

US Agencies Announce Sweeping New Measures Aimed at Russia

On June 12, 2024, the U.S. Department of Commerce, Department of State, and Department of Treasury announced a wide range of new sanctions and export controls related measures and actions that are being taken to counter Russian aggression against Ukraine. These developments have been among the most significant on the Russian sanctions framework in recent months.

Last week's measures build on what has been a multi-year campaign by the U.S. government to target Russia's economy with the goal "to degrade Russia's ability to wage this tragic war of aggression," as the Assistant Secretary

of Commerce for Export Administration Thea D. Rozman Kendler described it. Since Russia invaded Ukraine on February 24, 2022, U.S. governmental agencies such as Department of Commerce's Bureau of Industry and Security (BIS), the Department of Treasury's Office of Foreign Assets Control (OFAC), and the Department of State have implemented numerous regulations and programs affecting a range of Russia's economic sectors from financial services to mining and technology. Below we provide a summary of the newly announced restrictions and sanctions instituted by the two agencies.

Key Takeaways

- OFAC published an updated compliance guidance for foreign financial institutions expanding the definition of "Russia's military-industrial base" to include all those designated under E.O. 14024 as well as those transacting with certain sectors and in certain items, broadening the exposure of foreign financial institutions (FFIs) to U.S. sanctions.
- The agency's press release states that it is targeting those involved in evasion schemes, designating more than 90 new entities and individuals onto the SDN List; adding even more financial institutions, including some foreign locations of already sanctioned entities as well as new entities not previously sanctioned in the SDN List; and issuing three new general licenses permitting certain transactions with Moscow Exchange, the largest exchange in Russia, and its affiliates, as well as wind down transaction with other newly sanctioned Russian entities.
- OFAC issued a new determination under E.O. 14071 regarding software services, prohibiting the exportation or sale of a range of information technology and cloud-based services for enterprise management software and design and manufacturing software to Russia or Russian companies with some exceptions.
- BIS published a new final rule that introduces a new framework to prevent sanctions and export controls evasion through shell companies, directly targeting addresses used by these companies; expands exports controls on software and riot control agents exported to Russia; and has introduced 522 new Harmonized Tariff Schedule 6-Code entries, increasing the number of items that will require a license for export to Russia.

E.O. 14024 Developments

In late 2023, President Biden issued Executive Order (E.O.) 14114, amending E.O. 14024, to authorize sanctions against foreign financial institutions (FFIs) for engaging in certain transactions with Russia's military-industrial base.¹ Those FFIs that are found to be engaging in such transactions could be designated onto OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List). This is a list of blocked parties with which U.S. persons, defined to include U.S. legal persons and natural persons who are U.S. citizens and permanent residents, wherever located, and non-citizens/permanent residents physically in the U.S., cannot transact.

The June 12, 2024 policy update notably includes a broadening of the definition of "Russia's military-industrial base" in E.O. 14114 to cover all persons blocked pursuant to E.O. 14024 and any person operating in the technology, defense and related materiel, construction, aerospace, and manufacturing sectors of the Russian Federation economy (the specified sectors), even if they not on the SDN List.² Additionally, Russia's military-industrial base may also include persons that support the sale, supply, or transfer, directly or indirectly, to the Russian Federation of certain critical items (the specified items).³

Given this vastly expanded definition of "Russia's military-industrial base," FFIs can no longer engage in any transactions with the following individuals or entities even if neither party is a U.S. person nor has any U.S. assets:

- any individuals or entities designated onto the SDN List under E.O. 14024;

- any individuals or entities that operate in any of the specified sectors⁴ of the Russian economy, **even if they are not blocked by the U.S.;**
- any individuals or entities that support the sale, supply, or transfer, directly or indirectly, to the Russian Federation of specified items⁵, **even if they are not blocked by the U.S.**

The impact of this may be buffered in some part by the fact that many FFIs around the world have been preventing at least some of the dealings that can now lead them to direct sanctions exposure. It can be expected that the ongoing large scale derisking by FFIs may likely expand, impairing those transactions falling outside the permissible categories of food, agriculture, medicine, energy, and telecommunications.⁶

Additions to the SDN List

OFAC has designated new entities on the SDN List under E.O. 14024 for operating or having operated in the Russian financial services sector:

- **Moscow Exchange (MOEX)**, which operates Russia's largest public trading markets, as well as Russia's central securities depository and the country's largest clearing service provider. MOEX had been partnered with Euroclear and Clearstream. Notably, President Putin has approved a series of measures to attract capital through MOEX from both Russian and non-Russian persons. As such, these designations will likely have a pronounced effect even beyond the Russian borders.
- Also importantly, two key MOEX subsidiaries were also designated, namely the **National Clearing Center (NCC)** - the central counterparty, clearing

¹ Exec. Order No. 14114, 88 FR 89271 (Dec. 22, 2023); see also Office of Foreign Assets Control, FAQ 1151 (updated June 12, 2024), <https://ofac.treasury.gov/faqs/1151>.

² Compliance Advisory, Office of Foreign Assets Control, *Updated Guidance for Foreign Financial Institutions on OFAC Sanctions Authorities Targeting Support to Russia's Military-Industrial Base* (June 12, 2024), <https://ofac.treasury.gov/media/932436/download?inline>

³ See Office of Foreign Assets Control, FAQ 1181 (June 12, 2024), <https://ofac.treasury.gov/faqs/1181>; Office of Foreign Assets Control, FAQ 115 (updated June 12, 2024), <https://ofac.treasury.gov/faqs/1151>.

⁴ The list of specified sectors items is available online at Office of Foreign Assets Control, FAQ 1126 (May 19, 2023), <https://ofac.treasury.gov/faqs/1126>.

⁵ The current list of specified items is available online in the December 22, 2023 Determination under subsection 11(a)(ii) of E.O. 14024 at <https://ofac.treasury.gov/media/932446/download?inline>.

⁶ Compliance Advisory, Office of Foreign Assets Control, *Updated Guidance for Foreign Financial Institutions on OFAC Sanctions Authorities Targeting Support to Russia's Military-Industrial Base* (June 12, 2024), <https://ofac.treasury.gov/media/932436/download?inline>.

agent for, and a subsidiary of MOEX. NCC is supervised by the Central Bank of the Russian Federation, as well as the **Non-Bank Credit Institution Joint Stock Company National Settlement Depository (NSD)**, Russia's central securities depository and is a subsidiary of MOEX. NSD provides bank account services, registration of over-the-counter trades, and liquidity management services. The EU previously sanctioned NSD in June 2022.

- **Gas Industry Insurance Company Sogaz (Sogaz)**, an insurance company that provides insurance to Russian military personnel and personnel of leading defense entities already designated by the U.S. Sogaz has also been sanctioned by Australia, Canada, the EU, New Zealand, and the UK.
- **Joint Stock Company Russian National Reinsurance Company (RNRC)**, a Russian state-owned reinsurance provider created to provide protection for sanctioned persons. RNRC has also been sanctioned by the EU and UK.

Since the announcement, the Bank of Russia, the country's central bank, has declared that OFAC's designation of MOEX has caused the halting of all trading in U.S. Dollars and Euros with respect to exchange trading and settlements of U.S. Dollar and Euro-denominated deliverable instruments.⁷ All such exchanges are now occurring over-the-counter.

Importantly, OFAC also updated the SDN List to include the foreign addresses of **Promsvyazbank Public Joint Stock Company, State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank, Sberbank, VTB, and VTB Capital Holdings Closed Joint Stock Company**.

These designations create risk not only for those engaging directly in transactions with the sanctioned parties, but also those who could be seen as materially

assisting, sponsoring, or providing financial, material, or technological support for, or good or services to or in support of these parties. From its issuance, Section 1 of E.O. 14024 has authorized OFAC to engage in derivative sanctions against those found to be engaging in such behaviors, and the agency has used this discretion quite broadly over the past two years and has not defined this in precise terms.

New OFAC General Licenses

As a result of the newly announced SDN List designations, OFAC has announced three new general licenses that will authorize certain transactions with some of the sanctioned entities that would otherwise be prohibited under E.O. 14024. These general licenses are primarily focused on affording investors and counterparties an opportunity to exit or unwind their operations.

General Licenses typically authorize U.S. persons to engage in certain transactions without seeking specific OFAC authorizations. One does not apply to OFAC for a general license, and they are self-executing. By comparison, a specific license is one issued based on a specific request to OFAC by the applicant requesting authorization on a particular transaction or transactions, or type of activity.

- Russia-related General License 98 - Authorizing the Wind Down of Transactions Involving Certain Entities Blocked on June 12, 2024
- Russia-related General License 99 - Authorizing the Wind Down of Transactions and Certain Transactions Related to Debt or Equity of, or Derivative Contracts Involving, MOEX, NCC, or NSD
- Russia-related General License 100 - Authorizing Certain Transactions Related to Debt or Equity or the Conversion of Currencies Involving MOEX, NCC, or NSD

⁷ Alexander Marrow, et al., *Russia, hit by new US sanctions, halts dollar and euro trade on main bourse*, Reuters (June 12, 2024), <https://www.reuters.com/markets/europe/moscow-exchange-stop-trading-dollars-after-latest-us-sanctions-2024-06-12/>

Shell Companies and Evasion

Offshore and the so-called shell companies are frequently used on a global level for illicit purposes in aiding sanctions evasion and money laundering. They are often registered in known offshore jurisdictions including, but not limited to, Ireland, Lichtenstein, Switzerland, Guernsey, Bermuda, Cayman Island, and Hong Kong. Such shell companies are often used to obfuscate the foreign source of the money so that parties on the BIS Entity List and the OFAC's SDN List can engage in transactions. BIS addressed this issue through designating entities suspected of engaging in such activities onto the Entity List and issuing Temporary Denial Orders (TDO) suspending export privileges of such entities.⁸

BIS has now introduced a new regulatory framework targeting shell companies. The framework is designed to make it harder for parties seeking to evade the law to find a corporate services provider willing to lend the use of their address for use in unlawful schemes by such companies. Specifically, it will allow BIS to publish high diversion risk addresses in the Entity List where these entries will detail the license requirements, review policies, and restrictions on the use of license exceptions that will apply to all entities using that address, other than entities with their own separate entry at that same address.⁹ Concurrently, BIS published eight such addresses located in Hong Kong. This new rule also requires enhanced client screening by the foreign corporate services industry.¹⁰ If any company uses these addresses as a Purchaser, Intermediate Consignee, Ultimate Consignee, or End-User they will be faced with restrictions on their ability to engage in transactions subject to the Export Administration Regulations (EAR).

This latest move dovetails an earlier prohibition on U.S. persons providing corporate services to parties in Russia.

These developments suggest that companies providing offshore corporate formation services should act with caution and conduct thorough review and research before engaging in such transactions. It is recommended that such companies consult an attorney on such matters to avoid potential risk of violating U.S. sanctions law or being designated under these sanctions.

Additionally, BIS issued TDOs against two Russian procurement networks facilitating more than 500 shipments of aircraft parts to Russia including to an arm of Siberian Airlines (subject to a TDO) through third countries in violation of U.S. export controls: **Turboshaft FZE, Treetops Aviation, Black Metal FZE, Timur Badr** (owner of companies listed), **Elaine Balingit** (assisted Badr).¹¹

BIS also issued TDOs against a group of entities and individuals responsible for the export of approximately 260 shipments, the majority of which contained aircraft parts, to Russia including to Pobeda Airlines (subject to a TDO) in violation of U.S. export controls: **Skytechnic, Skywind International Limited, Hong Fan International, Lufeng Limited, Unical dis Ticaret Ve Lojistik Joint Stock Company, Izzi Cup DOO, Alexey Sumchenko, Anna Shumakova, Branmir Salevic, Danijela Salevic**.¹²

OFAC also contributed to this effort by designating more than 90 individuals and entities across Russia, Belarus, the British Virgin Islands (BVI), Bulgaria, Kazakhstan, the Kyrgyz Republic, the People's Republic of China (PRC), Serbia, South Africa, Turkey, and the United Arab Emirates (UAE), which have been suspected of assisting and engaging with networks designed to assist in sanctions evasions scheme utilizing shell companies, onto the SDN List.¹³

⁸ See e.g., U.S. Dep't of Commerce, Bureau of Industry and Security, Order Temporarily Denying Export Privileges (Dec. 13, 2022), <https://efoia.bis.doc.gov/index.php/documents/export-violations/export-violations-2022/1431-livshits-tdo-signed-final-12-13-2022/file>

⁹ Bureau of Industry and Security, Dep't of Commerce, Implementation of Additional Sanctions Against Russia and Belarus Under the Export Administration Regulations and Refinements to Existing Controls, Docket No. 240610-0156 (June 12, 2024), <https://public-inspection.federalregister.gov/2024-13148.pdf>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Office of Foreign Assets Control, *Russia-related Designations; Publication of Russia-related Determination; Issuance of Russia-related General Licenses and Frequently Asked Questions* (June 12, 2024), <https://ofac.treasury.gov/recent-actions/20240612>

Restrictions on Distributors and Transshippers

BIS announced that it will continue to impair transshipment of items to Russia's defense industrial base. They informed over 130 U.S. distributors of additional restrictions on shipments to known suppliers to Russia, specifically those supplying U.S. and foreign-produced electronic components.

BIS will more extensively target foreign companies who supply U.S.-branded products to Russia through Entity List additions and other related actions.

Additions to the BIS Entity List

Five entities in Russia and China are being added to the Entity List by BIS, restricting exports, reexports, and transfers (in-country) involving these entities, for their involvement in shipping items restricted by U.S. export controls to Russia:¹⁴

- **Shenzhen Daotong Intelligent Aviation Technology Co., Ltd (Autel)**, an entity located in China, has been involved in the shipment of controlled items to Russia since Russia's invasion of Ukraine in February 2022, as well as acquiring and attempting to acquire U.S.-origin items applicable to unmanned aerial vehicles to be used by Chinese military entities.
- **Volgogradpromproyekt (VPP)**, an entity located in Russia, has been involved with, contributes to, and supports the Russian military and defense sectors and has sold a variety of chemicals for use in the activities of companies of concern.
- **Advantage Trading Co. Limited**, an entity located in China being added for procuring components, including U.S.-origin components, that are used to develop and produce Shahed-series UAVs which have been used by Russia in Ukraine.

- **Duling Technology (HK) Limited**, an entity located in China being added for procuring components, including U.S.-origin components, that are used to develop and produce Shahed-series UAVs which have been used by Russia in Ukraine; and
- **FY International Trading**, an entity located in China being added for procuring components, including U.S.-origin components, that are used to develop and produce Shahed-series UAVs which have been used by Russia in Ukraine.

Given these developments, companies engaged in the export of U.S.-origin or items falling under the foreign direct product rules should be particularly mindful in their due diligence and compliance efforts.

The BIS' move also signals a need for non-U.S. companies to be particularly mindful of the consequences of violating U.S. export control regulations. While this is nothing new, it underscores an increasingly vigilant enforcement posture by the BIS.

New Exports Restrictions

In 2022, BIS first imposed extensive restrictions on Russia and Belarus for their involvement in the aggression against Ukraine in forms of sanctions and export controls in a final rule.¹⁵ Since then, BIS has published numerous final rules strengthening the export controls on Russia and Belarus. Additionally, BIS has been designating foreign individuals and entities onto the Entity List thus subjecting them to the licensing policy and requirements of the EAR. As a result, the U.S. is able to control the flow of certain items identified on the Commerce Control List (CCL) that could be used for military purposes or support Russian aggression into Russia. The goal of BIS's efforts is "limiting Putin's military options by imposing substantial costs on his ability to repair, replenish, and rearm with high-tech, high-quality equipment," said Under Secretary of Commerce for Industry and Security Alan Estevez.

¹⁴ Implementation of Additional Sanctions Against Russia and Belarus Under the Export Administration Regulations and Refinements to Existing Controls, Bureau of Industry and Security, Dep't of Commerce, Docket No. 240610-0156 (June 12, 2024), <https://public-inspection.federalregister.gov/2024-13148.pdf>.

¹⁵ Implementation of Sanctions Against Russia Under the Export Administration Regulations, 87 FR 12226 (Mar. 3, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-03-03/pdf/2022-04300.pdf>.

BIS has now imposed additional restrictions on the export, reexport, or transfer (in country) of certain types of technologies and software to Russia and Belarus, even when not specifically identified on the Commerce Control List. Specifically, BIS introduced the following changes:

- Imposing a “software” license requirement for certain EAR99-designated “software” such as enterprise resource planning; customer relationship management; business intelligence; supply chain management; enterprise data warehouse; computerized maintenance management system; project management software, product lifecycle management; building information modelling; computer aided design; computer-aided manufacturing; and engineering to order;
- Narrowing the scope of commodities and software under License Exception Consumer Communications Devices, items such as lower-level graphics processing units are no longer eligible for export;
- Adding controls on more than 500 additional 6-digit Harmonized Tariff System codes; and
- Adding controls on several additional riot control agents.

Additionally, OFAC has issued a new determination pursuant to Section 1(a)(ii) of E.O. 14071 that establishes new prohibitions on information technologies (IT) and software services. It is now prohibited to export, reexport, sell, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of IT consultancy and design services or of IT support services or cloud-based services for enterprise management software and design and manufacturing software to any person located in the Russian Federation.¹⁶ There are some exceptions to this prohibition – this prohibition does not apply if the receiver is an entity owned directly or indirectly by a U.S. person, the transaction is related to a winddown of a foreign company’s operations in Russia, or the software is either licensed or eligible for a license exception under the EAR.



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¹⁶ Office of Foreign Assets Control, Determination Pursuant to Section 1(a)(ii) of E.O. 14071 (June 12, 2024), <https://ofac.treasury.gov/media/932951/download?inline>