

## U.S. Export Controls and Sanctions Update: Russia, Belarus and Ukraine

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March 15, 2022

Broad U.S. export controls and sanctions recently imposed on Russia, Belarus and specific areas of Ukraine may impact companies with international exposure to these regions, including but not limited to industries such as defense, aerospace, energy and finance. Generally, these U.S. export controls and sanctions:

1. Impose new export license requirements;
2. Add parties to export-restrictive export control and sanctions lists of the U.S.; and
3. Prohibit transactions with certain individuals and entities, including financial institutions.

On February 21, 2022, Russian President Vladimir Putin recognized two regions of Ukraine, Luhansk People's Republic (**LNR**) and the Donetsk People's Republic (**DNR**), as independent states, indicating Russia would send military forces to the regions for "peacekeeping" operations. In response President Biden issued **Executive Order (EO 14065)** imposing sanctions on the two regions. EO 14065 further expands the scope of the multiple pre-existing executive orders relating to Russia and Ukraine generally stemming from Russia's prior invasion of the Crimean Peninsula of Ukraine in 2014.

Subsequently, the Russian Federation Council authorized the use of military force in Luhansk and Donetsk. Then, on February 24, 2022, Vladimir Putin announced a special military operation in Ukraine, instigating the largest military attack on a sovereign state in Europe since World War II. As a result, on March 8, 2022, President Biden further issued **Executive Order (EO 14066)** prohibiting: (a) U.S. importation of oil, natural gas, and coal of Russian origin, and (b) new investments in the Russian energy sector.

In response to the Russian invasion of Ukraine, the U.S. Bureau of Industry and Security (**BIS**), one of the primary U.S. agencies charged with administering and enforcing U.S. export controls (**U.S. Export Controls**) under the Export Administration Regulations (**EAR**), implemented the following restrictions over the export and reexport of U.S. origin items (which includes U.S. origin equipment, software and technology, as well as foreign-direct products manufactured from U.S.-origin equipment, software and technology):

- **Implementation of Export Control Restrictions Against Russia Under the EAR:** Published on March 3, 2022, and retroactively effective February 24, 2022, these new U.S. Export Control regulations issued by the BIS: (a) impose broad new export license requirements under the EAR for Russia with a general policy of presumed denial, (b) add two new foreign "direct product" rules (**FDPRs**) specific to Russia and Russian "military end-users," (c) significantly restrict the use of EAR export license exceptions for Russia, (d) expand the preexisting Russian "military end-use" and Russian "military end-user" export license control scope to generally impose export controls on all items "subject to the EAR" (e. U.S. origin items), (e) transfer 45 Russian entities from the Military End-User List (**MEU List**) to the more export-restrictive BIS Entity List with expanded export license requirements on all "items subject to the EAR" (including related foreign-produced items under the newly augmented FDPRs), (f) add two new Russian entities to the export-restrictive BIS Entity List and implement more export restrictions on two Russian entities currently on the BIS Entity List, and (g) impose comprehensive export, reexport and transfer (in-country) restrictions for the DNR and LNR regions of Ukraine.

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- **Imposition of Export Control Restrictions Against Belarus Under the EAR:** Published on March 8, 2022, and retroactively effective March 2, 2022, these new U.S. Export Control regulations issued by the BIS: (a) impose new export license requirements under the EAR for Belarus with a general policy of presumed denial, (b) revise the two preexisting FDPRs that are specific to Russia and Russian "military end-users" to make the same also applicable to Belarus and Belarusian "military end-users," (c) significantly restrict the use of EAR export license exceptions for Belarus, (d) expand the preexisting "military end-use" and "military end-user" export license control scope to include Belarus and generally impose export controls on all items "subject to the EAR" (e. U.S. origin items), (e) add two new Belarusian entities to the export-restrictive BIS Entity List as Belarus "military end-users," and (f) impose further export license requirements for nuclear nonproliferation items for exports and reexport to Belarus.
- **Expansion of Export Control Restrictions Against the Russian Industry Sector Under the EAR:** Published on March 8, 2022, and retroactively effective March 3, 2022, these regulations issued by the BIS add new prohibitions targeting the Russian industry oil refinery sector to limit revenue that could support the military capabilities of Russia.
- **Further Imposition of Export Control Restrictions Against Russia with the Addition of Certain Entities to the Entity List:** Published on March 9, 2022, and retroactively effective March 3, 2022, these additions by the BIS add 91 new entities to the Entity List under the destinations of Belize, Estonia, Kazakhstan, Latvia, Malta, Russia, Singapore, Slovakia, Spain and the United Kingdom.
- **Addition to the List of Countries Excluded from Certain Export License Requirements under the EAR:** Published on March 10, 2022, and retroactively effective March 4, 2022, this addition by the BIS adds South Korea to the list of those specified countries that are excluded from the new requirements imposed on foreign-produced items under these newly implemented U.S. Export Controls.

As to U.S. Export Controls under the EAR, U.S.-origin items subject to the EAR but not listed on the Commerce Control List (*i.e.*, EAR99) may generally be exported or reexported to Russia, so long as those EAR99 items are not exported or reexported to, or generally incorporated into an item destined for, a Russia-Military End User on the Entity List; however, EAR99 items will require an export license in any event for export to Crimea, DNR, and LNR, except for permitted (a) food and medicine designated as EAR99 and (b) software necessary to enable the exchange of personal communications over the internet.

In addition to U.S. Export Controls, the U.S. Office of Foreign Asset Controls (**OFAC**), which is the U.S. agency charged with administering and enforcing U.S. sanctions (**U.S. Sanctions**), implemented the following additional U.S. Sanctions respecting transactions involving Russia, Belarus, and Ukraine:

- **Issuance of Executive Order Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to Continued Russian Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine; Issuance of Ukraine-related General Licenses:** Issued and effective on February 21, 2022, EO 14065 prohibits transactions with the DNR and LNR, including investments, imports to the U.S., and exports from the U.S., the related General Licenses issued by OFAC authorize certain transactions in these regions within Ukraine.
- **Russia-related Designations; Issuance of Russia-related Directive 1A and General Licenses:** Published and effective on February 22, 2022, this Directive 1A issued by OFAC under the previously issued EO 14024 adds the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian

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Federation to the Specially Designated Nationals List (SDN List), prohibiting U.S. financial institutions from participating in the primary and secondary bond market with, and lending funds to these Russian financial institutions; the related General Licenses Nos. 2 and 3 issued by OFAC now permits specified transactions with these Russian financial institutions through March 1 and 24, 2022, respectively.

- **PEESA Designations; Issuance of Russia-related General License 4:** Published and effective on February 23, 2022, these targeted Russia-related SDN designations by OFAC block property of, and prohibit U.S. transactions with, German national Matthias Warnig and German entity Nord Stream 2 AG; the related General License 4 issued by OFAC authorizes the wind down of transactions involving Nord Stream 2 AG through March 2, 2022.
- **Russia-related Designations; Belarus Designations; Issuance of Russia-related Directive 2 and 3; Issuance of Russia-related and Belarus General Licenses:** Published and effective on February 24, 2022: (a) Directive 2 issued by OFAC under the previously issued EO 14024 prohibits U.S. financial institutions from opening or maintaining accounts, or processing transactions with specified Russian financial institutions now designated on the SDN List, and (b) Directive 3 issued by OFAC under EO 14024 prohibits U.S. financial institutions from issuing new debt or equity of specified Russian and Belarusian entities now designated on the SDN List; the related General Licenses issued by OFAC authorize select transactions with certain of these Russian and Belarusian financial institutions and entities otherwise prohibited by EO 14024.
- **Russia-related Designations:** Published and effective on February 25, 2022, these targeted designations by OFAC on its SDN List block U.S. property interests of, and prohibit U.S. transactions with Russian nationals Valery Gerasimov, Sergei Viktorovich Lavrov, Vladimir Vladimirovich Putin, and Sergei Shoigu and their majority-owned affiliates.
- **Russia-related Designations; Issuance of Russia-related Directive 4 and Russia-related General License 8A:** Published and effective on February 28, 2022, Directive 4 issued by OFAC under the previously issued April 15, 2021, Presidential Executive Order 14024 (EO 14024) now prohibits any foreign exchange or other transactions with Central Bank of the Russian Federation, National Wealth Fund of the Russian Federation, or Ministry of Finance of the Russian Federation; General License 8A issued by OFAC now permits certain transactions with specified Russian financial institutions through June 24, 2022, that were otherwise prohibited by the previously issued EO 14024.
- **Issuance of Russian Harmful Foreign Activities Sanctions Regulations:** Published and effective on March 1, 2022, these targeted U.S. Sanctions by OFAC add regulations further implementing EO 14024 related to specified harmful foreign activities conducted by the Russian Federation Government.
- **Issuance of Russia-related General Licenses:** Published and effective on March 2, 2022, OFAC's issuance of these new Russia-related General Licenses 9A, 10A, 13, and 14 authorize the clearing of select debt, equity and other financial transactions with specified Russian financial institutions and their majority-owned affiliates through May 25, 2022, or June 24, 2022, depending on the specific transaction, that were otherwise prohibited by recently issued OFAC Directive 4.
- **Russia-related Designations; Issuance of Russia-related General License:** Published and effective on March 3, 2022, these targeted designations by OFAC on its SDN List block U.S. property interests of, and prohibit U.S. transactions with, newly listed Russian nationals and entities and their majority-owned affiliates; the related General License 15 issued by OFAC authorizes select transactions involving certain blocked property of Russian entities

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majority-owned by Russian national Alisher Burhanovich Usmanov.

- **Issuance of new Russia-related Executive Order and related General License 16:** Published on March 8, 2022, EO 14066 prohibits: (a) U.S. importation of oil, natural gas, and coal of Russian origin, and (b) any new investments in the Russian energy sector; the related General License 16 issued by OFAC authorizes those transactions entered into before March 8, 2022, until April 22, 2022.

It should be underscored that, as of the release date of this U.S. Export Controls and Sanctions Alert, OFAC has yet to implement a comprehensive Russia Sanctions Program or Belarus Sanctions Program. Rather, OFAC has imposed targeted U.S. Sanctions on select Russian and Belarusian State-Owned Enterprises, industry sectors (*i.e.*, defense, finance, energy), and designated private entities and individuals. Some publicly recognized companies have unilaterally ceased engaging in Russian (and Belarusian) transactions, notwithstanding the fact that current U.S. Sanctions do not prohibit those transactions. Hence, a determination of whether a particular transaction or the parties thereto are subject to U.S. Sanctions must be based upon a specific analysis of all transaction facts relevant to the targeted U.S. Sanctions currently in effect for Russia and Belarus.

In general, parties with business interests in or transactions involving Russia, Ukraine, Belarus and surrounding countries such as Poland are strongly advised to consider:

1. the dynamically evolving nature of these U.S. Export Controls and U.S. Sanctions;
2. the complex interplay of the coordinated restrictions between these U.S. Export Control and U.S. Sanction regimes;
3. the difficulty in assessing and maintaining legal compliance for multi-step international transactions subject to both (i) these U.S. Export Controls and Sanctions, and (ii) the newly emerging foreign laws governing this area; and
4. the very time-sensitive and transaction-specific nature of whether a proposed international transaction is permitted under these laws.

The **Miller Canfield Export Controls and Sanctions Practice Group** possesses the depth of knowledge and experience necessary to successfully navigate you and your international transaction through these U.S. responses to the Russian invasion of Ukraine and compliance with these U.S. Export Controls and U.S. Sanctions. Please contact the authors to discuss these matters further.

*For a discussion on the recent actions of the U.S. Federal Aviation Administration (FAA) and European Council restricting airspace to Russian flights that were taken in response to the Russian invasion of Ukraine, **please see our previous alert.***