

Scope Of Russia's New Blocking Sanctions Is Unclear

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On May 3, Russia's President Vladimir Putin issued Decree No. 252, requiring Russian federal and municipal authorities, as well as organizations and individuals falling under Russian Federation jurisdiction to follow special economic measures introduced against certain designated persons.[1] The decree entered into force immediately and has no wind-down period.

On May 11, the Russian government adopted Resolution No. 851, which introduced the list of designated persons and supplemented the list of prohibited transactions in the May 3 decree.[2]

Special Economic Measures

The decree introduced multiple prohibitions, or blocking measures, including on the following:

- Executing transactions, including entering into foreign trade contracts, with a designated person;
- Performing outstanding obligations under existing transactions, including foreign trade contracts, with a designated person;
- Conducting financial operations benefiting a designated person; and
- Exporting goods or raw materials produced or originated in Russia, if such products are supplied (1) for the benefit of a designated person, or (2) by a designated person for the benefit of nondesignated persons.

Resolution 851 added the following to the list of restricted transactions:

- Transactions performed for the benefit of a designated person;



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- Transactions that involve entry into Russian seaports of vessels owned or chartered by a designated person; and
- Payments or transactions with securities with or for the benefit of a designated person.

Designations

The resolution adopting the designated persons list comprises 31 energy companies, including Gazprom Germania GmbH, Gazprom Schweiz AG, Gazprom Marketing & Trading USA Inc., Vemex, Wingas GmbH, EuRoPol GAZ SA and other entities.[3]

In essence, these are European companies formerly controlled by JSC Gazprom, a Russian company, and located in the countries that imposed sanctions on Russia, and entities operating the Polish part of the pipeline that carries Russian gas to Europe.

Putin also authorized the Ministry of Finance and the central bank to issue official guidance on certain matters concerning Decree No. 252 implementation.

Licenses

In general, prohibited transactions can still be authorized. On May 25, the Russian government issued a license to allow otherwise prohibited transactions related to liquid gas deliveries by Yamal Trade Pte. Ltd. to Gazprom Marketing & Trading Singapore Pte Ltd.

This license is in effect for only 90 days.

Existing Blocking Measures

Decree No. 252 was issued under the auspices of Federal Law No. 281-FZ of Dec. 30, 2006, on special economic measures and coercive measures. This is the second decree introducing blocking measures.

In the past, the president used his powers under this law by ordering the government to introduce certain special economic measures, as the government would decide and against persons whom the government would designate.

This was per the Oct. 22, 2018, Decree No. 592, "On the Application of Special Economic Measures in Connection with Unfriendly Actions of Ukraine in Relation to Citizens and Legal Entities of the Russian Federation."

Measures introduced under Decree No. 592 included:

- Blocking funds, securities and property in Russia, and banning the withdrawal of capital from Russia by several hundred directly designated persons — including mostly Ukraine and Ukraine-related individuals and legal entities — and entities controlled by them;[4] and
- Prohibitions on the import of certain goods originating from Ukraine or in transit through Ukraine, the export of certain Russian goods to Ukraine, and the export to Ukraine of certain goods — e.g., oil and oil products, liquefied petroleum gas and diesel fuel absent a special government permission.[5]

Since their adoption, Decree No. 592 and the resolutions creating the aforementioned prohibitions have been amended several times.

Another piece of legislation governing Russian sanctions and blocking measures is Federal Law No 127-FZ, countering unfriendly actions of the U.S. and other foreign countries, of June 4, 2018.

This law contains a separate basket of measures that the president may introduce against foreign states and nationals, including termination or suspension of international cooperation in certain industries; import bans or restrictions; exceptions for indispensable-to-life goods with no Russian analogues — e.g., certain pharmaceuticals — and goods for personal use; export bans or restrictions; and prohibitions or restrictions on performance of work and services for state and municipal needs.

Impact of the New Measures on Existing Transactions

The practical consequences of the newly introduced measures will become clearer after official guidance becomes available. However, it is already apparent that Decree No. 252 substantially extends the purview of the existing Russian blocking measures.

Notably, as compared with Decree No. 592, Decree No. 252 includes a total ban on new transactions with designated persons or for their benefit.

Legal consequences of the newly introduced regulation are also not fully clear and require further guidelines. The following issues in particular raise quite a few legal questions.

The Russian legal term "transaction" includes actions giving rise to, varying or terminating legal relationships.

It is not clear whether Decree No. 252, by prohibiting transactions, was intended to restrict a Russian counterparty not only from entering into new contracts with designated persons, but also amending or even terminating existing contracts, i.e., those contracts that cannot be performed because of Decree No. 252's prohibition on performing outstanding obligations.

Further, Decree No. 252's restricting Russian counterparties' performance of outstanding obligations under existing transactions may result in a contract, in whole or in part, becoming invalid.

Usually, under Russian law the consequence of a transaction becoming invalid is restitution. It is not clear whether this rule would apply to transactions affected by Decree No. 252 and to what extent Decree No. 252 prohibits restitution in general.

Most likely, the possibility of affecting restitution would depend on the specific circumstances of a particular transaction, such as the contract's governing law and whether actions required to be performed for the restitution would fall under the restrictions introduced by the decree or other countersanctions, and permitted by law governing the contract.

Liability

The decree does not specify what liability follows a breach of the established restrictions, neither do the laws that are the primary basis for Russian countersanctions, including the blocking measures in the decree.[6]

The Russian Administrative Code was recently amended to introduce liability for "abstaining from blocking of monetary funds and other property contemplated by Russian legislation on special economic measures." The legal entity committing the offense may be subject to a fine of up to 500,000 rubles — circa \$7,500.

The Russian Administrative Code also provides for liability for breach of restrictions applicable to export and import of goods, for failure to comply with a government body's lawful demand, and for some other general causes.

However, to date no specific liability has been established, for example, for executing transactions or for performing outstanding obligations under existing transactions — including foreign trade contracts — with a designated person.

The effect of Decree No. 252 on each existing contract with a designated person would, of course, largely depend on the law the parties chose to govern the contract, the scope of affected rights and obligations, and other terms and conditions of their contract, including those addressing force majeure, invalidity and termination.

Unfortunately, there is no one-size-fits-all solution. Each contract will require a separate legal analysis.

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[1] Decree No. 252, "On Application of Retaliatory Special Economic Measures in Connection with Unfriendly Actions of Certain Foreign States and International Organizations."

[2] Decree of the Government of the Russian Federation of May 11, 2022, No. 851 "On measures to implement Presidential Decree No. 252, of May 11," <http://publication.pravo.gov.ru/Document/View/0001202205110017>.

[3] A list of all 31 companies can be found here: <https://www.garant.ru/hotlaw/federal/1543055/>.

[4] Resolution No. 1300, of Nov. 1, 2018.

[5] Resolution No. 1716-83, of Dec. 29, 2018.

[6] Law 281-FZ and Law 127-FZ.