EU Further Strengthens Restrictive Measures Against Russia in 12th Package of Sanctions

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On 18 December 2023, the European Union adopted a 12th package of sanctions against Russia. The sanctions impose an asset freeze on more than 140 individuals and entities pursuant to Council Regulation (EU) 269/2014[1] (Regulation 269) and expand existing sectoral sanctions targeting key aspects of the Russian economy under Council Regulation (EU) 833/2014[2] (Regulation 833), including a ban on Russian diamonds.

The asset freeze restrictions against the listed persons and entities entered into force on 18 December 2023[3], and the sectoral sanctions took effect on 19 December 2023.[4]

The key aspects to note are:

- The EU has introduced new criteria for imposing asset freeze restrictions, including on persons or entities that benefit from the compulsory transfer of ownership of, or control over, Russian entities that were previously owned or controlled by EU businesses. The EU has also imposed an asset freeze against more than 140 additional individuals and entities.
- Regulation 833 now restricts the sale, supply, export and transfer of additional dual-use goods and technology, advanced technological items and goods that could contribute to the enhancement of Russian industrial and defense capacities. These include certain chemicals, thermostats, direct current (DC) motors and servomotors for unmanned aerial vehicles (UAVs), machine tools and machinery parts, construction-related goods, processed steel, copper and aluminum goods, lasers, and batteries.
- The EU has added new Russian and third-country entities to the list of entities connected to Russia's military and industrial complex, making them subject to tighter export restrictions concerning restricted goods and technologies.
- Regulation 833 imposes a so-called "no-Russia clause" that requires EU exporters to contractually prohibit the re-exportation of certain restricted goods to Russia when dealing with third-country business partners. The requirement will take effect on 20 March 2024.
- The EU has imposed a ban on the import of Russian diamonds into the EU or any other non-EU country.
- The EU has made the import ban on iron and steel more flexible. The ban on the import of certain iron and steel products processed in third countries that incorporate Russian iron and steel took effect on 30 September 2023; the EU has since introduced a derogation for certain partner countries and a wind-down period for certain specific products.[5]

[1] *See* Council Regulation (EU) 2023/2873 of 18 December 2023 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. *See also* Council Implementing Regulation (EU) 2023/2875 of 18 December 2023 implementing Regulation (EU) 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

[2] *See* Council Regulation (EU) 2023/2878 of 18 December 2023 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

[3] *See* Council Implementing Regulation (EU) 2023/2875 of 18 December 2023 implementing Regulation (EU) 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

[4] This client alert is for informational purposes only and does not constitute legal advice. Complex assessments often have to be made as to which sanctions regime applies in any given instance, given the multinational touch points of many entities and individuals. In that regard, given the complex and dynamic nature of these sanctions regimes, there may be developments not captured in this summary. Moreover, while the summary was accurate when written, it may become inaccurate over time given developments. For all of these reasons, you should consult with a qualified attorney before making any judgments relating to sanctions, as there are potentially severe consequences of failing to adhere fully to sanctions restrictions.

[5] The prohibition applies as of 1 April 2024 for CN code 7207 11 and as of 1 October 2028 for CN codes 7207 12 10 and 7224 90.

- The EU has extended the scope of the ban on certain professional services to the provision of software for the management of enterprises and software for industrial design and manufacture. The EU has also added an expiration date to the intragroup exemption: as of 20 June 2024, EU entities will need an authorization to provide professional services to a subsidiary established in Russia. EU entities that benefitted from the derogation should therefore prepare to request for such authorization before the deadline.
- The EU has introduced new information that businesses are required to provide to show compliance with the EU's price cap on Russian oil, and it has implemented restrictions on the import of liquefied propane gas from Russia.
- As part of its anti-circumvention measures, the EU sanctions include new notification requirements for certain transfers of funds out of the EU involving EU entities that are owned more than 40% by Russian residents, nationals or entities.
- The EU has also extended the deadline to 30 June 2024 for EU national competent authorities to authorize EU businesses to engage in covered transactions involving restricted goods and technology, in order to divest or wind down their business activities in Russia. The EU has also provided additional guidance on Russian exit transactions.

Asset Freezes

New Entities and Persons Listed by the EU

The EU has imposed an asset freeze against more than 140 individuals and entities. Under Regulation 269, the EU may also impose asset freeze restrictions against entities or persons who facilitate the circumvention of EU sanctions. Notably, the EU has used this authority to impose an asset freeze against a French citizen who is the CEO of two Finnish entities that the EU has determined are involved in the export of restricted goods to Russia.

Seizure of EU Assets in Russia; Deceased Persons on the Asset Freeze List

Responding to the Confiscation of EU Assets in Russia

The new sanctions have also established a legal framework for the EU to respond to Russian confiscation of assets of EU businesses in Russia. For instance, if Russia enacts a law or other legal instrument to compulsorily transfer ownership or control of a Russian subsidiary of an EU entity (seized entity), the EU has the authority to impose an asset freeze on:

- the seized entity,
- persons or entities that benefit from the seized entity, or
- individuals serving on the governing bodies of the seized entity without the consent of the former EU parent company.

If, following a compulsory transfer of the shares of the seized entity, a consideration is to be paid — either because the parties to the compulsory transfer agreed on it or because a judicial or administrative authority so decided — the competent EU authorities can authorize any transfer of funds/economic resources that is required for the payment of the consideration.

Maintaining EU Asset Freeze Restrictions Against Deceased Persons

Under Regulation 269, the EU may also retain the name of a deceased EU-listed person on the asset freeze list (Annex I) if their delisting would pose a risk of undermining EU sanctions objectives. Such risk includes, among other things, the likelihood that the deceased person's assets would be used to finance Russia's conflict in Ukraine or other actions that undermine Ukraine's independence.

Trade Measures

Export Controls and Restrictions

Dual-Use Goods and Technology and Advanced Technology Items; Industrial Goods

The EU further extended the scope of the export restrictions on dual-use goods and technology, advanced technology items, and goods that could contribute in particular to the enhancement of Russian industrial capacities, to include:

- Listed chemicals.
- Lithium batteries.
- Thermostats.
- DC motors and servomotors for UAVs.
- Machine tools and machinery parts.
- Construction-related goods.
- Processed steel.
- Copper and aluminum goods.
- Lasers.
- Batteries.

Luxury Goods

The EU has amended the rule banning the sale, supply, transfer or export of luxury goods to or for use in Russia to expressly specify that the ban on the listed luxury goods also applies regardless of whether such goods originated in the EU.

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Additional Entities Subject to Stricter Export Restrictions

Twenty-nine entities connected to Russia's military and industrial complex were added to Annex IV of Regulation 833. Those entities are therefore subject to stricter export restrictions with respect to dual-use goods and technology, and advanced technology items. The listed entities include companies registered in Uzbekistan and Singapore that the EU has determined are involved in the circumvention of EU sanctions.

Import Restrictions

EU Ban on Russian Diamonds

As of 1 January 2024, Regulation 833 prohibits EU persons from purchasing, importing or transferring into the EU or any other non-EU country, directly or indirectly, diamonds and products incorporating diamonds if they originate in or have been exported from Russia. Additionally, the EU ban also applies to diamonds of any origin if they transit via the Russian territory. Regulation 833 sets forth the types of diamonds and products incorporating such diamonds that fall within the scope of the EU ban, including unsorted, nonindustrial and synthetic diamonds as well as jewelry incorporating diamonds.[6]

Beginning on 1 March 2024, the EU ban will also apply to diamonds that are processed in a third country outside of Russia and consist of diamonds originating in or exported from Russia with a weight equal to or above 1 carat per diamond. Starting on 1 September 2024, the weight threshold will be lowered to 0.5 carats or 0.1 grams per diamond.

EU sanctions also prohibit EU persons to provide, directly or indirectly, technical assistance, brokering services or other services related to the covered diamonds, or related to the provision, manufacture, maintenance and use of such covered diamonds, in connection with prohibited trade. Furthermore, it is prohibited to provide financing or financial assistance for the purchase, import or transfer of covered diamonds, or for the provision of related technical assistance, brokering services or other services relating to such goods in connection with prohibited trade.

Per EU guidance, the weight thresholds apply equally to rough and polished diamonds at the time of importation into the EU. The guidance also states that the EU will establish a robust traceability-based verification and certification mechanism for rough diamonds within the G7 that will be operational on 1 March 2024 in an initial pilot phase (G7 Verification Scheme). The G7 Verification Scheme is expected to be fully operational on 1 September 2024.

On 3 January 2024, the EU imposed an asset freeze against Russia's PJSC Alrosa, the world's largest diamond-mining company by output, and its CEO, pursuant to Regulation 269.

Extension of Import Ban to Certain Goods that Generate Significant Revenues for Russia

The EU has amended the list of goods that generate significant revenues for Russia that are subject to an EU import ban if they originate in or are exported from Russia, to include: pig iron and spiegeleisen, copper wires, aluminum wires, foil, tubes and pipes. The goods are listed in Annex XXI of Regulation 833.

Professional Services Ban

Amendment to the Ban on Certain Professional Services

Under Regulation 833, EU persons are prohibited from providing, directly or indirectly, certain professional services, such as accounting, auditing, bookkeeping or tax consulting, business and management consulting, or legal advisory or public relations services to legal entities established in Russia or the Russian government.

The EU professional services ban also applies to services relating to market research and public opinion polling, technical testing and analysis, and advertising. With respect to the foregoing services, Regulation 833 has amended the sanctions to expressly cover both direct and indirect provision of such services.

New Ban on the Sale of Certain Software

Regulation 833 also now prohibits EU persons from selling, supplying, transferring, exporting or providing, directly or indirectly, software for the management of enterprises and software for industrial design and manufacture to legal entities established in Russia or the Russian government. The restrictions also apply to related services in connection with the covered software or for their provision.

The software covered in Annex XXXIX of Regulation 833 include:

- **Software for the management of enterprises (systems that digitally represent and steer all processes happening in an enterprise):** enterprise resource planning; customer relationship management; business intelligence; supply chain management; enterprise data warehouse; computerized maintenance management system; project management software; product life cycle management; and typical components of the foregoing suites, including software for accounting, fleet management, logistics and human resources.

[6] The products are listed in Parts A, B, and C of Annex XXXVIIIA of Regulation 833.

- **Design and manufacturing software used in the areas of architecture, engineering, construction, manufacturing, media, education and entertainment:** building information modelling, computer-aided design, computer-aided manufacturing, engineer to order and typical components of the foregoing suites.

Regulation 833 provides a wind-down period until 20 March 2024 for contracts that were concluded before 19 December 2023 (or an ancillary contract necessary for the satisfaction of such a contract).

Ban on Ancillary Services Relating to Professional Services

With respect to the professional services ban, Regulation 833 explicitly prohibits EU persons to provide, directly or indirectly, technical assistance, brokering services or other services related to the covered goods or services, or for their provision, to entities established in Russia or the Russian government. Furthermore, it is prohibited to provide financing or financial assistance relating to the products and services, or for the provision of related technical assistance, brokering services or other services, directly or indirectly, to entities established in Russia or the Russian government.

Expiry of the Intragroup Exemption – Authorization Requirement for EU-Owned or -Controlled Russian Entities

Under the old rules, the EU professional services ban did not apply to the provision of services intended for the exclusive use of Russian entities that are owned or controlled by a legal entity incorporated or constituted under the law of an EU member state, a member of the European Economic Area, Switzerland or an EU partner country.

The new rules have amended this exemption to expire on 20 June 2024. After this date, EU businesses must request an authorization from their national competent authorities to provide such services to their Russian subsidiaries.

The new restrictive measures are implemented as the EU continues to focus on enforcing its sanctions and make it more difficult to circumvent the restrictive measures. To this end, on 12 December 2023, the EU Council (Council) and the European Parliament reached a political agreement on new rules to criminalize the violation of EU sanctions and define certain minimum penalties.[7]

The provisional agreement requires the endorsement of the member states' representatives, after which the Council and the European Parliament will need to formally adopt the political agreement and issue a directive.

Sanctions Targeting Russia's Energy Sector

Updated Definition of 'Energy Sector'

Regulation 833 has updated its definition of the term "energy sector" to expressly exclude from its scope the Paks II project, which the regulation cites as an example of civil nuclear-related activities. EU competent authorities may therefore provide applicable derogations for the Paks II project; other exemptions may also apply.

Import Ban on Liquefied Propane Gas

The EU has added Russian liquefied propane gas (LPG) to Annex XXI of Regulation 833. Therefore, EU operators are prohibited from directly or indirectly purchasing, importing or transferring Russian LPG into the EU. The restriction also applies to related services involving Russian LPG. There is a wind-down period until 20 December 2024 for contracts (or an ancillary contract necessary for the satisfaction of such a contract) concluded before 19 December 2023.

Prohibition on the Sale of Oil Tankers

Regulation 833 prohibits EU nationals, residents or entities from directly or indirectly selling or otherwise transferring ownership of tankers falling under HS Code ex 8901 20 for the transport of crude oil or petroleum products listed in Annex XXV of Regulation 833.

EU businesses must notify their national competent authority before 20 February 2024 of any sale or other transfer of ownership of tankers that occurred during the period commencing after 5 December 2002 through 19 December 2023 (*i.e.*, when the EU's prohibition took effect).

Regulation 833 provides that national competent authorities may provide a derogation for the sale of tankers under certain conditions.

The objective of the prohibition on the sale of tankers is to introduce transparency regarding such sales for the purpose of detecting attempts to circumvent the EU's price caps on Russian crude oil and petroleum products.

[7] *See* European Commission, press release, "Commission Welcomes Political Agreement on New Rules Criminalising the Violation of EU Sanctions," Brussels, 12 December 2023.

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EU Price Cap on Russian Oil: Obligation To Collect Additional Information

The EU has set a price cap of $60 per barrel for Russian crude oil and petroleum oils, which took effect on 5 December 2022. The EU has also set a price cap at $45 per barrel for petroleum products traded at a discount to crude oil and a second price cap at $100 for petroleum products traded at a premium to crude oil. These caps entered into force on 5 February 2023.

The price caps take the form of an exemption from the ban on maritime transport as well as on technical assistance, brokering services, and financing or financial assistance related to the trading, brokering, or transport of Russian crude oil and petroleum products to non-EU countries, if those products are purchased at or below the applicable price caps.

The price cap exemption relies on a record-keeping and attestation process that allows each party in the supply chain of seaborne Russian crude oil to demonstrate or confirm that such product complies with the price cap. In our 20 December 2022 client alert, "EU and UK Price Cap on Russian Crude Oil," we discussed the attestation and record-keeping requirements.

Regulation 833 now requires that service providers that do not have access to the purchase price per barrel of Russian crude oil loaded as of 20 February 2024 collect itemized price information for ancillary costs as provided by operators further up the supply chain of such Russian crude oil or petroleum product trade. The service providers must provide the itemized price information to business counterparties and competent authorities, upon their request, for the purpose of verifying compliance with the EU's price caps.

Exemption for the Sakhalin-2 Project

Due to Japan's energy security needs, the exemption for the transport by vessel, as well as related technical assistance, brokering services, financing or financial assistance, of crude oil from Russia to Japan in connection with the Sakhalin-2 project, has been extended until 28 June 2024.

Amendment of the Insurance Exemption for Annex II Goods

Regulation 833 prohibits the direct or indirect sale, supply, transfer or export of energy-related goods or technology listed in Annex II, whether or not they originate in the EU, to or for use in Russia, including its Exclusive Economic Zone and Continental Shelf. The standard EU restrictions on related services associated with the restricted trade also apply.

An exemption for EU entities to provide insurance or reinsurance to EU businesses with regard to activities outside the energy sector in Russia involving such goods will now apply until 20 June 2024. (The exemption did not have a deadline under the old rules.) After this date, EU businesses must be authorized by their national competent authorities to provide insurance or reinsurance with respect to the restricted activities.

Anti-Circumvention Measures

No-Russia Clause

When an EU exporter sells, supplies, transfers or exports certain restricted goods to a third country, Regulation 833 requires that the EU exporter contractually prohibit the re-exportation of such restricted goods to or for use in Russia. The goods falling within the scope of the so-called no-Russia clause are the items listed in Annexes XI, XX and XXXV of Regulation 833, common high priority items listed in Annex XL of Regulation 833, and firearms and ammunition listed in Annex I to Regulation (EU) 258/2012.

EU exporters must ensure that the contract includes adequate remedies if their counterparty breaches the no-Russia clause; they are also required to notify their national competent authority of such breach. The no-Russia clause will enter into force on 20 March 2024.

Regulation 833 provides a wind-down period for contracts that were concluded before 19 December 2023 until 20 December 2024 or the expiry date of such contracts, whichever date is earlier. The no-Russia clause does not apply to exports to EU partner countries listed in Annex VIII of Regulation 833.[8]

EU Transit Ban

The EU has extended the scope of the transit ban to cover goods and technology that are exported from the EU that could contribute in particular to the enhancement of Russian industrial capacities. The covered goods and technology are listed in Annex XXXVII of Regulation 833.

Ban on Russian Nationals Serving on Governing Bodies of EU Entities Providing Crypto Services

Under Regulation 833, Russian nationals or persons residing in Russia are prohibited from directly or indirectly owning or controlling, or holding any posts in the governing bodies, of an EU entity providing cryptoasset wallet, account or custody services. The EU has stated that the aim of this restriction is to mitigate the circumvention of the prohibition on providing cryptoasset wallet, account or custody services to Russian persons and residents.

[8] The partner countries are: Australia, Canada, the United States, Japan, UK, South Korea, New Zealand, Norway and Switzerland.

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New Reporting Obligation for Certain Russian-Owned EU Entities

Starting 1 May 2024, EU entities that are directly or indirectly owned more than 40% by (i) a company established in Russia, (ii) a Russian national or (iii) a natural person residing in Russia will be required to report to their EU national competent authority, within two weeks of the end of each quarter, any transfer of funds out of the EU exceeding €100,000 that they made directly or indirectly during the relevant quarter in one or several transactions.

Beginning on 1 July 2024, EU credit and financial institutions will be required to report to their national competent authority, "within two weeks of the end of each semester," information on all transfers of funds out of the EU of an aggregate amount exceeding €100,000 during the relevant semester that they initiated directly or indirectly for the Russian-owned EU entities set forth above.

Exit Transactions

Regulation 833 provides the possibility for EU national competent authorities to authorize EU businesses to divest from their Russian business operations involving restricted goods or services under certain conditions. The deadline for the divestment derogation has been extended to 30 June 2024, as part of the EU's 12th sanctions package against Russia.

The EU has also provided guidance that confirms that a sale of shares of a Russian subsidiary that owns restricted goods (Restricted Assets) must be considered a prohibited indirect sale, supply or transfer of Restricted Assets because the buyer of the shares acquires those assets as part of the transaction. According to the EU guidance, it is not relevant that the full 100% of the shares are sold. Once the buyer has control over the Russian subsidiary, they also have control over the Restricted Assets.

The guidance sets forth the following requirements that must be met cumulatively for EU competent authorities to authorize the divestment transaction:

- The sale/supply/transfer or import must be strictly necessary for divesting from or winding down business activities in Russia.[9]
- The restricted goods or technology are owned by an EU national or operator, or by a Russian entity owned or solely or jointly controlled by an EU operator.
- There are no reasonable grounds to believe that the goods might be for a military end-user or end-use in Russia.
- The restricted goods or technology were physically located in Russia before the sanctions relating to such restricted products took effect.
- The divestment transaction must be completed before the regulatory deadline of 30 June 2024.

In light of these requirements, knowledge regarding (i) the export control or sanctions status of the relevant assets of the Russian business and (ii) their intended use post-transaction, among other considerations, should be thoroughly assessed for the purpose of requesting a derogation for an exit transaction involving Restricted Assets.

[9] Such requirement is not necessary for divestments involving importing restricted goods into the EU.