

E-ALERT | International Trade Controls

March 18, 2014

UNITED STATES AND EUROPEAN UNION IMPOSE ADDITIONAL SANCTIONS IN RESPONSE TO THE CRISIS IN UKRAINE

The United States imposed new sanctions this week against high-level Russian government officials, and current or former Ukrainian leaders responsible for the crisis in Ukraine. The EU has also adopted new sanctions, further to the sanctions regulation issued by the European Council on March 5, 2014. The sanctions were imposed after Sunday's disputed referendum in the Ukrainian region of Crimea, which Russian armed forces are currently occupying. Crimean voters were asked to address whether the region should remain part of Ukraine or secede and join Russia. The Crimean regional government announced Sunday that the voters had chosen secession, and measures are underway in the Russian government to officially recognize that determination. However, Ukrainian, U.S. and European leaders condemned the referendum as illegitimate because it was not undertaken in accordance with Ukrainian law and was conducted under foreign military occupation.

U.S. Sanctions and Visa Ban

In the United States, President Obama [issued an Executive Order](#) authorizing the Secretary of the Treasury, in consultation with the Secretary of State, to impose sanctions on officials of the Russian government, any individual or entity that operates in the Russian arms or related materiel sector, and any individual or entity that is owned or controlled by, acts for or on behalf of, or that provides material assistance or other support to, any senior Russian government official or other party blocked under the Order. An Annex to the Order identified the following seven high-ranking members of the Russian government currently subject to the sanctions: Vladislav Surkov and Sergey Glazyev, both advisors to President Putin; Leonid Slutsky and Yelena Mizulina, both Deputies in the State Duma; Federation Council Speaker Valentina Matviyenko; Member of the Federation Council Andrei Klishas; and Deputy Prime Minister Dmitry Rogozin. No Russian defense companies have yet been sanctioned pursuant to the Order.

A [White House Fact Sheet](#) indicated that the U.S. government is prepared to identify and sanction powerful Russian individuals who do not hold public office. Significantly, however, the Fact Sheet noted that the United States currently plans to target such individuals' personal assets and not companies that they may manage on behalf of the Russian state. If the U.S. government takes additional action to sanction leading Russian business figures, there may be practical restrictions to observe in dealing with businesses in which they play a role.

The U.S. Department of the Treasury also [announced](#) that the U.S. government is imposing sanctions on four Ukrainian politicians pursuant to [Executive Order 13660 issued last week](#), including Crimea-based separatist leaders Sergey Aksyonov and Vladimir Konstantinov; former President of Ukraine Viktor Yanukovich; and his former Chief of Staff Viktor Medvedchuk. See our recent e-alert on the Executive Order [here](#).

Under U.S. law, U.S. persons are prohibited from engaging in any dealings with the sanctioned Russian and Ukrainian parties; property and property interests of those parties that are or come

within the United States or that are or come into the possession or control of a U.S. person must be blocked; and dealings in such blocked property by U.S. persons are prohibited. In addition, these sanctioned parties are prohibited from entering the United States. The sanctions reach activities by U.S. citizens, permanent resident aliens, and legal entities organized under the laws of the United States (including their non-U.S. branches). The sanctions also apply to non-U.S. persons when they are physically present in the United States, act within the United States, or cause a violation of the sanctions by another person, but the sanctions do not otherwise reach activities outside the United States by non-U.S. persons, including the independent, non-U.S. subsidiaries of U.S. companies.

EU Sanctions

The EU also adopted sanctions yesterday. These are set out in [Council Decision 2014/145/CFSP](#) and [Council Regulation \(EU\) No 269/2014](#) (the “Regulation”). The EU measures are limited to imposing visa bans and asset freezing measures on 21 individuals, identified by the EU as sharing responsibility for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine. These measures follow the imposition of EU sanctions on 18 Ukrainian individuals on March 5, and bring the total number of persons subject to the EU’s Ukraine-related sanctions to 39.

The list of designated individuals includes several Crimean politicians, among them Sergey Valeryevich Aksyonov (who was elected “Prime Minister of Crimea” in an election deemed unconstitutional by the new Ukrainian government), several members of the Russian Federation Council and the Russian Duma who supported the Crimean referendum, and a few military officers commanding the Russian forces deployed to Crimea. Notably, the EU list does not reach Russia’s private sector, despite earlier press reports that the asset freeze would potentially target the CEOs of Gazprom or Rosneft.

The EU asset freezing measures are consistent in scope with those imposed under other EU financial sanctions regulations. All funds and “economic resources” belonging to, owned, held, or controlled by the designated individuals must be frozen. (“Economic resources” is a broad term, and includes “assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but which may be used to obtain funds, goods or services.”) Parties subject to the jurisdiction of [Regulation](#) are also prohibited from making funds or “economic resources” available, directly or indirectly, to or for the benefit of the listed individuals. As a practical matter, the foregoing measures will restrict most business activities with designated individuals, and may also restrict dealings with entities that are owned or controlled by those individuals.

Finally, the [Regulation](#) also specifically prohibits attempts to knowingly circumvent the asset freeze.

Implications for Investment in the Region

Russia could well take retaliatory actions in response to the U.S. and EU sanctions – for example by implementing sanctions of its own against Ukrainian, U.S. or EU targets, or by enacting blocking legislation to prohibit compliance with the U.S. or EU sanctions measures. The Russian Duma is, for example, now considering legislation authorizing the confiscation of assets belonging to U.S. and European companies, while some Russian government officials have threatened to respond to Western sanctions with equivalent measures targeting the United States and Europe. Such retaliation by Russia could threaten U.S. or European investment in the region and undermine contractual relationships that U.S. and European companies have with their Russian and Ukrainian partners. Companies invested in the region should be evaluating certain critical issues now, including whether their investments are structured in a manner that affords them the strongest protections possible under international law and bilateral investment treaties. These companies

should also assess the remedies available under applicable contracts and investment treaties in the event of adverse government action.

The crisis in Ukraine is still unfolding, and future political and military developments may produce additional legal consequences. Yesterday, Russia recognized Crimea as a sovereign state; today it enacted legislation formally annexing Crimea, and signed a treaty to that effect with the disputed prime minister of Crimea and mayor of the Crimean city of Sevastopol. In response, the U.S. and EU governments may expand the scope of their sanctions programs in the coming days. The EU heads of state and government are already scheduled to meet on March 20 and 21 to consider further sanctions against Russia. We are well-positioned to advise companies and individuals on compliance with the new U.S. and EU sanctions, as well as on the broader impact of the crisis on foreign investment in both Ukraine and Russia, and other legal and commercial interests in the region.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our foreign trade controls practice group:

International Trade Controls

Peter Flanagan	+1.202.662.5163	pflanagan@cov.com
Corinne Goldstein	+1.202.662.5534	cgoldstein@cov.com
Peter Lichtenbaum	+1.202.662.5557	plichtenbaum@cov.com
David Lorello	+44.(0)20.7067.2012	dlorello@cov.com
Lisa Peets	+44.(0)20.7067.2031	lpeets@cov.com
Kimberly Strosnider	+1.202.662.5816	kstrosnider@cov.com
David Addis	+1.202.662.5182	daddis@cov.com
Agnieszka Polcyn	+44.(0)20.7067.2039	apolcyn@cov.com
Eric Sandberg-Zakian	+1.202.662.5603	esandbergzakian@cov.com
Ezra Steinhardt	+44.(0)20.7067.2381	esteinhardt@cov.com

Investment Counseling and International Arbitration

Marney Cheek	+1.202.662.5267	mcheek@cov.com
Jonathan Gimblett	+1.202.662.5457	jgimblett@cov.com
Ben Holland	+44.(0)20.7067.2109	bholland@cov.com
David Pinsky	+1.212.841.1177	dpinsky@cov.com
Jeremy Wilson	+44.(0)20.7067.2110	jwilson@cov.com

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to unsubscribe@cov.com if you do not wish to receive future emails or electronic alerts.

© 2014 Covington & Burling LLP, 1201 Pennsylvania Avenue, NW, Washington, DC 20004-2401. All rights reserved.