



## U.S. Treasury & Commerce Departments Issue New Crimea Authorizations and Clarifications

The U.S. Government has amended the Crimea sanctions, in part, to foster and support the free flow of information to individual citizens in the Crimea region of Ukraine (Crimea) and to ensure that the sanctions against Crimea do not have the unintended effect of preventing companies from providing personal communications tools to individuals in Crimea. In 2010, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) made similar amendments to the sanctions programs for Iran, Sudan, and Cuba to ensure that individuals in these countries can exercise their universal right to free speech and information to the greatest extent possible. Specifically, on May 22, 2015, OFAC issued General License (GL) No. 9 authorizing the export or reexport of software and services related to Internet-based communications (e.g., email, instant messaging, chat, social networking, or blogging) to Crimea, with certain restrictions. This would permit, for example, U.S. software or app developers to allow users in Crimea to purchase and/or download products that support and enable Internet-based communications.

The U.S. Department of Commerce, Bureau of Industry and Security (BIS) concurrently amended the Export Administration Regulations (EAR) to make the EAR's Crimea provisions consistent with OFAC's GL No. 9. BIS also made additional clarifications to the EAR regarding Crimea's Country Group designation and deemed exports to foreign nationals from Crimea. [OFAC's GL No. 9](#) and [BIS's final rule](#) are described below.

### 1) Description of the New Crimea Authorizations and Clarifications

#### A. General License No. 9

GL No. 9 authorizes the export and reexport, directly or indirectly, from the United States or by U.S. persons to persons in Crimea of services and software incident to the exchange of personal communications over the Internet (e.g., email, instant messaging, chat, social networking, or blogging). In order to rely on GL No. 9, the software required to enable the communications services described above

must be (1) classified as EAR99 or under Export Control Classification Number (ECCN) 5D992 (or, if foreign origin and located outside of the United States, classified under EAR99 or ECCN 5D992 if it were subject to the EAR); and (2) widely available to the public at no cost to the user.

GL No. 9 may not be used to export or reexport such software or services to prohibited persons or entities. Further, GL No. 9 does not authorize the export or reexport of commercial-grade Internet connectivity services or telecommunications transmissions facilities, or of Web-hosting services that are for commercial endeavors or of domain registration services. In other words, GL No. 9 does not authorize a U.S. telecommunications company to operate, install, or service major telecommunications infrastructure in Crimea. Additionally, GL No. 9 would not authorize U.S. persons or U.S. companies to rely on or retain the services of technical support companies located in Crimea.

OFAC may issue specific licenses on a case-by-case basis for the export or reexport of services or software incident to the exchange of personal communications over the Internet not specified in GL No. 9 and/or for related hardware.

#### *B. Crimea-Related Clarifications to the EAR*

##### 1. Corresponding Changes to EAR Consistent with OFAC's GL No. 9

In order to make the EAR consistent with OFAC's GL No. 9, BIS has amended the Crimea provisions in the EAR to allow exports or reexports to Crimea and transfer within Crimea without a license of software necessary to enable the exchange of personal communications over the Internet that is (1) classified as EAR99 or under ECCN 5D992; and (2) widely available to the public at no cost to the user.

##### 2. Application of Country Group Designations for Crimea

BIS also amended the EAR by adding a footnote to Ukraine's designation in the EAR's Country Chart to clarify that Crimea uses the same Country Group provisions under the EAR as the country of Ukraine. Notably, however, only a limited number of license exceptions are available for exports to Crimea versus many more license exceptions that are available for exports to Ukraine.

##### 3. Application of Deemed Exports and Reexports for Crimea

BIS also amended the EAR by clarifying in the EAR Crimea provisions that for purposes of determining whether a deemed export and/or deemed reexport (i.e., releasing technology or software source code) license is required under the EAR, for foreign nationals located in or from Crimea, the nationality of the foreign national is used to make the determination. More specifically, if a Ukrainian national is in the United States and has a Ukrainian passport, the person seeking to conduct the deemed export would use Ukraine to determine the EAR license requirements and would not need to determine whether the Ukrainian national was from Crimea.

## **2) How to Comply with the New Measures**

Anyone who may be subject to U.S. law should assess, in conjunction with counsel, the particular activities contemplated to determine whether they are permissible under existing sanctions and export control measures. Contemplated transactions in or with Crimea should be reviewed to confirm that the activities fall within the scope of what is permissible under U.S. regulations.

Based in Washington, D.C., our [Export Controls](#) team advises and represents clients on the full range of international goods, software and technology transfer issues. We have broad experience providing export controls and related regulatory counsel to both U.S. and foreign businesses. Our industry-specific experience includes assisting companies in a wide range of industries such as aerospace, defense, firearms and ammunition, electronics, software and information technology, food, consumer products, biotechnology, medical device, and engineering services.

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