

United States Imposes More Sanctions to Block Russian Access to U.S. Banking System and U.S. Goods, Technology or Software

by Lawrence Ward, Dave Townsend, and T. Augustine Lo

On February 24, 25 and 28, the United States broadened its economic sanctions against Russia in response to its full-scale military invasion of Ukraine. As the Biden Administration had promised in recent weeks, in close cooperation with its major allies, the United States imposed further rounds of coordinated sanctions against the Russian Federation in reaction to this grave and violent expansion of hostilities. We summarize below some key provisions of these new U.S. sanctions.

The February 24 package added both economic sanctions that target the Russian financial services sector and vastly expanded export controls that will restrict Russia's access to U.S. goods, software, and technology. The February 25 measures placed asset blocking sanctions on Russian President Vladimir Putin, Foreign Minister Sergei Lavrov, Defense Minister Sergei Shoigu and a Russian general individually so that U.S. persons may not now engage in any transactions involving their blocked property interests. On February 28, OFAC expanded the sanctions to target the Russian Federation's Central Bank, National Wealth Fund, and Ministry of Finance. This new round of sanctions is on top of those imposed earlier last week, which we reported earlier [here](#). (We will also be issuing additional separate summaries of other U.S. sanctions measures that have been announced since February 25, keeping in mind that these U.S. sanctions-based responses to the invasion are still evolving and expanding quickly.)

Expanded U.S. Economic Sanctions Against Russian Financial Sector.

On February 24, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") significantly expanded the targeted sanctions against the Russian financial services sector. According to OFAC, this round of sanctions targets "all of Russia's largest financial institutions and the ability of state-owned and private entities to raise capital," affecting "nearly 80 percent of all banking assets in Russia." OFAC indicated that it had selected these particular Russian sanctions targets based on their likely impact on the Russian Government while trying to minimize potential collateral effects on the U.S. and allied economies. These new measures are based on OFAC Directives 2

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and 3 that the Biden Administration had issued on February 22 and 24, 2022, which are in addition to previous OFAC Directives that the Obama Administration had issued in 2014 that still remain in effect as amended.

OFAC issued its new Directive 2 on February 24, citing its authority under Executive Order (“EO”) 14024 of April 15, 2021 (“EO 14024 Directive 2”). EO 14024 had been the basis for OFAC’s expanded sanctions under EO 14024 Directive 1A (issued on February 22 and discussed [here](#)) against Russian sovereign debt. Under this new EO 14024 Directive 2, U.S. financial institutions are now prohibited from (1) opening or maintaining any correspondent account of payable-through account or (2) processing any transactions on behalf of targeted Russian owned financial institutions. OFAC is adding any Russian owned financial institutions targeted under this EO 14024 Directive 2 to its Correspondent Account and Payable-Through Account List (“CAPTA List”).

Under this new EO 14024 Directive 2 authority, OFAC imposed sanctions on Sberbank, the largest bank in Russia that is majority owned by the Russian Government, along with 25 Sberbank subsidiaries. Effective March 26, 2022, Sberbank and its 50% or more owned subsidiaries will no longer be able to process transactions using correspondent accounts or payable-through accounts at any U.S. banking institution, effectively preventing Sberbank and its designated affiliates from processing U.S. foreign exchange transactions. However, even before this designation under EO 14024 Directive 2, OFAC had already imposed other sanctions against Sberbank under EO 13662 Directive 1, which OFAC issued in 2014 after Russia’s annexation of the Crimea region of Ukraine. As amended in September 2017, that EO 13662 Directive 1 prohibited transactions by U.S. persons with Sberbank involving any new equity or debt financing exceeding 14 days maturity. This latest prohibition under OFAC’s EO 14024 Directive 2 has far broader consequences because it disrupts the ability of Russian account holders to make or receive international wire transfers for all cross-border transactions involving any part of the U.S. financial system unless OFAC grants a license.

In addition, OFAC designated several other major Russian banks for asset blocking sanctions under EO 14024, adding them to OFAC’s List of Specially Designated Nationals and Blocked Persons (“SDN List”). As a consequence, a U.S. person may not engage in any transaction involving the property interests of those named Russian banks or the property interests of any 50% or greater owned subsidiaries even if those subsidiaries are not themselves named on the SDN List. Moreover, any property belonging to these targeted Russian financial institutions held by U.S. persons, such as deposits at U.S. banking institutions, are now “blocked” and cannot be released to the sanctioned Russian banks or any other party unless authorized by OFAC. OFAC added the following Russian owned banks to the SDN List along with some of their domestic and foreign subsidiaries:

- VTB Bank and 20 subsidiaries, which hold about 20% of banking assets in Russia;
- Otkritie and 12 subsidiaries, which constitute Russia’ seventh largest banking institution;
- Sovcombank and 22 subsidiaries, which constitute Russia’s ninth largest banking institution; and

- Novikombank, a state-owned banking institution that provides financial services to the Russian defense sector.

OFAC also issued Directive 3 under EO 14024 (“EO 14024 Directive 3”) on February 24 to prohibit U.S. persons from engaging in transactions that involve the new equity or new debt of designated Russian entities that exceed 14 days maturity.¹ This prohibition significantly curtails the ability of the listed Russian companies to raise capital through capital markets transactions. EO 14024 Directive 3 names 13 Russian financial institutions as the initial set of entities subject to this new prohibition, to take effect on March 26, 2022:

• Credit Bank of Moscow	• Sovcomflot
• Gazprombank	• Russian Railways
• Alfa-Bank	• Alrosa
• Russian Agricultural Bank	• Gazprom
• Gazprom Neft	• Sberbank
• Rostelecom	• Transneft
• Rushydro	

Six of these Russian firms had already been subject to debt or equity restrictions under one or more of the EO 13662 Directives issued in 2014. This overlap includes Sberbank, which OFAC simultaneously designated for the CAPTA List sanctions under EO 14024 Directive 2 as described above.

However, given the potentially broad effect of these bank-related sanctions, to alleviate humanitarian, safety, and other concerns, OFAC concurrently issued eight general licenses (“GLs”) to allow certain categories of transactions to continue notwithstanding the sanctions imposed on February 24, including transactions involving international organizations; agricultural and medical commodities; aviation safety; energy; certain debts and equity; derivative contracts; and the wind-down and rejection of transactions involving persons subject to the SDN List.

In addition to the sanctions targeting entities in the Russian financial services sector, OFAC also added to its SDN List ten prominent and wealthy Russian individuals who are connected to the Russian Government and 24 Belarusian entities and individuals for their roles in supporting and enabling Russia’s invasion of Ukraine. Please see [here](#) for the complete list of the entities and individuals added to the SDN List and that became subject to OFAC’s EO 14024 Directives 2 and 3 through OFAC’s February 24 sanctions designations.

On February 25, OFAC also designated Russian President Vladimir Putin, Foreign Minister Sergei Lavrov, Defense Minister Sergei Shoigu, and Chief of the General Staff Valery Gerasimov for individual asset blocking sanctions and added them to the SDN List. OFAC rarely designates heads of state personally for sanctions on the SDN List, so this latest move signals the U.S. Government’s vehement opposition to the Russian Government’s actions in Ukraine and to these sanctioned officials’ personal roles in the invasion. For information about these additional designations to the SDN List, please see

here.

On February 28, following reports of intense combat in Ukrainian cities, OFAC also issued Directive 4 under EO 14024 (“EO 14024 Directive 4”), which prohibits U.S. persons from engaging in transactions that involve the Russian Federation’s Central Bank, National Wealth Fund, and Ministry of Finance. This prohibition includes any transfer of assets to these entities and foreign exchange transactions on their behalf. This significant expansion of U.S. sanctions effectively freezes the Russian Government’s assets held by U.S. financial institutions (including the Federal Reserve) and will prevent the Russian Government from using those assets to mitigate the economic impact from the sanctions imposed by the United States and its allies. (Other leading nations and their central banks have taken similar steps to block the Russian Central Bank’s access to assets held by those institutions so as to apply these sanctions on a multilateral basis to enhance the financial pressure on the Russian government to end its invasion of Ukraine.)

Allied Actions on Russian Access to SWIFT Interbank System.

In the weeks leading up to Russia’s full-scale invasion of Ukraine, there has been widespread discussion whether the United States and its allies would cut off Russia from the international SWIFT interbank messaging system as a sanctions measure. Such a step would make it very onerous for Russian financial institutions to engage in international fund transfers. When the President Biden announced sanctions on February 24 in the wake of the Russian invasion, he did not announce such a move. During a White House press conference, President Biden indicated that certain of the European allies were not yet prepared to take that step. However, on February 26, after additional consultations among the European allies, the United States and EU governments announced a plan to cut off certain Russian financial institutions, but not the entire Russian banking sector, from SWIFT.

Some analysts had suggested that a number of European leaders initially opposed sanctions involving SWIFT because, although such a move could potentially inflict the virtual severance of Russian banks from the global financial system, that degree of economic pain in Russia might then trigger a Russian counter-measure to reduce or even cut off oil and gas supplies to Europe. Russia supplies roughly one-quarter of all crude oil and almost 40% of all natural gas to the European Union. European leaders probably remain concerned that any significant Russian reduction or cut-off of these energy supplies at a time of soaring energy prices could add to the already-severe inflation across Europe and might even trigger an economic recession just as Europe is seeking to recover from the pandemic. Thus, the partial cut-off from SWIFT appears to be designed to allow Russian oil and gas exports (and payments by EU customers) to continue, at least for now.

Russian Export Pipeline Sanctions.

One of Europe’s largest energy projects is the Nord Stream 2 (“NS2”) natural gas export pipeline running under the Baltic Sea between Russia and Germany. Nord Stream 2 AG

("NS2 AG"), a Swiss entity, built the pipeline and would be its operator if operations commence. NS2 AG is wholly owned by the Russian state-owned natural gas company, Gazprom, and NS2 AG had already been named by the U.S. State Department in a May 2021 report that was required under the Protecting Europe's Energy Security Act ("PEESA"). Under EO 14039 of August 20, 2021, NS2 AG would have been subject to asset blocking sanctions by virtue of that May 2021 report, but the Biden Administration had decided to waive those sanctions from taking effect. The Obama, Trump and Biden Administrations had opposed the NS2 pipeline because it would bypass the Ukrainian natural gas pipeline system, and thus further weaken Ukraine's struggling economy and would, at the same time, lead to further German and European energy dependence on Russia, allowing Russia to exert substantial geopolitical leverage on Europe that could weaken the military alliance of the North Atlantic Treaty Organization ("NATO"). In spite of opposition in principle to the NS2 pipeline project, U.S. Secretary of State Anthony Blinken waived that specific sanctions designation in May 2021, apparently at the request of the German government, which still strongly supported the project. That waiver decision then triggered significant criticism from members of the U.S. Congress, notably Senator Ted Cruz of Texas, who sponsored legislative proposals to compel U.S. sanctions against NS2 AG.

Now, with Russian forces actually fighting inside Ukraine, the Biden Administration has reversed itself on the May 2021 NS2 AG waiver. Citing Russia's recognition of the self-proclaimed separatist republics in Ukraine's eastern Donetsk and Luhansk regions, on February 23, Secretary Blinken terminated his previous waiver and allowed the PEESA-based SDN List sanctions against NS2 AG and its chief executive officer to take effect. OFAC also issued a General License 4 to allow wind-down of transaction involving NS2 AG until 12:01 am Eastern U.S. Time on March 2, 2022. Germany concurrently announced its own indefinite suspension of certification of the NS2 pipeline that would be required for its operation to commence. Thus, for now, full U.S. SDN List-based sanctions will be imposed on NS2 AG and its CEO and Germany will not allow the NS2 pipeline to become operational, which will inflict financial losses on NS2 AG and its owner Gazprom, who would supply the gas for that pipeline.

Expanded U.S. Export Controls Against Russia.

The Department of Commerce and its Bureau of Industry and Security ("BIS") significantly expanded the scope of goods, software, and technology that will require an export license to Russia under the U.S. Export Administration Regulations ("EAR") which are codified under the newly created EAR Section 746.8 and amendments to conform various EAR sections to the new requirements. These changes will result in many more transactions to Russia being subject to export license requirements and, moreover, many of those transactions will now be mostly subject to a BIS policy of denial for the issuance of such export licenses. These changes to the EAR also became effective as of February 24.

Exports from the United States and of Certain U.S. Items.

BIS will now impose a license requirement to export or reexport to Russia or transfer

within Russia any goods, software or technology that are listed under any Export Control Classification Number (“ECCN”) in any of the following categories of the EAR’s Commerce Control List (“CCL”):

Category 3: Electronics

Category 4: Computers

Category 5: Telecommunications and Information Security

Category 6: Sensors and Lasers

Category 7: Navigation and Avionics

Category 8: Marine

Category 9: Aerospace and Propulsion

This new EAR license requirement for exports or reexports to Russia and transfers within Russia covers all goods exported from or through U.S. territory, U.S.-origin items wherever located, and foreign-made items that have controlled U.S. content that exceeds the *de minimis* threshold (generally 25% of the item’s value). As examples, this rule change will expand export license requirements for Russia to include even low-technology electronic components, consumer computers, basic telecommunications equipment, certain lasers and sensors, navigation equipment, commercial aircraft, and parts and components of commercial aircraft. In its public notice, BIS acknowledges the potential impact on civil aviation for items that previously were not controlled for exports to Russia. However, BIS believes these controls are now necessary to deny the Russian defense sector access to these items.

As a result of these changes, many U.S. and non-U.S. companies will need to apply for BIS export licenses to send items to Russia (or even to transfer items that are already in Russia). Moreover, BIS has stated such applications generally will be subject to a policy of denial. However, BIS will review applications on a more lenient “case-by-case basis” for items relevant to flight safety, maritime safety, humanitarian needs, space cooperation, certain civil telecommunications infrastructure, government-to-government activities, and operations of companies that are subsidiaries or joint ventures of enterprises based in the United States or certain allied countries. As part of this “case-by-case” review, BIS will focus on whether such transactions would benefit the Russian government or Russian defense sector (which are both disfavored under this new licensing policy).

Foreign Direct Products of U.S. Software or Technology.

BIS also created a special foreign direct product (“FDP”) rule that will apply just to Russia (the “Russia FDP Rule”). Before issuing this Russia FDP Rule, the EAR already had other FDP rules that covered foreign-made products that were made by using certain controlled U.S.-origin software or technology or by using production equipment that had been made through the use of certain controlled U.S.-origin software or technology.² The Russia FDP Rule now triggers a new license requirement in either of two scenarios:

(1) If the foreign-made product is classified under an ECCN (i.e., not EAR99), and if it was a direct product of any technology or software controlled under CCL Categories 3

through 9; or

(2) If the foreign-made product is classified under an ECCN (i.e., not EAR99), and if it was created from equipment that is a direct product of technology or software controlled under CCL Categories 3 through 9.

The Russia FDP Rule applies only if the exporter or re-exporter knows or has reason to know based on the circumstances that the foreign-produced item's ultimate destination will be Russia, or if that foreign-produced item will be incorporated or used to produce an item in Russia or in a third country before re-exportation to Russia that is classifiable under CCL Categories 3 through 9. Moreover, the EAR defines "direct product" to mean the "immediate product (including processes and services) produced directly by the use of technology or software," which imposes some limits to the otherwise expansive scope of the Russia FDP Rule.

The Russia FDP Rule is BIS's most significant expansion of its FDP rules and imposes EAR licensing requirements for non-U.S. companies that rely on basic software or technology from the United States, or that use production equipment that had been made with U.S. software or technology, to produce items destined, directly or indirectly, for Russia. To comply with the Russia FDP Rule, companies must exercise considerable vigilance about whether any U.S.-origin software or technology is used to produce foreign-made products or whether any U.S.-origin software or technology is used to make production or testing equipment necessary for making items that will be destined to Russia. If that is the case, companies must then consider whether such U.S.-origin software or technology falls under the scope of software or technology that is subject to the Russia FDP Rule.

The Russia FDP Rule thus captures a considerable volume of foreign-made electronic components, computers, telecommunications equipment, production equipment, encryption software, aircraft parts, and many other items that could be supplied from other nations to Russia. As context and perhaps by way of precedent, BIS had created a specific FDP rule for Huawei Technologies Co., Ltd ("Huawei") in the People's Republic of China. Prior to imposing the Russia FDP Rule, U.S. Government officials had highlighted the success of that focused use of its FDP rule in obstructing Huawei's access to crucial inputs for its 5G and other product lines because of the prominence of U.S.-origin software and technology in the production of numerous parts and components around the world. The U.S. Government had previously warned that similar punitive action could be taken with respect to Russian companies in the event of hostilities against Ukraine.

New Russian Military End User FDP Rule.

In addition to the Russia FDP Rule above, BIS also issued another new FDP rule that vastly expands the scope of foreign-made items that will now be considered "subject to the EAR" and denied to certain sanctioned Russian military end users ("MEUs"). BIS is implementing this separate FDP rule through footnote 3 to the Entity List, which BIS applies to designated Russian MEUs through a notation in the sanctioned MEUs' entries

on the Entity List. BIS calls this new FDP rule the “Russia Military End User FDP Rule” (“Russia MEU FDP Rule”) because it targets specific known Russian MEUs.

In particular, the Russia MEU FDP Rule imposes a license requirement for exports to any of these designated sanctioned Russian entities of a foreign-made item that is a direct product of technology or software controlled under *any* of the 10 CCL categories. Likewise, the Russia MEU FDP Rule adds a license requirement for exports to these sanctioned Russian entities of any foreign-made item that is created from production equipment that is a direct product of controlled technology or software under *any* the 10 CCL categories. These license requirements apply if the exporter knows or has reason to know under the circumstances that the foreign-made product will be incorporated into or used in the production of an item that is produced, purchased, or ordered by a sanctioned Russian company on the Entity List with a Footnote 3 designation or if such a sanctioned Russian company is a transaction party (e.g., a purchaser, ultimate consignee, intermediate consignee, or end-user). The foreign-made item or production equipment must be a “direct product” of U.S.-origin software or technology controlled under an ECCN.

Unlike the Russia FDP Rule above, the scope of the new Russia MEU FDP Rule includes even EAR99 foreign-produced products. There is a limited exemption for foreign-made EAR99 food, EAR99 medicine, and certain mass market encryption items. However, even that limited exemption would not apply in the case of any Russian Government entities or Russian state-owned enterprises (“SOEs”). Because the new Russia MEU FDP Rule has such a wide sweep, it could cover even very basic products made outside of the United States, such as EAR99 electronics or consumer goods, software, or other items, so long as their production or related production equipment were products of ECCN controlled U.S.-origin software or technology.

Relatedly, BIS made conforming changes to the MEU Rule in EAR Section 744.21 with respect to Russia. As amended, the MEU Rule covers all items subject to the EAR for Russian MEUs, except EAR99 food, EAR99 medicine, and certain mass market items. However, like the Russia MEU FDP Rule, this exception would not apply in the case of MEUs that are Russian Government entities or Russian SOEs.

Exclusions from FDP Rules for Certain Allies.

BIS excludes from the new Russian FDP rules described above any allies of the United States who, according to BIS, will be implementing their own strengthened export control measures on Russia. This means that foreign-produced items from those countries bound for Russia will not be deemed subject to the new Russia FDP Rule or Russia MEU FDP Rule requirements (but those countries presumably will now apply their own export regulations to the same items). As of February 24, the following countries’ foreign-made direct products will be exempt under either of these new Russian FDP provisions: Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxemburg, Malta, Netherlands, New Zealand, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

Russian Entity List Additions and Sanctioning of Military End Users.

In addition to the above expansions to the EAR, BIS moved 45 Russian entities from its Military End Users List to its Entity List, added two Russian entities to the Entity List, and amended two existing entries on the Entity List. With limited exceptions, no items “subject to the EAR” may be sent to these entities unless authorized by a BIS export license. Furthermore, BIS made all of these 49 Russian entities in the Russian defense sector subject to the new Russia MEU FDP Rule by adding a “footnote 3” designation next to each of their entries on the Entity List.

As a result of this action, with a few exceptions, unless licensed by BIS, U.S. and non-U.S. companies can no longer provide these Russian entities any goods, software, or technology that are sent from or through the United States, U.S.-origin items wherever located, or that contain more than *de minimis* amounts of controlled U.S.-content. Because these 49 sanctioned entities also are subject to the new Russia MEU FDP Rule, they also will be barred from receiving items that are made from certain U.S.-origin software or technology or made by using production equipment that had been made with such U.S. software or technology. This combined prohibition denies access by the sanctioned entities to a vastly broader array of items than is ordinarily the case for sanctioned entities on the Entity List (which already was quite broad). Any license applications by these 49 entities to mitigate the effect of the sanctions would be subject to BIS review under its policy of denial.

Codification of Luhansk and Donetsk Region Restrictions.

BIS also codified territorial embargoes under the EAR against the Luhansk region (“LHR”) and the Donetsk region (“DNR”), which we described earlier [here](#). Thus, under the EAR, unless licensed by BIS, all items subject to the EAR are prohibited from being exported to either the LHR or DNR except for EAR99 food, EAR99 medicine or certain software necessary for the functioning of personal communications over the internet that is widely available at no cost to the user. This BIS action places LHR and DNR on the same footing as the Crimea region of Ukraine that had already been similarly blocked off by BIS in 2014.

Conclusion.

As a result of these actions, both companies in the United States and many non-U.S. companies should consider whether any of their transactions with Russia or the occupied territories of Crimea, LHR or DNR in Ukraine are now subject to any of these new legal requirements or export restrictions. In addition, since the situation in Ukraine is still highly volatile with active combat still under way between the military forces of Ukraine and the Russian Federation, it seems likely that the U.S. Government will continue to adjust its economic sanctions and export control regimes in response to new developments, so all such companies should continue to monitor both the changing geopolitical news and further legal changes as they occur.

If you have any questions regarding this eUpdate, please contact the attorneys profiled

below. Dorsey's attorneys routinely counsel clients to address and mitigate the impact of U.S. economic sanctions, trade embargoes, export controls and other measures that affect cross-border transactions.

¹ OFAC had previously issued Directive 1 through 4 under EO 13662 in 2014 to impose sectoral sanctions on various Russian entities and individuals after Russia's annexation of the Crimea region of Ukraine (collectively, "EO 13662 Directives"). The latest OFAC sanctions imposed on February 24 also use the same terminology of sequentially numbered "Directives," but it is legally important to distinguish between the EO 13662 Directives from the latest EO 14024 Directives because they carry different consequences for the targeted Russian entities and individuals.

² The FDP rules reference "complete plant" or a "major component" of a complete plant that is used to make foreign-made items that are subject to the FDP rules. These terms refer to production equipment. For example, the EAR defines "major component" as "equipment" that is essential to the 'production' of an item, including testing 'equipment.'"