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# EU Sanctions in relation to Russia

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# Introduction

This presentation will cover the sanctions position in relation to Russia, focused specifically on those sanctions imposed by the EU.

The US, Japan, Australia, Norway, Canada and Switzerland also impose sanctions on Russia, on an individual basis, but I will not address those here, though they are broadly in line with those of the EU.

The imposition and subsequent evolution of sanctions against, and retaliatory sanctions by, Russia has been a process of almost exactly two years, with very little in the way of an end in sight. In contrast to what we have seen in the process of Iranian sanctions more recently, where a clear roadmap has now been set up and both sides have, broadly, complied with it, no such route is, as yet clear for us to see in relation to Russian Sanctions.

The sanctions imposed on Russia by inter alia, the countries listed above, are by and large, similar and the updates to them have progressed in similar fashion. This has inevitably led to claims by the Russian State of collusion and the application of “mirror logic”, with everyone following the US’s lead in allegedly “advocating a military solution to the Ukrainian conflict”.

By way of introduction, I will outline the history of the sanctions against Russia and how both they, and the situation that justifies them, have evolved, focusing on sanctions imposed by the EU, where we have considerable experience in relation to sanctions imposed on Iran. I will briefly outline a case brought by a Russian company in the Court of Justice of the European Union (CJEU), along with a referral from the High Court of Justice of England & Wales. I will put the sanctions situation as it stands currently and explain what bearing that may have in the near future, in relation to the lifting of, or possible circumvention by some listed organisations/individuals, of sanctions.

I will then explain how we dealt with similar situations brought about by the unilateral inclusion of sections of Iranian industry, persons and corporate entities, by reference to two cases, where we acted for a major Iranian shipping organisation and Iranian individuals, respectively.

# The Background

The EU originally imposed sanctions against Russia by means of **Council Decision 2014/145/CFSP1** and **Council Regulation (EU) 269/2014**, of 17 March 2014, which imposed visa bans and asset freezes on specific individuals associated with “actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine”.

Specific sanctions were imposed on the regions of Crimea and Sevastopol as well as Russia.

On 23<sup>rd</sup> June the Council of the European Union adopted **Council Decision 2014/386/CSFP** concerning:

*“restrictions on goods originating in Crimea or Sevastopol and on the provision, directly or indirectly, of financing or financial assistance, as well as insurance and reinsurance, related to the import of such goods, in response to the illegal annexation of Crimea and Sevastopol. In order to minimise the effect of such restrictive measures on economic operators, exceptions and transitional periods should be provided for in respect of trade in goods and related services for which transactions are required by a trade contract or ancillary contract, subject to a notification procedure.”*

This works alongside **Council Regulation (EU) No 692/2014**. Both have been amended several times since.

EU Leaders assembled at a special meeting on 16<sup>th</sup> July 2014 and stated that Russia had not sufficiently implemented the steps set out in their conclusions of 27<sup>th</sup> June 2014, whereby they had called on Russia to use its influence on rebel groups and stop the flow of militants and weapons across the border, thereby rapidly de-escalating the conflict.

As a result of this conclusion, the EU prevented the European Investment Bank and the European Bank for Reconstruction and Development from granting further loans in the Russian Federation. The European Commission prepared a list of entities that it considered was supporting the unrest by the end of July. Asset freezes and travel bans had already been placed on some individuals earlier in the month.

They also agreed to discontinue the suspension of licences for export to Ukraine of equipment that might be used for internal repression.

The European Council also asked the Commission to review EU bilateral and regional cooperation programmes with a view to suspending most of them. This amounted to the cancellation of aid worth around €450 million, though civil society programmes were to be maintained.

# The Background

The Permanent Mission of the Russian Federation to the European Union had this to say about the EU position taken as a result of the special meeting on the 16<sup>th</sup> July 2014:

*“We are disappointed that the European Union, contrary to its own interests, has yielded to the blackmail of the US Administration and followed the path of sanctions against Russia. Brussels is actually copying the example of Washington, basically applying “mirror logic” putting full blame on those who take real efforts to deescalate the situation in Ukraine, while glaring facts including unceasing flow of refugees from Ukraine to Russia, shelling of Russian territory and other anti-Russian provocations are being blatantly suppressed. Ever since the conflict erupted in Ukraine Russia has been applying all efforts to facilitate a ceasefire and launch an intra-Ukrainian dialogue, strictly implementing the Geneva Accords of 17 April 2014, including their most important provision on stopping bloodshed and launching a peace process in Ukraine. All our efforts were met with outspoken sabotage on the part of Kiev and its US sponsors. Now, instead of using existing opportunities to launch Kiev’s dialogue with representatives of the South-East of the country, the EU allowed itself to be led by those who advocate a military solution of the Ukrainian conflict and use it as a pretext for provoking confrontation with Russia. Thus, the EU assumes responsibility for Kiev continuing the military operation that is claiming lives every day. Russia has repeatedly stressed that using economic instruments as a political weapon is not our choice. Such unilateral measures can damage not only Russia, but also EU Member States themselves, many of which are facing economic hardships. Nevertheless, we are still open for an equal and ideology-free dialogue with EU Member States. We hope that the EU will find its own voice in international affairs serving the interests of all states on our continent.”* (<http://www.russianmission.eu/en/news/comment-european-council-conclusions-regarding-situation-ukraine> )

The approach Russia takes in stating that it does not consider the use of economic sanctions as a political weapon a viable approach, is certainly consistent with the fact that it had earlier made similar arguments in relation to EU sanctions against Iran, so the statement is not as self-serving as it may at first seem.

However, as a result of the MH17 Malaysian Airlines crash on the 17<sup>th</sup> July 2014, incidentally, the same day as the release of the statement above, international debate and its resulting rhetoric began to strengthen further. Many leaders called for ‘Stage three’ sanctions: those restricting entire sectors of the Russian economy.

# The Evolution

As a result of the special meeting of the European Council on the 16<sup>th</sup> July 2014 and the subsequent meetings on 22<sup>nd</sup>, 24<sup>th</sup>, 25<sup>th</sup>, 28<sup>th</sup> and the 29<sup>th</sup> July 2014, in some of which, EU member states' ambassadors met in Coreper (The Committee of Permanent Representatives to the EU), further sanctions targeted against individuals were agreed, making the following sanctions, in summary:

- *to target 15 additional persons and 18 new entities with a travel ban and assets freeze. In total, therefore, 87 persons and 20 entities, from Russia and Ukraine, will now be under EU sanctions as a result of their involvement in the situation in Ukraine.*
- *to extend the designation criteria for imposing asset freezes and visa bans on persons and entities that actively support or are benefiting from the Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Eastern Ukraine.*
- *Restrictions meaning that 'EU nationals and companies may no more buy or sell new bonds, equity or similar financial instruments with a maturity exceeding 90 days, issued by major state-owned Russian banks, development banks, their subsidiaries and those acting on their behalf. Services related to the issuing of such financial instruments, e.g. brokering, are also prohibited.'*
- *The listed financial institutions were:*
  1. SBERBANK
  2. VTB BANK
  3. GAZPROMBANK
  4. VNESHECONOMBANK (VEB)
  5. ROSSELKHOZBANK
- *An embargo on the export and import of arms and related material, covering all items from the EU common military list.*
- *An export ban on dual-use goods and technology for military end users, as defined by the EU list of dual use goods.*
- *Restrictions on the export of technology connected with the deep water, Arctic or shale oil extraction, but not the gas industry.*

These broad economic (Stage three) sanctions were finalised on the 31<sup>st</sup> July 2014 by means of **Council Regulation (EU) No 833/2014** "concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine" and **Council Decision 2014/512/CSFP**.

# The Evolution

The restrictive measures were further extended on the 8<sup>th</sup> September 2014 by the adoption of **Council Regulation (EU) Nos 959 & 960/2014**.

It should be noted, however, that despite their formal adoption on the 8<sup>th</sup> September, they were only due to take effect “in the next few days” to allow the EU to take stock of the changing situation in Ukraine. EU Council President at the time, Herman Van Rompuy, noted that “The EU stands ready to review the agreed sanctions in whole or in part” depending on the willingness of Russia to comply with the negotiated ceasefire in Ukraine on the 5<sup>th</sup> September.

The extension of the sanctions, by way of **Council Regulation (EU) Nos 959 & 960/2014**, encompassed Russian defence and oil companies, including Rosneft (more of which later), Transneft, Gazprom, Oboronprom, United Aircraft Corporation and UralVagonZavod.

The original March 2014 sanctions were intended to send a message to the Russian Leadership that the EU was united in its response to the situation in Ukraine, whereas the stage three measures were designed to hurt the Russian economy. The financially focussed sanctions implemented against Russia were, in the words of the Presidents of the European Council and Commission, in order to:

*“limit access to EU capital markets for Russian State owned financial institutions, impose an embargo on trade in arms, establish an export ban for dual use goods for military end users and curtail Russian access to sensitive technologies, particularly in the field of the oil sector”*

Further sanctions include a ban on the export of ‘dual use technologies’, those that can be used in both military and civilian scenarios and a prohibition on the supply of European Associated Services to the Russian Oil exploration industry.

# The Evolution

Over the course of nearly two years, numerous amendments have been made to the original Regulation and Decision, predominantly for the purposes of adding people and entities to the proscribed list, but also to broaden the scope of economic and industrial effect that the sanctions bring to bear on Russia.

The current position is covered by **Council Regulation (EU) No 833/2014**, as amended by **Regulation (EU) No 960/2014** and **Regulation (EU) No 1290/2014** “*concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine*”, and **Council Decision 2014/512/CSFP**, as amended by **Council Decision 2014/659/CFSP** of 8<sup>th</sup> September 2014 and **Council Decision 2014/872/CFSP** of 4<sup>th</sup> December 2014. The original regulations and decisions were introduced for one year.

The Council originally prolonged the duration of the measures for six months until 31<sup>st</sup> January 2016 in order to accommodate the completion of the implementation of the Minsk Agreements concerning ceasefires in the Donbass region of Ukraine. Unfortunately, the original Minsk Protocol failed, though the issues were re-addressed in the form of Minsk II, which were envisioned to conclude by the 31<sup>st</sup> December 2015. Currently, the Council has prolonged EU targeted economic sanctions until 15<sup>th</sup> September 2016. They now cover 146 Russian people and 37 entities, designated for “undermining the territorial integrity or stability of Ukraine”.

If indeed the sanctions are lifted as a result of the Minsk Agreements, or any associated measures, proving to be successfully implemented, then it may seem as though there is little point in bringing any legal action, or continue with any existing actions, against the Council by the companies and individuals wrongly listed on the Annexes to the sanctions. On the contrary, we continue in actions against the Council of the European Union for just such reasons as there are significant damages to be won for the unlawful inclusion of entities and individuals, which I will elucidate in due course.



# The Future

The current situation very much appears to be one with no clear end in sight, so companies and individuals who believe they have been unlawfully made the subject of sanctions, by reason of unfair inclusion, or on further investigation, due to the fundamental illegality of the sanctions, must act swiftly.

Russia has retaliated, over the course of time, with a number of trade sanctions of its own, in particular for the import of European food. Russia has been negotiating with a number of South American states to fill this gap, much to the dismay of all the countries that have imposed sanctions. As things stand a stalemate appears to have developed between Russia and the EU as to who is capable of bringing sanctions to an end.

The European position seems to be one that is dependent on the outcome of ceasefire negotiations in Ukraine and the end of Russian support for separatists. That is not a position that seems to have any traction with Russia.

Prime Minister Dmitry Medvedev was recently interviewed at length by Euronews, over the situation in Ukraine and the effect of sanctions. He had this to say about Russia's position when asked whether the future of Crimea was up for negotiation:

*“No, there is no such issue for Russia. This issue was settled once and for all. Crimea is part of Russia. A referendum was held there, we amended the constitution. The Republic of Crimea and the city of Sevastopol are part of the Russian Federation.”*

He commented further on the economic situation brought about by sanctions and the fact that the suffering cuts both ways:

*“They told us we were the bad guys and had to be punished. And then they made some calculations and began to weep: it turns out that for some reason it was hitting their own business. We had a trade turnover with the European Union at 450 billion euros. It was 450 billion! Now it is down to 217 billion euros. Why don't they ask the people in the EU who are employed by the various companies that used to make products for Russia – how do they like all of this?”*

# The Future

Mr Medvedev also admitted that the sanctions had had a significant negative effect on Russia, but continued to stress that Europe would suffer just as much:

*“The sanctions have had some effect as well. This is obvious, since some of our companies, for example, lost the financing they used to have from European banks, which means they cannot grow, some of them anyway. Therefore, in this sense, the economic situation is not the easiest. But there is also a positive effect. The economy is healing, it is becoming less dependent on oil, and we have an opportunity to develop our own industry and agriculture.*

*Perhaps one of the advantages of these sanctions and our response measures is that we started concentrating harder on domestic agriculture, so, to a large extent, we are now satisfying our demand for food, while wheat, for example, is now exported in large quantities. In this sense, the sanctions have helped. But they probably didn't help farmers in the European Union.”*

Indeed, The UK's Financial Times newspaper recently reported on the trade situation for Russia with the rest of Europe. Russia's trade with the EU's eastern states fell by almost a third in 2015. Exports to Russia from the six countries (Lithuania; Latvia; Estonia; Poland; the Czech Republic; and Bulgaria) for which data are available were worth Euro 5.9 Billion less in 2015 than 2014. Prime Minister Medvedev is clearly adamant as to the solution:

*“Again, we are not the ones who started this, so it is not up to us to undo it. They have always been trying to intimidate us with some sanctions, which were introduced even in the Soviet period, many times. It never brought them anything but lost profits. What is happening now is no different. They will have to have the courage to say, guys, we'll just scrap all this from day X, and could you please reciprocate by lifting your response measures as well. That would be the right approach.”*

In any case, as Mr Medvedev alluded to (whilst vociferously insisting that Europe is suffering from imposing sanctions as much as Russia is under them), several Russian companies have been hit heavily by the sanctions regime.

# Russian Companies contesting EU Sanctions

Notably, Rosneft, by way of a subsidiary, OSJC Rosneft Oil Company, has recently brought actions in both the Court of Justice of the European Union (CJEU) and The Queen's Bench Division High Court of Justice of England and Wales (QBD). The case in the QBD was for a Judicial Review. This is a special type of case in the English system whereby Judges review the legislative actions of the Executive. Put succinctly, they test the legality of particular law, by ensuring that the processes undertaken in passing law were properly followed and that the Executive had the power so to do.

The scope of the application for Judicial Review encompassed three elements:

1. The first was a Statutory Instrument by the UK Treasury creating criminal offences in relation to the supply of specific financial services.
2. The second was both a Statutory Instrument issued by the Secretary of State for Business, Innovation and Skills, in respect of criminal offences, related to the supply of oil and associated services, and a piece of 'guidance' that interpreted the term 'financial assistance'.
3. The third element concerned statements made by the Financial Conduct Authority, the UK's financial regulator, about the application of Article 5(2) of **Council Regulation 833/2014** which related to newly issued transferable securities in the form of Global Depository Receipts (GDRs) in respect of shares in Rosneft.

Whilst the Judicial Review was based on the legality of the UK measures, it did touch on the legality of the EU measures, so the QBD referred the case with specific questions to the CJEU, listed as **Case C-72/15**. We have similar ongoing cases in the CJEU.

# Russian Companies contesting EU Sanctions

Similarly, NK Rosneft and associated parties, brought two actions in the CJEU, **Case T-715/14**, on the 9<sup>th</sup> October 2014, and **Case T-69/15**, on the 4<sup>th</sup> December 2014 wherein the applicants sought partial annulment of **Decision 2014/512**, **Decision 2014/659**, **Regulation No 833/2014**, including the corrigendum to that regulation of 21 August 2014 (OJ 2014 L 246, p. 59), and **Regulation No 960/2014**.

On 4<sup>th</sup> December 2014, having considered that it was necessary to clarify certain provisions, the Council adopted **Decision 2014/872/CFSP** amending **Decision 2014/512** and **Decision 2014/659**, and **Regulation (EU) No 1290/2014** amending **Regulation No 833/2014**, and amending **Regulation No 960/2014** amending **Regulation (EU) No 833/2014**.

The first case, **Case T-715/14** has been stayed pending the delivery of the Court of Justice in **Case C-72/15**. The second case was held to be 'manifestly inadmissible', on the basis of the fact that the action was between the same parties, had the same purpose and submissions as **Case T-715/14** and as such, was dismissed.

At the time of going to press, the hearing of '**Case C-72/15**' was scheduled for hearing on the 23<sup>rd</sup> February 2016. So, it remains to be seen how that case and **Case T-715/14**, the approach to which rests on **Case C-72/15**', will be dealt with in order to judge how the pleas in law are judged by the CJEU.

This leads us neatly into M Taher & Co's direct and lengthy experience in dealing with the same issues in sanctions related cases for Iranian individuals and entities.

# M Taher & Co and EU sanctions on Iran

During the remainder of the presentation, I shall be explaining our involvement in CJEU proceedings in relation to two of our many cases, which were among the first of their kind and stand as significant precedents in the subject of EU sanctions. The two cases I shall expound upon are **Case T-489/10** IRISL v EU Council, concerning entities, and **Case T-58/12** Nabipour & Others v EU Council, concerning individuals.

For the purposes of this presentation handout however, the following is a summary of salient issues in relation to those two cases:

T-489/10 – IRISL v EU Council

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T-58/12 – Nabipour & Others v EU Council

# T-489/10

We acted for Islamic Republic of Iran Shipping Lines and others in an application for the annulment of Council Implementing **Regulation (EU) No. 668/2010**, and **Council Decision 2010/413/CFSP**.

IRISL was designated by the European Union in **Council Decision 2010/413/CFSP** and in the accompanying **Regulation (EU) No. 668/2010**, on the basis of allegations by the Council that it “***has been involved in the shipment of military-related cargo, including proscribed cargo from Iran.***” IRISL challenged its designation by the European Union in an application for annulment, on the **grounds** that the Council had:

1. violated the Applicants’ rights of defence and the right to effective judicial protection;
2. failed to give the Applicants sufficient reasons for their inclusion;
3. infringed, without justification or proportion, the Applicants’ rights to property; and
4. committed a manifest error of assessment in determining that the designation criteria in the contested Regulation and the contested Decision were satisfied in relation to the Applicants.

A further plea alleged that Article 16(2) of **Regulation No 961/2010** and Article 23(2) of **Regulation No 267/2012** were unlawful in that those provisions impose a prohibition on the loading and unloading of cargoes and further sought the annulment of those provisions.

# Findings

The court found it appropriate to examine the second plea in law, (b), and the fourth plea, (d), in its findings.

Dispensing with the second plea in law the court turned to the fourth plea, that of committing a manifest error of assessment in determining that the designation criteria in the contested Regulation and the contested Decision were satisfied in relation to the Applicants. Pertinent extracts are as follows:

- *“In the present case, the Court must establish whether the Council was right to take the view that the applicants should be subject to restrictive measures on account of the fact that IRISL and Khazar Shipping Lines were involved in nuclear proliferation and on account, moreover, of the fact that the applicants other than IRISL were owned or controlled by IRISL or acted on its behalf...”*
- *“The wording used by the legislature implies that the adoption of restrictive measures against a person or an entity on account of the support which that person or entity has allegedly given to nuclear proliferation presupposes that that person or entity has actually done so. By contrast, the mere risk that the person or entity concerned may in the future provide support for nuclear proliferation is not sufficient.... Therefore, [the Articles] required the Council to establish that support for nuclear proliferation had actually been provided by IRISL...”*
- *“On the other hand, the desire to ensure that the restrictive measures have the broadest possible preventive effect cannot result in the legislation in force being interpreted contrary to its clear wording...”*
- *“Therefore, even if it appears appropriate to regard the fact that IRISL was involved in the three incidents concerning the shipment of military material in breach of the prohibition laid down in paragraph 5 of Resolution 1747 (2007) as increasing the risk that IRISL may also be involved in incidents relating to the shipment of material linked to nuclear proliferation, that does not, as the relevant legislation now stands, justify the adoption and maintenance of restrictive measures against it...”*
- *“In the light of all the foregoing, it must be concluded that the evidence put forward by the Council does not justify the adoption and maintenance of restrictive measures against IRISL.”*

# T-58/12

We acted for a number of Iranian individuals in an application for the annulment of:

**Council Decision 2011/783/CFSP** of 1<sup>st</sup> December 2011, which added 11 Applicants to the list of persons and entities in Annex II to **Council Decision 2010/413/CFSP**, of 26<sup>th</sup> July 2010, concerning restrictive measures against Iran.

and

**Council Implementing Regulation (EU) No. 1245/2011** of 1<sup>st</sup> December 2011, which added 11 Applicants to the list of persons and entities in Annex VIII to **Regulation (EU) No 961/2010**, of 25<sup>th</sup> October 2010, on restrictive measures against Iran.

In accordance with **Decision 2011/783**, **Council Implementing Regulation (EU) No. 1245/2011** added, inter alia, 11 Applicants' names to the list of persons, entities and bodies subject to a freezing of funds which is set out in Annex VIII to **Regulation No 961/2010**. The reason put forward by the Council of the European union in order to justify the applicants' listing in Annex II to **Decision 2010/413** and in Annex VII to **Regulation No 961/2010** concerned the professional or capital links maintained by the applicants with IRISL or with companies linked to IRISL.



# Forms and Order sought by the Applicants

The Application sought the following:

- (1) Annul **Decision 2011/783** and **Regulation No 1245/2011**;
- (2) Declare that the travel ban did not apply to the 11 Applicants; and (3) Order the Council to pay the costs.

The Applicants raised four Pleas in law in support of their application for annulment of their listing:

1. The first plea in law alleged infringement of the legal criteria for inclusion in the lists.
2. The second plea in law alleged error of assessment and infringement of the legal criteria for inclusion in the lists.
3. The third plea in law alleged infringement of the rights of the defence and of the right to effective judicial protection.
4. The fourth plea in law alleged breach of the principle of proportionality and infringement of fundamental rights, in particular the right to property, the freedom to pursue an economic or commercial activity, the right to the protection of private and family life and the right to protection of reputation.

# Findings

The General Court found in favour of the Applicants the following:

- Annulled **Council Decision 2011/783/CFSP** of 1<sup>st</sup> December 2011, amending **Decision 2010/413/CFSP**, concerning restrictive measures against Iran;
- Annulled Council **Implementing Regulation (EU) No 1245/2011** of 1<sup>st</sup> December 2011, amending **implementing Regulation (EU) No 961/2010** on restrictive measures against Iran;
- Annulled Annex IX to Council **Regulation (EU) No 267/2012** of 23<sup>rd</sup> March 2012 concerning restrictive measures against Iran and repealing **Regulation (EU) No 961/2010**;
- Annulled Council **Decision 2013/270/CFSP** of 6<sup>th</sup> June 2013 amending **Decision 2010/413**;
- Ordered the effects of **Decision 2011/783** and of **Decision 2013/270** to be maintained as regards the Applicants from their entry into force until the annulment in part of **Regulation No 267/2012** takes effect;
- Dismissed the action as to the remainder;
- Ordered the Council of the European Union to bear its own costs and to pay those incurred by a number of Applicants.

# Questions?



Maryam Taher is the firm's founding partner. She has over twenty years' experience in the shipping industry having previously worked at Clyde & Co, Hill Dickinson, WK Webster as in-house legal counsel, and also at a P&I Club before setting up her own practice in 2004. Maryam has handled a variety of work, from non-contentious advice, to arbitrations relating to demurrage and detention, to sole conduct of large scale multi-jurisdictional disputes, and major cases such as the US\$800m "Kuwaiti Airways" case following the invasion of Kuwait by the Iraqi Government. More recently, Maryam has successfully brought actions in the European General Court to annul the applicability of the European sanctions against Iranian nuclear proliferation insofar as they apply to her clients. Her cases and clients represented in the European Courts are in record numbers and none of the successful judgments have been appealed.

Maryam holds an LLM degree in Maritime Law from Southampton University and speaks fluent Farsi/Persian and Azerbaijani/Turkish. She also has basic knowledge of Arabic.

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