

A horizontal banner image divided into several vertical panels. From left to right, the panels show: a pair of scales of justice, a close-up of a person's face wearing glasses, a computer keyboard, and a gavel. Overlaid on this image is the text "JONES DAY COMMENTARY" in white, bold, sans-serif font. "JONES DAY" is in a smaller font size above "COMMENTARY".

JONES DAY  
**COMMENTARY**

## IMPOSITION OF SANCTIONS MEASURES IN RESPONSE TO THE DEVELOPING CRISIS IN UKRAINE

In recent weeks, a rapidly escalating crisis in Ukraine has led to the imposition of limited sanctions by the United States, the European Union, and Canada against certain Russian and Ukrainian parties. This *Commentary* summarizes the sanctions imposed to date and potential retaliatory sanctions being considered by the Russian parliament, with a focus on possible repercussions for clients doing business connected to Ukraine and Russia.

As recent events have demonstrated, the situation in Ukraine can evolve quickly. Jones Day will continue to keep significant developments under review.

### UNITED STATES

In late February, the United States began taking steps to respond to the increasing violence in Ukraine. In mid-February, the United States moved to restrict and ban issuance of visas to approximately 20 senior members of the Ukrainian government and

other individuals determined by the U.S. Department of State to be responsible for or complicit in human rights abuses related to political repression in Ukraine.

As events progressed and Russia moved to intervene, the United States took several high-level actions, including suspending bilateral discussions with Russia on trade, investment, and other matters, and its participation in preparations for the scheduled June G-8 Summit in Sochi.

On March 6, the United States further escalated its response, when President Obama issued an Executive Order declaring that the events in Ukraine constitute a national security threat under the International Emergency Economic Powers Act and authorizing more rigorous measures to address the actions and policies of persons who have contributed to the current state of affairs in Ukraine.

First, the Executive Order authorizes the U.S. Department of State to impose further Ukraine-related visa restrictions to deny visas to individuals determined, *inter alia*, to be responsible for or complicit in threatening the sovereignty and territorial integrity of Ukraine. The U.S. Department of State indicated that such additional restrictions would begin to take effect as of March 6.

Second, the Executive Order authorizes the blocking of property and interests in property of, and otherwise prohibits U.S. persons from dealing with, persons and entities<sup>1</sup> determined, by the Secretary of the Treasury, in consultation with the Secretary of State, to be, directly or indirectly, responsible for, complicit in, or to have engaged in the following activities:

- Actions or policies that undermine the democratic processes or institutions in Ukraine;
- Actions or policies that threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine;
- Misappropriation of state assets of Ukraine or of an economically significant entity in Ukraine; or
- Assertion of governmental authority over any part or region of Ukraine without the authorization of the Ukrainian government.

Blocking of the assets of designated persons typically must be reported to the U.S. Department of the Treasury's Office of Foreign Assets Control. While the United States has not yet designated any persons or entities pursuant to the authority of this Executive Order, such designations may be forthcoming at any time.

The United States has indicated that it is continuing to consider a wide range of options in response to developing events in Ukraine. As a result, additional sanctions measures are possible.

## EUROPEAN UNION

With respect to the European Union's response to events in Ukraine, a distinction can be made between:

- Measures taken as a reaction to Russia's actions in the Autonomous Republic of Crimea ("Crimea"), which have so far been limited; and

- Measures taken as a reaction to the repression and the use of violence in Ukraine, which are more extensive.

### Limited Initial Response by the European Union to Russia's Actions in Crimea

The European Union has so far refrained from imposing sanctions with economic effect on Russia. The European Union has taken certain measures, but these will not have an immediate impact on day-to-day business and so the effects thereof are limited. In particular, on March 6, the European Union decided to suspend bilateral talks with Russia on proposed "visa-free" travel arrangements and on a planned new EU-Russia investment treaty. The European Union also expressed its support for the decisions of the G-8 Members to suspend their participation in the Summit preparations. These actions had already been anticipated by the Council of the European Union on March 3 in the event that Russia did not take "de-escalating steps" in respect of its presence in the Crimea region.

On March 6, in addition to suspending these ongoing negotiations, the European Union outlined further possible sanctions that could be adopted in the future, as follows:

- If negotiations between the governments of Ukraine and Russia (which are expected to start "within the next days") do not produce results "within a limited timeframe," the European Union will decide on sanctions such as travel bans and asset freezes and on the cancellation of a planned summit between the EU and Russia; and
- In the event that Russia is perceived as taking further steps to destabilize the situation in Ukraine, this will give rise to "severe and far-reaching consequences" for relations between the European Union and Russia, which will "include a broad range of economic areas."

So far, the European Union's approach to Russia has been rather cautious. The agreed-upon measures are limited to a suspension of bilateral talks with Russia on specific matters and should not affect normal business operations in or with Russia. However, it remains to be seen whether any further actions will be taken by the European Union and, if so, what the nature and extent of such actions would be exactly.

## **European Union's Reaction to the Repression and the Use of Violence in Ukraine**

**Sanctions by the European Union.** On the same day as the U.S. and Canada, the European Union imposed economic sanctions targeting persons identified as responsible for the misappropriation of Ukrainian State funds and for human rights violations in Ukraine. The list of the targeted persons includes former members of the Yanukovich government and related persons.

The first initiatives taken by the European Union date back to February 20, when the Council of the European Union decided to impose sanctions in view of the situation in Ukraine, as a reaction to the repression and the use of violence in the country. On March 3, the Council of the European Union recalled its conclusions of February 20 and agreed to focus sanctions on the freezing and recovery of assets of persons identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations in Ukraine.

On March 5, the Council of the European Union adopted the legal texts to this end.<sup>2</sup> The sanctions entered into force on March 6 and will in principle apply for one year. They consist of a freezing of funds and economic resources belonging to the 18 listed persons and a prohibition to make funds or economic resources available, directly or indirectly, to or for the benefit of these 18 persons. The list of sanctioned individuals and entities is the same as the list of individuals sanctioned by Canada. In specific situations, the competent authorities of the EU Member States may authorize the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources. The European Union also decided to encourage other countries to adopt similar sanctions.

As with all EU sanctions regimes, the prohibition on making funds or economic resources available to sanctioned persons applies to any direct or indirect involvement in the funding process. Clients doing business connected to Ukraine may therefore wish to clarify their understanding of the ownership structure of any local partners with which they are dealing as well as adopt a precautionary approach to any unusual or unexpected requests for transfers of funds into or out of (or otherwise connected to) Ukraine.

**Suspension and Reassessment of Certain Existing Export Licenses by EU Member States.** In addition to the above measures, EU Member States agreed on February 20 to suspend export licenses on equipment that might be used for internal repression and reassess export licenses for military technology and equipment. This is potentially a wide category of goods, including technology and parts. However, this has remained only a political commitment as no Council Decision or Council Regulation was adopted in this respect. The statement by the Council of the European Union also did not provide guidance about the timeframe for this commitment or about the interpretation of concepts such as "suspension" and "equipment which might be used for internal repression."

As a result of this commitment by EU Member States, exporters holding a license for goods that may be considered "equipment which might be used for internal repression" by the competent Member State may have their license suspended. EU Member States may also reassess whether the proposed transfers of military technology and equipment for which licenses have been granted still meet the required conditions, in view of the situation in Ukraine. Clients that are subject to the EU export regime may need to coordinate with their national export regulator in light of this ongoing uncertainty.

**Closer Cooperation with Ukraine.** Beyond the sanctions targeting members of the former Yanukovich government and related persons, the European Union has also decided to deepen the relationship with Ukraine. The European Union expressed its intention to sign all political chapters of the Association Agreement before the end of May. In addition, the European Union intends to adopt unilateral measures that would allow Ukraine to benefit substantially from the advantages it would obtain under the Deep and Comprehensive Free Trade Agreement as part of the future Association Agreement. In particular, the measures would provide for a reduction of tariffs and opening of tariff rate quotas. These measures should benefit Ukrainian companies doing business with the European Union.

## CANADA

Canada's response has been similar to that of the European Union. While Canada's reaction to Russia's actions in Crimea has so far been moderate, it imposed an asset freeze targeting former members of the Yanukovich government and related persons.

### Limited Initial Response by Canada to Russia's Actions in Crimea

The measures taken by Canada in response to Russia's interference in Ukraine should not affect normal business operations in or with Russia. The measures include:

- Suspension of its participation in the Canada–Russia Intergovernmental Economic Commission, established to promote economic relations between Canada and Russia;
- Suspension of all planned bilateral activities between the Canadian Armed Forces and the military of the Russian Federation;
- Suspension of Canada's engagement in preparations for the G-8 Summit; and
- Recall of the Canadian Ambassador in Moscow for consultations.

Although Canada was one of the first countries to threaten to impose economic sanctions as a reaction to Russia's interference in Ukraine, it has not yet taken any such measures. Reportedly, Canada is, however, considering imposing trade and investment sanctions and freezing the assets of persons to be designated.

### Asset Freeze of Those Considered Responsible for Misappropriation of State Funds in Ukraine

Further to the request by Ukraine, Canada imposed a freeze of the assets of 18 designated individuals. The designated persons include Ukrainian former leaders and senior officials or their associates and family members suspected of having misappropriated state funds, or obtained property inappropriately as a result of their office or business or personal connections.

The asset freeze was published on March 6 but took effect as of March 5. Further to the asset freeze, it is prohibited for anyone in Canada and for any Canadian outside Canada to:

- Deal, directly or indirectly, in any property, wherever situated, of a designated person;
- Enter into or facilitate, directly or indirectly, any financial transaction related to a dealing, directly or indirectly, in any property, wherever situated, of a designated person; and
- Provide financial services or other related services in respect of any property of a designated person. The prohibition on financial services applies to property services such as asset management, lending (including mortgage lending), the provision of property insurance and other insurance policies and services, and other financial services.

The asset freeze is accompanied by reporting obligations, which require reporting, without delay, to the Commissioner of the Royal Canadian Mounted Police of:

- The existence of property in their possession or control that they have reason to believe is the property of a designated person; and
- Information about a transaction or proposed transaction in respect of such property.

Further, federally and provincially regulated financial institutions and financial services companies must determine on an ongoing basis whether they are in possession or control of any designated person's property.

## RUSSIA

It has been reported that the Federation Council, the Russian parliament's upper chamber, is considering draft legislation authorizing retaliatory sanctions against U.S. and EU companies and individuals in response to U.S. and EU sanctions against Russian companies and individuals. Proposed Russian sanctions reportedly contemplate freezing and/or confiscating assets belonging to individuals and entities from the European Union and the United States, although at this point it is unclear what criteria will be applied to determine which entities and individuals may be subject to sanctions. It is possible that such Russian countermeasures, if enacted, would extend to any other countries imposing sanctions on Russia in respect of this matter, such as Canada.

## LAWYER CONTACTS

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## ENDNOTES

- 1 Pursuant to the Executive Order, U.S. persons will also be required to block the property and interests in property of and otherwise be prohibited from dealing with any entities owned or controlled by or acting, directly or indirectly, on behalf of designated persons.
- 2 Council Decision 2014/119/CFSP of March 5, 2014 concerning restrictive measures directed against certain persons, entities, and bodies in view of the situation in Ukraine; Council Regulation (EU) No 208/2014 of March 5, 2014 concerning restrictive measures directed against certain persons, entities, and bodies in view of the situation in Ukraine.

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