SQUIRE PATTON BOGGS

EU AND US IMPOSE COORDINATED SANCTIONS AGAINST RUSSIA

Following an intense week of diplomatic negotiations, on July 29, the European Union and United States jointly announced a new round of economic sanctions targeting certain sectors of the Russian economy. The development comes after the US Department of the Treasury adopted a new "Sectoral Sanctions Identification List" (SSI List) on July 16 pursuant to existing legal authorities, but marks the first time that the EU 28-member bloc agreed to a package of restrictive measures targeting key sectors of the Russian economy. The legal impact of these expanding and overlapping sanctions regimes differ in both their underlying statutory authorities and policy goals and require careful examination by global financial institutions and businesses.

Summary of Sanctions (see details below for full explanation)		
Following are prohibited if not licensed by the applicable national authority:		
	EU	**US**
Dealings with listed persons/entities	Yes	Yes
Dealing in new debt/equity greater than 90 days with certain listed person/entities	Yes. Only financial institutions listed	Yes. (i) Financial institutions and (ii) other business organizations (but only for debt)
Imports/Exports of Military Listed Items	Embargo on both exports and imports	Policy of denial for exports that "contribute to Russia's military capabilities"; no action on imports
Export of certain energy sector equipment/ technology	Yes	Yes
New investment in infrastructure projects in Crimea and Sevastopol	Yes	No
Multilateral and State-Sponsored Financing	EU (European Bank for Reconstruction and Development, European Investment Bank)	

This client alert provides an update to a series of international economic sanctions alerts on the situation in Ukraine, including US and EU Increase Sanctions Against Russia.

European Union Extends Sanctions Package against Russia

In consequence of the continuing instability of the situation in Ukraine, on July 29, the EU reached agreement on additional restrictive measures against Russia. The newly announced restrictions are the most wide-ranging to date and extend to measures that target Russia's access to EU capital markets, the import and export of items for military use, and adding to the existing list of sanctioned individuals and entities subject to asset freezes and travel bans.

The EU Council has confirmed that these measures will be kept under review and, dependent upon the unfolding situation, may in due course be suspended, withdrawn, or supplemented by other restrictive measures.

Economic Sanctions Designed to Restrict Russia's Access to EU Capital Markets

On July 31, the EU Council published Regulation 833/2014, which imposed restrictions on access to the EU capital markets for five Russian financial institutions listed in Annex III to the Regulation. Accordingly, EU nationals and companies are prohibited from buying or selling (or otherwise dealing with) bonds, shares, or similar financial instruments with a maturity exceeding 90 days, issued by the five financial institutions named in the Regulation. The restrictions also extend to subsidiaries of these financial institutions, together with those acting on their behalf or at their direction.

Trade Embargoes

On July 31, the EU also placed an arms embargo on the import and export of all goods and technology listed on the EU Common Military List. The embargo only relates to contracts or agreements concluded after July 31, which means that obligations arising from contracts for military goods concluded prior to August 1 remain unaffected by the new measures.

In addition, no EU national or company may sell, supply, transfer, or export any dual-use goods and technology (i.e., goods that have a civilian or military application) to any individual or entity in Russia, if those goods are or may be intended to be used for a military purpose or by a military end-user. For the latest EU list of dual use goods please refer to Annex I to Regulation 428/2009. In circumstances where the end-user is the Russian military, such dual-use goods or technology shall be deemed to be for a military use.

Finally, the EU has introduced sanctions designed to obstruct the long-term development of Russia's oil industry by imposing a prior authorisation requirement for the provision of certain energy-related equipment and technology to Russia listed in Annex II of Regulation 833/2014. Exporters intending to make such exports will be required to obtain prior authorisation from the competent authority of the EU member state in question, with export licences for technologies for use in connection with the exploration and production of deep water oil or Arctic oil and shale oil projects in Russia likely to be declined.

Extension of Asset Freezes and Travel Bans

On July 30, the EU Council published Council implementing Regulation 826/2014, which added eight more individuals and three more entities to the list of individuals, entities, and bodies subject to the restrictive measures imposed by the EU on March 17 by the adoption of Regulation 269/2014.

The list includes parties suspected of providing support to or benefitting from Russian decision-makers responsible for or connected to Russia's annexation of Crimea and the crisis in Ukraine. The recent additions, which took effect July 30, include the Russian National Commercial Bank (RNCB) and a Russian state-owned anti-aircraft weaponry manufacturing company and bring the total number of persons and entities under EU restrictions to 95 persons and 23 entities.

Trade and Investment Restrictions for Crimea and Sevastopol

On July 30, the EU Council published Regulation 825/2014, which introduced various trade and investment restrictions for the regions of Crimea and Sevastopol and amended the previous measures that had been put in place under Regulation 692/2014 of June 23. The new measures comprise a ban on new investment (including related services such as brokering) in infrastructure projects in the transport, telecommunications, and energy sectors and in relation to the exploitation of oil, gas, and minerals in Crimea and Sevastopol. Such measures are specifically designed to stifle economic development in the Crimean region, which the US and EU argue Russia illegally seized earlier this year.

United States Expands Sectoral Sanctions against the Russian Federation

On July 29, the US Treasury Department's Office of Foreign Assets Control (OFAC) added one Russian business to the Specially Designated Nationals (SDN) List pursuant to the March 17, 2014 Executive Order (E.O.) 13661 and three Russian financial institutions to the Sectoral Sanctions Identifications (SSI) list pursuant to the March 20, 2014 E.O. 13662.

New Designation Pursuant to Executive Order 13661

E.O. 13661 authorizes the imposition of sanctions against individuals the US government determines to be Russian government officials and entities determined to operate in the Russian arms sector. On July 29, OFAC designated the United Shipbuilding Corporation, Russia's largest shipbuilding company and main contractor for the Russian Navy, to the SDN list. The legal implications of the SDN designation means that corporation's assets are frozen, it is prohibited from accessing the US financial system, and no US persons may participate in transactions with it.

New Sanctions Pursuant to Executive Order 13662

E.O. 13662 authorizes the imposition of sanctions against individuals and entities determined by the US government to operate in certain sectors of the Russian economy, including the financial services, energy, metals and mining, engineering, and defense industries. On July 16, OFAC imposed sanctions for the first time under this authority against two large Russian financial institutions and two major Russian energy companies and added these entities to a new Sectoral Sanctions Identifications (SSI) List.[1] On July 29, OFAC added three more financial institutions to the SSI List – Bank of Moscow, the Russian Agricultural Bank (Rosselkhozbank), and VTB Bank – totaling five of Russia's six largest banks on the SSI List.

In creating the SSI List, OFAC established a new legal framework that defines a different scope of permissible and prohibited transactions. As compared to the SDN List that subjects designated entities to asset freezes and travel bans, the new SSI List prohibits US persons from undertaking the following activities with respect to financial institutions on the SSI List or any entities owned 50 percent or more by an SSI List financial institution:

- providing or transacting any business with respect to new debt with a maturity of more than 90 days (short term debt is not affected); and
- transacting in new equity.

OFAC states, "The property and interests in property of persons identified on the SSI list are not [automatically] blocked," although it notes that this could change.

Other transactions in which one or more of these entities has an interest remain permitted, including US banks providing these Russian banks with correspondent banking services. US persons may also issue and deal in SSI List entities' depositary receipts so long as they are based on equity issued prior to the date when the entity was placed on the SSI List. However, OFAC cautions that a US person should undertake appropriate due diligence to avoid inadvertently transacting in, providing financing for, or otherwise dealing in new equity issued to an SSI List entity by virtue of that entity utilizing the same International Securities Identification Number (ISIN) or other equity identifier issued to it before it was placed on the SSI List.

Since creation of the SSI List on July 16, OFAC has clarified that US persons who entered into long-term credit facilities or loan agreements for an SSI List entity before that it was placed on the SSI List are permitted to continue drawdowns and disbursements so long as the repayment terms are 90 days or less – or, if longer than 90 days, were contractually agreed to prior to the date when the entity was placed on the SSI List. However, OFAC would view any renegotiation of the terms or new drawdowns or disbursements as a prohibited extension of credit.

Businesses that have entered into contracts with SSI-listed entities with extensions of credit greater than 90 days prior to July 16 have been advised by OFAC that they may perform under the agreement without modification to the credit terms.

Similarly, OFAC allows US financial institutions to advise or confirm letters of credit – even if the term is longer than 90 days maturity – issued on behalf of a non-sanctioned entity in which an SSI List entity such as Rosneft and Novatek is the beneficiary (e.g., exporter or seller) because the letter of credit does not constitute an extension of credit to the SSI List entity. However, OFAC prohibits such transactions if an SSI List entity applies for the letter of credit.

1 Directive 1 pertains to entities operating in the Russian financial services sector. On July 16, OFAC sanctioned Rosneft and Novatek under Directive 2, which prohibits the extension of new debt – but not new equity – to entities operating in the Russian energy sector. No entities were sanctioned pursuant to Directive 2 on July 29.

General License No. 1 permits US persons to continue to transact business with respect to derivatives linked to debt or equity of any SSI List entities even if that debt or equity is issued on or after July 16, 2014, or has a maturity of longer than 90 days. And while normal counterparty credit exposure in an otherwise permissible derivative transaction does not constitute an extension of credit, OFAC cautions that a US person should insure it does not hold, purchase, or sell the underlying asset in such transactions.

Additional U.S. Restrictions on Transactions with Russia

This week, the Obama administration also announced further restrictions on US trade with Russia through several mechanisms. These restrictions include:

- Suspending consideration of any new financing or provision of insurance by the Overseas Private Investment Corporation for transactions with Russia;
- Suspending all new transactions supported by the Export-Import Bank for financing exports to Russia;
- Requiring license applications to the US Department of Commerce, which will presumptively be denied, to export US military, dual use or energy technologies to Russia for use in deepwater, Artic offshore, or shale oil projects. This is in addition to an existing policy of presumptively denying any license for the export or reexport of licenses to export or re-export any high technology item subject to the EAR to Russia that might contribute to Russia's military capabilities; and
- Suspending all US Department of Agriculture bilateral export credit and development finance for Russia.

While there is no comprehensive Arms Embargo contained in the expanded sanctions, export of military items requires a license from the US Department of State for more critical items or from Commerce for the less critical "600 series" items. The State Department has announced a policy of denial with respect to exports that "contribute to Russia's military capabilities."

The Squire Patton Boggs offices in Washington, Brussels, London, and Moscow are continuing to monitor on all developments relating to this expanding global sanctions regime.

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