

Trade Compliance Flash: New Executive Order Expands Sanctions Risk in Russia; Targets Wide Range of Russian Malign Activities and Sovereign Debt

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On April 15, 2021, President Biden issued Executive Order 14024, "Blocking Property with Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation" ([EO 14024](#)),¹ a sweeping new sanctions tool aimed at countering a wide range of Russian government-backed malign activities, including interference in the 2020 U.S. presidential election, the SolarWinds cyberattack, and Russia's ongoing occupation of the Crimea region of Ukraine, among others.

EO 14024 significantly expands the categories of Russian persons that can be targeted for sanctions by the U.S., moving well beyond the bounds of the existing Ukraine-/Russia-Related Sanctions Program. The broad coverage of the EO includes several categories of actors that can now be targeted for blocking sanctions, including, among others, those engaged in malicious cyber-enabled activities, election interference, transnational corruption, and attempting to disrupt the gas or energy supply to certain regions outside of Russia. Significantly, EO 14024 also focuses on entities operating in the technology and defense and related materiel sectors as specific bases for sanctions, but it leaves room for considerable expansion in the future, as it can be extended to cover any other sector of Russia's economy in the event the U.S. wants to take a more aggressive tact to deter and respond to the Russian Federation's "[destabilizing behavior](#)." The breadth of the EO is notable and may prompt many U.S. and non-U.S. companies to reassess the risks and benefits of continuing to operate in Russia or the surrounding region. At a minimum, companies with business ties to Russia should consider reevaluating whether their existing sanctions compliance program is sufficient to mitigate the rising risks.

Pursuant to EO 14024, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) also issued [Directive 1](#), which implements new restrictions prohibiting U.S. financial institutions from participating in the primary market for ruble and non-ruble denominated bonds issued by Russia's Central Bank, National Wealth Fund, and Ministry of Finance after June 14, 2021, as well as lending ruble and non-ruble denominated funds to those entities. The new restrictions on Russian sovereign debt build upon existing restrictions on U.S. banks imposed in 2019 pursuant to the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (CBW Act).

In coordination with the issuance of EO 14024, OFAC [announced](#) that it added six Russian technology companies to the Specially Designated Nationals and Blocked Persons List (SDN List) for malicious cyber-related activities and [designated 32 entities](#) deemed to have been involved in attempts to interfere in and spread misinformation related to the 2020 U.S. presidential election.

This trade flash proceeds as follows: First, we summarize the key target actors and actions that are now sanctionable under EO 14024. Second, we summarize Directive 1 and the scope of its prohibitions. Third, we share our key takeaways regarding the new EO and Directive 1, including the most significant compliance challenges likely to arise for U.S. and non-U.S. companies.

Key Targets of EO 14024

1. Russia's Technology and Defense and Related Materiel Sectors

Section 1(a)(i) of EO 14024 authorizes the imposition of blocking sanctions on any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to operate or have operated in the technology sector or the defense and related materiel sector of the Russian Federation economy, or any other sector of the Russian Federation economy. Notably, OFAC guidance issued in conjunction with the EO notes that "[t]he identification of a sector pursuant to [EO 14024] provides notice that persons operating in the identified sector are exposed to sanctions risk; however, such identification **does not automatically block all persons operating in the sector**. Only persons designated pursuant to [EO 14024] for operating in the defense and related materiel sector of the Russian economy (or any other sector identified under the EO) are subject to blocking sanctions and will appear on the SDN List." [OFAC FAQ 887](#). (Emphasis added).

2. Persons and Entities Engaged in Harmful Foreign Activities

Section 1(a)(ii) of EO 14024 authorizes blocking sanctions on any person determined to be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in a litany of activities (Harmful Foreign Activities), including:

- Malicious cyber-enabled activities
- Interference in a United States or other foreign government election
- Actions or policies that undermine democratic processes or institutions in the United States or abroad
- Transnational corruption
- Assassination, murder, or other unlawful killing of, or infliction of other bodily harm against, a United States person or a citizen or national of a United States ally or partner
- Activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners
- Deceptive or structured transactions or dealings to circumvent any United States sanctions, including through the use of digital currencies or assets or the use of physical assets

Separate provisions of EO 14024 also authorize blocking sanctions on any person determined to have been a leader, official, senior executive officer, or member of the board of directors of an entity that has, or whose members have, engaged in any of the Harmful Foreign Activities listed above² or an entity sanctioned under the EO.³ Sanctions may also be imposed on the spouses and adult children of persons sanctioned under these provisions of the EO.⁴

3. Persons Disrupting Gas or Energy Supplies to Europe, the Caucasus, or Asia

With an apparent eye toward the possible completion of the Nord Stream 2 pipeline project, Section 1(c) of EO 14024 authorizes sanctions on any person determined by the Secretary of State, in consultation with the Secretary of the Treasury, to be responsible for or complicit in, or to have directly or indirectly engaged in or attempted to engage in, cutting or disrupting gas or energy supplies to Europe, the Caucasus, or Asia, and to be:

- An individual who is a citizen or national of the Russian Federation; or
- An entity organized under the laws of the Russian Federation or any jurisdiction within the Russian Federation (including foreign branches)

4. The Russian Government and Agents of the Russian Government

Instrumentalities and officials of the Russian government are also key targets of EO 14024. Specifically, the EO authorizes sanctions on any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be a political subdivision, agency, or instrumentality of the Government of the Russian Federation.⁵ Sanctions may also be imposed on any individual determined to be a leader, official, or senior officer of the Government of the Russian Federation⁶ as well as entities owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.⁷

5. Persons Materially Assisting, and Those Controlled/Owned/Acting on Behalf of, Blocked Persons

EO 14024 authorizes sanctions on persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of one of the "Harmful Foreign Activities" listed above or any person sanctioned under the EO.⁸ Sanctions may also be imposed on persons who are owned, controlled by, or have acted or purported to act on behalf of, indirectly, or directly, persons blocked under EO 14024.⁹

Similarly, residents, citizens, or nationals of Russia and entities organized under the laws of the Russian Federation or any jurisdiction within the Russian Federation (including foreign branches) may be sanctioned if they are determined to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, a government whose property and interests in property are blocked pursuant to chapter V of title 31 of the Code of Federal Regulations or another Executive Order.¹⁰ The Governments of Syria and Venezuela, respectively, are two notable examples likely to be relevant to future enforcement of this provision.

Restrictions on Russian Sovereign Debt: Directive 1

Pursuant to Sections 1(a)(iv), 1(d), and 8 of EO 14024, OFAC issued a new directive (Directive 1) that prohibits U.S. financial institutions from (1) participation in the primary market for ruble or non-ruble denominated bonds issued after June 14, 2021 by the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; and (2) lending ruble or non-ruble denominated funds to those three entities. "U.S. financial institution" is defined broadly to include depository institutions, banks, savings banks, trust companies, securities brokers and dealers, futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefits plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. The definition also includes branches, offices, and agencies of foreign financial institutions that are located in the United States, but *not* such institutions' foreign branches, offices, or agencies. Directive 1 expressly states that all other activities involving these three entities or involving their property or interests in property are permitted, provided they are not otherwise prohibited under EO 14024 or any other sanctions program administered by OFAC.

Ultimately, Directive 1 represents a modest expansion of the pre-existing restrictions imposed on "U.S. banks" under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (CBW Act). A separate "[CBW Act Directive](#)," issued on August 2, 2019 pursuant to the CBW Act, already prohibited U.S. banks from participating in the primary market for non-ruble bonds issued by the Russian sovereign and lending non-ruble funds to the Russian sovereign. Directive 1 thus expands those restrictions to cover ruble- *and* non-ruble-denominated bonds *and* loans. Significantly, U.S. financial institution participation in secondary market activities involving Russian sovereign debt is unaffected by Directive 1 and remains permissible.

Additionally, OFAC guidance makes clear that OFAC's 50 Percent Rule is inapplicable in this context, as the prohibitions in Directive 1 "do not apply to any entity that is owned, directly or indirectly, 50 percent or more by one or more of these three entities, whether individually or in the aggregate." [OFAC FAQ 891](#).

Key Takeaways and Compliance Challenges

- **The Biden administration is taking a measured approach to sanctions expansion** . Although the new EO is broad in scope, many of its authorities will remain unused initially. Not surprisingly, this marks a clear departure from the "maximum pressure" approach to economic sanctions favored by the Trump administration. Our expectation is that while the pace and scope of sanctions designations under EO 14024 will increase over time, that increase is likely to be gradual and targeted. Of course, retaliation on the part of the Russian Federation, or other geopolitical events, may intervene to upend that approach.
- **Assessing the sanctions risk of conducting business in Russia is more complex than ever** . For U.S. and non-U.S. companies alike, EO 14024 unquestionably increases the sanctions compliance challenges associated with operating in Russia. Because the heightened sanctions risk of transacting with companies operating in Russia's technology sector is novel, for example, it should prompt companies dealing with that sector to consider refreshing partner and customer due diligence to better understand the nature of the risk they now face. Moreover, the possible future expansion of the EO to cover other, as-yet-unidentified sectors of Russia's economy, may compel companies, depending on the nature of their business, to consider contingency planning in the event sanctions compliance and business practices need to be adjusted quickly to respond to targeting of additional industry sectors by the U.S. pursuant to EO 14024.
- **U.S. financial institution participation in secondary markets for Russian sovereign debt remains permissible for now** . Because Directive 1's prohibitions are limited to the primary market for ruble and non-ruble denominated bonds, U.S. financial institutions will still have access to the secondary market in such bonds. It is quite possible, however, this avenue for continued dealings in the secondary market for Russian sovereign debt may not last. Although the U.S. itself could expand Directive 1 to cover U.S. financial institution participation in the secondary market, key U.S. allies, namely the U.K. and the EU, could impose similar sanctions to restrict the dealings of their financial institutions in Russian sovereign debt. The potential for further restrictions warrants close monitoring, as the interconnectivity of this global market could create considerable compliance challenges as financial institutions seek to navigate the rapidly evolving sanctions landscape.
- **Even if the Nord Stream 2 pipeline project is completed, that may not be the final word** . Recent statements and actions by U.S. government officials suggest that sanctions may finally be forthcoming against certain parties involved in the construction of the Nord Stream 2 pipeline project pursuant to the recently amended Protecting Europe's Energy Security Act (PEESA). Even if such sanctions are imposed, however, there is no guarantee at this advanced stage of the project that U.S. actions can prevent the completion of the Nord Stream 2 pipeline. In that event, Section 1(c) of EO 14024 now provides yet another sanctions tool for the U.S. to protect the energy supply of its allies from Russian interference. Whether this tool, like those that have preceded it, provides the desired deterrent effect is an open question. Nevertheless, this new authority signals that dealings with individuals and entities in Russia with ties to the Nord Stream 2 pipeline may continue to carry sanctions risks even if the project is completed and becomes operational.

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¹86 Fed. Reg. 20249 (Apr. 15, 2021).

²Section 1(a)(iii)(B).

³Section 1(a)(iii)(C).

⁴Section 1(a)(v).

⁵Section 1(a)(iv).

⁶Section 1(a)(iii).

⁷Section 1(a)(vii).

⁸Section 1(a)(vi).

⁹Section 1(a)(vii).

¹⁰Section 1(b).

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