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## Most Recent EU Sanctions Against Russia: Impact on EU Capital Markets and the Financial Service Industry

By [Orestis Omran](#), [Nora Wouters](#) on November 12, 2014

On July 31, 2014, the EU adopted [Regulation 833/2014](#) ("Regulation 833") [Council Decision 2014/512/CFSP](#) concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, targets particularly Russia's financial sector, by restricting access to the EU capital markets for certain state owned Russian financial institutions. The Regulation 833's restrictions are immediately applicable pursuant Article 13 (a) within the territory of the Union; (b) on board any aircraft or any vessel under the jurisdiction of a Member State; (c) to any person inside or outside the territory of the Union who is a national of a Member State; (d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State; and (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.

Article 5 of the Regulation 833 provides that it is prohibited to sell, broker or provide assistance in the issuance after August 1, 2014 of transferable securities and money-market instruments, where issued by: (i) Sberbank, VTB Bank, Gazprombank, Vnesheconombank, Rosselkhozbank; (ii) their over 50% owned subsidiaries, or agents acting on behalf or at the direction of designated banks or their subsidiaries. Issuances of money-market instruments are caught by Regulation 833 only where they have a maturity date of over 90 days. Transferable securities such as bonds are caught by Regulation 833 regardless of their maturity.

**GIVEN THE TECHNICAL CHARACTER OF THE RELEVANT PROVISIONS AND THE UNDERLYING EU FINANCIAL LEGISLATION, EXPERT LEGAL ADVICE IS REQUIRED WHEN ASSESSING THE RESTRICTIONS THAT THE REGULATION 833 INTRODUCES FOR BOTH INDIVIDUALS AND LEGAL ENTITIES.**

The Regulation 833 essentially targets investment services defined as "brokering". Article 1 of Regulation 833 provides that "*brokering means the following services and activities: i.e. (i) reception and transmission of orders in relation to one or more financial instruments, (ii) execution of orders on behalf of clients, (iii) dealing on one own account, (iv) portfolio management, (v) investment advice, (vi) underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis, (vii) placing of financial instruments without a firm commitment basis, and (viii) any service in relation to the admission to trading on a regulated market or trading on a multilateral trading facility.*"

Whereas there is no specific reference to the relevant EU financial services directives it can be assessed that the Regulation 833 provides for restrictive measures that target essentially financial services as defined under Directive 2014/65/EU on markets in financial instruments (the so-called MiFID II) with respect to two specific categories of financial instruments, namely (i) transferable securities and (ii) money market instruments (see Article 5 of the Regulation).

Article 1 provides that "transferable securities" means "*those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as: (i) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares, (ii) bonds or other forms of securitized debt, including depositary receipts in respect of such securities, (iii) any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement.*" Moreover, "money-market instruments" means "*those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.*"

The term investment advice may seem problematic, especially for investment firms and other financial services providers, due to its seemingly broad character. According to Article 4(4) of Directive 2004/39/EC on

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markets in financial instruments (the so-called MiFID I), investment advice means “the provision of personal recommendations to a client, either upon his request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments”.

For the purposes of the definition of investment advice, that recommendation must be presented as suitable for that specific person or must be based on a consideration of the circumstances of that person.<sup>[1]</sup> Therefore, an advice that can be classified as investment advice shall be specific to a person and his particular needs. General provision of financial data to clients other than the provision of personal recommendations, either upon the client’s request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments, based on which the client can make an informed investment decision, do not fall under the scope of Regulation 883.

In a nutshell, the new EU sanctions against Russia are expected to have a considerable impact on a number of financial transactions of both EU and foreign financial institutions in Russia. Similar severe consequences will be faced by financial intermediaries offering the restricted financial services to the sanctioned entities while the application of the Regulation may affect the credit rating assessment process of the latter. Executives of these entities and legal counsels must be particularly careful and seek expert legal advice, when entering transactions or offering services that might be falling under Regulation 883’s scope of application, as analyzed above. As long as the situation in Ukraine remains unresolved, the EU might be lead to take additional measures against Russia’s financial sector in the near future. All relevant developments must be closely followed by the EU financial industry to avoid potential violations of EU law on this field.

\* \* \*

[1] See Article 52 of the MiFID Implementing Directive; also ESMA Consultation Paper of April 19, 2010 on Understanding the definition of advice under MiFID, page 4, available at:

[http://www.esma.europa.eu/system/files/10\\_293.pdf](http://www.esma.europa.eu/system/files/10_293.pdf)



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  - [February](#)
  - [January](#)
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  - [April](#)
  - [March](#)
  - [February](#)
  - [January](#)
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