



U.S. and EU Respond to Ukraine Crisis with Sanctions

In March 2014, the U.S. and EU authorities issued a series of sanctions against those deemed to be compromising Ukraine's peace, sovereignty, democratic processes, and state assets. The U.S. also placed a hold on issuance of new export licenses for items destined for Russia. The U.S. and EU join Australia, Canada and Japan, all of whom have recently issued measures against the Russian Federation after its annexation of the Crimea region of Ukraine.

U.S. Sanctions

The U.S. Government has blocked (or frozen) assets of specifically named individuals and entities; and, banned issuance of visas for those individuals' entry into the United States. These measures effectively prohibit U.S. individuals or companies from engaging in any transactions with sanctioned persons, or any entity owned or controlled by one of the sanctioned persons.

The sanctioned individuals include various members of the Russian government, as well as Crimea-based separatists, and former Ukrainian President, Viktor Yanukovich. Additionally, the sanctions target Russian bank, Rossiya, the 17th largest bank in Russia with assets of approximately US\$ 10 billion, known to be used as the personal bank for senior officials of the Russian Federation. Under the sanctions, U.S. financial institutions are prohibited from processing transactions involving Rossiya.

While the U.S. sanctions do not restrict all U.S. person activities involving Russia or Ukraine, U.S. persons should exercise scrutiny and due diligence before engaging in transactions, direct or indirect, with or benefitting anyone located in Russia or Ukraine. More restrictions are likely on the horizon. Of note, we anticipate additional designations of Russian Federation officials. We also anticipate designations of entities in Russia's financial services, energy, metals and mining, engineering, and arms and defense industries. The recent Executive Orders contemplate sanctions against entities in these sectors, but no specific entities have yet been designated. Furthermore, the U.S. Congress is considering legislation that

could, among other things, codify the current sanctions, impose additional restrictions, as well as provide financial assistance and support to Ukraine.

U.S. Export Restrictions

Both the U.S. Department of State and the U.S. Department of Commerce have placed “holds” on issuance of all new licenses for the export of items destined for Russia.

Previous U.S. Measures

The recent U.S. sanctions and export restrictions supplement previous actions by the U.S. Government towards Russia including:

- > December 14, 2012:
 - Enactment of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 (December 14, 2012), which provides for asset freezes and visa bans on gross violators of human rights in Russia, as well as individuals acting as their agents or on their behalf.

- > March 2014:
 - Suspension of bilateral discussions with Russia on trade and investment;
 - Suspension of U.S.-Russia military-to-military engagement;
 - Exclusion of Russia from G-8; and
 - Cancellation of G-8 meetings to be held in Sochi, Russia in June 2014.

EU Sanctions

On March 5, 2014 the EU issued restrictive measures against certain persons, entities and bodies, like former officials of Ukraine. These sanctions include, among other things, freezing funds and restricting funds or economic resources for the benefit of the listed persons. On March 17th and 21st, the EU agreed on the expansion of the sanctions. The March 17th and 21st sanctions focus on natural persons, specifically, officials of the Autonomous Republic of Crimea and the Russian Federation, and natural or legal persons, entities or bodies associated with them.

On the other hand, the EU proposed and adopted measures to help Ukraine stabilizing its economy and improving its financial situation. On March 21st, Ukraine and the EU signed the core parts of an association agreement. This agreement commits the EU and Ukraine to closer cooperation, both politically and economically. More substantial measures are expected after the upcoming Ukrainian presidential elections in May. In this respect, the European Commission proposed a ‘Support Package for Ukraine.’ This package includes, for example, loans to Ukraine from the EU budget, setting up a donor coordination platform, modernization of the Ukraine gas transit system and work on reverse flows, notably via Slovakia and the provisional application of the Deep and Comprehensive Free Trade Area. The proposal includes measures for temporarily removing customs duties on imports of Ukrainian goods. The idea is to implement the tariff section of the Deep and Comprehensive Free Trade Area (DCFTA), which is not yet in force. The preferences will be temporary and unilateral, meaning that Ukraine may continue levying customs duties on EU imports. The plan is that the EU and Ukraine will sign the DCFTA later this year, after which the full free trade agreement will be in force.

Compliance with the Sanctions Measures

Given the fluid nature of the Russia/Ukraine situation and economic sanctions, U.S. and EU persons should exercise caution in dealings (direct and indirect) with or benefitting entities in Russia and Ukraine. Importantly, they should, at a minimum, screen all entities in proposed transactions against the U.S. and EU lists of sanctioned entities and individuals.

Furthermore, anyone who may be subject to U.S. or EU law (or Australian, Canadian or Japanese law, for that matter) should assess the particular activities contemplated to determine whether they are permissible under existing sanctions and export control measures. They may also review and consider enhancing commercial contract terms to provide expressly for termination without penalty if economic sanctions would prohibit performance of the contract. This may help to protect the individual or company doing business with Ukraine or Russia from contractual claims by a counterparty, if one party ceases performance of the contract due to restrictions dictated by economic sanctions.

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