



U.S. Government to Expand Ukraine and Russia-Related Sanctions

On Dec. 13, 2014, the U.S. Congress unanimously passed the Ukraine Freedom Support Act (UFSA) authorizing the president to expand sanctions against Russia and provide military aid to Ukraine. President Obama is expected to sign the legislation into law.

1) Description of the New Measures

A. Energy and Defense Sector Sanctions

If the legislation is enacted, the president **is required to** impose sanctions against Rosoboronexport, the state agency that promotes Russia's defense exports and arms trade, and against Russian-owned or -controlled defense entities that knowingly manufacture, sell, transfer, or broker the transfer of defense articles into Syria, Ukraine, Georgia, Moldova, or any country without the consent of the internationally recognized government of that country. The president must also impose sanctions on parties that knowingly assist, sponsor, or provide financial, material, or technological support for, goods or services to or in support of, entities that engage in the above activities.

The president **may** impose sanctions against any foreign person if that person knowingly makes a significant investment in a Russian deepwater, Arctic offshore, or shale project for crude oil extraction. The Department of Commerce, Bureau of Industry and Security (BIS) and the Department of the Treasury, Office of Foreign Assets Control (OFAC) may also impose additional licensing requirements or other restrictions on the export or reexport of items for use in Russia's energy sector, including equipment used for tertiary oil recovery.

Finally, if the president makes a determination that Gazprom is withholding significant gas supplies from NATO member countries or countries such as Ukraine, Georgia, or Moldova, the president must prohibit U.S. persons from transacting in, providing financing for, or otherwise dealing in Gazprom's new equity or debt of longer than 90 days' maturity, and must also impose additional sanctions.

The legislation provides the president with a list of sanctions from which he may choose. These sanctions include:

- > Limitations on Export-Import Bank assistance;
- > Prohibition on U.S. government procurement from the sanctioned person;
- > Prohibition of export of any defense articles or services to the sanctioned person;
- > Prohibition of issuance of licenses for dual-use items;
- > Blocking of property;
- > Prohibition on bank transactions;
- > Ban on investment in sanctioned person's new equity or debt of longer than 30 or 90 days' maturity;
- > Travel ban; and/or
- > Any of the above sanctions on principal executive officers if the sanctioned person is an entity.

B. Foreign Financial Institution Sanctions

The president may impose the sanctions described above on foreign financial institutions that knowingly engage in transactions involving the proscribed activities, as well as foreign financial institutions that facilitate transactions with any Russian national listed on OFAC's Specially Designated Nationals (SDN) List pursuant to the various Russia/Ukraine-related sanctions measures.

2) How to Comply with the Measures

a) If the legislation is enacted, U.S. companies and individuals may continue to export to Russia and Ukraine, as long as the exports comply with U.S. export control laws and do not involve any entity or individual sanctioned or otherwise restricted by the U.S. Government.

b) Compliance and in-house legal teams should continue to notify and update operational personnel dealing or potentially dealing, directly or indirectly, with transactions involving Russia or Ukraine. Communicate to relevant personnel that significant restrictions exist for both U.S. and non-U.S. entities engaged in or planning to be engaged in transactions that enter the U.S. territory or financial system (such as U.S. dollar clearing transactions) as many prominent Russian and Ukrainian individuals, entities, and financial institutions continue to be sanctioned by the U.S. Government.

c) U.S. entities and non-U.S. entities engaged in transactions that enter the U.S. territory or financial system should continue to screen all parties and entities involved in Russia or Ukraine-related transactions, as well as the transaction as such, against all of the most up-to-date relevant lists of designated and sanctioned individuals and prohibited transactions.

d) If a U.S. entity, or non-U.S. entity engaged in transactions that enter the U.S. territory or financial system, proposes to have dealings (directly or indirectly) with any entity or individual that does appear on any of the sanctions lists, then the entity should halt all activities related to the transaction, and consult with legal counsel whether a given sanction prohibits the transaction or, instead, triggers a licensing requirement.

Furthermore, anyone who may be subject to U.S. law 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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