

Europe issues guidance on sectoral sanctions against Russia

The European Commission has issued some welcome and long-awaited guidance on certain provisions of the so-called sectoral sanctions introduced by Council Regulation (EU) No. 833/2014, as amended by Council Regulations (EU) No. 960/2014 and No. 1290/2014 ("Regulation 833"). The guidance is contained in a [Commission Notice](#) dated 16 December 2014. Running to seven pages, the stated purpose of the guidance, which is presented in the form of a Q&A, is "uniform implementation by national authorities and parties concerned".

The Q&A address issues arising in a number of areas, including:

- What is covered by "financial assistance" under Articles 2 and 4 of Regulation 833?
- How are trade finance transactions affected by Article 5?
- What is meant by "emergency funding" in Article 5(3)?
- Other issues relating to loans that arise under Article 5. In particular, Q16 addresses the issue of whether EU persons may place term deposits with a maturity exceeding 30 days in a sanctioned bank after 12 September 2014, and confirms that deposit services are not as such covered by the prohibitions set out in Article 5. The Answer provided notes the risks of term deposits being used to circumvent the prohibition on new loans, which would be prohibited. Q19 deals with the issue of whether deferred payment terms exceeding 30 days may constitute a new loan or credit to a sanctioned entity in receipt of goods or services from an EU person.
- Are derivatives covered by the prohibitions in Article 5(1) and (2)?
- The impact of Regulation 833 on EU person dealings in depositary receipts, and in repurchase agreements or securities lending agreements, where sanctioned entities are involved.
- Issues arising from the practical difficulties in dealing in pooled securities, where certain of the securities may be within the scope of the prohibitions in Article 5.

Some notable issues of interpretation remain unanswered by the Notice, including the question of whether the proprietary interests of different sanctioned entities are to be added together, for purposes of determining whether an entity is owned for more than 50% by a sanctioned entity, within the meaning of Article 5. It also remains unclear whether Article 5(3) prohibits involvement in intra-group loans within sanctioned groups.

The Notice indicates that, if further questions arise, the Commission may revise or extend the questions and answers provided. Moreover, the Notice confirms that although it "sheds light on [the Commission's] understanding" of provisions of Regulation 833, it does not create new legislative rules; and cautions that only the Court of Justice of the EU can provide legally binding interpretations of Regulations.

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