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U.S. and EU Sanctions on Iran and Russia

For Le Cercle De la Compliance

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Agenda

- **U.S. Sanctions Programs**
 - U.S. Sanctions: Considerations and Overview
 - Iran
 - Russia/Ukraine/Crimea

- **EU Sanctions Programs**
 - Iran
 - Russia



U.S. Sanctions: Considerations and Overview

- Legal Scope of Restrictions
 - Territorial
 - Conduct/Sector (e.g. Debt/Equity, Industry)
 - Targeted Persons (e.g. Specially Designated Nationals, Entity List)
- Requesting Clarity or Authorization from the USG under Primary or Secondary Sanctions
- Contractual commitments regarding U.S. sanctions (e.g. Banks, Suppliers)
- Penalties for Violations: Primary versus Secondary
- Enforcement Trends (e.g. Countries, SDNs, Intersection of Export Controls)

U.S. Sanctions on Iran

Overview of JCPOA Sanctions Relief

- Implementation of Joint Comprehensive Plan of Action (JCPOA) on January 16, 2016
 - Most EU trade restrictions with Iran were lifted
 - Most U.S. “secondary sanctions” were lifted
 - “Primary” U.S. sanctions remain fully in place, meaning that broad U.S. trade embargo continues to exist for activities with a U.S. nexus, including U.S. persons, **USD payments**, and/or goods, software, or technology subject to U.S. law
 - Some very limited sanctions relief for U.S. companies and their foreign subsidiaries (e.g. GLH and aviation specific licenses)
- JCPOA mainly benefits non-U.S. companies who can engage in activities with no U.S. nexus
- U.S. companies generally still cannot do business in or with Iran due to a broad U.S. trade embargo



U.S. Sanctions on Iran

- U.S. embargo generally remains in place
- **Primary Sanctions** (with limited exceptions): U.S. persons wherever located continue to be broadly prohibited from engaging in transactions or dealings with Iran or its government
- U.S. Export Controls: All licensing requirements and prohibitions under the Iran Transactions and Sanctions Regulations (ITSR) and the U.S. Export Administration Regulations (EAR) continue to apply
- Designation authorities: including support for terrorism, Iran's human rights abuses, proliferation of weapons of mass destruction (WMD), etc.
- **Secondary Sanctions** targeting third parties for dealings with Iranian persons/entities that remain designated on the SDN List that have been designated under terrorism, counter-proliferation, missile, and human rights authorities
- State and Local Laws
- SEC reporting requirements

Trump Administration

President Trump refused to certify Iran's compliance with its obligations under the JCPOA by the October 2017 deadline

But Trump continued to sign JCPOA waivers, including in January 2018, temporarily extending suspension of U.S. secondary sanctions

The first set of secondary sanctions will be re-imposed on August 7, 2018;
The remaining secondary sanctions will be re-imposed on November 5, 2018;
Certain Iranian parties will be re-designated as SDNs on November 5, 2018

On May 8, 2018, President Trump announced that the U.S. would withdraw from the JCPOA and begin re-imposing *all* sanctions that were lifted under JCPOA

US primary sanctions on Iran will snap back after 90-day and 180-day wind-down periods

- ❑ GL H activities must be completed by November 4, 2018
- ❑ OFAC will revoke aviation specific licenses after August 6, 2018

U.S. Sanctions on Russia

Russia – U.S. Sanctions Overview

Introduced in March 2014 as targeted sanctions focused on SDNs, but have expanded since that time, four key components:

Restrictions on dealings with SDNs

- Blocking of property and interests in property, broadly defined
- Numerous designations (several Russian banks, defense companies, and individuals)

Sectoral sanctions under four OFAC Directives (no blocking of property)

- Currently target banks, energy, and defense companies in Russia identified on the Sectoral Sanctions Identifications List (SSIL) – not all are subject to the same restrictions
- Restrictions on certain financial dealings (e.g., new “debt” and “equity”)
- Extensions of credit (including payment terms) are considered as “debt”
- Restrictions on exploration or production projects in Russia (deep water, Arctic offshore, or shale)

Export controls

- Defense articles/services under the International Traffic in Arms Regulations (ITAR)
- Commercial/dual use items under the U.S. Export Administration Regulations (EAR)

Crimea (broad territorial sanctions)

Sanctioned Persons

OFAC designated a number of entities and persons in Ukraine and Russia as SDNs under Executive Orders 13660 and 13661, including certain:

- Russian banks and defense companies
- Individuals in Russia and Ukraine

U.S. persons are prohibited from engaging in any dealings with SDNs and must block (freeze) property interests of SDNs when such property is within the possession or control of a U.S. person, or within the United States

- Property and interests in property defined broadly
- Blocking must be reported to OFAC within 10 days

Restrictions apply to an entity “owned” by SDNs at 50% or higher level (directly or indirectly)

- Aggregate ownership counts toward the 50% rule



Sanctioned Persons, cont'd.

- The European Union (EU), Canada, Japan, and Australia have also imposed sanctions against certain individuals and entities, including asset freezes and visa bans
- However, the lists of designated persons are not identical



U.S. Financial Restrictions



- Pursuant to EO 13662, and as supplemented by CAATSA, OFAC has imposed certain restrictions on transactions with the financial, energy, and defense sectors in Russia
- OFAC published the Sectoral Sanctions Identification List (“SSIL”), which identifies entities subject to these restrictions
 - OFAC issued 4 Directives, which set forth groups of entities subject to different restrictions
 - The entities listed on the SSIL are **not** SDNs so they are not subject to property blocking
 - SSIL restrictions apply to entities owned by SSIL entities at 50 percent or greater interest, directly or indirectly
 - Restrictions extend to evasion, conspiracy to violate or causing a violation of these measures

U.S. Financial Restrictions, cont'd.

[Financial Sector]

Directive 1, as amended, prohibits transacting in, providing financing for, or otherwise dealing in:

- new debt of longer than 14 days maturity (for new debt issued after Nov. 28, 2017; previously it was 30 days)
- new equity of these SSIL entities

[Energy Sector]

Directive 2, as amended, prohibits transacting in, providing financing for, or otherwise dealing in:

- new debt of longer than 60 days maturity (for new debt issued after Nov. 28, 2017; previously it was 90 days)
- Unlike Directive 1, Directive 2 does not place restrictions on new equity of these entities

[Defense and Related Materials Sector]

Directive 3 prohibits transacting in, providing financing for, or otherwise dealing in:

- new debt of longer than 30 days maturity



U.S. Financial Restrictions, cont'd.

- For purposes of all three Directives, the term “debt” includes loans, guarantees, extensions of credit etc.
 - For example, allowing payment terms in excess of 30 days would represent a prohibited extension of credit to a Directive 3 entity
 - Loans where SSILs are lenders, rather than borrowers, are not targeted by these restrictions
 - Analysis can be complex – OFAC issued guidance (FAQs) but not all scenarios are covered



US Financial Restrictions, cont'd.

[Deepwater, Arctic offshore, or shale projects]

Directive 4 prohibits the provision, export, or reexport, directly or indirectly, of:

- goods, services (except for financial services), or technology
- in support of exploration or production for deepwater, Arctic offshore, or shale projects
- that involve an SSIL entity subject to Directive 4 and have the potential to produce oil in the Russian Federation, or in maritime area claimed by the Russian Federation, or
- that are initiated on or after Jan. 29, 2018 and have the potential to produce oil in any location, and in which any SSIL subject to Directive 4 has a 33% or greater ownership interest or ownership of a majority of the voting interests

- Directive 4 targets a number of energy companies such as:
 - Gazprom
 - Gazprom Neft
 - Lukoil
 - Rosneft
 - Surgutneftegas
- Not limited to goods subject to U.S. law



U.S. Restricted Party Lists

- Beginning April 28, 2014, the Commerce Department has added a number of Russian / Ukrainian persons to the Entity List due to the ongoing strife in Ukraine, including, but not limited to:
 - Uralvagonzavod
 - Kalashnikov Concern
 - Volga Group
 - United Shipbuilding Corporation
- The Entity List includes other Russian persons designated for unrelated reasons
- The U.S. government maintains other lists of restricted parties, some of which include Russian persons and entities



Export Licensing

Department of Commerce (DOC): Export Administration Regulations (EAR) – four types of Russia-related restrictions:

1. Items on the Commerce Control List controlled for National Security (NS) reasons
 - No longer favorable licensing policy, irrespective of end use
2. Oil/gas projects (deep water, Arctic offshore, or shale)
 - Eight ECCNs targeted (including oil/gas exploration data, hydraulic fracturing design and analysis data)
 - Covered items by Schedule B number (EAR99 items)
 - Policy of denial for extraction from shale (though not *through* shale)
3. Entity List designations
 - Oil/gas companies – all items subject to the EAR but only if used for targeted projects
 - Others – all items subject to the EAR, irrespective of end use
4. Expansion of the “China rule” to Russia
 - Several ECCNs (including 7A994 navigation systems and 9A991 aircraft etc.) are subject to licensing if intended for “military end use” or “military end user” (including those whose actions support “military end uses”)



Crimea Sanctions

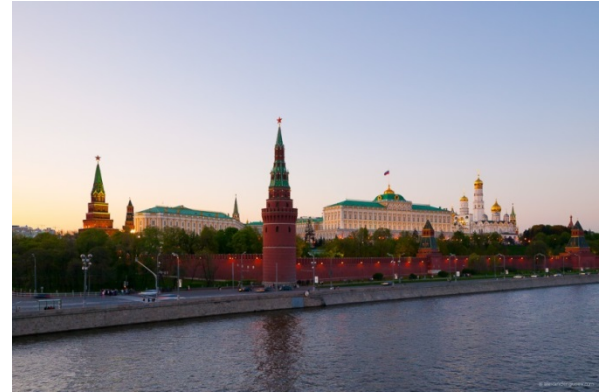
- On 19 Dec. 2014, Executive Order 13685 imposed comprehensive sanctions on the Crimea region, prohibiting U.S. persons from:
 - New investment
 - The exportation, sale or provision, directly or indirectly, of **any** goods, services, or technology
 - The importation into the U.S., directly or indirectly, of **any** goods, services, or technology
 - Any approval, financing, facilitation, or guarantee of a transaction by a foreign person if such transaction would be prohibited for a U.S. person to undertake
- BIS amended the EAR to implement ban on export/re-export of items subject to U.S. law (even by non-U.S. persons)
- Effectively, Crimea is now subject to very broad sanctions that are territorial in nature

Countering America's Adversaries Through Sanctions Act ("CAATSA")

- Became law in August 2017 (passed with a veto-proof majority)
- CAATSA includes the following provisions expanding primary sanctions:
 - Tightens restrictions under SSIL Directives 1 and 2 by reducing the length of the maturity date for debt transactions to 14 and 60 from 30 and 90 days, respectively
 - Authorizes imposition of (yet to be defined) sectoral sanctions on state-owned railways
 - Expands Directive 4 beyond unconventional exploration/production projects in Russia to the same projects anywhere in the world so long as the SSIL entity has at least a 33% interest in such project (individually or in the aggregate)
- CAATSA adds new secondary sanctions that target parties engaged in the following activities:
 - Energy export pipelines in Russia (investment or provision of goods/services over certain monetary thresholds)
 - Foreign financial institutions facilitating defense- and energy-related transactions on behalf of Russian Government or transactions with SDNs
 - “Significant transaction” with a designated party in Russian intelligence and defense sectors (State Dept. issued the so-called “section 231” list with such parties)
 - Significant investment in unconventional exploration/production projects in Russia
 - Facilitating privatization of state assets that unjustly benefits Russian govt. officials
 - Cybersecurity activities
 - “Significant transaction” with a sanctioned party in Russia (OFAC issued helpful guidance regarding the scope of section 228 restrictions)

“Kremlin” List

- Report on Senior Foreign Political Figures and Oligarchs in the Russian Federation (“Kremlin List”)
- CAATSA Section 241 required the Administration to provide a report to Congress on senior Russian officials, oligarchs, and parastatal entities by January 29, 2018
 - Section 241 did not require sanctioning or blocking the named individuals and entities
- The Trump Administration submitted the report to Congress but did not immediately impose sanctions
 - The Kremlin List has no legal effect (does not impose sanctions), however the named individuals may be at a higher risk of being sanctioned



Russia Sanctions – Recent Developments

- On June 20, 2017, OFAC designated 38 individuals and entities as SDNs and added 20 new SSILs under Ukraine-related authorities
- On April 6, 2018, OFAC designated multiple Russian targets as SDNs
 - 7 “oligarchs” (and their companies) and 17 top Russian government officials
 - Including: EN+, GAZ Group, Basic Element, Renova Group, Rosoboroneksport
 - Secondary Sanctions apply
- General License 12C (“GL12C”)
 - **Effective until June 5, 2018**
 - Authorizes most transactions and activities ordinarily incident and necessary to the maintenance of wind down operations, contracts, or other agreements with listed companies
 - Does not authorize the export of goods from the U.S. or divestment of debt, equity, or other holdings for an SDN
 - Does not authorize payments owed to these SDNs

Russia Sanctions – Recent Developments

- General License 13A (“GL13A”)
 - **Expires June 6, 2018**
 - Authorized activities necessary to divest or transfer debt, equity, or other holdings as well as facilitation of transfers in such holdings from a non-US person to another non-US person
 - Applies to
 - En+ Group, GAZ Group, and RUSAL, as well as entities they own 50% or more provided that holdings were issued by Irkutskenergo, GAZ Auto Plant, or Rusal Capital Designated Activity Company
- General License 14 (“GL14”)
 - Only for RUSAL, extends wind-down to **Oct. 23, 2018** and does allow payments
- General License 15 (“GL15”)
 - Allows GAZ Group or any other entity in which GAZ Group owns, directly or indirectly, a 50 percent or greater interest, to continue maintenance or wind down activities until **Oct. 23, 2018**
- Reporting obligations exist under GL 12C, GL 13A, GL 14, and GL15

EU Sanctions on Iran

Iran: EU Overview

Two different sets of EU Iran sanctions legislation

- Nuclear-related sanctions, economic and financial restrictive measures
- Human rights violations related sanctions, measures prohibiting trade in equipment which might be used for internal repression and freezing funds of those persons or entities linked to human rights violations

Applicable restrictions

- Restrictions on dual-use / technology that can contribute to uranium enrichment, listed on Nuclear Suppliers Group list or under the Missile Technology Control Regime

Lifted measures

- Import of crude oil, petroleum products, gas and petrochemical products from Iran
- Exports to Iran of key equipment for the oil, gas and petrochemical sectors
- Investment in the oil, gas and petrochemical sectors
- Associated services for each of the above
- Shipping and shipbuilding restrictions removed
- Storing or transporting oil and petrochemical products

Iran: EU asset-freezing measures

- Persons and entities still subject to asset freezing measures:
 - Nuclear-related sanctions: **62 individuals** and **184 entities**
 - Human rights-related sanctions: **87 individuals** and **1 entity**
- Key targets:
 - Government of Iran
 - Iranian Revolutionary Guards Corps and subsidiaries
- EU asset-freezing measures target entities owned or controlled more than 50% by a sanctioned entity



The EU's reaction

- **18 May 2018: Commission presents plan to counter U.S. sanctions:**
 - Activation of the Blocking Statute
 - Removal of obstacles for the European Investment Bank to invest in Iran
 - Explore the possibility of one-off bank transfers to the Central Bank of Iran
- **25 May 2018: meeting of the Joint Commission including the EU, China, France, Germany, Russia, United Kingdom and Iran**
 - Participants recalled their commitment to the continued implementation of the JCPOA
- **Total and Maersk announced their intention to abandon business in Iran**

“As long as Iran continues to implement its nuclear related commitments, as it is doing so far, the European Union will remain committed to the continued full and effective implementation of the nuclear deal”

High Representative
Federica Mogherini

8 May 2018

Regulation 2271/96: the blocking regulation

- Protects EU companies from the extraterritorial reach of certain U.S. sanctions
- Applies to the sanctions listed in the Annex
- Prohibits compliance, active or by negligence, with the requirements or prohibitions of extraterritorial sanctions
- Prohibits the recognition of judgements or administrative decisions implementing extraterritorial sanctions
- Requirement to inform the Commission if economic and/or financial interests are affected by the extraterritorial sanctions
- Possibility to recover damages caused by the application of extraterritorial sanctions
- EU preparing amendment of the Annex by 4 June 2018

Sanctions currently in the Annex

- National Defense Authorization Act for Fiscal Year 1993
- Cuban Liberty and Democratic Solidarity Act of 1996
- Iran and Libya Sanctions Act of 1996
- 31 CFR (Code of Federal Regulations) Ch. V (7-1-95 edition) Part 515 — Cuban Assets Control Regulations, subpart B (Prohibitions), E (Licenses, Authorizations and Statements of Licensing Policy) and G (Penalties)

Impact on EU companies

- European leaders want to minimise the impact on EU companies but do not want an open confrontation with the U.S.
- Blocking Regulation probably not sufficient to protect all companies
- Compliance might become particularly challenging to EU subsidiaries of U.S. corporates
- Compliance clauses relating to U.S. sanctions in contracts can raise concerns for EU corporates
- It is unclear whether Iran will continue respecting the terms of the JCPOA



Iran: Practical considerations under U.S. Sanctions

- After 16 January 2016, Iran-related activities with U.S. nexus still restricted, e.g., payments in U.S. dollars, transactions involving goods, software or technology (“items”) subject to U.S. law, and transactions otherwise involving U.S. persons
- Unwillingness of non-U.S. banks to support Iran trade or process Iran-related payments
- Loss of visa-free travel to the U.S. by nationals of Visa Waiver countries who travel to Iran
- Mandatory disclosure obligation to U.S. Securities and Exchange Commission continues
- Restrictive covenants/representations imposed by banks in lending/financing agreements
- No “grandfathering” of activities in case sanctions “snap back” into effect

EU Sanctions on Russia

EU Russia Sanctions – Trade restrictions – Sectoral

Ban on sale, supply, transfer or export, directly or indirectly, of **listed oil exploration or production goods and technology** for use in Russia, and destined for projects in: Arctic, Deep-water projects, Shale projects

Ban on provision of **technical assistance**, brokering services, financing or financial assistance (including payment services and letters of credit) in relation to prohibited goods

Financial assistance does not include simply processing payments or transfers of funds, but acts of financing which provide substantive support to transactions involving prohibited goods (*PJSC Rosneft Oil Company v HM Treasury and Ors*, C-72/15)

Prohibition on **provision of services** in relation to: drilling, logging and completion services, well testing, specialized floating vessels

EU Russia Sanctions – financial restrictions (1)

Entities subject to financial restrictions

- 5 Banks:
Sberbank,
VTB Bank,
Gazprombank,
VEB,
Rosselkhozbank;
- 6 Companies:
OPK Oboronprom,
United Aircraft
Corporation,
Uralvagonzavod,
Rosneft,
Transneft
Gazprom Neft

Prohibitions on

- The sale or purchase of or dealing with transferable securities and money-market instruments with a maturity of over 30 days if issued after 12 September 2014 (related investment services and assistance with such issues is also prohibited); and
- Making or being part of any arrangement to extend new loans or credit with a maturity exceeding 30 days after 12 September 2014

Restrictions apply to

- Transferable securities and money market instruments issued after 12 September 2014 or loans made after this date, in all cases where the maturity is over 30 days

EU Russia Sanctions – financial restrictions (2)

Transferable securities



Shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares

Bonds or other forms of securitised debt, including depositary receipts in respect of such securities,

Any other securities giving the right to acquire or sell any such transferable securities

Money-market instruments



Classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment

Rollovers of existing debt



They must comply with the 30-day maturity limit

Deposit services



Not covered unless used to circumvent the prohibition on new loans

EU Russia financial restrictions in practice

- Current accounts with the 5 listed banks can be used, assuming that they are not used for circumvention
 - Eg. agreeing to leave large amounts of capital untouched in a current account by way of a long-term deposit is permissible.
- Payment terms and delayed payment for goods are not prohibited if they do not suggest circumvention
 - Eg. payment terms granted to the 6 listed entities in line with normal business practice are permissible, unless the extension may suggest circumvention.
- Financing related to exports or imports in relation to non-restricted trade between the EU and Russia is carved out of the restrictions on making loans to the designated entities.



EU Russia/Ukraine Sanctions – asset-freezing measures

- The EU has imposed asset-freezing measures in relation to Russia and Ukraine against 61 entities and 286 persons
- Asset-freezing measures cover listed parties or entities owned or controlled, directly or indirectly, more than 50% by a listed party
- The measures prohibit:
 - Dealing with funds or economic resources belonging to, owned, held or controlled by the designated persons
 - Making funds or economic resources available, directly or indirectly, to or for the benefit of the designated persons
 - "Economic resources": Assets of every kind (tangible or intangible, movable or immovable), which are not funds but may be used to obtain funds, goods or services. Essentially, any asset of any kind is likely to fall within the definition of "funds" or the definition of "economic resources"
 - Dealing with "economic resources" means exchanging them, or using them in exchange, for funds, goods or services
 - Participating, knowingly and intentionally, in activities the object or effect of which is to circumvent the above prohibitions
- Activities are prohibited include, e.g.,
 - Issuing a letter of credit where a designated person is the beneficiary
 - Supplying goods or services to a designated person
 - Re-structuring a transaction to try and avoid the impact of sanctions

Questions?

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