

E-ALERT | International Trade Controls

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U.S. AND EU SIGNIFICANTLY EXPAND SANCTIONS AND EXPORT CONTROL RESTRICTIONS TARGETING RUSSIA

The United States and EU took coordinated and significant steps on September 12, 2014, to expand and intensify sanctions targeting the Russian energy, defense, and financial services sectors. In tandem, the United States and EU also imposed additional restrictions on energy-related exports to certain entities in Russia, and the EU introduced new trade controls relating to certain dual-use exports.

In the United States, the Treasury Department's Office of Foreign Assets Control ("OFAC") and the Commerce Department's Bureau of Industry and Security ("BIS") took three steps that target the Russian energy sector:

- First, OFAC [imposed a prohibition](#) on the following activities by U.S. persons or within the United States: the provision, export, or reexport of goods, services (other than financial services), or technology in support of deepwater, Arctic offshore, or shale exploration or production projects that: (1) have the potential to produce oil in or offshore of Russia; and (2) involve any of five major Russian energy companies: Gazprom, Gazprom Neft, Lukoil, Rosneft, or Surgutneftegas. U.S. parties impacted by these new sanctions have two weeks to wind down their activities with these Russian firms, under the terms of a new general license.
- Second, BIS [imposed a license requirement](#) for the export, reexport, or foreign transfer to these same five Russian companies of any item subject to the U.S. Export Administration Regulations ("EAR") if the exporter, reexporter, or transferor knows that the item will be used directly or indirectly in exploration for, or production from, deepwater, Arctic offshore, or shale projects in Russia. This action – achieved by naming these companies to the BIS Entity List – represents an expansion of the previous BIS restrictions relating to Russian deepwater, Arctic offshore, and shale oil and gas projects, which we reviewed in our [e-alert of July 30, 2014](#).
- Third, OFAC added two Russian energy companies – Gazprom Neft and Transneft – to the group of companies whose ability to issue new debt with a maturity of longer than 90 days is restricted. Those restrictions on new debt, which apply to U.S. persons and persons in the United States who transact in, provide financing for, or otherwise deal in such debt, were detailed in our [e-alert of July 17, 2014](#).

U.S. actions targeting the Russian defense and financial services sectors include new or expanded "sectoral sanctions" and the designation of Russian defense companies to BIS's Entity List and OFAC's List of Specially Designated Nationals and Blocked Persons. BIS also noted that it will "require licenses for an additional group of items destined to military end-uses or end-users in Russia," but did not further elaborate on what this may entail.

The new EU sanctions are set forth in two measures. First, [Council Regulation No. 960/2014](#), which amends Council Regulation No. 833/2014 (described in our [e-alert of August 4, 2014](#)), introduces new restrictions on the access of certain Russian companies, including major Russian energy

companies such as Rosneft and Gazprom Neft, to EU financing and financial markets. It also introduces new trade controls relating to certain dual-use and energy-related exports. Separately, [Council Regulation No. 961/2014](#) designates 24 additional individuals for EU asset-freezing measures.

Collectively, the new U.S. and EU sanctions introduce a significant new range of trade controls, which will be of particular importance to companies in the energy, financial services, and defense sectors. The principal elements of the new sanctions are described below.

NEW U.S. SANCTIONS

A. New U.S. Sanctions Targeting the Russian Energy Sector

Perhaps the most significant of the new U.S. sanctions are those targeting the Russian energy sector. The new U.S. measures have implications for both U.S. and non-U.S. companies that do business with the Russian energy industry, though they will impact U.S. and non-U.S. companies in different ways. As noted above, OFAC and BIS have taken three new steps to target the Russian energy sector.

OFAC Directive 4 and General License No. 2

The first key action targeting the Russian energy sector is OFAC's issuance of a new directive – [Directive 4](#) – pursuant to Executive Order 13662. Directive 4 prohibits the following activities by U.S. persons or within the United States: providing, exporting, or reexporting, directly or indirectly, goods, services (except for financial services), or technology in support of exploration or production from deepwater (i.e., more than 500 feet), Arctic offshore, or shale projects that: (1) have the potential to produce oil in Russia or in maritime area claimed by Russia and extending from its territory; and (2) involve parties subject to Directive 4, their property, or their interests in property. These restrictions also extend to entities owned 50% or more by one or more sanctioned parties. Currently, five Russian energy companies are identified on the [U.S. Sectoral Sanctions Identifications List](#) (“SSI List”) as being subject to Directive 4 – Gazprom, Gazprom Neft, Lukoil, Rosneft, and Surgutneftegas. Directive 4 also makes clear that any conspiracy to violate any of its prohibitions is prohibited, and that any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of Directive 4's prohibitions is also prohibited.

At the same time that it issued Directive 4, OFAC expanded the guidance it offers on the sectoral sanctions through its [Frequently Asked Questions](#). One of these “FAQs” (#412) explains that the prohibition on the exportation of services includes, but may not be limited to, drilling services, geophysical services, geological services, logistical services, management services, modeling capabilities, and mapping technologies. In contrast, Directive 4 does not prohibit the exportation or provision of financial services, such as clearing transactions or providing insurance related to the targeted activities. However, companies providing such financial services should ensure that those services do not constitute a prohibited dealing in new debt or new equity under Directives 1 or 2, which are addressed further below and apply independently of Directive 4.

Simultaneously, OFAC also issued [General License No. 2](#) to authorize, for a limited time, certain wind down activities involving the Russian energy companies subject to Directive 4. Specifically, activities otherwise prohibited by Directive 4 are authorized until September 26, 2014, if they are “ordinarily incident and necessary to the wind down of operations, contracts, or other agreements involving persons determined to be subject to Directive 4 . . . that were in effect prior to September 12, 2014.” OFAC has made clear that General License No. 2 does not authorize the provision, export, or reexport

of goods, services (other than financial services), or technology except as needed to cease operations involving the projects covered by Directive 4.

Any U.S. persons participating in transactions authorized by General License No. 2 are required, within 10 business days after the wind down activities conclude, to file a detailed report with OFAC covering the parties involved in the wind down activities and the date, type, and scope of such activities.

Finally, even if General License No. 2 appears to allow an export or reexport of goods, services, or technology related to wind down activities, companies should also confirm that there are no BIS restrictions applicable to the export or reexport before proceeding.

Expansion of BIS License Requirements for Certain Russian Deepwater, Arctic Offshore, and Shale Projects

The second key action targeting the Russian energy sector is [BIS's addition to its Entity List](#) of the same five Russian energy companies currently subject to OFAC's Directive 4 – Gazprom, Gazprom Neft, Lukoil, Rosneft, and Surgutneftegas. As a result of this action, BIS now requires all U.S. and non-U.S. persons to obtain a BIS license for the export, reexport, or foreign transfer to these five Russian companies of any item subject to the EAR if the exporter, reexporter, or transferor knows that the item will be used directly or indirectly in exploration for, or production from, deepwater, Arctic offshore, or shale projects in Russia. Moreover, applications for such licenses will be subject to a presumption of denial if the item will be used directly or indirectly in exploration for, or production from, a deepwater, Arctic offshore, or shale project in Russia that has the potential to produce oil. BIS previously issued guidance addressing the scope of the Entity List, including circumstances where an entity is owned or controlled by an entity on the Entity List. That guidance is available [here](#).

This BIS action – which targets the export, reexport, or transfer of any item subject to the EAR – represents a significant expansion of the BIS export restrictions that were announced in early August, which targeted only certain enumerated items, not any item, subject to the EAR.

Addition of Two Russian Energy Companies to the SSI List as Subject to OFAC Directive 2

The third key action targeting the Russian energy sector is OFAC's addition of two Russian energy companies – Gazprom Neft and Transneft – to the SSI List as subject to OFAC's [Directive 2](#). Directive 2 was originally issued on July 16, 2014, pursuant to Executive Order 13662, and prohibited the following activities by U.S. persons or within the United States: transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days maturity of entities identified on the SSI List as subject to Directive 2, their property, or interests in property.

Because Gazprom Neft and Transneft are now subject to Directive 2, transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days maturity of Gazprom Neft and Transneft, Rosneft and OAO Novatek (which were added to the SSI List as subject to Directive 2 in July), and any entities owned 50% or more by one or more sanctioned parties is prohibited as to U.S. persons and within the United States.

Notably, OFAC also issued [General License No. 1A](#), which supersedes General License No. 1 of July 16, 2014, and which authorizes all transactions by U.S. persons and within the United States involving derivative products whose value is linked to an underlying asset that constitutes new debt with a maturity of longer than 90 days issued by a person subject to Directive 2.

It is important to highlight that Rosneft and Gazprom Neft are subject to both Directive 2 and Directive 4 (described above). OFAC has made clear that persons dealing with either Rosneft or Gazprom Neft must ensure that such dealings comply with Directive 2 and Directive 4 independently. For example, even if the provision of services to Rosneft is permissible under Directive 4 because the services qualify as “financial services,” the entity providing those services must separately ensure that the services do not run afoul of the prohibitions of Directive 2.

B. New U.S. Sanctions Targeting the Russian Defense Sector

OFAC Directive 3

OFAC expanded the sectoral sanctions targeting Russia to also cover the defense and related materiel sector. U.S. sectoral sanctions targeting Russia had previously focused only on the Russian financial services and energy sectors.

In particular, OFAC issued a new directive – [Directive 3](#) – prohibiting the following activities by U.S. persons or within the United States: transacting in, providing financing for, or otherwise dealing in new debt of longer than 30 days maturity of entities added to the SSI List as subject to Directive 3, or their property or interests in property. Simultaneously, OFAC added Rostec, a Russia-based state-owned holding company for the Russian defense industry, to the SSI List as subject to Directive 3.

Like Directive 4, Directive 3 prohibits any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate Directive 3’s prohibitions. Likewise, Directive 3 prohibits any conspiracy to violate any of its prohibitions.

Notably, OFAC also issued General License No. 1A, as discussed above, which authorizes all transactions by U.S. persons and within the United States involving derivative products whose value is linked to an underlying asset that constitutes new debt with a maturity of longer than 30 days issued by a person subject to Directive 3.

Addition of Five Russian Defense Companies to the SDN List and Entity List

Separately, OFAC added the following five entities that operate in the Russian defense sector to its SDN List pursuant to Executive Order 13661:

- [Almaz-Antey GSKB](#) (aka Almaz-Antey Air Defense Concern Main System Design Bureau, JSC): a subsidiary of the Almaz-Antey Concern (which was itself added to the SDN List pursuant to Executive Order 13661 on July 16, 2014) that designs and manufactures air defense systems for the Russian Ministry of Defense.
- [Dolgoprudny Research Production Enterprise](#): primarily engaged in the production of weapons and ammunition, including the Buk (SA-11 or SA-17) missile system.
- [JSC NIIP](#) (aka Tikhomirov Scientific Research Institute of Instrument Design): a subsidiary of the Almaz-Antey Concern that develops anti-aircraft defense systems, including on-board radar systems for MiG and Sukhoi fighters, and anti-aircraft missile systems for land forces, including the Kub and Buk systems.
- [Kalinin Machine Plant JSC](#): a state-run company involved in the production of special purpose products, including launchers, anti-air missiles, and artillery guns for infantry and anti-air defense.
- [Mytishchinski Mashinostroitelny Zavod OAO](#): has produced weaponry and equipment, primarily anti-aircraft missile systems and chassis for tracked military vehicles.

U.S. persons are prohibited from engaging in any dealings with these designated entities or any entities that are owned 50% or more by one or more of the designated entities. Additionally, any property or interests in property of these designated entities that comes within the United States or the possession or control of a U.S. person must be blocked.

Simultaneous with the OFAC designations, BIS added these same five entities to its Entity List, which means that any person – including non-U.S. persons – must obtain a BIS license for the export, reexport, or foreign transfer of any item subject to the EAR to the five designated entities. Applications for such licenses will be subject to a presumption of denial.

BIS noted in making these designations that it “will also require licenses for an additional group of items destined to military end-uses or end-users in Russia.” BIS did not further elaborate on what this may entail. We note – as explained in our [e-alert of August 4, 2014](#) – that the EU previously imposed a prohibition on the sale, supply, transfer, or export of dual-use goods and technology to Russia if those items may be intended for “military use” or a “military end-user.”

C. New U.S. Sanctions Targeting the Russian Financial Services Sector

OFAC also has taken two key steps to expand and intensify the restrictions under [Directive 1](#), which was originally issued on July 16, 2014, pursuant to Executive Order 13662 and which targets the access of certain entities in Russia’s financial services sector to U.S. capital markets.

First, OFAC amended [Directive 1](#) to decrease the length of maturity of prohibited new debt from 90 days to 30 days. In its original form, [Directive 1](#) prohibited the following activities by U.S. persons or within the United States: transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days maturity or new equity for persons identified on the SSI List as subject to [Directive 1](#) (i.e., certain Russian banks), their property, or their interests in property. In its new, amended form, [Directive 1](#) prohibits the following activities by U.S. persons or within the United States: transacting in, providing financing for, or otherwise dealing in new debt of longer than 30 days maturity or new equity of persons identified on the SSI List as subject to [Directive 1](#), their property, or their interests in property.

Second, OFAC added Sberbank to the list of Russian banks subject to [Directive 1](#). Thus, the prohibitions under [Directive 1](#) are now applicable to new debt of longer than 30 days maturity and new equity of the Bank of Moscow, Gazprombank, the Russian Agricultural Bank, Sberbank, VEB, and VTB.

As noted above, OFAC also issued General License No. 1A, which authorizes all transactions by U.S. persons and within the United States involving derivative products whose value is linked to an underlying asset that constitutes new debt with a maturity of longer than 30 days or new equity issued by a person subject to [Directive 1](#).

NEW EU SANCTIONS

The EU Council first agreed to the core framework of the sanctions on September 8, 2014. However, the cease-fire between the Ukrainian government and the pro-Russian armed militia – signed on September 5, 2014 – caused the EU Council to delay the entry into force of the new sanctions as the Council evaluated the cease-fire and the implementation of broader peace initiatives proposed earlier this month by the President of Ukraine.

The EU Council has signaled that it is prepared to take swift action to remove or reduce the new sanctions if the Russian Government helps to resolve the conflict in Ukraine – or to further enhance the sanctions regime if Russia does not play a constructive role in this regard.

The restrictions implemented on September 12, 2014 introduce a number of new measures, including features that do not have precedent in prior EU sanctions regulations. As in the case of the original version of Regulation 833/2014, the new provisions include a number of ambiguities that have already generated important questions from potentially affected companies, and the EU Member States will likely be called upon in the coming weeks to issue interpretive guidance relating to the new sanctions measures.

A. Additional Restrictions on Dual-Use Goods and Technologies

Regulation 960/2014 imposes a new prohibition – codified in Article 2a of the Amended Regulation 833/2014 – on the sale, supply, transfer, or export, directly or indirectly, of dual-use goods and technologies to any natural or legal person, entity, or body in Russia that is listed in Annex IV to the Regulation. Annex IV currently includes JSC Sirius, OJSC Stankoinstrument, OAO JSC Chemcomposite, JSC Kalashnikov, JSC Tula Arms Plant, NPK Technologii Maschinostrojenija, OAO Wysokototschnye Kompleksi, OAO Almaz Antey, and OAO NPO Bazalt. This new restriction on dual-use items supplements the existing prohibition, reflected in the original Regulation 833/2014, against the export of dual-use items to military end-users or for any military end-use in Russia.

Regulation 960/2014 also prohibits the provision to Annex IV parties of technical assistance, brokering services, or any “other services” related to dual-use items and to the provision, manufacture, maintenance, and use of those items. The provision to the Annex IV parties of financing or financial assistance for the sale, supply, transfer, or export of dual-use items, or for the provision of related technical assistance, brokering services, or other services is also prohibited.

The foregoing restrictions are expressed in the Regulation as prohibitions, rather than licensing requirements, thus implying that licenses will not be available to authorize transactions covered under the new restrictions. The new prohibitions are, however, subject to a number of important exemptions. Firstly, they do not apply to (i) the sale, supply, transfer, or export of dual-use items intended for the aeronautics and space industry, or the related provision of technical or financial assistance for non-military use and for a non-military end-user, or to (ii) the sale, supply, transfer, or export of dual-use items for maintenance and safety of existing civil nuclear capabilities within the EU, for non-military use, and for non-military end-users.

The foregoing provisions are also without prejudice to the execution of contracts or agreements concluded before September 12, 2014, and to the provision of assistance necessary to the maintenance and safety of “existing capabilities within the EU.” Regulation 960/2014 does not define the term “existing capabilities.”

B. New Oil and Gas “Services” Controls

Regulation 960/2014 also introduces a new Article 3a to Regulation 833/2014, prohibiting the direct or indirect provision of certain “services necessary for deepwater oil exploration and production, arctic oil exploration and production, or shale oil projects in Russia,” including (i) “drilling,” (ii) “well testing,” (iii) “logging and completion services,” and (iv) “supply of specialised floating vessels[.]” The new measures supplement existing restrictions, set forth in Articles 3 and 4 of Regulation 833/2014, concerning transactions associated with oil and gas equipment listed in Annex II to Regulation 833/2014. The new Article 3a restrictions are not, however, limited to Annex II items or to any other defined products, and the Regulation provides no definition or guidance

concerning the scope of the restricted “services.” Moreover, in contrast to Regulation 833/2014 and to trade controls restrictions in other EU sanctions regulations, which distinguish restrictions on exports of goods and technology from restrictions on the provision of related support (e.g., technical assistance, brokering, financing, or financial assistance), the general reference to “services” in Article 3a has invited questions – which are not easily resolved from the text of the Regulation – concerning whether the new measures are intended to capture the supply of goods, the mere provision of technical or other support, or both.

The Article 3a prohibitions are without prejudice to the execution of an obligation arising from a contract or a “framework agreement” concluded before September 12, 2014, or ancillary contracts necessary for the execution of such contracts. The term “framework agreement” is not defined in Regulation 960/2014. However, it presumably carries a broader scope than the term “agreement” used in similar grandparenting provisions in Regulation 833/2014.

Finally, Article 3a exempts services that 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.

On a separate but related note, a recently published corrigendum to Regulation 833/2014 has clarified the scope of the restrictions on the provision of technical assistance, brokering services, financing, or financial assistance relating to the items listed on Annex II to that regulation. The corrigendum amends Article 4(4), correcting an error to the version of Regulation 833/2014 published on August 1, 2014, to make clear that competent Member State authorities may not authorize such assistance if the Annex II items are for Arctic or deepwater oil exploration or production or for a shale oil project unless the assistance concerns the execution of an obligation arising from a contract or an agreement concluded before August 1, 2014.

C. Additional Controls on Military Items

Regulation 960/2014 also amends Article 4 of Regulation 833/2014 to prohibit the provision of insurance and reinsurance relating to military items to Russian parties or for use in Russia; this prohibition applies in addition to the pre-existing prohibition against the provision of financing and financial assistance relating to military items.

D. Additional Financial Sector Restrictions

Regulation 960/2014 also amends Article 5 to Regulation 833/2014 to introduce a number of important new financial restrictions against designated Russian parties. The key amendments to Article 5 are as follows:

- Regulation 960/2014 extends existing restrictions targeting “transferable securities” and “money market instruments” issued by Russian financial institutions listed on Annex III to Regulation 833/2014. Specifically, the new provisions introduce a restriction on the provision of “investment services” relating to those instruments, and lower the maturity period for covered instruments from 90 to 30 days (for instruments issued after September 12, 2014). Thus, Article 5 now renders it 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 90 days, issued after 1 August 2014 to 12 September 2014, or with a maturity exceeding 30 days, issued after 12 September 2014[.]”
- The newly-introduced term “investment services” 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.”

- The definition of “transferable securities” has been amended to exclude negotiable securities giving rise to a cash settlement.
- The amended Article 5 also introduces similar prohibitions on dealings in “transferable securities” and “money-market instruments” with a maturity exceeding 30 days, issued after September 12, 2014, by (1) certain designated Russian military entities, as listed in the new Annex V to Regulation 833/2014, and (2) certain Russian entities active in the oil industry, as listed in the new Annex VI to Regulation 833/2014. Notably, the latter list includes major Russian oil and gas enterprises Rosneft, Transneft, and Gazprom Neft (the oil branch of Gazprom). Those new restrictions also extend to any entity established outside of the EU that is majority-owned by any entity designated in Annex V or Annex VI.
- Similar to the restrictions imposed by Regulation 833/2014 against Annex III banks, the foregoing measures contain an important carve-out, as they do not apply to affiliates of the listed entities that are *established* within the EU. However, as with the Annex III bank restrictions, they extend to any entity “acting on behalf or at the direction of” the Annex V or Annex VI designated parties or their non-EU subsidiaries.
- Finally, Regulation 960/2014 prohibits making or being part of any arrangement to make new loans or credit with a maturity exceeding 30 days available to any party listed on Annexes III, V, or VI after September 12, 2014. The Regulation exempts from that prohibition (i) 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, and (ii) 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 that are majority owned by Annex III banks.

As with the original Article 5, the foregoing restrictions are not asset-blocking measures – EU parties are not generally prohibited from conducting business with the Annex III, V, and VI parties if their activities do not trigger the specific restrictions outlined above.

E. Additional Parties Subject to the Asset-Freezing Restrictions

Regulation 961/2014 imposes travel bans and asset freezes on a further 24 individuals, including pro-Russian rebels, Russian lawmakers and state officials, and the chairman of the Russian Rostec conglomerate, Sergey Viktorovich Chemzov. This brings the total number of individuals subject to sanctions under this specific regime to 119, whilst the number of designated entities remains 23.

In the same manner as prior EU sanctions measures, all funds and “economic resources” belonging to, owned, held, or controlled by the newly designated parties must be frozen. “Economic resources” include “assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but which may be used to obtain funds, goods or services.” In addition, Regulation 961 prohibits making available funds or “economic resources,” directly or indirectly, to or for the benefit of the designated parties.

F. Jurisdictional Reach of the New Sanctions

Consistent with the pre-existing sanctions measures, the jurisdictional scope of the new sanctions extends (1) to conduct by EU-incorporated entities and EU nationals anywhere in the world; (2) to conduct by any party, irrespective of nationality, in connection with activities occurring in the territory

of the EU or (with regard to legal persons) in respect of business “done in whole or in part within the Union”; or (3) conduct on board any aircraft or vessel under the jurisdiction of a Member State.

* * *

The new sanctions represent the latest, although perhaps not the last, restrictions relating to the crisis in Ukraine. The EU has signaled that it will closely monitor the implementation of the new restrictions and their impact, and it will consider supplemental measures if circumstances in Eastern Ukraine warrant and consensus among the 28 Member States can be reached. Likewise, the U.S. government has stated that additional sanctions targeting Russia could be forthcoming if Russia does not work toward a diplomatic resolution to the crisis in Ukraine.

We are following the above-mentioned sanctions and export control developments closely and will provide further updates as they evolve. We are particularly well-positioned to advise companies and individuals on compliance with the U.S. and EU sanctions related to the Ukraine crisis, as well as on the broader impact of the crisis on foreign investment in both Ukraine and Russia and other legal and commercial interests in the region.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our foreign trade controls practice group:

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