

Developments in U.S. and EU Sanctions Against Russia and the Occupied Crimea Region of Ukraine

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International Trade Controls

Within the past week, the United States and EU have enacted a range of further measures sanctioning Russia in response to its actions in Ukraine.

Late last week, President Obama issued an executive order enacting comprehensive sanctions against the Crimea region, following an expansion by the EU of its sanctions against Crimea and Sevastopol. The United States also designated additional Russian and Ukrainian parties for sanctions, and President Obama has signed legislation establishing new Russia sanctions authorities. In addition, the EU has issued new guidance relating to its financial restrictions on Russia.

U.S. and EU Issue Coordinated Sanctions Against the Crimean Peninsula

EU Expands Sanctions Against Crimea and Sevastopol

On December 18, 2014, following an EU summit in Brussels, the EU announced wide-ranging prohibitions on foreign investments in Crimea and Sevastopol. [Council Regulation No 1351/2014](#) (the “Regulation”), which implements [Council Decision 2014/933/CFSP](#), went into effect on December 20, 2014. Key provisions include the following:

- Foreign Investment in Crimea and Sevastopol. Article 2a prohibits investments and related investment activities in Crimea and Sevastopol. Specifically, the Regulation prohibits:
 - acquiring or extending participation in ownership of real estate located in Crimea or Sevastopol;
 - acquiring or extending participation in ownership or control of an entity in Crimea or Sevastopol, including the acquisition in full of such entity or the acquisition of shares, and other securities of a participating nature of such entity;
 - granting or being part of any arrangement to grant any loan or credit or otherwise provide financing, including equity capital, to an entity in Crimea or Sevastopol;
 - creating any joint venture in Crimea or Sevastopol or with an entity in Crimea or Sevastopol;
 - providing investment services in relation to any of the activities above.

For the purpose of the Regulation, an “entity” is defined as that “having its registered office, central administration or principal place of business in Crimea or Sevastopol, its subsidiaries or affiliates under its control in Crimea or Sevastopol, as well as branches and other entities operating in Crimea or Sevastopol.”

Importantly, Article 2a includes a grandfathering clause that exempts activities in relation to obligations arising from contracts concluded before December 20, 2014, or ancillary contracts necessary for the execution of such contracts, provided that the competent EU Member State authority has been informed at least five working days in advance.

- **Export Controls and Related Activities.** Article 2b prohibits the sale, supply, transfer, or export of certain goods listed in Annex II of the Regulation to any party in Crimea or Sevastopol, or for use in Crimea or Sevastopol. [Annex II](#) includes a wide range of goods and technologies suited to the transport, telecommunications, and energy sectors, as well as to the exploration and production of oil, gas, and mineral resources. Related technical assistance, brokering services, and financial assistance also are prohibited.

Article 2b also contains grandfathering provisions, meaning that parties that have contractual commitments to supply affected items may do so if their contracts were concluded before December 20, 2014, or if their obligations arise from ancillary contracts necessary for the execution of such contracts. The competent Member State authority must be notified in advance, and the supply must occur prior to March 21, 2015.

- **Activities related to Infrastructure in Crimea and Sevastopol.** Article 2c bans providing technical assistance, or brokering, construction, or engineering services directly relating to infrastructure in Crimea or Sevastopol for the transport, telecommunications, and energy sectors, and for the exploration and production of oil, gas, and mineral resources. The Regulation provides the same carve-out (in relation to contracts concluded before December 20, 2014) as Article 2b.
- **Tourism Services.** The Regulation (Article 2d) further prohibits the provision of “services directly related to tourism activities in Crimea or Sevastopol,” subject to limited exceptions. The term “services” is not defined, but ships providing cruise services are now prohibited from entering into or calling at seven listed ports in the Crimean Peninsula. This prohibition applies to ships flying the flag of a Member State or any ship owned and under the operational control of a Union shipowner or any ship over which a Union operator assumed overall responsibility as regards its operation.

In order to minimize the effect of these restrictive measures on economic operators and on the civilian population in Crimea or Sevastopol, the Regulation provides for some limited exceptions (in addition to those highlighted above). For example, Article 2e allows for the competent EU Member State authority to grant an authorization for certain activities that would otherwise be prohibited under Articles 2a and 2b to the extent those activities are related to projects exclusively in support of hospitals, or other public health institutions providing medical services, or civilian education establishments located in Crimea or Sevastopol; for appliances or equipment for medical use; or for maintaining existing infrastructure for safety reasons. Licenses also may be available in certain limited circumstances, where the provision of the items or related services is necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety, including the safety of existing infrastructure or the environment.

U.S. Issues Sanctions Targeting Crimea Region

Complementing the EU Regulation, President Obama signed an [Executive Order](#) on December 19, 2014¹ that prohibits transactions and blocks property of designated individuals associated with Crimea, and more generally prohibits a range of transactions with or for the Crimea region of Ukraine. The Crimea region is defined in the Order to include not only the land in that region but also “any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on purported sovereignty over that land territory.” Under the Executive Order, the following activities by a U.S. person or within the United States are prohibited:

- “New investment” in the Crimea region. The scope of prohibited “new investment” is not defined in the Executive Order but has been interpreted broadly under other sanctions programs to include equity investment, the commitment or contribution of funds or other assets (including extensions of credit), and contracts for the economic development of resources in the target market (including the supervision or guarantee of such contracts or participation in profits, earnings, or royalties from such contracts).
- The importation into the United States, directly or indirectly, of any goods, services, or technology from the Crimea region.
- The exportation, reexportation, sale, or supply, directly or indirectly, of any goods, services, or technology to the Crimea region.
- Any approval, financing, facilitation, or guarantee of a transaction by a foreign person that would be prohibited by the order if performed by a U.S. person or within the United States.

The Executive Order also gives the Treasury Department broad authority, in consultation with the Secretary of State, to identify parties in Crimea for asset-blocking measures along with parties that have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any party whose assets are blocked.

In tandem with the President’s Executive Order, the Treasury Department’s Office of Foreign Assets Control (“OFAC”) issued [General License No. 4](#), which authorizes exports or reexports from the United States or by a U.S. person of most agricultural commodities, medicine, and medical supplies (including those medical devices identified on OFAC’s [List of Medical Supplies](#) and replacement parts) to Crimea or to third persons specifically for the resale to Crimea, as well as facilitation of such exports/reexports. General License No. 4 also covers certain transactions related to covered activities, such as cargo arrangements, insurance, arrangements for financing and payments, and entry into executory contracts. Certain medicines, medical supplies/devices and agricultural products are excluded, and the general license does not authorize supply to military or law enforcement purchasers or importers in Crimea or to parties blocked under OFAC’s terrorism, weapons proliferation, or narcotics trafficking sanctions. Case-by-case licensing is available for the export or reexport of those medical devices that are not qualified medical supplies.

On the same day that President Obama signed the Crimea Executive Order, OFAC [added 24 parties](#) (seven entities and 17 individuals) to its List of Specially Designated Nationals and Blocked Persons (“SDN List”) pursuant to the Order. The designated persons are separatists of

¹ This Executive Order has not yet been assigned a number.

either Russian or Ukrainian citizenship along with the militias or entities they lead or support (including a Russian equity investment group). As a result of this designation, the property and interests in property of the designated parties that are, or come into, the United States or the possession of control of a U.S. person are blocked and cannot be dealt in absent licensing or other authorization from OFAC.

U.S. Enacts the Ukraine Freedom Support Act of 2014

On December 18, 2014, President Obama signed into law the Ukraine Freedom Support Act of 2014 (the “Act”), which went into effect on the same date.² The Act, [discussed in our e-alert of December 17](#), provides the President with authority to impose additional sanctions with respect to Russia, although the President stated upon signing the Act that the Administration “does not intend to impose sanctions under this law,” but retains the ability to do so if the situation warrants it.

Sanctions Relating to the Russian Defense Sector

The Act directs the President to impose, within 30 days of its enactment, at least three sanctions (from a menu of sanctions enumerated in the Act) against Rosoboronexport, a state agency that promotes Russia’s defense exports and arms trade. Additionally, the Act directs the President to impose, 45 days or more after the Act’s enactment, at least three of the listed sanctions against foreign persons that the President determines are entities owned or controlled by the Russian government or Russian nationals and that: (i) knowingly manufacture or sell defense articles, (ii) transfer defense articles, or (iii) broker or otherwise assist in the transfer of defense articles into Syria, or into the territory of a specified country without the consent of the internationally recognized government of that specified country.

Moreover, the Act directs the President to impose, 45 days or more after the Act’s enactment, at least three of the listed sanctions against foreign persons the President determines knowingly, on or after December 18, 2014, assist, sponsor, or provide financial, material, or technological support for, or goods or services to or in support of, an entity owned or controlled by Russian interests with respect to covered activities described above involving defense items for Syria or another specified country.

The Act defines “specified country” as Ukraine, Georgia, and Moldova and any other country designated by the President as a country of significant concern for purposes of Section 4(a) of the Act, such as Poland, Lithuania, Latvia, Estonia, and the Central Asia republics.

Sanctions Relating to the Russian Energy Sector

The Act authorizes (but does not direct) the President to impose, 45 days or more after the Act’s enactment, three or more of the listed sanctions against a foreign person if the President determines that such person knowingly makes a significant investment in a “special Russian crude oil project,” which the Act defines as a project intended to extract crude oil from: (i) Russia’s Exclusive Economic Zone in waters more than 500 feet deep; (ii) Russian Arctic offshore locations; or (iii) shale formations located in Russia. The term “significant investment” is not defined in the Act.

² The Public Law has not yet been published by the Government Printing Office but the text as enacted can be accessed [here](#).

The Act also authorizes the President to impose additional licensing requirements for or other restrictions on the export or reexport of items for use in Russia's energy sector, including equipment for tertiary oil recovery. The term "tertiary oil recovery" is not defined in the Act, but is generally understood to mean techniques for increasing the amount of crude oil that can be extracted from an oil field when more traditional methods are no longer effective.

Finally, the Act directs the President to impose sanctions on Gazprom if he determines that Gazprom is withholding significant natural gas supplies from NATO member countries or further withholds significant natural gas supplies from countries such as Ukraine, Georgia, or Moldova. In such circumstances, the President is required within 45 days of his determination, to (i) prohibit U.S. persons from transacting in, providing financing for, otherwise dealing in Gazprom debt of longer than 90 days' maturity and which is issued on or after the date on which sanctions are imposed, and Gazprom equity issued on or after that date, and (ii) impose at least one additional sanction against Gazprom from the menu summarized below. While the sanctions against Gazprom are mandatory following a determination, making that determination is within the President's discretion.

Menu of Sanctions Enumerated in the Act

The menu of sanctions from which the President can choose includes the following:

- Denial of U.S. Export-Import Bank assistance in connection with the export of any goods or services to the sanctioned person.
- Prohibition on entering into any contract for the procurement of goods or services from the sanctioned person by U.S. executive agencies.
- Prohibition on the export or provision by other means (e.g., sale, lease, loan, grant), directly or indirectly, of defense articles and defense services to the sanctioned person and the issuance of any license or other approval to the sanctioned person under Section 38 of the Arms Export Control Act.
- Denial and suspension of export licenses for dual-use items to the sanctioned person.
- Prohibition on any person from acquiring, holding, withholding, using, transferring, withdrawing, transporting, or exporting any property subject to U.S. jurisdiction and with respect to which the sanctioned person has any interest; dealing in or exercising any right, power, or privilege with respect to such property; or conducting any transaction involving such property.
- Prohibition on certain banking transactions to the extent such transactions are subject to U.S. jurisdiction and involve any interest of the sanctioned person.
- Prohibition on U.S. persons from transacting in, providing financing for, or otherwise dealing in certain debt or equity of the sanctioned person.
- Denial and revocation of U.S. visa or other documentation in the case of a sanctioned person who is an individual.
- Imposition of any of these sanctions on the principal executive officers (or individuals performing similar functions and with similar authorities as such officers) of sanctioned entities.

Exceptions to Sanctions and Waiver

Importantly, the Act vests significant discretion with the President. The President has the authority to waive the application of these sanctions generally or related to a specific transaction if the President determines that the waiver (or transaction) is in the national security interest of the United States. The Act also lists, in Section 4(d), a [number of exceptions](#) to certain sanctions. One exception makes importation of goods exempt from the Act's blocking authority. The President also has discretion to exempt the following from the scope of sanctions imposed under the Act:

- Procurement of defense articles or defense services, and certain eligible products, under certain existing arrangements and subject to certain conditions.
- Provision of products, technology, or services under arrangements entered into before a party is designated for sanctions.
- Spare parts, component parts and information and technology essential to U.S. products or production, as well as routine servicing and maintenance of U.S. products to the extent alternative sources are not readily or reasonably available.
- Food, medicine, medical devices, or agricultural commodities.

Sanctions on Russian and Other Foreign Financial Institutions

The Act also authorizes the President to impose a prescribed sanction on any foreign financial institution that the President determines knowingly engages, on or after December 18, 2014, in significant transactions for any person that is made subject to sanctions under the Act involving the same activities as described above: (i) knowing manufacture or sale of defense articles, transfers of defense articles, or brokering or other assistance in the transfer of defense articles into Syria, or into the above-noted specified countries without the consent of the internationally recognized government of that specified country; (ii) assistance, sponsorship, or provision of financial, material, or technological support for, or goods or services to or in support of, an aforementioned entity and activity; (iii) any curtailment of natural gas supplies by Gazprom as noted above; or (vi) a significant investment in a special Russian crude oil project.

The President also is authorized to impose the prescribed sanction on any foreign financial institution if the President determines that the foreign financial institution has, on or after June 16, 2015, knowingly facilitated a significant financial transaction on behalf of any Russian person on OFAC's SDN List who was blocked as a result of the Ukraine-related executive orders or the Act.

The prescribed sanction in such cases is a prohibition on the opening, and prohibition or imposition of strict conditions on maintaining, in the United States of a correspondent account or a payable-through account by the foreign financial institution. As with other sanctions under the Act, this sanction also is subject to the President's waiver authority if the President determines that the waiver is in the national security interest of the United States.

EU Commission Issues Guidance on Finance-related Russia Sanctions

On December 16, 2014, the EU Commission published a [guidance notice](#) regarding the restrictions imposed on Russia's access to capital markets and finance-related restrictions under the amended EU Regulation 833/2014 (the "Russia Regulation"). The guidance notice includes a number of FAQs designed to help national authorities interpret key aspects of the Russia Regulation's finance sector restrictions, including:

- **“Financial assistance” under Articles 2 and 4 of the Russia Regulation.** The notice clarifies that the provision of payment services and the issuance of letters of guarantee/credit constitute “financial assistance” with respect to these Articles.
- **Additional information related to the Article 5(3) “new loans and credit” provision.** The guidance notice also includes helpful clarifications on questions that have arisen under Article 5(3), including in relation to deposit services, selling parts of loans/credit, payment terms, and the role of correspondent banks in a loan/credit transaction. The response to question 17, for example, states that payment and settlement services, including through correspondent banking, should not be construed as “making” or “being part of an arrangement to make” a new loan or credit to a sanctioned entity. The response to question 19 explains that payment terms/delayed payment for goods or services are not considered loans or credit, although the provision of payment terms/delayed payment may not be used to circumvent the prohibition to provide new loans or credit; payment terms granted to the entities targeted by Article 5 which are not in line with normal business practice or which since September 12, 2014 have been substantially extended may suggest circumvention.

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We are following these sanctions developments closely and will provide further updates as they continue to evolve. We are particularly well-positioned to counsel companies and individuals on compliance with the U.S. and EU sanctions related to the Ukraine crisis and to advise on the application of the Ukraine Freedom Support Act of 2014, as well as to advise 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 International Trade Controls practice group:

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