

ExxonMobil said today it has launched a legal challenge to a finding by the Treasury Department's Office of Foreign Assets Control (OFAC) that it violated U.S. sanctions against Russia in 2014 when the company followed authoritative and specific guidance from the Obama administration that OFAC retroactively changed a year later.

"OFAC seeks to retroactively enforce a new interpretation of an executive order that is inconsistent with the explicit and unambiguous guidance from the White House and Treasury issued before the relevant conduct and still publicly available today," said ExxonMobil's filing in the U.S. District Court.

OFAC's action is fundamentally unfair and constitutes a denial of due process under the Constitution and violates the Administrative Procedure Act because market participants, including ExxonMobil, did not have notice of the interpretation OFAC now seeks to retroactively enforce, the filing said.

At the center of the dispute are interactions ExxonMobil had with the Russian oil company, Rosneft and with Igor Sechin in his capacity as CEO of Rosneft.

OFAC alleges that ExxonMobil violated sanctions when it signed certain documents in May 2014 that were countersigned on behalf of Rosneft by Sechin acting in his official capacity as a Rosneft executive. OFAC has acknowledged that White House and Treasury Department officials repeatedly said sanctions involving Sechin applied only to his personal affairs and not to companies that he managed or represented.

A March 17, 2014, White House Fact Sheet said: "Our current focus is to identify these individuals and target their personal assets, but not companies that they may manage on behalf of the Russian state."

The position was confirmed on May 16, 2014 by a Treasury Department spokesperson, who said by way of example that BP's American CEO was permitted to participate in Rosneft board meetings with Sechin so long as the activity related to Rosneft's business and not Sechin's personal business.

However, two months later, in July 2014, despite the White House and Treasury guidance that had already been given, OFAC contacted ExxonMobil to say it was still formulating its own policy. Nearly a year later, in June 2015, OFAC notified ExxonMobil through a pre-penalty notice that it had violated guidance that had not been developed when the alleged offences took place. The penalty notice was issued on July 20.

When Sechin was added to the sanctions list in April 2014, the White House and Treasury Department in numerous briefings and media reports specifically stated the sanctions applied to him in his individual capacity and with respect to his personal assets, and not the business he manages.

ExxonMobil followed the clear guidance from the White House and Treasury Department when its representatives signed documents involving ongoing oil and gas activities in Russia with Rosneft — a non-blocked entity -- that were countersigned on behalf of Rosneft by Sechin in his official capacity. At the time of the signing, those activities themselves were not under any direct sanction by the U.S. government.

ExxonMobil said a 2012 Supreme Court ruling involving drug company SmithKline Beecham is relevant to this matter.

In the case, the court said the following: "It is one thing to expect regulated parties to conform their conduct to an agency's interpretations once the agency announces them; it is quite another to require regulated parties to divine the agency's interpretations in advance or else be held liable when the agency announces its interpretations for the first time in an enforcement proceeding and demands deference."

#### Chronology of Events Leading to Allegations of Sanction Violations

- March 16, 2014. President Obama issues Executive Order 13661 Blocking Property of Additional Persons Contributing to the Situation in Ukraine.
- March 17, 2014. White House Fact Sheet: "Our current focus is to identify individuals and target their personal assets, but not companies that they may manage on behalf of the Russian state."
- March 17, 2014. White House Briefing: "[O]ur current focus is to identify these cronies of the Russian government and target their personal assets and wealth, rather than the business entities and industries that they may manage or oversee."
- April 28, 2014. Treasury Department Briefing: Sanctions were applicable to Igor Sechin "individually."
- April 28, 2014. Tony Blinken, White House Deputy National Security Adviser, said on PBS NewsHour that Sechin was sanctioned in his "individual capacity" and that Rosneft was not designated, "minimizing any impact or consequences on American companies."
- April 28, 2014. New York Times: "U.S. persons are not prohibited from dealing with Rosneft, including participating in meetings of the company board on which Mr. Sechin sits," a Treasury Department official said.

- April 28, 2014. Foreign Policy magazine: "Sechin's personal assets will be frozen, but Treasury officials said the designation wouldn't impact U.S. companies' ability to do business with Rosneft because Sechin does not control the firm."
- May 14, 2014. The president of ExxonMobil Development Company signs a document relating to a potential liquefied natural gas ("LNG") plant in Far East Russia.
- May 15, 2014. ExxonMobil-Rosneft High Arctic Completion Deeds signed by president of ExxonMobil Exploration Company and Sechin, in his official capacity as president of Rosneft.
- May 16, 2014. Wall Street Journal: BP's CEO, an American, "may participate in board meetings with Mr. Sechin as long as they are conducting Rosneft's, and not Mr. Sechin's, personal business, the Treasury Department said."
- May 23, 2014. Sechin, acting in his official capacity as Rosneft's president, countersigns the document relating to a potential LNG plant in Far East Russia.
- July 22, 2014. OFAC issues an administrative subpoena to ExxonMobil Development Company.
- July 30, 2014. OFAC acknowledges it has not yet come to a legal conclusion on whether Sechin's signature violated sanctions.
- June 29, 2015. OFAC issues pre-penalty notice to ExxonMobil.
- Sept. 26, 2016. OFAC dismisses the importance of the White House guidance at a meeting with ExxonMobil.
- July 20, 2017. OFAC issues penalty notice to ExxonMobil.

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