

# Morgan Lewis

informed



## UPDATE ON US AND EU RUSSIA SANCTIONS – ENERGY SECTOR FOCUS

*as of 8 April 2015*

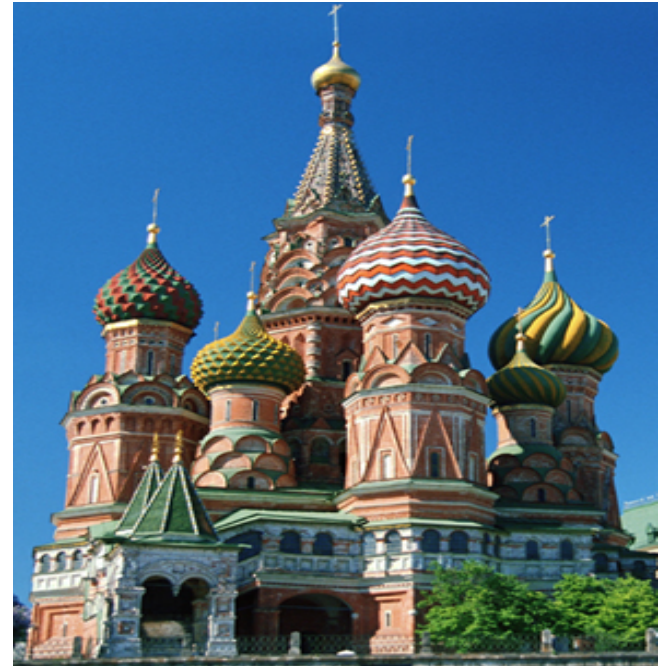
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# Further US and EU Sanctions: State of Play

- The US and EU economic sanctions against Russia, as further tightened in Sept. and Dec. 2014 and fairly well coordinated with one another, have basically remained as is since then.
- And there have been related clarifications – by new US FAQs, and by a 4 Dec. EU Reg. amendment and 16 Dec. EU Guidance Note (FAQs). Some of these clarifications actually serve to soften the restrictions in various ways – in the EU more so than in the US.
- And the Dec. 2014 EU and US Crimea-aimed sanctions touch the energy sector too.



- Further US arrow: the Ukraine Freedom Support Act – will it ever be used?
- More to come? (*per 29 Jan. decision, EU has extended existing sanctions to Sept. 2015 – but not yet any new sanctions (just more SDNs); now depends on further Ukraine events*)

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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 (enacted in December – establish "secondary" commercial sanctions – *applying mostly to foreign, not US, companies*)
- 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
  - and see the 29 Jan. 2015 BIS rules implementing the 19 Dec. E.O.

# 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 under other-country sanctions rules (and consistent with new 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
  - often not clear; factual / evidentiary showing may be key here

# 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 license 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_directive1.pdf)
- [http://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13662\\_directive2.pdf](http://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13662_directive2.pdf)
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- [http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine\\_gl3.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 on a “BIS Entity List” since Sept. 2014 (technically *not* including their subsidiaries, but...)
  - *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*” (here again, grey area where could produce both gas and 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) – *but special intricate rules re what goods “count” here*

- 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 (*their subs technically don't count, but...*)
  - *if... or if...* (same oil/gas target projects litany, and denial presumption for oil projects applies in both cases)
- *Note: BIS FAQ clarifications and license applications / actions (including re offshore drilling)*
- *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 ... and many lesser Russian / Crimean figures
- Such individual-person listing
  - bars dealings with their or their controlled companies' (generally measured by  $\geq 50\%$  shareholding – *and note tightened nuances here*) blocked assets etc.
  - but otherwise doesn't bar dealing with companies of which they just are officers / directors, etc.
  - ... except has been interpreted to bar having an SDN-individual executive signing a contract (or just attend negotiations?) on behalf of a non-SDN company
  - note: the restrictions re US persons vis-à-vis SDNs vary per provisions of each specific country sanctions regime
- 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 (*Russian ones too?*)
  - *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 ever 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*)

- Aimed at Russian persons / cos. generally too? or just at third-country companies? (and same issue re the section 5 sanctions)
- 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 (*cont'd*)

- 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 16 December EU Guidance Note FAQs ... some useful clarifics.*

# 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)
  - note practical wisdom re the interplay here

# 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 clarifications in the 16 Dec. Guidance Note (items 3-20)*
- *And note – many license applications / actions to date (experience varying by member state)*

# 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://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](http://europa.eu/newsroom/files/pdf/c_2014_9950_en.pdf)

# EU Direct Sanctions

- The EU's SDN-like "blacklist" Reg. No. 269/2014 of 17 March 2014
- And more names have been added in a few update regs. since then (in second half 2014 and early 2015)
- All dealings with the blocked assets of listed persons (or their subs or certain other affiliates) etc. 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=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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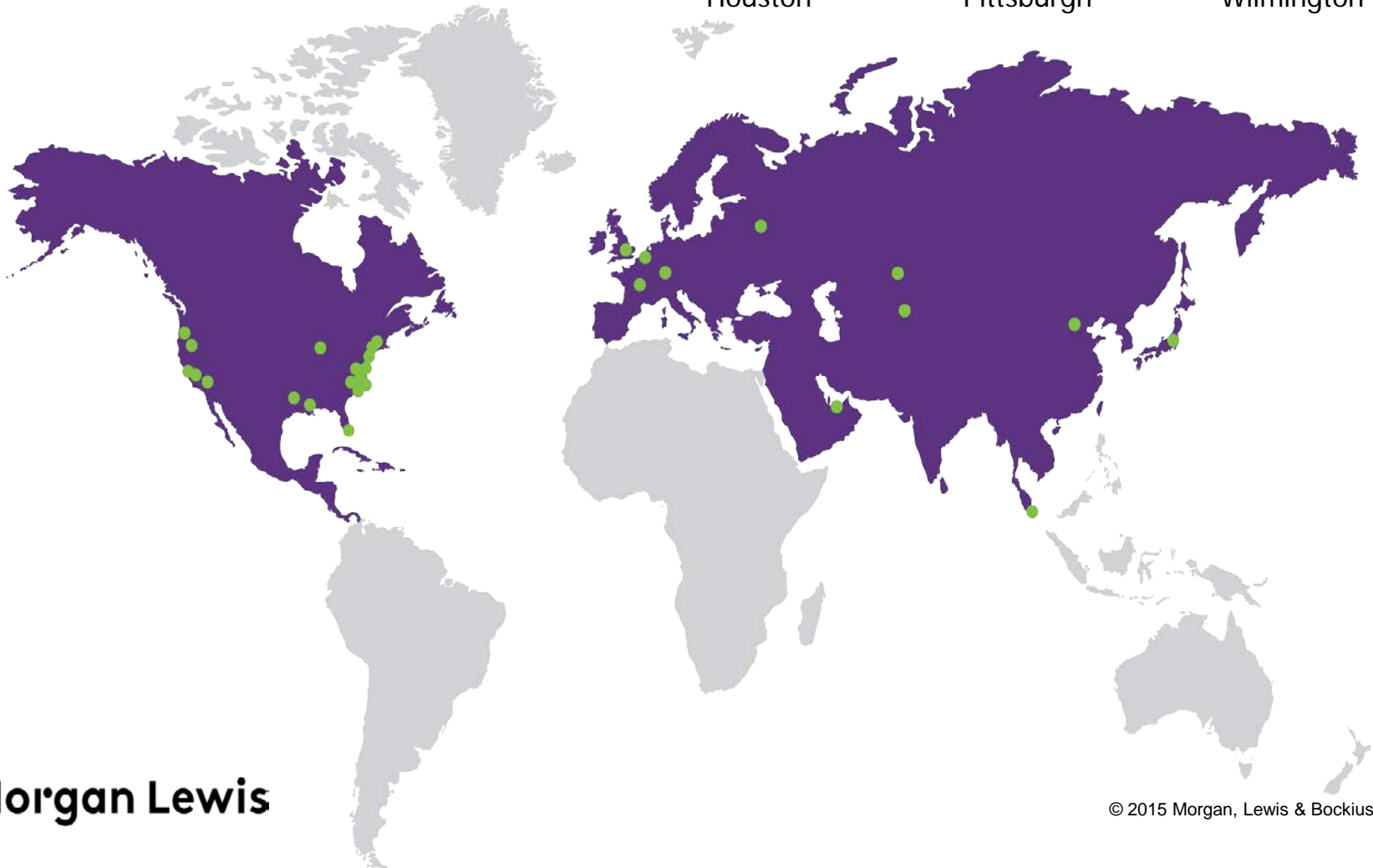
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