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Enforcement of Economic Sanctions: An Overview

As part of the response to Russia's invasion of Ukraine, the United States and many other international actors have imposed economic restrictive measures ("economic sanctions") on individuals and entities financing or otherwise connected with the Russian and Belarusian governments. In the United States, the Office of Foreign Assets Control (OFAC) within the Department of the Treasury (Treasury) often leads sanctions implementation. OFAC and the Department of Justice (DOJ) serve as the primary enforcers of economic sanctions measures, although other federal agencies play a role in enforcement efforts. This In Focus provides a brief overview of the economic sanctions regime and how it is enforced.

Imposition of Economic Sanctions

Most economic sanctions are imposed using authority delegated to the President in the International Emergency Economic Powers Act (IEEPA) and the National Emergencies Act (NEA). The President may, upon declaring a national emergency, restrict or prohibit a wide range of transactions involving "property in which any foreign country or a national thereof has any interest by any person, or with respect to any property, subject to the jurisdiction of the United States." 50 U.S.C. § 1702(a). "Person" includes natural persons and entities.

During periods when the United States "is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals," the President's authority to block and prohibit transactions in designated persons' property is expanded to include *confiscation* of property. 50 U.S.C. § 1702(a)(1)(C). The President may order that the property of any foreign person be confiscated, with title to such property vesting in an agency or person designated by the President. The President may also establish the terms on which the confiscated property may be held or sold, among other things.

When exercising authorities under IEEPA, the President generally issues an executive order that (1) declares a national emergency under the NEA; (2) sets out the legal bases upon which the Secretary of the Treasury or other officials (e.g., Secretary of the State Department) may designate specific foreign persons who will be subject to the sanctions; and (3) establishes the types of transactions or other prohibitions that shall apply to designated persons. For example, Executive Order 14024, related to countering "harmful foreign activities of the Government of the Russian Federation," blocks and prohibits transactions in property within the United States, or in the possession or control of a U.S. person, of designated foreign persons. The grounds on which the Secretary of the Treasury, in consultation with the Secretary of State, may designate individuals under Executive Order 14024 include that the

foreign person is "a political subdivision, agency, or instrumentality of the Government of the Russian Federation" or has engaged in "activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners."

Based on intelligence and other information, Treasury and/or the State Department identifies specific persons that meet the criteria of these executive orders. These persons are then added to the appropriate list. Persons whose assets are blocked and with whom U.S. persons generally may not deal appear on the Specially Designated Nationals and Blocked Persons List (SDN List). Persons whose assets are not blocked, but with whom certain transactions are prohibited, appear on non-SDN lists, collectively arranged by OFAC in a Consolidated Sanctions List.

Violations of IEEPA may expose U.S. and foreign persons to civil and criminal penalties. Respondents face civil penalties of up to \$250,000 (or \$330,947 once adjusted for inflation as required by the Federal Civil Penalties Inflation Adjustment Act of 1990) or "an amount that is twice the amount of the transaction that is the basis of the violation." 50 U.S.C. § 1705; Economic Sanctions Enforcement Guidelines, 31 C.F.R. App'x A to Pt. 501. They may also face criminal fines of up to \$1 million or up to 20 years' imprisonment for willful violations. 50 U.S.C. § 1705.

For further information on IEEPA, see CRS Report R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use*. For further information on sanctions issued in response to Russia's invasion of Ukraine, see CRS Insight IN11871, *Russia's Invasion of Ukraine: New Financial and Trade Sanctions*; and CRS Report R45415, *U.S. Sanctions on Russia*.

Enforcement of Economic Sanctions

Individuals who violate economic sanctions may face civil or criminal penalties. Enforcement actions may directly target sanctions violations, while others may also address other illegal conduct involved in or uncovered while investigating the sanctions violations.

OFAC

If OFAC suspects a person or entity may be acting in violation of economic sanctions, it may open enforcement proceedings. Based on evidence considered in its investigation, OFAC may issue a finding of no violation; a request for further information; a cautionary letter; a finding of a violation; a finding of a violation with civil monetary penalty; or a criminal referral. Should OFAC have reason to believe that the sanctions violation may be ongoing or recur, it may also issue a cease-and-desist order. Where

relevant, OFAC may also revoke, suspend, modify, withhold, or deny licenses to engage in certain transactions.

If OFAC imposes a monetary penalty, the amount varies depending on the relevant statutory authority (usually IEEPA) and OFAC's evaluation of the circumstances. To calculate the penalty, OFAC first determines the "base amount" by considering whether the violation qualifies as "egregious" and whether the individual voluntarily self-disclosed the violation. The egregious or nonegregious determination is based on a consideration of factors including the violator's willfulness; harm to the sanctions program's objectives; and individual characteristics (e.g., commercial sophistication). Then OFAC is to consider aggravating and mitigating factors, including whether the violator took remedial action or cooperated with OFAC's investigation to calculate a final penalty.

Should OFAC believe a particular case might warrant criminal penalties, it may refer the case to the DOJ for consideration. In such cases, OFAC may impose civil penalties in addition to any criminal penalties that an individual may face upon conviction.

U.S. Department of Justice

The DOJ handles criminal violations of sanctions. It also addresses enforcement through other investigations into conduct that may facilitate sanctions violations, such as money laundering. The DOJ's National Security Division leads sanctions violations prosecutions, while other prosecutions are led by other offices, including the Money Laundering and Asset Recovery Section within the Criminal Division.

Sanctions Violations Cases. As with OFAC's civil-enforcement authority, the DOJ's criminal-enforcement authority to address sanctions violations stems from a variety of statutes. Because most sanctions are imposed using IEEPA, the DOJ's prosecutions generally rely on IEEPA.

Sanctions-Related Cases. The DOJ may also seek to address conduct enabling sanctions violations through nonsanctions authority. In particular, DOJ may seek to prosecute sanctions evasion through investigations into money laundering or other financial crimes. In connection with such investigations, DOJ may use its civil and criminal forfeiture authorities to seize assets identified as the proceeds of unlawful conduct. For example, on March 2, 2022, Attorney General Merrick Garland announced the creation of Task Force KleptoCapture within the DOJ to enforce sanctions, export restrictions, and other economic countermeasures imposed by the United States in response to Russia's 2022 invasion of Ukraine. In addition to investigating sanctions violations, the Task Force is to investigate efforts to undermine economic sanctions, including instances of money laundering and evasion of "know-your-customer" obligations, and potentially seize assets identified as the proceeds of unlawful conduct. DOJ and Treasury are also participating in the multilateral Russian Elites, Proxies, and Oligarchs (REPO) Task Force created so countries can "share information to take concrete actions, including sanctions, asset freezing, civil and criminal asset seizure, and criminal prosecution."

Asset Seizure. The United States' authority to seize assets generally derives from civil and criminal forfeiture statutes, not from sanctions authorities. Criminal forfeiture authorities are found in numerous parts of the *U.S. Code* and require a defendant to forfeit "tainted" property—i.e., property involved in or derived from certain illegal activity. As the Supreme Court has stated, these statutes "serve important governmental interests such as 'separating a criminal from his ill-gotten gains,' [and] 'returning property, in full, to those wrongfully deprived or defrauded of it.'" *Honeycutt v. United States*, 137 S. Ct. 1626, 1631 (2017). For example, 18 U.S.C. § 982 provides for criminal forfeiture of real or personal property following a defendant's criminal conviction if that property was involved in or traceable to a variety of offenses, including money laundering; securities fraud; and mail or wire fraud.

Civil forfeiture allows the government to bring an action against *property*, rather than a *person*, generally on the theory that the property is suspected of being involved in a crime. For instance, 18 U.S.C. § 981 allows the U.S. government to seek civil forfeiture of real or personal property if that property was involved in or traceable to, among other things, money laundering; securities fraud; or mail or wire fraud. Unlike in criminal cases, the government need not obtain a criminal conviction against the individual whose property the government seeks to seize. Also unlike criminal cases, an "innocent owner" may contest a civil forfeiture on the grounds that he or she did not know of the illegal conduct giving rise to the forfeiture or that, on learning of the illegal conduct, took all reasonable steps to terminate the property's involvement in such conduct. 18 U.S.C. § 983.

Although Congress retains significant discretion in crafting criminal and civil forfeiture provisions, the Constitution's Excessive Fines Clause limits the scope of forfeiture laws. In the criminal context, the forfeiture must not be "grossly disproportionate to the gravity of a defendant's offense." *United States v.ajakajian*, 524 U.S. 321, 334 (1998). In the civil context, the Excessive Fines Clause applies only when the relevant statutory provision's purpose is at least partly punitive, rather than strictly remedial (e.g., ties forfeiture to the commission of certain crimes). *Austin v. United States*, 509 U.S. 602, 622 (1993).

Other Federal Agencies

In addition to OFAC and the DOJ, a number of federal agencies are involved with sanctions enforcement efforts. For example, Treasury's Financial Crimes Enforcement Network (FINCen), as part of its duties under the Bank Secrecy Act, monitors and provides the DOJ with information about suspicious transactions that may reflect efforts to evade sanctions. In addition, the Bureau of Industry and Security within the Department of Commerce oversees export controls for dual-use items—items with both military and civilian uses—and may prohibit the export of these items to individuals or entities on certain OFAC sanctions lists.

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