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Sanctions Affecting International Business



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Legal Framework: What do sanctions really mean?

- By Helge Masannek

In March 2014, the EU and the United States introduced sanctions against certain Russian and Ukrainian persons as a reaction toward Russia's role in the Crimea crisis. European "Regulations concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine" included economic sanctions, asset freezes and travel bans and have been implemented on March 5 (2014/119/CFSP), March 17 (2014/145/CFSP), May 12 (2014/265/CFSP) and July 12 (2014/455/CFSP) as well as July 30 (2014/507/CFSP). As of July 31, there were 123 individuals and legal entities on the sanctions list.

The US sanctions lists contain 95 individuals and legal entities and were first implemented on March 6 (Executive Order 13660), and then on March 17 (Executive Order 13661), on March 20 (Executive Order 13662) and several later amendments to Executive Orders.

By July 2014, the EU and the US lists together reached 167 positions, including 110 individuals and 57 legal entities. As these sanctions are not unique (for example, very similar sanctions have been introduced earlier against individuals and legal entities in Belarus), it is important to analyze the legal framework of the EU and US sanctions.

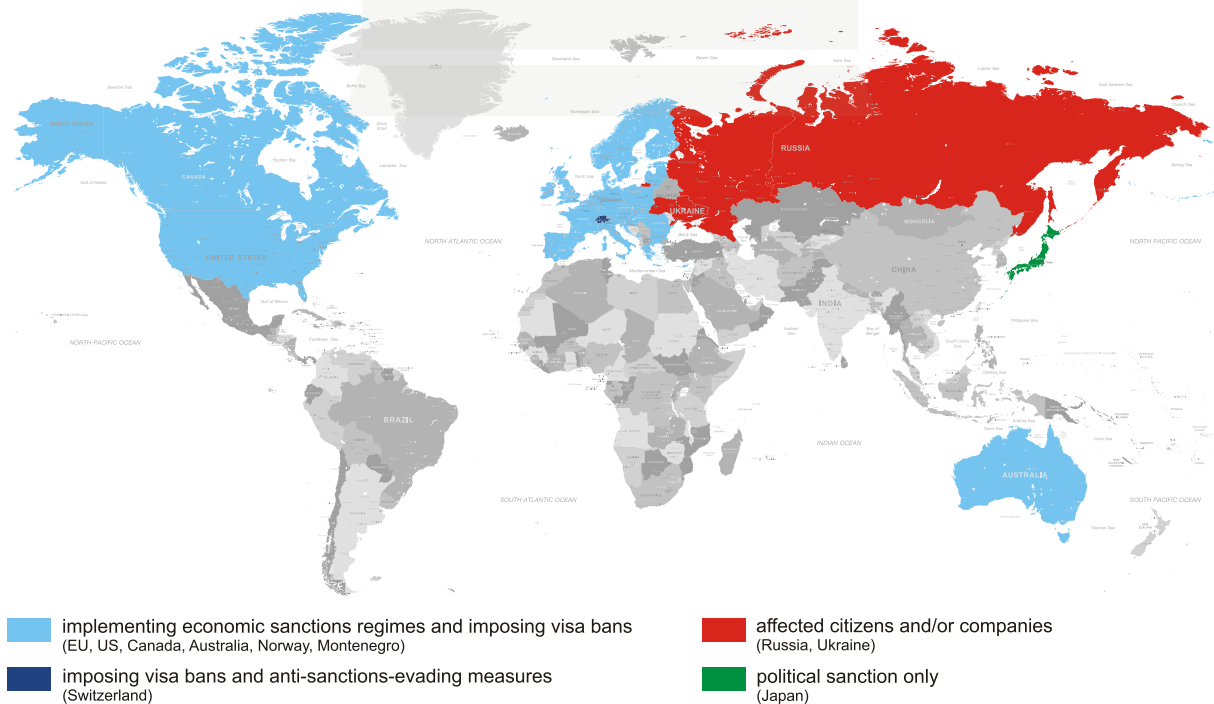
No economic contacts at all

With the sanctions, the EU and the US have tried to exclude both

individuals and enterprises from the economic activities of the EU and the USA, respectively. Therefore, for example, the property of sanctioned persons has been frozen and the sanctioned individuals are also not allowed to enter the EU and the US.

On April 28, the US also imposed an export and re-export prohibition on Russia for high-tech goods which could be used in the defense industry. The U.S. Commerce Department's Bureau of Industry and Security has also revoked existing export licenses for such goods. On July 30 and July 31, the EU introduced sectoral sanctions forbidding investments in Crimea in the areas of electricity networks, oil production, and transport infrastructure. Any technical assistance in these areas, even verbal consultations, are forbidden. The EU has also prohibited arms exports and exports of goods of dual use to Russia, as well as it has banned Russian state-owned financial institutions from the European capital markets.

Both the EU and US sanctions forbid any economic interactions with listed persons and also with companies that are 50 percent or more owned by a listed person. This means that it is forbidden to obtain goods from a listed person or to sell goods to them. Obtaining or rendering of services is also forbidden. Additionally, it is illegal to manage the property of sanctioned persons in any form, as well as to pay dividends to them.



And there are even more items to consider. Along with the companies which belong to listed individuals in amounts of 50 percent or more, the sanctions also affect companies which do not belong to listed individuals legally, but are controlled by them, sometimes via middlemen.

Other countries follow

After the introduction of sanctions by the EU and the US, other countries followed suit. Within months, countries like Norway and Montenegro joined the EU sanctions regime.

On March 17, Canada introduced its own sanctions list (Special Economic Measures (Russia) Regulations, SOR/2014-58), with rules similar to the US rules. This list was extended on March 19 (SOR/2014-58), March 21 (SOR 2014-62), April 28 (SOR 2014-65), May 4 (SOR/2014-98) and May 12 (SOR/2014-108). The Canadian sanctions list consists of 47 individuals and 19 companies. Some names which are found on the US or EU lists, are not included on the Canadian list. For example, Igor Sechin, a CEO of Russian oil giant, Rosneft, was not included on the Canadian list, although his name is on the US list. Rosneft is active in Canadian oil projects.

On April 2, Switzerland introduced its own measures “to prevent escaping from the sanctions”, which were extended on May 20 (SR 946.231.176.72.). Making new business contacts with listed persons is now prohibited and previously existing business relationships must be reported to the authorities. Switzerland also imposed travel bans against those on the EU lists.

Australia has imposed its own sanctions too. Japan has introduced a very special type of sanctions – in the form of cancelling the Japanese-Russian talks on visa liberalization, defense cooperation and investment agreement.

Should I follow the sanctions?

One of the most essential questions for any company and individual is whether they should follow the sanctions regime. The answer is rather simple here. Both the EU and US sanctions regime must be followed by companies established under EU and US laws, respectively. This means that a German or French company can not sell goods to a listed person or manage its property.

























Within most sanctions regimes (including those related to Russia and Ukraine) the prohibitions also apply to the foreign branches (and representative offices) of EU and US companies – but do not affect the foreign subsidiaries of these companies which are established under foreign laws. The US expands its sanctions regime to all foreign subsidiaries of US companies only within certain situations, such as the sanctions against Iran or North Korea. But it should be noted that the purposeful structuring of a business in such a way that the sanctions are circumvented, e.g. by delivering goods via subsidiaries to listed persons, will be regarded as a violation of the sanctions.

This means that a Russian representative office of a German or US company must follow the European or US sanctions against Russia, respectively, but a Russian subsidiary of a German or US company is not required to do so. One important exception: if a foreign company has a US representative office, the US laws would view this company as a US company and demand adherence to the US sanctions regime.

Private persons are liable too

No matter where they live, citizens of the EU or the US should follow the sanctions. This means that a German or US director working for a Russian subsidiary of a German or a US company will find himself liable for forbidden interactions with listed persons, even if the company itself is considered to be a Russian company and does not need to follow the sanctions.

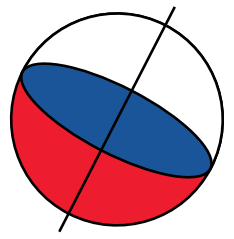
In the following table, you can find out how the sanctions are implemented based on the origin of the individual or company.

	EU company* or • its foreign branch • its foreign representative office or an EU citizen		US company* or • its foreign branch • its foreign representative office or a US citizen or resident		Non-EU and Non-US company		Non-EU and Non US-citizen who resides neither in the US nor in EU**	
acts in the EU		EU list applies		EU list applies		EU list applies		EU list applies
		US list does not apply		US list applies		US list does not apply		US list does not apply
acts in the US		EU list applies		EU list does not apply		EU list does not apply		EU list does not apply
		US list applies		US list applies		US list applies		US list applies
acts in a third country (for example, in Russia)		EU list applies		EU list does not apply		EU list does not apply		EU list does not apply
		US list does not apply		US list applies		US list does not apply		US list does not apply

* Subsidiaries of EU or US companies registered outside of the EU or US, respectively, are not regarded as EU or US companies, but as non-EU and non-US companies.
** For example, a Russian national residing in Russia who wants to sell his house that is located in the US or EU to a listed person.

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The EU and US sanctions prohibit any economic interactions with people and companies that are on the sanctions list. The answer to the question of whether a company has to follow the sanctions regime can be decisive for its business. At RUSSIA CONSULTING, we have developed a search engine which allows us to check hundreds of clients' contacts very quickly. Thus, the client is safe and he can prove that he acted honestly and checked all the available data using all the legal ways.

In the framework of our comprehensive check we offer to:

- **Check your Russian business contacts including complicated ownership structures**
- **Assess your reputational risk**
- **Evaluate the results and provide advice**

Request a check of your Russian business partners today and find out whether they are covered by the sanctions.

EU and US Sanctions

Is your company affected?

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