

## Economic Sanctions Related to Events in Ukraine

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With the events unfolding in Ukraine, many entities are assessing the potential impact on their international activities of U.S. and European sanctions. This alert highlights some key aspects of the U.S. and EU sanction regimes and outlines actions by President Obama and his counterparts in the European Union.

### United States

Under existing law, the president has authority to impose a wide range of economic, financial, trade or diplomatic sanctions. The president can act under his national emergency powers or under existing laws that grant specific authority. No action by Congress is necessary to impose sanctions related to the events in Ukraine, although such legislation has been proposed and could advance in the weeks ahead.

The scope and substance of U.S. sanctions vary significantly from program to program. They can be country-based and sweeping, as is the case with the Cuba sanctions program, or they can be targeted at specified actors or activities, as is the case with the counter-terrorism sanctions program. Each program has its own rules and guidance, which define the universe of targets, prohibited activities and parties required to comply with the sanctions. In some cases, the U.S. sanctions programs reach parties or conduct that seemingly has little contact or relationship with the United States.

On March 6, 2014, President Obama signed an executive order authorizing the Secretary of the Treasury to impose targeted economic sanctions against individuals or entities deemed responsible for, or complicit in, certain categories of conduct in Ukraine. These categories include:

- being responsible for, or complicit in, actions or policies that “undermine democratic processes or institutions in Ukraine” or “threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine”;
- misappropriating state assets of Ukraine or of an economically significant entity in Ukraine;
- asserting “governmental authority over any part or region of Ukraine without the authorization of the Government of Ukraine”;
- being a leader of any entity engaged in the targeted conduct;
- materially assisting, sponsoring or providing support for the targeted conduct; and
- being owned or controlled by, or acting on behalf of, a designated individual or entity.

These are broad categories, which give considerable discretion to U.S. policy makers in determining who might be designated for sanction. With respect to any such designated party, the executive order blocks all of their property and interests that are in the United States or come within the possession or control of U.S. persons (including the foreign branches of U.S. persons). The executive order prohibits providing or receiving funds,

goods or services to, from or for the benefit of any designated person. Designated individuals also will be denied entry to the United States.

Given the role of U.S. financial institutions in global payments systems and the tendency of many non-U.S. financial institutions to voluntarily adopt U.S. sanctions lists, this type of order can profoundly affect the ability of designated parties and their affiliates to conduct international business and financial transactions.

This type of order also creates important legal obligations on the part of all U.S. persons, and non-U.S. persons that conduct business in the United States, to ensure that they comply with the prohibitions of the order. Enforcement of the U.S. economic sanctions laws can be based on strict liability — which means a party can be deemed to have violated the law regardless whether the prohibited conduct was an intentional violation or in bad faith.

Although the executive order does not name Russia or any other specific party, the president explained in a statement that “[t]hese decisions continue our efforts to impose a cost on Russia and those responsible for the situation in Crimea.” *Notably, the Secretary of the Treasury has not yet designated any individual or entity pursuant to the executive order.* Thus, it is more accurate to characterize the executive order as *authorizing* sanctions rather than *imposing* sanctions. The U.S. decision to not yet designate any particular parties signals an incremental response to the situation — with U.S. officials perhaps believing that the threat of sanctions may be sufficient at this point in the crisis.

### European Union

Also on March 6, European leaders met in Brussels and issued their own sanctions aimed at both Russian and Ukrainian officials. The assets of former Ukrainian President Yanukovich, along with 17 of his advisors, were frozen, based on allegations that they misappropriated state funds. President of the European Council Herman Van Rompuy and President of the European Commission José Barroso also outlined a series of punitive measures aimed at Russia. Those measures include suspending talks for a more liberal EU-Russia visa regime, suspending talks on a wider EU-Russia trade agreement and supporting G8 members deciding to forgo preparations for the G-8 summit scheduled for later this year in Sochi, Russia. President Van Rompuy also signaled that the EU plans to sign the negotiated political chapters of the bilateral EU-Ukraine agreement, which proved to be the original flashpoint for the Maidan protests.

Much like their U.S. counterparts, European leaders seem keen to avoid action that could lead to escalation of the crisis. Given Europe’s deep economic ties with Russia, leaders such as U.K. Prime Minister David Cameron and German Chancellor Angela Merkel have voiced skepticism about freezing the assets of Russian officials.

### Russian Response

The upper house of Russia’s parliament is considering a proposal that would provide for the confiscation of property and assets of European and U.S. companies if sanctions are imposed on Russia by the West. The author of the proposal is Federation Council Constitutional Legislation committee head Andrei Klishas, who said “[t]he recent events in Cyprus spring to mind, where the confiscation of assets was the main demand made by the European Union in return for economic aid.”

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The situation in Ukraine and the international response are evolving rapidly. Skadden’s international team, which has significant experience with sanctions regimes, is following the situation closely. We encourage you to contact any of the attorneys listed here or your regular Skadden contact with any questions specific to your situation or business.