

October 18, 2019

NEW U.S. SANCTIONS TARGETING TURKISH GOVERNMENT IN RESPONSE TO MILITARY OPERATIONS IN SYRIA

To Our Clients and Friends:

On October 14, 2019, the Trump administration authorized new sanctions against the Government of Turkey in response to that country's recent military incursion into northern Syria, an action the U.S. government condemned as "endangering innocent civilians, and destabilizing the region, including undermining the campaign to defeat ISIS."^[1]^[2] Based on that authority, the Treasury Department immediately issued sanctions against Turkey's Ministry of Energy and Natural Resources and Ministry of National Defense, as well as three senior officials. The Trump administration announced that these sanctions would be accompanied by an increase in steel tariffs and the halt to negotiations over a \$100-billion trade deal with Turkey.^[3] At the same time, the U.S. Department of Justice indicted Halk Bank, a Turkish financial institution, for evading separate sanctions regarding Iran, among other charges.^[4]

Three days later on October 17, after Vice President Pence and other senior U.S. officials traveled to Ankara, the Turkish government agreed to a limited five-day ceasefire to allow the withdrawal of Kurds outside a designated "safe-zone."^[5] The resulting joint U.S.-Turkish statement on the ceasefire noted that, once Turkish military operations are paused, "the U.S. agrees not to pursue further imposition of sanctions under the Executive Order of October 14."^[6] However, the military situation in northern Syria remains fluid, as does U.S.-Turkish diplomatic engagement, leaving uncertain the status of this new sanctions regime in the near term.

The new sanctions are only the second time^[7] that the U.S. Government has sanctioned governmental entities of a G20 country, and the first sanctions that the U.S. Government has issued against the government ministries of a NATO member.^[8] The new sanctions are therefore likely to have significant impacts for U.S. and multinational companies doing business in Turkey, particularly those with counterparties in the defense and energy sectors. The Executive Order also authorizes the application of secondary sanctions against foreign financial institutions that continue to do business with listed entities and provides additional authority against individuals who interfere with a potential future peace process in Syria.^[9] While the Treasury Department issued a general license allowing U.S. Government employees, grantees, and contractors to conduct the official business of the U.S. government with the listed Turkish entities, this license is unlikely to authorize U.S. company engagement in direct commercial sales of defense articles and services, and other goods and services, to the Ministries of National Defense and Energy and Natural Resources.^[10] U.S. companies have until November 13, 2019 to wind down their operations and pre-existing contracts with those Turkish ministries.^[11]

The Executive Order's primary authorities, delineated in Section 1, enable the U.S. government to freeze property and assets of current and former Turkish officials, as well as subsets of the Turkish government,

that the U.S. Treasury Secretary, in consultation with the State Department, determines are contributing to ongoing instability in the Syrian conflict or committing serious human rights abuses.[12] The scope of the order also extends to those who “materially assist” Turkish entities designated under the sanctions regime and is not limited to material assistance with any specific conduct that prompted the entities’ designation.[13] Pursuant to Section 1, the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) immediately designated Turkey’s Ministry of Energy and Natural Resources and Ministry of National Defense to the Specially Designated and Blocked Persons (“SDN”) list.[14] OFAC also designated three senior Turkish officials—Minister of National Defense, Hulusi Akar; Minister of Interior, Suleyman Soylu; and Minister of Energy, Fatih Donmez—to the SDN list.[15] As a result of these designations, U.S. persons are generally prohibited from dealing with the listed Turkish agencies and individuals, and all assets under U.S. jurisdiction owned or controlled by the sanctioned entities will be frozen.

However, the scope of this new sanctions regime extends beyond those entities immediately listed. Section 1 of the Executive Order lays the groundwork for persons and entities operating in additional sectors of the Turkish economy to be designated, and Section 2 allows the U.S. Secretary of State to authorize sanctions against anyone responsible for or complicit in disrupting or preventing a potential ceasefire or political solution to the Syrian conflict, including those brokered by the United Nations.[16] Separately, Section 3 of the order allows the U.S. Treasury Secretary to impose sanctions on any foreign financial institution that knowingly facilitates a financial transaction for or on behalf of an entity designated as an SDN pursuant to Section 1.[17] Specifically, the Executive Order authorizes the Secretary of Treasury to prohibit or restrict the opening or maintenance of correspondent or payable-through accounts in the United States.[18]

OFAC issued three general licenses providing limited exemptions to compliance with the Executive Order. The first license exempts from the scope of the sanctions regime any interaction with the listed Turkish entities as a result of official business by the U.S. government, its employees, grantees, or contractors.[19] The second license provides for a period of time—from October 14, the date of the sanction’s implementation, to 12:01 a.m. on November 13—for companies to wind down their contracts, operations, and other agreements involving the Ministries of National Defense and Energy and Natural Resources.[20] The third license exempts from compliance certain international organizations affiliated with the United Nations, such as the World Bank and World Health Organization.[21]

Given the significant ties between the defense sectors of the U.S. and Turkish governments in particular, we expect that the October 14 sanctions are likely to have significant impacts, both intended and unintended, on the companies involved in these sectors as well as the U.S. and foreign financial institutions that support those relationships. Notably, General License 1 applies only to official U.S. Government engagement with the Turkish ministries and does not cover U.S. entities with direct commercial relationships with the Ministries of National Defense and Energy and Natural Resources, or any entities owned 50% or more by these ministries that are now blocked as a result of their designation.

OFAC has not yet issued guidance on the scope of the official business concept, which will be of keen interest to many companies that have invested significantly over decades in Turkey’s defense industrial base in part to support U.S. government foreign military sales. While foreign military sales may be

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covered by the official business concept, direct commercial sales of defense articles and services may not be. Foreign joint ventures with a U.S. partner and foreign subsidiaries of U.S. companies are not directly subject to the new sanctions regime. However, depending on the specific joint venture arrangements and the business of the foreign subsidiaries, the U.S. joint venture partner or parent company may need to cease supporting any work by November 13, 2019, absent a specific license.

[1] Executive Order, *Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Syria* (Oct. 14, 2019), available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/syria_eo_10142019.pdf.

[2] Press Release, U.S. Department of the Treasury, *Treasury Designates Turkish Ministries and Senior Officials in Response to Military Action in Syria* (Oct. 14, 2019), available at <https://home.treasury.gov/news/press-releases/sm792>.

[3] Press Release, White House, *Statement from President Donald J. Trump Regarding Turkey's Actions in Northeast Syria* (Oct. 14, 2019), available at <https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-regarding-turkeys-actions-northeast-syria/>.

[4] Press Release, U.S. Department of Justice, *Turkish Bank Charged in Manhattan Federal Court for its Participation in a Multibillion-Dollar Iranian Sanctions Evasion Scheme* (Oct. 15, 2019) available at <https://www.justice.gov/usao-sdny/pr/turkish-bank-charged-manhattan-federal-court-its-participation-multibillion-dollar>.

[5] Press Release, White House, *The United States and Turkey Agree to Ceasefire in Northeast Syria* (Oct. 17, 2019), available at <https://www.whitehouse.gov/briefings-statements/united-states-turkey-agree-ceasefire-northeast-syria/>.

[6] *Id.*

[7] On December 29, 2016, the Obama administration designated as Specially Designated Nationals (“SDNs”) Russia’s Federal Security Services, or Federalnaya Sluzhba Bezopasnosti (FSB) and the Main Intelligence Directorate of the Russian Ministry of Defense, or Glavenoe Razvedyvatel’noe Upravlenie (GRU), among other associated entities, for their involvement in cyber operations aimed at the 2016 U.S. presidential election, available at <https://www.treasury.gov/resource-center/sanctions/ofac-enforcement/pages/20161229.aspx>.

[8] Last year, the Trump administration levied separate sanctions on the Turkish Interior and Justice Ministers over the detention of an American pastor. Press Release, U.S. Department of the Treasury, *Treasury Sanctions Turkish Officials with Leading Roles in Unjust Detention of U.S. Pastor Andrew Brunson* (Aug. 1, 2018), available at <https://home.treasury.gov/news/press-releases/sm453>.

[9] Executive Order at Section 3, Section 2.

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- [10] General License 1 to Executive Order of October 14, 2019.
- [11] General License 2 to Executive Order of October 14, 2019.
- [12] Executive Order at Section 1(a).
- [13] *Id.* at Section 1(a)(E).
- [14] U.S. Department of the Treasury, *Executive Order on Syria-Related Sanctions; Syria-Related Designations; Issuance of Syria-Related General Licenses* (Oct. 14, 2019) available at <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20191014.aspx>.
- [15] *Id.*
- [16] Executive Order at Section 2(a-c).
- [17] *Id.* at Section 3(a-b).
- [18] *Id.*
- [19] General License 1 to Executive Order of October 14, 2019.
- [20] General License 2 to Executive Order of October 14, 2019.
- [21] General License 3 to Executive Order of October 14, 2019.



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