



POLICY ALERT // APRIL 18, 2018

Designations of Russian Executives Pose Sanctions Exposure Challenges

Summary

The April 6, 2018 U.S. designation of three Russian business executives makes doing business with their firms considerably more complicated.¹ The addition of the executives to the Specially Designated Nationals (SDN) list does not result in automatic blocking of their firms under U.S. law,² but the additions increase the risk of doing business with their firms, because the Office of Foreign Assets Control (OFAC) prohibits transacting with the designated executives directly or indirectly, including through intermediaries.³

- ▶ SDN Andrey Akimov is the chairman of the management board of Gazprombank.⁴ According to the know your customer (KYC) questionnaire that Gazprombank posted to its website, Akimov is the sole named person authorized to enter into agreements on behalf of the bank and the sole named person authorized to dispose of the bank's assets.⁵ Gazprombank was already subject to U.S.⁶ and EU⁷ debt and equity restrictions.
- ▶ SDN Andrey Kostin is the chairman of the management board and the president of VTB Bank.⁸ VTB Bank has disclosed less information about Kostin's responsibilities than Gazprombank has about Akimov's responsibilities. However, their titles are similar, and the governance structures of Gazprombank⁹ and VTB Bank¹⁰ are similar. VTB Bank was already subject to U.S.¹¹ and EU¹² debt and equity restrictions.
- ▶ SDN Alexey Miller is the chairman of the management committee of Gazprom and appears to have been heavily involved in Gazprom's Nord Stream 2 project.¹³ Miller has met with Gazprom's partners on the Nord Stream 2 project,¹⁴ but Miller is not on the management team for Nord Stream 2 AG,¹⁵ which Gazprom owns.¹⁶ Gazprom was already subject to U.S. technology restrictions.¹⁷

Although Gazprombank, VTB Bank, and Gazprom are not automatically designated under U.S. law as a result of the sanctions against their executives, the companies now present an elevated sanctions risk. The sanctions risks that arise from the designations are highly dependent on the specific facts and circumstances concerning the relationship.

- ▶ As a result of the designations, U.S. persons are prohibited from conducting transactions with Akimov, Kostin, or Miller, directly or indirectly, and all of



their assets in the United States or under the control of a U.S. person are frozen.¹⁸

- ▶ Non-U.S. financial institutions that “knowingly facilitate significant transactions, including deceptive or structured transactions, for or on behalf of any person subject to U.S. sanctions” against Russia could lose their U.S. correspondent accounts.¹⁹

OFAC did not block Gazprombank, VTB Bank, or Gazprom – although it almost certainly had the authority to do so – so it is unlikely that OFAC intended to shut the firms out of the international financial system entirely by sanctioning Akimov, Kostin, and Miller. At the same time, OFAC clearly intended to isolate Akimov, Kostin, and Miller and may have been signaling to markets that they should consider winding down business with Gazprombank, VTB Bank, and Gazprom.

Financial institutions should review any business involving Gazprombank, VTB Bank, or Gazprom to determine their potential sanctions exposure and to manage the sanctions risks associated with these entities. Financial institutions should also take into account the possibility that additional U.S. sanctions against Russia will increase the sanctions risk associated with Gazprombank, VTB Bank, and Gazprom as political tensions between the United States and Russia escalate.

Sanctions Risks to Consider

The United States on April 6, 2018, added Akimov, Kostin, and Miller to OFAC’s Specially Designated Nationals (SDN) list under Executive Order 13661 for being Russian government officials.²⁰ Akimov is the chairman of the management board of Gazprombank,²¹ and Kostin is the chairman of the management board and the president of VTB Bank.²² Miller is the chairman of the management committee of Gazprom.²³

As a result of the designations, U.S. persons are generally prohibited from conducting transactions with Akimov, Kostin, or Miller, directly or indirectly, and all of their assets in the United States or under the control of a U.S. person are frozen.²⁴ Non-U.S. financial institutions that “knowingly facilitate significant transactions, including deceptive or structured transactions, for or on behalf of any person subject to U.S. sanctions” against Russia could lose their U.S. correspondent accounts.²⁵ Akimov, Kostin, and Miller are not sanctioned in the EU.²⁶

The primary sanctions risk presented by Gazprombank and VTB Bank arises from the debt and equity restrictions imposed by the United States²⁷ and the European Union.²⁸ The primary sanctions risk presented by Gazprom arises from the technology restrictions imposed by the United States.²⁹



Broadly, the extent of the additional sanctions risks presented by these firms will be determined by the extent to which Akimov, Kostin, and Miller exercise control over their operations. Although control is not a basis for automatic blocking under U.S. law, control by an SDN increases the risk that an SDN will be directly or indirectly involved in a transaction.³⁰ Thus, independently assessing control of the firms is critical to identifying and managing risk. Financial institutions also should assess the extent to which they have been directly engaged with the sanctioned executives.

Gazprom Bank, VTB Bank, and Gazprom also are at risk of being blocked as a part of future U.S. sanctions actions in light of increasing tensions between Russia and the West. The U.S. government is very likely to sanction more Russian individuals and entities in the next 12 months. Entities with sanctioned persons among their senior executives are high-risk targets for future sanctions actions. OFAC guidance states that entities controlled by blocked persons may be “the subject of future designation or enforcement action by OFAC.”³¹ In the Russia program, the United States has escalated both horizontally – by adding people and entities to its sanctions lists – and vertically – by tightening sanctions on entities that were already listed.

Sanctions Risk Management

To manage the sanctions risks associated with Gazprombank, VTB Bank, and Gazprom, and avoid direct or indirect dealings with the sanctioned executives, financial institutions should ensure that they understand the roles that the sanctioned executives play at their firms and enhance internal controls to manage the heightened sanctions risk surrounding the firms.

First, financial institutions should immediately review contractual arrangements with Gazprombank, VTB Bank, and Gazprom. If Akimov, Kostin, or Miller signed contracts with the financial institution, the financial institution should consider entering into new agreements with non-sanctioned persons signing on behalf of their firms. If Akimov, Kostin, or Miller have signatory authority over accounts, the financial institution should consider removing them from the accounts and requesting that the firms identify non-sanctioned persons to exercise signatory authority.

Second, financial institutions should refresh their customer due diligence (CDD)/KYC information for Gazprombank, VTB Bank, and Gazprom, potentially through engagement with the firms and enhanced KYC forms focusing on the roles and responsibilities of Akimov, Kostin, and Miller to gather the information necessary to assess their levels of control over their firms and their involvement in their firms’ dealings with the financial institution.



- ▶ Financial institutions should conduct an independent control assessment for Gazprombank, VTB Bank, and Gazprom, because establishing control is critical to identifying and managing risk. The EU's control criteria are an objective basis for assessing control and are the global standard for assessing control in a sanctions context, though none of the executives are sanctioned in the EU.³²
- ▶ Financial institutions should use the CDD/KYC refresh to understand who at Gazprombank, VTB Bank, and Gazprom is managing the relationship with the financial institution and who is directing the transactions that the firms process through the financial institution. The hands-on involvement of Kostin, Akimov, or Miller in managing the relationship or directing transactions probably would present sanctions risks that cannot be mitigated.
- ▶ Comparing the new information received from the firms with the financial institution's existing understanding of the control of these entities will provide insight into how the firms are coping with the designations of their executives and enable financial institutions to assess the credibility of any reorganization that the firms have done. This analysis will mitigate the risk of conducting transactions involving the SDN executives indirectly through intermediaries.

Finally, financial institutions should enhance internal controls for ongoing business with Gazprombank, VTB Bank, and Gazprom, focusing on monitoring ongoing business and assessing and managing risk, to ensure that the financial institution is not conducting transactions for or on behalf of Akimov, Kostin, or Miller, directly or indirectly. In addition to the existing sanctions risk, there is a risk that these firms will be designated by the United States as part of a future sanctions action.

- ▶ Financial institutions should consider requiring prior review and approval by senior management of any new business with Gazprombank, VTB Bank, or Gazprom.
- ▶ Any agreements with Gazprombank, VTB Bank, or Gazprom should protect the financial institution's rights to exit the relationships to manage sanctions risk, even absent additional sanctions against Gazprombank, VTB Bank, and Gazprom.
- ▶ Financial institutions should consider a regular compliance review of their business activities with these firms to ensure that they maintain an updated risk assessment of business with Gazprombank, VTB Bank, and Gazprom as well as updated risk mitigation practices.



Endnotes

- 1 Treasury Department, "Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity," April 6, 2018.
- 2 OFAC, "Frequently Asked Questions," No. 398-400, Aug. 13, 2014.
- 3 OFAC, "Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property Are Blocked," Aug. 13, 2014.
- 4 Treasury Department, "Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity," April 6, 2018.
- 5 Gazprombank, "Know Your Customer (KYC Questionnaire)," Sept. 14, 2017.
- 6 OFAC, "Sanctions List Search."
- 7 European Union, "Restrictive measures in view of Russia's actions destabilising the situation in Ukraine (sectoral restrictive measures)," July 30, 2014, accessed via EU Sanctions Map.
- 8 Treasury Department, "Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity," April 6, 2018.
- 9 Gazprombank, "About Us," undated, accessed April 9, 2018.
- 10 VTB Bank, "VTB Bank," undated, accessed April 9, 2018.
- 11 OFAC, "Sanctions List Search."
- 12 European Union, "Restrictive measures in view of Russia's actions destabilising the situation in Ukraine (sectoral restrictive measures)," July 30, 2014, accessed via EU Sanctions Map.
- 13 Treasury Department, "Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity," April 6, 2018.
- 14 Gazprom, "Gazprom and Shell discuss LNG projects and Nord Stream 2," Nov. 17, 2017.
- 15 Nord Stream 2 AG, "Management Team," undated, accessed April 15, 2018.
- 16 Nord Stream 2 AG, "Shareholder and Financial Investors," undated, accessed April 15, 2018.
- 17 OFAC, "Sanctions List Search."
- 18 Treasury Department, "Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity," April 6, 2018.
- 19 OFAC, "Frequently Asked Questions," No. 574, April 6, 2018.
- 20 Treasury Department, "Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity," April 6, 2018.
- 21 Gazprombank, "Andrey Akimov," undated.
- 22 VTB Bank, "Andrey Kostin," undated.
- 23 Treasury Department, "Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity," April 6, 2018.
- 24 Treasury Department, "Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity," April 6, 2018.
- 25 OFAC, "Frequently Asked Questions," No. 574, April 6, 2018.
- 26 European Union, "Restrictive measures in view of Russia's actions destabilising the situation in Ukraine (sectoral restrictive measures)," July 30, 2014, accessed via EU Sanctions Map.
- 27 Treasury Department, "Announcement of Additional Treasury Sanctions on Russian Financial Institutions and on a Defense Technology Entity," July 29, 2014.



- 28 European Union, "Restrictive measures in view of Russia's actions destabilising the situation in Ukraine (sectoral restrictive measures)," July 30, 2014, accessed via EU Sanctions Map.
- 29 OFAC, "Sanctions List Search."
- 30 OFAC, "Frequently Asked Questions," No. 398-400, Aug. 13, 2014.
- 31 OFAC, "Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property Are Blocked," Aug. 13, 2014.
- 32 The Council of the European Union, "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy – new elements," 9068/13, April 30, 2013.