

(BILLING CODE 4810-02-P)

DEPARTMENT OF THE TREASURY

Revocation of Designation of Ukraine as Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Revocation of Designation.

SUMMARY: This notice revokes the Department of the Treasury's December 20, 2002, designation of Ukraine as a primary money laundering concern pursuant to section 5318A of title 31, United States Code, as added by section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001(Public Law 107-56).

DATES: The revocation of the designation is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel (FinCEN), (703) 905-3590; Executive Office for Terrorist Financing and Financial Crimes, (202) 622-0400; Office of the General Counsel (Treasury), (202) 622-1927 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

On December 20, 2002, Treasury designated Ukraine as a primary money laundering concern under 31 U.S.C. 5318A, as added by section 311(a) of the USA PATRIOT Act. In a notice published in the Federal Register on December 26, 2002,¹ the various factors supporting the designation were outlined. Of particular importance to the decision to designate was the fact that while Ukraine had recently enacted anti-money

laundering legislation, it was deficient in several material respects.² As noted in the designation, among other things, Ukraine's system for reporting suspicious transactions remained so constrained as to be virtually ineffective, and the ability of its financial intelligence unit to share information with law enforcement and function appropriately was in doubt. Having analyzed the legislation, the Financial Action Task Force (FATF) likewise concluded that the new legislation was inadequate and called on FATF members to take appropriate counter-measures against Ukraine. In the designation, Treasury specifically warned Ukraine that unless it took steps to address the concerns giving rise to its designation, Treasury anticipated imposing one or more special measures that would require U.S. financial institutions to obtain nominal and beneficial ownership information on certain accounts and transactions involving Ukraine.

Since Treasury's designation of Ukraine under section 5318A, Ukraine has taken steps to address the deficiencies. First, Ukraine amended its anti-money laundering law clearly to allow the Ukrainian financial intelligence unit to share information with law enforcement and to lower the suspicious transaction reporting thresholds. Second, the Ukrainian criminal code was amended to criminalize money laundering, the failure to file suspicious transaction reports, and tipping off the subjects of such reports. Finally, the Ukrainian banking and financial services laws were amended to require the full disclosure of beneficial ownership at account opening for all legal entities and natural persons. These new provisions are scheduled to come into force as of June 7, 2003.

¹ 67 FR 78859 (December 26, 2002). In that same Notice, Treasury also designated Nauru as a primary money laundering concern. Published elsewhere in this issue of the Federal Register is FinCEN's notice of proposed rulemaking seeking to impose counter-measures against Nauru.

² On November 28, 2002, Ukraine's Supreme Council (Parliament) passed a Law on Prevention and Counteraction of the Legalization (Laundering) of the Proceeds from Crime, and the President of Ukraine signed the Law on December 7.

As a result of these further legislative enhancements, along with the pledge of aggressive implementation, on February 14, 2003, the FATF rescinded its call for counter-measures against Ukraine.

In light of the further legislative enhancements, the commitment of Ukraine to further efforts to implement its anti-money laundering legislation, and the FATF's decision to rescind the call for counter-measures, Treasury has decided to revoke the designation of Ukraine as a primary money laundering concern under section 5318A.

Significantly, Treasury's revocation of the primary money laundering concern designation should not be construed as an indication that financial transactions involving Ukraine do not continue to present a heightened risk of money laundering. To the contrary, Ukraine's recent legislative enactments are not yet in force and much work remains. Ukraine is still on the FATF's Non-Cooperative Countries and Territories (NCCT) list due to its inadequate anti-money laundering regime. The FATF will require additional progress and effective implementation of the anti-money laundering legislation before considering removing Ukraine from the NCCT list.

Moreover, U.S. financial institutions are reminded that the revocation of the designation does not affect existing guidance issued by FinCEN or obligations arising under the Bank Secrecy Act with respect to accounts and transactions involving Ukraine. For example, the April 2002 FinCEN advisory on transactions involving Ukraine remains in effect, and, due to Ukraine's status as an NCCT jurisdiction, U.S. financial institutions are or will be required by 31 U.S.C. 5318(i), as added by section 312 of the USA

PATRIOT Act, to conduct enhanced scrutiny on any correspondent accounts maintained for a foreign bank operating under a license issued by Ukraine.³

Revocation of the Designation of Ukraine as a Primary Money Laundering Concern

For the foregoing reasons, the designation of the country of Ukraine as a primary money laundering concern for purposes of section 5318A of title 31, United States Code, is hereby revoked.

Dated: _____

James F. Sloan
Director
Financial Crimes Enforcement Network

³ Section 5318(i) requires U.S. financial institutions to conduct enhanced scrutiny when opening or maintaining a correspondent account for a foreign bank operating, among other things, under a banking license issued by a foreign country designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative concurs. Jurisdictions placed on the FATF NCCT list fall into this category.

By its own terms, section 5318(i) became effective on July 23, 2002. On May 30, 2002, FinCEN issued a proposed rule implementing the various provisions of section 5318(i). 67 FR 37736 (May 30, 2002). On July 23, 2002, FinCEN issued an interim rule that temporarily deferred application of section 5318(i) to certain financial institutions, and provided guidance to those subject to the provision pending FinCEN's issuance of a final rule. 67 FR 48348 (July 23, 2002). FinCEN expects that the final rule implementing section 5318(i) will be issued shortly. In the meantime, only U.S. depository institutions must comply with the enhanced scrutiny provisions in the manner set forth in the interim guidance.