

White House Issues Sweeping Russia Sanctions and Export Control Restrictions (Part II)

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The United States and numerous U.S. allies have now imposed the most significant rounds of Russia sanctions and export control restrictions to date. Given the vast number and complexity of developments in a short span, and in order to assist our clients and friends in understanding the new U.S. actions, this alert provides a high-level summary of developments.

New Russia Sanctions

Central Bank of Russia: On February 28, the Office of Foreign Assets Control at the U.S. Department of the Treasury (“OFAC”) [announced sanctions](#) targeting the Central Bank of the Russian Federation through new [Directive 4](#) to Executive Order 14024, “Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation” (“Executive Order 14024”). Pursuant to Directive 4, U.S. persons are prohibited from engaging in “any transaction involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation, including any transfer of assets to such entities or any foreign exchange transaction for or on behalf of such entities.” The action by OFAC also includes new additions to the Specially Designated Nationals and Blocked Persons List (“SDN List”): the Russian Direct Investment Fund (a Russian sovereign wealth fund), as well as its management company, one subsidiary, and its CEO.

President of the Russian Federation, Vladimir Putin: On February 25, OFAC took the significant step of sanctioning Russian President Vladimir Putin himself by [adding him to the SDN List](#), along with Minister of Foreign Affairs Sergei Viktorovich Lavrov, and, pursuant to a designation by the U.S. Department of State (“State Department”), two other members of Russia’s Security Council. The State Department designations include Chief of the General Staff of the Russian Armed Forces, First Deputy Minister of Defense, and General of the Army Valery Gerasimov, and Minister of Defense Sergei Shoigu.

Sberbank: OFAC [has imposed](#) correspondent and payable-through account (“CAPTA”) sanctions on Public Joint Stock Company Sberbank of Russia (“Sberbank”) through new Russia-related [Directive 2](#) to Executive Order 14024. Under Directive 2, U.S. financial

institutions are prohibited from opening or maintaining correspondent accounts or payable-through accounts on behalf of Sberbank, 25 Sberbank foreign financial institution subsidiaries, and any other foreign financial institutions owned 50 percent or more by Sberbank. U.S. financial institutions are likewise prohibited from processing transactions involving such entities. Annex 1 to Directive 2 provides the full list of the 25 identified subsidiaries subject to the Directive. The new CAPTA sanctions take effect at 12:01 a.m. EST on March 26, 2022.

VTB Bank and Additional Financial Institution Blocking Sanctions: OFAC [has also imposed](#) full blocking sanctions on VTB Bank Public Joint Stock Company (“VTB Bank”) by adding VTB Bank to the SDN List, along with 20 of its subsidiaries. OFAC likewise designated three additional Russian financial institutions on the SDN List: (1) Public Joint Stock Company Bank Financial Corporation Otkritie (“Otkritie”), (2) Open Joint Stock Company Sovcombank (“Sovcombank”), and (3) Joint Stock Commercial Bank Novikombank (“Novikombank”). The designations also included 12 identified Otkritie subsidiaries and 22 Sovcombank subsidiaries.

In its earlier February 22nd action, OFAC [also issued blocking sanctions](#) on State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank (“VEB”) and Promsvyazbank Public Joint Stock Company (“PSB”), along with 42 of their subsidiaries, by adding them to the SDN List.

New Debt and Equity Prohibitions: OFAC issued new Directive 3 to Executive Order 14024, prohibiting U.S. persons from engaging in transactions in new debt of longer than 14 days’ maturity and new equity of certain identified Russian entities provided in Annex 1 to [Directive 3](#). These include a mix of state-owned and privately held entities, such as Sberbank, Gazprombank, Alfa-Bank, and more. The new debt and equity prohibitions take effect at 12:01 a.m. EST on March 26, 2022.

Sanctions on Additional Sovereign Debt Transactions: On February 22, OFAC issued [Russia-related Directive 1A](#) (“Directive 1A”) to Executive Order 14024. Directive 1A supersedes and expands original Directive 1 to prohibit participation in the secondary market (in addition to the primary market under the original Directive 1) for ruble or non-ruble denominated bonds issued by, or lending of ruble or non-ruble denominated funds to, the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation after March 1, 2022.

Nord Stream 2: On February 23, the State Department adopted blocking sanctions targeting the Nord Stream 2 pipeline. OFAC [designated](#) Nord Stream 2 AG and CEO Matthias Warnig on the SDN List. OFAC also issued [Russia-related General License 4](#), authorizing a wind-down of transactions involving Nord Stream 2 AG through 12:01 a.m. EST on March 2, 2022.

Donetsk & Luhansk Regions of Ukraine: On February 21, President Biden also issued an [Executive Order](#) condemning Russia’s recognition of the separatist Donetsk and Luhansk regions of Ukraine as independent and imposed comprehensive sanctions on transactions with respect to those regions. The new comprehensive sanctions are similar to those involving Crimea, and prohibit dealings by U.S. persons involving:

- New investment in the Donetsk and Luhansk regions;
- Importation into the United States of goods, services or technology from the Donetsk and Luhansk regions;

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- Exportation, reexportation, sale, or supply of goods, services, or technology to the Donetsk and Luhansk regions; and
 - Approval, financing, facilitation or guarantees by U.S. persons of the foregoing prohibited transactions with respect to the Donetsk and Luhansk regions.

Russian Elites and Vessels: Over the course of its various actions, OFAC has continued to add elites and oligarchs with close ties to Putin or sanctioned entities, as well as some of their family members, to the SDN List. OFAC also sanctioned five vessels linked to PSB Lizing OOO, including the Baltic Leader, FESCO Magadan, FESCO Moneron, Linda, and Pegas.

New Russia Export Controls and Russia Foreign Direct Product Rule

The Bureau of Industry and Security (“BIS”) at the U.S. Department of Commerce has announced the adoption of new Russia export controls. According to the [draft available for public inspection](#), the new rules are effective as of February 24, 2022. Specifically, the new export controls include:

- A license requirement for the export, reexport or transfer (in-country) to or within Russia of any item subject to the Export Administration Regulations (“EAR”) and specified in an Export Control Classification Number (“ECCN”) in Categories 3, 4, 5, 6, 7, 8 or 9 of the Commerce Control List (“CCL”).
- A Russia foreign direct product (“FDP”) rule requiring a license to reexport, export from abroad, or transfer (in-country) to any destination any foreign-produced items subject to the EAR (i.e., a direct product of certain U.S.-origin technology or software, or items produced by a plant or part of a plant that itself is the direct product of U.S.-origin software or technology) if there is knowledge that the foreign item is destined for Russia or will be incorporated into or used in the production or development of certain items destined for Russia. This rule does not apply to EAR99 items.
- A Russia Military End User (“MEU”) FDP rule requiring a license to reexport, export, or transfer (in country) to or within any destination any foreign-produced item subject to the EAR (i.e., a direct product of any software or technology in an ECCN in any category of the CCL, or items produced by a plant or part of a plant that itself is the direct product of such U.S.-origin technology or software) when it is known that the foreign item will be incorporated into, or will be used in the production or development of, any part, component or equipment by any entity with a footnote 3 designation on the Entity List. This rule applies to EAR99 items. It does not apply to certain food, medicine or mass market technology, unless for Russian government end users and Russian state-owned enterprises (“SoEs”).
- A license requirement for the export and reexport to the Donetsk People’s Republic (“DNR”) and the Luhansk People’s Republic (“LNR”) (collectively the Covered Regions of Ukraine), and the transfer within the Covered Regions of Ukraine, of all items subject to the EAR other than food and medicine designated as EAR99 and certain software for Internet-based personal communications. The DNR and the LNR have also been added to the Entity List in supplement No. 4 to Part 744.
- A revision to the Entity List by moving the 45 entities from the MEU List at 744.21 to the Entity List and by adding an additional two entities that are newly listed in the EAR. These 47

entities are considered MEUs in Russia. This revision further limits these entities' ability to obtain items subject to the EAR or obtain the benefit of technology or software subject to the EAR. For these entities, an export license is required for all items subject to the EAR.

- A revision to 744.21 such that license requirements for MEUs in Russia now apply to all items subject to the EAR, except for food or medicine designated as EAR99 or certain mass market items and software, unless for Russian government end users and Russian SoEs.

The new license requirements apply to many items that did not previously require a license to Russia, such as parts and components used in civil aircraft under ECCN 9A991.d. They are also intended to further restrict items to the Russian military and defense sector. Given these new license requirements, many additional items will be treated as controlled U.S.-origin content for purposes of the de minimis calculation under Supplement No. 2 to Part 734 of the EAR.

Licensing Policy: BIS stated in its announcement that it has also adopted a license review policy of denial applicable to all new Russia licensing requirements. However, license applications for certain categories of items will be reviewed on a case-by-case basis to determine whether the transaction would benefit the Russian government or defense sector. The categories are: applications related to safety of flight, maritime safety, to meet humanitarian needs, in support of government space cooperation, applications for companies headquartered in certain countries to support civil telecommunications infrastructure, or involving government-to-government activities.

Certain Countries Excluded from License Requirements: Countries that BIS has determined are committed to implementing substantially similar export controls as part of their domestic sanctions against Russia are subject to full or partial exclusions from the Russia FDP and Russia MEU FDP license requirements. These countries appear in a list at new Supplement No. 3 to Part 746.

License Exceptions: Except for the Russia Military End User FDP license requirement, the new Russia license restrictions are subject to the following license exceptions: certain sections of License Exception TMP for items for use by the news media; License Exception GOV; License Exception TSU for software and technology updates for civil end users provided those civil end users are subsidiaries or joint ventures of companies headquartered in the United States or a country or countries from Country Groups A:5 or A:6; License Exception BAG, excluding firearms and ammunition; License Exception AVS (limited sections); License Exception ENC, excluding Russian government end users and Russian SoEs; and License Exception CCD. Generally, no license exceptions apply to any of the MEUs moved to the Entity List, consistent with the general rule that parties on the Entity List are not eligible for license exceptions.

Savings Clause for Shipments En Route to a Port of Export: As to the new Russia FDP and Russia MEU FDP license requirements, shipments of items removed from eligibility for a license exception or reexport or transfer (in-country) without a license ("NLR") that were en route aboard a carrier to a port of export, reexport, or transfer (in country), on March 26, 2022, pursuant to actual orders for reexport, or transfer (in-country) to or within a foreign destination, are permitted to proceed to that destination under the previous license exception or NLR eligibility. For all other EAR revisions, shipments of items removed from eligibility for a license exception or export, reexport or transfer (in-country) without a license that were en route aboard a carrier to a port of export, reexport or transfer (in-country) on February 24, 2022, pursuant to actual orders for export to or within a foreign destination, may proceed to that destination under the previous eligibility.

Conclusion

Companies doing business with Russia and Russian entities, and the Donetsk and Luhansk regions of Ukraine, should understand the new prohibitions and tailor their dealings appropriately. While U.S. financial institutions will undoubtedly be impacted, all U.S. persons and entities doing business in or with Russia should be prepared for potential complications that the sanctions or export controls could pose in their dealings, such as possible challenges to receiving payment for goods or services due to new financial institution restrictions.

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