



Ongoing Legal Developments in Response to the Situation in Ukraine

As anticipated in our *Commentary*, “[Imposition of Sanctions Measures in Response to the Developing Crisis in Ukraine](#)” and our updating *Alerts*, “[Further Legal Developments in Response to the Situation in Ukraine](#)” and “[Continuing Legal Developments in Response to the Situation in Ukraine](#),” international sanctions imposed against Russian and Ukrainian parties in response to events in Ukraine have continued to expand and evolve. This *Commentary* summarizes the most recent developments.

United States

On July 16, 2014, the U.S. Department of the Treasury expanded its implementation of Ukraine-related sanctions under executive orders issued by President Obama in March 2014, targeting a number of companies in the Russian financial, energy, and arms sectors, as well as several Russian government officials, separatist groups within Ukraine, and a Crimean shipping company.

Sectoral Sanctions Identifications List. As discussed in our March *Alert* “[Continuing Legal Developments in Response to the Situation in Ukraine](#),” [Executive Order](#)

13662 provides the Secretary of the Treasury, in consultation with the Secretary of State, broad authority to target individuals and entities operating in any sector of the Russian Federation economy. On July 16, 2014, the Secretary of the Treasury used this authority for the first time to impose sectoral sanctions on two large Russian financial institutions and two major Russian energy companies. These sectoral sanctions are set forth in two directives issued by the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”). All persons designated pursuant to these directives are listed on OFAC’s newly created [Sectoral Sanctions Identifications List](#) (the “SSI List”).

Under Directive 1, U.S. persons are prohibited from transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days’ maturity or new equity for state-owned Vnesheconombank and Gazprombank.

Under Directive 2, U.S. persons are prohibited from transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days’ maturity for Rosneft, the largest Russian oil company, and Novatek, the largest Russian independent gas producer.

Although Directives 1 and 2 contains a number of undefined terms and potential ambiguities, OFAC has issued several [FAQs](#) in connection with these directives that provide some clarification:

- The term “debt” includes bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper.
- The term “equity” includes stocks, share issuances, depositary receipts, or any other evidence of title or ownership.
- The prohibitions do not apply to any debt or equity issued prior to the sanctions’ effective date (July 16, 2014) by, on behalf of, or for the benefit of the entities operating in the financial and energy sectors that are identified in the directives.
- The prohibitions also do not apply to debt instruments with maturities of 90 days or less issued by or on behalf of the entities identified in the directives, even if the debt instruments are issued after the sanctions’ effective date.
- These prohibitions extend to new debt of longer than 90 days’ maturity—and, in the case of entities listed under Directive 1, new equity—by, on behalf of, or for the benefit of any entities or property in which a listed entity holds a 50 percent or greater ownership interest.
- Neither Directive 1 nor Directive 2 blocks the property or interests in property of any of the listed entities.
- U.S. persons should reject any transactions or dealings prohibited under these directives and, to the extent required by [OFAC’s Reporting Procedures and Penalties Regulations](#), must report any rejected transactions to OFAC within 10 business days.
- U.S. banks are not prohibited from maintaining correspondent accounts with, or processing U.S. dollar-clearing transactions for, the listed entities, provided the activities do not involve transacting in, providing financing for, or dealing in prohibited debt or equity.

In addition, OFAC has issued a [general license](#) permitting transactions by U.S. persons that involve derivative products whose value is linked to an underlying asset that falls within the scope of Directive 1 or Directive 2.

Newly Designated Entities and Individuals. On July 16, 2014, the Secretary of the Treasury also placed five individuals and 11 entities on its List of Specially Designated Nationals and Blocked Persons (“SDN List”) pursuant to the authority granted to the Secretary in Executive Orders 13660 and 13661. The complete list of designated entities is available on [OFAC’s website](#).

Pursuant to these designations, all of these individuals’ and entities’ assets, property, and interests in property that are in the United States, hereafter come within the United States, or are or hereafter come within the possession or control of any U.S. person are blocked, and all U.S. persons are prohibited from dealing with these designated individuals. As noted in prior general guidance from OFAC, U.S. persons are also prohibited from dealing with any entity in which a designated person (under the U.S. sanctions regime) owns, directly or indirectly, a 50 percent or greater interest, regardless of whether the entity itself is specifically designated.

On July 16, 2014, in concert with the additional sanctions announced by OFAC, the U.S. Department of the Commerce’s Bureau of Industry and Security added the 11 entities that OFAC placed on its SDN List to the Entity List. BIS designated these entities based on a determination that they are involved, or pose a significant risk of becoming involved, in activities contrary to the national security and foreign policy interests of the United States. Designation on the Entity List imposes a license requirement, with a presumption of denial, for the export, re-export, or foreign transfer of items subject to the Export Administration Regulations to the designated entities.

European Union

On July 16, 2014, a special meeting of the European Council was convened, *inter alia*, to discuss the situation in Ukraine. It agreed to expand the legal basis of the restrictive measures, paving the way for broadening the scope of the measures, in particular by the listing of legal entities.

As a result, Council Decision 2014/475/CFSP of July 18, 2014 and Council Regulation (EU) No 783/2014 of July 18, 2014 were adopted, expanding the scope of the EU’s asset freeze to the following categories:

- Natural persons responsible for, actively supporting, or implementing actions or policies that undermine or threaten the territorial integrity, sovereignty, and independence of Ukraine, or stability or security in Ukraine, or that obstruct the work of international organizations in Ukraine, and natural or legal persons, entities, or bodies associated with them;
- Legal persons, entities, or bodies supporting, materially or financially, actions that undermine or threaten the territorial integrity, sovereignty, and independence of Ukraine; or
- Legal persons, entities, or bodies in Crimea or Sevastopol whose ownership has been transferred contrary to Ukrainian law, or legal persons, entities, or bodies that have benefited from such a transfer.

Until now, the Russian persons made subject to the asset freeze were individuals only. Although the EU now has the possibility to list legal entities, a first list of entities and persons to be listed under the enhanced criteria is yet to be adopted. Such a list is expected before the end of July.

In addition to the enhanced criteria for the listing, the European Council agreed on the following measures:

- A request to the European Investment Bank (“EIB”) to suspend the signature of new financing operations in the Russian Federation;
- The coordination of EU Member State positions within the European Bank for Reconstruction and Development (“EBRD”) Board of Directors with a view to suspending the financing of new operations in the Russian Federation;
- The discontinuation of the agreement of February 20, 2014 on export licenses. The agreement related to the suspension and reassessment of certain export licenses by EU Member States and was discussed in our *Commentary*, “Imposition of Sanctions Measures in Response to the Developing Crisis in Ukraine”;
- An invitation to the European Commission to reassess EU–Russia cooperation programs with a view to taking a decision, on a case-by-case basis, on the suspension of the implementation of EU bilateral and regional cooperation programs;

- A request to the European External Action Service to present proposals for additional measures in particular on restricting investments in Crimea and Sevastopol; and
- An expectation that the International Financial Institutions will refrain from financing any projects that explicitly or implicitly recognize the annexation of Crimea and Sevastopol.

By means of Council Regulation (EU) No 692/2014 of June 23, 2014, the EU imposed restrictions on imports of goods originating in Crimea or Sevastopol. Restrictions were also placed on the provision, directly or indirectly, of financing or financial assistance, as well as insurance and reinsurance, related to the import of such goods.

Australia

As we discussed in our March 2014 *Alert* “Continuing Legal Developments in Response to the Situation in Ukraine,” Australia announced in March 2014 that it would impose an autonomous sanctions regime in response to the Russian threat to the sovereignty and territorial integrity of Ukraine. The Australian autonomous sanctions regime was anticipated to come into effect, after a standard amendment and public comment process, several months after its announcement.

On June 19, 2014, [Australia's Autonomous Sanctions \(Designated Persons and Entities and Declared Persons—Ukraine\) List 2014](#) (the “Ukraine List”) entered into effect. The Ukraine List gives effect to the March 19 and May 21, 2014 announcements by the Minister of Foreign Affairs with respect to the imposition of financial sanctions and travel bans against designated persons and entities. At present, 50 persons and 11 entities have been designated for targeted financial sanctions or travel bans on the Ukraine List. The details of these persons and entities have been published in the Australian Department of Foreign Affairs and Trade’s [Consolidated List](#).

As the situation in Ukraine continues to evolve, Jones Day will continue to keep significant developments under review.

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