
New Ukraine Sanctions Announced— U.S., EU and Canada Take Action

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In response to political developments in the Ukraine and Russian military action in Crimea, the United States and European Union (EU) announced new sanctions on March 6, 2014. Canada issued its sanctions on March 5, 2014. The U.S. Executive Order authorized the Treasury Department to block the assets of persons determined to have engaged in certain destabilizing conduct or misappropriation of state assets in the Ukraine. The Executive Order also provided for the potential denial of visas. The United States has not yet made any designations under its sanctions and is not expected to do so immediately, but has issued anti-money laundering guidance concerning the accounts of eighteen members of the former Ukraine regime, including ex-President Viktor Yanukovich. The EU and Canada imposed an asset freeze against these former Ukraine regime officials.

The U.S., EU and Canada are deploying sanctions in an attempt to influence Russian behavior in the Ukraine and to support the new Ukraine government by helping it pursue assets misappropriated by former regime officials and cronies. At present, the U.S. sanctions are only a framework, since there have not been any sanctions designations. Trade, investment, banking and commercial activity with the Ukraine and Russia remain lawful.

The EU designations imposed under Council Regulation No. 208/2014 and the Canadian designations under the “Freezing Assets of Corrupt Foreign Officials (Ukraine) Regulations” (SOR/2014-44) go further in actually freezing the assets of eighteen former Ukrainian government officials and their close associates who are subject to criminal prosecution in Ukraine. The EU regulation does, however, provide for limited exceptions such as payments due under contracts concluded before the date of designation.

In related action, the Financial Crimes Enforcement Network (FinCEN) issued guidance on March 6, 2014 (FIN-2014-A002) to monitor accounts that may relate to these eighteen former Ukrainian regime officials sanctioned by the EU and Canada, updating its earlier Ukraine anti-money laundering guidance of February 25 (see FIN-2014-A001). FinCen issued its advisory because of the increased risk that these individuals may

attempt to move assets in a deceptive fashion. The advisory does not impose new obligations on U.S. financial institutions, but it reminds them of the enhanced scrutiny required for private bank accounts of senior foreign political figures and emphasizes the obligation to file suspicious activity reports if they know, suspect or have reason to suspect that transactions relating to such accounts involve funds derived from illicit activity.

By issuing this advisory, rather than blocking the assets of these individuals outright, the Obama Administration is evidently attempting to calibrate carefully the escalation of sanctions, using only the threat of designation at present as a diplomatic tool. Careful calibration also is warranted because of the substantial assets of U.S. companies in Russia and the risk of retaliatory Russian action against those assets. The U.S. Executive Order, however, opens the door to the possible imposition of sanctions by the Office of Foreign Assets Control (OFAC) on a wide range of Ukrainian and Russian parties and those who do business with them.

Specifically, the Executive Order authorizes sanctions against persons determined to:

1. Be responsible for or complicit in, or to have engaged, directly or indirectly, in:
 - (A) actions or policies that undermine democratic processes or institutions in Ukraine;
 - (B) actions or policies that threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine; or
 - (C) misappropriation of state assets of Ukraine or of an economically significant entity in Ukraine;
2. Have asserted governmental authority over any part or region of Ukraine without the authorization of the Government of Ukraine;
3. Be a leader of an entity that has, or whose members have, engaged in any activity described above or of any other entity blocked pursuant to Ukraine sanctions; or
4. Have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the activity described above or a person blocked pursuant to Ukraine sanctions.

Consistent with past OFAC guidance, parties that are owned 50 percent or more by a person subject to sanctions would be subject to the sanctions as well. The Executive Order further provides for immigration and visa bans in addition to blocking.

In addition to the sanctions authorized under the Executive Order, other sanctions under consideration include designations of Russian companies and/or financial institutions under other U.S. sanctions programs, targeting the assets of Russian oligarchs, and restricting exports of certain products or technology. The situation is evolving rapidly, and companies should monitor developments closely.

If you have any questions about the content of this client alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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