

LEGAL UPDATES

PUBLISHED: AUGUST 6, 2014

Services

Corporate
International
International Trade &
Supply Chain

Industries

Manufacturing
Transportation

Professional

CORTNEY O'TOOLE
MORGAN
WASHINGTON:
202.378.2389
CORTNEY.MORGAN@
HUSCHBLACKWELL.COM

EU Increases Sanctions Against Russia

As described in our Alert published on August 1, 2014, the United States and other nations have ramped up sanctions against Russia related to the ongoing situation in Ukraine.

On July 31, 2014, the European Union imposed increased sanctions designed to discourage Russia from, in the words of the EU Regulation, "destabilising the situation in Ukraine."

What This Means to You

The EU sanctions provide for criminal penalties for violation of the sanctions, so preventive measures should be implemented to avoid inadvertent violations. Our guide covering U.S. sanctions outlines a number of recommended compliance steps.

This guide to the new EU sanctions was prepared by Pinsent Masons LLP.

Sector sanctions

Sector-wide sanctions imposed by Council Regulation (EU) No. 833/2014 came into force on July 31, 2014. The sanctions will primarily apply to new contracts. The provision of financing products and related services required under pre-existing contractual obligations will be allowed, at least for a limited period, subject to authorizations from particular government agencies in the EU.

Financial instruments and services

EU nationals and companies are prohibited from buying or selling bonds, equity or other money-market instruments with a maturity exceeding 90 days and issued after August 1, 2014 by Sberbank, VTB Bank, Gazprombank,

Vnesheconombank, Rosselkhozbank, or another institution or body outside of the EU in which one of those banks is a majority shareholder, or another person or entity acting at the direction of one of these five banks.

Services related to the issuing of such financial instruments, such as brokering, are also prohibited.

Energy-related equipment and technology

Exports of certain energy-related equipment and technology to Russia require prior authorization by a competent authority of the relevant EU country. The restricted items include line pipe, drill pipe, casing and tubing used in oil or gas drilling, rock-drilling or earth-boring tools, certain types of pumps, liquid elevators, mobile drilling derricks, floating or submersible drilling or production platforms, and other oil and gas drilling related equipment. A list of CN codes has been published to help exporters identify restricted items.

Export licenses will be denied if the equipment is provided under a contractual obligation entered into on or after August 1, 2014, and there are reasonable grounds to consider that the products are destined for projects pertaining to deep water oil exploration and production, Arctic oil exploration or production, or shale oil projects in Russia.

In the UK, authorization is by way of a “Standard Individual Export Licence” issued by the UK Export Control Organisation and can take up to 20 working days for issuance.

Dual-use goods and technology

Exports of dual-use goods and technology for military use in Russia or to Russian military end users are also prohibited. All items in the EU list of dual-use goods (Council Regulation (EC) No. 428/2009) are included. As with energy-related equipment, the supply of dual-use goods for military use or for a military end user may be authorized by an EU export control authority if the supply obligations arose from a contract concluded before August 1, 2014.

Crimea and Sevastopol

There is a complete ban on new investment in the following sectors in Crimea and Sevastopol: infrastructure projects in the transport, telecommunications and energy sectors; and in relation to the exploitation of oil, gas and minerals. Key equipment for the same six sectors may not be exported to, or for use in, Crimea and Sevastopol. In addition, finance and insurance services related to such transactions must not be provided.

The prohibition on the supply of key equipment do not apply, until October 28, 2014, to the execution of transactions required by a contract concluded before July 30, 2014 so long as 10 working days advance notice is given to a competent authority in the EU.

Asset Freezes and Financial Sanctions

The EU has prohibited any EU company or person, and any overseas company or person while in the EU, from making any funds, or economic resources from which funds could be generated, such as hardware and technology for example, available to, or for the benefit of, certain designated persons (117 individuals and 23 companies as of July 31, 2014). The assets of these designated persons are also to be frozen.

The requirement to freeze or not to make available funds and economic resources is triggered where there is reasonable cause to suspect that the funds or resources are owned or controlled by a designated person or that the designated person will benefit from the provision of the funds or resources, even if the funds and resources are to be provided to a third party. As such, the provision of products to a company that a designated person only has a minority share in could be caught by the sanctions if the designated person will still derive a significant financial benefit from the supply of that product to the company.

The EU restrictions allow for funds and assets to be made available to, or for the benefit of, a designated person, or for funds to be released from frozen accounts if authorized by HM Treasury or another competent authority in the EU. The ability to authorize a release of funds or assets only applies in limited circumstances. The main exception relevant to businesses is that payments due from a designated person under a contract which was agreed before the person was added to the list of designated persons may be authorized by HM Treasury or another competent authority in the EU. In addition, banks and other companies may be authorized to release funds needed for a designated person's basic family needs or to pay legal fees. However, there is no pre-existing contractual exemption that allows designated persons to be provided with or benefit from the provision of economic resources to a third party company.

EU import restrictions

The EU has prohibited the import of goods originating in Crimea or Sevastopol. There is also a restriction on EU companies providing finance, financial assistance, insurance or re-insurance relating to the import of goods originating in Crimea or Sevastopol.

The import bans do not apply to imports arising out of contracts concluded before June 25, 2014, provided that the goods are imported before September 26, 2014, and a relevant EU authority has been notified at least 10 working days in advance of the import date. Advanced notifications also need to be given in relation to the finance, financial assistance, insurance and reinsurance of such contracts.

Application

The sanctions apply to all EU companies and persons operating anywhere in the world and to any overseas company and person when doing business within the EU.

Supplies of products into Russia via non-EU subsidiaries may be caught if title to the products is in the hands of the EU parent company (this is often required for financing reasons) or an EU company or EU-based directors need to approve the contract or supply in accordance with the company's pre-existing governance arrangements.

Circumvention provisions

UK laws to implement the EU Regulations make it an offense to deliberately do anything which has the object or effect of circumventing the prohibitions.

Contractual enforcement

No claim by any Russian person or entity in connection with any contract or transaction, the performance of which has been affected directly or indirectly, in whole or in part, by the EU sanctions, can be enforced in the EU. Often companies doing business in Russia will have contracts that are subject to a Russian law and jurisdiction clause. Subject to force majeure considerations, such a contract may be enforced within Russia, but courts within the EU will not enforce any judgment if the transaction was prevented from proceeding because of the EU sanctions.

Contact Us

Because many clients have business relationships and legal needs in the United Kingdom, Europe and the Middle East, we have developed a unique relationship with the global law firm of Pinsent Masons. Through this relationship, Pinsent Masons clients have access to all of Husch Blackwell's resources and offices in the U.S., and Husch Blackwell clients have access to attorneys and services throughout Pinsent Masons' 18 offices in Europe, the Middle East and Asia.

If you are unsure whether a transaction is subject to any financial or trade sanctions, please contact the individuals below for legal advice.

EU Sanctions

Pinsent Masons LLP

Tom Stocker - +44 131 777 7362

Anna Austin - +44 131 777 7080

U.S. Sanctions

Husch Blackwell LLP

Linda Tiller - 816.983.8223

Cortney Morgan - 202.378.2389