

US Sanctions A Warning That Ukraine Response Growing

By **Scott Flaherty**

Law360, New York (March 18, 2014, 7:54 PM ET) -- The U.S. sanctions unveiled Monday target Russian and Ukrainian officials, but the move serves as a reminder to companies that the response to Russia's role in Ukraine's unrest is evolving and could expand to affect business dealings in the region, attorneys say.

Following Russia's movement of troops into Ukraine's Crimean Peninsula and a vote in Crimea to secede and join Russia, President Barack Obama on Monday signed an executive order to freeze the assets of seven Russian officials, including members of the Russian government and advisers to Russian President Vladimir Putin. Obama warned that more sanctions could follow "if Russia continues to interfere in Ukraine."

Also on Monday, under a prior executive order signed March 6, the U.S. Treasury Department designated four Ukrainians — among them local government leaders who have supported Crimea's separation from Ukraine and Ukraine's ousted former president, Viktor Yanukovich — for contributing to the unrest in Ukraine, which is operating under a transition government after months of political tension. And the European Union has taken its own steps, unveiling on Monday asset freezes against 21 Russians and Ukrainians, some of which overlapped with those targeted by the U.S.

The sanctions unveiled Monday are limited in scope, as they focus in on certain individuals, according to trade attorneys. But while the sanctions' reach may be narrow, attorneys said Monday's announcement should put companies that do business in the region on their guard, since the situation is still developing and tensions could continue to flare.

"The U.S. and EU sanctions are targeted at specific individuals and, so far, are limited," said Marney Cheek, a partner with Covington & Burling LLP. "That said, as the situation continues to deteriorate, companies have some important strategic decisions to make quickly."

Harry Clark, head of Orrick Herrington & Sutcliffe LLP's international trade and compliance group, also said the sanctions represented a "pretty limited step," and that the individuals targeted, at least under the U.S. sanctions, don't appear to have a hand in any businesses that would interact with the U.S.

With those limits in mind, Clark said the sanctions announced Monday are "not really going to affect much," at least in the near term, as they aren't likely to unravel existing business arrangements. He added, however, that the announcement does show that the U.S. is prepared to follow through on its threats of sanctions, a sign that the situation and the responses from the U.S. are subject to change.

“It has pointed us in the direction of continued intensification of the sanctions,” he said.

Monday's sanctions came after Crimea, a region with a large population of ethnic Russians, voted Sunday to break away from Ukraine in a referendum that Western leaders refused to recognize, saying it took place under the threat of Russian military intervention. The sanctions announced by the U.S. and the EU targeted some Russian and Ukrainian officials that played a role in either the military involvement in Crimea or supported Sunday's vote.

The Russian government has seemed unperturbed by the sanctions, however, and has maintained that the Crimea vote occurred in line with international norms. Putin on Monday signed a decree recognizing Crimea as a sovereign and independent state, and on Tuesday, unveiled a treaty that would formally annex Crimea as part of Russia.

Responding to Russia's steps to annex Crimea, U.S. Vice President Joseph Biden reiterated the U.S. stance that Russia has acted outside of international law and said sanctions could be ratcheted up if Russia continues its aggression.

“Russia has offered a variety of arguments to justify what is nothing more than a land grab, including what was said today,” Biden said Tuesday, during a trip to Poland to meet with the Polish prime minister. “It's a simple fact that Russia's political and economic isolation will only increase if it continues down its current path and it will, in fact, see additional ... sanctions by the U.S. and the EU.”

If the administration follows through with Biden's promise to ratchet up sanctions if Russia doesn't change course, they could eventually start to have a broader impact than the targeted sanctions that were unveiled on Monday, according to Clark. But, Clark added, it's unclear what direction any additional sanctions would take and what the impact will be — one big question is whether the U.S. will impose sanctions against Russia's banking industry.

“Even minor sanctions against banks would have a significant impact on the business and financial community,” he said.

With more potential sanctions injecting further uncertainty into the landscape, attorneys said companies would be well served to take steps to examine any business connections they have with Russia or Ukraine.

Covington's Cheek said, for example, that it's a good time for U.S. companies to review investments to ensure that they're structured in a way that maximizes their protection under international law or investment treaties.

“Companies also should assess the remedies available under applicable contracts and investment agreements in the event of breach of contract by current Russian or Ukrainian partners or adverse government action,” Cheek added.

Attorneys have also suggested another clear step: keeping a close eye on the situation to see if any developments would affect them, and examining their business arrangements for any potential risks.

While companies may well have been doing those things before, back when the U.S. was still considering sanctions as one of several potential responses to Russia's move into Crimea, they may want

to “take those steps even more assiduously now” that sanctions are no longer a hypothetical, Clark said.

“We are on the path of sanctions now, which is a change,” he said. “So those sorts of precautions ... are even more valuable.”

--Editing by John Quinn and Richard McVay.

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