

## CLIENT MEMORANDUM

# U.S., EU Expand Russia Sanctions and Export Controls

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## AUTHORS

**Martin J. Weinstein** | **Robert J. Meyer** | **Jeffrey D. Clark** | **Peter Burrell** | **Miriam A. Bishop**

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On September 12, 2014, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) and the European Union intensified sanctions against Russia. OFAC's new sanctions target Russia's largest bank, deepen sanctions against other Russian financial institutions, expand sanctions against the Russian energy sector, and target additional energy and defense sector entities. The U.S. Commerce Department's Bureau of Industry and Security (BIS) also announced plans to impose export controls on certain Russian energy and defense sector entities. The EU similarly expanded sanctions and export controls on Russia's financial, energy, and defense sectors. More information on the U.S. and EU sanctions is given below.

### **U.S. Sanctions**

OFAC has updated Directive 1, previously issued pursuant to Executive Order (E.O.) 13662, to lower from 90 days to 30 days the allowable maturity for the new debt that is subject to the Directive's prohibitions.<sup>1</sup> Specifically, Directive 1 now prohibits transactions in, and provision of financing for, or other dealings in new debt of greater than 30 days' maturity and

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<sup>1</sup> For discussion of the initial versions of Directives 1 and 2, please see Willkie Farr & Gallagher LLP Client Memorandum, "U.S. Imposes Sectoral Sanctions Against Russia; Targets Banking, Energy and Arms, But Scope Is Limited" (July 18, 2014), available [here](#).

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new equity of the banks subject to Directive 1 by U.S. persons or within the United States. OFAC also added Sberbank, Russia's largest bank, to the Sectoral Sanctions Identification List (SSIL). Russian banks now subject to the prohibitions in Directive 1 include Bank of Moscow, Gazprombank, Russian Agricultural Bank, Sberbank, Vnesheconombank (VEB), and VTB Bank, as well as any entity owned 50 percent or more by these banks. Directive 1 now effectively cuts off these banks from all U.S.-dollar financing except for same-day transactions.

OFAC also modified Directive 2, previously issued pursuant to E.O. 13662, and added the energy companies AK Transneft and Gazprom Neft to the list of entities subject to its restrictions and to the SSIL. Directive 2 now prohibits transactions in, provision of financing for, and other dealings in new debt of greater than 90 days' maturity for the designated entities and entities owned 50 percent or more by the designated entities, by U.S. persons or within the United States.<sup>2</sup> Entities subject to Directive 2 from previous OFAC sanctions include Novatek and Rosneft.

In addition, Treasury Secretary Jacob Lew made a determination pursuant to E.O. 13662 that persons operating within Russia's defense and related materiel sector may now be subject to targeted sanctions. As a result, OFAC expanded the number of Russian firms on the SSIL through a newly issued Directive 3, which prohibits transactions in, provision of financing for, and other dealings in new debt of greater than 30 days' maturity issued by Rostec, a state-owned holding company for the Russian defense industry, and its 50 percent or more owned subsidiaries.<sup>3</sup>

Newly issued OFAC Directive 4 prohibits provision, exportation, or re-exportation of goods, services (except for financial services), or technology by U.S. persons or from the United States in support of exploration or production for deepwater, Arctic offshore, or shale projects that have the potential to produce oil in Russia, or in maritime areas claimed by Russia, and extending from its territory, and that involve the Russian energy companies Gazprom, Gazprom Neft, Lukoil, Rosneft, and Surgutneftegas.<sup>4</sup> U.S. companies have until **September 26, 2014**, to wind down operations prohibited by Directive 4.<sup>5</sup> Directives 2 and 4 do not impede current Russian energy exports, but rather impair Russia's ability to develop long-term, technically challenging energy projects, impacting agreements among Rosneft, Gazprom Neft, and certain non-Russian companies.

OFAC also added five firms to the Specially Designated Nationals and Blocked Persons List (SDN List). OFAC designated and blocked the assets of OAO 'Dolgoprudny Research Production Enterprise,' Mytishchinski Mashinostroitelny Zavod OAO, Kalinin Machine Plant JSC, Almaz-Antey GSKB, and JSC NIIP. Any assets of these

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<sup>2</sup> Directive 2 only applies to debt, not equity.

<sup>3</sup> Directive 3 only applies to Rostec's debt, not equity. Also note that Rostec's Director General, Sergei Viktorovich Chemezov, was designated on April 28, 2014, under E.O. 13661.

<sup>4</sup> Directive 4 applies to projects with the potential to produce oil, but not to projects with the potential only to produce gas.

<sup>5</sup> See General License No. 2. U.S. Persons must file a detailed report with OFAC within 10 days of concluding wind-down transactions.

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entities within U.S. jurisdiction must be frozen and transactions by U.S. persons or within the U.S. involving these entities are generally prohibited.

Complementing the OFAC sanctions, the Commerce Department's BIS announced that it would add the defense entities Almaz-Antey Air Defense Concern Main System Design Bureau JSC; Tikhomirov Scientific Research Institute of Instrument Design; Mytishchinski Mashinostroitelny Zavod OAO; Kalinin Machine Plant JSC; and Dolgoprudny Research Production Enterprise to the Entity List. Designation on the Entity List imposes a license requirement for the export, re-export, or foreign transfer of all items subject to the Export Administration Regulations (EAR) to the designated entities, with a presumption of denial. Further, BIS announced that it will require licenses for an additional group of items destined to military end users or end users in Russia.

BIS will also add the energy companies Gazprom OAO, Gazprom Neft, Lukoil, Rosneft, and Surgutneftegas to its Entity List. For these entities, BIS will impose a license requirement for the export, re-export, or foreign transfer of items subject to the EAR to those companies when the exporter, re-exporter, or transferor knows those items will be used directly or indirectly in exploration for, or production from, deepwater, Arctic offshore, or shale projects in Russia that have the potential to produce oil. BIS will review license applications with a presumption of denial.<sup>6</sup> Unlike previous BIS Russia-related licensing requirements, the new restrictions apply to both controlled and non-controlled (EAR99) items.

### EU Sanctions

On September 12, 2014, the EU adopted a series of further sanctions targeting Russian interests linked to the situation in Ukraine. These new sanctions expand the restrictions previously adopted on August 1, 2014 under Regulation 833/2014.<sup>7</sup>

### Access to Capital Markets for Specific Russian Banks, Military and Oil Companies

Regulation 833/2014 prohibits, directly or indirectly, the purchase, sale, provision of brokering or assistance in the issuance of, or otherwise dealing with transferable securities and money-market instruments with a maturity exceeding 90 days issued after August 1, 2014 by any of Sberbank, VTB Bank, Gazprombank, VEB, or Rosselkhozbank (the "Restricted Banks"). This restriction has now been expanded by Regulation 960/2014 to include transferable securities

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<sup>6</sup> The licensing policy mirrors BIS's August 6, 2014 EAR Section 746.5 (Russian Industry Sector Sanctions). For additional information, please see Willkie Farr & Gallagher LLP Client Memorandum, "U.S., EU Impose Coordinated Controls on Exports to Russian Energy Sector" (Aug. 8, 2014), available [here](#).

<sup>7</sup> The Regulation is available [here](#). For additional details on Regulation 833/2014, please see Willkie Farr & Gallagher LLP Client Memorandum, "EU Russian Sanctions Update" (Aug. 1, 2014), available [here](#).

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and money-market instruments of the Restricted Banks with a maturity exceeding 30 days issued after September 12, 2014.<sup>8</sup>

In addition, the restriction now also covers transferable securities and money-market instruments with a maturity exceeding 30 days issued after September 12, 2014 by the following entities in the military and oil sectors: OPK Oboronprom, United Aircraft Corporation, Uralvagonzavod, Rosneft, Transneft, or Gazprom Neft, together with the Restricted Banks, the “Restricted Entities.”

Finally, it is now also prohibited to, directly or indirectly, make or be part of any arrangement to make new loans or credit with a maturity exceeding 30 days to any Restricted Entity after September 12, 2014. The restrictions do not apply to loans and 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; or
- emergency funding to meet solvency and liquidity criteria for legal persons established in the EU that are majority-owned by a Restricted Bank.

The EU prohibitions set out above also apply to any entity which acts on behalf or at the direction of a Restricted Entity and any entity established outside the EU in which a Restricted Entity owns, directly or indirectly, more than 50 percent of the proprietary rights.

### Oil Industry Export Restrictions

Regulation 960/2014 also prohibits the provision of the following services necessary for deepwater oil exploration and production, Arctic oil exploration and production, or shale oil projects in Russia: drilling, well testing, logging and completion services, and supply of specialized floating vessels.

These restrictions will not apply to contracts or framework agreements concluded before September 12, 2014, to ancillary contracts necessary for the execution of such contracts, or where the services 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.

### Dual-Use and Military-List Goods and Services

Regulation 833/2014 prohibits the sale, supply, transfer or export, directly or indirectly, of dual-use goods and technology to anyone in Russia, or to a person in another country if such items are intended for use in Russia, if those items are or may be intended for military use. The provision of technical assistance, brokering services, financing and financial assistance related to dual-use goods to anyone in Russia, or for use in Russia, is also prohibited.

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<sup>8</sup> The Regulation is available [here](#).

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These restrictions have now been expanded by Regulation 960/2014 to also apply specifically to the following companies: 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.

The new restrictions do not apply to:

- agreements concluded before September 12, 2014;
- the provision of assistance necessary to the maintenance and safety of existing capabilities in the EU;
- goods and technology for use in the aeronautics and space industry;
- the related provision of technical and financial assistance for non-military use and non-military end users; and
- maintenance and safety of existing civil nuclear capabilities within the EU, for non-military use and non-military end users.

Finally, it is now prohibited to provide insurance or reinsurance related to the sale, supply, transfer or export of items on the Common Military List, or for the provision of related technical assistance, to a natural or legal person in Russia, or for use in Russia.

### EU Asset Freeze Expanded

On September 12, 2014, the EU further expanded its asset freeze relating to the situation in Ukraine. The EU expanded its criteria for listing to include individuals or entities that conduct transactions with the separatist groups in the Donbass region of Ukraine<sup>9</sup> and added a further 24 individuals now subject to asset freezes and travel bans.<sup>10</sup> The new additions to the EU list, including summary reasons for their listing, may be found [here](#).

### Compliance with U.S. and EU Restrictions

Companies that are subject to U.S. or EU restrictions and do business in or with Russia or Russian entities should know with whom they are dealing and whether such entity or individual or the proposed transaction is subject to sanctions or export restrictions. Adequate screening procedures using the most current information should be in place. It is critical that affected companies review their relationships and transactions **immediately** in order to comply with the **September 26, 2014** expiration of OFAC's general license permitting the wind-down of newly restricted conduct. The new restrictions imposed by OFAC, BIS, and the EU underscore once again the importance to companies subject to U.S. or EU trade

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<sup>9</sup> Regulation 959/2014, available [here](#).

<sup>10</sup> Regulation 961/2014, available [here](#).

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restrictions of conducting sufficient due diligence on their counterparties to determine whether, and/or the extent to which, these companies are owned or controlled by a sanctioned entity or individual.

### Related Links

OFAC Specially Designated Nationals List (September 12, 2014), available [here](#).

OFAC Sectoral Sanctions Identification List (September 12, 2014), available [here](#).

OFAC Directives 1, 2, 3, and 4, pursuant to E.O. 13662, and the related General Licenses (September 11, 2014), available [here](#).

BIS U.S. Commerce Department Expands Export Restrictions Aimed at Russia's Defense Sector (September 12, 2014), available [here](#).

### European Union Sanctions

EU Council Regulation 960/2014 (September 12, 2014), available [here](#).

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If you have any questions or need any assistance in determining whether your company may be affected by U.S./EU sanctions against Russia, please contact Martin J. Weinstein (202-303-1122, [mweinstein@willkie.com](mailto:mweinstein@willkie.com)), Robert J. Meyer (202-303-1123, [rmeyer@willkie.com](mailto:rmeyer@willkie.com)), Jeffrey D. Clark (202-303-1139, [jdclark@willkie.com](mailto:jdclark@willkie.com)), Peter Burrell (+44 20 3580 4702, [pburrell@willkie.com](mailto:pburrell@willkie.com)), Miriam A. Bishop (202-303-1126, [mbishop@willkie.com](mailto:mbishop@willkie.com)) or the Willkie attorney with whom you regularly work.

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