WHITE & CASE

Client **Alert**

International Trade

19 December 2014

EU extends Crimea sanctions: broad ban on investment, exports and tourism

I. Introduction

The EU has **extended its sanctions against Crimea and Sevastopol** with the aim of reinforcing its policy of not recognizing Russia's annexation of the peninsula in March 2014. The new measures, which enter into force on **20 December 2014**, include three main elements:

- A general EU ban on investments in real estate and businesses located, established or registered in Crimea and Sevastopol;
- A ban on exporting a wide range of goods and technology (no matter what sector they are used in) to Crimean companies or for use in Crimea – as well as providing related technical assistance, brokering, construction or engineering services; and
- A prohibition on providing services directly related to tourism activities in Crimea or Sevastopol, including a ban on cruise ships from entering various Crimean ports.

These bans are subject to a number of exceptions, including the execution of obligations arising from contracts pre-dating 20 December 2014.

In addition, the European Commission has issued **guidance** on the implementation of the EU's sanctions targeting Russia adopted to date, notably on the provisions concerning financial assistance, financial services and the capital markets restrictions.

Finally, the EU Regulation imposing a **ban on exports of jet fuel and relevant additives to Syria** entered into force on **14 December 2014**.

II. Extended sanctions on Crimea and Sevastopol

Following the Foreign Affairs Council's agreement in principle on additional measures on 15 December 2014,[1] the EU has published Regulation 1351/2014 extending its sanctions in relation to Crimea and Sevastopol.[2] The new sanctions measures will enter into force on **20 December 2014**.

These new measures are in addition to the existing import ban on goods from Crimea and Sevastopol,[3] and restrictions introduced in July on trade and investment in certain economic sectors and in relation to infrastructure projects.[4]

The new set of restrictive measures in relation to Crimea and Sevastopol include three elements: a general investment ban, expansion of existing

EUsanctions@whitecase.com

James Killick
Partner, Brussels
+ 32 2 239 2552
jkillick@whitecase.com

Sara Nordin
Associate, Brussels & Geneva
+ 32 2 239 2576
snordin@whitecase.com

Genevra Forwood
Associate, Brussels
+32 2 239 2537
gforwood@whitecase.com

Charlotte Van Haute
Associate, Brussels
+32 2 239 2623
cvanhaute@whitecase.com

Fabienne Vermeeren
Regional Director Europe –
International Trade Services, Brussels
+ 32 2 239 2606
fvermeeren@whitecase.com

US Sanctions Team

Richard Burke
Partner, Washington, DC
+1 202 626 3687
rburke@whitecase.com

Nicole Erb
Partner, Washington, DC
+1 202 626 3694
nerb@whitecase.com

Kristina Zissis
Counsel, Washington, DC
+1 202 626 3636
kzissis@whitecase.com

Claire A. DeLelle
Counsel, Washington, DC
+1 202 626 6485
claire.delelle@whitecase.com

Cristina Brayton-Lewis
Associate, Washington, DC
+1 202 729 2407
cbraytonlewis@whitecase.com

Tanya Hanna
Associate, Washington, DC
+1 202 637 6294
thanna@whitecase.com

[1] See Press Release of Foreign Affairs Council meeting of 15 December 2014 (p. 11).
[2] See Regulation 1351/2014 of 18 December 2014 amending Regulation (EU) No 692/2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol (see page 46 of Official Journal No L 365).
[3] See our alert from 25 June 2014 here.
[4] See our alert from 31 July 2014 here.

sanctions measures on four sectors to cover export of goods and technology (and related assistance and services), and a ban on tourism services.

First, the new sanctions impose a **ban on investment** in enterprises located, established or registered in Crimea and Sevastopol, or branches of other entities operating there. As a result, all parties subject to EU jurisdiction[5] may no longer, for example, buy real estate or entities in Crimea, acquire or extend participations in such Crimean entities or supply related investment services, or create joint ventures with such entities.

These new prohibitions do not apply to the execution of obligations under contracts concluded before 20 December 2014 (or ancillary contracts necessary for their execution), and which have been notified to the competent authority at least five days in advance. The Member States may also grant conditional authorisations to acquire real estate for consular missions or international organisations, hospitals or education establishments. Activities covered by the investment ban may also be authorised for the maintenance of existing infrastructure in order to ensure its safety, or for the urgent prevention or mitigation of human health and safety and the environment.

Second, the new sanctions prohibit **the sale/supply/transfer or export of a very broad list of goods and technology** (regardless of their origin) to Crimean companies or for use in Crimea. The goods and technology covered, listed in a new **Annex II**, are those suited for use in certain key sectors – transport, telecommunications, energy and exploitation of oil, gas and mineral resources – but the **ban is not limited to those sectors**. Annex II includes wide categories of products (e.g. various key metals and articles thereof), numerous categories of industrial machinery and tools, electrical equipment, railway and motor vehicles, aircraft, ships, nuclear reactors, vending machines and measuring equipment. The ban also covers technical assistance, brokering, financing or financial assistance relating to Annex II exports. The prohibitions do not apply where there are no reasonable grounds that the goods/technology or related services are to be used in Crimea or Sevastopol. Member States can also authorise transactions related to consular missions, international organisations, hospitals or education establishments, or for the emergency/safety reasons listed above for the investment sanctions.

In addition, technical assistance or brokering, construction or engineering services directly relating to infrastructure in Crimea or Sevastopol in the four sectors (i.e. transport, telecoms, energy and exploitation of oil, gas and mineral resources) "as defined on the basis of Annex II" is banned. The meaning of "as defined on the basis of Annex II" is unclear given the breadth of Annex II and the fact that it includes items such as vending machines, which are not sector specific.

A grandfathering clause applies to allow execution of obligations arising from pre-20 December contracts (or ancillary contracts) until 21 March 2015 for all items under this second category -- with a prior notification obligation applicable in addition in the case of Annex II exports.

Third, the sanctions prohibit persons falling under EU jurisdiction from providing "services directly related to **tourism activities"** in Crimea and Sevastopol. The sanctions also ban, in particular EU cruise ships (i.e. all ships owned or controlled by a party subject to EU jurisdiction or flying the flag of an EU Member State) from entering seven listed ports – including in Yalta and Sevastopol – in the Crimean peninsula, unless it involves an emergency. Again, an exemption is made for the execution of contracts concluded before 20 December 2014, subject to prior notification.

[5] EU jurisdiction for purposes of sanctions applies in the following situations: within the EU territory; to nationals of EU Member States (regardless of whether they are inside or outside EU territory); on board vessels and aircraft under Member State jurisdiction; to companies incorporated or registered under the law of a Member State and to other companies in respect of business done in whole or in part in the EU.

III. Guidance on Russia sanctions

With the aim of promoting the uniform implementation in the EU of the sanctions targeting Russia, the European Commission has issued **guidance** on the measures outlined in Regulation 833/2014, as amended.[6] The guidance note answers certain questions that have been brought to the Commission's attention, and is subject to change if further questions arise.

The questions answered in the guidance note relate to the capital market and financial services related sanctions; for example, it clarifies that the sanctions cover takeover by a sanctioned entity of debt arising from a pre-existing loan, and that payment and settlement services should not be construed as 'making' or 'being part of an arrangement to make' a covered new loan or credit. It also clarifies that payment terms or delayed payment for goods and services are not considered covered new loans or credit, but may not be used to circumvent the sanctions (and payment terms not in line with normal business practice may suggest circumvention).

IV. Published Syria export ban on jet fuel

Following our earlier explanation about the relevant proposal (see the alert here), the EU has published Regulation 1323/2014[7] imposing an export ban for jet fuel and related additives in relation to Syria. The new ban entered into force on **14 December 2014**.

Regulation 1323/2014 amends the existing Syria Sanctions Regulation (i.e. Regulation 36/2012)[8] by introducing **a new EU ban on the direct or indirect sale, supply, transfer or export of specified jet fuel and fuel additives** (identified in Annex Va by tariff code) to any party or for use in Syria. It also covers related financing, financial assistance (including financial derivatives and (re-)insurance) and brokering services.

The published Regulation differs somewhat from the earlier proposal in certain notable respects. For example, anti-knock additives have been removed from the final list of covered products. Also, specified exceptions to the export ban only apply to some of the listed products (specified in Annex Vb; not including corrosion and fuel system icing inhibitors), and the exemption relating to civilian aircraft has become more restrictive by only covering non-Syrian planes.

[6] See Commission Guidance Note on the implementation of certain provisions of Regulation (EU) No 833/2014, available at http://europa.eu/newsroom/files/pdf/c_2014_9950_en.pdf. Our alert summarizing the latest amendments to this Regulation is available here.

[7] See Council Regulation (EU) No 1323/2014 of 12 December 2014 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria.

[8] See Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011, as amended (latest consolidated version, which does not include recent amendments, available here).