

KIRKLAND ALERT

August 2014

EU Broadens the Scope of Sanctions and Restrictive Measures Targeting Russia

The EU has implemented a program of sanctions and restrictive measures designed to target Russia and persons responsible for actions that undermine or threaten the territorial integrity, sovereignty and independence of Ukraine. Whilst these measures had previously been limited to asset freezes against a number of named individuals and entities, Regulation 833/2014 of 31 July 2014 (the “Regulation”) has broadened the scope of these measures to impact the wider Russian economy, including its energy industry and financial sector.

The new restrictions imposed by the Regulation are more wide-ranging and now contain specific finance-related prohibitions. Accordingly, together with various prohibitions on the export and financing of certain arms and military equipment, dual-use goods and the sale of certain energy industry-related technologies, there is also a restriction on access to the capital market for certain Russian financial institutions.

In light of this new restriction, we suggest that companies, especially those with Russian related operations, carry out a review of their respective businesses. Any such review will have to look at both their direct dealings as well as, where applicable, wider portfolio management mandates to see whether they relate to any of the financial instruments covered by the Regulation in relation to the entities listed in it.

The United States has also imposed sweeping economic sanctions.¹ Companies and individuals doing business with Russia and Ukraine will therefore have to be diligent and stay well-informed of the evolving situation to ensure compliance with all applicable laws.

Background

As with other nations and international bodies, the EU has expressed concern over the situation that has developed in the Crimea and wider Ukraine.² Since March 2014, the EU has adopted and expanded sanctions designed to freeze and recover misappropriated Ukrainian state funds and adopted and expanded restrictive measures against persons responsible for actions that undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, and persons and entities linked to them, as follows:

- On 5 March 2014, the EU issued a regulation freezing the assets of, and prohibiting making funds or economic resources available to, 18 individuals identified as responsible for misappropriation of Ukrainian state funds and human rights violations in Ukraine.³ This was extended on 14 April 2014 to list a further four individuals.⁴
- On 17 March 2014, the EU issued a regulation freezing the assets of, and prohibiting making funds or economic resources available to, 21 individuals identified as responsible for actions that undermine or threaten the territorial integrity,

sovereignty and independence of Ukraine.⁵ This has been extended a number of times and there are now 95 individuals and 23 entities listed.⁶

- On 23 June 2014, the EU issued a regulation banning the import of certain goods originating in Crimea or Sevastopol and the financing or insuring of such imports.⁷ This was extended on 30 July 2014 to include a ban on new investments in infrastructure in the transport, telecommunications and energy sectors in Crimea and Sevastopol.⁸

Until the Regulation, the measures adopted by the EU had generally only targeted specific individuals or entities, and had not been designed to impact the wider Russian economy.

However, as a result of continued activity by armed militants in eastern Ukraine, further restrictive measures targeting Russia were agreed.⁹ On 17 July 2014, Malaysia Airlines flight MH17 was shot down in Donetsk, eastern Ukraine and, as a result, the Foreign Affairs Council agreed to accelerate the preparation of sanctions, and to finalise work on targeted measures relating to access to capital markets, defence, dual-use goods and sensitive technologies, including in the energy sector.¹⁰ This is the context in which the Regulation, discussed further below, was issued.

The Regulation

The Regulation was issued on 31 July 2014 and entered into force across the EU on 1 August 2014. The restrictions apply within the EU, on board any aircraft or vessel under the jurisdiction of a Member State, to any individual who is a national of a Member State wherever in the world they are located, to any entity which is incorporated in a Member State, and to any individual or entity in respect of business done in the EU.

The Regulation applies restrictions on:

1. access to the capital market for certain financial institutions;
2. the sale, supply, transfer or export of certain technologies for the Russian energy industry;
3. exports of certain dual-use goods and technologies and on the provision of related services; and
4. certain services related to the supply of arms and military equipment.

We discuss these elements briefly below.

Capital markets

The Regulation prohibits (directly or indirectly) buying, selling, dealing or providing *brokering* or assistance in the issuance of *transferable securities* and *money-market instruments* with a maturity exceeding 90 days which are issued after 1 August 2014 by:

1. the institutions listed in Annex III to the Regulation;¹¹

2. any entity established outside the EU that is more than 50% owned by one of the institutions listed in Annex III; or
3. any entity acting on behalf of or at the direction of an entity referred to in (2) above or listed in Annex III.

The Regulation also defines the terms *brokering*, *transferable securities* and *money-market instruments*.

Brokering is defined as: (i) reception and transmission of orders in relation to one or more financial instruments; (ii) execution of orders on behalf of clients; (iii) dealing on own account; (iv) portfolio management; (v) investment advice; (vi) underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis; (vii) placing of financial instruments without a firm commitment basis; and (viii) any service in relation to the admission to trading on a regulated market or trading on a multilateral trading facility. *Transferable securities* are defined as those classes of securities that are negotiable on the capital market, with the exception of instruments of payment such as shares in companies, bonds and other forms of securitised debt and any other securities that give the right to acquire or sell any transferable securities or give rise to a cash settlement. *Money-market instruments* are defined as those classes of instruments that are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers, but excluding instruments of payment.

While the definition of brokering is wide, especially given the inclusion of portfolio management, the brokering and dealing concerned by the Regulation is limited to the specified transferable securities and money-market instruments in relation to those five institutions listed in Annex III and related entities.

Energy industry technologies

The Regulation has also imposed a requirement to seek authorisation for the sale, supply, transfer or export of certain energy industry technologies¹² (whether or not the technology originates in the EU¹³) to any individual or entity in Russia or for use in Russia. Authorisation will not be provided for projects pertaining to deep water oil exploration and production, Arctic oil exploration and production, or shale oil projects in Russia. However, authorisation may be granted if the obligation arises from a contract or agreement concluded before 1 August 2014. Parties wishing to provide related technical assistance, brokering services, financing or financial assistance are also required to seek authorisation.

Dual-use goods and arms and military equipment

The sale, supply, transfer or export, either directly or indirectly, of dual-use goods and technology¹⁴ (whether or not that technology originates in the EU¹⁵) to any individual or entity in Russia or for use in Russia, if those items are or may be intended for military use or for a military end user, is prohibited by the Regulation. If the end user is the Russian military, any dual-use goods and technology procured by it are deemed to be for military use. The Regulation also restricts the provision of technical assistance, brokering services, financing or financial assistance related to dual-use goods and technology. Authorisation may be granted if the obligation arises from a contract or agreement concluded before 1 August 2014.

Similar restrictions have been placed on the provision of (direct or indirect) technical assistance, financing or financial assistance related to arms and military equipment¹⁶ to any individual or entity in Russia or for use in Russia.

Conclusion

Notwithstanding the broader restrictive measures taken against Russia under the Regulation, EU sanctions on Russia remain focused on relatively narrow sectors. Companies doing business in the region should review their operations to ensure they do not fall foul of the enhanced regime. Given the unstable political situation, it is possible that the EU and other nations and international bodies may further increase the scope of sanctions on Russia at short notice.

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- ¹ See Kirkland Alert “New Parties and Key Sectors Targeted in Russia, Further Increasing Risks for Global Companies” dated August 2014, http://www.kirkland.com/siteFiles/Publications/Alert_8142014.pdf
 - ² European Union Fact Sheet on EU-Ukraine relations, 30 July 2014, http://eeas.europa.eu/statements/docs/2014/140514_02_en.pdf
 - ³ Council Regulation (EU) No 208/2014 of 5 March 2014, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.066.01.0001.01.ENG
 - ⁴ Council Implementing Regulation (EU) No 381/2014 of 14 April 2014, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0381>
 - ⁵ Council Regulation (EU) No 269/2014 of 17 March 2014, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.078.01.0006.01.ENG
 - ⁶ It was extended on 21 March to list a further 12 individuals (Council Implementing Regulation (EU) No 284/2014, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0284>), on 28 April to list a further 15 individuals (Council Implementing Regulation (EU) No 433/2014, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0433>), on 12 May to list a further 13 individuals and 2 entities (Council Implementing Regulation (EU) No 477/2014, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0477>), on 11 July to list a further 11 individuals (Council Implementing Regulation (EU) No 753/2014, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.205.01.0007.01.ENG), on 25 July to list a further 15 individuals and 18 entities (Council Implementing Regulation (EU) No 810/2014, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2014_221_R_0001), and on 30 July to list a further 8 individuals and 3 entities (Council Implementing Regulation (EU) No 826/2014, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2014_226_R_0003).
 - ⁷ Council Regulation (EU) No 692/2014 of 23 June 2014, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2014_183_R_0004.
 - ⁸ Council Regulation (EU) No 825/2014 of 30 July 2014, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.226.01.0002.01.ENG.
 - ⁹ Special Meeting of the European Council, 16 July 2014, <http://www.european-council.europa.eu/special-meeting-of-the-european-council>

- ¹⁰ Council of the European Union, Foreign Affairs Council Meeting, 22 July 2014, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/144098.pdf
- ¹¹ Sberbank, VTB Bank, Gazprombank, Vnesheconombank (VEB) and Rosselkhozbank.
- ¹² The relevant technologies are defined by reference to a list in Annex II to the Regulation.
- ¹³ See Article 3, paragraph 1 of the Regulation.
- ¹⁴ “Dual-use goods and technology” is defined by reference to a list in Annex I to Regulation (EC) No.428/2009, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1408010842500&uri=CELEX:32009R0428>
- ¹⁵ See Article 2, paragraph 1 of the Regulation.
- ¹⁶ Arms and military equipment refers to the goods and technology listed in the Common Military List, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.107.01.0001.01.ENG

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