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Russia sanctions after one year: United States imposes new round of restrictions

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One year after Russia's invasion of Ukraine, the United States and its allies imposed a new round of sanctions targeting Russia's metal, mining, and banking sectors and signaled an increased focus on enforcement.

On February 24, 2023, the United States and its allies marked the one-year anniversary of Russia's invasion of Ukraine with a new round of sanctions and export control restrictions targeting Russia's economy and financial system. Consistent with the U.S. sanctions response from the outbreak of the conflict, the latest round of sanctions focused on Russia's banking sector and export-oriented industries –adding several major Russian financial institutions to the SDN List and targeting Russia's metal and mining sector. On the same day, the U.S. Department of Commerce, Bureau of Industry and Security (BIS) released new rules significantly expanding and modifying the export control restrictions applicable to Russia and Belarus, which may require exporters to re-examine their processes for product classification.

As the U.S. and allies continue to expand sanctions and trade restrictions on Russia, regulators have signaled an increased focus on enforcement and sanctions evasion. On March 3, 2023, the Office of Foreign Assets Control (OFAC), BIS, and Justice Department jointly released a compliance note urging financial institutions and other stakeholders to be "vigilant" in detecting and reporting sanctions evasion and reminding covered entities of their compliance obligations (the Compliance Note).[1] Notably, the Justice Department recently expanded its resources to prosecute potential violations: on March 2, the DOJ announced the appointment of "25 new prosecutors who will investigate and prosecute sanctions evasion, export control violations and similar economic crimes," as well as the appointment of the National Security Division's first-ever Chief Counsel for Corporate Enforcement.[2]

While the DOJ and regulators adopt a more proactive enforcement posture, compliance remains a challenge for persons subject to U.S. jurisdiction. As was highlighted in a recent report from the Treasury Department, the sanctions imposed on Russia are unprecedented in their scale, scope, and impact: since February 2022, OFAC has imposed full blocking sanctions on over 2,500 Russia-related targets, over 80% of Russia's banking sector by assets are under U.S. sanctions, and more than 1,000 foreign companies reportedly have ceased or curtailed their operations in Russia.[3] As the sanctions targeting Russia have evolved over the past year, stakeholders continue to adjust to the new normal.

New and expanded sanctions on Russian Federation

Designation of metal and mining sector

The round of sanctions announced on February 24 added the Russian metals and mining sector to the list of nearly a dozen sectors that OFAC has designated under Executive Order 14024.[4] The designation of the Russian metals and mining sector does not automatically result in sanctions against persons involved in those industries, but authorizes OFAC to impose sanctions going forward against persons found to operate, or have operated, in the sector.[5]

OFAC defines the "metal and mining sector" to include "any act, process, or industry of extracting, at the surface or underground, ores, coal, precious stones, or any other minerals or geological materials" in Russia "or any act of procuring, processing, manufacturing, or refining such geological materials, or transporting them to, from, or within" Russia.[6] Notably, *any* non-U.S. persons that operate in the Russian metal and mining sector (i.e., not just Russian entities) may be targeted for sanctions.[7] OFAC clarified, however, that it will not sanction persons providing safety, care, and maintenance services, and non-U.S. persons may rely on applicable general licenses.[8] Concurrently with the sector determination, OFAC announced its first round of sanctions pursuant to that determination. The four entities subject to the first round of metals and mining sanctions are all connected to the Russian defense industry, but OFAC's guidance and definitions suggest that sanctions on the metal and mining sector could reach beyond Russia's defense base.[9] As with prior sanctions targeting Russia's energy sector, however, the U.S. government will likely carefully calibrate any sanctions applied to major Russian metals producers to avoid market disruptions and limit inflationary effects.

New sanctions on financial institutions

A key aspect of the U.S. sanctions program against Russia from the beginning of the invasion has been isolating Russia's financial system from the U.S. dollar economy. Currently, the Department of the Treasury estimates that over 80% of Russia's banking sector by assets are under U.S. sanctions.[10] In the latest round of sanctions, OFAC designated 11 additional banks and three other financial institutions that have been found to act for or purported to act for or on behalf of a sanctioned bank.[11] As a result, the ten largest Russian-owned banks are now under full U.S. sanctions.[12] In connection with these new sanctions, OFAC has issued two General Licenses to facilitate the wind-down of transactions with certain of the blocked financial institutions.[13]

In a new effort to crack down on sanctions evasion by those using alternative non-bank financial institutions, OFAC expanded its financial services sector sanctions to include various wealth management and investment entities as well as individuals connected to the Russian financial services sector.[14]

Guidance on the Russian "exit tax"

Also on February 24, OFAC released new guidance regarding the permissibility of paying the so-called "exit tax" required by the Russian government. As of December 2022, the Russian government may require persons divesting assets in the Russian Federation to pay an "exit tax" prior to divestment. Because paying this tax may require transactions involving the Central Bank of Russia and the Ministry of Finance of Russia – which are both blocked under OFAC sanctions – persons subject to U.S. jurisdictions would be prohibited under U.S. law from paying the tax, absent a general or specific license. In response to industry requests, OFAC clarified that paying the exit tax does not fall within the scope of GL13D,[15] which authorizes payment of taxes to the Central Bank of Russia and the Ministry of Finance if "ordinarily incident and necessary to such persons' day-to-day operations in the Russian Federation," because the exit tax is not ordinarily incident or necessary to a person's day-to-day operations.[16] Accordingly, persons subject to U.S. jurisdictions will be required to obtain a specific license from OFAC prior to paying the "exit tax" to the Russian government.

Oil and energy – price cap guidance

In an attempt to limit the revenue that Russia earns from the sale of oil and petroleum products, the United States, in coordination with an international coalition that includes the G7, the EU and Australia (the Price Cap Coalition), imposed a price cap on both Russian crude oil and petroleum products. On November 22, 2022, OFAC published a determination (the Oil Determination) that prohibits U.S. persons from providing certain services related to the maritime transport of Russian oil (the Covered Services), but authorizes the provision of Covered Services in connection with Russian oil that is purchased at or below a price cap.[17] On February 3, 2023, OFAC published a second determination to implement the price cap policy for Russian petroleum products (the Petroleum Determination), which builds on the Oil Determination.[18]

Pursuant to the Petroleum and Oil Determinations, there are two price caps for Russian petroleum products and one for Russian crude oil: the "Discount to Crude" cap, which is $45 per barrel; the "Premium to Crude" cap, which is $100 per barrel; and the crude oil price cap, which is $60.[19]

On February 3, OFAC also issued updated price cap guidance (the Updated Price Cap Guidance),[20] which expanded OFAC's November 2022 Price Cap Guidance to cover the petroleum product restrictions established in the Petroleum Determination. As described in our previous client update, the November 2022 Price Cap Guidance established a safe harbor for providers of Covered services who comply with a recordkeeping and attestation process that allows each party in the supply chain of Russian oil or petroleum products shipped via maritime transport to demonstrate or confirm that the Russian oil or petroleum products have been purchased at or below the price cap. The Updated Price Cap Guidance extends the safe harbor to Russian petroleum products, in addition to General Licenses 55 (Authorizing Certain Services Related to Sakhalin-2), 56A (Authorizing Certain Services with Respect to the European Union) and 57A (Authorizing Certain Services Related to Vessel Emergencies).

Expanded export control restrictions

On February 24, 2023, BIS released four rules, developed in conjunction with U.S. allies, that build upon and modify existing export control restrictions that were imposed in response to Russia's invasion of Ukraine.[21] Since February 2022, BIS has implemented a number of export control restrictions, which curtail the export, reexport and transfer of certain technology, commodities and software to Russia and Belarus.[22] The four new rules, which are summarized below, enhance the existing export control restrictions and sanctions against Russia.

1. **Additional sanctions against Russia under the EAR.** BIS issued a final rule[23] that amends the EAR and expands the scope of the Russian and Belarusian industry sector restrictions. Broadly, the final rule expands the scope of licensing requirements that apply to products, parts, components, equipment, accessories, and attachments related to oil and gas production, commercial and industrial items, and chemical and biological precursors. More specifically, the rule modifies the codes that must be used to classify items for exports to Russia or Belarus under the Harmonized Tariff Schedule (HTS) to determine when these sanctions apply. HTS codes are standardized codes, based on the Harmonized Commodity Description and Coding System (HS) administered by the World Customs Organization, used to determine the duties that apply to items shipped internationally. The WCO assigns a six-digit code under the HS that broadly classifies an item, which countries are able to supplement with additional digits for further classification. The United States generally uses a ten-digit HTS code to more granularly classify items; these codes, among other things, are used to determine export control restrictions applicable to the item. To "align" the classification with the system used by allies, the new rule switches to the broader HTS-6 code to determine where licensing requirements apply to items exported to Russia and Belarus. The effect of this change is to significantly broaden the scope of goods subject to licensing requirements. Importantly, the switch to HTS-6 will likely affect how exporters asses controls applicable to products and may require a re-evaluation of existing classifications and procedures. In addition to those changes, the rule also expands the 'luxury goods' that are subject to licensing requirements for exports to Russia.
2. **Export control measures on Iran.** In response to the presence of Iranian UAV's being found on the Ukrainian battlefield, in some cases with U.S.-branded parts and components, BIS issued a rule[24] that imposes new export control restrictions on Iran. Among other things, the rule imposes new license requirements for a subset of EAR99 items that are destined for Iran and other measures intended to curtail the export and reexport of parts and components involved in the manufacture of UAVs.
3. **Entity List additions.** Through two actions[25], BIS added 86 entities to the Entity List due to their activities in support of Russia's defense-industrial sector and war effort.

Focus on enforcement and evasion

As BIS and OFAC continue to expand sanctions and export control restrictions on Russia, regulatory attention has also shifted towards evasion and enforcement. On March 2, 2023, the DOJ, BIS, and OFAC released a joint compliance note alerting financial institutions and other stakeholders of red flags associated with sanctions evasion and emphasizing the importance of maintaining adequate risk-based controls. The Compliance Note followed previous alerts from BIS and the Financial Crimes Enforcement Network (FinCEN), which similarly reminded financial institutions of their obligations to detect and report suspected sanctions evasion and export control violations.[26]

Although the Compliance Note did not articulate any new requirements for covered entities (generally restating existing expectations that organizations maintain risk-based controls such as customer due diligence and screening tools), the Compliance Note made clear that organizations are expected to be "vigilant in their compliance efforts" and maintain "rigorous compliance controls." The agencies signaled their willingness to take action in response to violations, stating that organizations that fail to implement appropriate controls "risk being the targets of regulatory action, administrative enforcement action, or criminal investigation."

On March 9, further guidance on sanctions evasion was released by the Russian Elites, Proxies, and Oligarchs (REPO) Task Force – a multilateral group comprising the DOJ, Treasury Department, and the Finance and Justice Ministries of key U.S. allies tasked with tracking, freezing and seizing the assets of major Russian sanctions targets.[27] The REPO Task Force has, to date, locked or frozen more than $58 billion worth of sanctioned Russians' assets,[28] and the March 9 advisory underscores the international scope of efforts targeting sanctions evasion. The REPO Task Force's advisory highlighted several common typologies of Russian sanctions evasion, which broadly align with well-known methodologies. Key typologies include the use of shell companies and complex corporate structures to obscure the source and ownership of assets, holding sanctioned assets through real estate and high-value goods, and the use of family members and professional service providers (e.g., lawyers and accountants) to obscure the true beneficial owner of funds. The REPO Task Force also noted that Russian end-users commonly use third-party jurisdictions and false information (e.g., fictitious parties or false final definitions) to evade export control restrictions.

Similar to the Compliance Note, the REPO Task Force emphasized the importance of implementing risk-based controls. The collective guidance and statements of regulators and the DOJ, together with the expansion of the DOJ's sanctions prosecution resources, suggest that the enforcement landscape may be increasingly active over the coming year.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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[1] Department of Commerce, Department of the Treasury, and Department of Justice, Tri-Seal Compliance Note: Cracking Down on Third-Party Intermediaries Used to Evade Russia-Related Sanctions and Export Controls (March 2, 2023), https://home.treasury.gov/system/files/126/20230302_compliance_note.pdf.

[2] Department of Justice, Deputy Attorney General Lisa Monaco Delivers Remarks at American Bar Association National Institute on White Collar Crime (March 2, 2023), https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-monaco-delivers-remarks-american-bar-association-national#:~:text=And%20to%20address,partner%20to%20NSD.

[3] U.S. Department of the Treasury, Press Release, FACT SHEET: Disrupting and Degrading – One Year of U.S. Sanctions on Russia and Its Enablers (Feb. 24, 2023), https://home.treasury.gov/news/press-releases/jy1298 (Fact Sheet).

[4] Executive Order 14024, among other things, authorizes OFAC to target sectors of the Russian economy for sanctions and impose blocking sanctions on persons determined to operate in those sectors. *See* Exec. Order No. 14024 (2021).

[5] OFAC, Frequently Asked Question No. 1116 (Feb. 24, 2023), https://home.treasury.gov/policy-issues/financial-sanctions/faqs/1116. While state-owned entities operating in the metals and mining sector have been subject to sanctions since Russia's annexation of Crimea in 2014, this is the first time that private entities and persons operating in the metals and mining sector will be subject to similar sanctions. *See* Exec. Order No. 13662 (2014) and 31 CFR § 589.201(a)(4)(v).

[6] OFAC, Frequently Asked Question No. 1115 (Feb. 24, 2023), https://home.treasury.gov/policy-issues/financial-sanctions/faqs/1115. This is the same definition OFAC used to define the same term in the 2014 Ukraine/Russia-related Sanctions Regulations imposed in response to Russia's invasion of Crimea. See 31 CFR 589.325.

[7] OFAC, Frequently Asked Question No. 1117 (Feb. 24, 2023), https://home.treasury.gov/policy-issues/financial-sanctions/faqs/1117.

[8] OFAC stated that it does not intend to target those operating in the metals and mining sector solely for the "safety and care of personnel, protection of human life, prevention of accidents or injuries, maintenance or repair necessary to avoid environmental or other significant damage, or activities related to environmental mitigation or remediation." In addition, "non-U.S. persons generally do not risk exposure to U.S. blocking sanctions under E.O. 14024 for engaging in transactions with blocked persons, including in the metals and mining sector, where those transactions would not require a specific license if engaged in by a U.S. person." *Id.*

[9] U.S. Department of the Treasury, Press Release, Targeting Key Sectors, Evasion Efforts, and Military Supplies, Treasury Expands and Intensifies Sanctions Against Russia (Feb. 24, 2023) (Press Release), https://home.treasury.gov/news/press-releases/jy1296.

[10] Fact Sheet.

[11] Press Release.

[12] Fact Sheet.

[13] GL 60 authorizes the wind down and rejection, rather than blocking, of transactions with certain financial institutions through May 25, 2023, at 12:01 a.m. eastern daylight time. GL 61 authorizes the wind down of certain preexisting securities and derivatives transactions involving a subset of the GL 60 financial institutions through May 25, 2023, at 12:01 a.m. eastern daylight time.

[14] Press Release.

[15] OFAC, General License No. 13D, Authorizing Certain Administrative Transactions Prohibited by Directive 4 under Executive Order 14024 (Feb. 24, 2023), https://home.treasury.gov/system/files/126/russia_gl13d.pdf.

[16] OFAC, FAQ 1118 (Feb. 24, 2023), https://home.treasury.gov/policy-issues/financial-sanctions/faqs/1118.

[17] *See* OFAC, Prohibitions on Certain Services as They Relate to the Maritime Transport of Crude Oil of Russian Federation Origin, https://home.treasury.gov/system/files/126/determination_11222022_eo14071.pdf.

[18] *See* OFAC, Prohibitions on Certain Services as They Relate to the Maritime Transport of Petroleum Products of Russian Federation Origin, https://home.treasury.gov/system/files/126/determination_eo14071_20230203.pdf.

[19] *See* OFAC, Price Cap on Petroleum Products of Russian Federation Origin, https://home.treasury.gov/system/files/126/price_cap_determination_20230203.pdf; *see also,* OFAC, Price Cap on Crude Oil of Russian Federation Origin, https://home.treasury.gov/system/files/126/20221205_Price_cap_determination.pdf.

[20] OFAC, OFAC Guidance on Implementation of the Price Cap Policy for Crude Oil and Petroleum Products of Russian Federation Origin (Feb. 3, 2023), https://home.treasury.gov/system/files/126/price_cap_guidance_combined_20230203.pdf.

[21] U.S. Department of Commerce, Bureau of Industry and Security, Commerce Imposes Additional Export Restrictions in Response to Russia's Brutal War on Ukraine, https://www.bis.doc.gov/index.php/documents/about-bis/newsroom/press-releases/3227-2023-02-24-bis-press-release-additional-russia-invasion-response-actions/file.

[22] The export, reexport and transfer of the following items are subject to BIS license requirements: All items on the Export Administration Regulations' (EAR) Commerce Control List, luxury goods listed in Supplement 5 to Part 746 of the EAR, sector-specific items listed in Section 746.5 and Supplements 2, 4 and 6 to Part 746 of the EAR; any Items subject to the EAR going to a military end use or end user or a military intelligence end use or end user, regardless of whether located in or outside Russia; foreign-produced Items that are subject to the EAR under the foreign-direct product rules, including the specific Russia/Belarus rules in Sections 746.8 and 734.9(f) and (g) of the EAR; and any Item subject to the EAR if a person on the BIS Entity List or Denied Persons List or other sanctioned persons list is involved in the transaction.

[23] BIS, Implementation of Additional Sanctions Against Russia and Belarus Under the Export Administration Regulations (EAR) and Refinements to Existing Controls, 88 Fed. Reg. 12175 (Feb. 27, 2023), https://www.govinfo.gov/content/pkg/FR-2023-02-27/pdf/2023-03927.pdf.

[24] BIS, Export Control Measures Under the Export Administration Regulations (EAR) To Address Iranian Unmanned Aerial Vehicles (UAVs) and Their Use by the Russian Federation Against Ukraine, 88 Fed. Reg. 12150 (Feb. 27, 2023), https://www.govinfo.gov/content/pkg/FR-2023-02-27/pdf/2023-03930.pdf.

[25] *See* BIS, Additions of Entities to the Entity List; Revisions of Entities on the Entity List, 88 Fed. Reg. 12155 (Feb. 27, 2023), available at https://www.govinfo.gov/content/pkg/FR-2023-02-27/pdf/2023-04099.pdf; BIS, Additions of Entities to the Entity List, 88 Fed. Reg. 12170 (Feb. 27, 2023), https://www.govinfo.gov/content/pkg/FR-2023-02-27/pdf/2023-03929.pdf.

[26] *See, e.g.*, FinCEN, FIN-2022-Alert01, FinCEN Advises Increased Vigilance for Potential Russian Sanctions Evasion Attempts (March 7, 2022), https://www.fincen.gov/sites/default/files/2022-03/FinCEN%20Alert%20Russian%20Sanctions%20Evasion%20FINAL%20508.pdf; FinCEN, BIS, FIN-2022-Alert003, FinCEN and the U.S. Department of Commerce's Bureau of Industry and Security Urge Increased Vigilance for Potential Russian and Belarusian Export Control Evasion Attempts (June 28, 2022), https://www.fincen.gov/sites/default/files/2022-06/FinCEN%20and%20Bis%20Joint%20Alert%20FINAL.pdf.

[27] U.S. Department of the Treasury, Global Advisory on Russian Sanctions Evasion Issued Jointly by the Multilateral REPO Task Force (March 9, 2023), https://home.treasury.gov/system/files/136/REPO_Joint_Advisory.pdf. The members of the REPO Task Force include Australia, Canada, France, Germany, Italy, Japan, the United Kingdom, the United States, and the European Commission.

[28] U.S. Department of the Treasury, Press Release, Joint Statement from the REPO Task Force (March 9, 2023), https://home.treasury.gov/news/press-releases/jy1329.