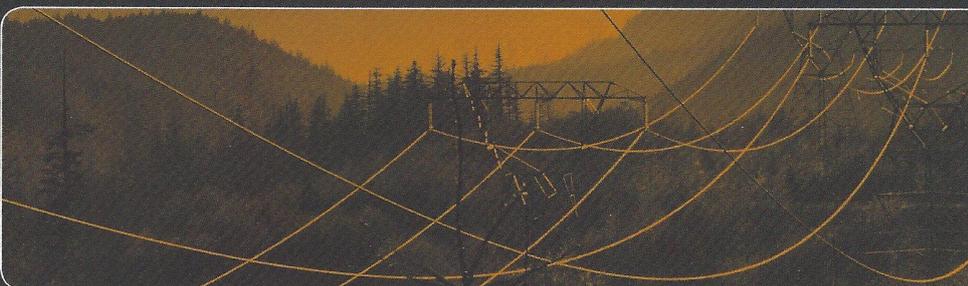
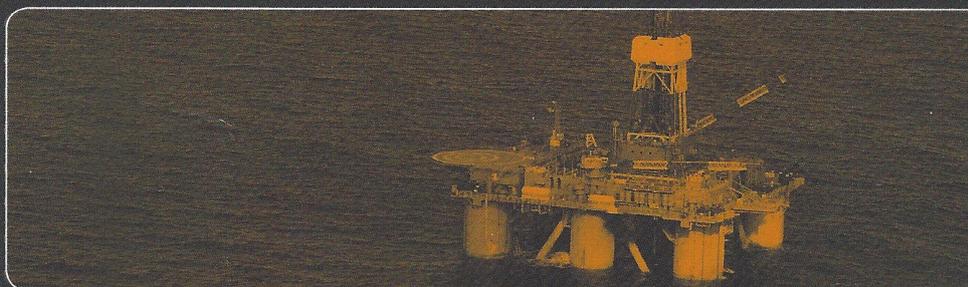


REVIEW



International Energy Law Review

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EU and US Sanctions: Legal Impact on the Russian Energy Sector

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☞ Economic sanctions; Energy; EU law; International law; International trade; Russia; United States

The sanctions limiting energy cooperation with the Russian Federation that have been introduced by the EU and US during the Ukrainian crisis have had a significant impact on the Russian economy and its energy sector in particular. However, despite the absence of truly efficient international legal mechanisms, the Russian legislative system, as well as private entities, have developed an idiosyncratic way to mitigate the adverse effects of the restrictions imposed, including the use of the reciprocal sanctions mechanism, the alteration of the case law interpretation of the force-majeure concept, the elaboration of the draft legislation on sub-soil use and the alteration of contract terminology in order to ensure formal compliance with the sanctions regime. The issues arising from the said legislative and case-law confrontation between the countries concerned, as well as the prospects of its resolution, are addressed in this article.

1. Introduction

In May 2014, disagreeing with Russia's actions in the Ukrainian crisis, the US, followed by the EU, Canada and several other countries, imposed sanctions against a number of Russian citizens and companies. The total number of Acts passed during 2014–2017 amounts to 50 EU Decisions and Regulations and 20 acts of the US including the acts of the President and Office of Foreign Assets Control (OFAC).

The restrictive measures touch upon a wide range of international relations, from diplomacy to foreign trade. In particular, the sanctions targeting international economic relations encompass those against individuals and legal entities (asset freezes and travel bans), restrictive measures transactions on the territory of Crimea and Sevastopol and measures limiting exchanges with Russia in specific economic sectors (sectoral sanctions). In the below, we would like to outline the EU and US sanctions imposing limits on energy cooperation with the Russian Federation as well as their legal consequences within the country and internationally.

2. EU Sanctions

These are imposed by the EU Decision (Ch.2 Title 5 TEU) and Regulation containing provisions on the volume of sanctions and their implementation by the Member States (art.215 TFEU). Deciding on imposing sanctions, the EU Council adheres to Basic Principles on the Use of Restrictive Measures (Sanctions) 2004,¹ *Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy 2012*² and EU Best Practices for the Effective Implementation of Restrictive Measures 2008.³ The major importance in the EU–Russia energy dialogue is placed on the sectoral sanctions and restrictive measures on transactions with the territory of Crimea and Sevastopol.

2.1. Sectoral sanctions

(1) Decision 2014/512/CFSP⁴ (Decision 512) and Regulation 833/2014⁵ (Regulation 833) of 31 July 2014, “concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine”, imposed sectoral sanctions in three economic sectors (financial, defense and energy industry).

The provisions of the mentioned acts concerning the energy sector introduced the licensing of the sale, supply, transfer or export of goods and technologies suited to the oil industry for use in deep-water oil exploration and production, Arctic oil exploration and production, or shale oil projects in Russia as well as the licensing of services related to the respective goods and technologies. The transactions concluded before 1 August 2014 may be excluded from these prohibitions.

Besides, Decision 512 (art.7) and Regulation 833 (art.11) introduced a ban on satisfaction of any claims in connection with any contract or transaction the performance of which has been affected, directly or

¹ *Basic Principles on the Use of Restrictive Measures (Sanctions)*, available at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010198%202004%20REV%201> [Accessed 24 August 2017].

² *Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy*, available at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2011205%202012%20INIT> [Accessed 24 August 2017].

³ *EU Best Practices for the Effective Implementation of Restrictive Measures*, available at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%208666%202008%20REV%201> [Accessed 24 August 2017].

⁴ Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L229/13–17.

⁵ Regulation 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine [2014] OJ L229/1–11.

indirectly, in whole or in part, by the measures imposed, including claims for indemnity or any other claim of this type, if they are made by:

- entities against whom financial sanctions were imposed;
- any other Russian person, entity or body; and
- any person, entity or body acting through or on behalf of one of the persons referred to above.

Moreover, art.8 of the Regulation 833 envisages the obligation of the Member States to lay down the rules on penalties applicable to infringements of its provisions. Originally imposed until 31 July 2015, the sanctions were successively prolonged by six months to 22 June 2015⁶ and 19 December 2016.⁷ Decision 2017/1148/CFSP of 28 June 2017 extended the sanctions until 31 January 2018.⁸

(2) Decision 2014/659/CFSP⁹ and Regulation 960/2014¹⁰ of 8 September 2014 supplemented the Decision 512 and Regulation 833 energy sanctions by the prohibition of the associated services necessary for deep-water oil exploration and production, Arctic oil exploration and production, or shale oil projects in Russia. Such services include drilling, well testing, logging and completion services, supply of specialised floating vessels.

At the same time the European legislator set forth two exceptions to this rule:

- for the agreements concluded before 12 September 2014 or ancillary contracts necessary for the execution of such contracts; and
- for the services which are necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment.

(3) Decision 2014/872/CFSP¹¹ (Decision 872) and Regulation 1290/2014¹² (Regulation 1290) of 4 December 2014 clarified the scope of the energy sanctions. Moreover, Regulation 1290, similarly to Regulation 960, contains the exception for the transactions conducted in

“duly justified cases of emergency”. Such transactions may proceed without prior authorisation, provided that the exporter notifies the competent authority within five working days after the transaction in question has taken place.

Together the EU acts described have significantly limited the European market opportunities for Russian oil and gas companies which resulted in legal actions in the European Court of Justice (ECJ) challenging the Council decisions and regulations. At present, there are several cases brought by Russian energy companies pending (*Gazprom Neft v Council* (T-735/14); *Rosneft v Council* (T-715/14)). The latter has a major role to play here. On 20 October 2014, Rosneft brought an action with the High Court of Justice (London) against HM Treasury, Secretary of State for Business, Innovation & Skills and the Financial Conduct Authority contesting the EU sectoral sanctions. On 9 February 2015, the English court, in accordance with its right granted by art.267 TFEU, filed a request for a preliminary ruling on the validity of certain provisions of these acts with the ECJ.¹³ On 28 March 2017, the ECJ rendered its judgment,¹⁴ confirming the validity of the respective decisions and regulations and the fact that the Council did not exceed its powers by enacting them. In the court’s opinion, neither do the EU sectoral sanctions violate the EU–Russia Partnership Agreement 1994 since “the importance of the objectives pursued by the contested acts ... is such as to justify the possibility that, for certain operators, the consequences may be negative”. The court has also addressed the scope of the right of the Member States to give their own interpretation of certain expressions of the EU acts in order to impose penalties for their violation. In the tribunal’s opinion, the possibility of the subsequent clarification by the court of such expressions as “shale”, “waters deeper than 150 metres”, “financing and financial assistance” used in Regulation 833 and Decision 512 does not preclude the Member States from imposing criminal penalties that are to apply in the event of an infringement of the provisions of the sanctions legislation, nor is it contrary to the principle of legal certainty. It is quite likely that this judgment will set a precedent for the cases brought by the Russian companies.

⁶ Decision 2015/971/CFSP of 22 June 2015 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2015] OJ L157/50.

⁷ Decision 2016/2315/CFSP of 19 December 2016 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2016] OJ L345/65.

⁸ Decision 2017/1148/CFSP of 28 June 2017 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2017] OJ L166/35.

⁹ Decision 2014/659/CFSP of 8 September 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L271/54–57.

¹⁰ Regulation 960/2014 of 8 September 2014 amending Regulation 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine [2014] OJ L271/3–7.

¹¹ Decision 2014/872/CFSP of 4 December 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, and Decision 2014/659/CFSP amending Decision 2014/512/CFSP [2014] OJ L349/58–60.

¹² Regulation 1290/2014 of 4 December 2014 amending Regulation 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, and amending Regulation 960/2014 amending Regulation 833/2014 [2014] OJ L349/20–24.

¹³ *R. (on the application of OJSC Rosneft Oil Co) v HM Treasury* [2015] EWHC 248 (Admin), available at CO/5379/2014, <https://www.judiciary.gov.uk/judgments/ojsc-rosneft-oil-company-v-hm-treasury-others/> [Accessed 25 August 2017].

¹⁴ Judgment of the court (Grand Chamber) of 28 March 2017 (request for a preliminary ruling from the High Court of Justice (England and Wales), Queen’s Bench Division (Divisional Court)—UK) EU:C:2017:236, available at <http://curia.europa.eu/juris/document/document.jsf?docid=189262&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=1827165> [Accessed 25 August 2017].

2.2. Sanctions against Crimea and Sevastopol

This category of sanctions was imposed by Decision 2014/933/CFSP¹⁵ and Regulation 1351/2014¹⁶ of 18 December 2014 amending Decision 2014/386/CFSP and Regulation 692/2014 of 23 June 2014 (Regulation 692).

The acts in question substantially extended the existing restrictions which used to cover only the import ban on goods from Crimea and Sevastopol. Particularly, it was prohibited to sell, supply, transfer, or export goods and technology as well as provide services in the energy sector in Crimea and Sevastopol either by natural or legal persons of the union or entities of the union or from the territory of the union.

Under these regulatory provisions the “entity in Crimea or Sevastopol” means any entity having its registered office, central administration or principal place of business in Crimea or Sevastopol, its subsidiaries or affiliates under its control in Crimea or Sevastopol, as well as branches and other entities operating in Crimea or Sevastopol.

Article 6 of Regulation 692 contains the provision similar to Regulation 833 art.11, forbidding to satisfy any claims in connection with any contract or transaction the performance of which has been affected by the sanctions imposed, including claims for indemnity or any other claim of this type.

On 19 June 2017 the restrictive measures against Crimea and Sevastopol were prolonged until 23 June 2018.¹⁷

In the context of the EU sanctions against Crimea and Sevastopol of particular interest is the so-called “Siemens case”. On 11 July 2017, the German company Siemens Aktiengesellschaft brought an action before Moscow Court of Arbitration (Case No.A40-126531/2017) against three companies: open joint stock company “Foreign Economic Association”, “Technopromexport”, limited liability company “Foreign Economic Association”, “Technopromexport” and its own subsidiary “Siemens Gas Turbine Technologies” seeking to challenge the contract of shipment of four gas turbines to Technopromexport, a subsidiary of Russia’s state-owned Rostec, or to obtain their contract price of €111,8 million. The German company also applied for interim measures in the form of seizure of the turbines or prohibition of their installation by Technopromexport LLC, which was however dismissed by the court.¹⁸ Pursuant to the contract, Siemens Gas Turbine Technologies shipped four gas turbines to Technopromexport for a power plant to be

built in Taman, Krasnodar Region. Additionally, the contract specifically prohibited to ship these turbines to Crimea. The buyer also provided Siemens with written assurances that this condition would be observed. Nevertheless, the German company received information that two of the turbines were delivered to Crimea by Technopromexport LLC which bought them from the same named JSC. The hearing on the case in the Russian court of arbitration is scheduled for 18 September 2017.

However, the legal implications of the actions being challenged have gone far beyond the Russian jurisdiction. On 4 August 2017, the EU Council added three Russian nationals and three companies involved in the transfer of gas turbines to Crimea to the list of persons subject to restrictive measures.¹⁹ Among the sanctioned individuals are Andrey Cherezov, Vice Minister for Energy of the RF, Sergey Topor-Gilka, Director General of Technopromexport LLC, and Evgeniy Grabchak, Head of Department in the Energy Ministry of the RF. The companies placed under sanctions are Technopromexport LLC, JSC Technopromexport and CJSC “Interavtomatika” as the entities taking part in the power plant construction in Crimea.

Besides, the German Government has called on Siemens to explain how its turbines got diverted to Crimea supposedly in breach of the sanctions. The company reacted by filing a lawsuit in the Moscow Court of Arbitration which seems to be more of an attempt to minimise the risk of being penalised for violating the sanctions regime, than the willingness to regain its property. Apart from the lawsuit, 21 June 2017 the company announced a halt in delivering power-generation equipment to state-controlled clients in Russia and divesting its minority interest in the Russian company, Interavtomatika, where it holds 46% of the stock.²⁰

3. US sanctions

Pursuant to the National Emergencies Act 1976 and International Emergency Economic Powers Act 1977 the US President may declare a national emergency with respect to “any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States” and introduce restrictive measures as well as define their scope and nature by passing an Executive Order (EO). The Office of Foreign Assets Control (OFAC), a US Department of the Treasury division, is responsible for administration and implementation of such sanctions.

¹⁵ Decision 2014/933/CFSP of 18 December 2014 amending Decision 2014/386/CFSP concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L365/152–155.

¹⁶ Regulation 1351/2014 of 18 December 2014 amending Regulation 692/2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2014] OJ L365/46–59.

¹⁷ Decision 2017/1087/CFSP of 19 June 2017 amending Decision 2014/386/CFSP concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol [2017] OJ L156/24.

¹⁸ Court rulings on Case No.A40-126531/2017, available at <https://kad.arbitr.ru/Card/c342617c-ca37-4353-ab7c-f3b642b28565> [Accessed 24 August 2017].

¹⁹ Decision 2017/1418/CFSP of 4 August 2017 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2017] OJ L2031/5–8; Regulation 2017/1417 of 4 August 2017 implementing Regulation 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2017] OJ L2031/1–4.

²⁰ W. Boston, W. Wilkes, “Germany Questions Siemens on Equipment that Made it to Crimea”, available at <https://www.wsj.com/articles/germany-questions-siemens-on-equipment-that-made-it-to-crimea-1499881224> [Accessed 24 August 2017].

Sectoral sanctions against Russia were introduced by EO No.13662 of 20 March 2014.²¹ Subsequently, OFAC issued four Directives imposing prohibitions on certain specified transactions with the sanctioned entities.

Thus, Directive 2 (16 June 2014)²², following the Secretary of the Treasury's decision to apply EO No.13662 to the energy sector of the RF economy, prohibits transactions and other dealings in new debt of longer than 90 days maturity of persons sanctioned under the Sectoral Sanctions Identifications (SSI) List of OFAC, their property, or their interests in property. On 12 September 2014, two companies, Gazpromneft and Transneft, were added to the SSI List which already included such important operators of the Russian fuel and energy complex as Novatek and Rosneft.

Directive 4 (12 September 2014)²³ prohibits exporting by US persons of goods, services (except for financial services), or technology in support of exploration or production for deep-water, Arctic offshore, or shale projects that have the potential to produce oil in the Russian Federation. The sanctions in question target Russian companies Gazprom, Gazpromneft, Lukoil, Surgutneftegas and Rosneft.

The US legislation also provides for a possibility to authorise certain types of activities and transactions that would otherwise be prohibited under the Ukraine/Russia-related sanctions program by issuing a general licence (unlike the EU acts which directly enumerate the exceptions). For example, General License No.1A²⁴ authorises certain transactions involving oil derivative products, whereas General License No.2 provides for a grace period until 26 September 2014 for winding down the existing agreements.²⁵

On 2 August 2017, Countering America's Adversaries Through Sanctions Act, amending the energy sanctions regime, entered into force.²⁶ In particular, the Secretary of the Treasury was obliged to modify Directive 2 not later than 60 days after the date of the enactment of the Act, to ensure that the directive prohibits the financing Gazpromneft, Novatek and Rosneft for longer than 60 days (instead of 90 days). Additionally, s.232 of the new legislative act authorises the President to impose sanctions with respect to investments that directly and significantly contribute to the enhancement of the ability of the RF to construct energy export pipelines. These investments also can not be made regarding the provision of goods, leases, or technologies providing for the construction thereof, any of which has a fair market value of \$1,000,000 or

more; or that, during a 12-month period, have an aggregate fair market value of \$5,000,000 or more. This power may be exercised by the Head of State "in coordination with allies of the United States", this formula highlighting the necessity to compromise with the EU, the Member States of which are expressing concerns that the US sanctions may negatively affect European companies, e.g. those participating in the construction of the Nord Stream 2 Pipeline across the Baltic to Germany. At the same time s.257(a)(9) dedicated to Ukraine's and EU's energy security directly provides the necessity to oppose the Nord Stream 2 Project.

The International Emergency Economic Powers Act 1977 sets forth fines for the infringement of the sanctions. For example, on 20 July 2017, OFAC assessed a \$2,000,000 civil monetary penalty against the oil company ExxonMobil Corp for violations of § 589.201 of the Ukraine-Related Sanctions Regulations prohibiting transactions with the sanctioned persons.²⁷ According to OFAC, the violation consisted in signing eight legal documents related to oil and gas projects in Russia with Igor Sechin, the President of Rosneft OAO, and an individual identified on OFAC's List of Specially Designated Nationals and Blocked Persons. The office disregarded the fact that Mr Igor Sechin was included in the List as an individual, rather than the Rosneft executive body representative. OFAC concluded that the language of the Ukraine-Related Sanctions Regulations does not contain a "personal" versus "professional" distinction. Above all, such interpretation is contrary to OFAC's official stance, expressed in frequently asked questions (FAQ) warning against "entering into *any* contracts that are signed by the SDN (Special Designated Nationals List)" which were publicly available on the OFAC Website in 2013 before the introduction of the Ukraine-related sanctions.

Apart from sanctions administered by OFAC, the Bureau of Industry and Security (BIS), a US Department of Commerce division, may introduce additional export control measures. Within the framework of its powers, on 6 August 2014, BIS amended the Export Administration Regulations to insert §746.5 (Russian Industry Sector Sanctions) requiring a licence to export, re-export or transfer certain goods to the RF when the exporter knows the goods will be used directly or indirectly in exploration for, or production of, oil or gas in Russian deep-water (greater than 500ft) or Arctic

²¹ EO No.13662—Blocking Property of Additional Persons Contributing to the Situation in Ukraine, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_eo3.pdf [Accessed 24 August 2017].

²² Directive 2 as Amended Under EO No.13662 (September 12, 2014), available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13662_directive2.pdf [Accessed 24 August 2017].

²³ Directive 4 Under EO No.13662 (12 September 2014), available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/eo13662_directive4.pdf [Accessed 24 August 2017].

²⁴ Ukraine General License No.1A—Authorizing Certain Transactions Related to Derivatives Prohibited by Directives 1, 2 and 3 Under Executive Order 13662 (issued 12 September 2014), available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_gl1a.pdf [Accessed 24 August 2017].

²⁵ Ukraine General License No.2—Authorizing Certain Activities Prohibited by Directive 4 under Executive Order 13662 Necessary to Wind Down Operations (issued 12 September 2014), available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_gl2.pdf [Accessed 24 August 2017].

²⁶ Countering America's Adversaries Through Sanctions Act 2017 (H.R. 3364), available at <https://www.congress.gov/bill/115th-congress/house-bill/3364> [Accessed 24 August 2017].

²⁷ The US Department of the Treasury's Office of Foreign Assets Control Assesses a Civil Monetary Penalty Against ExxonMobil Corporation (20 July 2017), available at <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20170720.aspx> [Accessed 24 August 2017].

in January 2017. Similarly, the Rosneft's press-release of January 2017 uses the term "low permeability silicon and carbonate sediments pertaining to hard-to-extract hydrocarbons".

The use of above mentioned expressions allowed the companies to circumvent the prohibition on shale oil exploration and production imposed by Directive 4. Also, the companies took into account OFAC's interpretation on its website, which states that the ban applies to "projects that have the potential to produce oil from resources located in shale formations".³⁶ Following OFAC, BIS as well pointed out that shale projects include only those which involve fracking.³⁷ The licence requirement does not apply to exploration or production through shale to locate or extract crude oil or gas in reservoirs. Interestingly, the said interpretation almost verbatim incorporates the respective provision of Regulation 1290 art.4a(1)(c).

4.4. International law: more questions, than answers

Despite a wide variety of international economic dispute settlement mechanisms, the International Law is less efficient for Russia in combating the adverse economic consequences of the sanctions, as compared to the national measures, including the reciprocal sanctions of the RF against certain sectors of the European and US economies.

No doubt, Russia could consider applying to the WTO Dispute Settlement Understanding as a way to protect its interests with respect to the EU and US sanctions. On 17 April 2014, the RF submitted a communication to the Council for Trade in Services and the Council for Trade in Goods concerning the economic sanctions imposed by the US President presumably in violation of GATT arts II, VI and XI, and specific commitments undertaken by the US which preclude the US from introducing such measures.³⁸ Besides, Russian authorities have repeatedly announced the possible commencement of proceedings in the WTO Dispute Settlement Body. However, Russia has not yet contested the EU and US sanctions in this organisation. It appears that if such a dispute is submitted to the DSB Russia could argue that the sanctions contradict a number of the WTO fundamental principles, namely, trade without discrimination, predictability and progressive liberalisation,³⁹ as well as GATT art.XI touching upon general elimination of quantitative restrictions. On the other hand, GATT art.XXI leaves the possibility to classify the sanctions as a "security exception". However, the application of this article in the case law of the Organization mostly refers to the GATT

period (1947–1994) and reflects different opinions of the GATT members to this issue rather than the uniform approach of the WTO bodies. Therefore, neither the legislative text, nor the case law allows evaluating the applicability of art.XXI in this situation. For example, there is no generally accepted interpretation of the following expressions: "essential security interests", "taken in time of war or other emergency". Furthermore, it is unclear whether the rights granted under the article may be exercised exclusively after the respective UN Act has been adopted or it is possible to invoke its provisions just based on the country's obligations as a UN Member without the need for the emergency to be confirmed by the UN.⁴⁰

To make matters worse, in 2009, Russia withdrew the provisional application of the Energy Charter Treaty 1994, which resulted in the impossibility for Russian energy companies to invoke its provisions protecting their assets in the European market.

5. Final remarks

The EU and US sanctions, being quite different in their nature and application as well as the penalties for their infringements, have had a considerable impact on the Russian energy sector. Apart from the sanctions in 2014–2017 the Russian economy has experienced a significant drop in crude oil prices and devaluation of the ruble (Russian national currency), as well as the increase in ruble interest rates. The combined action of these factors triggered such adverse macroeconomic trends as reduced access to capital, a higher cost thereof and the decrease in national GDP (2.8% YOY in 2015, 0.2% YOY in 2016, contrary to the IMF calculation of 1% YOY). The slowdown of the decline is explained by growing industrial production (+1.3% YOY in 2016), including oil production (+2.5% YOY in 2016).⁴¹

Nonetheless, during 2014–2017 Russia and its energy companies have developed a consistent reaction to the restrictive measures described. The "legal response" includes the reciprocal sanctions of the RF in other spheres of economic cooperation, legislative activities aimed at the creation of a regime taking into account the interests of operators in terms of the sanctions, case law development and other governmental and contractual mechanisms. The efficiency of such an approach was highlighted by Rosneft management in the company's annual report. It is stated that Rosneft has demonstrated decent operations performance and managed to successfully implement its investment projects. For instance, the hydrocarbon replacement ratio, according

³⁶ OFAC FAQ No.418, available at https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx#ukraine [Accessed 24 August 2017].

³⁷ BIS FAQs, available at <https://www.bis.doc.gov/index.php/policy-guidance/faqs> [Accessed 24 August 2017].

³⁸ Communication from the Russian Federation, Certain Trade Restrictive Measures Adopted by the United States, S/C/W/353, G/C/W/697 (17 April 2014), available at <http://goo.gl/yPHg4J> [Accessed 24 August 2017].

³⁹ *Principles of the Trading System*, available at https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm [Accessed 24 August 2017].

⁴⁰ See, e.g. *Analytical Index of the GATT (art.XXI)*, available at https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art21_e.pdf [Accessed 24 August 2017]; Decision by the Arbitrators, European Communities—Regime for the Importation, Sale and Distribution of Bananas—Recourse to Arbitration by the European Communities under Article 22.6 of the DSU, WT/DS27/ARB/ECU (24 March 2000), DSR 2000: V, 2237 etc.

⁴¹ *Rosneft Annual Report* (2016), available at https://www.rosneft.com/upload/site2/document_file/a_report_2016_eng.pdf [Accessed 24 August 2017]; *Rosneft Annual Report* (2014), available at https://www.rosneft.com/upload/site2/document_file/176411/a_report_2014_eng.pdf [Accessed 24 August 2017].

to Russian classification, grew over the year 2015 to 168 % of the volume of production on the territory of the RF, which made it possible for the company to maintain long-term production. The company's activities also play a considerable role in providing stability for the Russian economy and maintaining the steady demand for domestic products. Rosneft is a major consumer of goods, works

and services among Russian companies. In 2015, the procurement of goods, works and services from third counterparties amounted to 1.4 billion rubles.⁴²

In the light of the above, it is, for now, impossible to make an unequivocal conclusion on the prospects of the "sanctions issue" resolution since the situation around the EU and US energy sector sanctions is constantly developing and depends on the further steps of the interested states towards the settling the Ukrainian crisis.

⁴² *Rosneft Annual Report* (2015), available at https://www.rosneft.com/upload/site2/document_file/a_report_2015_eng1.pdf [Accessed 24 August 2017].