

Ukrainian Sanctions – Further Economic and Trade Restrictions

Introduction

On 15 July 2014, we [reported](#) on the EU restrictive sanctions that have been imposed over the course of the past four months in relation to the ongoing situation in Ukraine. To date the measures have taken the form of asset freezes, travel bans and economic restrictions in relation to specified individuals and entities as determined by the European Council (the Council).

On 30 and 31 July 2014 the Council took the decision to expand the restrictive measures with a package of further significant sanctions with a much wider and more direct effect upon trade in Russia, Crimea and Sevastopol. The new rules will necessitate that further caution be exercised by EU companies and nationals in any commercial dealings in each of these locations, and particularly in relation to dealings in financial services and energy markets.

European sanctions concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

On 31 July 2014, the Council decided to impose restrictions on the export of certain goods and the provision of certain services to Russia. These restrictions extend broadly to three categories of activity:

- restrictions on exports of arms and dual-use goods and technology, on the provision of related services, and on services related to the supply of arms and military equipment;
- restrictions on the sale, supply, transfer or export, directly or indirectly, of certain technologies for the oil industry;
- restrictions on access to the capital market for certain financial institutions.

The Council [Decision](#) (2014/512) and [Regulation](#) (833/2014) impose a complete prohibition on various types of restricted activity (which cannot be authorised by a Member State). The Regulation also requires that certain other types of activity, while not wholly prohibited, must receive prior authorisation in the form of a licence obtained from the Member State where the exporter is established before the activity can take place.

Prohibited Activity

Under the new rules, the following actions/activities are prohibited:

- the direct or indirect export of dual-use goods and technology (as defined under [Council Regulation No. 248/2009](#)) for military end-use or users to any person or entity in Russia or for use in Russia, and the provision of technical assistance, brokering services, financing or financial assistance relating to such goods. Dual-use goods cover a wide range of items, software and technologies normally used for civilian purposes but which may have military applications. The export of dual-use goods intended for civil use or users in Russia will continue to be permitted with authorisation from the competent authority in a Member State;
- the direct or indirect export of arms and related materials to Russia from EU nationals or Member State territories, the purchase, import or transport of arms and related materials from Russia by EU nationals,

and the provision of technical assistance, financing or financial assistance related to the goods and technology in the [Common Military List](#), to any person or entity in Russia or for use in Russia;

- the direct or indirect purchase or sale, brokering or assistance, or any other dealings with bonds, equity or similar financial instruments with a maturity exceeding 90 days issued after 1 August 2014 by either:
 - any institution listed in Annex III (five major Russian financial institutions);
 - a legal person, entity or body acting on behalf of an entity in Annex III; or
 - a legal person, entity or body outside the EU owned more than 50% by an entity in Annex III and anyone acting on their behalf;
- the direct or indirect export of any technologies listed in Annex II to the Regulation (primarily technologies for use in the oil industry) if the technologies are for projects pertaining to deep water or Arctic oil exploration and production, or shale oil projects in Russia.

There is an exception to the above prohibitions where the export concerns the execution of an obligation arising from a contract concluded prior to 1 August 2014, or the provision of assistance necessary for the maintenance and safety of existing capabilities within the EU. In such a case, it shall be permitted for Member States to grant a licence to authorise the export. Licence applicants wishing to rely on these exemptions must provide a copy of the relevant contract or agreement in support of their licence application.

Restricted Activity Requiring Prior Authorisation

A prior authorisation from the competent authority in a Member State (in the UK the licensing authority is HM Treasury) shall be required for:

- the direct or indirect export of technologies listed in Annex II, originating anywhere in the world, to any person or entity in Russia for use in projects other than for the purposes of deep water, Arctic or shale oil extraction;
- the provision of technical assistance, brokering services, financial assistance or financing relating to technologies listed in Annex II to any person or entity in Russia or to any person or entity in any other country concerned in providing such technologies for use in Russia.

Further restrictions on goods originating in Crimea or Sevastopol

On 30 July 2014, the Council also took the decision to expand Regulation No. 629/2014 in relation to the import of goods originating in Crimea or Sevastopol, through the implementation of [Council Regulation No. 825/2014](#).

The amending Regulation imposes:

- a ban on new investments related to infrastructure in Crimea and Sevastopol in the sectors of transport, telecommunications and energy which extends to a prohibition on granting any financial loan or credit, acquiring shares or securities of a participating nature in enterprises established in Crimea or Sevastopol engaged in these sectors or creating a joint venture relating to infrastructure in any of these sectors;
- a ban on the export of key equipment and technologies (as listed in Annex III) across these sectors to any person, entity or body in Crimea or Sevastopol or for use in Crimea or Sevastopol;
- a ban on the exploitation of natural resources (oil, gas or mineral reserves) in Crimea and Sevastopol which extends to a prohibition on granting any financial loan or credit, acquiring shares or securities of a participating nature in enterprises established in Crimea or Sevastopol engaged in such exploitation or creating a joint venture relating to such exploitation;
- a ban on the provision of technical assistance or brokering services related to any such restricted investment activity in the Regulation.

The prohibitions shall not apply if the transaction is required under an agreement concluded before 30 July 2014 so long as the Member State in which the entity is established has been informed at least 10 working days in advance of the activity. This exception shall only continue until 28 October 2014 in respect of the transfer of equipment and technologies listed in Annex III.

Existing sanctions

The existing sanctions subjecting individuals and entities to asset freezes, travel bans and economic restrictions remain in force. The current number of persons and entities restricted under the Ukrainian sanctions regime stands at 95 individuals and 23 entities. The consolidated list of individuals and entities issued by HM Treasury can be accessed [here](#).

What do these restrictions mean?

The new rules apply restrictive measures much more broadly across industries and general trade than the existing restrictions on travel, assets and economic resources for certain individuals and entities. The greatest impact of the extension to the regime is likely to be upon financial institutions and the energy sector. While the embargoes do not apply to contracts signed before the implementation of these sanctions, the rules will have an impact upon future trade.

Companies must take particular care when selling goods or services into Russia to ensure that they are not in breach of the sanctions rules, meaning heightened due diligence measures will be necessary. Any dealings in Crimea and Sevastopol must also now be treated with caution. Companies must also be aware that other jurisdictions, notably the United States, Japan and Australia, also have sanctions regimes in place affecting trade with Russia.

The EU measures restricting trade with Russia will apply until 31 July 2015 however they are due to be reviewed by 31 October 2014 at the latest, taking into account their effect in Member States.

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