
SANCTIONS – UPDATE

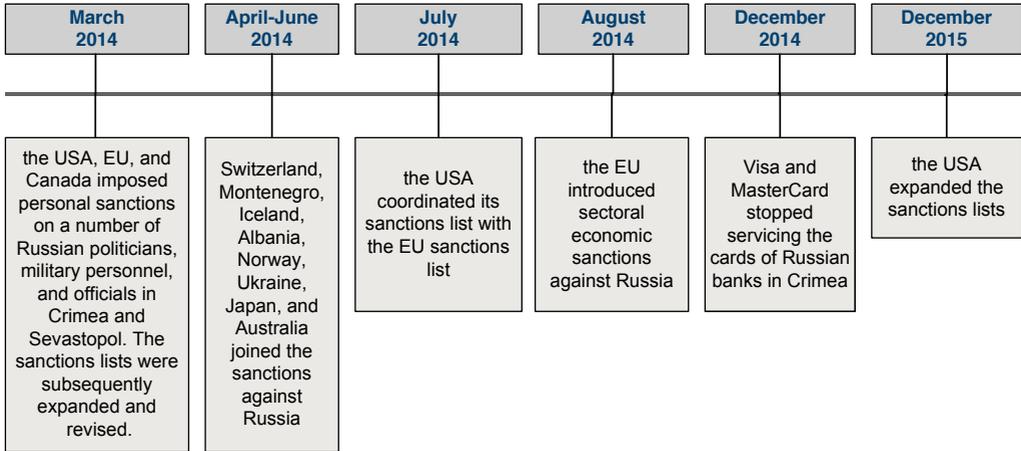


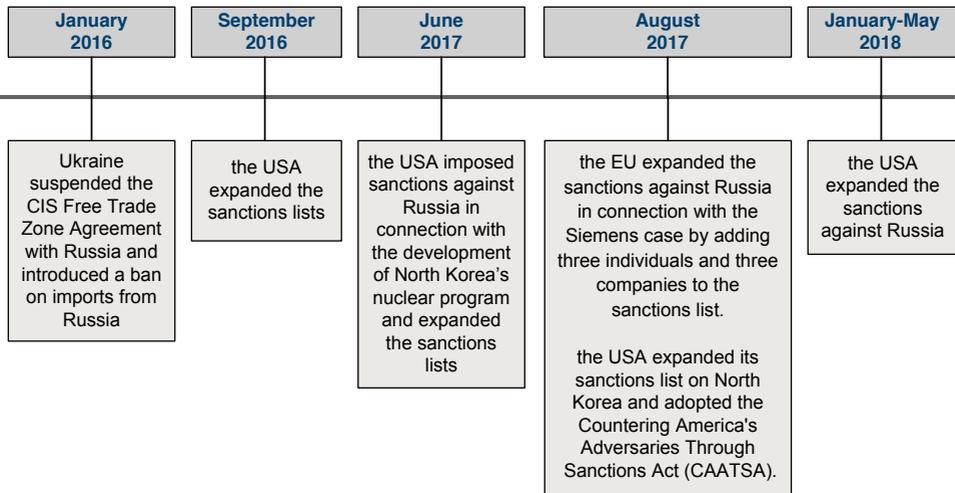
**BEITEN
BURKHARDT**

Contents

- Overview (Timeline)
- European Union sanctions
- US sanctions
- Other sanctions

Sanctions timeline since 2014





European Union sanctions

WHAT EU SANCTIONS ARE IN PLACE AGAINST THE RUSSIAN FEDERATION?

Personal sanctions

Council Decision (EU) No. 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

Council Regulation (EU) No. 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine ("EU Regulation No. 269/2014").

Sectoral sanctions:

- Military hardware and technology;
- Dual-use goods and technology;
- Goods and services for the prospecting, exploration and production of oil;
- Capital market.

Council Decision (EU) 2014/512/CFSP of 17 March 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine ("Decision 2014/512/CFSP").

Council Regulation (EU) No. 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine ("EU Regulation No. 833/2014").

Territorial sanctions – Crimea and Sevastopol

Council Regulation (EU) No. 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol ("EU Regulation No. 692/2014").

WHO MUST COMPLY WITH EU SANCTIONS?

1. Citizens of the EU member states;
2. Legal entities incorporated or constituted under the law of an EU member state;
3. Other legal entities in respect of any deals effected in whole or in part within the EU.

EU sanction rules do not have direct effect on Russian companies.

A situation in which a citizen of an EU member state acts as the director of a Russian company could present a problem. On the one hand, EU sanctions directly affect this person, but, on the other hand, this person acts as an official of the Russian company and not as an individual. This situation has not been addressed directly. Right now, the sanction rules are interpreted in such a way that the position of the director as an official of the Russian company prevents the application of the sanction rules (however, it should be remembered that this situation could change).

It should be noted that conducting the business of a European company through a Russian company or another third party in order to circumvent sanctions is prohibited.

WHO MONITORS COMPLIANCE WITH EU SANCTIONS AND ISSUES THE NECESSARY AUTHORIZATIONS AND INTERPRETATIONS ON SANCTION-RELATED ISSUES?

Each EU member state independently designates the authority responsible for monitoring compliance with the sanctions. Information on these authorities from each of the EU countries is given in the annex to each EU Regulation.

In Germany these authorities are:

- The German Central Bank (Deutsche Bundesbank) – as regards financial sanctions (monetary funds, financial resources, and financial aid);
- The Federal Office for Economic Affairs and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA) – as regards all other sanctions (goods, technical assistance, and economic resources).

WHAT ARE PENALTIES FOR FAILURE TO COMPLY WITH EU SANCTIONS?

Each EU member state independently determines the liability for a failure to comply with the EU sanctions. Pursuant to the EU Regulations, the penalties established by the EU member states must be “effective, proportionate and dissuasive”. A fine is generally established for a violation of the sanctions regime by companies, and for individuals – a fine or, in certain cases, criminal liability.

In Germany, the legal consequences for failure to comply with EU sanctions are established by the Foreign Trade and Payments Law (AWG).

WHAT ACTIVITIES DO THE CRIMEAN SANCTIONS OF THE EU COVER?

The following prohibitions have been established:

1. A prohibition on the import into the EU of goods originating in Crimea, as well as providing, directly or indirectly, financing or financial assistance as well as insurance and reinsurance related to the import of such goods.
2. A prohibition on investment, and specifically on:
 - the acquisition of any title to real estate or a participation share in ownership of a company located in Crimea;
 - the financing of such a company in Crimea;
 - the creation of a joint venture in Crimea;
 - investment services directly related to the indicated types of activities.
3. A prohibition on the supply of the goods and technologies indicated in Annex II to Regulation (EU) No. 692/2014 to persons in Crimea or for use in Crimea, and a prohibition on the provision of technical assistance and financing in this regard.

The list in Annex II includes certain goods and technologies suited for use in the following sectors:

- transport;
- telecommunications;
- energy;
- the prospecting, exploration and production of oil, gas and other mineral resources.

The list includes a wide variety of goods – salt, plastering materials, aluminum, cement, etc.

4. A prohibition on providing technical assistance, or brokering, construction or engineering services directly relating to infrastructure in Crimea in the sectors referred to above (transport, telecommunications, etc.).
5. A prohibition on providing services directly related to tourism activities in Crimea.

Participation, knowingly and intentionally, in activities to circumvent the restrictive measures set forth above is prohibited.

Certain exceptions to the aforementioned prohibitions have been stipulated.

The competent authorities of the EU member states may grant an authorization in relation to the activities and to the goods indicated in points 2 and 3 above, if:

- these actions are necessary for the official purposes of consular missions or international organizations enjoying immunities in accordance with international law located in Crimea,
- these actions are related to projects exclusively in support of public medical or civilian educational institutions in Crimea, or
- these goods are relevant appliances or equipment for medical use.

The competent authorities of the EU member states may also grant an authorization in relation to the activities referred to in points 2, 3, and 4 above, provided that these activities are necessary for the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety, including the safety of existing infrastructure, or the environment.

US sanctions

The U.S. sanctions regarding Russia are established by the following documents:

AECA	U.S. Act dated 30 June 1976 “Arms Control Export Act”
IEEPA	U.S. Act dated 28 December 1997 “The International Emergency Economic Powers Act”
EAA	U.S. Act dated 29 September 1979 “Export Administration Act”
ECRA	U.S. Act dated 13 August 1918 “Export Control Reform Act”
SSIDESU	U.S. Act dated 3 April 2014 “Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act”
UFSA	U.S. Act dated 18 December 2014 “Ukraine Freedom Support Act”
CAATSA	U.S. Act dated 2 August 2017 “Countering America’s Adversaries Through Sanctions Act”
CBWA	U.S. Act dated 4 December 1991 “Chemical and Biological Weapons Control and Warfare Elimination Act”
Executive Order 13660	Executive Order 13660 of U.S. President dated 6 March 2014
Executive Order 13661	Executive Order 13661 of U.S. President dated 16 March 2014
Executive Order 13662	Executive Order 13662 of U.S. President dated 20 March 2014
Executive Order 13685	Executive Order 13685 of U.S. President dated 19 December 2014
Executive Order 13849	Executive Order 13685 of U.S. President dated 20 September 2018
EAR	U.S. Export Administration Regulations established by the Bureau of Industry and Security of the United States Department of Commerce

ITAR	U.S. International Traffic in Arms Regulations established by the United States Department of State (equivalent to Ministry of Foreign Affairs)
SDN List	Specially Designated National And Blocked Persons List (U.S.A.)
SSI List	Sectoral Sanctions Identifications List (U.S.A.)

WHAT US SANCTIONS ARE IN PLACE AGAINST RUSSIA?

US sanctions can be classified as follows based on the subject of the prohibitions and restrictive measures:

Personal (blocking) sanctions

- a prohibition on entry into the USA / deportation from the USA (for individuals);
- a prohibition on administrative departments purchasing goods and services from sanctioned persons;
- a prohibition on the issue of export licenses for the shipment of dual-use items to sanctioned persons;
- a prohibition on banking operations with the assets of sanctioned persons;
- and others.

Sectoral (industry) sanctions

- energy sector;
- financial services market;
- defense industry.

Territorial (“Crimean”) sanctions: Crimea region

- new investment in the Crimea region by a United States person, wherever located;
- importation into the USA, directly or indirectly, of any goods, services, or technology from the Crimea region;
- and others.

Export sanctions

US export sanctions on Russia cover the following types of products:

- military-purpose and high-technology products capable of contributing to the military capabilities of the Russian Federation;
- products that are related to oil and gas production or which can be used in this area;
- any product that falls under US export controls as regards (1) export to the Crimea region, and (2) export to persons engaged in activities directed against the interests of US national security and foreign policy.

WHO MUST COMPLY WITH US SANCTIONS?

The persons required to comply with US sanctions include persons subject to liability under US law in case of a violation of sanctions against Russia. This group does not necessarily correspond to the group of persons on whom sanctions have been imposed.

Pursuant to the guidance of the OFAC, all United States persons must comply with the personal, sectoral and territorial sanctions of the USA. These persons include:

1. US citizens;
2. Legal entities subject to US law and other entities incorporated pursuant to US law that do not have the status of a legal entity (including the foreign divisions of such legal entities and other entities)¹;

¹ Hereinafter the term “**legal entities**” will be used (except in the names of official acts) to designate both legal entities and other entities that do not have the status of legal entities (partnerships, associations, trusts, and other *entities*), since legal entities and the other mentioned entities are treated as equal in the regulatory acts of the USA on sanctions.

3. Aliens who are lawful permanent residents in the USA or who have received permission for permanent residence;
4. Persons within the territory of the USA (who are not US persons under SSIDESU and CAATSA).

American export sanctions apply to all entities (individuals and legal entities, state authorities, etc.) which participate in any way in transactions and actions with products, programs, software and technologies subject to export controls in accordance with EAR, aimed at:

- the export of products and technologies from the USA;
- the re-export of products and technologies (delivery or relocation from one foreign state to another);
- the transfer of products and technologies to the territory of a foreign state.

WHO MONITORS COMPLIANCE WITH US SANCTIONS AND ISSUES THE NECESSARY AUTHORIZATIONS AND INTERPRETATIONS ON SANCTION-RELATED ISSUES?

The President and Congress of the USA are the main government authorities that establish and monitor compliance with US sanctions related to Russia. The President may introduce, amend, and remove restrictions and prohibitions of all types against Russia, while Congress, on the basis of the provisions of CAATSA, monitors the activity of the President and the executive branch in this area, and where required gives its consent to specific actions.

On 29 September 2017 the US President sent a Presidential Memorandum to the Secretary of State, the Secretary of the Treasury, and the Director of National Intelligence. This document delegates to the Secretary of the Treasury and the Secretary of State the key powers of the US President to introduce, amend, and remove sanctions against specific persons under the provisions of SSIDESU, UFGA and CAATSA.

The following agencies also monitor compliance with US sanctions, issue the necessary authorizations, and provide interpretations on sanctions issues:

- The Office of Foreign Assets Control (“OFAC”) as regards personal, sectoral, and territorial sanctions;
- The Bureau of Industry and Security (“BIS”) as regards export sanctions;
- The Directorate of Defense Trade Controls (“DDTC”) as regards the export of products or services of defense industry.

WHAT ARE PENALTIES FOR FAILING TO COMPLY WITH US SANCTIONS?

Generally, the IEEPA stipulates the following types of penalties for violations of the personal, sectoral, and territorial sanctions of the USA:

- administrative (formally a “civil penalty”) – a fine of up to \$250,000 or twice the amount of the transaction in violation of the sanctions in question (whichever is larger);
- criminal – a fine of up to \$1,000,000 and/or imprisonment for up to 20 years (a criminal penalty in the form of a fine may also be imposed on legal entities).

In general, ECRA, EAA, EAR, AECA and ITAR stipulate the following types of penalties for violation of US export sanctions:

- administrative – a fine of up to \$11,000 or up to \$120,000 (violation in the area of national security). For violations of export sanctions in respect of products or services of the defense industry the amount of the fine may be up to \$1,134,602 (depending on the circumstances, the maximum amount may vary);
- criminal – a fine of up to \$1,000,000 and/or imprisonment for up to 20 years (a criminal penalty in the form of a fine may also be imposed on legal entities). In certain cases, other limits to criminal penalties may apply;
- other types of sanctions: violators may be restricted from participating in transactions with products and technologies subject to export controls, or from accessing such products and technologies; a person may be prohibited from exercising representative functions in relations with the BIS; products and technologies intended for export from the USA in violation of sanctions may be confiscated, etc.

The amounts of these fines are regularly indexed for inflation.

WHAT ACTIVITY FALLS UNDER THE TERRITORIAL (“CRIMEAN”) SANCTIONS OF THE USA?

In accordance with the territorial sanctions of the USA introduced in respect of the Crimea region, the following operations are prohibited in relation to this territory:

- new investments in the Crimea region by United States persons, wherever located;
- importation into the USA, directly or indirectly, of any goods, services, or technologies from the Crimea region;

- direct or indirect export, re-export, sale, or delivery of any goods, services, or technologies to the Crimea region from the USA or by US persons, wherever located;
- any approval, financing, facilitation, or guarantee by US persons, wherever located, of a transaction by a foreign person where the transaction would fall under the prohibitions established by the sanctions on the Crimea region if performed by a United States person or within the United States.

Certain exceptions to these prohibitions are stipulated in accordance with OFAC general licenses Nos. 4 – 11. These licenses allow, among other things:

- the export/re-export to the Crimea region of agricultural products, medicines, certain medical equipment and spare parts thereto;
- the receipt and transfer of telecommunications and postal communications to the Crimea region;
- monetary transfers to and from the Crimea region, if such transfers are made for personal needs and are not business-related, etc.

In addition, US sanctions on the Crimea region do not extend to transactions necessary for the performance of the official activity of the US Government which are performed by its officials and contractors, as well as by entities that receive subsidies from the US Government.

Other sanctions

AUSTRALIA

Sanctions against Russia were enacted by the following legislative measures:

Autonomous Sanctions Regulations 2011

see: <https://www.legislation.gov.au/Details/F2017C00637>

Autonomous Sanctions (Russia, Crimea and Sevastopol) Specification 2015

see: <https://www.legislation.gov.au/Details/F2017C00697>

Information on Australian sanctions against Russia is available on the website of the government of Australia:

<http://dfat.gov.au/international-relations/security/sanctions/sanctions-regimes/Pages/russia.aspx>

ICELAND

Sanctions against Russia were imposed under Regulation No. 281/2014 of the Ministry of Foreign Affairs of 18 March 2014 “Sanctions in Connection with the Situation in Ukraine” (Reglugero um pvingunaraogerdir varoandi Ukrainu).

CANADA

Sanctions against Russia were imposed under:

Special Economic Measures (Russia) Regulations P.C. 2014-282 of 17 March 2014 No. SOR/2014-58

see: <https://laws.justice.gc.ca/eng/regulations/SOR-2014-58/FullText.html>

Regulations Amending the Special Economic Measures (Russia) Regulations P.C. 2014-296 of 21 March 2014 No. SOR/2014-65

see: <http://www.gazette.gc.ca/rp-pr/p2/2014/2014-04-09/html/sor-dors65-eng.html>

Information on Canadian sanctions against Russia is available on the website of the government of Canada:

<http://www.international.gc.ca/sanctions/countries-pays/russia-russie.aspx?lang=eng>

LIECHTENSTEIN

Sanctions against Russia were imposed under the Government Resolution No. 946.224.2 of 16 September 2014 “Measures to Prevent the Circumvention of International Sanctions in Connection with the Situation in Ukraine” (Verordnung über Massnahmen zur Vermeidung der Umgehung internationaler Sanktionen im Zusammenhang mit der Situation in der Ukraine).

see: https://www.gesetze.li/konso/html/2014235000?version=5&search_text=&search_loc

NORWAY

Sanctions against Russia were imposed under the Government Regulations No. 1076 of 15 August 2014 “Restrictive Measures Concerning Actions That Undermine or Threaten Ukraine’s Territorial Integrity, Sovereignty, Independence and Stability” (Forskrift om restriktive tiltak vedrørende handlinger som undergraver eller truer Ukrainas territoriale integritet, suverenitet, uavhengighet og stabilitet).

see: https://www.regjeringen.no/no/dokumenter/forskrift_tiltak/id765909/

Information on Norwegian sanctions against Russia is available on the website of the government of Norway:

<https://www.regjeringen.no/en/aktuelt/Norway-tightens-restrictive-measures-against-Russia-/id2005821/>

SWITZERLAND

Sanctions against Russia were imposed under the Ordinance of the Federal Council of 27 August 2014 “Measures to Prevent the Circumvention of International Sanctions in Connection with the Situation in Ukraine” (SR 946.231.176.72) (Mesures visant à empêcher le contournement de sanctions internationales en lien avec la situation en Ukraine).

see: <https://www.admin.ch/opc/fr/classified-compilation/20142202/index.html>

Information on Swiss sanctions against Russia is available on the website of the government of Switzerland:

<http://www.seco.admin.ch/situation-ukraine>

JAPAN

Sanctions against Russia were imposed under the following public notices of the Japanese Ministry of Foreign Affairs:

1. Non-Sectoral Sanctions Public Notice issued on 5 August 2014

see: http://www.mofa.go.jp/press/release/press4e_000387.html

2. Sectoral Sanctions Public Notice issued on 24 September 2014

see: http://www.mofa.go.jp/press/release/press4e_000446.html

Authors



Falk Tischendorf

Attorney-at-law | Partner
Head of the Representative Office Moscow
BEITEN BURKHARDT Moscow
Tel.: +7 495 2329635
Falk.Tischendorf@bblaw.com



Alexander Bezbodov

Attorney-at-law | LL.M. | Partner
BEITEN BURKHARDT Moscow
Tel.: +7 495 2329635
Alexander.Bezborodov@bblaw.com



Dr. Gerd Lenga

Attorney-at-law
Of Counsel
BEITEN BURKHARDT Moscow
Tel.: +7 495 2329635
Gerd.Lenga@bblaw.com



Prof. Dr. Andreas Steininger

Lawyer | Engineer
Of Counsel
BEITEN BURKHARDT Moscow
Tel.: +7 495 2329635
Andreas.Steininger@bblaw.com



BEIJING | BERLIN | BRUSSELS | DUSSELDORF | FRANKFURT AM MAIN
HAMBURG | MOSCOW | MUNICH | ST. PETERSBURG

WWW.BEITENBURKHARDT.COM

06/2019