U.S. Imposes Sweeping New Export Controls and Economic Sanctions Against the Russian Federation

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This week, the Biden Administration imposed extensive new export controls and economic sanctions against the Russian Federation in response to its declaration of two independent states in Eastern Ukraine and subsequent invasion of the country. Taken together with similar measures announced by other NATO members and allies, the impact of these measures will be significant. They will restrict a wide array of exports to Russia, block assets of numerous Russian banks and individuals, and limit dealings in Russian sovereign debt. As President Biden noted in his February 24, 2022 announcement of the measures, they are designed to ?impose severe costs on the Russian economy, both immediately and over time?? and to ?limit Russia?s ability?to be part of the global economy.? U.S. companies and others dealing in U.S.-origin goods must now take steps to adapt to the new rules, the preponderance of which became effective immediately upon their publication.

This article summarizes the key elements of new U.S. export controls and economic sanctions against Russia. It is not exhaustive, and we expect restrictions to evolve both with circumstances in Ukraine and as the U.S. and its allies fine tune these measures to enhance their effects. U.S. companies doing business in or with Russia, Ukraine, or Belarus, directly or indirectly, should carefully review any restrictions that could apply to their business and that of their non-U.S. distributors, and closely monitor any developments and modify compliance procedures to address the heightened risks involved in these transactions.

New Export Controls on U.S. Goods, Technology and Software

On February 24, 2022, the U.S. Commerce Department?s Bureau of Industry and Security (BIS) issued strict new controls on exports, reexports and transfers (in-country) of US-origin items to Russia and the Russian military. The BIS **rulemaking** revises the Export Administration Regulations (EAR, 15 C.F.R. Parts 730-774) to restrict exports of U.S. goods supporting Russia?s defense industrial base, military and intelligence services. However, its effects are far broader, and severely restrict supplies of U.S. goods to Russia across high-technology sectors such as semiconductors, communications, computers, information technology, electronics and sensors. The new controls include the following:

- *Licensing requirements for goods in Commerce Control List Categories 3-9.* The rule imposes a new licensing requirement for items classified in all Export Control Classification Numbers (ECCNs) in Categories 3 through 9 of the CCL. This includes items subject only to unilateral controls, such as items controlled only for antiterrorism (AT) reasons.
- *Licensing Review Policy of Denial.* The rule applies a general policy of denial for license applications for exports, reexports and transfers (in-country) of items within Russia, subject to limited exceptions for humanitarian and other non-military endeavors.
- *Expansion of Restrictions on Military End-Use/Military End-User Controls.* The rule expands the EAR?s restrictions on exports, reexports, and transfers (in-country) to Russian military end-uses and end-users to apply to all items subject to the EAR, including EAR99 items. It includes limited exceptions for certain food and medicine items and mass market encryption items (except to Russian government end-users or state-owned enterprises).
- *New Russia Foreign Direct Product Rules.* The rule adopts two new Foreign Direct Product rules specific to Russia. They impose licensing requirements for foreign-made items that are the direct product of certain U.S.-origin software or technology, or a plant that is a direct product of certain U.S.-origin software or technology, when it is known that the end item is destined for Russia or used in the development or production of a part, component or equipment destined for Russia or a Russian military end-user.
- *Entity List Designations.* The rule adds 49 Russian military end-users to the EAR?s Entity List, all but two of which were previously identified on the Military End User (MEU) List. The move requires a license to export, reexport, or transfer (in country) to those entities all items subject to the EAR. The previous MEU List designations of those entities imposed licensing requirements only for certain CCL items.

In announcing the new rule, BIS noted that parallel export controls would soon be adopted by the EU, Japan, Australia, UK, Canada and New Zealand.

New Economic Sanctions

Sanctions Against the Donetsk and Luhansk Regions of Ukraine

On February 21, 2022, President Biden signed Executive Order 14065 (**EO 14065**) imposing new economic sanctions responding directly to Russia?s recognition of independent states in the Donetsk and Luhansk Regions of Ukraine. The actions are similar in scope to those taken following Russia?s 2014 annexation of the Crimea Region of Ukraine. They both isolate and restrict U.S. trade with the Donetsk and Luhansk Regions (the ?Covered Regions?) and authorize OFAC to impose blocking sanctions on persons and entities operating in or supporting the Covered Regions. EO 14065 further authorizes the Secretary of the Treasury to expand the Covered Regions as needed to comprise additional geographic areas. As of the time of publication, OFAC has not yet modified the scope of Covered Regions subject to the Order. We expect it could take this action in the coming days to account for the full-scale invasion of Ukraine that transpired since issuance of EO 14065.

Effective immediately, EO 14065 prohibits the following activities by U.S. persons (including their unincorporated foreign branch offices):

1. New investment in the Covered Regions;
2. The importation into the U.S., directly or indirectly, of any goods, services or technology from the Covered Regions;
3. The export, reexport, sale or supply, directly or indirectly, from the U.S. or by a U.S. person wherever located, of any goods, services, or technology to the Covered Regions; and
4. Any approval, financing, facilitation or guarantee by a U.S. person of a transaction by a foreign person where the transaction by the foreign person would be prohibited by the above sanction if performed by a U.S. person or within the U.S.

Concurrently with issuing EO 14065, OFAC issued a series of General Licenses authorizing certain limited activities in the Covered Regions, including activities necessary for the wind down of existing transactions, supply of humanitarian goods, transactions supporting internet communications and telecommunications, activities of certain non-government organizations, and others.

Blocking Sanctions

The Biden Administration further ratcheted up sanctions against Russia and Belarus through a series of new blocking sanctions. OFAC imposed these sanctions by adding more than 140 parties to the OFAC?s List of Specially Designated Nationals and Blocked Persons (the ?SDN List?) under the authorities of prior Executive Orders addressing Russia?s aggressions.

The blocking sanctions prohibit U.S. persons (including foreign branches of U.S. companies) from engaging in any transfer, payment, export, withdrawal or other dealing in property or property interests of a designated (i.e., ?blocked?) party. Further, under OFAC?s ?50 percent rule,? the prohibition extends to any entity (and its property) that is owned 50 percent or more by one or more SDNs, even if that entity does not itself appear on the SDN List. U.S. persons are thus prohibited from virtually all transactions with SDNs. They must freeze blocked property of SDNs and report the action to OFAC, and they must report rejected transactions that would have involved SDNs to OFAC (within 10 days).

The series of blocking sanctions against Russia have targeted numerous individuals, banks, companies, and vessels associated with the Russian Federation, as well as persons and entities in Belarus. Importantly, OFAC has designated Vnesheconombank (VEB) and Promsvyazbank (PSB) and a number of their subsidiaries, which are major state-owned financial institutions (the 5th and 8th largest Russian banks) that generate significant revenues for the Russian government and defense industry. OFAC also has designated numerous Russian government and private sector elites and their children, due to their close ties to Vladimir Putin.

Financial Sanctions and Sovereign Debt Restrictions

The primary target of U.S. economic sanctions against Russia has been the country?s financial services sector. In addition to blocking sanctions imposed against several important Russian banks, the U.S. has imposed additional restrictions on Russia?s largest banks limiting their ability to conduct dollar-denominated transactions processed through to U.S. financial systems. OFAC implemented these financial sanctions through a series of directives under Executive Order 14024 (**EO 14024**), and designated many of Russia?s largest financial institutions as subject to those directives, as follows:

- *Directive 1A ? Restrictions on Transactions Involving Russian Sovereign Debt.* Directive 1A prohibits U.S. financial institutions from participating in the secondary market for Russian bonds issued by the Central Bank of Russia, the Russian National Wealth Fund and the Russian Ministry of Finance, and from providing certain loans to those institutions.
- *Directive 2 ? Restrictions on Correspondent and Payable-Through Accounts*. Directive 2 prohibits U.S. financial institutions from opening or maintaining correspondent and payable-through accounts for designated Russian banks, and also prohibits processing transactions on behalf of those banks. OFAC has designated under Directive 2 Russia?s Sberbank and a number of its affiliates. For the designated Russian banks, the prohibitions go into effect as soon as March 26, 2022, or 30 days after a new designation.
- *Directive 3 ? Restrictions on Transactions Involving New Debts or Equities*. Directive 3 prohibits US persons from any transaction involving dealing in new debt or equities of designated Russian banks and entities (including Gazprom and Sberbank) of greater than 14 days maturity, beginning March 26, 2022, or 30 days after any new designation.

In conjunction with these new sanctions directives, OFAC issued numerous General Licenses authorizing limited types of transactions otherwise prohibited by the directives, as well as Frequently Asked Questions that explain their application and scope.

This article contains general, condensed summaries of actual legal matters, regulations, and opinions for informational purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel. For more information, please visit our website at **www.williamsmullen.com** or contact **Chris Skinner** at 202.293.8129 or via email at **cskinner@williamsmullen.com**.

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