

U.S. and Allied Countries Impose Sanctions Targeting Russian Financial Sector and Ukraine Separatist-Territories

by Lawrence Ward, Dave Townsend, and T. Augustine Lo

The Biden Administration and several allied countries announced on February 22 new economic sanctions on Russia and the separatist territories in Ukraine. In the United States, the sanctions target only certain Russian financial institutions and some of their foreign subsidiaries, Russian sovereign debt, certain Russian individuals, and certain Russian-flagged vessels. In addition, President Biden signed an executive order on February 21 that imposes a territorial embargo on what Russia is now calling the Donetsk People's Republic ("DNR") and Luhansk People's Republic ("LNR") in eastern Ukraine. Likewise, Australia, Canada, the European Union, Japan, and the United Kingdom all imposed similar sanctions on Russia on February 22.

As a result of these actions and the potential for rapid escalation of sanctions against Russia, U.S. and other non-Russian companies doing business in Russia should review their operations, sales, and partnerships in Russia to determine if immediate changes are necessary or are advisable given the heightening risk of new sanctions. Moreover, companies whose operations are subject to these new prohibitions – especially U.S. companies – will now want to update their corporate compliance policies and procedures to avoid business with the DNR and LNR regions of Ukraine and also to avoid transactions with the newly-sanctioned entities and their subsidiaries, individuals and vessels, keeping in mind that more such entities and individuals (and perhaps even entire sectors of the Russian economy) are apt to be added as sanctions targets if the current crisis worsens.

As background, the United States and allied countries imposed these sanctions after Russia recognized DNR and LNR as independent of Ukraine, which the United States, the EU and other countries consider to be illegitimate under international law and in violation of Russia's commitments under the Minsk agreement that it had signed in 2014 when Russia first annexed Crimea, to secure a ceasefire between the Ukrainian and pro-Russian separatist forces. Russia has made a significant build-up of military forces on the other side of the border in that region, as well as in other border regions surrounding Ukraine. The U.S. and other governments have warned in recent months that the military

Related People

- Lawrence Ward
- Dave Townsend
- T. Augustine Lo

Related Capabilities

- National Security Law
- International Trade
- International Arbitration & Litigation
- Asia-Pacific
- Europe
- Emerging Companies

build-up could lead to a Russian invasion, which Russia repeatedly denied. This week, President Biden called the movement of Russian military forces into the DNR and LNR following Russia's recognition of these separatist regions as the "beginning" of an invasion of Ukraine. Accordingly, the sanctions below may be an initial round of sanctions with more extensive sanctions possible in the future. These new sanctions build upon and expand U.S. and non-U.S. sanctions issued against Russia and the Crimea region of Ukraine since 2014.

Financial Sanctions on Russia.

The Biden Administration on February 22 added two large Russian banks, the State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank ("VEB") and Promsvyazbank Public Joint Stock Company ("PSB") to the Department of the Treasury Office of Foreign Assets Control ("OFAC") List of Specially Designated Nationals and Blocked Persons ("SDN List"). OFAC also added 25 VEB subsidiaries and 17 PSB subsidiaries to the SDN List. U.S. persons cannot engage in transactions with SDNs or persons that are 50% or more owned by SDNs. According to OFAC, VEB is among the five largest Russian financial institutions, and PSB is the eighth largest Russian financial institution. OFAC designated VEB for being owned or controlled by, or for having acted on behalf of, the Government of Russia and for operating in the financial services sector of the Russian Federation economy. OFAC designated VEB for its connections to the defense sector of Russia. These new OFAC sanctions on VEB and PSB and their affiliates went into effect immediately on February 22.

In addition, OFAC is prohibiting U.S. persons from purchasing certain Russian sovereign debt that is traded on secondary markets, effective March 1, 2022. The prohibition applies to the Central Bank of Russia, the National Wealth Fund of Russia, and the Russian Ministry of Finance. This measure expands upon a prior OFAC prohibition on U.S. person trading of sovereign debt from those same entities that is exchanged on the primary market and certain lending to those same institutions.

OFAC also added a number of prominent Russian individuals to the SDN List, including high ranking officials within the Government of Russia, as well as several Russian-flagged cargo vessels. A complete list of entities, vessels, and individuals added to the SDN list on February 22 is available [here](#).

Finally, OFAC designated the entire Russian financial services sector for future sanctions determinations pursuant to earlier-issued executive orders relating to the situation in Ukraine. This designation will now allow OFAC and the Biden Administration to impose sanctions more quickly on other Russian financial institutions, which the Biden Administration has promised if Russia takes further aggressive action in Ukraine.

Embargoes on DNR and LNR Regions of Ukraine.

The United States also is imposing sanctions that prevent U.S. persons from making new investment or trading with the DNR and LNR regions of Ukraine. In Executive Order 14065 signed by President Biden on February 21 ("EO 14065"), the White House

expanded the International Emergency Economic Powers Act (“IEEPA”) national emergency with respect to Ukraine to include Russia’s recognition of the “so-called” DNR and LNR as independent of Ukraine.

As a result of EO 14065, U.S. persons are now prohibited from any of the following types of business transactions:

- Making any new investment in the DNR or LNR regions;
- Importation into the United States of goods, services or technology from the DNR or LNR regions;
- Exportation, directly or indirectly of goods, services, or technology to the DNR or LNR regions;
- Approving, financing, or guaranteeing any transaction with the DNR or LNR regions that would be prohibited if performed directly by a U.S. person or from the United States.

EO 14065 also allows OFAC to add to the SDN List more individuals or companies that are operating in the DNR or LNR regions, to be a leader or executive officer of entities in the DNR or LNR regions, to be owned or controlled by persons whose property are blocked under EO 14065, or to have materially assisted or financed persons whose property are blocked pursuant to EO 14065.

These actions effectively treat the DNR and LNR regions in the same fashion as the Crimea region of Ukraine. The United States has imposed a territorial embargo on Crimea since 2014 after Russia annexed it, and those Crimea region sanctions will remain in place. Thus, U.S. companies now need to avoid most transactions involving three eastern regions of Ukraine: Crimea, DNR, and LNR (with certain exceptions explained in the following paragraph).

Concurrently with EO 14065, OFAC issued six general licenses (“GLs”) permitting continued transactions with the DNR or LNR regions for certain categories of transactions, consistent with other previous OFAC sanctions regimes. In particular, OFAC authorized a 30-day grace period for wind-down transactions to remove U.S. investment or terminate business with those regions until March 23, 2022. OFAC also authorized mail transactions, certain communications related transactions, COVID-19 related transactions, and transactions of agricultural commodities, medicine, medical devices, and replacement parts or software for certain medical devices to the DNR and LNR regions. OFAC also will permit personal non-commercial remittances to the DNR or LNR regions and certain transactions relating to international organizations operating in those regions (e.g., the United Nations). However, aside from these GL-authorized transactions, a U.S. person will need an OFAC specific license for transactions with any person in the DNR or LNR regions as of February 21.

Non-U.S. Sanctions.

In addition to these U.S. sanctions, Australia, Canada, the EU, Japan, and the United Kingdom all also imposed or announced their intention to impose sanctions on Russia on February 22. These non-U.S. sanctions appear mostly to align with those of the United

States, and the Biden Administration stressed similar actions of U.S. allies in announcing the sanctions that same day. The EU, Canada, and UK measures all will include restrictions on transactions with certain Russian politicians, lawmakers, and other officials; restrictions on trading of Russian debt; and a ban on specified transactions with the DNR or LNR regions. Japan stated it would impose sanctions consistent with those of the G-7, which includes Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. The UK sanctions include restrictions on particular Russian financial institutions. Finally, the Australian sanctions also prevent transactions with the DNR or LNR regions and certain targeted Russian officials and companies.

Likely Impact on U.S. Businesses.

U.S. business will need to assess their global operations, sales, imports, and partnerships to ensure consistency with the expanded U.S. and international sanctions on Russia. In addition, since the situation could rapidly escalate further, U.S. businesses should consider the extent of their exposure to potential new rounds of sanctions against Russia. All of the G-7 countries and Australia have stressed that this may only be a first round of sanctions and that further restrictive measures may follow, depending on the extent and scope of Russia's future actions in Ukraine.

U.S. companies that are doing or that plan to do business with persons in Russia or with the DNR or LNR regions that would remain authorized under any of the six new GLs or exemptions should work closely with their compliance personnel and counsel to ensure they will be fully compliant with the terms and conditions set out by OFAC in the relevant authorization. Moreover, since GLs are largely discretionary authorizations that OFAC could revise or even terminate at any time, U.S. companies should take care that their agreements for such business activities contain appropriate force majeure provisions to allow them to adjust or end those activities as may be required by any such future changes in U.S. law.

U.S. companies who expect to rely on any GLs or exemptions to continue doing business will still need very thorough advanced compliance preparation and consultation with their own U.S. financial institutions to assure there are no misunderstandings or inconsistent understandings about what is and is not permissible. U.S. financial institutions typically tend to be highly cautious about such new sanctions measures. For instance, it might remain permissible under a GL for a U.S. medical device company to continue selling its surgical implants to a hospital in the DNR or LNR region, but there could be substantial difficulty if that hospital were to attempt to pay for its purchase of those implants through a Russian bank that is on the SDN List.

Finally, if a U.S. company operates multi-nationally with business units in the EU or in any other nations that may be imposing its own sanctions regime on Russia or on the DNR or LNR regions, its compliance efforts should be planned and implemented in a coordinated manner to avoid intra-company confusion or inconsistent activity. As an example, if a U.S. parent company might have two foreign subsidiaries, one in a country that has its own sanctions regime in regard to the Ukraine situation and another in a country that has no such sanctions regime at all, these new U.S. sanctions may require a

global response from the U.S. parent company that must then be communicated clearly and timely to both of those subsidiaries and to all their employees and independent resellers, distributors or agents.

#####

If you have any questions regarding this eUpdate, please contact the attorneys profiled below. Dorsey's attorneys routinely counsel clients to address and mitigate the impact of U.S. economic sanctions, trade embargoes, and other measures that affect cross-border transactions.