

Client Insight

International Trade

20 August 2014

EU Sanctions Against Russia: Possible Effects on Aircraft Sector

Against the background of recent European Union (EU) sanctions targeting Russian airline Dobrolet, this note provides a general overview of relevant issues – especially in the context of the aircraft sector.

I. Background

On 30 July 2014, the EU expanded its sanctions measures against Russia by adding 8 persons and 3 entities to the so-called asset freeze list.¹ Among the listed entities was Russian airline Dobrolet (or Dobrolyot), a low-cost Aeroflot subsidiary operating flights between Moscow and Crimea.² It was reported in the press that as a consequence of this asset freeze, Dobrolet's existing lease agreement for Boeing 737-800 planes was cancelled and Dobrolet was forced to suspend all flights.³

As of today, Dobrolet is the only Russian airline subject to an EU asset freeze. While it is impossible to predict which EU sanctions might be imposed in the future, the fact that the EU has imposed sanctions against one Russian airline shows that there is a possibility of future sanctions affecting the sector. The sanctions now applicable to Dobrolet show there is political agreement among the 28 EU Member States that it would not be inappropriate to sanction airlines operating in Crimea. Hence the reason for the present note, notably given that Western companies are involved in leasing aircraft to Russian airlines.⁴

II. When do EU sanctions apply?

EU sanctions apply to all parties subject to EU jurisdiction ("EU parties"). There is EU jurisdiction in the following five situations:

- Within the EU territory, including its airspace;
- On board any aircraft or any vessel under the jurisdiction of an EU Member State;
- To nationals of EU Member States (including those located outside the EU);
- To companies, inside or outside the territory of the EU, that are incorporated or constituted under the law of an EU Member State; and
- To non-EU companies in respect of any business done in whole or in part within the EU.

Accordingly, EU companies must comply with the EU sanctions. In addition, EU sanctions measures may apply to non-EU companies depending on the particular circumstances under which they perform their business in the EU and how it is connected to sanctions-restricted activities.

III. The Asset Freeze

While other types of sanctions measures could be imposed, we explain the basis of the EU asset freeze since it has already been applied to one Russian airline and there is clearly a possibility the same treatment could be applied to other airlines. Under EU asset freeze measures, all funds and economic resources of so-called listed parties (also known as prohibited or designated parties) must be frozen in the EU as of the date the party is listed (which normally corresponds with the date the relevant EU Regulation is published in the EU's Official Journal). Most importantly, it is also prohibited for all EU parties to directly or indirectly make funds or economic resources available to or for the benefit of listed parties.

EU Sanctions Team EUsanctions@whitecase.com

James Killick
Partner, Brussels
+ 32 2 239 2552
jkillick@whitecase.com

Sara Nordin
Associate, Geneva & Brussels
+ 32 2 239 2576
snordin@whitecase.com

Genevra Forwood
Associate, Brussels
+32 2 239 2537
gforwood@whitecase.com

Charlotte Van Haute
Associate, Brussels
+32 2 239 2623
cvanhaute@whitecase.com

Fabienne Vermeeren
Regional Director Europe –
International Trade Services,
Brussels
+ 32 2 239 2606
fvermeeren@whitecase.com

US Sanctions Team USSanctions@whitecase.com

Richard Burke
Partner, Washington, DC
+1 202 626 3687
rburke@whitecase.com

Nicole Erb
Partner, Washington, DC
+1 202 626 3694
nerb@whitecase.com

Kristina Zissis
Counsel, Washington, DC
+1 202 626 3636
kzissis@whitecase.com

¹ Other EU sanctions measures have recently been imposed in response to the situation in Ukraine, involving targeted sanctions against Russia covering banks, the oil sector, arms and dual-use items as well as trade and investment restrictions for Crimea and Sevastopol. For more information about those EU sanctions, please see our [alert from 31 July 2014](#).

² See [Regulation 826/2014](#) implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. The reason given for the asset freeze was that Dobrolet "facilitates the integration of the illegally annexed Autonomous Republic of Crimea into the Russian Federation and undermines Ukrainian sovereignty and territorial integrity."

³ See <http://rt.com/business/177748-dobrolet-aeroflot-suspends-flights-crimea/>.

⁴ The Moscow Times has reported that Russian airlines lease 90 percent of their planes from the West, and many of them fly routes to Crimea (see <http://www.themoscowtimes.com/business/article/russia-may-create-sanction-proof-airline-to-service-crimea/505081.html>).

The concepts “funds” and “economic resources” are interpreted very broadly to include anything that can be used to obtain funds, goods or services. Accordingly, this would cover, for example, leasing of an aircraft to a listed party (which would enable the listed party to obtain funds by operating flights).

As noted above, the EU asset freeze also prohibits “indirectly” making funds and economic resources available to listed parties. This means that EU parties must not only refrain from making funds and economic resources directly available to a listed party, but as a general rule (even though exceptions could apply depending on the circumstances) also to any entity that is owned or controlled by that listed party.

In other words, if an airline, or an entity that owns or controls that airline, becomes listed (which was the case for Dobrolet), EU parties (including EU lessors and EU companies providing services) cannot do business with this airline. EU parties would also need to exercise care when doing business with Russian airlines that are connected to a listed party to avoid “indirectly” making funds or economic resources available.

Member States can authorise derogations from the EU asset freeze in certain limited circumstances, which are seemingly of limited use in situations involving aircraft leasing. There are two notable situations (in addition to standard provisions covering basic needs, legal services, etc.): first, where release of funds is to satisfy a court or arbitral decision that predates the asset freeze, where the beneficiary is not the listed person; and, second, where a payment by a listed party is due under a contract that pre-dates the asset freeze provided the payment does not benefit that listed party.

IV. Conclusion

It is notoriously difficult to predict the future when it comes to sanctions – notably whether they might be expanded or relaxed, when and what might be covered. What is clear is that the implications of EU asset freeze measures can be significant, as can be seen from the example of Dobrolet. Parties subject to EU jurisdiction would need to cease their business activities with sanctioned entities as of the date of their listing. Appropriate measures in these situations, including whether to end business activities with entities that are affiliated with listed parties, would depend on the precise circumstances.

For additional information about US and EU sanctions in relation to the situation in Ukraine, see <http://www.whitecase.com/ukraine-news-update/>.

US Sanctions Team (cont'd)

Claire A. DeLelle
Counsel, Washington, DC
+1 202 626 6485
claire.delelle@whitecase.com

Cristina Brayton-Lewis
Associate, Washington, DC
+1 202 729 2407
cbraytonlewis@whitecase.com

Tanya Hanna
Associate, Washington, DC
+1 202 637 6294
thanna@whitecase.com

This Client Insight is provided for your convenience and does not constitute legal advice. It is prepared for the general information of our clients and other interested persons. This Client Insight should not be acted upon in any specific situation without appropriate legal advice.

This Client Insight is protected by copyright. Material appearing herein may be reproduced or translated with appropriate credit.