

# US Adopts Further Sanctions and Export Controls Targeting Russia

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Even though significant sanctions and export controls have already been put in place, the United States recently adopted additional measures targeting key elements of the Russian economy and military industry in response to the continuing war in Ukraine.<sup>1</sup>

As with previous rounds of sanctions, these measures have been coordinated with U.S. allies, including the United Kingdom and European Union. The latest restrictions are designed to further isolate Russia's economy. They include, among other things:

- new guidance that interprets broadly the U.S. ban on new investment in Russia;
- further restrictions on exports to Russia and Belarus;
- a prohibition on the provision of many professional services to Russia; and
- blocking sanctions against prominent Russian companies and individuals, including key players in the military sector, as well as against a number of yachts and aircraft.<sup>2</sup>

## I. U.S. Sanctions

### OFAC Guidance on the Ban on New Investment in Russia

On June 6, 2022, the U.S. Treasury's Office of Foreign Assets Control (OFAC) issued long-awaited guidance (Guidance) in the form of Frequently Asked Questions clarifying the "new investment" ban under Executive Orders 14066, 14068, and 14071 (Investment Ban EOs), issued on March 8, 2022, March 11, 2022, and April 6, 2022, respectively. Below we summarize key takeaways from the Guidance. We anticipate that OFAC may publish new and/or further clarifying guidance in the future.

The Guidance states that "new investment" means "the commitment of capital or other assets for the purpose of generating returns or appreciation ... on or after the effective date" of the relevant Investment Ban EO.<sup>3</sup> In principle, this definition appears consistent with earlier guidance OFAC issued in the context of the ban on new investment in Russia's energy sector under EO 14066. However, OFAC has now clarified that, to be "new investment," the purpose of the commitment of capital or other assets must be the generation of returns or appreciation. Examples of "new investment" identified in the Guidance include:

- the acquisition of real estate in Russia, other than for noncommercial, personal use;
- entry into an agreement requiring the commitment of capital or other assets for the establishment or expansion of projects or operations in Russia;
- the formation of joint ventures or other corporate entities in Russia;
- entry into an agreement providing for the participation in royalties or ongoing profits in Russia;
- the lending of funds to persons located in Russia for commercial purposes;

<sup>1</sup> See our April 25, 2022 client alert, "[US, UK and EU Impose New Sanctions and Export Controls on Key Elements of Russian Economy](#)," and previous alerts linked to there.

<sup>2</sup> This client alert is for informational purposes only and does not constitute legal advice. Complex assessments often have to be made as to which sanctions regime applies in any given instance, given the multinational touch points of many entities and individuals. In that regard, given the complex and dynamic nature of these sanctions regimes, there may be developments not captured in this summary. Moreover, while the summary was accurate when written, it may become inaccurate over time given developments. For all of these reasons, you should consult with a qualified attorney before making any judgments relating to sanctions, as there are potentially severe consequences of failing to adhere fully to sanctions restrictions.

<sup>3</sup> [OFAC FAQ 1049](#) (link to all FAQs)

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- the purchase of any equity or debt of an entity located in Russia; and
- the acquisition of rights to natural resources or exploitation thereof in Russia.<sup>4</sup>

Significantly, the new Guidance provides that the Investment Ban EOs also prohibit U.S. persons from purchasing (but not selling) both new and existing debt and equity securities issued by an entity in Russia.<sup>5</sup> However, U.S. persons are not required to divest such securities and may continue to hold the previously acquired securities.

The extension of the ban to purchases of pre-existing securities is a departure from the approach taken by OFAC in the context of the sectoral sanctions against Russia, which generally only restricted dealing in debt and equity issued after the date the relevant sanction went into effect. The Investment Ban EOs also prohibit investments in entities located *outside* Russia if (i) the funds are specifically intended for new projects or operations in Russia or (ii) the revenues of the entity located outside of Russia are “predominantly” derived from its investments in Russia.

The Guidance clarifies that “maintenance” of “pre-existing entities, projects or operations” in Russia is generally not considered “new investment.”<sup>6</sup> The term “maintenance” includes “transactions ordinarily incident to performing under an agreement in effect prior to the effective date” of the relevant Investment Ban EO, “provided that such transactions are consistent with previously established practices and support pre-existing projects or operations.” The Guidance also clarifies that “maintenance” allows for modifications to pre-existing agreements, or entering into new agreements, provided that any transaction under such agreements is consistent with previously established practices and supports pre-existing projects or operations.

However, according to the Guidance, certain activities undertaken pursuant to pre-existing agreements would *not* be considered maintenance. It states that, where a pre-existing agreement contemplates an expansion of a pre-existing project but the expansion was not in effect prior to the effective date of the relevant EO, the subsequent expansion of the project may be considered a prohibited new investment.

Examples of maintenance falling outside of the new investment prohibition identified in the Guidance include:

<sup>4</sup> See *id.*

<sup>5</sup> OFAC FAQ 1054

<sup>6</sup> OFAC FAQ 1050

- payments to employees, suppliers, landlords, lenders and partners, as well as other transactions to ensure continuity of pre-existing projects/operations;
- continued funding of subsidiaries and affiliates with pre-existing projects or operations in Russia, other than for “expansion” of such projects or operations;
- preservation and upkeep of pre-existing tangible property in Russia;
- maintaining pre-existing capital investments or equity investments; and
- modifying or entering into a new agreement to substitute suppliers, conduct maintenance or repairs, or comply with new environmental or safety standards, where consistent with established practices and in support of pre-existing projects or operations.

The Guidance further confirmed that the ban on “new investment” does not prohibit the export or import of goods, services or technology, or related sales or purchases, to or from Russia, provided that such transaction is made pursuant to ordinary commercial sales terms. U.S. persons may continue to enter into new contracts for such transactions.<sup>7</sup> However, U.S. export controls may impose licensing requirements on exports, re-exports and in-country transfers to Russia of many U.S. goods and technologies.

Finally, transactions related to the divestment or the facilitation of divestment of a pre-existing investment, including a pre-existing investment in an entity, project or operation in Russia, are not prohibited by the new investment prohibition. For example, the Investment Ban EOs generally do not prohibit U.S. persons from selling or divesting, or facilitating the sale or divestment of, debt or equity securities issued by an entity in Russia to a non-U.S. person, provided that any such facilitation “is on behalf of the selling party only.”<sup>8</sup>

## Sanctions Targeting Accounting, Trust and Corporate Formation, and Management Consulting Services

On May 8, 2022, OFAC issued two determinations further implementing Executive Orders 14024 and 14071.

Section 1(a)(i) of Executive Order 14024 established a mechanism whereby the Secretary of the Treasury, in consultation with the Secretary of State, may designate sectors of Russia’s economy and impose sanctions on persons determined to operate in those sectors. The determination under Executive Order 14024,

<sup>7</sup> OFAC FAQ 1051

<sup>8</sup> OFAC FAQ 1053

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which became effective May 8, 2022, identified the accounting, trust and corporate formation services, and management consulting sectors of Russia's economy. However, the determination under Executive Order 14024 does not impose sanctions on any specific individual or entity. Sanctions will only attach when a determination is made with respect to a specific individual or entity that they operate in one of the newly identified sectors.

Concurrent with that determination under Executive Orders 14024, OFAC issued a determination pursuant to Section 1(a)(ii) of Executive Order 14701. As a result, effective June 7, 2022, it is prohibited to export, re-export, sell or supply, directly or indirectly, from the U.S. or by a U.S. person, accounting, trust and corporate formation, or management consulting services to any person located in Russia.

The determination excludes from its scope (1) any services provided to an entity located in Russia that is owned or controlled, directly or indirectly, by a U.S. person (however, the provision of relevant services by a U.S. subsidiary to its Russian parent company would generally be prohibited<sup>9</sup>), and (2) any services in connection with the wind down or divestiture of an entity located in Russia that is not owned or controlled, directly or indirectly, by a Russian person.

The OFAC FAQs explain that "Russian person" means an individual who is a citizen or national of Russia, or an entity organized under the laws of Russia.<sup>10</sup> The provision of relevant services to persons located outside of Russia is generally not prohibited, provided that the provision of services is not ultimately received by a person in Russia.<sup>11</sup> Whether or not the services are ultimately received by a person in Russia will depend on the specific facts.

The FAQs also further clarified the scope of each identified type of service:

- "Accounting Services" includes services related to the measurement, processing and evaluation of financial data about economic entities, and tax preparation and filing services. OFAC issued General License 35 authorizing through August 19, 2022 (*i.e.*, for a period that is longer than that authorized under the now General License 34) certain transactions ordinarily incident and necessary to the provision of credit rating or auditing services to any person located in Russia. On July 14, OFAC also issued General License 44 authorizing all transactions ordinarily incident and necessary to the provision from the U.S. or by a U.S. person of tax preparation and tax filing services to U.S. citizens and permanent residents located in Russia.

- "Trust and corporate formation services" includes services related to assisting persons in forming or structuring legal persons, such as trusts and corporations; acting or arranging for other persons to act as directors, secretaries, administrative trustees, trust fiduciaries, registered agents or nominee shareholders of legal persons; providing a registered office, business address, correspondence address or administrative address for legal persons; and providing administrative services for trusts.

- "Management consulting services" includes services related to strategic business advice; organizational and systems planning, evaluation and selection; development or evaluation of marketing programs or implementation; mergers, acquisitions and organizational structure; staff augmentation and human resources policies and practices; and brand management.<sup>12</sup>

Finally, the FAQs also address whether, as a result of the prohibition on providing relevant services, U.S. persons are prohibited from serving as directors or employees of companies located in Russia. While U.S. persons are not prohibited from serving as directors or employees, they must themselves continue to abide by the prohibition. For example, according to the FAQs, U.S. persons may not provide nominee officer or director services in which a U.S. person is contracted to serve as a nominee officer, director, shareholder or signatory of a legal person on behalf of a person located in the Russian Federation.<sup>13</sup> Similarly, U.S. person employees would not be able to provide relevant services to their employer even if providing such services would ordinarily fall within the scope of their duties as employees.<sup>14</sup>

## New Blocking Sanctions

The U.S. government has continued to impose full blocking sanctions on additional entities and individuals, as well as vessels and aircraft, adding them to the Specially Designated Nationals and Blocked Persons List. OFAC has designated a number of significant companies across a range of sectors, including banking and defense, as well as multiple state-owned television stations.

As a result of these actions, any property or interest in property belonging to these persons, or any entities in which these persons have a 50% or greater, direct or indirect, ownership interest, that is in the U.S. or comes within the possession or control of a U.S. person must be blocked (*i.e.*, frozen), and U.S. persons are generally prohibited from engaging in any transactions or dealings involving them.

<sup>9</sup> OFAC FAQ 1062

<sup>10</sup> OFAC FAQ 1034

<sup>11</sup> OFAC FAQ 1059

<sup>12</sup> See OFAC FAQ 1034

<sup>13</sup> OFAC FAQ 1060

<sup>14</sup> OFAC FAQ 1051

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## Prohibition on the Importation of Gold

On June 28, 2022, OFAC, in consultation with the Department of State and the Department of Commerce, made a determination under section 1(a)(i) of Executive Order 14068 with respect to gold of Russian origin, with immediate effect. Consequently, the importation into the U.S. of gold of Russian origin is generally prohibited, absent a license. The determination excludes gold of Russian origin that was located outside of the Russia prior to June 28, 2022.

## II. U.S. Export Controls

### BIS and FinCEN Joint Statement

On June 28, 2022, the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) and the U.S. Department of Commerce's Bureau of Industry and Security (BIS) issued a joint alert to financial institutions advising them to identify and report on transactions that may indicate efforts to evade U.S. export controls on Russia. The alert identifies specific commodities of concern for possible export control evasion, as well as "red flags" to assist financial institutions in identifying suspicious transactions. Although FinCEN had issued two earlier alerts related to Russia's invasion of Ukraine, this was the first issued jointly with BIS and suggests that both agencies are focused on Russia-related export controls enforcement.

### Expansion of Export Controls Targeting Russian Industry Sectors

Pursuant to a rule made effective on May 9, 2022, BIS expanded existing sanctions against Russian industry sectors by imposing a license requirement for exports, re-exports and transfers (in-country) to and within Russia for additional items subject to the U.S. Export Administration Regulations (EAR). The measures are designed to "further restrict Russia's ability to withstand the economic impact of the multilateral sanctions, further limit sources of revenue that could support Russia's military capabilities, and to better align with the European Union's controls."<sup>15</sup>

The new measures build upon measures announced in a final rule in March,<sup>16</sup> whereby the so-called "Russian Industry Sector Sanctions" in part 746.5 of the EAR were revised to impose new licensing requirements on exports, re-exports and transfers (in-country) to or within Russia of any items subject to the EAR and identified under certain Schedule B numbers or Harmonized

Tariff Schedule 6 (HTS) codes.<sup>17</sup> The Schedule B numbers and HTS codes for items subject to the new licensing requirements targeted the oil refinery sector in Russia and were identified under a new supplement no. 4 to part 746. License applications for items identified in supplement no. 4 are reviewed under a policy of denial, with an exception for items necessary for health and safety reasons or for humanitarian needs, which are reviewed under a case-by-case policy.

The new measures add 205 HTS codes and 478 corresponding Schedule B numbers to the list of items identified under supplement no. 4 to part 746. Types of items added by the measures cover a wide range of commodities and industrial parts and materials, including:

- wood and timber products;
- iron and steel products (e.g., drums, tanks, vats, etc.);
- metalworking, glassworking and woodworking tools;
- industrial and electrical equipment;
- certain vehicles and vehicle parts, including construction vehicles, railway and railcar components, and truck engines and trailers;
- refrigeration equipment;
- water coolers and soda dispensing equipment;
- paper and textile machinery; and
- certain cleaning or household products, such as dry-cleaning machines, sewing machine parts and ironing machines.

These restrictions, which apply to all items covered by the relevant HTS codes and Schedule B numbers, including "EAR99" items (a designation for less-sensitive items subject to the EAR that are not specified on the CCL), supplement license requirements imposed earlier this year on exports, re-exports and transfers (in-country) to or within Russia and Belarus for any items identified within categories 0-9 of the Commerce Control List (CCL).

### Additional Entity List Designations

Pursuant to a rule effective June 2, 2022, BIS added 71 additional entities to the Entity List under the destinations of Belarus and Russia. As a result, a license from BIS is required for exports, re-exports or in-country transfers to these entities of any items subject to the EAR.

<sup>15</sup> Expansion of Sanctions Against the Russian Industry Sector Under the Export Administration Regulations (EAR), 87 FR 28758 (May 11, 2022).

<sup>16</sup> Expansion of Sanctions Against the Russian Industry Sector Under the Export Administration Regulations (EAR), 87 FR 12856 (Mar. 8, 2022).

<sup>17</sup> Schedule B numbers are 10-digit codes used in the United States to classify physical goods for export to another country. HTS numbers are 10-digit codes used to classify physical goods imported into the United States from another country.

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The Entity List is located at supplement no. 4 to part 744 of the EAR and identifies parties who BIS has determined, based on a “reason to believe” standard, have been involved or pose a significant risk of becoming involved in activities contrary to national security or foreign policy goals of the U.S. Parties designated on the Entity List are subject to additional licensing requirements for items subject to the EAR. Each party’s Entity List entry specifies the applicable licensing requirements, as well as the review policy for license applications.

The rule also identified 66 of the new Entity List entries as Russian or Belarusian “military end users” in accordance with section 744.21 of the EAR for “acquiring and attempting to acquire U.S.-origin items in support of Russia’s military,” adding so-called “footnote 3 designations” to these entries on the Entity List. The Entity List parties with footnote 3 designations are subject to the foreign direct product rule that targets Russian and Belarusian military end users (Russian/Belarusian MEU FDP Rule).

Under the Russian/Belarusian MEU FDP Rule, a foreign-produced item is subject to the EAR if:

1. it is the direct product of technology or software subject to the EAR and
  - a. specified in any Export Control Classification Number (ECCN) in product groups D or E in any category of the CCL, or
  - b. if the foreign-produced item is produced by a plant or major component of a plant that is a direct product of technology or software subject to the EAR and specified in any ECCN in product groups D or E in any category of the CCL, and
2. there is knowledge that the foreign-produced item will be incorporated into or used in the production or development of any part, component, or equipment that is produced, purchased, or ordered by an entity with a footnote 3 designation.

The 66 entities with footnote 3 designations now are subject to license requirements for all items subject to the EAR, and no license exceptions are available for these entities. BIS reviews applications for entities with a footnote 3 designation under a policy of denial for all items subject to the EAR, except for food and medicines designated as EAR99, which it reviews on a case-by-case basis.

The additional five entities were added to the Entity List “for acquiring and attempting to acquire U.S.-origin items in support of activities contrary to U.S. national security and foreign policy

interests.”<sup>18</sup> The Russian/Belarusian MEU FDP Rule does not apply to transactions with these five entities. However, a license is required for all items subject to the EAR, and no license exceptions are available and BIS reviews license applications under a policy of denial.

On June 30, 2022, BIS announced that an additional 36 entities to the Entity List under the destinations of China, Lithuania, Pakistan, Russia, Singapore, the United Arab Emirates, the United Kingdom, Uzbekistan and Vietnam. Most of these entities were added for reasons relating to the ongoing conflict in Ukraine. The rule also identified two Chinese parties that had been on the Entity List since 2018 as having supported and continuing to support Russia’s efforts in Ukraine. The addition of these entities demonstrates BIS’s continued reliance on the Entity List as an enforcement tool against parties supporting Russia’s efforts in Ukraine.

## Export Enforcement Actions Targeting Russian Airlines and Exports of Aircraft to Russia

On May 20, 2022, BIS announced that it issued an order denying export privileges for a fifth Russian airline, Rossiya Airlines, as a result of continued export violations of measures targeting Russia. The order denied Rossiya the ability to participate in any transactions subject to the EAR for a period of 180 days, which can be renewed. The order prohibits the export or re-export of items subject to the EAR to Rossiya, as well as the use of any items subject to the EAR to service Rossiya aircraft, absent BIS authorization. BIS has also issued orders denying export privileges for Aeroflot, Azur Air, UTair, and Aviastar.

On June 16, 2022, BIS announced that it had issued an order temporarily denying export privileges for Belavia Belarusian Airlines due to ongoing violations of the comprehensive export controls that had been imposed on Belarus. Belavia is Belarus’s national airline, and the temporary denial order prevents it from leveraging any U.S. technology to operate its airplane fleet or otherwise participating in any transactions subject to the EAR.

On June 24, 2022, BIS announced that it had issued orders denying export privileges for three additional Russian airlines: Nordwind Airlines, Pobeza Airlines, and S7 Airlines.

## EAR Technical Corrections

On June 6, 2022, BIS issued a final rule making certain technical corrections to the EAR relating to Russia and Belarus. Specifically, the final rule:

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<sup>18</sup> *Id.*

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- revised provisions relating to the EAR's military end-use and end-user controls relevant to Russia and Belarus;
- made revisions relating to items destined for certain regions in Ukraine;
- clarified and corrected provisions of the EAR pertaining to luxury goods destined for Russia and Belarus and items for use in Russia's oil and refinery sector; and

- made a technical correction to an EAR provision describing items and activities subject to the EAR by adding a cross-reference to the Foreign Direct Procurement Rules of the EAR.

The final rule also allowed export enforcement charging letters to be made available to the public prior to the final administrative disposition of such cases, thereby allowing the public to be made aware of ongoing cases that have not yet reached a resolution.

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