

March 17, 2014

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Developments in US and EU Sanctions Relating to Ukraine

Overview

- To date, sanctions related to the Ukrainian crisis, including those imposed today by the US and the EU, are relatively modest and focused on individual Russian and Ukrainian officials, who are subject to individual asset freezes and travel bans. These sanctions do not affect their organizations or the Russian Government more broadly, although they do affect direct dealings with the sanctioned officials.
- More drastic sanctions against Russian persons and entities are possible and have been threatened by some political actors in the United States, where the forcefulness of the US response is also a partisan political issue, but the decisionmakers appear to be taking a cautious and incremental approach.
- It is possible that sanctions will be expanded to target state-owned enterprises or other Russian businesses linked to developments in Ukraine, particularly if matters escalate further, but at the moment such an expansion of sanctions does not appear to be imminent.
- At this point, we think it is unlikely that the crisis will ultimately result in the imposition of comprehensive sanctions against dealings with all Russian state-owned entities, Russian persons and entities in general, or (given European sensitivities) the Russian energy sector.
- In general, however, the outcome is obviously highly dependent on future developments and unpredictable political reaction.

US developments

There have been two significant developments so far in the United States.

First, President Obama has issued two Executive Orders. An Executive Order issued on March 6 provided broad authority to impose sanctions on (among others) persons or entities “responsible for or complicit in” in the crisis in Ukraine (broadly defined) or corruption in Ukraine, and entities they own or control or that “have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of” any targeted activity or any person who is sanctioned under the Executive Order. The Executive Order issued today, March 17, provides authority to sanction any Russian Government official, any company in the Russian arms sector, and, again, entities they own or control or that have provided them material support. A list of 11 individuals sanctioned under the two Executive

Orders was released today with the second order. However, no entities were sanctioned, and prior OFAC guidance indicates that individual government officials are not considered to control the ministries or agencies they head (although dealings with the named official even in his official capacity may be problematic for persons subject to US jurisdiction). The list of officials and links to the two Executive Orders are attached as an appendix.

The language of the Executive Orders is intentionally broad and vague, as is typically the case in US sanctions authorizations, and it permits the imposition of full US sanctions (*i.e.*, freezing all property of the sanctioned person or entity within US jurisdiction and prohibiting all transactions with the sanctioned person or entity within US jurisdiction). While only the named individuals have been sanctioned to date, the Executive Orders permit sanctions to be imposed on a wide range of targets connected either with the crisis in Ukraine or with senior Russian officials. However, the US Administration must specifically designate a particular person or entity for sanctions before any restrictions apply. As with most US sanctions programs, the ability to designate sanctions targets is broad and highly discretionary. The tone and rhetoric of the Executive Orders appear aimed at individual officials, but the legal authority is broad enough to encompass specified businesses. The Executive Order is not broad enough to encompass sanctions against all dealings with Russian persons or entities; a further Executive Order or statute would be required.

Separately, the US Senate is considering a bill that authorizes the imposition of sanctions against persons involved in human rights abuses in Ukraine, violations of Ukrainian sovereignty, or corruption in Ukraine or Russia, as well as those assisting in such acts. The proposed legislation is also targeted at individuals, but both the text of the bill and statements by individual senators indicate that the bill is intended to provide authority to target prominent Russian businessmen as well as the Russian Government (which would in turn affect any business of which they own 50% or more and could affect other businesses in which they have effective control or substantial stakes). Again, no sanctions are actually imposed; the proposed statute merely provides authority, and it appears to have been designed largely to track and reinforce the actions already taken under the President's authority. Other proposals that have been discussed publicly, such as sanctions against state-owned entities more broadly, were not included; however, it is still possible that the bill could be amended to provide for stronger sanctions. The bill has been passed by the Senate Foreign Relations Committee, which tends to play a leading role in US sanctions legislation, but the Senate is out of session this week and the bill very likely will not be considered by the full Senate until March 24 at the earliest (at which time further changes, such as an expansion of authority or the inclusion of mandatory sanctions, would be possible). Although no mandatory sanctions proposals are currently pending, the Congress is another potential source of additional sanctions.

No further legal authority is needed for the US to take additional action on very short notice. The President and OFAC can act at any time, including by issuing a new Executive Order as was done this morning, and contingency plans providing various options for further action are almost certainly already in place. If there is a major imposition of sanctions, the Administration will make efforts to ensure that it is done without warning and with immediate effect because of the risk that targeted persons will move assets to avoid sanctions. At the moment, the momentum seems to be behind targeting individual officials, but that could change rapidly as the situation develops.

It is unclear at this point whether the US will attempt more aggressive sanctions, and its options may be limited. Any effective restriction on energy transactions would risk unacceptable consequences in Europe (although it is not impossible that the U.S. would impose sanctions that had only the effect of driving Russian energy transactions out of dollar-denominated transactions and into Euro or other currencies). If matters escalate, targeted sanctions against specified state-linked companies could be possible; that is the most likely option if the US goes beyond sanctions against individuals. Sanctions against all state-owned companies would be a more drastic escalation. The US's most aggressive realistic option – and therefore likely its last resort – is broad-based sanctions against the Russian financial system designed to cut it off from US dollar transactions or even the global financial system more broadly. Broad-based sanctions against all Russian companies or activities appear quite unlikely at this point. There is as yet no indication that any of these sanctions is likely.

EU Developments

The European Union has also adopted a limited number of sanctions (travel restrictions and asset freeze orders) against members of the former government of Ukraine, including President Yanukovich. At the moment, it appears that additional sanctions on Ukrainian persons or entities are likely to be limited, and, if adopted, are expected to primarily target members of the former government and individuals suspected of having been involved in human rights violations or the misappropriation of Ukrainian Government funds.

On March 17, the European Union also imposed sanctions against 21 individuals from Russia and Crimea. A Council Decision requires Member States to take “measures to prevent the entry into, or transit through, their territories of the natural persons responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine.” A Council Regulation imposes, in addition, an “asset freeze” against the same persons, which are identified in the Annex to the Decision and the Regulation (see Appendix for the list of names and references to the relevant legislation).

The EU is considering further sanctions against additional Russian individuals, which could be imposed later this week. If tensions continue to escalate, additional sanctions may include a prohibition of certain economic activities with Russia, such as providing services to Russian entities or importing goods from Russia (or the Crimea region). Import / export restrictions affecting the oil and gas industry are therefore possible, but rather unlikely at this stage given the EU's dependence on energy imports from Russia. The EU may also prohibit banks from transacting business with Russian financial institutions or sanction Russian banks. Again, it is unlikely that such drastic measures would be taken unless the crisis worsens. As with the US, the options to escalate sanctions are therefore limited in practice.

The EU Council of Ministers has broad powers to enact sanctions against non-EU countries, companies, and individuals from third countries, and does not need the consent of the European Parliament. EU sanctions are typically adopted as regulations and are immediately applicable in all Member States. EU sanctions must be complied with by the Member States, EU citizens, entities, and corporations established under the laws of any Member State. All persons and entities must comply with EU sanctions if the affected business is transacted within the EU.

Timing of Further Developments

In both the EU and the US, new sanctions can take effect immediately, with no blanket “grandfathering” exemption, and authorities aim for speed and surprise to avoid giving sanctions targets an opportunity to hide or shift assets. In the US, there is more warning of sanctions imposed by congressional action given the necessary steps of the legislative process, but new legislation is not necessary for the President to act without warning. We will therefore continue to monitor these developments closely.

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Please feel free to raise any concerns you may have with any of your regular contacts at the Firm, or with [Paul Marquardt](#) in our Washington office regarding US sanctions or with [Till Müller-Ibold](#) in our Brussels office or [Sunil Gadhia](#) in our London office regarding European sanctions.

Appendix

US Executive Orders

March 6, 2014

http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_eo.pdf

March 17, 2014

http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_eo2.pdf

US-Sanctioned Russian and Ukrainian Officials

AKSYONOV, Sergey Valeryevich (a.k.a. AKSENOV, Sergei; a.k.a. AKSYONOV, Sergei; a.k.a. AKSYONOV, Sergey; a.k.a. AKSYONOV, Sergiy; a.k.a. AKSYONOV, Serhiy Valeryevich); DOB 26 Nov 1972; POB Balti, Moldova (individual) [UKRAINE].

GLAZYEV, Sergey (a.k.a. GLAZYEV, Sergei); DOB 01 Jan 1961; POB Zaporozhye, Ukraine; Presidential Advisor (individual) [UKRAINE2].

KLISHAS, Andrei (a.k.a. KLISHAS, Andrey); DOB 09 Nov 1972; POB Yekaterinburg, Sverdlovsk, Russia; Chairman of the Russian Federation Council Committee on Constitutional Law, Judicial and Legal Affairs and the Development of Civil Society (individual) [UKRAINE2].

KONSTANTINOV, Vladimir Andreyevich, Crimea, Ukraine; DOB 19 Nov 1956 (individual) [UKRAINE].

MATVIYENKO, Valentina Ivanovna; DOB 07 Apr 1949; POB Shepetovka, Khmelnytsky, Ukraine; Federation Council Speaker; Chairman of the Russian Federation Council (individual) [UKRAINE2].

MEDVEDCHUK, Viktor; DOB 07 Aug 1954; POB Pochyot, Krasnoyarsk Krai, Russia (individual) [UKRAINE].

MIZULINA, Yelena (a.k.a. MIZULINA, Elena; a.k.a. MIZULINA, Elena Borisovna; a.k.a. MIZULINA, Yelena Borisovna); DOB 09 Dec 1954; POB Bui, Kostroma, Russia; State Duma Deputy; Chairman of the State Duma Committee on Family, Women and Children (individual) [UKRAINE2].

ROGOZIN, Dmitry Olegovich (a.k.a. ROGOZIN, Dmitriy; a.k.a. ROGOZIN, Dmitry); DOB 21 Dec 1963; POB Moscow, Russia; Deputy Prime Minister of the Russian Federation (individual) [UKRAINE2].

SLUTSKY, Leonid (a.k.a. SLUTSKIY, Leonid; a.k.a. SLUTSKY, Leonid E.; a.k.a. SLUTSKY, Leonid Eduardovich); DOB 04 Jan 1968; State Duma Deputy; Chairman of the Committee on Affairs of the Commonwealth of Independent States (CIS); First Deputy Chairman of the Committee on International Affairs; Chairman of the Russian World Fund Administration (individual) [UKRAINE2].

SURKOV, Vladislav Yurievich; DOB 21 Sep 1964; POB Solntsevo, Lipetsk, Russia; Presidential Aide (individual) [UKRAINE2].

YANUKOVYCH, Viktor Fedorovich; DOB 09 Jul 1950; POB Yenakiyev, Donetsk Region, Ukraine; alt. POB Makiivka, Donbas, Ukraine; Former President of Ukraine (individual) [UKRAINE].

Sanctions Imposed by the EU Council of Ministers

Council Decision of March 5:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:066:0026:0030:EN:PDF>

Council Decision of March 17:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:078:0016:0021:EN:PDF>

Council Regulation of March 17:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:078:0006:0015:EN:PDF>

EU-Sanctioned Ukrainian Individuals

	Name	Identifying information	Statement of reasons	Date listed
1.	Viktor Fedorovich Yanukovich	born on 9 July 1950, former President of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
2.	Vitalii Yuriyovich Zakharchenko	born on 20 January 1963, former Minister of Internal Affairs	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
3.	Viktor Pavlovych Pshonka	born on 6 February 1954, former Prosecutor General of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014

4.	Oleksandr Hryhorovych Yakymenko	born on 22 December 1964, former Head of Security Service of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
5.	Andriy Volodymyrovych Portnov	born on 27 October 1973, former Adviser to the President of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
6.	Olena Leonidivna Lukash	born on 12 November 1976, former Minister of Justice	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
7.	Andrii Petrovych Kliuiev	born on 12 August 1964, former Head of Administration of President of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
8.	Viktor Ivanovych Ratushniak	born on 16 October 1959, former Deputy Minister of Internal Affairs	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
9.	Oleksandr Viktorovych Yanukovich	born on 1 July 1973, son of former President, businessman	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014

10.	Viktor Viktorovych Yanukovych	born on 16 July 1981, son of former President, Member of the Verkhovna Rada of Ukraine	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
11.	Artem Viktorovych Pshonka	born on 19 March 1976, son of former Prosecutor General, Deputy Head of the faction of Party of Regions in the Verkhovna Rada of Ukraine	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
12.	Serhii Petrovych Kliuiev	born on 12 August 1969, businessman, brother of Mr. Andrii K1iuiev	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
13.	Mykola Yanovych Azarov	born on 17 December 1947, Prime Minister of Ukraine until January 2014	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
14.	Oleksii Mykolayovych Azarov	son of former Prime Minister Azarov	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
15.	Serhiy Vitaliyovych Kurchenko	born on 21 September 1985, businessman	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014

16.	Dmytro Volodymyrovych Tabachnyk	born on 28 November 1963, former Minister of Education and Science	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
17.	Raisa Vasylivna Bohatyriova	born on 6 January 1953, former Minister of Health	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
18.	Ihor Oleksandrovych Kalinin	born on 28 December 1959, former Adviser to the President of Ukraine	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014

EU-Sanctioned Russia and Crimean Officials

1. Sergey Valeryevich Aksyonov, d.o.b. 26.11.1972, Elected "Prime Minister of Crimea" in the Crimean Verkhovna Rada on 27 February 2014
2. Vladimir Andreevich Konstantinov, d.o.b. 19.03.1967, Speaker of the Supreme Council of the Autonomous Republic of Crimea, Konstantinov
3. Rustam Ilmirovich Temirgaliev, d.o.b. 15.08.1976, Deputy Chairman of the Council of Ministers of Crimea
4. Deniz Valentinovich Berezovskiy, d.o.b. 15.07.1974, Former commander of the Ukrainian Navy
5. Aleksei Mikhailovich Chaliy, d.o.b. 13.06.1961, Chaliy became "Mayor of Sevastopol" by popular acclamation on 23 February 2014
6. Pyotr Anatoliyovych Zima, New head of the Crimean Security Service (SBU)
7. Yuriy Zherebtsov, Counsellor of the Speaker of the Verkhovna Rada of Crimea
8. Sergey Pavlovych Tsekov, d.o.b. 28.03.1953, Vice Speaker of the Verkhovna Rada; Tsekov
9. Viktor Alekseevich Ozerov, d.o.b. 5.1.1958 in Abakan, Khakassia, Chairman of the Security and Defense Committee of the Federation Council of the Russian Federation

10. Vladimir Michailovich Dzhabarov, d.o.b. 29.9.1952, First Deputy-Chairman of the International Affairs Committee of the Federation Council of the Russian Federation
11. Andrei Aleksandrovich Klishas, d.o.b. 9.11.1972 in Sverdlovsk, Chairman of the Committee on Constitutional Law of the Federation Council of the Russian Federation
12. Nikolai Ivanovich Ryzhkov, d.o.b. 28.9.1929 in Duleevka, Donetsk region, Ukrainian SSR, Member of the Committee for federal issues, regional politics and the North of the Federation Council of the Russian Federation
13. Evgeni Viktorovich Bushmin, d.o.b. 4.10.1958 in Lopatino, Sergachiisky region, RSFSR Deputy Speaker of the Federation Council of the Russian Federation
14. Aleksandr Borisovich Totoonov, d.o.b. 3.3.1957 in Ordzhonikidze, North Ossetia, Member of the Committee on culture, science, and information of the Federation Council of the Russian Federation
15. Oleg Evgenevich Panteleev, d.o.b. 21.7.1952 in Zhitnikovskoe, Kurgan region, First Deputy Chairman of the Committee on Parliamentary Issues
16. Sergei Mikhailovich Mironov, d.o.b. 14.2.1953 in Pushkin, Leningrad region, Member of the Council of the State Duma
17. Sergei Vladimirovich Zheleznyak, d.o.b. 30.7.1970 in St Petersburg (former Leningrad), Deputy Speaker of the State Duma of the Russian Federation
18. Leonid Eduardovich Slutski, d.o.b. 4.01.1968, in Moscow Chairman of the Commonwealth of Independent States (CIS) Committee of the State Duma of the Russian Federation
19. Aleksandr Viktorovich Vitko, d.o.b. 13.9.1961 in Vitebsk (Belarusian SSR), Commander of the Black Sea Fleet, Vice-Admiral
20. Anatoliy Alekseevich Sidorov, Commander, Russia's Western Military District
21. Aleksandr Galkin, Commander of Russia's Southern Military District

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