

E-ALERT | International Trade Controls

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UNITED STATES AND EUROPEAN UNION IMPOSE SANCTIONS RELATED TO UNREST IN UKRAINE

The United States and European Union have taken notable steps to target with sanctions certain former Ukrainian government officials and others who have contributed to the destabilization of Ukraine, including its Crimean region. Russia has threatened to respond by authorizing the confiscation of U.S. and European property or imposing retaliatory sanctions against the United States and the European Union.

In the United States, President Obama today issued an [Executive Order](#) authorizing the imposition of sanctions on individuals who have undermined democratic government in Ukraine, contributed to the misappropriation of its assets, and occupied the Ukrainian region of Crimea, including those involved in the apparent attempt by the Crimean parliament to break away from Ukraine and join Russia. In addition, the U.S. Department of State [established](#) a visa ban on a number of officials and other individuals involved in the crisis.

In the European Union, the Council of the European Union (“EU Council”) announced yesterday [Council Decision 2014/119/CFSP](#) and [Council Regulation \(EU\) No 208/2014](#), which impose asset freezing measures against former Ukrainian President Viktor Yanukovich and 17 other individuals.

Canada and Switzerland also imposed sanctions on Mr. Yanukovich and his associates.

The crisis in Ukraine is fast-moving and fluid. 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.

U.S. SANCTIONS AND VISA BAN

The Executive Order imposes sanctions on individuals or entities identified by the Secretary of the Treasury, in consultation with the Secretary of State:

- “to be responsible for or complicit in, or to have engaged in, directly or indirectly . . . actions or policies that undermine democratic process or institutions in Ukraine; . . . [or] that threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine;”
- “to be responsible for or complicit in, or to have engaged in, directly or indirectly . . . misappropriation of state assets of Ukraine or of an economically significant entity in Ukraine;”
- “to have asserted governmental authority over any part or region of Ukraine without the authorization of the Government of Ukraine;”
- “to be a leader of an entity that has, or whose members have, engaged in” such activity or been sanctioned pursuant to the Order; or

- “to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of” such activity or any person who has been sanctioned pursuant to the Order.

The Order also sanctions persons determined to be owned or controlled by, or acting for or on behalf of, any person subject to the sanctions.

Unlike some Executive Orders, this Order (which has not yet been assigned a number) does not include an annex identifying an initial list of sanctioned parties. Accordingly, no entity or individual will actually be subject to sanctions until the Secretary of the Treasury takes formal action to designate sanctioned parties.

Once a party is so designated, U.S. persons are prohibited from engaging in any dealings with that party; property and property interests of that sanctioned party 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, the Order prohibits sanctioned parties 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 present in the United States, but the sanctions do not reach activities by non-U.S. persons located outside the United States, including the non-U.S. subsidiaries or affiliates of U.S. companies.

The White House also announced that the State Department has implemented a visa ban on “officials and individuals . . . responsible for or complicit in threatening the sovereignty and territorial integrity of Ukraine.” The State Department generally does not publish the names of individuals subject to such bans, which prohibit entrance into the United States and may result in existing visas being revoked.

The sanctions and visa ban constitute concrete actions expressing U.S. displeasure with the Russian intervention in Crimea, and the preceding events in Ukraine that resulted in unrest. However, these measures impose restrictions far less significant than the comprehensive sanctions maintained by the United States against countries such as Iran, Sudan, Syria, and Cuba, and do not generally prohibit trade with or investment in Russia, Crimea, or Ukraine. While the situation remains unpredictable, at this time the U.S. government does not appear poised to expand the Order into a broader sanctions regime. Nonetheless, the Administration has stated that depending on how the situation develops, the United States is prepared to consider additional steps and sanctions as necessary.

EU AND SWISS SANCTIONS

Council Regulation (EU) No 208/2014 (the “Regulation”) freezes the assets of Mr. Yanukovich and 17 other individuals, including Ukraine’s former Ministers of Internal Affairs, Justice, Education and Science, and Health; Mr. Yanukovich’s two sons, Oleksandr Yanukovich and Viktor Yanukovich; senior government officials formerly in charge of the Ukrainian Security Services and Presidential Administration; the Ukrainian Prosecutor General and his son; former Prime Minister Mykola Azarov and his son; several advisors to Mr. Yanukovich; and several Ukrainian businessmen. All of those individuals have been identified for their role in the embezzlement of Ukrainian state funds and the illegal transfer of those funds out of Ukraine. Notably, this list does not include the principal Ukrainian oligarchs, most of whom have recently expressed their support for a unified Ukraine.

The asset freezing measures imposed under the Regulation are consistent in scope with those imposed under other EU financial sanctions regulations. Specifically, all funds and “economic

resources” belonging to, owned, held, or controlled by the designated individuals must be frozen. “Economic resources” sweep broadly, and include “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.” EU parties are also prohibited from making funds or “economic resources” available, directly or indirectly, to or for the benefit of those individuals. As a practical matter, these asset freezing measures restrict most business activities with the designated individuals.

Because the restrictions extend to indirect dealings with designated parties, Member States interpret the restrictions to extend to dealings with entities owned or controlled by designated parties. As some of the designated individuals appear – based on public reports – to have links to Ukrainian businesses in energy (solar, oil, and gas), media, and financial services sectors, foreign companies active in those fields may be particularly affected.

In addition to the asset freeze itself, the Regulation prohibits activities that have the “object” or “effect” of “circumventing” the asset freeze. The Regulation also prohibits parties subject to its jurisdiction from satisfying claims in connection with any contract or transaction the performance of which has been affected by the asset freeze, if those claims are made by (i) the designated parties themselves or (ii) any natural or legal person, entity, or body acting through or on behalf of the designated parties.

The EU measures follow the implementation of asset freezing restrictions against certain designated individuals by Swiss, Austrian, and Liechtenstein authorities on February 26. Notably, there is not complete overlap among these lists – a number of parties are designated under some but not all of the lists. Accordingly, companies with operations in the EU and Switzerland should ensure that they review both the EU and national designation lists.

Given Russia’s recent activities in Crimea, European policymakers also are considering the imposition of targeted restrictive measures against Russia, as has been widely reported in the media. In parallel to those discussions, many Member State Governments have announced that they will review existing licenses authorizing the export of military items to Russia. The UK Government, in particular, has indicated that it will review all existing export licenses.

IMPLICATIONS FOR INVESTMENT IN THE REGION

In retaliation for the new U.S. and EU sanctions, the Russian Duma is considering legislation authorizing the confiscation of assets belonging to U.S. and European companies. More generally, the uncertainty and instability in the region have potentially significant ramifications for contractual relationships that U.S. and European companies have with their Russian and Ukrainian partners. While Russia has not yet taken specific action that threatens foreign investments, companies should be evaluating 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 and whether *force majeure* or other contractual provisions may be used by partners to avoid contractual obligations. Companies should also be assessing under applicable contracts and investment treaties their possible remedies in the event of contractual breach or adverse government action.

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The crisis in Ukraine is still developing. Russian government officials have threatened to respond with retaliatory sanctions that could conceivably do significant damage to U.S. and European

interests in the region. The United States and European Union could also take additional action as the crisis unfolds.

We are well-positioned to advise clients on U.S. and EU sanctions, the impact of the ongoing crisis on investments in Ukraine and Russia, and future developments that may affect legal and commercial interests in the region.

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