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CORRIGENDUM

This document corrects document SWD(2014) 300 final of 17.07.2014.
Information on EU sanctions was updated.

The text shall read as follows:

JOINT STAFF WORKING DOCUMENT

Information Note to EU business operating and/or investing in Crimea/Sevastopol

Information Note

To EU business operating and/or investing in Crimea/Sevastopol

The objective of this document is to raise European citizens' and businesses' awareness on the risks related to the economic and financial situation in Crimea/Sevastopol in light of the situation on the ground at the time of its release, following the illegal annexation by Russia and the policy of "non-recognition" upheld by the EU. It has been prepared by the European Commission services and by the European External Action Service. This note is not intended to constitute legal advice and should not be seen as providing guidance/recommendations. Moreover, it may be subject to revision in light of the evolving situation on the ground.

1. EU position on the illegal annexation of Crimea/Sevastopol

The EU has adopted a consistent policy of non-recognition towards the illegal annexation of Crimea/Sevastopol to the Russian Federation. Even before the illegal annexation was implemented, the EU Heads of State or Government had declared illegal, on 6 March 2014, the referendum on the future status of the territory announced by the Supreme Council of the Autonomous Republic of Crimea.

On 20 March, the European Council declared not to recognise the illegal referendum in Crimea, considered in clear violation of the Ukrainian Constitution, and condemned the illegal annexation of Crimea/Sevastopol to the Russian Federation, committing not to recognise it. In this context, the European Council asked the Commission to evaluate the legal consequences of the annexation and to propose economic, trade and financial restrictions regarding Crimea for rapid implementation.

The same position was reiterated by the EU Foreign Affairs Council on 12 May and by the EU Heads of State or Government on 27 May. The EU has also welcomed the adoption of the United Nations' General Assembly Resolution number 68/262 on the territorial integrity of Ukraine.

A regularly updated fact sheet on EU-Ukraine relations can be found here: http://eeas.europa.eu/statements/docs/2014/140514_02_en.pdf

2. EU action following the illegal annexation of Crimea /Sevastopol

As of 25 June 2014, Council Decision 2014/386/CFSP and Council Regulation (EU) No 692/2014 prohibit the import into the European Union of goods originating in Crimea and Sevastopol, unless they are accompanied by a certificate of preferential origin granted by the Ukrainian authorities. Financial services, such as provision of financing, financial assistance, insurance and re-insurance services, related to the import of goods subject to the prohibition are equally forbidden.

On 30 July, the Council adopted a Decision (2014/507/CFSP) and a Regulation (825/2014) amending Council Decision 2014/386/CFSP and Council Regulation (EU) No 692/2014 (cf. reference document) to prohibit investment in Crimea and Sevastopol in specific sectors and to prohibit trade in certain goods with Crimea and Sevastopol in specific sectors.

In summary, this prohibits new investment by persons or entities under EU jurisdiction of the EU in infrastructure projects in Crimea and Sevastopol in the sectors of transport, telecommunications and energy. The sale, supply or transfer of key equipment and technology for the creation, acquisition or development of infrastructure projects in these sectors is also prohibited.

The Decision also prohibits new investment by persons or entities under EU jurisdiction in projects for the exploitation of natural resources in Crimea and Sevastopol in the sectors of oil, gas and minerals. In addition, the sale, supply or transfer of key equipment and technology for the exploitation of these natural resources is prohibited.

3. Other EU measures in relation to the territorial integrity, sovereignty and independence of Ukraine

In addition to the measures specifically in response to the illegal annexation of Crimea and Sevastopol, the EU has agreed to impose a travel ban and asset freeze against 95 natural persons on the ground of being responsible for undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine or against individuals who actively provide material or financial support to or are benefiting from the Russian decision makers responsible for the annexation of Crimea or the destabilisation of Eastern Ukraine.

The restrictive measures equally allow for listing legal persons subject to certain conditions for being associated with persons responsible for or threatening the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine, or for materially or financially supporting actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine. In addition, legal entities may be designated in case they are actively supporting or if they are benefitting from Russian decision makers responsible for the annexation of Crimea or the destabilisation of Eastern Ukraine. Also, legal persons in Crimea or Sevastopol are designated whose ownership has been transferred contrary to Ukrainian law. So far an asset freeze has been imposed against a total of 23 entities.

With regard to Crimea and Sevastopol 11 entities have been designated whose ownership has been transferred contrary to Ukrainian law.

In addition to imposing an asset freeze, the effect of designation is to prohibit making funds or economic resources available directly or indirectly to any person or entity that has been listed. Economic operators must determine based on the facts of each case whether engaging or continuing in business will breach this prohibition.

More details and information including the grounds for listing and lists can be found in Council Decision 2014/145/CFSP (amended 2014/151/CFSP, 2014/238/CFSP, 2014/265/CFSP, 2014/455/CFSP, 2014/508/CFSP) and Council Regulation (EU) No 269/2014 (amended 284/2014, 433/2014, 477/2014, 753/2014, 826/2014).

In addition, economic operators should note that an asset freeze has been imposed against 22 persons identified as being responsible for the misappropriation of Ukrainian state funds.

More details and lists can be found in Council Decision 2014/119/CFSP (amended on 14 April 2014), and Annex I to Council Regulations (EU) No 208/2014 and 381/2014.

On 31 July 2014, the Council adopted Council Decision 2014/512/CFSP and Council Regulation (EU) No 833/2014, which impose restrictions with regard to specific sectors of the Russian economy (restrictions on access to capital markets for major state owned Russian banks, arms embargo (import and export), and restrictions on the export to Russia of dual use goods to military end users and restrictions on the export of sensitive technologies used for the exploration or exploitation of oil resources in specific projects). Prior contracts are exempted from these measures. As Crimea and Sevastopol remain legally part of Ukraine, these measures do not apply directly to Crimea and Sevastopol. However, persons and operators will be responsible to ensure that any activity with persons or entities in Crimea or Sevastopol would not circumvent these provisions.

More details and lists can be found in Council Decision 2014/512/CFSP of 31 July and Council Regulation (EU) No 883/2014.

4. Review of the measures

The restrictive measures are kept under constant review. The Council may expand or reduce the number of natural or legal persons listed through the adoption of other Council Decisions and Regulations, The Council may also expand or reduce or amend the measures in the area of trade and finance. Economic operators should therefore ensure that they are aware at all times of the current list of designated persons and entities and of any possible changes regarding the trade and financial measures.

More information is provided in **annex**.

5. Situation on the ground

While non-recognition by the EU and its Member States of the illegal Russian annexation of Crimea/Sevastopol also means that the EU and its Member States do not recognise new Russian legislation on Crimean issues as valid, the fact remains that any businesses which desire to establish or continue business relations with Crimea/Sevastopol will have to do so bearing in mind that Russian legislation is *de facto* applied. The following paragraphs therefore seek to give some, necessarily incomplete, indication of what the *de facto* application of Russian legislation in Crimea/Sevastopol might entail for foreign businesses.

Traditional trade flows between Crimea/Sevastopol and the rest of Ukraine have been affected. The regulatory framework is rapidly changing and remains unclear, adding risks for business operators. The Ukrainian law "On legal guarantees of people's rights and freedoms on the temporarily occupied territories of Ukraine" does not address economic activity. It is expected that the issue of economic activity will be regulated by a separate law although the timeline is still unknown[1].

[1] Not least for this reason, the present information is susceptible to change at any moment, is necessarily of a summarised nature and cannot be seen as either portraying a final Commission position or constituting any form of legal advice.

It is understood that according to the law of the Russian Federation "On admission of the Republic of Crimea and establishment of the new federal subjects of the Russian Federation", all transitional issues related to the integration of Crimea in the economic, financial and legal system of the Russian Federation will be settled by 1 January 2015.[2] Yet, Ukraine does not recognise any activity of the Crimean authorities and their officials if they were established or elected other than in accordance with the Ukrainian legislation. Ukraine's law "On legal guarantees of people's rights and freedoms on the temporarily occupied territories of Ukraine" seems to provide that any decisions and documents issued either by the Crimean authorities or their officials are null and void and do not have legal effect in the territory of Ukraine.

The juxtaposition of jurisdictions leads to major legal uncertainty which has a direct impact on business. This concerns, among others, the validity of contracts, available legal remedies as well as business registries and databases and the recognition of information contained therein (e.g. rights to immovable property). In practice, many companies are switching legal jurisdictions and their Crimean affiliates start operating as part of the Russian market, with employees re-hired under the Russian affiliate.

The illegal annexation of Crimea/Sevastopol to Russia has *de facto* led also to the loss of administrative capacity of the authorities in Kiev over this area. The Ukrainian authorities have thus notified on 17 April 2014 the discontinuation of powers of the chambers of commerce based in Crimea/Sevastopol and have requested the invalidation of any certificate of origin issued by the aforementioned chambers as of 23 April 2014. Accordingly only goods accompanied by certificates of preferential origin issued by authorities recognised by the Ukrainian central authorities will be accepted by the EU. Without this essential administrative element, the goods will be denied preferential treatment.

Another major issue for business active in Crimea is taxation. It is unclear for many companies which taxes have to be paid and under which law. The same goes for VAT refunds. Also, businesses may incur losses if delivery of goods to Ukraine is hindered due to the lack of tax stamp labels. The same uncertainty applies to the possible renewal of licences.

Within the same vein, the juxtaposition of two legal systems leads to the possible non-recognition and non-implementation of decisions of courts from Crimea/Sevastopol in third countries. This situation could lead, for instance, to difficulties with the enforcement of the payments of debts or return of property.

De facto prevalence of Russian law also implies that businesses exporting to Crimea/Sevastopol may be subject to the import tariffs and non-tariff barriers applied by Russia.[3]

[2] Additionally, the Resolution "On the Independence of Crimea" states that "From the day on which this resolution comes in force, no laws of Ukraine will be applicable or valid on the territory of the Republic of Crimea, and no orders or instructions of the Supreme Council of Ukraine or other bodies of authority of Ukraine issued later than February 21, 2014 will be acted upon".

[3] For example, possible barriers faced by the automotive industry when entering Russia could include the application of Russia's WTO bound tariffs, the imposition of price references (through increasing the value of goods being exported), change of tariff codes to increase import duty rates, extortionate recycling fees and problems with customs procedures (e.g. several changes to the Russian certification logo to be placed on all products and packaging, effective retroactively).

Economic operators have also been faced with increased cost of haulage given increased waiting times at the border, increased transportation costs in Crimea as well as changes in transport routes. Furthermore, business is hampered by additional checks introduced at the "administrative line" between Crimea and the rest of Ukraine. Provision of supplies is generally becoming more difficult. Companies are often forced to switch from Ukrainian to Russian suppliers, but there is a lack of transportation capacities for deliveries out of Russia.

Ukrainian authorities have advised EU citizens not to visit Crimea and Sevastopol. Any EU citizen who wants to travel to this area will need to obtain a visa.

As for physical persons present in Crimea, it should be noted that at this moment honorary consuls present in Crimea have suspended their activities. In cases of extreme urgency, some Member States might provide help through their consular services in neighbouring areas.

6. Examples of affected sectors

Banking

As a consequence of the illegal annexation, the Law of the Russian Federation "On Certain Aspects of the Functioning of the Financial System of Crimea and Sevastopol" that entered into force on 2 April 2014 requires banking activities in Crimea and Sevastopol to be brought under Russian supervision before 1 January 2015. Any operator that would fail to do so would then be forced to sell its assets to Russian supervised financial entities at that date. The Russian Central Bank has begun monitoring the Crimean banking sector, while on 6 May the National Bank of Ukraine ordered Ukrainian banks to cease operations in Crimea in view of its inability to perform banking regulation and monitoring on the Crimean peninsula. As a consequence only Russian supervised banking entities can perform banking activities in Crimea and Sevastopol. EU banks that were present in Crimea and Sevastopol before the illegal annexation decided to cease their activities. Generally, the payment system is in flux and transfers are impeded (payments in Ukrainian hryvnia from Crimea to continental Ukraine have been stopped). Companies have, thus, been or are likely to be forced to switch banks (e.g. to pay salaries) and to 'negotiate' with locally operating banks to receive cash. The Russian Central Bank has changed the currency from the Ukrainian hryvnia to the Russian rouble. Also, pensions are paid in Russian rouble.

Pharmaceutics

In the pharmaceutical sector there appear to be contradictions between the relevant Ukrainian and Russian legislation and uncertainty persists as to the regulation of certain activities. Most pharmaceutical companies are in the process of closing their activities in Crimea or will transfer their employees to their affiliates in Russia in the coming months. The Russian Ministry of Health issued an official communication in order to resolve any regulatory issues in the transition period. According to an information letter from the Russian Federal Service on Surveillance in Healthcare, licences and permits in relation to pharmaceutical and medical activities issued by the respective Ukrainian authorities will remain valid for an unlimited period of time (unless the opposite is directly stipulated in the information letter). This implies that Russia recognises the licences issued by Ukrainian authorities (presumably at least until the "official integration" of Crimea into Russia by 1st January 2015).

Tourism

The EU tourism industry is also being adversely affected. Cruise ships have received official warnings that the Ukrainian Ministry of Transport has no longer access to the maritime information system in Crimea and thus no information on navigation. The unreliability of food deliveries and power supplies are also having an impact. Investors should be aware that an illegal nationalisation process is going on in the tourism sector, creating substantial uncertainty and risks for the security of EU investment.

ANNEX

Further information on restrictive measures

In general terms restrictive measures in force affect businesses operations in Crimea/Sevastopol in the following way:

a) It is prohibited to provide new investment and related activities in infrastructure in the sectors of transport, telecommunications and energy in Crimea and Sevastopol;

b) It is prohibited to provide new investment and related activities in the exploitation of oil, gas, or mineral resources in Crimea and Sevastopol;

'Mineral resources' are those listed in Annex II to Council Regulation (EU) No 825/2014.

The categories of prohibited new investment and related activities are defined in the Regulation and include granting of loans or credit, the creation of any joint venture in relation to specific projects, and the acquisition of a participation in enterprises established in Crimea/Sevastopol.

c) It is prohibited to sell, supply, transfer or export equipment and technology related to the creation of infrastructure in the sectors of transport, telecommunications and energy as well as regards the exploitation of oil, gas and mineral resources.

The prohibited equipment and technology is listed in Annex III to Council Regulation (EU) No 825/2014.

d) Due to the asset freezing measures, all funds and economic resources belonging to listed persons and entities should be frozen.

The terms 'funds', 'economic resources', 'freezing of funds', 'freezing of economic resources' are defined in Article 1 of Regulation (EU) No 269/2014. It should be noted that the freezing measures do not involve a change in ownership of the frozen funds and economic resources.

e) Due to the prohibition on making funds or economic resources available directly or indirectly available to listed persons and entities, economic operators must not establish or maintain economic relations with listed persons or entities. In addition, economic operators are prohibited from making funds or economic resources available indirectly to listed persons or entities.

Specific guidelines on the implementation of the prohibition on making indirectly available of funds and economic resources to listed persons and entities can be found here: http://register.consilium.europa.eu/pdf/en/13/st09/st09068.en13.pdf.

f) Due to restrictions on admission (travel ban), in principle no meetings with listed persons and entities can be held in the EU.

In certain cases derogations from the above restrictions (for example, in order to satisfy the basis needs of the listed persons) are allowed by the respective legal basis. Such derogations require prior authorisation by the competent authorities of the relevant Member State and a notification to the Commission and the Member States. The list of competent authorities of Member States can be found in Annex II to Council Regulation

(EU) No 269/2014. The list of exemptions can be found in Council Regulation (EU) No 269/2014 (derogations from the asset freezing measures and the prohibition on making funds and economic resources available to listed persons and entities) and Council Decision 2014/145/CFSP (derogation from restrictions on admission to the EU).

On 23 June 2014 the Council has adopted Council Decision 2014/386/CFSP and Council Regulation (EU) No 692/2014 prohibiting the import into the European Union of goods originating in Crimea or Sevastopol. As of 25 June, goods originating in Crimea and Sevastopol may no longer be imported into the European Union. In addition, it will be prohibited to provide financial and insurance services related to the import of such goods. Goods originating in Crimea or Sevastopol having been granted by the Ukrainian authorities a certificate of preferential origin may, however, still be imported into the EU.

Goods from countries other than Ukraine are not affected by the import prohibition, even where they enter the European Union via Crimea or Sevastopol.

Further information on the implementation of restrictive measures can be found in the following documents:

- Guidelines on implementation and evaluation of restrictive measures (http://register.consilium.europa.eu/pdf/en/12/st11/st11205.en12.pdf)

- Best Practices for effective implementation of restrictive measures (http://register.consilium.europa.eu/pdf/en/08/st08/st08666-re01.en08.pdf)

- Guidelines on the implementation of the prohibition on making indirectly available of funds and economic resources and the notions of ownership and control (http://register.consilium.europa.eu/pdf/en/13/st09/st09068.en13.pdf)

- Frequently Asked Questions (http://eeas.europa.eu/cfsp/sanctions/docs/frequently_asked_questions_en.pdf)