

Sanctions relating to vessels



When advising on sanctions, the lawyer providing the relevant advice should be extra careful to cover all angles of the specific transaction.

As an example, take a facility agreement, made several years ago, between a Russian bank (lender) to an EU ship-owning company (borrower). Can any amendments be made to the said facility agreement? Are these amendments

subject to the Sanctions Regulations?

References to the ‘Sanctions Regulations’ include the EU Council Regulation 833/2014 as amended, concerning the restrictive measures imposed by the Council of the European Union in view of Russia’s actions destabilising the situation in Ukraine (“**Regulation 833**”); and also the EU Council Regulation 269/2014 as amended, concerning the restrictive measures imposed by the Council of the European Union in respect of actions undermining or threatening the territory and independence of Ukraine (“**Regulation 269**”)

Having in mind that Regulation 833 has applied restrictions, inter alia, in relation to vessels, the energy sector and entering into transactions and/or the provision of financing to certain persons and in relation to certain products; such persons (the “**Listed Entities**”) and products being listed in Annexes XXV and XIX of Regulation 833; and taking into account that Regulation 269 provides inter alia for the freezing of funds and of economic resources of certain persons, such persons being listed in Annex I of Regulation 269 (the “**Listed Persons**”), the questions which will have to be answered include, but are not limited to, the following:-

- What is the purpose of the proposed amendments and what do they relate to?
- Are any of the parties any proposed amendment agreement a Listed Entity under Regulation 833/2014 or a Listed Person under Regulation 269/2014?
- Are any of the other persons involved, e.g. charterer, lessee, operator, etc Listed Persons under Regulation 269/2014?
- Under which flag is the vessel registered?
- What is the certification of the vessel?¹
- Where does the vessel sail?
- What does the vessel transport? and, generally, what are the activities of the vessel? e.g. are the vessel’s activities affected by any of the prohibitions relating to the energy sector?²

¹ This is important as the prohibition laid out in paragraph (1a) of Article 3ea of Regulation 833 (prohibiting the provision of access to any vessel registered under the flag of Russia to ports and locks in the EU with the exception of access to locks for the purpose of leaving the territory of the EU), extends, as of **8 April 2023** to any vessel certified by the Russian Maritime Register of Shipping.

² (see definition of the ‘Energy Sector’ in Article 1(u) of Regulation 833) ‘Energy Sector’ means a sector covering the following activities with the exception of civil nuclear related activities:

The prohibitions laid out in paragraphs 1. and 2. of **Article 3m** of Regulation 833 provide as follows:

1. It shall be prohibited to purchase, import or transfer, directly or indirectly, crude oil or petroleum products, as listed in Annex XXV³, if they originate in Russia or are exported from Russia.

2. It shall be prohibited to provide, directly or indirectly, technical assistance, brokering services, financing or financial assistance or any other services related to the prohibition in paragraph 1.”

Article 3n paragraph 1 of Regulation 833 provides that *“It shall be prohibited to provide, directly or indirectly, technical assistance, brokering services or financing or financial assistance, related to the trading, brokering or transport, including through ship-to-ship transfers, to third countries of crude oil or petroleum products as listed in Annex XXV which originate in Russia or which have been exported from Russia.”*

Article 5aa paragraph 1 of Regulation 833 provides as follows:

“It shall be prohibited to directly or indirectly engage in any transaction with:

(a) a legal person, entity or body established in Russia, which is publically controlled or with over 50 % public ownership or in which Russia, its Government or Central Bank has the right to participate in profits or with which Russia, its Government or Central Bank has other substantial economic relationship, as listed in Annex XIX;

(b) a legal person, entity or body established outside the Union whose proprietary rights are directly or indirectly owned for more than 50 % by an entity listed in Annex XIX; or

(c) a legal person, entity or body acting on behalf or at the direction of an entity referred to in point (a) or (b) of this paragraph.”

(i) the exploration, production, distribution within Russia or mining of crude oil, natural gas or solid fossil fuels, the refining of fuels, the liquefaction of natural gas or regasification;

(ii) the manufacture or distribution within Russia of solid fossil fuel products, refined petroleum products or gas; or

(iii) the construction of facilities or installation of equipment for, or the provision of services, equipment or technology for, activities related to power generation or electricity production;

³ Annex XXV includes the following crude oil and petroleum products:

- (i) 2709 00: Petroleum oils and oils obtained from bituminous minerals, crude other than natural gas condensates of subheading CN 27 00 10 from liquefied natural gas production plants
- (ii) 2710: Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils.

Pursuant to Law 58(I)/2016 Concerning the Application of the Provisions of Resolutions or the Decisions of the UN Security Council (Sanctions) and the Decisions and Regulations of the Council of the EU (Restrictive Measures) – the “**Sanctions Law**”, Cyprus introduced specific measures and penalties for breach and/or non-compliance with the Sanctions Regulations.

In particular, by section 4(1) of the Sanctions Law, *Any person breaching any of the provisions of the Resolutions or Decisions of the Security Council (sanctions) or/and the Decisions and Regulations of the Council of the European Union (Restrictive Measures), is guilty of an offence, and without prejudice to any greater penalties provided for under any other legislation, in the event of his/her conviction, the penalty will be:*

- a) *In the event of a natural person, imprisonment not exceeding two (2) years or to a fine not exceeding one hundred thousand Euros (€100.000) or to both penalties;*
- b) *In the event of a legal entity, to a monetary fine not exceeding three hundred thousand Euros (€300.000).*

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