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Client Alert

News Flash

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Ukraine Crisis Update: EU Enacts Sanctions Targeting Military Exports, Oil Sector and State-Owned Banks

The EU's "Stage 3" sanctions restrict exports to the Russian military, exports of certain technologies for the oil industry, and certain Russian State-owned banks' access to EU capital markets.

New EU Measures Target Sectors Not Directly Connected to Events in Ukraine

On July 31, 2014, the EU enacted Council Regulation (EU) No 833/2014 (the Regulation), containing so-called "Stage 3" sanctions against Russia. These sanctions resemble — but in several respects differ from — the enhanced US sanctions. Notably, the sanctions go beyond the designation of certain individuals and entities for purposes of the EU asset freeze. The new sanctions must be reviewed by the Council of the EU by October 31, 2014, and remain in force until July 31, 2015, unless they are renewed or revoked at an earlier date.

Significantly, these latest sanctions target certain sectors of the Russian economy not directly connected to events in Crimea and eastern Ukraine.

As anticipated, the Regulation prohibits the export of technologies related to deep water oil exploration and production, Arctic oil exploration and production, and shale oil products, but does not restrict investment or exports in the gas sector.

Similar to the recent US sanctions, the Regulation restricts access of certain State-owned banks to EU capital markets. In addition, the EU sanctions prohibit dealings in transferable securities and money-market instruments with a maturity exceeding 90 days issued by Sberbank — which is not currently targeted by the US sanctions — as well as VTB Bank, Gazprombank, VEB and Rosselkhozbank.

Exports to the Russian Military

Article 2 of the Regulation prohibits exports of dual-use goods and technology to Russia for military end-use. The Regulation provides that any exports to the Russian military are deemed to be for military end-use, thereby prohibiting any such sales. This supplements Article 2 of Council Decision 2014/512/CFSP, which prohibits the export to and import from Russia of military items, including those listed in the EU common military list.

Article 4 of the Regulation further prohibits the provision of technical, financial and related services in relation to the export of military and dual-use items to Russia.

Exports of Oil Equipment

As anticipated, Article 3 restricts the export to Russia of certain "technologies" for the Russian oil industry.

This provision first specifies that the export of "technologies" listed in Annex II of the Regulation to or for use in Russia requires authorization in accordance with the export licensing regime in force in the EU for dual-use goods. Accordingly, the export control authority of the Member State where the exporter is established (in the UK, the Export Control Organization) must obtain an export license before any of the listed technologies may be exported.

Importantly, Article 3(5) specifies that export licenses shall not be granted if the export "is for projects pertaining to deep water oil exploration and production, Arctic oil exploration and production, or shale oil projects in Russia."

Russian State-Owned Banks' Access to EU Capital Markets

Article 5 is designed to restrict access by certain Russian State-owned banks (VTB Bank, Gazprombank, VEB, Rosselkhozbank and Sberbank) to EU capital markets. However, the precise wording of this provision requires careful consideration.

Article 5 provides that it shall be prohibited to "directly or indirectly purchase, sell, provide brokering 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" by:

a) The major State-owned banks listed in Annex III, viz. VTB Bank, Gazprombank, VEB, Rosselkhozbank and Sberbank

b) Subsidiaries of these banks "established outside the Union"

c) Legal persons "acting on behalf or at the direction of" either (a) or (b)

This prohibition is similar to the sectoral sanctions recently imposed by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC). Under these provisions, US persons may not transact in, provide financing for, or deal in new debt of longer than 90 days maturity or new equity for these financial institutions (except with respect to Sberbank, which is not covered by the US sanctions). In a General License issued on July 16, OFAC authorized transactions involving derivative products whose value is linked to an underlying asset that would be considered prohibited new debt. Whether or not the EU intends to adopt a similar approach remains unclear.

The practice of some Member States (including the UK) is to enact secondary legislation clarifying the scope of EU sanctions regulations, and certain competent authorities (including HM Treasury) often issue guidance notes. Potentially affected parties should consider future regulations and guidance carefully, as well as any further regulations that the UK may enact extending these sanctions to British Overseas Territories (such as the British Virgin Islands and Cayman Islands).

Potential for Additional Sanctions

We are continuing to monitor the implementation of these new measures and the potential for additional sanctions.

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