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ALERT

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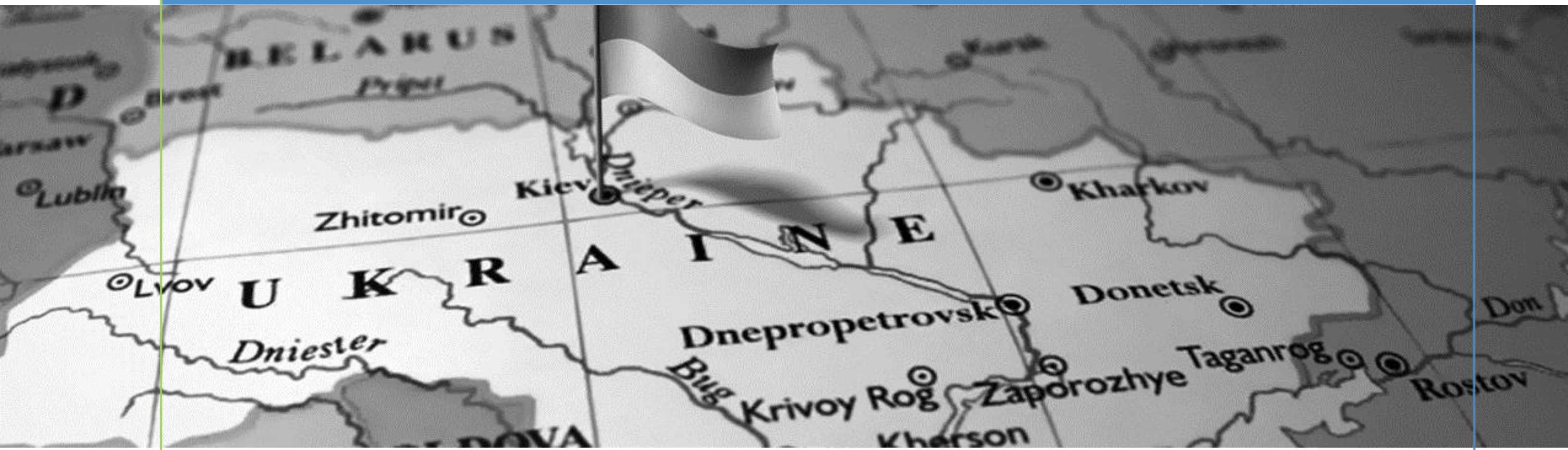

EU Sanctions Concerning Russia and Ukraine Impose Serious Export Compliance Liabilities

The European Union has adopted a bundle of sanction-imposing legislative measures in response to the downing of Malaysian Airlines flight MH17, the turbulent situation in Crimea and Eastern Ukraine,[1] and Russia's alleged role in Eastern Ukraine.[2] To ensure compliance with these sanctions, companies need to review their export compliance programs, or risk significant fines as well as other measures.

These sanctions represent the first time since the conflict in Eastern Ukraine's commencement that the EU has adopted significant sanctions, which largely affect investments in, and trade with, Eastern Ukraine and Russia.[3] These sanctions include a restriction of access to Russian capital markets and financial institutions as well as an embargo on the direct and indirect export of dual-use goods both to Russia and to Russian end users, among others.

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[1] These legislative acts include: (i) Council Decision 2014/508/CFSP of 30 July 2014 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, (ii) Council Decision 2014/507/CFSP of 30 July 2014 amending Decision 2014/386/CFSP concerning restrictions on goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol, (iii) Council Implementing Regulation (EU) No 826/2014 of 30 July 2014 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, and (iv) Council Regulation (EU) No 825/2014 of 30 July 2014 amending Regulation (EU) No 692/2014 concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol.

[2] These legislative acts include: (i) Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, and (ii) Council decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

[3] These sanctions solely relate to certain areas within (Eastern) Ukraine. In fact, the EU adopted a Regulation (EU) No 374/2014,in force since 23 April 2014, which introduces trade measures relating to Ukraine that eliminate or reduce customs duties on originating goods.

1. <u>Sanctions on Russia directly</u>

Embargo on dual use export to Russia or to Russian end users

The sale, supply, transfer or export, directly or indirectly, of dual-use goods and technology, whether or not originating in the EU, to an individual or an entity in Russia or for use in Russia is prohibited when the dual-use product is or may be intended for military use or by a military end user. Certain computers, chemicals, software and electronics are examples of dual-use goods, and numerous other ordinary civilian products are also defined as dual-use goods.

Because of the sanction's breadth, if a dual-use good that may be intended for military purposes is found in the Russian market, the original exporter may be held liable for violating the sanctions (whether or not that exporter actually exported the goods to Russia). This poses a significant risk for exporters of dual-use goods.

Pursuant to the sanctions, the only means of exporting such dual-use goods to Russia is by obtaining an export license, which competent authorities in the EU Member States will issue if the good(s) will not be used for military purposes.[4]

The legislation also implements a trade and financial embargo on providing technical and financial assistance related to military goods. Specifically, any grants, loans and export credit assurances regarding military goods or technology for use in Russia by any end user, individual or entity, are prohibited.

Restricted access to capital markets

All money market instruments and brokering activities[5] exceeding a duration of 90 days are prohibited when issued by one of five major Russian banks, Sberbank, VTB Bank, Gazprombank, Vnesheconombank (VEB) or Rosselkhozbank, which are majority-owned by the Russian Federation. The financial embargo also extends to legal persons, entities or bodies outside of the EU that are over 50 percent owned by one of these Russian banks as well as to legal persons, entities or bodies acting on the bank's behalf.

Thus, even if a company may export its product to Russia, the other sanctions notwithstanding, these financial restrictions may nevertheless prohibit completion of any transaction.

Effect

The legislation has effect as of 1 August 2014 and does not relate to the execution of an obligation arising from an agreement dated before that. Each EU Member State must appoint an authority to monitor the execution of the legislation. Furthermore, each Member State will have to determine the penalties applicable to the infringements of this legislation, which are likely to be significant considering the sanctions' scope.

[4] Prior authorization is also required for the sale, supply, transfer or export, directly or indirectly, of certain technologies mainly relating to the energy industry, for example, a drill pipe used in drilling for oil and gas. The legislation specifically targets projects relating to deep water oil exploration, Arctic oil exploration or shale projects in Russia.

[5] Brokering activities include, but are not limited to, dealing on own account, investment advice, reception and transmission of orders in relation to one or more financial instruments.

2. Crimea and Sevastopol

The European Council, in its meeting of 20-21 March 2014, strongly condemned the annexation of Crimea and the city of Sevastopol (together "Crimea") and in that meeting, the EU adopted legislation, entailing economic, trade and financial restrictions regarding Crimea.[6]

Ban on investments

The most imposing of the new Crimea sanctions are those incorporating a ban on investments in Crimea. The legislation prohibits the sale, supply, transfer, export, directly or indirectly, of key equipment and technology related to infrastructure in: (i) transports, (ii) telecommunications, (iii) energy, and (iv) the exploitation of oil, gas and mineral reserves in Crimea. It also prohibits providing, whether directly or indirectly, financial assistance, technical assistance or insurance services relating to such transactions.

Moreover, creation of a joint venture, granting a loan and the acquisition or extension of a participation relating to creating, acquiring or developing infrastructure in the areas of transport, telecom or energy in Crimea is prohibited.

Effect

This legislation is effective as of 31 July 2014. The consequences of a violation differ by Member State. However, because violating these sanctions constitutes a crime, the consequences of a violation may include large fines and/or imprisonment.

As with the Russian sanctions, these sanctions also impose a risk for export control.

3. Compliance

Given the extent of the sanctions relating to Russia and Crimea, companies in a broad swathe of sectors – ranging from export of certain commercial goods to provision of financial services – will have to review and bolster their internal compliance mechanisms to avoid potential fines or other criminal measures for the sanctions' violation.

In case an export compliance program is not yet in place, companies would need to initiate such a process. Broadly speaking, companies would be wise to keep updated on the changes of these sanctions, create an internal awareness program and review current export compliance proceedings in place.

In order to avoid running afoul of the sanctions, companies should: (1) develop an internal sanctions-compliance policy; (2) perform periodic internal audits; (3) amend existing contracts to comply with the sanctions; and (4) provide for a periodic training of management and staff regarding the risks of violations, and the (civil and criminal) sanctions such violations could trigger, for the company and for management and staff personally.

[6] In addition to the investment ban discussed further, the Council also expanded the list of individuals and entities that undermine Ukrainian sovereignty—it now includes 95 individuals and 23 entities–targeting individuals who are close friends and business partners of President Putin as well as Russian financial institutions such as the Russian National Commercial Bank.

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