

Ukraine Crisis Update: US and EU Expand Sanctions

The US blocks the property of 11 persons, the EU freezes the assets of another 21 individuals, and a new US Executive Order authorizes future blocking actions.

In response to the continuing political crisis in Ukraine and Sunday's widely-reported referendum on the status of Crimea, the United States and the European Union have expanded their targeted sanctions against certain Ukrainian and Russian persons. These measures build on the initial rounds of sanctions imposed on March 5 and 6, 2014, described in our previous [Client Alert dated March 7, 2014](#). While these new actions expand the framework for possible further sanctions in the days ahead, the measures imposed to date continue to be targeted and limited in their reach.

On March 17, 2014, the US President issued an [Executive Order](#) (EO) expanding upon [Executive Order 13660](#) (EO 13660) of March 6. The new EO blocks the property of persons found to have "undermine[d] democratic processes and institutions in Ukraine" or contributed to the "misappropriation of [Ukraine's] assets." The current list of blocked persons includes [seven individuals identified in the annex to the EO](#)¹ and [four individuals simultaneously designated](#) by the US Department of the Treasury under EO 13660. In addition, unlike EO 13660, the new EO explicitly includes "official[s] of the Government of the Russian Federation" as persons who may be subject to blocking.

Also yesterday, March 17, the EU froze [the assets of another 21 individuals](#) it considers responsible for actions "undermining or threatening the territorial integrity, sovereignty and independence of Ukraine." This regulation, which has direct effect throughout the EU, also prohibits financial institutions from making funds or economic resources available to or for the benefit of these listed persons.

These EU and US steps could trigger the Russian government to take threatened retaliatory actions, in what could become a volatile and escalating exercise of measures and counter measures.

Scope and Impact of These Measures

New US Executive Order and Designations

The new EO extends the [reach of EO 13660](#) by allowing the Treasury Department, in consultation with the US Department of State, to designate additional persons and subject them to blocking if those persons are any of the following:

- Officials of the Government of the Russian Federation
- Individuals or entities operating in the arms or related materiel sector in the Russian Federation

- Individuals or entities owned or controlled by, or providing material or other support to, any senior official of the Government of the Russian Federation or any designated person

Under the authority of EO 13660 and the new EO, the US has [blocked the property of 11 individuals](#), all of whom are identified as former or current Ukrainian, Russian, or Crimean government officials, including the deposed president Viktor Yanukovich. All property and assets of these listed persons in the US or under the possession or control of a US person are subject to immediate blocking — and “may not be transferred, paid, exported, withdrawn, or otherwise dealt in.” This blocking extends to any property that later comes into the US or into the possession or control of a US person, including any foreign branches of US persons.

The new EO confers broad authority on Treasury to designate virtually any person who is serving in the Russian government or acting for the government — without applying any limitations or other defining criteria. Unless and until such persons are actually designated, however, the EO does not restrict dealings with non-designated officials of the Russian government, the government itself, or entities, assets or property under their ownership or control. Nonetheless, the spectre of possible additional designations by Treasury creates potential legal and business risks for US persons and firms arising from any dealings with individuals who are members of the Russian government or acting on behalf of the government.

The EO also expressly authorizes Treasury to designate entities or assets that are “owned or controlled” by designated, blocked persons. The [White House Fact Sheet](#) issued in conjunction with the EO states that the US government’s “current focus” is to target the personal assets of the designated persons, “but not companies that they may manage on behalf of the Russian state.” Nevertheless, the EO raises the possibility that Treasury will add names of businesses deemed to be under the ownership or control of listed persons. Importantly, even without this designation authority, the Treasury Department’s Office of Foreign Assets Control (OFAC) already takes the position that entities that are majority-owned by designated persons are presumed to be subject to blocking, even if those entities are not listed.

Expanded EU Sanctions

The EU asset freeze adds 21 individuals, named in the annex to [EU Regulation 269/2014](#) of March 17, 2014, to the 18 individuals already named in [EU Regulation 208/2014](#) of March 5, 2014. The 21 new individuals are current and former Ukrainian, Russian, and Crimean politicians or military commanders. This asset freeze, like that imposed on March 5, 2014, applies to all funds and economic resources (which are broadly defined) belonging to, owned, held or controlled by the 21 individuals. Consistent with standard EU asset freeze regulations, the new regulation also provides that no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of these individuals.²

Although the regulation has direct effect in the EU, Member States may in the coming days enact domestic legislation to clarify the scope of the sanctions and define penalties for any breach of the sanctions.³

UK Export Licensing Suspension

Beyond the EU and US sanctions described above, the Government of the United Kingdom announced today that it has [immediately suspended all existing licenses and license applications](#) for exports of military and dual-use items to the Russian military “which could be or are being deployed against Ukraine.” This action illustrates the potential for individual EU Member States to impose additional measures, and the UK government’s announcement encourages “other European nations to take similar

action.” Other governments, including the US, may soon adopt measures along these lines or other types of sanctions.

FinCEN Advisories

The Treasury Department’s Financial Crimes Enforcement Network (FinCEN) issued Advisories on [February 25](#) and [March 6, 2014](#) referencing individuals subject to the first EU asset freeze and reminding “financial institutions of their responsibility to take reasonable, risk-based steps regarding the potential suspicious movement of assets related to Viktor Yanukovich departing Kyiv and abdicating his responsibilities and other senior officials resigning from their positions or departing Kyiv.” Financial institutions should consider these reminders in light of the ongoing situation in Ukraine and the expanding US and EU sanctions.

Travel and Visa Restrictions

The 11 US-designated individuals are automatically denied entry into the US under the terms of the new EO and EO 13660. These restrictions are in addition to the [previously reported](#) US Department of State [visa restrictions](#).

Differing from the previously imposed measures, the EU Council Decision 2014/145/CFSP of March 17, 2014, also imposes travel restrictions on the 21 individuals. EU Member States are required to take necessary measures to prevent the listed persons from entry into, or transit through, EU Member States’ territories.

Potential for Additional Sanctions

With structures now in place to block property and freeze assets, the US and EU are positioned to take additional steps and to impose further measures on individuals or entities, likely depending on Russia’s official response to the Crimea referendum of March 16, 2014. As the impact of US and EU measures increases, US and EU Member State interests may also face the additional risk of responsive measures by Russia.

Notwithstanding the broad potential reach of the new US and EU sanctions and the risk of additional designations, thus far only listed individuals are subject to sanctions, along with assets or entities in which those individuals hold majority ownership stakes. But any dealings by US and EU firms with Russian government officials — or entities or assets those officials own or control — carry legal and business risks, especially given the possibility of additional designations.

As these and potentially even broader sanctions are implemented in the coming days, EU, US and Russian firms should carefully review all operations and business relationships that could involve any designated person and consider steps to manage their risks. The Latham Team is prepared to advise and assist clients on any legal issues arising from these sanctions, including developing measures to identify and mitigate risks, conducting due diligence, implementing contractual safeguards, managing financial and banking transactions, and interacting with relevant government authorities for guidance or licensing approvals.

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¹ The later published version of this EO will include the annex with names, which are currently available [from the Treasury Department](#).

² Article 2 of the regulation extends the asset freeze to "natural or legal persons, entities or bodies associated with them." This language is not usually found in EU asset freeze regulations, but the text nevertheless appears to limit the scope of the asset freeze to individuals listed in the annex.

³ On March 18, 2014, the UK has already enacted [The Ukraine \(European Union Financial Sanctions\) \(No.2\) Regulations 2014](#).