



RUSSIA: EUROPEAN UNION AND UNITED KINGDOM SANCTIONS

by The Swedish Club and Reed Smith LLP
July 2023

Overview

The EU and UK have adopted similar sanctions regimes with regard to Russia, but there are some key differences.

The relevant EU regulations are Council Regulation (EU) No 833/2014, Council Regulation (EU) No 208/2014, Council Regulation (EU) No 692/2014, Council Regulation (EU) Regulation 269/2014, each as amended.

The UK regulations relating to Russia are The Russia (Sanctions) (EU Exit) Regulations 2019 (the “UK Russia Regulation”) and the UK’s Global Human Rights Sanctions Regulation 2020. The former was introduced following the UK’s exit from the EU and largely replicates the terms of the EU regulations above.

The UK also introduced a series of amendments to the UK Russia Regulation, expanding the sanctions framework. The latest amendment was implemented under the Russia (Sanctions) (EU Exit) (Amendment) Regulations 2023

Who do the EU and UK Sanctions apply to?

The scope of the EU and UK sanctions regimes are very similar in how they apply in their respective jurisdictions. Specifically, both apply:

- (a) within the territory of the EU / UK respectively, including their airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of an EU Member State / the UK;
- (c) to any person inside or outside the territory of the EU / UK, who is a national of an EU Member State / the UK;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of an EU Member State / the UK; and
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the EU / UK.

This will include Owners, Managers, Operators, Charterers and even vessels that are registered, incorporated, constituted or do business in whole or in part within the EU / UK.

The sanctions do not apply to non-EU / non-UK companies. However, if those companies take any action that is in breach of sanctions, associated EU / UK companies and employees who are EU / UK citizens may face penalties under the EU and UK regimes, to the extent they were involved in those activities.

In addition, non-EU / non-UK companies may face sanctions in respect of any business they conduct that is done in whole or in part within the EU / UK. The sanctions would be limited to that particular business, and would not extend to exclusively non-EU / non-UK business carried out by those companies.

Prohibitions: Overview

The prohibitions of greatest significance to the shipping sector relating to Russia, Ukraine, Crimea, Donetsk, Zaporizhzhia, Luhansk, Kherson and Sevastopol are:

A. Asset freezes

Under EU and UK regulations, all funds and economic resources belonging to, owned, held or controlled by listed parties are to be frozen. In addition, no funds or economic resources shall be made available,

directly or indirectly, to or for the benefit of listed parties. The prohibition on making available funds and economic resources goes beyond prohibiting direct payments to listed parties. Indirect payments, such as payment to a non-listed party who then in turn pays the money to a listed party, are also prohibited.

B. Territorial sanctions

Territorial sanctions on financing, trade in key sectors and investment in Crimea, Sevastopol, Donetsk, Luhansk, Kherson, and Zaporizhzhia.

C. Sectoral sanctions

Sectoral sanctions, specifically targeting the energy, oil transportation, goods strategic to the Russian economy, luxury goods, mining and metals and dual use and arms sectors.

D. Financial sanctions

Financial sanctions aimed at restricting the access of certain Russian entities, financial institutions and key companies to EU and UK capital markets.

The EU measures were first adopted in 2014 and have been significantly amended and developed since then, particularly following the invasion of Ukraine. The UK measures were introduced following the UK exiting the EU and effectively replace the equivalent EU measures.

Due diligence as a defence to liability

The EU sanctions regulations implementing these prohibitions include a partial defence to liability where the person or entity concerned “*did not know, and had no reasonable cause to suspect*”, that their actions would infringe the relevant prohibitions. The UK sanctions regulations have a similar defence in relation to criminal liability and trade related restrictions, but the Economic Crime (Transparency and Enforcement) Act 2022 empowered the UK financial sanctions regulator OFSI to impose civil monetary penalties without regard to such knowledge.

Conducting thorough investigations into any particular trade or transaction involving sanctioned jurisdictions is, therefore, critical; well-documented investigations and screenings may serve as a defence to unintentional sanctions violations.

Anti-circumvention

The EU and UK sanctions regulations contain anti-circumvention wording that provides that it “*shall be prohibited to participate, knowingly and intentionally, including indirectly, in activities the object or effect of which is to circumvent the prohibitions ...*”. Therefore, even if a transaction is not in direct breach of sanctions, if it intended to circumvent sanctions, a violation and liability may still arise. The EU Commission has increased its efforts to crack down on the circumvention of sanctions, thus expanding the designation criteria by adding a category whereby it can list individuals, with the aim of deterring others from evading sanctions. Furthermore, the EU has opened up the possibility of taking exceptional, last-resort measures restricting the sale, supply, transfer or export of sensitive dual-use goods and technology (or goods and technology that might contribute to the enhancement of Russia’s military, technological or industrial capacities or to the development of Russia’s defence and security sector) to third countries whose jurisdiction is demonstrated to be at a continuing and particularly high-risk of being used for circumvention.

Dealing with Designated Parties: Asset Freezes

Background

The EU has implemented asset freeze measures against three different categories of persons under its Russia related sanctions regime:

1. persons identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations in Ukraine, and natural or legal persons, entities or bodies associated with them;

2. persons responsible for actions which destabilised, undermined or threatened the territorial integrity, sovereignty and independence of Ukraine, and natural or legal persons, entities or bodies associated with them; and
3. individuals and entities that facilitate the circumvention of EU sanctions or that otherwise significantly frustrate the EU's anti-circumvention prohibitions.

The UK has implemented asset freezes on similar bases under the UK regulations listed above.

The total number of designated persons by the EU and the UK runs into the thousands and include a number of Russian banks, shipping companies, other commercial parties, Russian politicians and oligarchs.

What is prohibited?

4. Funds and economic resources belonging to, owned, held or controlled by designated parties are to be frozen.

→ *What does this mean?*

This provision is largely aimed at banks and financial institutions, who must freeze all accounts belonging to, owned, held or controlled by designated parties.

It also means that economic resources belonging to, owned, held or controlled by such designated parties cannot be dealt with (e.g. transported).

5. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of designated parties.

→ *What does this mean?*

No payments can be made to any party designated by the EU and UK regimes, either directly or indirectly (e.g. making the payment to a non-designated party in the knowledge that they will pay it on to the designated party).

No payments can be made "for the benefit of" a designated party. This includes, for example, making payments to a non-designated company which is owned or controlled by a designated party.

The prohibition extends beyond the payment of monies to "economic resources". These are defined by the EU and UK regimes as "assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but which may be used to obtain funds, goods or services". This can include letters of credit, bills of lading and bills of sale.

The wide scope of this provision emphasises the importance of thoroughly investigating all parties involved in a particular transaction or trade.

How can I avoid a breach?

Thorough investigations must be carried out in order to determine whether any party involved in a transaction is designated and whether the cargo, product or service that is the subject matter of the transaction is restricted. If so, there is a risk that involvement in the transaction will amount to sanctionable conduct, even if the listed party is not a direct contractual counterpart.

In many cases, designated oligarchs have taken measures to try and shield their businesses from the sanctions introduced against them. It is therefore recommended that careful due diligence is undertaken when engaging in any business involving entities associated with a sanctioned person.

The following investigations should be carried out:

- (a) Identify all parties involved in the transaction, for example the physical supplier, shippers, receivers, agents and any intermediaries.
- (b) Investigations must go further than simply identifying the names of the parties and checking them against the asset freeze lists. The prohibitions extend to parties owned and controlled by designated persons. Where possible the corporate structure, ownership and control of all companies involved in the transaction should be investigated.
- (c) Where a cargo is to be loaded or discharged in Russia, the relevant ports and terminals must be identified. Involvement in a trade which would require payment of port dues and other similar charges to a designated entity, either directly or indirectly, is likely to amount to a breach of sanctions.

It is also necessary to consider whether a non-designated party is owned or controlled by a designated party.

Under the UK sanctions regime, a party is considered to be “owned or controlled” by another party if:

- (a) that person holds directly or indirectly more than 50% of the shares or voting rights in the company or the rights to appoint or remove a majority of the board of directors of that company; and
- (b) it is reasonable, having regard to all the circumstances, to expect that that person would (if such person chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the company are conducted in accordance with that person’s wishes.

Under EU regulations, a party is considered to be “owned” by another party which is in possession of more than 50% of its proprietary rights, or which has a majority in it. There is no definitive meaning of “control” for the purposes of the EU sanctions regime – however, it is likely to follow similar principles to the UK position.

Are there any situations in which payments can be made to a designated party?

Under the EU and UK sanctions regulations, payments to designated parties may be authorised in certain specified circumstances. The majority of these are not relevant to a commercial situation, and reflect circumstances such as satisfying the basic needs of designated parties, or the payment of fees or service charges for the maintenance of frozen funds.

Funds may be added to frozen accounts where they reflect payments due under contracts, agreements or obligations that were concluded or arose before the date on which the designated party in question was listed. Those funds must then be immediately frozen.

Under EU regulations, these payments must be authorised by the relevant authority in the Member State of the party making the payment. Those authorities are listed in the relevant EU regulations. Such payments must also be notified to the EU Sanctions Committee, who must not object to the payment (subject to limited exceptions, including in relation to certain Crimean Sea ports).

Under the UK Russia Regulation, similar exceptions apply and a licence to carry out any such payments must be obtained from the UK’s HM Treasury.

In December 2022 the EU also introduced a derogation to the asset freeze restrictions, allowing the competent Member States authorities to authorise the release of certain frozen funds or economic resources belonging to natural persons having a significant role in international trade in agricultural and food products, including wheat and fertilisers, prior to their listing. This also concerns certain designated entities and individuals, if the funds or economic resources are necessary for the purchase, import or transport of agricultural and food products, including wheat and fertilisers.

Similarly, the UK introduced General Licence INT/2022/2349952 which authorises dealings with Russian sanctioned entities, in connection with the export, sale, production and transport of Agricultural Commodities (so defined). The licence also authorises ancillary services in connection with such activities including the provision of insurance, reinsurance and underwriting services and any other financial service to those involved

in such activities (including “Designated Persons”) in connection with a transaction relating to Agricultural Commodities.

Even if it appears that a particular payment may be permitted, it should never be assumed that authorisation will be given.

Are there any situations in which funds may be released from a frozen account?

In the EU, the competent Member State authorities may authorise release of frozen funds or economic resources include where:

- (a) the funds or economic resources are:
 - i. the subject of an arbitral decision rendered prior to the date on which the designated party was put on the asset freeze list, or of a judicial or administrative decision rendered in the EU, or a judicial decision enforceable in the Member State concerned, prior to or after that date; and
 - ii. will be used exclusively to satisfy claims secured by such a decision or recognised as valid in such a decision, within the limits set by applicable laws and regulations governing the rights of persons having such claims; and
 - iii. the decision is not for the benefit of a party on the asset freeze list and is not contrary to public policy in the Member State concerned.
- (b) if a payment is due under a contract or agreement concluded, or an obligation that arose, before the party was designated provided that the payment will not be directly or indirectly received by a designated party (e.g. into a frozen account).

Under UK regulations, similar exceptions to those of the EU listed above apply, save that a HM Treasury licence is required to authorise any such release of frozen funds or economic resources that fall under the above exceptions.

How can I find out which parties are designated?

A complete list of all parties designated by the EU regime can be found [here](#).

A complete list of all parties designated by the UK regime can be found [here](#).

B. Territorial sanctions on financing, trade in key sectors and investment in Crimea, Sevastopol, Donetsk, Luhansk, Kherson, and Zaporizhzhia

The EU and UK both impose substantial territorial sanctions on financing, trade in key sectors and investment in Crimea and Sevastopol, Donetsk. The EU restrictions are primarily set out in Regulation 692/2014 (as amended) and following the invasion of Ukraine, they were extended to include the Donetsk, Kherson, Zaporizhzhia and Luhansk regions.

What is prohibited?

Subject to certain exceptions and possible permissions, the following activities are prohibited under the relevant EU restrictions:

- (a) importing into the EU goods originating in Crimea, Sevastopol, Donetsk, Luhansk, Kherson or Zaporizhzhia and providing, directly or indirectly, financing or financial assistance, as well as insurance and reinsurance related to those goods;
- (b) acquiring any new or extending any existing participation in ownership of real estate located in Crimea, Sevastopol, Donetsk, Luhansk, Kherson or Zaporizhzhia;
- (c) acquiring any new or extending any existing participation in ownership or control of an entity in Crimea, Sevastopol, Donetsk, Luhansk, Kherson or Zaporizhzhia, including acquiring in full of such entity, or the acquiring of share and other securities of a participating nature of such entity;

- (d) granting or being part of any arrangement to grant any loan or credit of otherwise provide financing, including equity capital, to any entity in Crimea, Sevastopol, Donetsk, Luhansk, Kherson or Zaporizhzhia., or for the documents purpose of financing such entity;
- (e) creating any joint venture in Crimea, Sevastopol, Donetsk, Luhansk, Kherson or Zaporizhzhia or with an entity in those same regions.;
- (f) providing investment services directly related to the activities identified in paragraphs b) to e) above;
- (g) selling, supplying, transferring or exporting, directly or indirectly listed equipment and technology relating to transport, telecommunications, energy, oil and gas to companies incorporated in Crimea, Sevastopol, Donetsk, Luhansk, Kherson or Zaporizhzhiaa or for use in that region;
- (h) providing, directly or indirectly, technical assistance or brokering services, related to such listed goods and technology or related to the provision, manufacture, maintenance and use of such items to any natural or legal person, entity or body in Crimea, Sevastopol, Donetsk, Luhansk, Kherson or Zaporizhzhia, or for use in those same regions;
- (i) providing, directly or indirectly, financing or financial assistance related to such listed goods and technology to any natural or legal person, entity or body in Crimea, Donetsk, Luhansk, Kherson or Zaporizhzhia, or for use in those same regions;
- (j) providing technical assistance, or brokering, construction or engineering services directly related to infrastructure in Crimea, Donetsk, Luhansk, Kherson or Zaporizhzhia in the transport, telecommunications, energy and prospection, exploration and production of oil, gas and mineral resources sectors, independently of the origin of the goods and technology;
- (k) providing services directly related to tourism activities in Crimea, Donetsk, Luhansk, Kherson or Zaporizhzhia, including any ship providing cruise ship services, entering or calling at any of the following ports situated in the Crimean Peninsula, namely Sevastopol, Kerch, Yalta, Theodosia, Evpatoria, Chernomorsk and Kamysh-Burun.

The UK Russia Regulation largely replicates these restrictions in relation to the UK, although potential differences may arise in interpretation and scope of the restrictions. On 1 January 2021, the Office of Financial Sanctions Implementation (“OFSI”) issued a general licence permitting payments to the State Unitary Enterprise of the Crimean Republic “Crimean Sea Ports” for services provided at the ports of Kerch Fishery Port, Yalta Commercial Port and Evpatoria Commercial Port, as well as for services provided by Gosgidrografiya and by Port-Terminal branches of the Crimean Sea ports.

C. Sanctions Imposed before the February 2022 Russian Military Action in Ukraine

The EU sectoral sanctions pre-dating the Ukraine invasion included:

- (a) a ban on the supply of dual-use goods and technologies to persons in Russia or for use in Russia, where the goods or technology were or may be intended for military use or a military end-user. This was subsequently amended to include an outright prohibition on supplying various Russian entities, irrespective of end-use.
- (b) restrictions on the supply of various items to persons in Russia or for use in Russia relating to deep water and Arctic oil exploration and production or shale oil projects in Russia (“**Restricted Projects**”). This includes pipelines and various exploration equipment (e.g. Floating or submersible drilling or production platforms) suited for such projects.
- (c) a ban on the direct or indirect provision of various services relating to Restricted Projects, including drilling, well testing, logging and completion services and the supply of floating vessels.
- (d) a ban on the provision of arms and related materiel of all types to Russia.¹

¹ This restriction is contained in Article 2 of Council Decision 2014/512/CFSP, rather than the EU Regulation.

- (e) restrictions on *inter alia* (i) dealing with transferable securities and money-market instruments with a maturity exceeding 30 days; and (ii) making new loans or credit with a maturity exceeding 30 days to various Russian banks and corporate entities (including Rosneft, Transneft and Gazprom Neft), as well as their >50% subsidiaries.

In relation to dual-use goods / arms and related material, there were associated restrictions on related technical assistance, brokering services, financing and financial assistance (which includes insurance).

The UK restrictions in place prior to the Ukraine invasion largely replicated the equivalent EU measures above with restrictions on the following as well as the provision of related technical assistance, brokering services, financing and financial assistance including insurance:

- (a) various restrictions effectively comprising a ban on the export of military goods in to or from Russia.
- (b) a ban on the supply of dual-use goods intended for military use and an outright prohibition to various Russian entities, irrespective of end-use.
- (c) a prohibition on the export of energy-related goods (equivalent to the EU oil and gas exploration goods) to Russia.
- (f) an equivalent ban on the direct or indirect provision of various services relating to Restricted Projects, including drilling, well testing, logging and completion services and the supply of floating vessels.
- (d) similar restrictions on (i) dealing with transferable securities and money-market instruments with a maturity exceeding 30 days; and (ii) making new loans or credit with a maturity exceeding 30 days to various Russian banks and corporate entities (including Rosneft, Transneft and Gazprom Neft), as well as their >50% subsidiaries.

D. Additional Sanctions Imposed in Response to the February 2022 Russian Military Action in Ukraine

European Union

Finance restrictions

A variety of finance related restrictions were introduced against Russia since February 2022, which significantly expand on sanctions that pre-dated the invasion of Ukraine. These restrictions are important to consider, particularly in relation to potential payment difficulties connected with business involving Russia.

Specifically, it is prohibited to, *inter alia*:

- (a) sell, supply, transfer or export banknotes denominated in any official currency of a Member State to any person in Russia, which would likely cover any cash disbursements during Russian port calls
- (b) acquire any new or extend any existing participation; grant or be part of any arrangement to grant any new loan or credit; (iii) create any new joint venture; or provide investment services to entities operating in the energy sector in Russia, which includes entities within the Russian mining sector (with the exception of mining and quarrying activities involving certain critical raw materials);
- (c) deal with transferable securities and money-market instruments and make new loans or credit – without any maturity threshold limits to certain entities;
- (d) accept deposits from Russian persons, Russian persons whose proprietary rights are directly or indirectly owned for more than 50 % by Russian nationals or natural persons residing in Russia, where the total value of deposit of these persons / entities exceeds EUR 100,000;
- (e) provide public financing or financial assistance for trade with, or investment in, Russia.

The following Russian banks have also been cut off from SWIFT: (i) Bank Otkritie, (ii) Novikombank; (iii) Promsvyazbank; (iv) Rossiya Bank; (v) Sovcombank; (vi) VEB; (vii) VTB Bank; (viii) Credit Bank of Moscow and (ix) the Russian Agricultural Bank (JSC Rosselkhozbank).

Export restrictions

Energy and Aviation Industry

The sale, supply, transfer or export of certain listed goods and technology suited for use in oil and gas exploration to any person, entity or body in Russia or for use in Russia are prohibited. These pre-existing measures have been amended from a restriction only banning the relevant goods if intended for use in certain restricted projects, to an outright ban (subject to limited exceptions). There are also prohibitions on exporting various equipment designed for oil refining and liquefaction processes.

Further, the sale, supply, transfer or export of certain goods and technology suited for use in aviation or the space industry and jet fuel and fuel additives whether or not originating in the Union, to any natural or legal person, entity or body in Russia or for use in Russia are prohibited, subject to limited exceptions.

The provision of technical assistance, brokering services, financing and financial assistance related to the restricted goods and technology described above is also prohibited.

The transit via the territory of Russia of goods suited for use in aviation or the space industry and jet fuels and fuel additives is now also prohibited.

Dual-use goods and technology

The sale, supply, transfer or export of any dual-use goods and technology to any person, entity or body in Russia or for use in Russia, irrespective of whether such goods and technology are intended for military use or for military end-users is prohibited.

The provision of technical assistance, brokering services, financing and financial assistance for any sale, related to the restricted goods and technology is also prohibited.

There are certain exceptions for non-military use and non-military end-users, including for humanitarian or medical purposes, software updates or for use as consumer communication devices. The competent authorities of each Member State may, under very limited circumstances, grant authorizations to the above prohibitions.

Military enhancement goods

The sale, supply, transfer or export of arms and related materiel and goods and technology which might contribute to Russia's military and technological enhancement to any person, entity or body in Russia or for use in Russia is prohibited.

The provision of technical assistance, brokering services, financing and financial assistance related to the restricted goods and technology is also prohibited.

There are certain exceptions for non-military use and non-military end-users, including for humanitarian or medical purposes, software updates or for use as consumer communication devices.

Maritime navigation goods and technology

The sale, supply, transfer or export of maritime navigation goods and technology whether or not originating in the Union, to any natural or legal person, entity or body in Russia, for use in Russia, or for the placing on board of a Russian-flagged vessel. This ban targets certain marine navigation equipment, sitting alongside the other restrictions on marine goods (including vessels).

The provision of technical assistance, brokering services, financing and financial assistance related to the restricted goods and technology is also prohibited.

Luxury goods

The sale, supply, transfer or export of luxury items, as well as providing technical assistance, brokering services, other services, financing or financial assistance related to the same, including caviar, truffles, champagne, cigars and perfumes, but also less luxurious items such as railways or tramway parts, or motor vehicle parts and accessories, is prohibited insofar as their value exceeds €300 per item. There is further guidance on the application of these financial limits in the EU's related FAQs.

Import restrictions

Iron and steel

The import, purchase or transport of certain iron and steel products originating in Russia, located in Russia or being exported from Russia irrespective of final destination (EU or non-EU) is prohibited. The import restrictions into the EU are subject to certain limited exceptions. The provision of technical assistance, brokering services, financing and financial assistance related to the restricted iron and steel products is also prohibited. In the EU, importers are also now obliged to provide evidence of the country of origin of iron and steel inputs used for the processing of the certain iron and steel products if such products are processed in certain third countries.

Gold

The purchase, import or transfer directly or indirectly of gold if it is of Russia-origin and has been exported from Russia into the EU, or to any third country is prohibited. These restrictions subject to certain limited exceptions. The provision of technical assistance, brokering services, financing and financial assistance related to the restricted gold products is also prohibited.

Goods generating significant revenues

The import, purchase or transport of a variety of goods that generate significant revenues for Russia, including seafood products, fertiliser products, raw materials, various marine vessels and certain wood products and charcoal if they originate in Russia or are exported from Russia is prohibited, subject to certain limited exceptions and wind-down periods. The provision of technical assistance, brokering services, financing and financial assistance related to the restricted iron and steel products is also prohibited.

The EU has clarified through relevant FAQs on 7 October 2022 that the transfer of restricted fertilizer and animal feed products to third-countries is permitted, in order to mitigate against food and energy insecurity.

Coal and other solid fossil fuels

The purchase, import or transfer of certain restricted coal products into the EU if they originate in Russia or are exported from Russia is prohibited. However, the transport of restricted coal products to a third country is permitted provided that it does involve transit through EU territory. The provision of technical assistance, brokering services, financing and financial assistance related to the restricted coal products is also prohibited.

Crude oil and petroleum products

The import, purchase or transport of crude oil and petroleum products if they originate in Russia or are exported from Russia into the Union is prohibited. The provision of technical assistance, brokering services, financing and financial assistance related to the above activities is also prohibited. These restrictions are subject to a variety of exceptions including:

- (a) where those goods originate in a third country and are only being loaded in, departing from or transiting through Russia, provided that both the origin and the owner of those goods are non-Russian;
- (b) the purchase, import or transfer into Bulgaria of restricted seaborne crude oil and of petroleum products originating in Russia or exported from Russia until 31 December 2024;
- (c) the purchase, import or transfer into Croatia of vacuum gas oil falling under CN 2710 19 71 originating in Russia or exported from Russia, provided that: (a) no alternative supply of vacuum gas oil is available; and that (b) Croatia has notified the Commission, at least two weeks prior to the authorisation, of the grounds on which it considers that a specific authorisation should be granted, and the Commission has not objected within that period.

Further, from 5 February 2023:

- (a) it is prohibited to transfer or transport petroleum products falling under CN 2710 produced from Russian origin crude oil imported into Bulgaria, to other Member States or to third countries, or to sell such petroleum products to purchasers in other Member States or in third countries. This restriction is subject to certain exceptions that may be granted by the Bulgarian competent authorities; and
- (b) the purchase, import, or transfer of natural gas condensates falling under CN 2709 0010 from liquefied natural gas ("LNG") production originating in or exported from Russia is authorised if such transaction is necessary for ensuring the security of LNG supplies of the Union. There is also a new reporting obligation (including information on volumes) that applies on EU operators engaged in transactions concerning natural gas condensate from LNG production plants.

Price Cap restrictions

The EU and the G7 have imposed restrictions on transport, insurance, brokering, technical assistance and financing for crude oil (CN 2709 00) and petroleum cargoes (CN 2710) destined for third countries unless price cap compliant. The prohibitions do not apply with respect to specific projects (currently only with respect to crude oil originating in the Sakhalin-2 Project destined to Japan for the limited period between 5 December 2022 and 31 March 2024).

The EU has published guidance and FAQs on the application of the Price Cap restrictions.² Briefly, the Price Cap restrictions:

- (a) cover only the price for the purchase of the restricted oil product - ancillary costs, including, but not limited to, freight, insurance and transportation costs as well as legal fees, are not subject to the restrictions; and
- (b) apply from shore to shore, that is, from receipt of the restricted product onboard a ship up to the point where it is delivered to a third country and substantially transformed into a different good in line with the applicable rules of origin (e.g. the resulting product comes under a different CN code).

The cut-off date for crude oil was 5 December 2022, with a wind down for cargoes loaded before 5 December 2022 provided they were discharged at a discharge port by 19 January 2023. The cut-off date for petroleum products was 5 February 2023, with a wind down for cargoes loaded before 5 February 2023 provided they were discharged at a discharge port by 1 April 2023.

There is an agreed three-tier system across the EU (as well as the UK), which is summarised in the table below.

The key difference is that, while the EU guidance state that financial institutions providing transaction-specific trade and general financing both fall under Tier 2, the UK guidance suggests that financial institutions providing general financing could fall under Tier 3 instead.

As specified in the relevant guidance, the evidential and attestation obligations differ across the Tiers and are broadly aligned between the three jurisdictions. Each guidance states that the attestation process is additional to the typical due diligence and KYC checks that market participants are expected to conduct for each trade.

Further, the EU guidance provides that documentary evidence and attestations should be kept for a minimum of five years from the date of transportation or the transaction whereas the UK guidance requires records to be kept for four years.

Tier	Definition	Typical actors
Tier 1	Actors who have direct access to price information in the ordinary course of business.	Commodities brokers, commodities traders, and other persons acting in their capacity as seller or buyer of Russian oil.
Tier 2	Actors who are sometimes able to request and receive price information from their customers in the ordinary course of business.	Financial institutions (EU and U.S.), custom brokers, ship agents, charterers. Financial institutions providing transaction-specific financing (UK only).
Tier 3	Actors who do not have direct access to price information in the ordinary course of business.	Insurers, including P&I clubs, shipowners, ship management companies, and flagging registries. Financial institutions providing general financing (UK only).

² https://finance.ec.europa.eu/publications/oil-price-cap_en;

Bunkering

EU FAQ 25 of 3 December 2022 states as follows:

25. Is bunkering of Russian oil included?

Last update: 3 December 2022

No. The maritime services ban does not extend to bunkering (service of supplying fuel for use by ships).

The above FAQ was supplemented by a new FAQ 18a, which provides:

“18a. Is it prohibited for an EU vessel to bunker Russian petroleum products?

Last update: 4 February 2023

The bunkering by an EU vessel of Russian petroleum products in Russia is possible provided this purchase is required to meet the essential needs of the purchaser in Russia (Article 3m paragraph 9).

Furthermore, if an EU person has no reason to suspect that the petroleum product that it has purchased for the bunkering of its vessel in a third country is of Russian origin, it should not be held liable if such product is of Russian origin. If, exceptionally, the EU person knew, or could not have ignored the Russian origin of such product, it would be in breach of Article 3m, paragraph 1.”

This now suggests that the restrictions under Article 3m should be read expansively. Whereas previously the EU had clarified that it only sought to restrict Russian oil and products into the Union under Article 3m, it now suggests that EU owners/operators are prohibited from purchasing Russian product for use on vessels. As to what constitutes the “essential needs of the purchase in Russia”, FAQ 4 of 22 June 2022 provides examples: “EU tourists visiting Russia, EU expats living in Russia, EU humanitarian aid providers etc... EU company in Russia which would need to purchase the goods for its own use.”

Economic embargo on certain state-owned enterprises

In addition to the asset freeze measures, similar restrictions have been introduced against various state-owned enterprises and their subsidiaries under the EU Regulation. Specifically, it is prohibited to directly or indirectly engage in any transaction with certain Russian state-owned entities which are publicly controlled or with over 50 per cent public ownership or in which Russia, its government or the Central Bank has the right to participate in profits or a significant economic relationship. This also applies to legal persons, entities or bodies established outside the Union that are 50 per cent or more owned by, or acting on behalf or at the direction of, any such entity.

Entities targeted by this complete ban include Transneft, Rosneft, Gazprom Neft, the Russian Maritime Register of Shipping, Rostec and the Russian Regional Development Bank.

The prohibition does not apply to inter alia transactions which are:

- (a) strictly necessary for the purchase, import or transport of fossil fuels, in particular natural gas, titanium, aluminium, copper, nickel, palladium and iron ore from or through Russia into the Union, a country member of the European Economic Area, Switzerland, or the Western Balkans ;
- (b) strictly necessary for the transport of oil and petroleum products from or through Russia unless prohibited by the EU Regulation;
- (c) related to energy projects outside Russia in which the targeted entities are a minority shareholder;
- (d) necessary for the purchase, import or transport of pharmaceutical, medical, agricultural and food products, including wheat and fertilisers whose import, purchase and transport is allowed under the EU Regulation.

Please also note that the provision of insurance for a vessel calling into a port owned by a restricted state-owned entity is not prohibited but in the event of a claim or incident an insurer subject to the EU sanctions would most likely not be permitted to make a direct or indirect payment to the port or reimburse liabilities for damages occurring.

Further, EU nationals are prohibited from holding any posts on the governing bodies of all Russian State-owned or controlled legal persons, entities, or bodies located in Russia, as of 16 January 2023.

In addition, the EU has withdrawn the recognition of the RMRS as a recognised ship inspection and survey organisation in the EU. This means that an EU flag State can no longer enter into, or renew, any authorisations with RMRS nor delegate any work to it. Likewise, the Member States cannot delegate any verification in the ship security field or any safety inspection for the inland waterways purposes.

Ban on Russia-flagged vessels accessing EU ports

From 16 April 2022, it is prohibited for any Russian flagged vessels to access EU ports and, from 29 July 2022, any locks in the territory of the EU, with the exception of access to locks for the purpose of leaving the territory of the EU.

This includes any vessel that have changed their Russian or registration to another State after 24 February 2022. This is subject to certain limited exceptions. The EU has also clarified through related FAQs that it is an offence to provide STS services to a vessel as a means of circumventing these restrictions. Additionally, vessels certified by the Russian Maritime Register of Shipping cannot call at EU ports after 8 April 2023.

Access to EU Ports and Locks for Vessels

On and from 24 July 2023, EU ports and locks will not be available to any vessel that has engaged in STS activity “at any point of the voyage to a Member State’s ports or locks”, if the relevant competent authority has reasonable cause to suspect that such vessel is in breach of the import ban on crude oil and petroleum products or the price cap restrictions.

Even if the vessel’s fixture is in compliance with the import ban and price cap restrictions that vessel will not be granted access if it fails to notify the relevant competent authority at least 48 hours in advance of such STS activity, if such STS activity occurs within the Exclusive Economic Zone or 12 nautical miles from the baseline of that Member State’s coast.

Furthermore, on and from 24 July 2023, EU ports and locks will not be available to any vessel that a competent authority has reasonable cause to suspect that such vessel has illegally interfered with, switched off or otherwise disable its AIS “at any point of the voyage to a Member State’s ports or locks”, in breach of the SOLAS Regulation when transporting crude oil or petroleum products.

These port bans are all subject to exemptions or grounds for derogation in emergency circumstances or for humanitarian purposes. Competent authorities will exchange information in relation to any refusals made under the new provisions.

United Kingdom

Finance restrictions

A wide range of finance focused restrictions have been introduced against Russia. The most relevant to the shipping industry are set out below:

- (a) restrictions on: (i) dealing with transferable securities and money-market instruments; and (ii) making new loans or credit – in many cases without maturity thresholds. These restrictions are broader than the EU’s, applying not only to certain specific entities, but all entities connected with Russia (subject to certain exceptions).
- (b) Restrictions on the export of banknotes³ and prohibitions on directly or indirectly: (i) supplying or delivering banknotes to a person connected with Russia; (ii) making banknotes available to a person connected with Russia; or (iii) making banknotes available for use in Russia.

Export restrictions

³ “Banknotes” means (i) sterling denominated banknotes issued by the Bank of England and banks in Scotland and Northern Ireland; and (ii) banknotes denominated in any official currency of the EU.

Although there is significant overlap between the UK and EU export restrictions against Russia, there are also material differences. For example, the UK restrictions do not cover all the same goods as the EU measures (on a CN code basis) and the restrictions are generally not subject to wind-down exceptions

Additionally, the language of the UK restrictions is broader than that of the EU and refers to restrictions on the export, supply, delivery and 'making available' certain goods to 'persons connected with Russia' or 'for use in Russia'. These include but are not limited to:

- (a) Dual use, military, defence and security and critical industry goods ("restricted goods")
- (b) Aviation and space goods
- (c) Goods for oil refining and maritime goods
- (d) Energy-related goods
- (e) Jet fuel and fuel additives
- (f) Luxury goods
- (g) G7 dependency goods including raw materials, chemical products and certain vehicle types
- (h) Russia's vulnerable goods which includes a wide variety of industrial and commercial goods

The provision of, *inter alia*, associated insurance and brokering services in relation to the activities described above is also prohibited.

Import restrictions

The UK import restrictions are also similar to those of the EU and include restrictions on the import and acquisition, and in some instances transport (even to a third country), from a place in Russia of:

- (a) Military goods
- (b) Iron and steel products
- (c) Coal and coal products
- (d) Oil and oil products
- (e) Gold
- (f) Liquefied natural gas
- (g) Revenue generating goods which includes a wide range of goods such as seafood products, fertiliser products, raw materials, various marine vessels

There are similarly related restrictions on the provision of technical assistance, financial services (which includes insurance) and brokering services in relation to all these goods.

With regards to restricted iron and steel products processed in a third country, Chapter 4CA which comes into force on 30 September 2023, imposes a restriction on imports into the UK of "relevant processed iron or steel product" (as defined) on or after 30 September 2023. Again, there are associated restrictions on technical assistance, brokering services, financing and financial services.

With regards to revenue generating goods, there is a distinction between "Schedule 3D revenue generating goods" and "Schedule 3DA revenue generating goods":

- Schedule 3D revenue generating goods are only restricted if they are being imported or acquired with the intention of entering the UK.
- Schedule 3DA revenue generating goods are subject to broader restrictions and prohibits UK persons from, directly or indirectly, (i) importing; (ii) acquiring; and (iii) supplying or delivering from a place in Russia to a non-UK country, goods falling under Schedule 3DA which are consigned from Russia, located in Russia, or of Russian origin.

Price cap

The maritime transport, as well as the provision of associated brokering services or financing or financial assistance (which includes insurance, to third countries of crude oil or petroleum products), which originate in Russia or are consigned from Russia are prohibited from 5 December 2022 (crude oil) and 5 February 2023 (petroleum products), respectively, unless they are price cap compliant.

The UK has issued guidance on the Price Cap restrictions⁴. Similar wind-down periods to those of the EU apply.

The UK guidance adopts the three-tier system, as set out above in the EU section. The UK General Licence relating to the 45 day wind-down period⁵ and the Price Cap General Licence⁶, as well as the accompanying guidance, goes slightly further than the EU and the U.S. by imposing reporting obligations on UK actors. These are briefly summarised in the table below.

UK actor Tier	UK reporting requirements
Tier 1	<p>UK Tier 1 actors must report their reliance on the relevant General Licence each time they undertake activity purporting to be permitted under the relevant General Licence within 40 days of such activity.</p> <p>Where there are multiple activities undertaken within a 30-day period, this may be submitted as one consolidated report.</p> <p>UK Tier 1 actors must notify HM Treasury of any change to the details previously reported/provided.</p>
Tier 2 and Tier 3	<p>The previous section discussed the reporting requirements where a UK Tier 2 or Tier 3 actor directly transacts with a UK Tier 1 actor.</p> <p>If the UK Tier 2 or Tier 3 actor directly transacts with a non-UK Tier 1 actor, the UK Tier 2 or Tier 3 actor must inform HM Treasury of this transaction.</p> <p>For Tier 2 actors, this must be reported within 60 days of the quarterly review.</p> <p>For Tier 3 actors, this confirmation can be made on a periodic basis (e.g., at the same time as an annual policy review, or other periodic review of the service agreements with the Tier 1 entity) but must be within 60 days of the periodic review.</p>

Further, the UK guidance also expects operators already subject to due diligence requirements to continue to comply with these and such due diligence requirements also form part of the conditions of the Price Cap Licence.

Bunkering

The UK's current guidance relates to UK bunker providers:

2.4 Bunkering services

The provision of bunkering services to a ship carrying Russian-origin oil or oil products is not in scope of the UK maritime services ban or price cap. A UK provider of bunkering services can therefore provide these services to a vessel carrying Russian-origin oil or oil products irrespective of whether the cargo complies with the relevant price cap.

Updated guidance and clarification as to the practical effect of the above is expected from OFSI.

Port ban restrictions

The following vessels are prohibited from accessing UK ports:

- (a) vessels owned, controlled, chartered or operated by a designated person;
- (b) vessels owned, controlled, chartered or operated by persons connected with Russia;
- (c) Russian-flagged vessels;
- (d) Vessels registered in Russia, or
- (e) "specified ships" (as specified by the Secretary of State)

⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1126108/Russian_Oil_Services_Ban_-_HMT_Industry_Guidance.pdf

⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1122838/Oil_Price_Cap_Wind-down_INT_2022_2470256.pdf

⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1121742/2469656_OFSI_OPC_GL.pdf

This is broader than the equivalent EU restrictions which only apply to Russian flagged (or recently Russian flagged) vessels. Further, the UK restrictions include additional governmental powers to detain vessels falling in these categories.

For the purposes of the restrictions, a ship is:

1. “Owned” by a person if: (i) the legal title to the ship, or to any share in the ship, is vested in the person, or (ii) the person has a beneficial interest in the ship or in any share in the ship; and
2. “Controlled” by a person who is able to take decisions about its operation, including (but not limited to) decisions about the route the ship may take and the appointment of master or crew. a ship is not “controlled” by its master or crew, unless that master or crew are designated persons under the relevant regulations of this Part
3. A “specified ship” is a ship specified by the Secretary of State, which the Secretary of State has reasonable grounds to suspect the ship is being used for activity whose object or effect is to contravene or circumvent the UK Russia Regulations.

The Secretary of State or a UK harbour authority has the power to issue the following to the relevant master or pilot: (i) a port barring direction in relation to a specified ship; (ii) a port entry direction or movement direction in relation to Restricted Vessels; or (iii) a detention order requiring the detention of Restricted Vessels at a port or anchorage of the UK.

Any directions given by the Secretary of State must be complied by any person to whom they are given to and may be of infinite duration. There is an exemption for the prohibition of port entry whereby the access to the port is needed for emergency reasons or where a port entry direction has been given.

Further, registration of vessels owned, controlled, chartered or operated by (i) designated persons; or (ii) persons connected with Russia prohibited

Trading Vessels to Russia

Marine vessels are a restricted good and therefore subject to various restrictions under the Russia UK Regulation. These measures are broadly speaking export control restrictions and therefore applying them to ships commercially traded worldwide can give rise to interpretative uncertainties. The UK General Trade Licence (Russia Sanctions – Vessels) issued by the UK on 17 March 2022 clarified that the trading of vessels to Russia in otherwise non-sanctioned trade, did not constitute a violation UK Regulations by virtue of making a vessel ‘available for use in Russia’, providing the terms of the licence were met. The licence also applies in relation to the related restrictions on technical assistance, brokering and financial services (including insurance).

Disclaimer: This Member Alert is intended to provide only general guidance and information pertaining to the issues identified and commented upon herein. The content of this Alert is not intended to be, and should not be treated as being final and binding legal advice. If Members consider they are likely to or in fact have encountered problems or difficulties as discussed in this Alert, they are asked to contact the Club and obtain further legal advice relevant to their specific circumstances.