



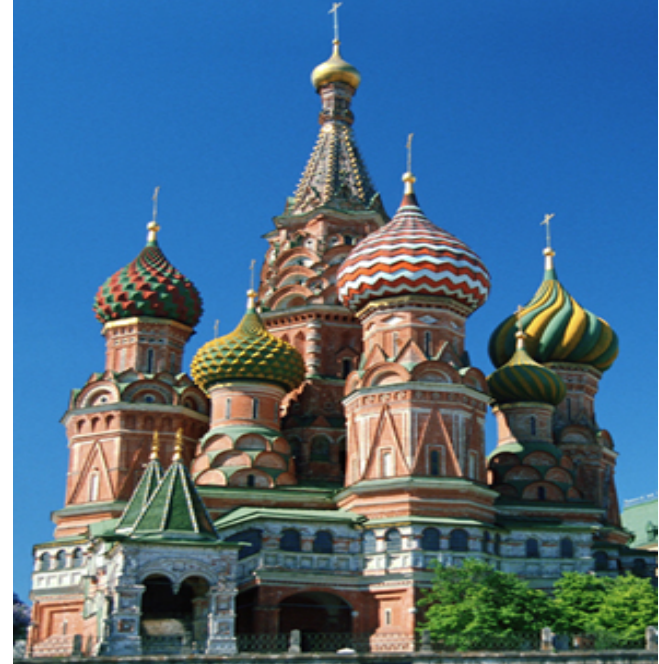
Update on US and EU Russia Sanctions – Energy Sector Focus

as of 23 December 2014

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Further US and EU Sanctions: State of Play

- The US and EU economic sanctions against Russia, as further tightened in Sept. 2014 and fairly well coordinated with one another, have basically remained as is since then.
- But there have been recent clarifications – by new US FAQs, and by a 4 Dec. EU Reg. amendment and 16 Dec. EU FAQs. Some of these clarifications actually serve to soften the restrictions in various ways – in the EU more so than in the US
- And new EU and US Crimea-aimed sanctions touch the energy sector too
- Latest US arrow: the Ukraine Freedom Support Act – will it ever be used?



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Basic Framework – for the Energy Sector

- **United States**

- Treasury Dep't (Office of Foreign Assets Control – OFAC) “*sectoral*” *sanction directives*, as amended to date (based on Executive Order 13662 from March 2014) – apply to “US persons”
- Commerce Dep't (Bureau of Industry and Security – BIS) export restrictions – 15 CFR §746.5, “*Russian Industry Sector Sanctions*”, as amended to date
 - apply to activities of any “US person” or within the US
 - and also to goods, technology etc. with sufficient US content wherever located (i.e., *in rem* jurisdiction)
- Ukraine Freedom Support Act (just enacted, 18 December – new “secondary” commercial sanctions – *applying mostly to foreign, not US, companies*)
- and new Crimea-focused Executive Order of 19 December
 - bars all new US investments etc. into Crimea – including for energy sector / offshore areas
 - and note that Chernomorneftegaz is a US (and EU) SDN

Basic Framework – for the Energy Sector (*cont'd*)

- **European Union**

- EU Council Regulation No. 833/2014 of 31 July 2014 – as amended by Reg. No. 960/2014 of 8 Sept. 2014, and most recently by Reg. No. 1290/2014 of 4 Dec. 2014 (based on EU Council Decision 2014/872/CFSR of 4 Dec. 2014)
 - applies to EU nationals and companies
 - or anything happening in whole or part within EU territory
 - or involving an EU-registered aircraft / vessel
- Commission Guidance Note (16 Dec.) on implementation of certain provisions
- and, re Crimea, EU Council Regulation No. 692/2014 of 23 June 2014 – as amended by Reg. No. 825/2014 of 30 July 2014, and most recently by Reg. No. 1351/2014 of 19 Dec. 2014 (now hits energy sector investments)

What's Newest?

- EU Regulation amendment of 4 December – clarifications / some softening
 - the broader “grandfathering” exemption (“... or ancillary contracts necessary for the execution of” pre-12 Sept. 2014 contracts/obligations), already available re “associated services” per Reg. article 3a, now extends also to the article 3 (Annex II items) and the article 4 (technical / financial assistance) sanctions
 - projects “in Russia” is clarified to include Russia’s exclusive economic zone (“EEZ”) and continental shelf (“Shelf”) – which had been understood in any event (note that the US’s “including marine areas claimed by Russia” definition may be a bit wider in scope)
 - the former “deep water” term is clarified to mean “waters deeper than 150 meters” (which is about 492 feet – just short of the US-defined 500 feet)
 - “Arctic” is clarified to mean only “offshore area north of the Arctic Circle” (i.e., no more risk of covering Russia’s onshore north-of-Arctic-Circle areas – so now is same as US intended scope (as just clarified – see below)
 - “shale oil projects” is clarified to exclude E&P “through shale formations to locate or extract oil from non-shale reservoirs” (this is consistent with recent US OFAC and BIS FAQ clarifications)

What's Newest? (*cont'd*)

- EU Regulation amendment of 4 December (*cont'd*)
 - the article 5.3 30-day new loans/credits safe harbor for trade finance of non-prohibited imports/exports is clarified to cover not only such into Russia but into any non-EU third country incident to such export/import contracts for Russia
 - and a new article 5.4 is added, clarifying that post-12 Sept. drawdowns under a pre-12 Sept. loan/credit contract aren't covered under the art. 5.3 general prohibition – but only if the terms and conditions governing such drawdowns haven't been changed etc. (this is more or less consistent with a US OFAC FAQ clarification)
- EU Guidance Note of 16 December
 - provides guidance (including some liberalizing clarifications) on certain provisions of the Regulation as amended – in FAQ form ... focusing on
 - financial assistance (Reg. arts. 2 and 4)
 - trade finance (Reg. art. 5.3)

What's Newest? (*cont'd*)

- EU Guidance Note of 16 December (*cont'd*)
 - loans other than for trade finance or emergency funding (Reg. art. 5.3) – including:
 - payment and settlement services including through correspondent banking ≠ “making” or “being part of an arrangement to make” new loan to sanctioned entity per art. 5.3 (thus – different from US OFAC FAQ interpretation to date)
 - payment terms / delayed payment > 30 days for goods or services ≠ loans or credit for purposes of art. 5 (but payment terms to sanctioned entities that aren’t “in line with normal business practice” etc. “may suggest” circumvention ... prohibited by art. 12)
 - deposit services (whether demand- or term-based) isn’t covered by the art. 5 loan/credit ban – except where “are to be used to circumvent the prohibition on new loans”
 - capital markets (arts. 5.1 and .2)
- EU Crimea investment ban – per new 19 December amendment
 - ban on new investments, financings, etc. (but with grandfathering)
 - ban on supply of certain goods / technology (again, with grandfathering)

What's Newest? (*cont'd*)

- US (new Nov. / Dec. 2014 FAQ responses – mostly loosen, one tightens)
 - shale oil projects clarification – same as EU (see above)
 - “Arctic offshore projects” = those involving drilling originating offshore and located above the Arctic Circle – *and* not including horizontal drilling operations originating onshore (OFAC 421)
 - “production” for purposes of OFAC Directive 4, does *not* include midstream (downstream) activities beyond field production or associated storage tank site (OFAC 420)
 - de facto extension of payment terms to SSI entity beyond 30 or 90 days (as applicable, per OFAC Directives 1, 2 or 3) may require license / authorization
- US Crimea investment ban – 19 December Executive Order
 - ban on new investments (no grandfathering)
 - ban on supply of *any* goods, services or technology (again, no grandfathering)
 - and ban on any “approval, financing, facilitation, or guarantee” by US persons
- US Ukraine Freedom Support Act – see slides 22-29 below

US Sectoral Sanctions – OFAC

Finance / Capital Markets

- The sanctions (as updated / amended in Sept. 2014) prohibit w/o license:
 - new debt financing with maturity ≥30 days, or new equity financing (except depositary receipts based on pre-existing shares – per FAQ 391), for these designated entities or their subs (50%-or-more owned), and transactions with or dealing in such debt or equity (Directive 1)
 - *Bank of Moscow*
 - *Gazprombank*
 - *Russian Agricultural Bank*
 - *Sberbank* (note limited license given)
 - *VEB*
 - *VTB Bank*

(except depositary receipts based on pre-existing shares – per FAQ 391)
 - new debt financing with maturity ≥90 days for these designated entities or their subs (50%-or-more owned), and transactions dealing in such debt (Directive 2)
 - *Gazpromneft*
 - *Novatek*
 - *Rosneft*
 - *Transneft*
 - new debt financing, maturity ≥30 days, for *Russian Technologies (Rostec)* or its subs (50%-or-more owned), and transactions / dealing in such debt (Directive 3)

US Sectoral Sanctions – OFAC (*cont'd*)

Energy

- Directive 4 prohibits (since Sept. 2014) without a license
 - the provision, export or re-export, directly or indirectly, of goods, services (except financial services) or technology
 - “in support of exploration or production for deepwater, Arctic offshore, or shale projects that have the potential to produce oil” in Russia
 - to these designated entities and or their subs (50%-or-more owned)
 - *Gazprom*
 - *Lukoil*
 - *Surgutneftegas*
 - *Gazpromneft*
 - *Rosneft*
- Note OFAC (and BIS) FAQ clarification that deepwater = over 500 feet
- And Nov. 2014 OFAC (and BIS) FAQ clarification that “shale project” doesn’t include E&P *through* shale to locate or extract oil in reservoirs
- And Dec. 2014 OFAC clarifications re “Arctic offshore” and production (see above)

US Sectoral Sanctions – OFAC (*cont'd*)

Energy (*cont'd*)

- The further reference to “*in Russia or in other maritime area claimed by [Russia] and extending from its territory*” ... likely means
 - any other offshore areas (whether inland or territorial sea, EEZ or Shelf) that aren't Arctic
 - per a BIS FAQ answer and analogous explanations of other country sanctions rules (and consistent with fresh EU Reg. clarifications)
 - and the Caspian Sea zone claimed by Russia (EU might not cover this)
 - as well as the Black Sea shelf area extending from Crimea (despite non-recognition by US as being part of Russia) – and see above on this
- And note the FAQ clarification that this sanction doesn't apply if a project has potential to produce only gas – but does apply if potential for both

US Sectoral Sanctions – OFAC (*cont'd*)

Energy (*cont'd*)

- The Directive 4 export ban thus covers essentially all goods, as well as US-origin services, technical assistance and technology, in respect of such projects, to the five listed companies and their subs
- US entities were given a general license by OFAC to continue / withdraw from existing projects up to late September
 - under OFAC General License 2, which granted this two-week period for winding down pre-existing contracts and operations
 - ExxonMobil evidently then got a further license from OFAC allowing it another two-week extension to mid-October for wind-down / termination of its Rosneft JV drilling operation in the Kara Sea
 - apparently applied to contractors too
- Further FAQ clarifications and licensing applications / actions since then

US Sectoral Sanctions – OFAC (*cont'd*)

Energy (*cont'd*)

- General application – to “US persons” ... which = US citizens (and green card holders), US companies (and foreign branches – but not foreign subs), and any persons/entities located in US
- All four directives (re finance / capital markets, and energy) also expressly prohibit
 - any transaction that evades or avoids, has that purpose, or causes a violation of, or attempts to violate any of the directive prohibitions
 - any conspiracy formed to violate any of same
- Note the “support services” compliance focus / risk

US Sectoral Sanctions – OFAC (*cont'd*)

- *Resources:*

- http://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13662_directive1.pdf
- http://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13662_directive2.pdf
- http://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13662_directive3.pdf
- http://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13662_directive4.pdf
- http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_gl1a.pdf
- http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_gl2.pdf
- http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_gl3.pdf
- <http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answers2.aspx>

US Sectoral Sanctions – BIS

Export Restrictions

- Has the same five Russian energy companies (or their subsidiaries) on a “BIS Entity List” (since Sept. 2014)
 - *Gazprom*
 - *Lukoil*
 - *Surgutneftegas*
 - *Gazpromneft*
 - *Rosneft*
- This designation imposes (re these five companies)
 - a new license requirement for the export, re-export, or transfer of “*all items subject to the EAR*” (Export Admin. Regs.)
 - when the exporter knows the items will be used directly or indirectly in exploration for or production of oil or gas in Russian deepwater, Arctic offshore, or shale formations
 - *or* is unable to determine whether the item will be used in such projects
 - and *presumption of denial* when for use in such projects “that have the potential to produce oil”

US Sectoral Sanctions – BIS (*cont'd*)

Export Restrictions (*cont'd*)

- Include, but are not limited to
 - *drilling rigs*
 - *parts for horizontal drilling*
 - *drilling and completion equipment*
 - *subsea processing equipment*
 - *Arctic-capable marine equipment*
 - *wireline & down-hole motors/equipment*
 - *drill pipe and casing*
 - *software for hydraulic fracturing*
 - *high pressure pumps*
 - *seismic acquisition equipment*
 - *remotely operated vehicle*
 - *compressors, expanders, valves, risers*
- What is “*subject to the EAR*”?
 - All items in / moving in transit through the US
 - all US origin items, wherever located

US Sectoral Sanctions – BIS (*cont'd*)

Export Restrictions (*cont'd*)

– and

- *foreign-made goods that incorporate controlled US-origin goods*
- *foreign-made software that is comingled with controlled US-origin software*
- *foreign-made goods that are “bundled” with controlled US-origin software*
- *foreign-made technology that is comingled with controlled US-origin technology*

... in quantities exceeding the de minimus levels (25% for Russia, other than encryption technology)

- certain foreign-made direct products of US-origin technology or software
- certain commodities, produced by any plant or major component thereof outside the US, that is direct product of US-origin technology or software
- *Note: includes in-country transfers between entities (e.g., within Russia)*

US Sectoral Sanctions – BIS (*cont'd*)

Export Restrictions (*cont'd*)

- The Commerce BIS August versus September sanctions:
 - August – only specifically designated ECCN items, to *all* Russian entities
 - September – plus *all* items subject to the EAR, for the 5 specifically named energy sector companies
 - *if... or if...* (same oil/gas target projects litany, and denial presumption for oil projects applies in both cases)
- *Resources:*
 - <http://www.bis.doc.gov/index.php/about-bis/newsroom/press-releases/107-about-bis/newsroom/press-releases/press-release-2014/742-u-s-commerce-department-expands-export-restrictions-aimed-at-russia-s-defense-sector>
 - <http://www.bis.doc.gov/index.php/policy-guidance/faqs>

US Direct Sanctions – SDNs

Specially Designated Nationals List

- A few oil & gas industry executives are on the SDN list: most notably Mr. Sechin of Rosneft, Mr. Timchenko (Volga Resources, Novatek, Yamal LNG), and the Rotenberg brothers
- Such individual-person listing
 - bars dealings with them or their controlled companies (generally measured by $\geq 50\%$ shareholding – *and note tightened nuances here*)
 - but otherwise doesn't bar dealing with companies of which they are officers / directors, etc.
 - ... except has been interpreted to bar having an SDN-individual executive signing a contract on behalf of a non-SDN company
- And note Chernomorneftegaz (nationalized by Crimean gov't) as SDN

US Direct Sanctions – SDNs (*cont'd*)

Specially Designated Nationals List (*cont'd*)

- And a number of Russian defense industry companies – and some Russian government officials
- These are the US “direct” sanctions (as opposed to the SSI “sectoral” sanctions summarized above)
- All dealings with SDNs and their subsidiaries are generally prohibited (and must block their assets)
- *Resources:*
 - <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0961&from=EN>
 - <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20140912.aspx>

US – Ukraine Freedom Support Act

Overview

- Signed into law by President Obama on 18 December, after unanimous vote (which is quite unusual) by both houses of Congress
- Various provocative provisions, on both the commercial and political fronts – but is milder than earlier version, in both tone and content
- The commercial-sanctions parts (sections 4 and 5) lean toward some of the Iranian sanctions' reach) – *i.e.*, primarily are
 - aimed at *foreign* companies / *foreign* financial institutions
 - *discretionary* (“may” rather than “shall”) for President to invoke or not
 - waivable (and terminable) by the President upon certification
- Also: mandatory sanctions to be imposed on Rosoboronexport (Russia's giant arms exporter), and on other Russian entities that participate in arms sales / transfers into in Ukraine and certain other countries

US – Ukraine Freedom Support Act (*cont'd*)

Overview (*cont'd*)

- Note from the President's 18 December signing statement:

“At this time, the Administration does not intend to impose sanctions under this law, but the Act gives the Administration additional authorities that could be utilized, if circumstances warranted.”
- The further political parts (authorization for military aid to Ukraine, support for democracy and civil society in Russia, etc.) – are a different matter ... not further covered here (sections 6-11)
- Not yet clear whether / how EU will coordinate on this

US – Ukraine Freedom Support Act (*cont'd*)

Sanctions re Russia's energy sector (section 4)

- Development of “special Russian crude oil project”
 - means the already-designated three types of sanctioned projects (in Russian EEZ at >500 feet, Arctic offshore, shale formations)
 - starting 45 days from enactment (i.e., by early Feb. 2015)
 - President may impose three or more of the seven possible sanctions set out at section 4(c) – see below
 - makes a “*significant investment*” (see Iran-related def.) in such a project
 - with certain exceptions (see below)
- Authorization (which exists anyway) for Commerce Dep't (BIS):
 - to impose further licensing requirements for / other restrictions on export / reexport “of items for use in [Russia's] energy sector”
 - including “equipment used for tertiary oil recovery”

US – Ukraine Freedom Support Act (*cont'd*)

Sanctions re Russia's energy sector (section 4) (*cont'd*)

- Contingent sanction re Gazprom
 - If President determines Gazprom is
 - withholding “significant” natural gas supplies from NATO countries
 - or “further withholds” significant supplies from Ukraine, Georgia or Moldova
 - President shall (not later than 45 days after such determination) impose
 - bar on US persons involvement with new >90-days debt or any new equity of Gazprom (see section 4(c)(7))
 - and at least one other of the section (c) sanctions
 - apparently applies only to Gazprom itself, and *not* to any subs

US – Ukraine Freedom Support Act (*cont'd*)

Sanctions re Russia's energy sector (section 4) (*cont'd*)

- Sanctions “menu” from which President may choose (in event of foreign company's involvement in special Russia's crude oil project, etc.):
 - no more US Eximbank program support to the company
 - no more US gov't agencies' procurement of goods/services from the company
 - no more US defense articles / services (e.g., if violator is a foreign gov't agency)
 - no more licensing (and suspension of current licensing) for dual-use items
 - prohibitions re present / future US property interests of the company
 - prohibition on transfers of credits or payments between/by/through/to financial institutions subject to US jurisdiction, that involve any interest of the company
 - prohibition on investment in new debt or equity of the company (*including possible imposition on Gazprom – see above*)
 - exclusion from US visa / revocation etc. (in case of foreign-person individuals)
 - sanctions on principal executive officers (in case of foreign-person entities – any of the above sanctions that are applicable to individuals)

US – Ukraine Freedom Support Act (*cont'd*)

Sanctions on Russian / Other Foreign Financial Institutions (“FFIs”)

- For facilitation of certain energy-related transactions:
 - President may prohibit FFI from opening, and prohibit / impose strict conditions on maintaining, correspondent account or payable-through account in the US
 - if determines that FFI knowingly (see above definition) engages after date of this Act (i.e., 18 December)
 - in “*significant transactions*” (see Iran-related def.) involving
 - special Russian crude oil project (see above) or
 - Gazprom withholding of natural gas supplies (see above)
- For facilitation of financial transactions on behalf of an SDN
 - starting 180 days after enactment
 - “knowingly facilitated a significant financial transaction...” qualifiers

US – Ukraine Freedom Support Act (*cont'd*)

Exceptions, Waivers, Penalties, Termination

- Exceptions (for the section 4 energy-related sanctions)
 - the possible sanction of US property transactions blocking / prohibition doesn't include authority to block imports (into the US)
 - some exceptions for pre-existing contracts (including ancillary / incidental contracts, in certain defined circumstances)
- National security waiver (for the section 4 and section 5 sanctions)
 - President may waive application with respect to foreign person / FFI if
 - determines is in national security interest
 - submits report to Congress
 - waiver can be transaction-specific as to foreign persons / the energy-related sanctions – but apparently not as to FFIs (section 5 sanctions)
 - thus, as with the Iranian sanctions, a practice of application for / grant of such waivers (for advance comfort / assurance) may develop now

US – Ukraine Freedom Support Act (*cont'd*)

Exceptions, Waivers, Penalties, Termination

- Penalties (for sections 4 and 5 sanctions violations)
 - apply to persons who violate, attempt or conspire to violate, or cause a violation
 - possible civil penalty: the greater of \$250,000 or twice the amount of the transaction – for each violation
 - possible criminal penalty (for willful act, etc.): max. \$1 million fine (for company or individual) and/or max. 20 years imprisonment
 - essentially same as for the other US sanctions (and there are enforcement guidelines, etc.)
- Termination (for sections 4 and 5 themselves, and any sanctions imposed thereunder)
 - shall terminate on date of President’s certification to Congress that the Russian Gov’t has ceased “significant acts intended to undermine the peace, security, stability, sovereignty, or territorial integrity of Ukraine”
 - “... including through an agreement between the appropriate parties”
- *Resource:* <http://www.gpo.gov/fdsys/pkg/BILLS-113hr5859enr/pdf/BILLS-113hr5859enr.pdf>

EU Sectoral Sanctions

Overview

- The EU sanctions regime (most recently amended by Reg. No. 1290 of 4 Dec.) focuses on the financial, energy, and dual-use / military sectors
 - is fairly well coordinated with the US regime
 - though not quite in all respects – for example
 - no sanctions on anything re gas-focused projects (given Europe’s dependence on Russian gas supplies)
 - new guidance note exempting correspondent banking (payment / settlement services) from loan/credit bans – *but not so in US*
- Much easier to grasp the basic EU rules than the US ones – essentially all in one document’s four corners
- *But the devil (?) is in the diversity:*
 - each member state competent authority interprets, authorizes (where called for) or denies, enforces, and sets / imposes its own penalties
 - unlike the US ... where this is all uniform, federal-level stuff
 - though some coordination / consistency is called for in the Reg.
 - and see the new 16 December EU Guidance Note FAQs

EU Sectoral Sanctions (*cont'd*)

Energy

- Per the initial 31 July energy-sector sanctions / authorization regime (article 3):
 - prior authorization is required for sale, supply, transfer or export, directly or indirectly, of the items *listed in Annex II*
 - to *any person or entity* in Russia or elsewhere
 - if for use in Russia
 - “Russia” now clarified to include its EEZ and Shelf
 - and note that, by the 4 Dec. amendment, some of the Annex II item descriptions have been newly refined / narrowed
 - authorization considered / granted by competent authority “*of the member state where the exporter is established*”, per some general EU rules

EU Sectoral Sanctions (*cont'd*)

Energy (*cont'd*)

- but authorization shall not be granted for supply etc. of Annex II items
 - if reasonable grounds to determine that is for Russian oil E&P projects:
 - ✓ in waters deeper than 150 meters (circa 492 feet)
 - ✓ in offshore area north of the Arctic Circle
 - ✓ in shale formations by way of hydraulic fracturing (and not including E&P activities through shale formations to locate/extract oil from non-shale reservoirs)
 - except for
 - ✓ execution of obligation arising from contract concluded before 1 August 2014 – or, per new 4 Dec. liberalization, from “ancillary contracts necessary for the execution of such contracts”, or
 - ✓ items necessary in case of certain events threatening health, safety or environment

EU Sectoral Sanctions (*cont'd*)

Energy (*cont'd*)

Restricted activities include:

- Provision, directly or indirectly, of specified types of “associated services necessary for” deepwater, Arctic offshore, shale oil E&P projects (same new-formulation litany as art. 3) in Russia including in its EEZ and Shelf):
 - these specified types of services:
 - *drilling*
 - *well testing*
 - *logging*
 - *completion services*
 - *supply of specialised floating vessels*
 - the same exceptions apply for
 - execution of an obligation arising from a prior (pre-12 Sept. 2014) contract / agreement or follow-on ancillary contracts, or
 - services necessary in case of certain events threatening health, safety or environment
 - apparently no scope for authorization here – rather, a pure prohibition for/to all (if neither of the above two carve-outs applies)
 - this is per Reg. art. 3a (as amended 4 Dec.)

EU Sectoral Sanctions (*cont'd*)

Energy (*cont'd*)

- Also, provision of the following services related to any Annex II items needs authorization from national competent authority (per article 4.3 – existing since the initial 31 July version of the Regulation, and as refined by the 4 Dec. amendment):
 - technical assistance (or brokering services) re Annex II items and re provision, manufacture, maintenance and use of those items directly or indirectly
 - to anyone in Russia (including its EEZ and Shelf)
 - or to anyone in any other country if such assistance concerns items for use in Russia (including EEZ / Shelf)

EU Sectoral Sanctions (*cont'd*)

Energy (*cont'd*)

- financing or financial assistance re Annex II items – including grants, loans and export credit insurance
 - for any sale, supply, transfer or export of those items
 - or for any provision of related technical assistance
 - also (as above for technical assistance) directly or indirectly to anyone in Russia (including its EEZ / Shelf) or to anyone in another country for use in Russia (including its EEZ / Shelf)
- Per art. 4.4, authorizations may be granted on same basis as set out in art. 3 (and possible emergency-based provision of such services without authorization, with prompt reporting of same – per arts. 4.3 and 3.5)
- New Crimea sanctions Reg. amendment bars sale, supply, transfer, export of goods and technology (per an Annex II) to any Crimean company or for use there – for oil & gas E&P (among other sectors)

EU Sectoral Sanctions (*cont'd*)

Capital Markets – for Energy (and Military) Sector Companies

- Prohibits (per Reg. art. 5.2) purchase or sale of, provision of investment services for or assistance in issuance of, or other dealings with, certain debt or equity securities (and money-market instruments) issued by
 - *Rosneft, Transneft, Gazpromneft* (the three currently designated entities engaged in “sale or transportation of crude oil or petroleum products” – per Annex VI, are currently listed), their non-EU subs (>50% owned), or persons or entities acting on their behalf or at their direction
 - applies to debt securities with maturity >30 days
 - and note the relevant “transferable securities” definition – “... which are negotiable on the capital market”
 - and see new 16 Dec. Guidance Note clarifications on derivatives, depositary receipts, and repos (items 21-26)
- And same basic prohibition re 3 designated Russian entities connected with military-sector goods/services – including *United Aircraft Corp.* (per Annex V), with exception for space / nuclear sector entities

EU Sectoral Sanctions (*cont'd*)

Capital Markets – for Russian Banks

- Prohibits (per Reg. art. 5.1) purchase or sale of, provision of investment services for or assistance in the issuance of, or other dealings with, “*transferable securities*” or money-market instruments
 - issued by 5 designated Russian banks listed in Annex III or their non-EU subs (>50% owned)
 - so, essentially same as in US OFAC sanctions (+ *Bank of Moscow*, a VTB sub)
 - or persons or entities acting on their behalf or at their direction
- Applies to debt securities issued
 - from 2 August to 12 Sept. 2014, with maturity >90 days
 - after 12 Sept. 2014, with maturity ≥30 days
- And, again, new Guidance Note clarifics. (re GDRs etc. – items 21-26)

EU Sectoral Sanctions (*cont'd*)

Loans – Energy (and Military) Sector Companies

- Prohibits (per Reg. art. 5.3) directly or indirectly making or being “part of any arrangement to make” new loans / credits with maturity >30 days after 12 Sept. 2014 to any entity covered under the previous two slides – namely
 - the three Russian energy-sector companies (per Annex VI)
 - the five Russian banks (per Annex III)
 - the three Russian military-sector companies (per Annex V)
 - or their non-EU subs, or persons acting on their behalf or at their direction
- Certain carve-outs provided (per Reg. art. 5.3, amended as of 4 Dec.)
 - *trade finance exemption*: for “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 any third State” (intended for use by an above-specified entity)
 - *but* not for purpose of funding any of the above-specified entities (see art. 12)

EU Sectoral Sanctions (*cont'd*)

Loans – Energy (and Military) Sector Companies (*cont'd*)

- And note the new (article 5.4, introduced by 4 Dec. clarification) that carves out from the general prohibition *new drawdowns / disbursements under pre-12 September loan/credit contracts*
 - if
 - “all the terms and conditions” of such were agreed pre-12 Sept. and haven’t been modified since then; and
 - before 12 Sept. “a contractual maturity date has been fixed for the repayment in full of all funds made available...”
 - possible issues re
 - whether “all” terms and conditions really mean *all*
 - treatment of typical carry-type loans – re the “repayment in full” aspect
- *And, again, see many new relevant clarifications in the 16 Dec. Guidance Note (items 3-20)*

EU Sectoral Sanctions (*cont'd*)

Important Overarching Provisions

- The Reg. also bans knowing and intentional participation in activities having object or effect of circumventing the above prohibitions (art. 12)
- Jurisdictional reach – the Regulation applies:
 - within EU territory (or on board aircraft / vessels under member state jurisdiction)
 - to any person, wherever located, who is an EU member state national
 - to any entity, wherever acting, that is incorporated in an EU member state
 - to any entity “in respect of any business done in whole or in part within the Union”
- *Note the distinctions between US / EU regs. reach*

EU Sectoral Sanctions (*cont'd*)

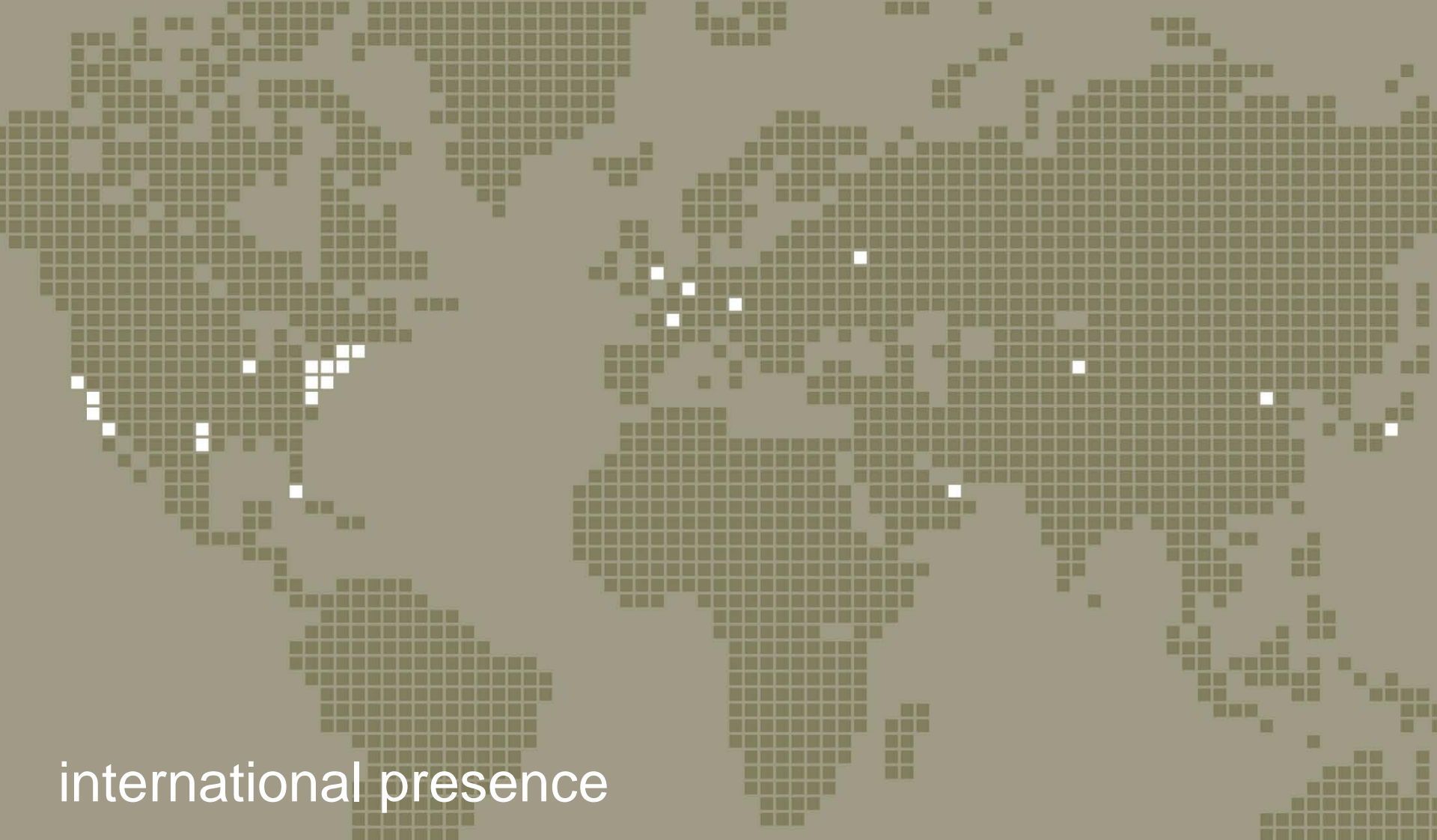
Important Overarching Provisions (*cont'd*)

- The “*no claims ... shall be satisfied*” provision (Reg. article 11)
 - but without prejudice to “judicial review of the legality of the non-performance of contractual obligations in accordance with this Regulation”
 - interesting for lawyers
- *Resources:*
 - <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0833&from=EN>
 - <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0960&from=EN>
 - http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_349_R_0002&from=EN
 - http://europa.eu/newsroom/files/pdf/c_2014_9950_en.pdf

EU Direct Sanctions

- The EU also adopted Council Reg. No. 961/2014 of 8 September 2014
- This added 24 persons to the EU “blacklist” previously established under Reg. No. 269/2014 of 17 March 2014
- All dealing with the listed persons (or their subs or certain other affiliates) is generally prohibited
- *Resources:*
 - http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_365_R_0006&from=EN
 - <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0961&from=EN>

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