

# Expanded EU Sectoral Sanctions Targeting Russia

On 12 September 2014, the EU implemented an expanded set of sectoral sanctions targeting Russia. The new sanctions are set out in Council Regulation (EU) No. 960/2014, which amends existing Council Regulation (EU) No. 833/2014 that had been in effect since 1 August 2014.

A press release issued by the President of the European Council on 11 September 2014 stated that the measures will be reviewed within a month, to determine whether they should be repealed, suspended or expanded further in view of the extent to which the peace plan in eastern Ukraine has been implemented.

## The new measures comprise the following: Capital markets restrictions

The new Regulation expands the existing controls affecting the capital markets. Those controls are contained in Article 5 of Regulation 833/2014, which has been replaced and updated by the new Regulation.

The existing controls in relation to *"transferable securities and money-market instruments"* issued by listed state-owned Russian banks (or their more than 50% owned non-EU subsidiaries, or entities acting on their behalf or at their direction) remains broadly unchanged. Of significance, the prohibition now applies in relation to transferable securities and money-market instruments with a maturity exceeding 30 days issued after 12 September 2014. For transferable securities and money market instruments issued after 1 August 2014 but before 12 September 2014, the relevant maturity threshold remains 90 days.

The new Regulation has clarified that Article 5 will apply to transferable securities and money-market instruments that are issued by a non-EU subsidiary of a listed state-owned Russian bank, where the listed *bank directly or indirectly* owns more than 50% of the proprietary rights of the issuing entity.

In addition, the new Regulation has amended, slightly, some of the relevant definitions. Whereas previously it was prohibited to provide *"brokering"* in relation to the newly

issued transferable securities or money-market instruments, in the new EU Regulation, the prohibition refers now to *"investment services"* in relation to such transferable securities or money-market instruments. The definition of *"investment services"* is the same as *"brokering"* in the original EU Regulation. The change appears to have been made so as to distinguish it from the prohibition against *"brokering services"* which arises in the context of the export controls elsewhere in the EU Regulation.

The definition of *"transferable securities"* has also been amended. Whereas before it applied to any classes of securities negotiable on the capital markets (with an open-ended list of examples), the definition is now more specific and is limited *only* to the categories set out. These are as follows:

- (i) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares;
- (ii) bonds or other forms of securitised debt, including depositary receipts in respect of such securities; and
- (iii) any other securities giving the right to acquire or sell any such transferable securities.

These categories largely track the previous definition, but limb (iii) has been amended. Whereas previously it

included the words "or giving rise to a cash settlement" at the end of the sentence, those words have now been deleted.

The categories of persons in relation to which the controls apply has now also been expanded. Pursuant to Article 5(2), it is now prohibited to, directly or indirectly, purchase, sell, provide investment services for or assistance in the issuance of, or otherwise deal with transferable securities and money-market instruments with a maturity exceeding 30 days, issued after 12 September 2014 by any of the following:

- (a) Entities listed in Annex V (which as at the date hereof, comprise OPK OBORONPROM, UNITED AIRCRAFT CORPORATION and URALVAGONZAVOD);
- (b) Entities listed in Annex VI (which as at the date hereof comprise ROSNEFT, TRANSNEFT and GAZPROM NEFT);
- (c) Any legal person, entity or body established outside of the EU whose proprietary rights are directly or indirectly owned for more than 50% by an entity listed in points (a) or (b) above; or
- (d) a legal person, entity or body acting on behalf or at the direction of an entity referred to in points (a), (b) or (c) above.

Recital (6) to the new Regulation explains that: "*Financial services other than those referred to in Article 5 of Regulation (EU) No. 833/2014, such as deposit services, payment services, insurance services, loans from the institutions referred to in Article 5(1) and (2) of that Regulation and derivatives used for hedging purposes in the energy market are not covered by these restrictions.*"

### Loans

The new Regulation contains an entirely new prohibition against, directly or indirectly, making or being part of any arrangement to make new loans or credit with a maturity exceeding 30 days to any of the entities which are subject to the capital markets restrictions (i.e. any of the listed entities in Annexes III, V or VI, or their more than 50% owned non-EU subsidiaries, or entities acting on their behalf or at their direction).

The prohibition applies in relation to new loans issued after 12 September 2014, with the following exceptions:

- loans or credit that have a specific and documented objective to provide financing for non-prohibited imports or exports of goods and non-financial services between the EU and Russia. This exception appears

to apply only where the loan is expressed to be for a specific purpose to finance imports or exports or non-financial services between the EU and Russia, as long as those imports, exports or other services are not otherwise prohibited by any other measures. A general working capital facility would not therefore be permitted by this exception.

- loans that have a specific and documented objective to provide emergency funding to meet solvency and liquidity criteria for legal persons established in the EU, whose proprietary rights are owned for more than 50% by any entity referred to in Annex III (i.e. the following banks: SBERBANK, VTB BANK, GAZPROMBANK, VNESHECONOMBANK (VEB) and ROSSELKHOZBANK).

There is no grandfathering provision which excludes the execution of pre-existing contractual obligations from the scope of the new prohibition. The prohibition instead applies only to new loans or credit. Recital (6) to the new Regulation states that "*Loans are only to be considered new loans if they are drawn after 12 September 2014.*" This suggests that new or further draw downs cannot be made even under pre-existing loan agreements entered into before 12 September 2014.

### Oil and Gas Sector

There is a new prohibition against the provision, directly or indirectly, of any of the following associated services necessary for deep water oil exploration and production, Arctic oil exploration and production, or shale oil projects in Russia: (i) drilling; (ii) well testing; (iii) logging and completion services; and (iv) supply of specialised floating vessels.

There is an exception which allows the execution of obligations arising from a contract or a framework agreement concluded before 12 September 2014 (or ancillary contracts necessary for the execution of such contracts).

There is also an exception which applies where the services in question are necessary for the "*urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment*".

### Dual-use goods and technology

The existing controls in relation to the sale, supply, transfer or export of dual-use goods and technology (as listed in Annex I to Regulation (EC) No. 428/2009) have been expanded. Whereas previously the prohibition in

Regulation 833/2014 was that the sale, supply or export of those items was prohibited if the items in question were intended for military use or for a military end-user (with a presumption that if the end-user was the Russian military, dual-use goods and technology procured by it would be for a military purpose and therefore prohibited) there is now, in addition, a list of entities in Annex IV to Regulation 833/2014 to whom the sale, supply, transfer or export of dual-use goods and technology is specifically prohibited. That list comprises 9 entities, including private enterprises engaged in both civil and military activities. These are: JSC Sirius; OJSC Stankoinstrument; OAO JSC Chemcomposite; JSC Kalashnikov; JSC Tula Arms Plant; NPK Technologii aschinostrojenija; OAO Wysokototschnye Kompleksi; OAO Almaz Antey and OAO NPO Bazalt.

There are also related prohibitions against the provision of technical assistance, brokering services, financing or financial assistance to any of the entities listed in Annex IV.

There is, as before, an exception for the sale, supply, transfer or export of dual-use goods and technology pursuant to contracts or agreements concluded before the introduction of the prohibitions: so, in this case, 12

September 2014. There is also an exception where the provision of assistance is necessary for the maintenance and safety of existing capabilities within the EU.

A carve-out exists in relation to the sale, supply, transfer or export of dual-use goods and technology intended for the aeronautics and space industry (for non-military use and for a non-military end user), as well as for the maintenance and safety of existing civil nuclear capabilities within the EU (again, for non-military use and for a non-military end user).

All EU exporters of dual-use items are already (under separate measures) required in any event to have a licence for exports of dual-use items to Russia. The new controls will determine the circumstances in which such licences will be granted. EU banks involved in financing or providing financial assistance in connection with the sale, supply, transfer or export of dual-use goods and technology to persons in Russia should ensure that they are not providing such financing or financial assistance to entities listed in Annex IV.

## Authors



**Rae Lindsay**  
Partner

T: +44 20 7006 8622  
E: rae.lindsay  
@cliffordchance.com



**Martin Saunders**  
Partner

T: +44 20 7006 8630  
E: martin.saunders  
@cliffordchance.com



**Michael Lyons**  
Senior Associate

T: +44 20 7006 4317  
E: michael.lyons  
@cliffordchance.com



**Martin Power**  
Senior Associate

T: +44 20 7006 8745  
E: martin.power  
@cliffordchance.com

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