

May 2, 2014

## Ukraine-Related Sanctions

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### **U.S. and EU Expand the List of Parties Targeted by Economic Sanctions in Response to Evolving Ukraine Crisis and Russia's Failure to Meet Geneva Commitments; New Measures Target Certain Russian Officials and Persons Close to President Putin, Including Several Russian Entities; Package of Sanctions Now Includes Expanded List of Blocked Persons, Travel and Visa Bans and Export Denials**

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#### **SUMMARY**

In response to the escalating situation in Ukraine, including Russia's failure to meet commitments that were made on April 17, 2014 at a meeting in Geneva with United States and European Union representatives, additional economic sanctions measures have been adopted by the United States and the European Union.

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#### **UNITED STATES**

On April 28, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") designated seven Russian government officials, including two key members of President Putin's "inner circle," and 17 entities as subject to sanctions under the authority of Executive Order ("E.O.") 13,661. Many of the newly sanctioned entities appear to have ties to Bank Rossiya, which was designated on March 20 and reportedly is the personal bank for several senior officials of the Russian Federation, or other previously designated individuals and entities. Notably, the most recent designations include Igor Sechin, the President and Management Board Chairman of Rosneft, Russia's leading petroleum company, but do not include Rosneft itself. All persons and entities designated in connection with the situation in Ukraine have

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been added to the List of Specially Designated Nationals and Blocked Persons (“SDN List”) administered by OFAC under the tags “[Ukraine]” or “[Ukraine2].”<sup>1</sup> These designations bring the total number of designated individuals under the Ukraine-related sanctions program to 45 and the total number of designated entities to 19. Annex A provides a complete list of individuals and entities (without aliases) that, as of the date of this publication, have been designated by OFAC in connection with the situation in Ukraine.

Absent an applicable exception or a license, it is unlawful for any U.S. person<sup>2</sup> (including any U.S. branch or agency of a non-U.S. bank) to do business with any designated person or entity, and any property that is in the United States or within the possession or control of a U.S. person in which any designated person or entity has an interest must be blocked, imposing an across-the-board prohibition against transfers or dealings of any kind with regard to such property.<sup>3</sup> Substantial civil and criminal penalties may be applied for violations of these sanctions.<sup>4</sup>

Pursuant to OFAC guidance, if a designated person or entity owns, directly or indirectly, a 50 percent or greater interest in an entity, that 50 percent-owned entity also is considered blocked by OFAC, even if that entity has not been specifically designated by OFAC. U.S. persons are therefore prohibited from doing business with any entity in which a designated person or entity owns a 50 percent or greater interest.<sup>5</sup> In other cases, such as where more than one designated person or entity has an ownership interest in an entity, and the combined ownership interests of the designated persons or entities in the entity equal 50 percent or more, or where a designated person or entity has a significant ownership interest in the entity that is less than 50 percent, or has management or other control of the entity, the entity is not considered *per se* blocked under OFAC guidance; however, U.S. persons should exercise caution in dealing with such entities for a variety of reasons, including that such entities may be designated by OFAC in the future.

OFAC guidance also imposes a burden on U.S. persons to assess whether they are dealing with an entity that is 50 percent or more owned by a designated person. As a general matter, U.S. persons should apply reasonable due diligence measures to all parties with which they are doing business in order to reduce the risk of dealing with a person or entity that is blocked pursuant to the OFAC guidance. For banks, OFAC has addressed the standard of care and due diligence that it expects in frequently asked question (“FAQ”) number 116,<sup>6</sup> which states, in relevant part, that “OFAC expects banks to conduct due diligence on their own direct customers (including, for example, their ownership structure) to confirm that those customers are not persons whose property and interests in property are blocked.” OFAC further notes in the FAQ that, in instances where a wire transfer is passing through a U.S. bank that (1) is operating solely as an intermediary, (2) does not have any direct relationship with the entity (e.g., the entity is a non-account party), and (3) does not know or have reason to know the entity’s ownership or other information demonstrating the blocked status of the entity’s property, OFAC would not expect the bank to research the non-account parties listed in the wire transfer that do not appear on the SDN List

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and, accordingly, would not pursue an enforcement action against the bank for having processed such a wire transfer, even if the wire transfer was blocked under sanctions.

In addition, U.S. banks must consider whether accounts of any non-designated persons are being used to effect transactions by designated persons. One way that this may occur is through nested accounts, which occur when a foreign financial institution gains access to the U.S. financial system by operating through a U.S. correspondent account belonging to another foreign financial institution. If the U.S. bank is unaware that its non-designated foreign correspondent financial institution customer is providing access to a third-party foreign financial institution (such as Bank Rossiya) that is designated, these third-party financial institutions can effectively gain anonymous access to the U.S. financial system; however, transactions in which the designated financial institution has an interest in property would be required to be blocked.

In addition to the blocking measures that apply in respect of designated persons, the United States has imposed visa bans on the designated individuals and also has imposed certain export controls. The U.S. Commerce Department's Bureau of Industry and Security ("BIS") has expanded its export restrictions on items subject to the Export Administration Regulations ("EAR") in response to Russia's continued actions in Ukraine. The EAR regulate the export of commercial items that have potential military applications (so-called "dual-use" items). Effective on April 28, BIS will deny pending applications for licenses to export or re-export any "high technology" item subject to the EAR to Russia or occupied Crimea that contribute to Russia's military capabilities.<sup>7</sup> BIS is also taking actions to revoke any existing export licenses that meet these conditions.<sup>8</sup> Moreover, BIS has imposed restrictions on 13 of the 17 companies designated by OFAC on April 28 by imposing licensing requirements for the export, re-export or other foreign transfer of any item subject to the EAR to those companies, with a presumption of denial.<sup>9</sup> In addition, the U.S. Department of State expanded export restrictions on technologies and services regulated under the U.S. Munitions List ("USML"). The State Department's Directorate of Defense Trade Controls ("DDTC") will deny pending applications for export or re-export of any high technology defense articles or services regulated under the USML to Russia or occupied Crimea that contribute to Russia's military capabilities, and the DDTC is taking actions to revoke any existing export licenses meeting these conditions. All other pending applications and existing licenses will receive a case-by-case evaluation to determine their contribution to Russia's military capabilities.<sup>10</sup>

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## EUROPEAN UNION AND OTHER NON-U.S. JURISDICTIONS

The European Union has continued to support the United States in responding to the situation in Ukraine through economic sanctions. On April 28, the European Union announced the designation of 15 more individuals, including senior Russian government and military officials and separatist leaders in Ukraine.<sup>11</sup> In addition to freezing assets, the EU measures also ensure that funds and economic resources are not made available to the targets. All persons designated in connection with the situation in Ukraine have

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been added to Member States' Lists of Designated Persons, which in the United Kingdom is the "Consolidated List of Financial Sanctions Targets in the UK" administered by Her Majesty's Treasury ("HMT"), which has used the descriptions "Ukraine (Misappropriation)" and "Ukraine (Sovereignty)" for the listings.<sup>12</sup>

As a result of these designations, which brings the total number of designated persons under the European Union's Ukraine sanctions regulations to 70, absent an applicable exception or a license, it is unlawful for any person from an EU Member State to deal with the funds or economic resources belonging to or owned, held or controlled by a designated person, and there is a prohibition on making funds or economic resources available, directly or indirectly, to, or for the benefit of, a designated person. Individual Member States apply implementing legislation to the European Union's Regulations to impose penalties for violations of the EU sanctions; in the UK, criminal penalties may be applied for a violation of the regulations.<sup>13</sup> Annex B provides a list of individuals that, as of the date of this publication, have been designated by the European Union in connection with the situation in Ukraine.<sup>14</sup> Of the 70 designated individuals, 29 overlap with the 45 individuals designated by the United States, while 16 of the U.S.-designated persons are not designated by the European Union, and 41 are designated by the European Union but not the United States. To date, no entities have been designated under the EU measures.

HMT's implementing notice for the March 21 sanctions (which is referred to in the latest HMT implementing notice for April 28 sanctions) provides a checklist of recommended actions to comply with the sanctions and a reminder that "failure to comply with financial sanctions legislation or to seek to circumvent its provisions is a criminal offence."<sup>15</sup> The relevant UK statutory instrument setting out criminal penalties has also been issued.<sup>16</sup>

Pursuant to HMT and EU guidance, if a designated person or entity owns, directly or indirectly, a 50 percent or greater interest in an entity, that 50 percent-owned entity also is considered blocked by EU sanctions even if that entity has not been specifically designated by the European Union. Business is therefore prohibited with any entity in which a designated person or entity own a 50 percent or greater interest.<sup>17</sup>

Guidance from the HMT also makes clear that there is a burden on UK persons to ensure that they have in place proper due diligence systems to ascertain if they are dealing with designated persons that goes above and beyond standard anti-money laundering checks.<sup>18</sup> Financial institutions have various reporting obligations, including an obligation to inform HMT as soon as practicable if they have knowledge, or have reasonable cause to suspect, that a designated person has committed an offence under the licensing or other provisions of the UK regulations.<sup>19</sup> If a report is about a customer, the institution must also include the nature and amount of funds or economic resources held by it for the customer.

In addition to the UK, other EU and non-EU jurisdictions have imposed or are considering imposing additional sanctions against Russia. Moreover, the leaders of the Group of 7 leading industrialized

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nations (otherwise known as the G-7 nations, which include Canada, France, Germany, Italy, Japan, the UK and the U.S.) have agreed to suspend Russia's membership in the Group and move the location of the Group's summit in June 2014 from Sochi, Russia, to Brussels and hold that summit without the participation of Russia.

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### NEXT STEPS

In statements accompanying the designations, both the White House and Department of the Treasury characterized Russia's continued intervention in Ukraine as "illegal."<sup>20</sup> Treasury Secretary Jacob Lew further stated that the U.S. sanctions, taken in close coordination with the European Union, are intended to persuade Russia to undertake measures to de-escalate the situation in Ukraine through, among other things, a potential impact on Russia's economy.<sup>21</sup>

Additional measures, including additional OFAC designations, are likely if the current situation continues to persist or escalate in Ukraine. United States officials have stated that "if Russia continues to press forward" with its current foreign policy with respect to Ukraine, the United States will "continue to work with its international partners and take the steps required, including action against individuals and entities in specific sectors" of the Russian economy.<sup>22</sup> These "targeted sanctions" against sectors of the Russian economy would be made under the authority of E.O. 13,662,<sup>23</sup> issued in March of this year, which provides for the possibility of blocking sanctions on persons and entities that operate in designated sectors of the Russian Federation economy, which may include, for example, the financial services, energy, metals and mining, engineering, and defense and related materiel sectors of the Russian economy.<sup>24</sup> A White House press statement accompanying the recent OFAC designations warned that "[i]f there is further Russian military intervention in Ukraine, we are prepared to sanction entities under this authority."<sup>25</sup>

This situation in Ukraine is continuing to evolve as the Russian Federation has imposed entry bans on U.S. lawmakers and officials following the United States' recent measures and has indicated that it may impose additional sanctions against the United States.

Clients interested in further information concerning these measures, including the scope of their application and manner of compliance therewith, are encouraged to contact the Sullivan & Cromwell lawyers identified at the end of this memorandum.

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ENDNOTES

- <sup>1</sup> The designations to date have been made under the authority of E.O. 13,660 (March 6, 2014) and E.O. 13,661 (March 17, 2014). SDNs with the tag “[UKRAINE]” are associated with E.O. 13660, while SDNs with the tag “[UKRAINE2]” are associated with E.O. 13661. For additional information about these E.O.s and previous, related actions thereunder, see our Memorandum to Clients “U.S. and EU Adopt Economic Sanctions in Response to the Current Situation in Ukraine; Additional Measures Likely if Current Situation Persists or Escalates,” dated March 19, 2014, available at: [http://www.sullcrom.com/siteFiles/Publications/SC\\_Publication\\_Ukraine\\_Related\\_Economic\\_Sanctions.pdf](http://www.sullcrom.com/siteFiles/Publications/SC_Publication_Ukraine_Related_Economic_Sanctions.pdf).
- <sup>2</sup> “U.S. person” means “any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.” See E.O.s 13,660 and 13,661, § 5(c).
- <sup>3</sup> This generally means that U.S. persons are prohibited from providing funds, goods or services to or for the benefit of any designated person and from receiving any funds, goods or services from any designated person.
- <sup>4</sup> Criminal penalties for willful violations can include fines ranging up to \$1 million and imprisonment of up to 20 years, while civil penalties can range up to \$250,000 or twice the amount of the underlying transaction for each violation. See 50 U.S.C. § 1705.
- <sup>5</sup> See “Guidance on Entities Owned by Persons Whose Property and Interests in Property Are Blocked,” OFAC (November 2008), available at: [http://www.treasury.gov/resource-center/sanctions/Documents/licensing\\_guidance.pdf](http://www.treasury.gov/resource-center/sanctions/Documents/licensing_guidance.pdf).
- <sup>6</sup> See OFAC’s Frequently Asked Question 116, available at: [http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/ques\\_index.aspx](http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/ques_index.aspx).
- <sup>7</sup> See BIS press release, “Commerce Department Announces Expansion of Export Restrictions on Russia,” (April 28, 2014), available at: <http://www.bis.doc.gov/index.php/about-bis/newsroom/press-releases/107-about-bis/newsroom/press-releases/press-release-2014/665-commerce-dept-announces-expansion-of-export-restrictions-on-russia>.
- <sup>8</sup> *Id.*
- <sup>9</sup> *Id.*
- <sup>10</sup> See U.S. Department of State press release, “United States Expands Export Restrictions on Russia,” (April 28, 2014), available at: <http://www.state.gov/r/pa/prs/ps/2014/04/225241.htm>.
- <sup>11</sup> The designations to date have been made under EU Regulations Nos. 208/2014 (March 5, 2014), 269/2014 (March 17, 2014), and EU Implementing Regulations Nos. 284/2014 (March 21, 2014, which amended 269/2014), 381/2014 (April 14, 2014, which amended 208/2014) and 433/2014 (April 28, 2014, which amended 269/2014).
- <sup>12</sup> The Consolidated List of Sanctions Targets in the UK, available at: <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>.
- <sup>13</sup> Criminal penalties can include fines ranging up to £5,000 and imprisonment of up to two years.
- <sup>14</sup> The European Union has not designated any entities in connection with the situation in Ukraine as of this publication.
- <sup>15</sup> The EU Regulation was implemented in the UK on March 18, 2014. Treasury Regulation Notice 18.03.2014, Ukraine (Sovereignty and Territorial Integrity) (Regulation No. 269/2014).
- <sup>16</sup> The Ukraine (European Union Financial Sanctions) (No. 2) Regulations 2014, available at: <http://www.legislation.gov.uk/ukxi/2014/693/contents/made>.

## ENDNOTES (CONTINUED)

- 17 See “HMT Financial Sanctions, Frequently Asked Questions” 8.2 – 8.3 available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/302397/August\\_2013\\_version\\_-\\_amended.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302397/August_2013_version_-_amended.pdf) and the EU Council’s “Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy- new elements” available at: [http://register.consilium.europa.eu/content/out?lang=EN&typ=ENTRY&i=SMPL&DOC\\_ID=ST%209068%202013%20INIT](http://register.consilium.europa.eu/content/out?lang=EN&typ=ENTRY&i=SMPL&DOC_ID=ST%209068%202013%20INIT).
- 18 See “HMT Financial Sanctions, Frequently Asked Questions” 12.5.
- 19 See *id.* 12.4, 13.2.
- 20 See Statement of Secretary of U.S. Treasury Department Jacob J. Lew (April 28, 2014), available at: <http://www.treasury.gov/press-center/press-releases/Pages/jl2368.aspx>. See also Statement of the White House Press Secretary on Ukraine (April 28, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/04/28/statement-press-secretary-ukraine>.
- 21 See Statement of Secretary of U.S. Treasury Department Jacob J. Lew (April 28, 2014), available at: <http://www.treasury.gov/press-center/press-releases/Pages/jl2368.aspx>. The statement indicates that the United States has already begun to see an impact of sanctions on the Russian economy — “Russian economic growth forecasts have dropped sharply, capital flight has accelerated and higher borrowing costs reflect declining confidence in the market outlook.” *Id.*
- 22 See *id.*
- 23 See E.O. 13,662 (March 20, 2014). On April 3, 2014, President Obama signed into law the “Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014” (the “Act”), which codified many of the sanctions measures issued by President Obama’s E.O.s, including the most recent E.O. 13,662, with respect to persons contributing to the situation in Ukraine. The Act also broadened the scope of those E.O.s to include anti-corruption sanctions against officials in the Russian Federation. See Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014, PL 113-95, HR 4152 (April 3, 2014). In addition, on April 30, 2014, a bill entitled, “The Russian Aggression Prevention Act of 2014” was introduced in the U.S. Senate Foreign Relations Committee that is meant to “deter Russian aggression in Europe.” If enacted as proposed, the Russian Aggression Prevention Act of 2014 would, among other things, place new sanctions on any Russian officials and agents involved in the Russian occupation of Crimea and impose sanctions on four additional Russian banks (Sberbank, VTB Bank, VEB Bank and Gazprombank). See U.S. Senate Committee of Foreign Relations, Press Release “Corker, Senate Republicans Introduce Strategic U.S. Response to Deter Russian Aggression in Europe” (April 30, 2014), available at: <http://www.foreign.senate.gov/press/ranking/release/corker-senate-republicans-introduce-strategic-us-response-to-deter-russian-aggression-in-europe>.
- 24 The E.O.s also target any persons or entities determined by the Secretary of the Treasury (i) to have materially assisted, sponsored or provided financial, material or technological support for, or goods or services to or in support of, the activities of designated persons and entities as described in this memorandum, or (ii) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any such designated persons and entities.
- 25 See Statement of the White House Press Secretary on Ukraine (April 28, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/04/28/statement-press-secretary-ukraine>.

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## CONTACTING SULLIVAN & CROMWELL LLP

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## Annex A – Individuals and Entities Designated by the United States under Ukraine-Related Sanctions

### A. Individuals

#### Name

Sergey Valeryevich Aksyonov  
Oleg Evgenyevich Belavencev  
Evgeni Viktorovich Bushmin  
Alekssei Mikhailovich Chaliy  
Sergei Chemezov  
Vladimir Michailovich Dzhubarov  
Andrei Alexandrovich Fursenko  
Sergey Glazyev  
Alexei Gromov  
Sergei Ivanov  
Victor Petrovich Ivanov  
Andrei Klishas  
Vladimir Andreyevich Konstantinov  
Yuri Valentinovich Kovalchuk  
Dmitry Kozak  
Vladimir Igorevich Kozhin  
Mikhail Grigorevich Malyshev  
Valentina Ivanovna Matviyenko  
Viktor Medvedchuk  
Valery Kirillovich Medvedev  
Sergei Mikhailovich Mironov  
Yelena Mizulina  
Evgeniy Alekseyevich Murov  
Sergey Yevgenyevich Naryshkin  
Viktor Alekseevich Ozero  
Oleg Evgenevich Panteleev  
Alekssei Konstantinovich Pushkov  
Dmitry Olegovich Rogozin  
Arkady Rotenberg  
Boris Rotenberg  
Nikolai Ivanovich Ryzhkov  
Igor Sechin  
Igor Dmitrievich Sergun  
Leonid Slutsky  
Vladislav Yurievich Surkov  
Rustam Ilmirovich Temirgaliev  
Gennady Timchenko  
Aleksandr Borisovich Totoonov  
Sergey Pavlovich Tsekov  
Vyacheslav Volodin  
Vladimir Yakunin  
Viktor Fedorovich Yanukovich  
Sergei Vladimirovich Zheleznyak  
Yuriy Gennadievych Zherebtsov  
Pyotr Anatoliyovich Zima

### B. Entities

#### Name

Aquanika  
Avia Group LLC  
Avia Group Nord LLC  
Bank Rossiya  
Chernomorneftegaz  
CJSC Zest  
Investcapitalbank  
JSB Sobinbank  
Sakhatrans LLC  
SMP Bank  
Stroygazmontazh  
Stroytransgaz Group  
Stroytransgaz Holding  
Stroytransgaz LLC  
Stroytransgaz OJSC  
Stroytransgaz-M LLC  
The Limited Liability Company  
Investment Company Abros  
Transoil  
Volga Group

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## Annex B – Individuals Designated by the European Union under Ukraine-Related Sanctions

### Name

Sergey Valeryevich Aksyonov\*  
Serhiy Arbuzov  
Mykola Yanovych Azarov  
Oleksii Mykolayovych Azarov  
Oleg Yevgenyevich Belaventsev\*  
Deniz Valentinovich Berezovskiy  
Raisa Vasylivna Bohatryiova  
Valeriy Bolotov  
Evgeni Viktorovich Bushmin\*  
Aleksei Mikhailovich Chaliy\*  
Vladimir Michailovich Dzhabarov\*  
Aleksandr Galkin  
Tsyplakov Sergey Gennadevich  
Valery Vasilevich Gerasimov  
Sergey Glazyev\*  
Yuriy Ivanyushchenko  
Ihor Oleksandrovych Kalinin  
Dmitry Konstantinovich Kiselyov  
Andrei Aleksandrovich Klishas\*  
Andrii Petrovych Kliuiev  
Serhii Petrovych Kliuiev  
Oleksandr Klymenko  
Vladimir Andreevich Konstantinov\*  
Olga Fedorovna Kovatidi  
Dmitry Nikolayevich Kozak\*  
Valery Vladimirovich Kulikov  
Serhiy Vitaliyovych Kurchenko  
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Sergei Ivanovich Menyailo  
Sergei Mikhailovich Mironov\*  
Elena Borisovna Mizulina\*  
Sergei Evgenevich Naryshkin\*

### Name

Sergei Ivanovich Neverov  
Alexander Mihailovich Nosatov  
Viktor Alekseevich Ozerov\*  
Oleg Evgenevich Panteleev\*  
Andriy Volodymyrovych Portnov  
German Prokopiv  
Artem Viktorovych Pshonka  
Viktor Pavlovych Pshonka  
Andriy Purgin  
Denys Pushylin  
Viktor Ivanovych Ratushniak  
Dmitry Olegovich Rogozin\*  
Nikolai Ivanovich Ryzhkov\*  
Oleg Genrikhovich Savelyev  
Igor Dmitrievich Sergun\*  
Ludmila Ivanovna Shvetsova  
Anatoliy Alekseevich Sidorov  
Leonid Eduardovich Slutski\*  
Edward Stavtyskyi  
Igor (Ihor Strielkov) Strelkov  
Vladislav Yurievich Surkov\*  
Dmytro Volodymyrovych Tabachnyk  
Rustam Ilmirovich Temirgaliev\*  
Aleksandr Borisovich Totoonov\*  
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Lt. Gen. Igor Turchenyuk  
Aleksandr Viktorovich Vitko  
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\* Also designated by the United States