

ALERT

UPDATE: Biden Administration Imposes Broad Sanctions and Export Controls in Response to Russia's Invasion of Ukraine

March 4, 2022

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UPDATE

The Department of Commerce's Bureau of Industry and Security (BIS) released new export restrictions on Belarus that largely mimic those applicable to Russia, including broad licensing requirements and the addition of expansive military and military-intelligence end user and end use controls.

Additionally, in the new rule, BIS altered the rules for encryption products being exported, reexported, or transferred to or within Russia or Belarus.

- First, BIS significantly narrowed the eligibility criteria for exports of **ECCN 5x002 products under License Exception ENC**. Going forward, for both Russia and Belarus, License Exception ENC can only be used for civil end-users that are wholly-owned U.S. subsidiaries, foreign subsidiaries of U.S. companies that are joint ventures with other U.S. companies, joint ventures of U.S. companies with companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740 of the EAR countries (certain allied countries), wholly-owned subsidiaries of companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740, or joint ventures of companies headquartered in Country Group A:5 and A:6 with other companies headquartered in Country

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Groups A:5 and A:6. Other entities in Russia and Belarus are no longer eligible for License Exception ENC.

- For **ECCN 5A992 and 5D992 mass market products**, BIS's new rule states that for purposes of the U.S. export licensing requirements and the Russia/Belarus country-wide Foreign Direct Product Rule licensing requirements, no license or license exception is required for exports, reexports, or transfers of mass market hardware and software to or within Russia or Belarus for civil end-users that meet the same criteria described above for License Exception ENC. Certain mass market items also remain eligible for License Exception Consumer Communications Devices (CCD) when provided to eligible end users.

Among other measures, BIS also issued new restrictions targeting exports of certain critical oil refining equipment to Russia, even if it is EAR99 (the list, broken down by HTS code and description, is available [here](#)), and added a number of companies to its Entity List.

In addition to these new export control measures, the U.S. government has imposed additional blocking sanctions, as well as restrictions prohibiting U.S. persons 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, unless authorized by the Department of the Treasury's Office of Foreign Assets Control (OFAC).

Also note that the EU took action to exclude certain banks (Bank Otkritie, Novikombank, Promsvyazbank, Bank Rossiya, Sovcombank, VNESHECONOMBANK or "VEB," and VTB BANK) from SWIFT, the global provider of secure messaging services, which will further limit international transactions with Russia.

ORIGINAL ALERT

On February 24, 2022, the Biden Administration issued another expansive round of sanctions measures and export controls related to Russia's actions in Ukraine.

The latest measures imposed by the Department of the Treasury's Office of Foreign Assets Control (OFAC) include sanctions against Russian banks and their subsidiaries, new debt and equity prohibitions for certain Russia-related entities, and sanctions on certain Russian individuals with close ties to Russian President Vladimir Putin. In addition, the Department of Commerce's Bureau of Industry and Security (BIS) imposed significant export restrictions to limit Russia's high-tech imports. OFAC also imposed new sanctions on Belarus for its support for the Russian invasion of Ukraine, which include sanctions on Belarusian state-owned banks, its defense and security industries, and certain defense officials and persons in Belarusian President Alexander Lukashenka's inner circle. Concurrent with the imposition of new sanctions measures, OFAC issued public guidance in the form of new and updated FAQs as well as general licenses, which are described below.

SANCTIONS ON RUSSIA

Sanctions Against Russian Banks and Their Subsidiaries

Specially Designated National (SDN) Designations

OFAC designated the following four Russian financial institutions as SDNs pursuant to Executive Order (EO) 14024:

- **VTB Bank PJSC** (VTB Bank). Russia's second-largest financial institution that is majority-owned by the Government of Russia. OFAC also designated 20 VTB Bank subsidiaries, and all entities owned 50% or more, directly or indirectly, by VTB Bank are subject to blocking.
- **PJSC Bank Financial Corporation Otkritie** (Otkritie). OFAC also designated 12 Otkritie subsidiaries, and all entities owned 50% or more, directly or indirectly, by Otkritie are subject to blocking.
- **JSC Bank Novikombank** (Novikombank). OFAC designated the Russian defense sector bank that is wholly owned by Rostec, a Russian state-owned defense company, as an SDN.
- **OJSC Sovcombank** (Sovcombank). OFAC also designated 22 Sovcombank subsidiaries, and all entities owned 50 percent or more, directly or indirectly, by Sovcombank are subject to blocking.

Correspondent and Payable-Through Account Sanctions

OFAC imposed correspondent and payable-through account sanctions on **Public Joint Stock Company Sberbank of Russia** (Sberbank) and its 50% owned subsidiaries. Sberbank is the largest financial institution in Russia and is majority-owned by the Russian government. To implement the Sberbank sanctions, OFAC issued Directive 2 under EO 14024, "Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions" (Russia-related CAPTA Directive). This directive takes effect March 26, 2022, and prohibits U.S. financial institutions from: (i) the opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity determined to be subject to the prohibitions of the Russia-related CAPTA Directive, or their property or interests in property; and (ii) processing of transactions involving any such entities determined to be subject to the Russia-related CAPTA Directive, or their property or interests in property.

Debt and Equity Prohibitions

OFAC also expanded its existing Russia-related debt and equity restrictions and issued Directive 3 under EO 14024, "Prohibitions Related to New Debt and Equity of Certain Russia-related Entities" (Russia-related Entities Directive). This directive prohibits transactions and dealings by U.S. persons or within the United States in new debt of longer than 14 days maturity, including payment/credit terms longer than this tenor period, and new equity of Russian state-owned enterprises, entities that operate in the financial services sector of the Russian economy, and other entities determined to be subject to the directive's prohibitions that is issued on or after March 26, 2022.

Annex 1 to the Russia-related Entities Directive identifies 11 state-owned enterprises and two private entities subject to the prohibitions:

- **Credit Bank of Moscow Public JSC** (financial institution)
- **Gazprombank JSC** (financial institution)
- **JSC Alfa-Bank** (financial institution)
- **JSC Russian Agricultural Bank** (financial institution)
- **JSC Sovcomflot** (maritime and freight shipping company)
- **OJSC Russian Railways** (railroad company)
- **PJSC Alrosa** (diamond mining company)
- **PJSC Gazprom** (natural gas company)
- **PJSC Gazprom Neft** (oil producer and refiner)
- **PJSC Rostelecom** (telecommunications company)
- **PJSC RusHydro** (hydroelectricity company)
- **PJSC Transneft** (petroleum-related pipeline manager)
- **Sberbank** (financial institution; also subject to the Russia-related CAPTA Directive)

Russia-Related General Licenses

To minimize unintended consequences on third parties, OFAC concurrently issued eight general licenses authorizing certain transactions related to the following:

- international organizations and entities (General License 5)
- agricultural and medical commodities and the COVID-19 pandemic (General License 6)
- overflight payments, emergency landings, and air ambulance services (General License 7)
- energy-related transactions involving certain sanctioned banks and their 50% owned subsidiaries (General License 8)
- dealings in certain debt or equity (General License 9)
- derivative contracts (General License 10)
- the wind down of transactions involving Otkritie, Sovcombank, VTB Bank, and their 50% owned subsidiaries (General License 11, expires March 26, 2022)
- the rejection (rather than blocking) of unauthorized transactions involving the above-referenced banks and related entities (General License 12, expires March 26, 2022)

Sanctions on Russian Elites and Their Families

In addition, under EO 14024, OFAC also designated as SDNs certain influential Russians in Putin's inner circle and in elite positions of power within the Russian state, whom the U.S. government believes enrich themselves from their positions of power and government access. Certain of these individuals were previously designated as SDNs, and thus, already subject to U.S. sanctions.

- **Sergei Sergeevich Ivanov**, current CEO of Russian state-owned diamond mining company Alrosa and a board member of Gazprombank, and his father **Sergei Borisovich Ivanov**, Special Presidential Representative for Environmental Protection, Ecology, and Transport and reportedly one of Putin's closest allies
- **Andrey Patrushev**, who served in leadership roles at Gazprom Neft and is employed in Russia's energy sector, and his father **Nikolai Platonovich Patrushev**, Secretary of the Russian Federation Security Council and a longtime close associate of Putin
- **Ivan Igorevich Sechin**, reportedly a deputy head of a department at Rosneft, and his father **Igor Ivanovich Sechin**, CEO, Chairman of the Management Board, and Deputy Chairman of the Board of Directors of Rosneft
- **Alexander Aleksandrovich Vedyakhin**, First Deputy Chairman of the Executive Board of Sberbank
- **Andrey Sergeyevich Puchkov**, high-ranking VTB Bank executive with interests beyond VTB, including Moscow-based real estate companies **LLC Atlant S** and **LLC Inspira Invest A**, which have been designated for their ties to Puchkov
- **Yuriy Alekseyevich Soloviev**, high-ranking VTB Bank executive, and his wife **Galina Olegovna Ulyutina**, who was designated for being the spouse of Soloviev

NEW EXPORT CONTROLS ON RUSSIA

BIS issued a rule that includes major new restrictions in the Export Administration Regulations (EAR), which the White House says will cut off more than half of Russia's high-tech imports. The goal of these new restrictions is to deny Russia access to "high-tech imports, restricting Russia's access to vital technological inputs, atrophying its industrial base, and undercutting Russia's strategic ambitions to exert influence on the world stage."

First, the rule imposes a new license requirement for all exports, reexports, and transfers (in-country) of items covered by Export Control Classification Numbers (ECCNs) in Categories 3-9 of the Commerce Control List (CCL), including new controls on microelectronics, telecommunications items, sensors, navigation equipment, avionics, marine equipment, and civil aircraft components. While this new licensing requirement is expansive, it does not cover deemed exports or deemed reexports. Additionally, the following license exceptions remain available: License Exception TMP for exports for use by the news media, GOV for government activities, TSU for software updates to civil end users that are subsidiaries of, or joint ventures with, companies headquartered in the United States or our partner countries; BAG for personal baggage (except firearms and ammunition), AVS for aircraft, ENC for encryption products (except for exports to Russian government end users or state-owned enterprises), and CCD for consumer communication devices (except for government end

users and certain prohibited Russian officials).

Second, the rule applies a policy of denial for nearly all license applications for exports, reexports, or transfers within Russia. Exports, reexports, and transfers of items for flight and maritime safety, humanitarian needs, government space cooperation, specified Western subsidiaries and joint ventures, companies headquartered in Country Groups A:5 and A:6 to support civil telecommunications infrastructure, and government-to-government activities will be subject to a case-by-case review to "minimize unintended consequences."

Third, the rule expands existing restrictions on Russian military end uses and military end users (MEU) to cover all items subject to the EAR, except for food and medicine designated as EAR99 and mass market items, as long as they are not for the Russian government end users or state-owned enterprises. Previously, MEU restrictions for Russia were limited to a much smaller subset of U.S. products.

Fourth, the rule adds two new Foreign Direct Product (FDP) rules specific to all of Russia (the "Russia FDP rule") and Russian military end users (the "Russia-MEU FDP rule"). Certain foreign-manufactured products can be "subject to the EAR" and trigger licensing requirements if the foreign-manufactured items are the direct products of U.S. technology or software, or a complete plant or any major component of a plant made from U.S. technology. In most cases, the foreign direct product rule is limited in scope, requiring that both the U.S. technology or software as well as the final foreign-manufactured products be controlled for "national security" reasons under the EAR, a fairly small universe of products and technology that does not include, for example, smartphones, mass market chipsets, and similar consumer products. The Russia FDP and the Russia-MEU FDP rules are much broader in scope.

- The Russia FDP rule is a country-wide restriction that controls foreign-produced items that are either (1) the direct product of U.S.-origin software or technology specified in any ECCN in product groups D or E in Categories 3-9 of the CCL; or (2) produced by plants or major components of plants that are the direct product of the above-specified U.S.-origin software or technology. The Russia FDP rule applies when there is knowledge that the foreign-produced item is destined to Russia or will be incorporated into or used in the production or development of any part, component, or equipment produced in or destined to Russia. Importantly, the Russia FDP does not apply to foreign-produced items that would be designated as EAR99 (the lowest level of control) if they were in the United States. Items controlled by the new Russia FDP rule also are eligible for the license exceptions noted above.
- The broader Russia-MEU FDP rule controls foreign-produced items that are either (1) the direct product of any technology or software that is subject to the EAR and specified in any product group D or E ECCN on the CCL; or (2) produced by plants or major components that are the direct product of any U.S.-origin technology or software that is specified in any product group D or E ECCN on the CCL. These items require a license to Russian military end users (e.g., where an entity with a footnote 3 designation on the Entity List is a party to the transaction, as explained below), or if there is knowledge that the item will be incorporated into or used in the production or development of any part, component, or equipment produced, purchased, or ordered by a Russian military end user.

The new measures provide an exception to the Russia and Russia-MEU FDP rules, along with the *de minimus* calculation rules, to certain partner countries that have adopted or plan to adopt similar measures (currently, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom).

Fifth, the rule adds a new footnote (footnote 3) to the Entity List for Russian military end users. With the new changes, 49 entities on the Entity List now have a footnote 3 designation. Accordingly, a license is now required to export, reexport, or transfer (in-country) all items subject to the EAR (including foreign-produced items under the Russia-MEU FDP rule) to footnote 3 designated entities, with limited exceptions.

Sixth, except as noted above, the rule eliminates EAR license exceptions for exports, reexports, and transfers to Russia.

Seventh, the rule makes changes to the EAR to implement the new embargo (with limited exceptions for food and medicine and certain software for Internet-based personal communications) on Russia's Donetsk and Luhansk's regions.

SANCTIONS ON BELARUS

In addition to the new measures on Russia, OFAC also imposed additional sanctions on Belarus.

Sanctions Against Belarusian State-Owned Banks

OFAC designated the following two Belarusian state-owned financial institutions as SDNs pursuant to EO 14038, as well as two subsidiaries:

- **Belarussian Bank of Development and Reconstruction Belinvestbank JSC** (Belinvestbank), as well as the real estate firm **LLC Belinvest-Engineering** and financial leasing company **CJSC Belbizneslizing**, for their ties to Belinvestbank
- **Bank Dabrabyt JSC**

In addition, OFAC issued Belarus General License 6 and General License 7 to authorize certain transactions related to official business of the U.S. government and international organizations and entities, respectively.

Additional Sanctions on Belarusian Defense and Security Sector and Lukashenka's Inner Circle

OFAC expanded upon its December 2021 designations related to the Belarusian defense industry, which is closely linked to Russia, by designating the following Belarusian entities and individuals as SDNs:

- **Minsk Wheeled Tractor Plant (MZKT)**, a state-owned enterprise considered to be the flagship of the Belarusian military-industrial complex

- **Aliaksei Ivanavich Rymasheuski** and **Aliaksandr Piatrovich Vetsianeovich**, senior executives of MZKT
- **State Authority for Military Industry of the Republic of Belarus (SAMI)**, a government agency tasked with developing, coordinating, and modernizing the defense industry for the Belarusian Armed Forces
- **Dmitry Aleksandrovich Pantus** and **Viachaslau Yevgenyevich Rassalai**, the Chairman and a Deputy Chairman of SAMI respectively
- **State Owned Foreign Trade Unitary Enterprise Belspetsvneshtekhnika (BSVT)**, exporter of high-tech products and military technologies
- **OJSC KB Radar-Managing Company Holding Radar System (KB Radar)**, a leading defense organization under SAMI's umbrella
- **JSC 558 Aircraft Repair Plant (558 ARP)**, developer and manufacturer of aircraft protection systems
- **PJSC Integral (Integral)**, a state-owned enterprise that produces semiconductors for military end-users
- **Industrial-Commercial Private Unitary Enterprise Minotor-Service**, producer of armored vehicles used by the Belarusian Armed Forces
- **OOO Oboronnye Initiativy**, a defense company specializing in electronic warfare equipment
- **OKB TSP Scientific Production Limited Liability Company**, producer of a surface-to-air missile system
- **LLC Synesis**, a security company with connections to the Ministry of Internal Affairs
- **Aliaksandr Yauhenavich Shatrou**, owner and CEO of Synesis
- **Viktor Gennadievich Khrenin**, Belarusian Minister of Defense
- **Aleksandr Grigorievich Volfovich**, State Secretary of the Security Council of Belarus
- **Aliaksandr Mikalaevich Zaitsau**, a former Belarusian government official who maintains close ties to the Lukashenka family, as well as Zaitsau's mining company **OOO Sokhra**

In the days leading up to the imposition of the sanctions and export controls discussed above, President Biden imposed other sanctions on Russia for its actions immediately prior to its full-scale invasion of Ukraine. We wrote about those sanctions measures in previous Alerts: *Biden Administration Sanctions Donetsk, Luhansk Regions of Ukraine* and *Biden Administration Imposes "First Tranche" of Sanctions in Response to Russian Actions in Ukraine*.

Our team has unparalleled experience and expertise representing a broad range of U.S. and multinational clients in complex sanctions and export control matters. Should you have any questions about this alert or any national security-related matters, please do not hesitate to contact one of the attorneys listed on this alert.