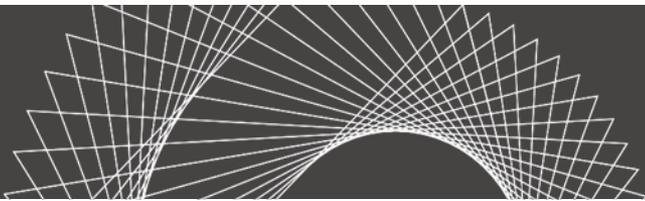


Updates on Russia/Belarus U.S. Sanctions and Export Controls



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What You Need to Know

- The sanctions and export control measures being imposed by the US, UK, EU, and other countries – both in form and substance – are unprecedented in terms of scope, inter-governmental coordination, and impact.
- The Russian measures being imposed in response are sweeping.

Agenda

- ❖ Sanctions Overview
- ❖ Export Controls Overview
- ❖ Issue Spotting

Sanctions Overview



U.S. Sanctions Overview: Types of Sanctions

Comprehensive Sanctions Programs

- Prohibit nearly **all** unlicensed activities and transactions involving targeted countries/territories (including nationals thereof) or their governments.
- Currently: Cuba, Iran, North Korea, Syria, Crimea, the so-called Donetsk People's Republic (DNR) or Luhansk People's Republic (LNR) regions of Ukraine

List-Based Sanctioned Programs

- Prohibit **all** unlicensed activities and transactions with designated individuals and entities.
- E.g., Specially Designated Nationals and Blocked Persons (SDN) List
- Typically assets owned (50% or more) or controlled by listed/designated entities are also blocked

Sectoral/Hybrid Sanctions Programs

- Prohibit **certain** unlicensed activities and transactions with designated entities in specified sectors.
- E.g., Russia sanctions restrictions relating to new debt / new equity of designated persons

CAPTA: FFIs for which the opening or maintaining of a correspondent account or a payable-through account is prohibited or subject to one or more restrictions or strict conditions; obligations on U.S. FI.

Secondary Sanctions

- Extraterritorial sanctions on non-U.S. persons that engage in prohibited conduct deemed contrary to foreign policy or security

U.S. Primary Sanctions

Physically in the United States

- Signing contracts
- Travel (emails, conference calls)
- Meetings
- Subsidiaries/affiliates

U.S.-Dollar Transactions that Indicate U.S. Bank Involvement

U.S. Person Involvement

- “Causing” a violation
- Citizens/Permanent Residents
- Intermediaries (freight forwarders, insurers)

U.S. Controlled Items

- U.S. origin
- U.S. content
- Direct product of sensitive U.S. plants or technologies

Expanding Possibilities

- Emails through U.S. servers?
- Making bankruptcy or other filings in the United States?

U.S. Secondary Sanctions

What are they?

Laws and executive orders that authorize the U.S. government to impose extraterritorial sanctions on non-U.S. persons that engage in conduct deemed contrary to foreign policy or national security (*e.g.*, material support for SDNs; corruption).

**SDN
Designation**

**Denial of
Export
Privileges**

**Financing
Restrictions**

**Government
Procurement
Ban**

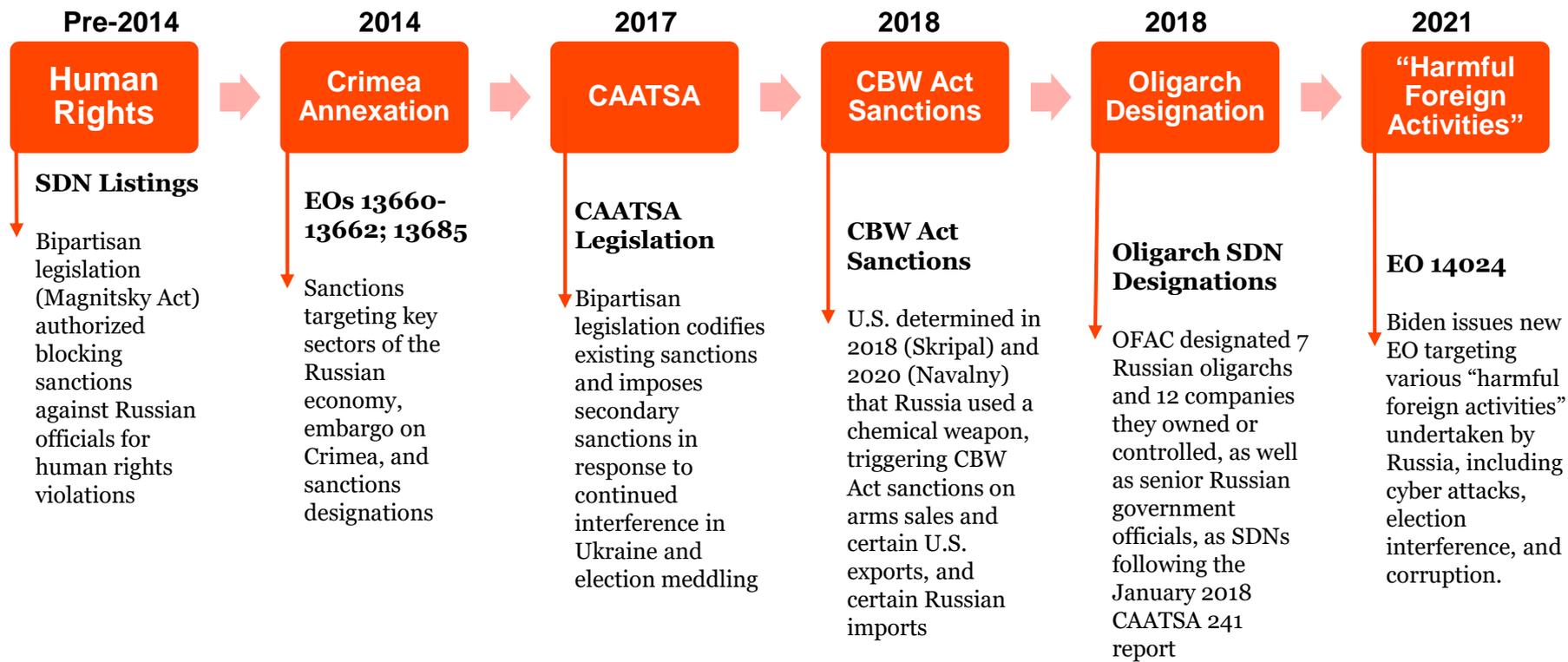
**Debt/Equity
Restrictions**

**Denial of
Export-Import
Bank
Assistance**

Visa bans

**Correspondent
and Payable
Through
Accounts**

Existing U.S. Sanctions on Russia



February 2022 U.S. Sanctions on Russia

- On **February 21, 2022**, President Putin recognized the Donetsk and Luhansk republics (DNR/LNR) as independent states.
 - In response, President Biden issued [EO 14065](#), which imposes comprehensive sanctions on the “so-called” DNR and LNR regions of Ukraine; similar in scope to the 2014 sanctions imposed on the Crimea region of Ukraine.
- On **February 22, 2022**, OFAC [imposed](#) a first round of “swift and severe” sanctions on Russia.
 - Blocking sanctions against VEB, Promsvyazbank, children of certain prominent Russian individuals
 - Prohibition on U.S. financial institutions from participating in secondary market for Russian sovereign debt issued after March 1, 2022.
- On **February 23, 2022**, OFAC [imposed](#) blocking sanctions on Nord Stream 2 AG – the Swiss operator of the Nord Stream 2 pipeline, and its German national CEO.

February 2022 U.S. Sanctions on Russia

- On **February 24, 2022**, following Russia's incursion into Ukraine, OFAC **imposed** additional sanctions
 - Blocking sanctions against VTB, Otkritie, Novikombank, Sovcombank and certain prominent Russian individuals
 - CAPTA Sanctions prohibiting U.S. financial institutions from opening/maintaining a correspondent account and processing transactions for identified foreign financial institutions (e.g., Sberbank)
 - Less-Than-Blocking Sanctions, similar to sectoral sanctions, prohibiting transactions in new debt and equity of designated entities (e.g., Sberbank, Gazprom, Gazprombank)
- On **February 25, 2022**, OFAC **imposed** blocking sanctions on President Putin and Foreign Minister Lavrov
- On **February 26, 2022**, the U.S. and its allies **agreed** to remove certain Russian banks from the SWIFT international financial messaging network
- On **February 28, 2022** –OFAC **prohibited** U.S. persons from engaging in transactions involving the Russian Central Bank, Ministry of Finance, and National Wealth Fund; and imposed blocking sanctions against the Russian Direct Investment Fund and its CEO

March 2022 U.S. Sanctions on Russia

- **March 3, 2022** – [OFAC](#) and the [State Department](#) imposed blocking sanctions on numerous Russian elites, their family members, and financial networks; various Russian defense enterprises; and certain Russian intelligence-directed disinformation outlets.
- **March 8, 2022** – The Biden Administration issued a new [Executive Order](#) that prohibits:
 - (i) the importation into the United States of the following products of Russian Federation origin: crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products;
 - (ii) new investment in the energy sector in the Russian Federation by a United States person, wherever located; and
 - (iii) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this section if performed by a United States person or within the United States

OFAC FAQ 980 – Non-U.S. Persons

980. Do non-U.S. persons risk being sanctioned for engaging in activity with persons sanctioned pursuant to Executive Order (E.O.) 14024?

- OFAC evaluates a range of factors when developing sanctions targets, consistent with foreign policy and national security goals.
- Non-U.S. persons may be designated if they have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, certain activities, a person whose property and interests in property are blocked pursuant to E.O. 14024.
- Non-U.S. persons generally do not risk exposure to U.S. blocking sanctions under E.O. 14024 for engaging in transactions with persons subject to the prohibitions of the directives under E.O. 14024.
- 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, where those transactions would not require a specific license if engaged in by a U.S. person.
- E.O. 14024 and the directives under E.O. 14024 prohibit any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions of those directives, as well as any conspiracy formed to violate any of the prohibitions of those directives.
- OFAC will not view as “evading or avoiding” efforts by non-U.S. persons to comply with U.S. sanctions by replacing sanctioned suppliers or service providers (including financial institutions) with non-sanctioned persons.

U.S. Sanctions on Belarus

Overview of Sanctions

- EO 14038 imposes sanctions against the Lukashenka regime due to various human rights abuses in the country.
- List-based program, previously dormant, now targeting the Belarussian government and various SOEs (e.g., Belaruskali OAO, Belkneftekhim)

Notable Developments

- **December 2021:** OFAC **imposed** blocking sanctions on certain entities in the Belarussian defense, potash, and security sectors; restrictions on dealings in new issuances of Belarussian sovereign debt in the primary and secondary markets
- **February 2022** – OFAC **imposed** blocking sanctions on 24 Belarussian individuals and entities due to Belarus's support for, and facilitation of, the Russian invasion of Ukraine (defense and banking sector).

Risk Considerations

- ***U.S. Touchpoints:*** Be cognizant of any U.S. touchpoints to a transaction (USD, U.S. persons, U.S.-origin goods); facilitation risk if U.S. parent.
- ***Third Party Dealings:*** Screen all parties to a transaction (new individuals and entities are being added to the lists on a daily basis); assess ownership or control by sanctioned individuals or entities.
- ***Differing Restrictions Across Jurisdictions:*** U.S., UK, EU measures not uniform.
- ***Location Risk:*** Flag any dealings with the DNR/LNR regions of Ukraine.
- ***Payment Structure Risks:*** Assess dealings with Russian financial institutions.
- ***Contractual Safeguards:*** Include robust sanctions compliance language in agreements and strong termination rights.

U.S. Sanctions Resources

- [U.S. Department of the Treasury, Office of Foreign Assets Controls \(“OFAC”\) Specially Designated Nationals and Blocked Persons List \(“SDN List”\)](#)
- [OFAC: Russian Harmful Foreign Activities Sanctions Landing Page](#)
- [OFAC: Frequently Asked Questions \(“FAQs”\)](#)
- [OFAC: Sanctions Programs and Country Information](#)

Export Controls Overview



U.S. Export Controls, in General

Protect national security and promote foreign policy objectives

Regulate the export of hardware, information, software, and services

- Format does not matter
- Mode does not matter (e.g., shipping, hand-carry, email, telephone call)

Controls are based on four factors

- Jurisdiction and classification
- Destination
- Parties
- End-use

Recent Changes

- Designed to severely restrict Russia's access to technologies and other items needed to sustain its military
- Most comprehensive application of Dept. of Commerce export authorities on U.S. items – including technology – and foreign items produced using U.S. equipment, software, and blueprints, targeting a single nation
- Truly momentous cooperation with the EU, Japan, Australia, UK, Canada, New Zealand, and other countries → implementing effectively similar or broader controls
- Some exceptions for oil and gas-related activities
- Apply to Russia, parts of Ukraine, Belarus, and anywhere else with controlled items
- Extensive, technical, and fact-intensive

Key Controls

Controls apply to any items-

- In the U.S.
- Coming from the U.S.
- Anywhere in the world incorporating more than a de minimis amount of U.S. content
- Anywhere in the world and being the “foreign direct product” of certain U.S. software or technology

Licenses required for many items-

- Electronics, computers, telecommunications, sensors, navigation, marine, airplanes and spare parts
- Policy of denial for applications; revoked existing licenses

Additional controls based on parties involved

- Military End-Use or End-Users → license required except for food, medicine, and certain computers
- Entity List entities → license required if any role in the transaction

Who is Impacted?

- **Anyone in the U.S. or partner countries doing business with Russia**
- **Anyone in the world doing business with Russia AND the U.S.**

Examples

- Aerospace companies that provide spare parts, navigation systems, and comms systems for business / civil aircraft in Russia/Belarus
- Tech companies that provide software to third party partners to enable online tools
- Electronics manufacturers that build chips, memory, telecom equipment
- Services providers who consult or provide advice to entities in Russia/Belarus

Clients are asking “what CAN we ship to whom” because that is a much smaller list than what they can’t export, reexport, or transfer to Russia

Potential Issues to Spot



Potential Issues to Spot – Export Controls

- **Essentially-**
 - any hardware, software, services, or technology
 - going to Russia, Ukraine, or Belarus
 - from anywhere in the world
 - by anyone in the world
 - with any possible connection to the U.S., including the equipment, software, or technology in the plants that manufactured the hardware

Export Control: Resources

- [Akin Gump Client Alert: U.S. Government Imposes, Expansive, Novel and Plurilateral Export Controls Against Russia and Belarus](#)
- [Bureau of Industry and Security, U.S. Department of Commerce Resources on Export Controls Implemented in Response to Russia's Invasion of Ukraine](#)