

Understanding the extent of this complex area of EU-Russia sanctions is fundamental bearing in mind the risks involved: a breach of sanctions constitutes a criminal offence in the member states of the EU, as well as in the UKOTs.

Russia Sanctions and the use of EU-based holding companies and SPVs

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This Article examines in summary whether EU-based subsidiaries of the sanctioned Russian state-owned entities listed in Council Regulation (EU) 833/2014 (**Regulation 833**) may fall within the scope of the all-important capital market and lending restrictions set out in Article 5. Though Regulation 833 creates a limited carve-out regime covering some EU-based subsidiaries of listed entities, important 'exceptions' to it in the context of holding companies and special purpose vehicles¹ can operate to nullify the carve out.

Note: This is an update to our [bulletin on Russia sanctions](#) from 18 September 2014.

Scope of EU restrictions under Regulation 833

Restrictions on access to EU capital markets and financial services

Articles 5(1) and 5(2) of Regulation 833 prohibit the purchase, sale, provision of brokerage or assistance in the issuance of, or otherwise dealing with 'transferable securities' and 'money market instruments' with a maturity, in most cases, exceeding 30 days, issued by any of the following 'listed entities':

- Sberbank, VTB Bank, Gazprombank, Vnesheconombank (VEB) and Rosselkhozbank
- OPK Oboronprom, United Aircraft Corporation and Uralvagonzalvod
- Rosneft, Transneft and Gazprom Neft

Restrictions on EU lending to listed entities

Article 5(3) prohibits new loans or credit, granted after 12 September 2014, to the listed entities by persons in the EU. Equally, the European Commission has clarified that the renegotiation or amendment of pre-existing lending arrangements may also be prohibited, to the extent that it results in an extension of further credit or lending to the listed entities.

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Application of sanctions to the subsidiaries of listed entities

Non-EU subsidiaries

The restrictions outlined above will almost always extend to non-EU based subsidiaries of listed entities². For these purposes, a subsidiary would be a legal person, entity or body established outside the EU whose proprietary rights are directly or indirectly owned in the amount of more than 50 per cent by at least one of the listed entities.

EU subsidiaries

What is sometimes less well understood is that EU-based subsidiaries are not given a blanket ‘get out of jail’ card under Article 5. Importantly, EU sanctions will extend to EU-based subsidiaries where they are legal persons, entities or bodies **acting on behalf or at the direction of a listed entity**.

While this is not an area free from doubt, historic EU sanctions jurisprudence clarifies that the concept of ‘**acting on behalf or at the direction of**’ is not dissimilar from the concept of *de facto* (rather than *de jure*) control of one person over another. As such, the following factors may constitute a red flag for these purposes: a parent being able to exercise a dominant influence in practice over its subsidiary, a subsidiary being a front company for the parent, or the maintenance of agreements between the directors of the subsidiary and the parent to provide for the implementation of the parent’s will on the subsidiary’s board.

In consequence, the vast majority of EU-based holding companies and special purpose vehicles that cannot show genuine independence from their (direct or indirect) parents that are listed entities in Russia should be treated as subject to the restrictions under Article 5 of Regulation 833.

A note on the UK Overseas Territories

The UK extended the spirit of Regulation 833 to its Overseas Territories (**UKOT**) in compliance with the EU Decision underlying the regulation. The UKOTs are termed Overseas Countries and Territories under the founding treaties of the EU but, crucially, do not form part of the EU or the EEA. Bermuda, the British Virgin Islands and the Cayman Islands, each a UKOT, are popular jurisdictions for foreign direct investment into Russia.

While a detailed consideration is not warranted here, it is important to note that:

- Regulation 833 considers subsidiaries domiciled in the UKOTs as non-EU subsidiaries
- UKOT law implementing the equivalent of Regulation 833 would treat an EU-based subsidiary (or parent) in a similarly negative way

Criminal offences and other considerations

Understanding the extent of this complex area of EU-Russia sanctions is fundamental, bearing in mind the risks involved: a breach of sanctions constitutes a criminal offence in the member states of the EU, as well as in the UKOTs. Express prohibitions extend beyond simply the listed entities or their subsidiaries and apply to brokers, underwriters, investors, lawyers and accountants that participate in a scheme that falls foul of the regime.

That said, the EU has not prohibited carrying on business outright with listed persons. As such, it is crucially important that comprehensive legal advice is sought when seeking to engage in business in this area.

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- ¹ We use the term 'special purpose vehicle' or SPV in this Article in its looser sense rather than the narrower sense relevant to securitisation arrangements.
 - ² Safe-harbours may apply in respect of trade finance deals, emergency funding requirements of affected credit institutions, and some pre-existing credit arrangements, but in the view of the author none of these safe-harbours will be relevant for the vast majority of capital market or lending deals involving listed entities.