

Client Alert

International Trade

5 December 2014

EU clarifies – and narrows the scope of – its Russia sanctions

I. Introduction

The EU has published further amendments¹ to its sanctions targeting Russia contained in **Regulation 833/2014**.²

The stated purpose is to “clarify certain provisions”,³ and indeed a number of key concepts such as “Arctic”, “deep water” and “shale” projects (in the context of oil exploration and production) are replaced with more precisely worded and narrower concepts, notably for “shale” (now only “hydraulic fracturing”) and “Arctic” (now only “offshore Arctic”). There are also explicit exceptions to the oil sector sanctions for health and safety or environmental work. Additional details are also provided with respect to the capital market restrictions, with the concept of a new credit/loan being clarified and the exceptions broadened. Overall, the amendments tend to narrow the scope of the previous sanctions by adding a number of carve-outs (albeit relatively limited).

These amendments take effect from 6 December 2014.

II. Clarification of key terms

A number of key terms have been clarified:

- References to “**Russia**” have been changed to “Russia, including its Exclusive Economic Zone and Continental Shelf”;
- References to “**deep water** oil exploration and production” have been changed to “oil exploration and production in waters deeper than 150 metres”;
- References to “**Arctic** oil exploration and production” have been changed to “oil exploration and production in the offshore area north of the Arctic circle”. Given the amount of Russia’s landmass that is within the Arctic circle, this is a significant narrowing of the scope of the sanctions;
- References to “**shale oil** projects” have been changed to “projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing”. The new regulation thus makes it clear (which was not the case before) that the prohibition on Annex II exports does not apply to exploration and production through shale formations to locate or extract oil from non-shale reservoirs”. This clarification therefore narrows the potential scope of the sanctions.

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

¹ [Council Decision 2014/872/CFSP](#) of 4 December 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, and Decision 2014/659/CFSP amending Decision 2014/512/CFSP, and the associated [Council Regulation \(EU\) No 1290/2014](#) of 4 December 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, and amending Regulation (EU) No 960/2014 amending Regulation (EU) No 833/2014.

² See [Council Regulation \(EU\) No 833/2014](#) of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. This was already amended by [Council Regulation \(EU\) No 960/2014](#) of 8 September 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (see our alert from 12 September 2014 [here](#)).

³ See recital 3 of Council Decision 2014/872/CFSP.

III. Restrictions on Annex II equipment

Articles 3 and 4(3) of Regulation 833/2014 impose a prior authorisation requirement on certain transactions involving so-called Annex II equipment (key energy-related equipment and technology, such as line and drill pipe, and rock-drilling or earth-boring tools) intended to or for use in Russia. This covers the sale, supply, transfer or export of such items, as well as related technical assistance, brokering services, financing and financial assistance.

Currently, authorisation must be denied if there are reasonable grounds to believe that the equipment will be used for Russian deep water (now clarified as being 150 metres or more), Arctic (clarified as only offshore Arctic) or shale projects (clarified as being only via hydraulic fracturing), save where the transaction arises from obligations under a contract or an agreement concluded before 1 August 2014, in which case authorisation may be granted. The new amendment specifies that this possibility as regards pre-1 August 2014 contracts also applies to “**ancillary contracts** necessary for the execution of such a contract.” This clarification thus expands the scope of an important exception to the ban on Annex II exports.

The new amendment also adds a **safety exemption**, allowing competent authorities to grant authorisation where the transaction “is 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”. This exception was an obvious (and unfortunate) omission to the original sanctions and the introduction of a health and safety or environment exception brings the Russian sanctions in line with the parallel provisions relating to the Iranian oil sector. Moreover, in **urgent** cases the transaction may proceed without prior authorisation, provided that the exporter notifies the competent authority within five working days, providing detail about the relevant justification.

Finally, the scope of **Annex II** itself is clarified and narrowed. Two of the product categories listed (CN codes 8413 50, 8413 60) are now limited to products within those categories with technical characteristics above certain levels for use in oil wells. Three other categories (ex 8431 39 00, ex 8431 43 00, and ex 8431 49) are more specifically defined with reference to oil field machinery.

IV. Restrictions on “Associated Services”

Article 3a of Regulation 833/2014 prohibited the provision of certain “associated services” necessary for Russian deep water, Arctic or shale projects, namely (i) drilling; (ii) well testing; (iii) logging and completion services; (iv) supply of specialised floating vessels. The definitions have been changed (see above), thus narrowing the scope of this provision. The possible exemptions are in substance unchanged. However, the amendment adds an obligation on the service provider invoking the health and safety or environmental exemption to notify the competent authority within five working days of any such activity and provide details, this aligning this provision with the parallel exception for Annex II equipment.

V. Capital markets restrictions

Article 5(3) of Regulation 833/2014 has been replaced and the new version of that article clarifies one of the exemptions to the prohibition on making or being part of any arrangement to make **new loans or credit** with a maturity exceeding 30 days to eleven listed Russian entities after 12 September 2014.

This exemption now states that the prohibition shall not apply to loans or credit having a specific and documented objective to provide financing for non-prohibited imports or exports of goods and non-financial services “**between the Union and any third State**” (previously this had read “between the Union and Russia”, which seemed to be a case of poor drafting). The revised exemption is still arguably too narrow given that it catches entirely legitimate trade finance for exports between non-EU countries. It is now specified that this includes “expenditure for goods and services from another third State that is necessary

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

for executing the export or import contracts”.

In addition, a new sub-paragraph 4 is added, essentially clarifying when a loan/credit is “new” and caught by the sanctions. It states that the prohibition in Article 5(3) shall not apply to **drawdown or disbursements** made under a contract concluded before 12 September 2014, provided that certain conditions are met. All the terms and conditions of such drawdown or disbursements: (i) must have been agreed before 12 September 2014; and (ii) cannot have been modified on or after that date. Further, the contractual maturity date must have been fixed before 12 September 2014 for the repayment in full of all funds made available and for the cancellation of all the commitments, rights and obligations under the contract. The terms and conditions of drawdowns and disbursements referred to above include provisions concerning the length of the repayment period for each drawdown or disbursement, the interest rate applied or the interest rate calculation method, and the maximum amount. The use of the word “include” is regrettable as it means that the clarifications do not in fact deliver certainty and there thus remains scope for different interpretations by different EU authorities.

In a related change, the sentence in Recital 6 of Regulation 960/2014 that “loans are only to be considered new loans if they are drawn after 12 September 2014” has been removed – there being no need to cover this point in the recital now that the rules are set out in detail in the body of the Regulation.

VI. Arms and Dual-Use Items

The grandfathering clauses in Articles 2(2) and 2a(3) on military and dual-use technology has also been extended to cover not only pre-1 August 2014 contracts, but to also apply for ancillary contracts necessary for the execution of such contracts.

VII. Scope of the Sanctions

The geographic scope of the amended EU sanctions is unchanged, and 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.