COVINGTON

U.S., UK, and EU Impose Additional Sanctions and Export Controls Against Russia and Belarus

March 6, 2022

International Trade Controls

Throughout the past week, as Russia's military action in Ukraine has continued, the United States, European Union, and United Kingdom have imposed additional sanctions and export control restrictions targeting Russia. This alert provides an update on the rapidly evolving multilateral trade controls response to the invasion, building on the measures described in our alerts of February 22, February 25, and February 28. This alert also summarizes recent measures imposed against Belarus, from which Russia partially mounted its invasion.

On February 28, 2022, the European Union adopted additional measures which include additional asset-freezing designations and measures targeting the Russian aviation sector and Russia's Central Bank. The EU has also adopted new Belarus sanctions. On March 1, 2022, the UK Government laid the implementing legislation before Parliament which give effect to sanctions measures announced last month, including sanctions targeting the Russian financial sector and export controls restricting the export of all dual-use items to Russia.

The United States also imposed additional sanctions against Russian individuals and entities, on February 25, February 28, and March 3, 2022. These include property-blocking sanctions against additional Russian individuals and entities, including President Vladimir Putin, as well as prohibitions on transactions involving certain Russian state institutions, including the Central Bank of the Russian Federation and the Ministry of Finance. Additionally, on March 2 and 3, the United States imposed new export control measures on Belarus and Russia.

UK Introduces New Sanctions Measures Against Russia

On 1 March 2022, the UK Government issued a series of statutory instruments, which amended the UK's existing Russia Sanctions Regulations and gave effect to a number of new sanctions against Russia, many of which had already been announced by the government and were outlined in our alert of February 25. The UK Government has also issued an updated guidance paper, highlighting some of the key changes.

Sectoral Sanctions Targeting the Russian Financial Sector

The existing UK sanctions regulations, derived from EU measures that transitioned into UK law upon the UK withdrawal from the EU, had included restrictions on dealings in certain transferable securities, money market instruments, loans, and credits, with a maturity exceeding 30 days. Those restrictions focused on certain designated Russian banks, energy companies, and certain other entities – as listed in Schedule 2 to the regulation – together with their non-UK subsidiaries and other parties acting on their behalf or at their direction. The Russia (Sanctions)

(EU Exit) (Amendment) (No. 2) Regulations 2022 retain and expand upon those measures, including through the following:

- The pre-existing sanctions included an exemption for UK subsidiaries of Schedule 2 entities. That exemption is now removed with regard to transferable securities or money market instruments issued on or after 1 March 2022, or loan/credit arrangements made or granted on or after 1 March 2022.
- New sanctions have been implemented prohibiting transactions involving any transferable security/money market instrument or loan/credit arrangement – irrespective of the maturity period – with regard to any person “connected with Russia” (apart from those captured under the Schedule 2 sanctions), which includes parties resident or located in Russia, incorporated in Russia, or domiciled in Russia, entities owned by the foregoing, or anyone acting on behalf or at the direction of the foregoing. These new sanctions exclude entities domiciled outside of Russia and branches/subsidiaries thereof.
- New sanctions also have been implemented prohibiting transactions with regard to any transferable security/money market instrument or loan/credit arrangement concerning the Government of Russia, which includes the Russian President, Russian public bodies/agencies and ministries, the chairman of the Government of the Russian Federation and deputies thereof, and the Central Bank of Russia.
- The new regulation prohibits UK credit and financial institutions from establishing or continuing correspondent banking relationships with certain designated Russian banks (and certain affiliates thereof). Currently, the Russian bank Sberbank is the only bank targeted for these sanctions. A correspondent banking relationship is defined as "the provision of banking services by a correspondent to a respondent including by providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, providing customers of the respondent with direct access to accounts with the correspondent (and vice versa) and providing foreign exchange services".
- The regulation also prohibits UK credit or financial institutions from processing sterling payments to, from or via certain designated Russian parties (and certain affiliates thereof).

The foregoing restrictions are subject to targeted exemptions and licensing provisions, set forth in the regulation.

Export Controls Prohibiting the Export of Dual-Use Items to Russia

The Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2022 expand on the scope of existing export controls and services restrictions relating to Russia. The new measures – which are similar to those implemented by the EU in Council Regulation 328/2022 (described in our 28 February alert) – impose the following restrictions:

- The new measures prohibit exports of dual-use items to Russia, combined with restrictions on providing technical assistance, financial services, and brokering services in relation to those items (these restrictions expand on existing UK dual-use export controls given that the new services-related restrictions apply to the conduct of UK nationals and entities on a worldwide basis - and, thus, could capture the provision of technical assistance by UK persons working, for instance, in Russia or elsewhere).
- Similar prohibitions are now in effect with regard to “critical-industry” goods, software, and technology set forth in Schedule 2A of the new regulation. Schedule 2A includes a

broad range of electronics, computers, telecommunications and information security, sensors and lasers, navigation and aviation, marine, and aerospace and propulsion items that were not previously subject to UK export controls. Schedule 2A is similar in scope to Annex VII of EU Council Regulation 328/2022.

The new UK regulation introduces certain targeted exemptions and licensing provisions relating to the foregoing prohibitions.

Measures Preventing Russian Ships Entering UK Ports

The Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2022 introduces a range of measures in relation to Russian ships:

- Prohibiting Russian ships from entering ports in the UK: It is now prohibited for a person to provide access to a UK port to a ship, where such person knows, or has reasonable cause to suspect, that the ship is: (a) owned, controlled, chartered or operated by a designated person; (b) owned, controlled, chartered or operated by persons connected with Russia; (c) flying the flag of Russia; (d) registered in Russia; or (e) a ship specified by the Secretary of State.
- Introducing new powers to control the movement of Russian ships: The Secretary of State will have the power to direct a Russian ship (as defined by the criteria above) to proceed to or leave a UK port, or to detain a Russian ship.
- Prohibiting the registration of Russian ships in the UK: Ships owned, controlled, chartered or operated by designated persons or persons connected with Russia are prohibited from registration on the UK vessels register.

Restrictions on Provision of Financial Services to Russian Central Bank, National Wealth Fund and Ministry of Finance

The Russia (Sanctions) (EU Exit) (Amendment) (No. 5) Regulations 2022 introduces a prohibition on the provision, subject to targeted exemptions, of financial services relating to foreign exchange reserve and asset management involving Russia's Central Bank, National Wealth Fund and Ministry of Finance.

- It is prohibited for persons in the UK to provide such services to: (a) the Russian Central Bank; (b) the Russian National Wealth Fund; (c) the Russian Ministry of Finance; (d) a natural or legal person owned or controlled directly or indirectly by Russia's Central Bank, National Wealth Fund and Ministry of Finance; or (e) a person acting on behalf of or at the direction of Russia's Central Bank, National Wealth Fund and Ministry of Finance.
- For the purposes of the restriction, "foreign exchange reserve and asset management" means activities relating to the following reserves or assets: (a) money market instruments (including cheques, bills and certificates of deposit); (b) foreign exchange; (c) derivative products (including futures and options); (d) exchange rate and interest rate instruments (including products such as swaps and forward rate agreements); (e) transferable securities; (f) other negotiable instruments and financial assets (including bullion); and (g) special drawing rights.

UK Asset Freezing Sanctions

The UK Government has also continued to add parties to its asset-freezing list, including for example the Russian Direct Investment Fund, and several other Russian and Belarussian entities operating in the financial and defense sectors, as well as certain high-profile government officials and business leaders.

The UK Office of Financial Sanctions Implementation has issued a series of general licenses authorizing targeted transactions with certain parties designated for sanctions, including wind-down licenses and licenses allowing for the provision of essential services.

UK Publishes Legislative Proposals to Strengthen OFSI's Enforcement Powers

On 28 February, the UK Government published its draft Economic Crime Bill. This Bill is primarily focused on addressing issues of transparency of ownership and other economic crime matters, but it also included potentially significant changes to sanctions enforcement in the UK.

The draft Bill includes proposals to:

- Impose a "strict liability" test for monetary penalties for breaches of UK sanctions rules, meaning that the UK Office of Financial Sanctions Implementation (OFSI) would no longer be required to establish that firms had knowledge or "reasonable cause to suspect" sanctions were being breached in order to impose a fine. A Government statement on the draft Bill said this change would "make it easier for [OFSI] to impose significant fines" for breaches of sanctions.
- Give OFSI the power to publish details of companies that breach UK economic sanctions but do not receive a fine.

New EU Targeted and Sectoral Sanctions

On 28 February 2022 and on 1 March 2022, the EU adopted additional sanctions measures, as summarized below.

Additional Asset-freezing Designations

Council Implementing Regulation (EU) 2022/336 adds 26 individuals and one entity (Sogaz, a Russian insurance company) to the EU-Russia asset-freezing list. The new designations include certain Russian business leaders active in the oil and gas, banking and finance sectors, as well as members of government, and senior military figures. Among the most notable designations are Mikhail Fridman (founder and one of the main shareholders of the Alfa Group, which includes Alfa Bank), Alexey Mordaschov (Chairman of Severgroup), Gennady Timchenko (founder and shareholder of the Volga Group) and Alisher Usmanov (interests in iron ore and steel, media and internet companies).

The EU's asset freezing measures relating to Russia now apply to 680 individuals and 53 entities.

Additional Measures Targeting the Aviation Sector and Russia's Central Bank

Council Regulation (EU) 2022/334 introduces additional restrictions targeting Russia's aviation sector and Central Bank:

- Measures targeting the aviation sector: The Regulation requires EU Member States (subject to targeted exceptions) to deny permission to land in, take off from or overfly their territories to any aircraft operated by Russian air carriers, any Russian registered aircraft, or to non-Russian registered aircraft which are owned or chartered, or otherwise controlled by a Russian legal or natural person.

- Measures targeting Russia's Central Bank: The Regulation introduces restrictions on transactions related to the management of reserves and the assets of the Central Bank of Russia and entities acting on its behalf or direction. These restrictions aim to prevent the Russian Central Bank from using its international reserves to undermine the impact of EU sanctions. They complement EU measures adopted on 25 February, which imposed restrictions on dealings in transferable securities or money market instruments issued by the Central Bank, or the issuance of loans and credits to the Central Bank.

Specialized Financial Messaging Services Restrictions

Council Regulation (EU) 2022/345 prohibits the following (subject to certain specific exemptions):

- The provision of specialized financial messaging services, which are used to exchange financial data, to certain designated Russian financial institutions, which currently include Bank Otkritie, Novikombank, Promsvyazbank, Rossiya Bank, Sovcombank, Vnesheconombank (VEB), and VTB Bank. This prohibition will enter into force on March 12, 2022 and will also apply to any legal person, entity or body established in Russia whose proprietary rights are directly or indirectly owned for more than 50 percent by the above-mentioned banks.
- Investment, participation or other contributions to future projects co-financed by the Russian Direct Investment Fund. Member State authorities may authorize contributions to these projects that are due under contracts concluded before 2 March 2022.
- The sale, supply, transfer or export of Euro-denominated banknotes to Russia or to any natural or legal person, entity or body in Russia, including the government and the Central Bank of Russia, or for use in Russia.

Suspension of broadcasting activities of Sputnik' and Russia Today (RT)

Council Regulation (EU) 2022/350 introduces restrictions on broadcasting content by certain designated Russian parties, including certain operations of the Russian media providers Sputnik and Russia Today ("RT").

New EU Belarus Sanctions

On March 2, 2022 the EU Council imposed additional sanctions measures on Belarus in response to Belarus's support of the Russian invasion of Ukraine.

Council Regulation (EU) 2022/355 expands upon pre-existing Belarus sanctions that have been in place since 2006 and were significantly expanded in 2021. The new measures are broadly similar to aspects of the EU export and services measures targeting Russia and include the following:

- Export controls on dual use and strategic goods/technology: Similar to the EU-Russia sanctions, the Regulation broadly restricts (subject to targeted exemptions) the export or supply to Belarus of dual use goods, software, and technology, together with certain additional items that the EU has deemed to contribute to Belarus' military and technological enhancement, and the provision of related services. These prohibitions cover a broad range of products, including items controlled under the EU Dual Use Regulation as well as certain semiconductors and other electronics, mass market encryption hardware and software, sensors and lasers, navigation and avionics equipment, various types of vessels and associated equipment, ground vehicle engines, and various other propulsion equipment and aerospace-related equipment.

- Further export restrictions: Pre-existing export controls on goods used for the production or manufacturing of tobacco products are expanded to now also include a prohibition to provide a broad range of services related to these goods. Furthermore, the Annex listing the products subject to these restrictions has been expanded to include products captured by the commodity code “ex 8208 90 00” (“Other knives and cutting blades, for machines or for mechanical appliances”). The Regulation also removes a pre-existing grandparenting provision applicable to these products, which had authorized transactions pursuant to contracts pre-dating 25 June 2021.
- The Regulation also introduces new export controls, and associated services restrictions, with regards to machinery listed in Annex XIV, which lists machinery captured under Ch. 84 of the EU Customs Code (“Nuclear reactors, boilers, machinery, etc”).
- Import ban: The Regulation introduces an import ban with regards to specific commodities from Belarus, namely certain listed wood products, cement products, iron and steel products and rubber products. These prohibitions extend to the provision of related services. The prohibitions do not apply to the execution until 4 June 2022 of contracts concluded before 2 March 2022.
- Pre-existing import bans for petroleum and gaseous hydrocarbon products (now called “mineral products”) and potassium chloride ("potash") products remain in force. However, the Regulation expands the products captured by those restrictions, introduces restrictions on the provision of services associated with restricted imports, and removes the grandparenting provision which allowed for the execution of contracts concluded before 25 June 2021.
- Loan and insurance restrictions: The pre-existing restriction on providing loans or credits to Belarus, its Government, its public bodies, corporations or agencies and the three Belarusian banks Belarusbank, Belinvestbank, Belagroprombank remain in place. The Regulation does, however, remove the exception which allowed for the execution of contracts concluded before June 25, 2021. The same applies to the pre-existing insurance and re-insurance restrictions.
- Asset freezes: Finally, the EU has added 22 high ranked members of Belarusian military to its asset-freezing list.

New U.S. Sanctions and Export Controls

New U.S. Sanctions

Property-Blocking Sanctions

On February 25, pursuant to Executive Order 14024, the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) designated four of the highest-ranking officials in the Russian government to its List of Specially Designated Nationals and Blocked Persons (“SDN List”) for property-blocking sanctions. These officials are President Vladimir Putin; Foreign Minister Sergei Lavrov; Defence Minister Sergei Shoigu; and General Valery Gerasimov, Chief of the General Staff of the Russian Armed Forces.

On February 28, also pursuant to Executive Order 14024, OFAC designated one additional individual and three entities to its SDN List, including the Russian Direct Investment Fund (“RDIF”), which is the Russian sovereign wealth fund; its management company; and its CEO, Kirill Dmitriev.

On March 3, pursuant to Executive Order 14024, OFAC designated to its SDN List Dmitry Peskov, President Putin's press secretary, and several prominent Russian oligarchs, including Alisher Burhanovich Usmanov and Nikolay Petrovich Tokarev, as well as certain of their family members and business holdings. Pursuant to Executive Order 14024, as well as Executive Orders 13848 and the Countering America's Adversaries Through Sanctions Act ("CAATSA"), OFAC designated several alleged Russian disinformation outlets and certain of their employees to its SDN List.

U.S. persons are broadly prohibited from transacting or dealing with SDNs and entities that SDNs own 50 percent or more, directly or indirectly, individually or in the aggregate with other SDNs, except as authorized by OFAC. In addition, the property of SDNs and entities that they own 50 percent or more must be blocked, or frozen, when it comes into the United States or the possession or control of a U.S. person. "U.S. persons" are U.S. entities and their non-U.S. branches; individual U.S. citizens and lawful permanent residents ("green-card" holders), no matter where located or employed; and persons present in the United States.

In addition to these prohibitions applicable to U.S. persons, non-U.S. persons may be exposed to secondary sanctions risk, i.e., the risk of being designated for property-blocking sanctions themselves, in relation to certain activities with persons subject to the foregoing property-blocking sanctions.

Prohibition on Transactions Involving Certain Russian State Institutions

On February 28, 2022, OFAC issued new Directive 4 pursuant to Executive Order 14024. Directive 4 prohibits U.S. persons from engaging in "any transaction" involving Russia's Central Bank, National Wealth Fund, or Ministry of Finance, "including any transfer of assets to such entities or any foreign exchange transaction for or on behalf of such entities." OFAC FAQ 1002 clarifies that Directive 4 prohibits both direct and indirect transactions involving the targeted Russian state entities.

However, Directive 4 also states that "[a]ll other activities with entities determined to be subject to the prohibitions of this Directive, or involving their property or interests in property, are permitted, provided that such activities are not otherwise prohibited . . . ." As confirmed by OFAC FAQ 1001, this means that the prohibitions in Directive 4 do not apply to entities owned 50 percent or more by the Central Bank, the National Wealth Fund, or the Ministry of Finance.

OFAC FAQ 1005 also clarifies that Directive 4 does not prohibit trading in the secondary markets for debt or equity of these three state entities, provided that none of them is a counterparty to such a transaction. However, as discussed in our February 22, 2022 client alert, Directive 1A prohibits U.S. financial institutions from participating in the secondary market for ruble or non-ruble denominated bonds issued after March 1, 2022 by these three entities.

General Licenses

OFAC issued six new general licenses in connection with these new sanctions, as follows:

- General License 8A replaces and supersedes General License 8. As discussed in our February 25 client alert, General License 8 authorized, through 12:01 a.m. EDT on June 24, 2022, transactions "related to energy" involving several Russian banks that are designated for property-blocking and other sanctions measures. General License 8A adds the Central Bank of Russia to the list of entities with respect to which transactions "related to energy" are authorized under the license. While General License 8A applies to entities owned 50 percent or more by the other entities listed in the license, it does not apply to entities owned 50 percent or more by the Central Bank because, as noted above, the prohibitions in Directive 4 do not apply to entities owned 50 percent or more by the Central Bank. In addition to other limitations carried over from General License 8, General License 8A does not authorize debits to accounts on the books of a U.S. financial institution of the Russian Central Bank or transactions prohibited by Directive 1A, which, as discussed in our February 22 client alert, relates to dealings in certain Russian sovereign debt. OFAC also issued a new FAQ (1012), which states that, in the event General License 8A is not renewed beyond June 24, OFAC intends to issue a general license authorizing the orderly wind down of activities covered by General License 8A upon its expiration.

- General License 9A replaces and supersedes General License 9. As discussed in our February 25 client alert, General License 9 authorized, through 12:01 a.m. EDT on May 25, 2022, transactions ordinarily incident and necessary to dealings in debt or equity, issued prior to February 24, 2022, of several banks recently designated for property-blocking sanctions, subject to certain conditions. General License 9A expanded General License 9 to authorize, through 12:01 a.m. EDT on May 25, 2022, all transactions ordinarily incident and necessary to the receipt of interest, dividend, or maturity payments in connection with debt or equity, issued prior to March 1, 2022, of the Russian Central Bank, National Wealth Fund, or Ministry of Finance, subject to certain limitations. General License 9A thus authorizes certain transactions that otherwise would be prohibited by Directive 4.
- General License 10A replaces and supersedes General License 10. As discussed in our February 25 client alert, General License 10 authorized, through 12:01 a.m. EDT on May 25, 2022, transactions ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. EDT on February 24, 2022 with several banks recently designated for property-blocking sanctions. General License 10A expanded General License 10 to authorize, through 12:01 a.m. EDT on May 25, 2022, all transactions ordinarily incident and necessary to the wind down of derivative contracts, repurchase agreements, or reverse repurchase agreements entered into prior to 12:01 a.m. EDT on March 1, 2022 with the Russian Central Bank, National Wealth Fund, or Ministry of Finance, subject to certain limitations.
- General License 13 authorizes, through 12:01 a.m. EDT on June 24, 2022, U.S. persons to pay taxes, fees, or import duties, and to purchase or receive permits, licenses, registrations, or certifications, to the extent such transactions are prohibited by Directive 4, provided that the transactions are ordinarily incident and necessary to day-to-day operations in the Russian Federation.
- General License 14 authorizes all transactions prohibited by Directive 4 involving the Russian Central Bank, National Wealth Fund, or Ministry of Finance, where the "sole function" of one of these entities in the transaction is to act as an operator of a clearing and settlement system, provided that (1) the transaction does not involve a transfer of assets to or from one of these three entities, unless separately authorized; and (2) none of these three entities is a counterparty or beneficiary to the transaction, unless separately authorized.
- General License 15 authorizes transactions prohibited by the Russian Harmful Activities Sanctions Regulations ("RuHSR," which OFAC issued on February 28 to implement the prohibitions of Executive Order 14024) involving entities that are owned 50 percent or more, directly or indirectly, by Alisher Burhanovich Usmanov that are not themselves listed on the SDN List. General License 15 also unblocks the property of these entities and authorizes debits to accounts on the books of U.S. financial institutions of these entities.

New Frequently Asked Questions

In addition to the new FAQs discussed above, OFAC also released several other new FAQs regarding recently-issued sanctions against Russia. Most notably, OFAC FAQ 1009 clarifies that the new comprehensive sanctions imposed by Executive Order 14065 against the so-called Donetsk People's Republic ("DNR") and Luhansk People's Republic ("LNR") regions of Ukraine, detailed in our February 22 client alert, do not apply to the entire Donetsk and Luhansk oblasts of Ukraine. However, this FAQ does not otherwise clarify the scope of territory that is considered to be a part of the DNR and LNR.

New U.S. Export Controls

On March 2, 2022, the U.S. Commerce Department's Bureau of Industry and Security ("BIS") issued a Final Rule amending and supplementing the Export Administration Regulations ("EAR") to impose on Belarus many of the same stringent new export control measures that it imposed on Russia on February 24, 2022, as outlined in detail in our February 25 client alert. The new rule also modifies in potentially significant ways the scope of exports, reexports, and transfers (in-country) of devices classified on the EAR's Commerce Control List ("CCL") under Export Control Classification Number ("ECCN") 5A992 and software classified under ECCN 5D992 that are authorized for both Russia and Belarus, as well as the availability of License Exceptions ENC, AVS, and CCD.

Additionally, on March 3, 2022, BIS published a Final Rule targeting Russia's oil refinery sector by imposing more restrictive controls on exports, reexports, and transfers (in-country) to or within Russia of certain items. Also on March 3, BIS published a Final Rule adding 91 entities to the Entity List based upon their involvement in, contributions to, or other support of the Russian security services, military and defense sectors, and military and/or defense research and development efforts. Further, on March 4, BIS published a Final Rule adding the Republic of Korea (South Korea) to a list of partner countries implementing substantially similar export controls on Russia and Belarus under their domestic laws, and which are thus excluded from portions of the new U.S. export controls imposed on Russia and Belarus.

New Export Controls on Belarus

Licensing Requirements for Additional U.S. Items Destined for Belarus

The March 2 rule issued by BIS adds a new license requirement with respect to Belarus for exports, reexports, and transfers (in-country) of items subject to the EAR and classified under any ECCN in Categories 3 through 9 of the CCL, thus requiring BIS authorization for the export, reexport, and transfer of many more types of items to Belarus than was previously the case. *See* EAR § 746.8(a)(1). Pursuant to EAR § 746.8(b), license applications under this section will be subject to a policy of denial, with certain limited exceptions. Further, the March 2 rule significantly restricts the availability of license exceptions for Belarus pursuant to EAR § 746.8(c).

U.S.-origin items controlled for Belarus, as set out above, will be treated as controlled U.S.-origin content for purposes of the EAR's *de minimis* rule, which is used to determine whether a non-U.S.-made item is subject to the EAR and thus may require BIS authorization for export from abroad and reexport to Belarus, subject to certain partner country exceptions. *See* EAR § 746.8(a)(5).

Extension of Russia-Specific Foreign Direct Product Rules to Belarus

The March 2 rule also expands the scope of the two new Russia-related foreign direct product rules (described in our February 25 client alert) to apply to Belarus and Belarusian military end-users, respectively.

The Russia/Belarus FDP Rule

The first FDP rule (now the "Russia/Belarus FDP rule") applies to foreign-produced items that are not designated EAR99 and that are (1) the direct product of certain U.S.-origin technology or software subject to the EAR, or (2) produced by plants or major components of plants located outside the United States that are themselves the direct products of certain U.S.-origin technology or software subject to the EAR. The U.S.-origin software and technology covered by this rule include that which is specified in any ECCN in product groups D (software) and E (technology) in Categories 3 through 9 of the CCL. An item meets the scope of the Russia/Belarus FDP rule if there is "knowledge" that the item is destined for Russia or Belarus, or will be incorporated into or used in the production or development of parts, components, and equipment not designated EAR99 and produced in or destined for Russia or Belarus.

Under EAR § 746.8(a)(2), a license is now required for exports or reexports to, or transfers within, any destination of the items described above. However, items that previously qualified for a license exception or could be reexported or transferred (in-country) without a license, and were en route to or within a foreign destination on March 26, 2022, may proceed to that destination under the rule's savings clause. License applications for products covered under this rule will be reviewed under a policy of denial under EAR § 746.8(b), subject to case-by-case review for certain limited exceptions. Limited license exceptions are available under EAR § 746.8(c), and there are certain partner country exceptions under EAR § 746.8(a)(4).

The Russia/Belarus MEU FDP Rule

The second FDP rule (the "Russia/Belarus MEU FDP rule") now targets Russian *and* Belarusian military end users included on the Entity List in Supplement No. 4 to Part 744 of the EAR and assigned a Footnote 3 designation in the license requirement column of the Entity List. Under EAR § 734.9(g), the Russia/Belarus MEU FDP rule applies to nearly all foreign-produced items that are (1) the direct product of any software or technology subject to the EAR (except EAR99 items); or (2) produced by plants or major components of plants located outside of the United States that are themselves the direct products of U.S.-origin technology or software subject to the EAR (except EAR99 items). The software and technology relevant to the Russia/Belarus MEU FDP rule is *not* limited to Categories 3-9 of the CCL (but rather applies to all software and technology classified under ECCNs in product groups D or E on the CCL), and foreign-produced items subject to the rule *include* EAR99 items (except for EAR99 food and medicine), so the Russia/Belarus MEU FDP rule is more expansive than the Russia/Belarus FDP rule discussed above. An item falls within the scope of the Russia/Belarus MEU FDP Rule if a Footnote 3 entity is a party to the transaction, or if there is knowledge that the item will be incorporated into or used in the production or development of any part, component, or equipment produced, purchased, or ordered by a Footnote 3 entity.

Under EAR § 746.8(a)(3), a license is now required for exports or reexports to, or transfers within, any destination of the items described above. However, items that previously qualified for a license exception or could be reexported or transferred (in-country) without a license, and were en route to or within a foreign destination on March 26, 2022, may proceed to that destination under the rule's savings clause. Unlike the Russia/Belarus FDP rule, all license applications under the Russia/Belarus MEU FDP rule will be reviewed under a policy of denial, and no license exceptions are available under EAR § 746.8(c) except those specified in the specific Entity List entry for a particular entity. Certain partner country exceptions apply to the Russia/Belarus MEU FDP rule under EAR § 746.8(a)(4).

Addition of Belarus to Military End Use and Military End User Controls

The March 2 rule issued by BIS expands the scope of the "military end use" and "military end user" restrictions under EAR § 744.21 to include Belarus. As with Russia, the military end use and military end user controls applicable to Belarus prohibit the unlicensed export, reexport, or transfer (in-country) of any item "subject to the EAR" (except for food and medicine designated EAR99) with "knowledge" that the item is intended for a military end use or military end user in Belarus. Applications for licenses under this section will be subject to a policy of denial.

As part of the new rule, BIS has also added two Belarusian entities to the Entity List and designated them with Footnote 3 (discussed above) as military end users: JSC Integral and The Ministry of Defence of the Republic of Belarus, including the Armed Forces of Belarus and all operating units wherever located. The entry for the Ministry of Defence of the Republic of Belarus includes the national armed services (army and air force), as well as the national guard and national police, and government intelligence or reconnaissance organizations of the Republic of Belarus.

Addition of Belarus to Military-Intelligence End Use and Military-Intelligence End User Controls

In addition, the March 2 rule adds Belarus to the countries subject to the "military-intelligence end use" and "military-intelligence end user" restrictions in EAR § 744.22, which prohibit the unlicensed export, reexport, or transfer (in-country) of any item subject to the EAR with ''knowledge'' that the item is intended for a military-intelligence end use or military-intelligence end user in Belarus. Applications for licenses under this section will be subject to a policy of denial. The new rule identifies The Main Intelligence Directorate of the General Staff of the Armed Forces of Belarus as a military-intelligence end-user. The new rule also revises EAR § 744.6(b)(5) to restrict specific activities of U.S. persons in connection with military-intelligence end uses and military-intelligence end users in Belarus, even if they do not involve an item subject to the EAR.

Changes to Export Controls Affecting Both Russia and Belarus

As noted, in addition to the changes described above, the March 2 BIS rule modifies the scope of exports, reexports, and transfers (in-country) of devices classified under ECCN 5A992 and software classified under ECCN 5D992 that are authorized for both Russia and Belarus; amends the availability of License Exceptions ENC and AVS for both destinations; and adds Belarus as an eligible destination for License Exception CCD.

Change in Scope of License Requirements for Encryption-Related ECCNs

The March 2 rule makes several changes to harmonize and clarify the licensing requirements and scope of license exceptions that apply to the range of encryption-related ECCNs on the CCL (the "5x002" series and "5x992" series ECCNs), as outlined below.

Mass market ECCNs 5A992 and 5D992

The previous rule (issued February 24) authorized items subject to the EAR and classified under ECCNs 5A992.c and 5D992.c to be exported, reexported, or transferred (in-country) without a license to or for military end uses or military end users in Russia, unless intended for Russian government end users or Russian state-owned enterprises. However, the previous rule did not include an express carve-out from licensing for the export, reexport, or transfer (in-country) of the same ECCN 5A992.c and 5D992.c items to non-military end uses or end users, leaving some uncertainty about the applicable licensing requirements if the export, reexport, or transfer did not qualify for one of the limited number of license exceptions available.

The new rule removes the authorizations to supply such items for military end uses and military end users, and revises EAR § 746.8 to clarify the licensing requirements for such items more broadly. Specifically, paragraphs (a)(1) and (a)(2) of Section 746.8 now permit exports, reexports, and transfers (in-country) of commodities and software classified under ECCNs 5A992 or 5D992 to or within Russia or Belarus without a license only for a limited set of end users: Civil end users that are (i) wholly-owned U.S. subsidiaries; (ii) foreign subsidiaries of U.S. companies that are joint ventures with other U.S. companies; (iii) joint ventures of U.S. companies with companies headquartered in Country Groups A:5 and A:6; (iv) the wholly-owned subsidiaries of companies headquartered in Country Groups A:5 and A:6; or (v) joint ventures of companies headquartered in Country Groups A:5 and A:6 with other companies also headquartered in Country Groups A:5 and A:6. A license is required for the export, reexport, or transfer (in-country) of 5A992 or 5D992 items to any other end user unless License Exception CCD (discussed below) or some other license exception is available.

License Exception ENC

As discussed above, EAR § 746.8(c) sets out the license exceptions that are available for exports, reexports, and transfers (in-country) to Russia and Belarus of items classified under ECCNs in Categories 3 through 9 of the CCL. Under the previous version of this rule (issued February 24), the EAR's License Exception ENC (EAR § 740.17) was available for exports, reexports, and transfers (in-country) of qualifying items classified in "5x002" ECCNs to any end-users in Russia other than government end-users or state-owned enterprises. Now, however, License Exception ENC is available only for exports, reexports, and transfers (in-country) to the same set of civil end users in Russia or Belarus outlined above: Civil end users that are (i) wholly-owned U.S. subsidiaries; (ii) foreign subsidiaries of U.S. companies that are joint ventures with other U.S. companies; (iii) joint ventures of U.S. companies with companies headquartered in Country Groups A:5 and A:6; (iv) the wholly-owned subsidiaries of companies headquartered in Country Groups A:5 and A:6; or (v) joint ventures of companies headquartered in Country Groups A:5 and A:6 with other companies also headquartered in Country Groups A:5 and A:6.

The practical result of these changes affecting encryption-related ECCNs is to impose essentially the same restrictive licensing requirements for mass-market encryption items classified pursuant to ECCNs 5A992 and 5D992 and for other encryption items with "5x002" ECCNs that qualify for License Exception ENC when exporting, reexporting, or transferring these items to or within Russia and Belarus.

License Exception AVS

The March 2 rule revises EAR § 746.8(c)(5) to prohibit any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from using License Exception AVS under EAR § 740.15(a) and (b). BIS notes that it is making this revision concurrently with the U.S. Department of Transportation and the Federal Aviation Administration, which have issued orders blocking Russian aircraft and airlines from entering and using all domestic U.S. airspace.

License Exception CCD

The March 2 rule adds Belarus as an eligible destination under License Exception CCD (EAR § 740.19), which authorizes the export, reexport, and transfer (in-country) of certain consumer devices and software to or for the use of individuals and "independent non-governmental organizations" in Belarus (as well as Russia and Cuba). The rule also revises License Exception CCD to specify the Belarusian government and certain Belarusian government officials as ineligible to receive commodities or software under License Exception CCD (in addition to the Russian government and ineligible Russian officials identified in the prior rule).

Certain Additional Changes

The March 2 rule issued by BIS makes certain additional changes to the EAR with respect to Belarus. These changes include, among other things:

- Revising the Commerce Country Chart in EAR Part 738 Supplement No. 1 to indicate that a license is now required for exports and reexports to Belarus of items controlled on the EAR's CCL for nuclear-nonproliferation ("NP1" and "NP2") reasons, and to also indicate that CCL items controlled for NP2 reasons require authorization for export or reexport to Russia.
- Revising the Country Groups in the EAR, at Supplement No. 1 to Part 740, to indicate that Belarus is no longer part of Country Group A:4 Nuclear Suppliers Group, and to add Belarus to Country Group D:2 Nuclear and D:4 Missile Technology, to reflect that Belarus is a country of concern for both nuclear proliferation and missile technology proliferation.

On March 3, BIS published a Final Rule targeting Russia's oil refinery sector, expanding the scope of export controls that originally were added to the EAR in August 2014 in response to Russia's destabilizing conduct in Ukraine and occupation of the Crimea region of Ukraine. Specifically, the rule adds a new license requirement under EAR § 746.5 for exports, reexports, and transfers (in-country) to and within Russia of any item subject to the EAR and listed in a new Supplement No. 4 to EAR Part 746. License applications submitted for such exports, reexports, and transfers (in-country) will be subject to a policy of denial, subject to certain limited exceptions for exports, reexports, and transfers (in-country) for health and safety reasons, which will be subject to case-by-case review.

Also on March 3, BIS added 91 entities in 10 countries to the Entity List based upon their involvement in, contributions to, or other support of the Russian security services, military and defense sectors, and military and/or defense research and development efforts. These entities are located in Russia (81), the UK (3), Estonia (3), Spain (2), Malta (2), Kazakhstan (1), Latvia (1), Belize (1), Singapore (1), and Slovakia (1). (The total number of entries is 96 rather than 91, as some entities operate in multiple countries). A full list of the entities by country is available in the text of the rule here. None of these added entities is designated as a "Footnote 3" entity triggering application of the Russia/Belarus MEU FDP Rule.

In addition, on March 4, BIS issued a Final Rule adding South Korea to a list of partner countries at Supplement No. 3 to EAR Part 746 that have committed to implementing export controls on Russia and Belarus under their domestic laws that are substantially similar to the export controls implemented by the United States. These partner countries have received full or partial exclusions from the requirements of (i) the FDP rules discussed above, and (ii) the EAR's *de minimis* rule for certain non-U.S. items being exported or reexported from a partner country to Russia or Belarus. South Korea has received a full exclusion from these requirements. Other partner countries subject to these exclusions include all members of the EU, Australia, Canada, Japan, New Zealand, and the United Kingdom.

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We are closely monitoring developments concerning the U.S., UK, and EU sanctions against Russia, and will issue further updates in the event of material developments. In the meantime, we would be happy to address any questions you may have.

Covington's International Trade Controls team—which includes lawyers in the firm's offices in the United States, London, Brussels, and Frankfurt—regularly advises clients across business sectors, and would be well-placed to provide support in connection with the emerging Russia sanctions and export controls.

Our trade controls lawyers also work closely with Covington's Global Public Policy team which consists of over 120 former diplomats and policymakers in the United States, Europe, the Middle East, Latin America, Africa, and Asia. Many of the members of the Public Policy team have had substantial government experience in sanctions and export controls matters, and regularly advise our clients on emerging sanctions policy matters and related engagements with government stakeholders.

Covington is therefore exceptionally well-positioned to assist clients in navigating their most complex challenges, drawing on our trade and public policy teams as well as our additional multidisciplinary teams in areas including international arbitration and disputes, cybersecurity, anti-money laundering, corporate restructuring, finance, and insurance.

As the Ukraine crisis evolves, we will continue to monitor developments, including those regarding U.S., UK, and EU sanctions against Russia, and will issue further updates in the event of material developments.

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