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**Commission Guidance note on the implementation of certain provisions of Regulation
(EU) No 833/2014**

Commission Guidance Note on the implementation of certain provisions of Regulation (EU) No 833/2014¹

On 31 July 2014 the European Union adopted a package of restrictive measures targeting sectorial cooperation and exchanges with the Russian Federation. The package consist of measures aimed at limiting access to EU capital markets for Russian State-owned financial institutions, an embargo on trade in arms, an export ban for dual use goods for military end use and end users, and restrictions on access to certain sensitive technologies particularly in the oil sector. The package was further extended on 8 September 2014 by the adoption of the Council Regulation (EU) No 960/2014 and amended on 4 December 2014 by the adoption of the Council Regulation (EU) No 1290/2014.

The aim of this note is to provide guidance on the application of certain provisions in Regulation (EU) No 833/2014, as amended, for the purpose of uniform implementation by national authorities and parties concerned. This guidance note is conceived in a form of answers to certain questions that have been brought to the Commission's attention. Should further questions arise, the Commission may revise or extend the questions and answers provided.

QUESTIONS AND ANSWERS

Financial assistance (Articles 2 and 4)

1. **Q. Do the provision of payment services and issuance of letters of guarantee/credit constitute financial assistance in the sense of Articles 2 and 4, and are therefore prohibited for the goods and technology subject to a ban?**

A. Yes. In accordance with Article 4, payment services and issuance of letters of guarantees/credit constitute financial assistance and are prohibited when linked to the underlying commercial transaction subject to a ban under Article 2.

2. **Q. How are banks expected to comply with the prohibition on financial assistance within the meaning of Article 4 for the goods and technology that are subject to a ban?**

A. Banks acting on behalf or to the benefit of their client should exercise due diligence on payments carried out by their customer and oppose to any payment made in breach of the Regulation. As regards banks acting as correspondent banks, they should oppose to payments when information on such a breach is available.

¹ This note has been conceived as a guidance document from the Commission. In this note the Commission sheds light on its understanding of a number of provisions of the Regulation. It does not aspire to cover all provisions in an exhaustive manner, nor does it create any new legislative rules. The Commission oversees the application of Union law under the control of the Court of Justice of the European Union. Pursuant to the Treaties, only the Court of Justice of the European Union can provide legally binding interpretations of acts of the institutions of the Union.

Financial services measures (Article 5)

Trade Finance

- 3. Q. Can EU persons process payments, provide insurance, issue letters of credit, extend loans, to sanctioned entities for non-prohibited exports or imports of goods or non-financial services to or from the Union after 12 September 2014?**

A. Yes, all of these operations are allowed as long as they are subject to the exemption under Article 5(3).
- 4. Q. If an EU person had extended a loan or credit with a maturity exceeding 30 days to a sanctioned entity before 12 September for the export or import of non-prohibited goods or non-financial services to or from the Union; can the payment schedule be modified, account receivables sold to another sanctioned entity or debt from that loan or credit be taken over by another sanctioned entity?**

A. Yes, all of these operations are allowed as long as they are subject to the exemption under Article 5(3).
- 5. Q. Does the trade finance exemption in Article 5(3) also apply to exports or imports of non-prohibited goods to or from the Union, when such goods also include third-country content?**

A. Yes, as long as the expenditure for goods and services from a third country is necessary for the execution of the export or import contract to or from the Union.
- 6. Q. Does the trade finance exemption in Article 5(3) also apply to exports or imports of non-prohibited goods between the Union and any third State, when such goods transit through another third State?**

A. Yes, as long as the export or import contract clearly stipulates that the imports or exports originate in or are destined to the EU.
- 7. Q. Do the references to "any third State" or "another third State" in Article 5(3) also include Russia?**

A. Yes.
- 8. Q. Can official Export Credit Agencies (ECAs) in the EU provide financing to sanctioned entities to support exports, including local costs, of non-prohibited goods from the Union?**

A. Yes, within the limits established by the OECD Arrangement on Officially Supported Export Credits which is binding in the EU by virtue of Regulation (EU) No 1233/2011.
- 9. Q. Can EU persons provide financing, including extending loans, to sanctioned entities for the export or import of goods or services between third States after 12 September 2014?**

A. Trade between third countries, where the export does not originate in the Union and the import is not destined to the Union, does not fall under the exemption under Article 5(3).

Only loans or credit with repayment terms of 30 days or less, which are outside the scope of the prohibition on new loans and credit set out in Article 5, may be provided to sanctioned entities for the export or import of goods or services between third countries.

- 10. Q. Can EU persons confirm or advise a letter of credit that was issued after 12 September 2014 by a sanctioned entity for the export or import of goods or services between third States? Is discounting or post-financing of such letters of credit allowed?**

A. EU persons can confirm or advise such letters of credits and provide discounting or post-financing for them, unless the applicant of the letter of credit (the buyer or importer) is a sanctioned entity under Article 5 and the maturity is longer than 30 days. That would constitute extending credit to a sanctioned entity that is not covered by the trade finance exemption and would therefore be prohibited.

- 11. Q. Can EU persons purchase bonds issued by a sanctioned entity after 12 September, with a maturity exceeding 30 days, if those are to fund the export or import of non-prohibited goods or non-financial services to or from the Union?**

A. No, the trade finance exemption applies to Article 5(3) (loans or credit), but does not apply to paragraphs (1) and (2) of Article 5. Purchasing such bonds is prohibited by the latter provisions.

- 12. Q. Are Interest Make-Up Agreement (IMU) with a sanctioned bank covered by the prohibitions in Article 5, if such IMU is to help finance the export or import of non-prohibited goods or non-financial services to or from the Union?**

A. IMUs are considered to be interest rate swaps and as such not covered by the prohibitions in Article 5.

Emergency funding

- 13. Q. How should the notion of "emergency funding" under Article 5(3) be understood?**

A. In situations such as those set out in Article 32(4) of Directive 2014/59/EU (Bank Recovery and Resolution Directive), the exemption for emergency funding under Article 5(3) of the Regulation may apply.

Loans (other than for trade finance or emergency funding)

- 14. Q. If an EU person had extended a loan or credit to a sanctioned entity before 12 September, is it allowed to sell a part of or the whole claim with a maturity exceeding 30 days to another sanctioned entity?**

A. Yes, the resale of the account receivable (i.e. factoring) to another sanctioned entity is allowed to the extent does not involve any new loans or credit to either sanctioned entity.

- 15. Q. If an EU person had extended a loan or credit with a maturity exceeding 30 days before 12 September, is the EU person allowed to agree to a takeover by a sanctioned entity of the debt arising from such loan after 12 September?**

A. No, as it would effectively correspond to making a new loan or credit to a sanctioned entity after 12 September 2014 and would therefore be prohibited by Article 5(3). An EU entity shall not agree to a takeover of existing loans or credit by a sanctioned entity.

16. Q. Can EU persons place term deposits with a maturity exceeding 30 days in a sanctioned bank after 12 September 2014?

A. Deposit services are not as such covered by the prohibitions set out in Article 5 of the Regulation. However, where (term) deposits are to be used to circumvent the prohibition on new loans, such deposits would be prohibited under Article 12 in combination with Article 5 of the Regulation.

17. Q. Can EU persons provide payment or settlement services in regard to loans made to a sanctioned entity, including in the context of correspondent banking? Must all correspondent banks be expected to establish the nature of the underlying credit in order to determine whether the trade finance exemption applies?

A. For the purposes of Article 5(3), payment and settlement services, including through correspondent banking, should not be construed as 'making' or 'being part of an arrangement to make' a new loan or credit to a sanctioned entity.

18. Q. Can an EU credit institution owned by more than 50% by an entity listed in Annex III provide collateral (e.g. in the form of guarantees, deposits, pledges, risk participations or funded participations) for intra-group risk mitigation purposes to its non-EU subsidiary, if the latter is covered by Article 5(1)b?

A. Yes, provided it does not constitute a new loan or credit with maturity exceeding 30 days, and the collateral used is not a transferable security or money market instrument covered by paragraphs (1) and (2) of Article 5.

19. Q. If an EU person has provided a good or service to a sanctioned entity, would payment terms/delayed payment for such good or service exceeding 30 days constitute a new loan or credit?

A. Payment terms/delayed payment for goods or services are not considered loans or credit for the purpose of Article 5 of the Regulation. The provision of payment terms/delayed payment may not be used, however, to circumvent the prohibition to provide new loans or credit under Article 5. Payment terms granted to the entities targeted by Article 5 which are not in line with normal business practice or which since 12 September 2014 have been substantially extended may suggest circumvention. Such circumvention would be prohibited under Article 12 in combination with Article 5.

20. Q. Can an EU person provide funds to a non-sanctioned entity, including loans or credit, which are channelled through a sanctioned entity, provided that the funds do not stay with the sanctioned entity for more than 30 days?

A. Yes, that would not constitute providing a new loan or credit with a maturity exceeding 30 days to a sanctioned entity and would therefore not fall within the prohibition in Article 5.

Capital markets

21. Q. Are derivatives covered by the prohibitions in paragraphs (1) and (2) of Article 5?

A. Derivatives which give the right to acquire or sell a transferable security or money market instrument covered by paragraphs (1) and (2) of Article 5, such as options, futures, forwards or warrants, irrespective of how they are traded (on-exchange or over-the-counter (OTC)) are covered by the prohibition set out in Article 5. Other derivatives, such as interest rate swaps, credit default swaps and cross currency swaps, are not covered by the prohibitions set out in Article 5. Derivatives used for hedging purposes in the energy market are also not covered.

22. Q. Can EU persons issue or deal with depositary receipts issued on or after 1 August 2014 (in the case of entities covered by Article 5(1)) or on or after 12 September 2014 (in the case of entities covered by Article 5(2)) if such depositary receipts are based on equity issued by a sanctioned entity?

A. Depositary receipts are transferable securities as defined in Article 1. Consequently, EU persons may not issue or deal in depositary receipts issued on or after 1 August 2014 (in the case of entities covered by Article 5(1)) or on or after 12 September 2014 (in the case of entities covered by Article 5(2)) in any of the following cases:

- the depositary receipts are based on equity issued by a sanctioned entity on or after 1 August 2014 (in the case of entities covered by Article 5(1)) or on or after 12 September 2014 (in the case of entities covered by Article 5(2)); or,
- the depositary receipts are based on equity issued by a sanctioned entity before 1 August 2014 (in the case of entities covered by Article 5(1)) or before 12 September 2014 (in the case of entities covered by Article 5(2)) and are issued under a deposit agreement with that sanctioned entity. These depositary receipts would constitute new transferable securities issued on behalf of a sanctioned entity, and would therefore be prohibited by Article 5(1)(c) or Article 5(2)(d).

23. Q. Can EU persons deal in depositary receipts issued after 1 August 2014, where one of the sanctioned banks is acting as custodian bank?

A. If the sanctioned bank is acting as a custodian for equity issued by a non-sanctioned entity, EU persons may deal in such depositary receipts, as it does not constitute dealing in new equity from the sanctioned entity. If the sanctioned bank is itself the issuer of the equity, the answer in Q22 applies.

24. Q. Can EU persons enter into repurchase agreements or securities lending agreements with a non-sanctioned entity using any transferable securities or money market instruments issued by a sanctioned entity as collateral?

A. If the transferable securities or money market instruments were issued between 1 August 2014 to 12 September 2014 with a maturity exceeding 90 days by entities covered by Article

5(1), or after 12 September 2014 with a maturity exceeding 30 days by entities covered by paragraphs (1) and (2) of Article 5, EU persons are prohibited from entering into repurchase agreements or securities lending agreements where such transferable securities or money market instruments are used as collateral.

The prohibition does not apply when other transferable securities or money market instruments are used as collateral.

25. Q. Can EU persons enter into repurchase agreements or securities lending agreements with a sanctioned bank, if non-prohibited instruments are used as collateral?

A. Repurchase agreements or securities lending agreements are instruments which are normally dealt in on the money market and, therefore, money market instruments as defined in Article 1. EU persons are therefore prohibited from entering into repurchase agreements or securities lending agreements with an entity covered by Article 5(1) between 1 August 2014 to 12 September 2014 with a maturity exceeding 90 days or after 12 September 2014 with a maturity exceeding 30 days, and by an entity covered by Article 5(2) after 12 September 12 with a maturity exceeding 30 days.

26. Q. If a sanctioned entity issues new transferable securities on or after 1 August 2014 (in the case of entities covered by Article 5(1)) or on or after 12 September 2014 (in the case of entities covered by Article 5(2)) that are fungible with pre-existing transferable securities, can EU persons still deal in the old securities in the event that is impossible to identify from the pool of assets what was issued before or after the cut-off dates?

A. EU persons may deal in transferable securities issued by a sanctioned entity before 1 August 2014 (in the case of entities covered by Article 5(1)) or 12 September 2014 (in the case of entities covered by Article 5(2)). Practical issues relating to the fungibility of these securities (which are outside the prohibition), with securities issued or on after, respectively, 1 August 2014 or 12 September 2014 (which may not be dealt with) may arise, however, and market participants bear the onus of ensuring that any trades they enter into do not involve the banned securities.