

Urgent response to Russian Trade Sanctions

25 March 2014

The US, EU, Australia and Canada have imposed sanctions against Russians and Ukrainians in connection with actions which undermine the sovereignty of Ukraine. Several countries, including the UK, have withdrawn export licences for military and dual use items destined for the Russian military.

Businesses, particularly in the EU given the amount of trade between the EU and Russia, will be concerned to ensure they understand and comply with the sanctions. In this bulletin we consider the scope and practical impact of the sanctions. We also consider what further sanctions may be imposed should the crisis relating to Ukraine escalate.

This note is up to date as of Monday, 24 March 2014.

Financial Sanctions

EU

The EU has prohibited any EU company or person, and any overseas company or person while in the EU, from making any funds, or economic resources from which funds could be generated (for example, hardware and technology), available to or for the benefit of 51 individuals (listed at Schedule 1 of this note): these persons are referred to as "Designated Person(s)". The assets of Designated Persons are also to be frozen. The restrictions also apply to bodies associated with a Designated Person.

The requirement to freeze or not to make available funds and economic resources is triggered where there is reasonable cause to suspect that the funds or resources are owned or controlled by a Designated Person or that the Designated Person will benefit from the provision of the funds or resources, even if the funds and resources are to be provided to a third party.

The EU restrictions allow for funds and assets to be made available to or for the benefit of a Designated Person or for funds to be released from frozen accounts if authorised by HM Treasury or another competent authority in the EU.

The ability to authorise a release of funds or assets only applies in limited circumstances. The main exception relevant to businesses is that payments due from a Designated Person under a contract which was agreed before the person was added to the list of Designated Persons may be authorised by HM Treasury or another competent authority in the EU. In addition, banks and other companies may be authorised to release funds needed for a Designated Person's basic family needs or to pay his legal fees.

USA

The US has imposed similar restrictions and property freezes on 31 individuals and one company (set out in Schedule 2 of this note). The US restrictions apply to US citizens and residents, US companies, and any person or company while in the US.

Under the US laws, funds and property may be released under a licence.

Further details (date of birth and official position) are given in the annexes to the EU and US orders to help businesses identify whether they hold funds or property belonging to or controlled by these individuals.

The US sanctions go further than EU sanctions because they targeted Bank Rossiya and several Russian businessmen. European sanctions remain targeted at politicians and civil servants.

Asset freezes imposed by the US and Canada on Bank Rossiya effectively prevent it from doing any business with most western banks. That impacts on Bank Rossiya's customers as is demonstrated by Mastercard, Visa and Western Union withdrawing payment services to customers of Bank Rossiya. More importantly, the imposition of sanctions on a bank indicates that the US may consider wider sanctions against the Russian financial services sector.

The US also added Gennadiy Timchenko to its list of sanctions targets. Mr Timchenko was, until last week, a significant shareholder in a company called Gunvor – the world's fourth largest oil trading company. There was a risk that international companies would not trade with Gunvor in light of the sanctions against Mr Timchenko. That risked reduced (but was not eliminated) following Mr Timchenko selling his shareholding. Mr Timchenko is also a shareholder in other Russian companies.

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The US has passed an Executive Order which authorises further sanctions to be imposed, if need be, against the energy, financial services and mining sectors. Such sanctions would impact directly on Russian and US businesses. The sanctions would also affect many non-US companies. The way in which the global financial system works means that most banks are caught by US sanctions. Banks, in turn, require their business customers to comply with US sanctions. US sanctions are therefore far reaching in effect.

Duty to Make Inquiries and Report

Under the EU regime, businesses are required to supply immediately any information which will facilitate compliance with the prohibitions to the competent authority of the Member State. In the UK, HM Treasury is the competent authority.

If the UK, any person or entity which is regulated under the Financial Services and Markets Act 2000 is required to report if it holds any funds for any person listed in the EU Regulations. Financial businesses will also be required to report to HM Treasury if they become aware that any funds or resources are being made available for the benefit of a person listed in the Regulations. That duty will apply over and above the usual requirements for filing Suspicious Activity Reports.

HM Treasury has issued a notice which requests that all businesses check whether they hold any accounts, funds or assets for the 51 persons named in the EU Regulations and to report any suspected matches to HM Treasury.

Criminal Offences

The UK laws that implement the EU Regulations specify that funds and assets must not be made available for the benefit of a person listed in the Regulations, where the business making the funds or assets available knows or has reasonable cause to suspect that to be the case. There is therefore both a subjective knowledge based trigger and an objective trigger based on what a company should have known.

The UK law also makes it a criminal offence to do anything which has the object or effect of circumventing the EU restrictions. Accordingly, structuring transactions through overseas subsidiaries and third parties with the intention of avoiding the prohibitions is likely itself to be an offence.

Export Controls

Trade sanctions are also effectively in place. The Export Control Organisation in the UK has suspended all existing licences and licence applications for export to Russia for military and dual use items destined for units of the Russian armed forces or other state agencies which could be or are being deployed against Ukraine. This suspension captures equipment which has dual military and civilian purposes if it is known that the end user is the Russian military.

What could happen next?

It is clear that the sanctions applied to date are an opening gambit and that further restrictions may be applied in future.

A likely next step is that more individuals will be added to the listed of Designated Persons. Any businesses owned or controlled by targeted individuals may also be designated.

Further escalation of the crisis could also lead to wider ranging trade sanctions being imposed. The EU sanctions against Iran and Syria started with targeted asset freezes. As those measures were shown to be ineffective in bringing those regimes to heel, prohibitions were put in place which included:

- Prohibiting the sale, supply, transfer or export of key equipment and technology for the oil and gas industry (with a limited exemption for transactions required by, or obligations arising from, pre-existing contracts)
- Prohibitions on investment in entities or bodies engaged in the exploration or production of crude oil and natural gas, the refining of fuels or the liquefaction of natural gas
- Prohibitions on any new investment in the Iran petrochemical sector (with a limited exemption on transactions for key equipment and technology for the petrochemical industry required by pre-existing contracts)
- Prohibitions on the sale, supply, transfer or export to, and the purchase, import or transfer of gold, precious metals and diamonds
- Prohibitions on insurance and financial assistance related to prohibited trade.

Given the extent of trade between the EU and Russia, the EU will most likely take a cautious approach to increasing the sanctions.

The US Government may be more robust. In respect of sanctions against Iran, the US Government introduced wide ranging restrictions on being involved in any business relating to Iran. It sought to ensure that non-US companies complied with the US restrictions by threatening to prohibit non-US companies which traded with Iran from accessing the US financial market or from trading with US companies.

The current indications are that such wide ranging restrictions are unlikely but, given recent developments in Crimea, and US and UK obligations relating to Ukraine, companies would be wise to keep the position under close review.

What should businesses do?

- Businesses should check if they are holding funds for any person with a name listed below.
- If funds are held for a person with one of the names listed, enquiries should be made to establish if that person is the Designated Person.

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- Businesses who are dealing with a Russian company or hold funds for a Russian company would be wise to check who stands behind that company. If a Designated Person is connected to the company, legal advice should be taken.
- Businesses should sign up to email alerts from HM Treasury (or their home competent authority) and from the US Department of Treasury to notify them when another person is added to the relevant sanctions lists.
- Those undertaking business in Russia should ensure they have written contracts in place which allow them to suspend and terminate the contract without liability in the event that their counterparty or any person connected to the counterparty becomes subject to EU or US sanctions, or in the event that the product or services to be provided is subject to restrictions under EU and US laws.

What can named individuals do?

An individual who is named can take the following steps to challenge the EU sanctions:

- Apply to the EU court in Luxembourg
- Apply for a Judicial Review of the implementation of the sanctions in the UK.

Both routes can be pursued simultaneously.

Applications are usually based on the following:

- The individual has been mistakenly included on the sanctions list. This is, obviously, fact specific but would involve an analysis of the reason behind the sanctions (say the annexation of Crimea) and what role the named individual could have played in that process.
- There is insufficient disclosure as to why the individual was named on the list to allow the individual to defend/challenge their being named. Many sanctions challenges are successful as the EU fails to provide adequate disclosure regarding the reasons that people have been named.

The EU route is relatively simple. An application is made to the EU court in Luxembourg. The difficulty with the EU regime is that it is very slow. It can take in excess of two years for a case to move through the system to resolution and there is no process to expedite claims.

The UK route may be more complicated as one would need to show a link to the jurisdiction. Such a link can be shown through residency or assets in the jurisdiction.

Additionally, if it can be shown that an individual was added to the EU list at the request of the UK Government then this can also provide a sufficient link to the jurisdiction.

If there is a link, then the two routes to Judicial Review could be:

- To make a request to the UK government for assistance to remove the individual from the list (as it effects that individual's rights in the UK to deal with assets). If the UK government refuses to assist then one could use the refusal as the basis for a Judicial Review.
- If the UK government requested that the individual be named on the list one can apply for a Judicial Review of this decision making process.

Please note that:

- The Judicial Review would not technically be of the implementation of the sanctions in the UK but of some decision of a UK public authority (e.g. a decision of the Foreign Office to propose a person for designation, to refuse to assist them getting off the list etc.).
- Another possible Judicial Review route is a challenge to some kind of licensing decision by the Treasury in the UK e.g. if it refused to licence a disposal of assets.

US sanctions can be challenged on a similar basis in the US courts.

Neither the EU or UK process is overly document heavy given the lack of disclosure from the EU/UK government in such cases.

Schedule 1 – EU Sanctions List

1.	Sergey Valeryevich Aksyonov
2.	Vladimir Andreevich Konstantinov
3.	Rustam Ilmurovich Temirgaliev
4.	Deniz Valentinovich Berezovskiy
5.	Aleksei Mikhailovich Chaliy
6.	Pyotr Anatoliyovych Zima
7.	Yuriy Zhrebtsov
8.	Sergey Pavlovych Tsekov
9.	Viktor Alekseevich Ozerov
10.	Vladimir Michailovich Dzhubarov
11.	Andrei Aleksandrovich Klishas
12.	Nikolai Ivanovich Ryzhkov
13.	Evgeni Viktorovich Bushmin
14.	Aleksandr Borisovich Tootonov
15.	Oleg Evgenevich Panteleev
16.	Sergei Mikhailovich Mironov
17.	Sergei Vladimirovich Zheleznyak
18.	Leonid Eduardovich Slutski
19.	Aleksandr Viktorovich Vitko
20.	Anatoliy Alekseevich Sidorov
21.	Aleksandr Galkin

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22.	Mykola Yanovych Azarov
23.	Oleksii Mykolayovych Azarov
24.	Raisa Vasylyvna Bohatyriova
25.	Ihor Oleksandrovych Kalinin
26.	Andrii Petrovych Kliuiev
27.	Serhii Petrovych Kliuiev
28.	Serhiy Vitaliyovych Kurchenko
29.	Olena Leonidivna Lukash
30.	Andriy Volodymyrovych Portnov
31.	Artem Viktorovych Pshonka
32.	Viktor Pavlovych Pshonka
33.	Viktor Ivanovych Ratushniak
34.	Dmytro Volodymyrovych Tabachnyk
35.	Oleksandr Hryhorovych Yakamenko
36.	Oleksandr Viktorovych Yanukovych
37.	Viktor Fedorovych Yanukovych
38.	Viktor Viktorovych Yanukovych
39.	Vitalii Yuriyovych Zakharchenko
40.	Sergey Glazyev
41.	Dmitry Konstantinovich Kiselyov
42.	Valery Vladimirovich Kulikov
43.	Mikhail Malyshev
44.	Valentina Ivanova Matviyenko
45.	Valery Medvede
46.	Elena Borisovna Mizulina
47.	Sergei Evgenevich Naryshkin
48.	Alexander Mihailovich Nosatov
49.	Dimitry Olegovich Rogozin
50.	Vladislav Yurievich Surkov
51.	Igor Turchenyuk

Schedule 2 – US Sanctions List	
1.	Viktor Fedorovych Yanukovych (also on EU list)
2.	Sergei Aksenov
3.	Elena Borisovna Mizulina (also on EU list)
4.	Gennadiy Nikolayevich Timchenko
5.	Leonid Slutskiy (also on EU list)
6.	Sergei Glazyev (also on EU list)
7.	Vladislav Surkov (also on EU list)
8.	Dmitry Rogozin (also on EU list)
9.	Valentina Matviyenko (also on EU list)
10.	Andrei Kliskas (also on EU list)
11.	Viktor Alekseevich Ozerov (also on EU list)
12.	Vladimir Michailovich Dzhubarov (also on EU list)
13.	Evgeni Viktorovich Bushmin (also on EU list)
14.	Nikolai Ivanovich Ryzhkov (also on EU list)
15.	Sergei Vladimirovich Zheleznyak (also on EU list)
16.	Sergei Mikhailovich Mironov (also on EU list)
17.	Aleksandr Borisovich Tootonov (also on EU list)
18.	Oleg Evgenevich Pantelev (also on EU list)
19.	Sergey Yevgenyevich Naryshkin (also on EU list)
20.	Victor Petrovich Ivanov
21.	Igor Dmitrievich Sergun
22.	Sergei Ivanov
23.	Alexei Gromov
24.	Andrei Alexandrovich Fursenko
25.	Vladimir Ivanovich Yakunin
26.	Vladimir Igorevich Kozhin
27.	Arkady Rotenberg
28.	Boris Rotenberg
29.	Yuri Valentinovich Kovalchuk
30.	Vladimir Konstantinov (also on EU list)
31.	Viktor Medvedchuk
32.	Bank Rossiya (formerly known as Aktsionerny Bank Russian Federation)

For more information, please contact:



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