

## *President Obama Imposes Broad Sanctions Framework in Response to Ukraine Crisis – Prepare for an Uncertain Future*

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The world's attention was recently wrenched to Ukraine, as the anti-government demonstrations in Kiev (and the domestic and international condemnation of the government's ultimately bloody efforts to repress them) led president Viktor Yanukovich to flee the country for Russia, leaving behind evidence of epic corruption.

As the parliament voted in new interim leadership, armed forces bearing no insignia, but speaking Russian and driving vehicles with license plates identified with the Russian military, took up positions in the Crimean section of Ukraine. At first, Russia's President Vladimir Putin denied that his government ordered the forces to occupy Crimea, while asserting that the "legitimate" Ukrainian government had asked for assistance. Then he claimed that he did so to protect the local population and the major Russian naval base from "extremists." Finally, employing verbal judo befitting his black belt in the sport, Putin asserted that the forces were local militia, not commanded by Moscow.

A March 16 referendum to "join" Russia has been set for March 16, and action in the Russian Duma to adopt the result could follow within days of a "yes" vote.

### **The Initial Response**

The West watched the unfolding events with deep concern, as observers labeled Russia's occupation the biggest crisis in Europe since the Cold War. While NATO eventually repositioned some forces and conducted military exercises in neighboring areas, it was quickly apparent that a military response was not an option. With diplomatic efforts yielding little (Russia has to date refused to even meet with representatives of the new Ukrainian government), the United States and the EU have focused on a combination of much-needed financial support for Kiev and a program of sanctions against those responsible for the repression of the popular demonstrations and the occupation of Crimea.

Both efforts remain works in progress. The EU pledged up to €11 billion in financial aid, contingent on Ukraine reaching a deal on support from the International Monetary Fund, which would likely come with significant conditions, but U.S. support for that was thrown into question when House Republicans voting to provide \$1 billion in U.S. loan guarantees dropped a White House-backed provision that would reform IMF rules to allow higher levels of funding.

On March 6, the EU voted a freeze on assets of Yanukovych and 16 members of his inner circle accused of embezzling state assets and suppressing human rights. (As of this writing, Switzerland, Austria, and Liechtenstein have adopted blocking measures, and the Swiss government has launched a money laundering investigation against Yanukovych.)

## **President Obama's Sanctions Order**

Also on March 6, President Obama issued a broad Executive Order permitting the Treasury Department to freeze the assets of:

- any person found by the Administration to have been responsible for or complicit in or has engaged in actions or policies that undermine democratic processes or institutions in Ukraine;
- any individual or entity that is responsible for or complicit in or has engaged in actions or policies that threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine;
- leaders of entities responsible or complicit in the above activities;
- those who have provided material assistance or support to those activities or to any individual or entity sanctioned under the Executive Order;
- individuals and entities involved in the misappropriation of state assets of Ukraine or of an economically significant entity in Ukraine;
- persons who have asserted governmental authority over any part or region of Ukraine without the authorization of the Government of Ukraine; and
- entities owned or controlled by, or who have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Executive Order.

The U.S. also imposed visa restrictions on pro-Russian opponents of the new Ukraine government.

While the reach of the Executive Order is potentially very wide, to date, no individuals or entities have yet been designated, and the White House acknowledged that the move is intended to give the Administration "flexibility" to impose sanctions as warranted.

## **Waiting for Sanctions Designations by the United States**

If current diplomatic efforts do not yield significant results soon, watch for the Treasury Department to start designating specific individuals and firms under the Executive Order. Yanukovych and his associates will likely be among the first wave designated for the full array of sanctions, but the prospect that the Order will be extended to Russian interests, including companies, financial institutions or government officials, is much less certain.

Because the initial targets are unlikely to have significant assets in the United States (other than some bank accounts and real estate interests), the greater effect of early U.S. sanctions will be to cast a cloud over ongoing arrangements between U.S. persons and those with ties to Ukraine or Russia.

Transactions with Russian entities could be slowed or disrupted, as U.S. companies gauge how far sanctions are likely to be extended.

Longer term impacts will depend in part on whether the West and Russia can agree on prompt new elections as a means of defusing the immediate issues, and whether Russia will seek to use its influence in the Crimean region to seek a secession or full autonomy for that region. Because the circumstances remain in flux and the ability of EU and U.S. interlocutors to influence the Russian and Crimean actors is limited, there is likely to be continuing uncertainty about the longer term reach and impact of the sanctions.

## How to Plan for the Uncertainty

U.S. and European companies involved in a current or planned investment in Ukraine or Russia, or a transaction with counterparties tied to activities falling within the broader outlines of the Executive Order, should engage in an immediate and sober assessment of the risks inherent in continuing the activity: consider alternative structures to mitigate the likelihood that the activity will subject to future sanctions; evaluate legal obligations and exit strategies should sanctions be extended to cover the activity; and most importantly, ensure that there is clear visibility into the operations and ownership of any investment target or source of funding for any transaction that might be connected, even remotely, with potential sanctions targets.

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*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Washington, D.C. lawyers:*

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