

# The International Economic Sanctions Against Russia. Part I: the USA

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I. **General overview (1)**  
Ia. **Categories of sanctions**

Blocking sanctions

Sectoral sanctions

“Crimean” sanctions

I. **General overview (2)**  
Ib. **What authorities deal with sanctions?**

**The President**

- Declares national emergency
- Issues executive orders

**The Congress**

- Approves changes to the sanctions

**OFAC**

**(Office of Foreign Assets Control, the US Department of the Treasury)**

- Administers, enforces, codifies sanctions
- Imposes control on transactions
- Freezes assets

I. **General overview (3)**  
Ic. **Who has to comply with sanctions?**

the US-persons

any persons  
participating in  
transactions with the  
US goods

non-US persons  
participating in the  
sanctioned activities

# I. General overview (4)

## Id. Executive orders

**E.O. 13660** (March 6, 2014) imposed personal (blocking) sanctions against individuals and entities designated pursuant to the executive orders and listed on the *Specially Designated Nationals and Blocked Persons List (SDN List)*.

**E.O. 13661** (March 16, 2014) extended sanctions introduced through E.O. 13660 (particularly, it imposed sanctions on 7 more persons).

**E.O. 13662** (March 20, 2014) imposed sectoral sanctions against entities operating in particular sectors of the Russian economy and listed on the *Sectoral Sanctions Identification List (SSI List)*.

**E.O. 13685** (December 19, 2014) provided for blocking the property of certain Crimean persons and prohibition of new investment in Crimea.



OFAC Directives (slides 9 - 13)

## I. General overview (5)

### 1e. The CAATSA

The Countering America's Adversaries Through Sanctions Act was signed on August 2, 2017

It codified executive orders already in place and mandated that changes to these existing sanctions only **be approved by the Congress**.

It went further by tightening existing Russian sectoral sanctions (narrowing the scope of permissible debt transactions between U.S. persons and Russian entities) and authorizing new secondary sanctions to target non-U.S. persons engaged in prohibited commercial activities with Russia.

## II. Blocking sanctions

Persons under blocking (personal) sanctions are included into the Specially Designated Nationals And Blocked Persons List (***SDN List***<sup>1</sup>) pursuant to all four executive orders.

Transactions by U.S. persons or in the U.S.A. **are prohibited** if they involve transferring, paying, exporting, withdrawing or otherwise dealing in the property or interests in property of an SDN.

<sup>1</sup> <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

### III. Sectoral sanctions

Persons under sectoral sanctions are included into the Sectoral Sanctions Identifications List (SSI List<sup>1</sup>).

The property and interests in property of these persons are **not blocked**, nor are transactions with them prohibited beyond the restrictions set forth in E.O. 13662 and four implementing Directives issued by OFAC.

<sup>1</sup> [https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/ssi\\_list.aspx](https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/ssi_list.aspx)



III. Sectoral sanctions: directives pursuant to E.O. 13662.  
**Directive 2** (as amended on September 29, 2017)

**Transneft  
Rosneft  
Gazpromneft  
Novatek  
etc.**

**Aimed at the energy sector  
of the Russian economy**

**All other activities  
are generally  
permitted!**

Prohibits the following transactions by US persons and within the  
territory of the US

Transacting in, providing financing for, or otherwise dealing in a new debt of longer than **60 days** maturity of the persons subject to Directive 2, their property, their interests in property, if the new debt was issued on or after **November 28, 2017**.

Earlier versions of Directive 2 provided for a longer maturity period (90 days)

III. Sectoral sanctions: directives pursuant to E.O. 13662.  
**Directive 3** (as amended on September 12, 2014)

**Vertolety Rossii AO  
OJSC Rosoboronexport  
Tekhnologii  
Mashinostroeniya  
etc.**

Aimed at the **defense and  
materiel sector** of the  
Russian economy

**All other activities  
are generally  
permitted!**

Prohibits the following transactions by US persons and within the  
territory of the US

All transactions in, provision of financing for, and other dealings in a  
new debt of longer than **30 days maturity** of persons subject to  
Directive 3, their property, their interests in property.

### III. Sectoral sanctions: directives pursuant to E.O. 13662. **Directive 4** (as amended on October 31, 2017) (1)

**Transneft  
Rosneft  
Gazpromneft  
Novatek  
etc.**

Aimed at the **energy sector**  
of the Russian economy



Prohibits the following transactions by U.S. persons and within the territory of the U.S.  
Provision, exportation, or reexportation, directly or indirectly, of goods, services (except for **financial services**), or technology in support of exploration or production for

- Deepwater,
- Arctic offshore, or
- Shale projects

### III. Sectoral sanctions: directives pursuant to E.O. 13662.

#### **Directive 4** (as amended on October 31, 2017) (2)

#### **Characteristics of the prohibited projects**

1. Have the potential to produce oil in Russia or in particular maritime area, that involve any person determined by Directive 4, their property, or their interests in property.

**OR**

2. Are initiated on or after **January 29, 2018**, that have potential to produce oil in any location, and in which any person subject to Directive 4, their property, or interests in property has

**33% or greater ownership interest**

**OR**

Ownership of a majority of voting interests

## IV. 50% Rule



The property and interests in property of an entity that is **50 percent or more owned**, whether individually or in the aggregate, directly or indirectly, by one or more persons whose property and interests in property are blocked, are **also blocked**, regardless of whether the entity itself is on the SDN List.



The property and interests in property of an entity that is **50 percent or more owned**, whether individually or in the aggregate, directly or indirectly, by one or more sanctioned persons **are also sanctioned**, regardless of whether the entity itself is listed on the SSI List.



## VI. Licenses (1)

### GENERAL LICENSES

- OFAC may authorize certain types of activities and transactions that would otherwise be prohibited.
- General licenses allow all US persons to engage in the activity described in the general license without needing to apply for a specific license.
- Currently 20 general licenses are in place.

### SPECIFIC LICENSES

- On a case-by-case basis OFAC considers applications for specific licenses to authorize transactions that are neither exempt nor covered by a general license.

## VI. Licenses (2)

### General licenses

- Authorizing the Exportation or Reexportation of Agricultural Commodities, Medicine, Medical Supplies, and Replacement Parts (General License No. 4)
- Transactions Related to Telecommunications and Mail Authorized (General License No. 8)
- Exportation of Certain Services and Software Incident to Internet-Based Communications Authorized (General License No. 9)
- Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts with United Company RUSAL PLC (General License No. 14)
- Etc.

## VI. Challenging the U.S. sanctions (1)

**Administrative  
procedure  
(OFAC)**

**Judicial  
procedure  
(federal courts)**

## VI. Challenging the U.S. sanctions (2)

### Via. Administrative procedure

- Any sanctioned person is entitled to administrative review of its designation on the list.
- An applicant shall demonstratively prove that OFAC's reasons for designation are not consistent with reality any longer.
- A sanctioned person may suggest particular steps to facilitate its de-listing (e.g. corporate reorganization or dismissal of particular officers – see *The Barker Plan, RUSAL*).
- OFAC shall consider the application and send its decision in a written form, however, it is not obliged to give a substantive response in a fixed term.

## VI. Challenging the U.S. sanctions (3). VIb. Judicial procedure

- The onus of proof in regard to the court's competency rests on the applicant.
- Deferential standard (court can revoke OFAC's decisions only in case they result from abuse of power and are inconsistent with the law).
- The courts confirmed: when making decisions, OFAC is entitled to rely on rumors, moreover, it is admissible to rely on newspaper articles.

## VI. Challenging the U.S. sanctions (4)

### VIc. Challenging the U.S. sanctions by Russian persons

The only known attempt of a Russian sanctioned person to challenge designation



**Kirsan Ilyumzhinov**  
ex-president of FIDE

Administrative and judicial procedures



NO  
RESULTS





## VIII. Extraterritorial effect of sanctions (2). VIIIa. Foreign financial institutions (FFIs)

Department of the Treasury must impose restrictions on the US correspondent and payable-through accounts for foreign financial institutions (including banks), which:

1. “knowingly” engage in “significant transactions” involving certain defense- and energy-related activities, or
2. “knowingly facilitate significant financial transactions” on behalf of any Russian person designated on the SDN List pursuant to any executive order addressing the crisis in Ukraine.

These sanctions may take form of termination or suspension of the US correspondent and payable-through accounts, which will cause a detrimental effect on a bank’s business operations.

## VIII. Extraterritorial effect of sanctions (3). VIIIb. Facilitating transactions with SDNs

The US President is entitled to impose blocking sanctions on a “foreign person”—a term that includes **ALL NON-US PERSONS** —that the President determines “knowingly” does either of the following:

1. “Materially violates, attempts to violate, conspires to violate, or causes a violation of” any Russian sanctions executive order or statute; or
2. “Facilitates a significant transaction or transactions, including deceptive or structured transactions, for or on behalf of” any person “subject to sanctions imposed by the United States with respect to the Russian Federation” or their immediate family members.



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