



**Update
Sanctions
of December 2014**

EU Updates Sanctions Against Russia and Crimea

Since March 2014, the EU had maintained sanctions against Russia in reaction to the developments in the Ukraine. Repeatedly, the EU has intensified these sanctions. On December 5, 2014, the EU has clarified the scope of existing sanctions against Russia which led, in small part, to a relaxation of the sanctions. As tensions in the Ukraine continue to increase, on December 19, 2014, however, the EU has adopted broad and far-reaching sanctions against the Crimea Region.

The measures currently in force provide for restrictions for transactions in Russia, in Crimea and with business partners in Russia and in the Ukraine. In the following, we do not only discuss the latest amendments to the sanctions regime, but explain the whole of the EU Sanctions currently in force against Russia and Crimea.

1. What do the EU Sanctions prohibit?

a. Restrictions for certain financial instruments and for loans

On July 30, the EU has adopted severe restrictions for long-term financing instruments issued by certain banks. These restrictions have been significantly tightened on September 12, 2014. It is prohibited to purchase or sell, or provide brokering or assistance in relation to transferable securities and money-market instruments with a maturity exceeding 30 days, if these have been issued by certain banks or certain companies from the energy and defense sectors after September 12, 2014. This prohibition applies to securities and instruments issued by one of the following banks or companies: Sberbank, VTB Bank, Gazprombank, Vnesheconombank (VEB), Rosselkhozbank OPK Oboronprom, United Aircraft Corporation, Uralvagonzavod, Rosneft, Transneft or Gazprom Neft (or by a company that is majority-owned by one of these banks or companies or by a person who acts on behalf of any of these banks or companies).

In addition, on September 12, 2014, the EU adopted a prohibition to grant new loans or credit to the banks and companies listed above with a maturity exceeding 30 days. The sanctions contain an express exemption from this prohibition for loans and credit for non-prohibited imports and exports of goods and for non-financial services. On December 5, 2014, the EU clarified that the exemption for exports and imports applies to any exports and imports between the EU and a third country – including Russia – and to any ancillary transactions related to such exports and imports. Thus, the prohibition to provide loans or credit does e.g. not apply to the acquisition of products which will then be exported from the EU. As a result, it is now clear that exports and imports to and from Russia, as well as related trade financing remain largely unaffected by the prohibition to grant loans or credit to some Russian banks and companies.



It is also important to note that these banks and companies are not subject to financial sanctions or other prohibitions. It is not prohibited to engage in transactions with these banks and companies or to transfer funds to or from one of these banks or to open a bank account at one of these banks.

b. "Financial" Sanctions

Already since March 2014, the EU has adopted "financial" sanctions against a number of individuals, groups and companies (so-called "Designated Parties"). All funds and assets of Designated Parties must be frozen, and no funds or economic resources may be provided to Designated Parties. The term financial sanctions is misleading, because any business transactions with Designated Parties are prohibited (except for a few unimportant exemptions).

In addition, no funds or economic resources may be provided for the benefit of Designated Parties. Traditionally, this prohibition has been interpreted to mean that transactions were also prohibited with any company that was majority-owned or otherwise controlled by a Designated Party, even if the company itself was not listed. Since 2013, the German Government has, based on a common Guideline issued by the EU Council, interpreted this prohibition less strictly. Thus, in Germany, it is no longer generally prohibited to enter into business transactions with companies that are majority-owned or controlled by Designated Parties, provided that it can be ensured that the items delivered to the company in question are not passed on to a Designated Party. This practice by German authorities may become important, because the chairman of the Rostec Conglomerate, Sergey Chemezov, has been included in the list of Designated Parties, but no companies of the Rostec Conglomerate have been Designated.

To date, the list includes a number of politicians and members of the self-proclaimed governments of Crimea, Donetsk and Luhansk. In addition, the list comprises a number of companies that have been nationalized by the current Government of Crimea.

c. Export prohibitions and restrictions

Already since August 1, 2014, Russia is subject to an arms embargo, and military items may no longer be supplied to Russia. Technical assistance (that is, certain support services), financing and brokerage services for military items are also prohibited. However, these prohibitions do not apply to contracts concluded before August 1, 2014; yet, licenses are required for respective exports. As a consequence of the arms embargo, it is prohibited to export any item to Russia if the exporter knows that the item is intended for a military end-use, that is, in particular, the manufacturing of military items.

In addition, it is prohibited to sell, supply or export dual-use items to Russia, if the end-user is the Russian military or if the items may be intended for another military end-user or for a military use. This prohibition was broadened on September 12: Dual use items may no longer be supplied to nine defense companies listed in the EU Sanctions. However, licenses may be granted for supplies which are made under contracts or agreements concluded before September 12, 2014.

Finally, the sale, supply, transfer and the export of technologies suited to the oil industry for use in deep water oil exploration and production, Arctic oil exploration and production or shale oil projects in Russia have been prohibited. Based on grandfathering rules in the EU Sanctions, export licenses for these items can still be issued if the respective contract has been concluded before August 1, 2014. In order to enforce this export prohibition, the EU Sanctions contain a list of items which are suitable, in principle, for such projects. The export of these items to Russia always requires a license, even if these items are not suitable or not designated for such project. On December 5, 2014, the EU further clarified which areas should be considered "deep water" or "Arctic". In addition, the list of products which are subject to these restrictions has been clarified. As a result, a number of "common" items that have no connection to such projects no longer require an export license. Germany has also adopted a very generous licensing policy for such items. Generally, blanket licenses can be obtained on short notice.

Since September 12, 2014, in addition, drilling, well testing, logging and completion services as well as the supply of specialized floating vessels for the projects of the oil industry listed above are prohibited. Again, an exemption to this prohibition applies if these services are provided under agreements which have been concluded before September 12, 2014.

d. Further restrictions for the Crimea Region and Sevastopol

Additional export restrictions apply with respect to the Crimea Region and Sevastopol. Since December 19, 2014, the EU maintains a very broad embargo against this area. It is prohibited to sell, supply, transfer or export all items listed in Annex II of Regulation 692/2014 to the Crimea Region directly or indirectly. It is also prohibited to provide respective ancillary services, such as brokering or financing, for the export of such equipment and technology to the Crimea Region. As many products for the Crimea Region are sourced from Russia, EU companies need to be aware that products caught by the embargo which they ship to Russia must not be forwarded to the Crimea Region.

In addition, it is prohibited to invest in companies or real estate in the Crimea Region and to provide financing for companies or real estate in the Crimea Region. Cruise ships may not call into the harbors of Crimea and Sevastopol.

Finally, with effect already since June 25, 2014, the EU has effectively prohibited the import of any goods originating in the Crimea Region or in Sevastopol. Goods originating in the Crimea Region or in Sevastopol may only be imported into the EU if Ukrainian authorities have examined the goods in question in advance.

2. Do the EU Sanctions apply to me or to my company?

The EU Sanctions apply in each of the following situations:

- within the territory of all EU Member States;
- on board any aircraft or any vessel under the jurisdiction of an EU Member State;
- to any person who is a national of an EU Member State;
- to any legal person which is incorporated or constituted under the law of a Member State;
- to any legal person in respect of any business done in whole or in part within the EU.

It is often overlooked that the EU Sanctions also apply to any person who is not an EU national for as long as he or she is within the EU. Also, the EU Sanctions apply to EU nationals wherever they are. Thus, managers or employees who have the nationality of an EU Member State must comply with the EU Sanctions even while they are, for example, within Russia or within the Ukraine.

On the other hand, the EU Sanctions do not apply to companies and persons who are not EU nationals as long as they are outside of the EU. Thus, the sanctions do not apply, for example, to transactions between Russian companies that are conducted outside of the EU and where no EU nationals are involved.

For further information, please contact:



Dr. Julia Pfeil
E-Mail: Julia.Pfeil@bakermckenzie.com

Baker & McKenzie - Partnerschaft von Rechtsanwälten, Wirtschaftsprüfern und Steuerberatern mbB

Berlin

Friedrichstrasse 88 / Unter den Linden
10117 Berlin
Tel.: +49 (0) 30 2 20 02 81 0
Fax: +49 (0) 30 2 20 02 81 199

Dusseldorf

Neuer Zollhof 2
40221 Dusseldorf
Tel.: +49 (0) 211 3 11 16 0
Fax: +49 (0) 211 3 11 16 199

Frankfurt / Main

Bethmannstrasse 50-54
60311 Frankfurt/Main
Tel.: +49 (0) 69 2 99 08 0
Fax: +49 (0) 69 2 99 08 108

Munich

Theatinerstrasse 23
80333 Munich
Tel.: +49 (0) 89 5 52 38 0
Fax: +49 (0) 89 5 52 38 199

www.bakermckenzie.com

Get Connected:



This client newsletter is prepared for information purposes only. The information contained therein should not be relied on as legal advice and should, therefore, not be regarded as a substitute for detailed legal advice in the individual case. The advice of a qualified lawyer should always be sought in such cases. In the publishing of this Newsletter, we do not accept any liability in individual cases.

Baker & McKenzie - Partnerschaft von Rechtsanwälten, Wirtschaftsprüfern und Steuerberatern mbB is a professional partnership under German law with its registered offices in Frankfurt/Main, registered with the Local Court of Frankfurt/Main at PR No. 1602. It is associated with Baker & McKenzie International, a Verein organized under the laws of Switzerland. Members of Baker & McKenzie International are Baker & McKenzie law firms around the world. In common with terminology used in professional service organizations, reference to a "partner" means a professional who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

© Baker & McKenzie