

Biden Administration Takes First Major Sanctions Action Toward Russia: What You Need to Know

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On April 15, 2021, President Biden imposed several new punitive measures targeting Russia, including a new sanctions executive order (“EO”), EO 14024, a Directive prohibiting certain transactions in ruble-denominated debt involving the Russian government, blocking sanctions on a wide array of individuals and entities, and expelling ten Russian diplomats posted to the U.S. In short, the new EO and new Directive expand the scope of existing U.S. sanctions authorities, as well as impose new sanctions and prohibitions, with respect to Russia.

What you need to know

Of particular and immediate impact for U.S.-person entities and individuals, including U.S. financial institutions, are the new sanctions designations and the new prohibitions, effective June 14, 2021, on dealing in ruble-denominated Russian sovereign debt and loans to the Russian Federation. These new restrictions should be factored into potentially impacted companies’ relevant compliance functions.

More broadly, the new EO represents President Biden’s first major sanctions action with respect to Russia and sets the tone for U.S. policy toward Russia under the new administration. While the new sanctions authorities do not break entirely new ground with respect to Russia sanctions - indeed, sanctions authority already existed under prior EOs for much of the conduct, and many of the persons and entities, targeted in EO 14024 - entities with significant operations in Russia or with Russian persons should take additional steps to ensure they do not face new risks or obligations as a result of the new EO and accompanying Directive.

The New Executive Order

The Biden administration’s stated intent of EO 14024, “Blocking Property with Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation,” is to “signal that the United States will impose costs in a strategic and economically impactful manner on Russia if it continues or escalates its destabilizing international actions.” To that end, the new EO provides OFAC the authority to block all property and interests in property of persons or entities it determines to be within the following categories:

- To operate or have operated in Russia’s technology sector, defense and related materiel sector, or any other sector as may be determined by the Secretary of the Treasury in consultation with the Secretary of State;
- To be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in, any of the following for or on behalf of, or for the benefit of, directly or indirectly, the Russian Government:
- Malicious cyber-enabled activities;
- Interference in a U.S. or other foreign government election;

- Actions or policies that undermine democratic processes or institutions in the U.S. or abroad;
- Transnational corruption;
- Assassination, murder, or other unlawful killing of, or infliction of other bodily harm against, a U.S. person or a citizen or national of a U.S. ally or partner;
- Activities that undermine the peace, security, political stability, or territorial integrity of the U.S., its allies, or its partners; or
- Deceptive or structured transactions or dealings to circumvent any U.S. sanctions, including through the use of digital currencies or assets or the use of physical assets;
- To be or have been a leader, official, senior executive officer, or member of the board of directors of Russia's government, any entity that has, or whose members have, engaged in the above listed activities, or any entity whose property and interests in property are blocked pursuant to the order;
- To be a spouse or adult child of any person blocked on the basis of having engaged in the malign activities identified above or on the basis of being a leader, official, or other senior member of Russia's government or an entity blocked pursuant to EO 14024;
- To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, a government that is blocked under any U.S. sanctions authority and who are:
 - Russian citizens or nationals;
 - Entities organized under Russian laws or any jurisdiction in Russia (including foreign branches); or
 - Any person ordinarily resident in Russia; and
- 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:
 - Russian citizens or nationals; or
 - Entities organized under Russian laws or any jurisdiction within Russia (including foreign branches).

The EO also prohibits transactions that evade or avoid, have the purpose of evading or avoiding, causing a violation of, or attempting to violate any of the above prohibitions. Similarly, conspiracies formed to violate any of the prohibitions above are also prohibited.

The EO goes into effect immediately.

The New Directive

In conjunction with EO 14024, the U.S. Department of the Treasury's Office of Foreign Assets Controls ("OFAC") also issued Directive 1 under that EO. The new Directive expands on existing prohibitions on dealing in non-ruble denominated Russian sovereign debt that have been in place since August 2019, as outlined in FAQ 890 below.

Directive 1 prohibits "U.S. financial institutions" from:

- Participation in the primary market for *ruble or non-ruble* denominated bonds issued after June 14, 2021 by

Russia's Central Bank, National Wealth Fund, and Ministry of Finance; and

- Lending *ruble* or *non-ruble* denominated funds to these three Russian entities.

For purposes of the above authority, a "U.S. financial institution" includes any:

- U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or other extensions of credit, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent;
- 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 benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing; and
- Branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

The Directive also prohibits 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 contained in the Directive; and any conspiracy formed to violate any of the prohibitions therein.

The effective date of the Directive is June 14, 2021.

The New FAQs

Accompanying the EO and the new Directive, OFAC also issued six new FAQs, including the following:

- FAQ 886 summarizes the designation authorities in EO 14024, and notes that, as distinct from prior EOs issued in response to the Ukraine crisis, it is intended to address harmful activities not covered by those authorities, including Russia's efforts to undermine the conduct of democratic elections and engagement in malicious cyber activities, among others. FAQ 886 notes that the 50 Percent Rule applies to entities designated under EO 14024.
- FAQ 887 addresses the fact that EO 14024, EO 13662, and Directive 3 under EO 13662, all target Russia's defense and related materiel sector. Directive 3 provides for non-blocking, sectoral sanctions against persons determined to operate in the defense and related materiel sector. FAQ 887 clarifies that persons subject to Directive 3 are not automatically subject to blocking sanctions under EO 14024, and that the sanctions in the new EO are not automatic and require a designation by OFAC to the List of Specially Designated Nationals and Blocked Persons ("SDN List").
- FAQ 889 clarifies that Directive 1 under EO 14024 does not prohibit U.S. financial institutions from participating in the secondary market for bonds issued by the three Russian entities named in that Directive.
- FAQ 890 addresses the relationship of new Directive 1 prohibitions with prohibitions already existing under the "CBW Act Directive," issued on September 16, 2019 pursuant to EO 13883. As a result of the CBW Act Directive, U.S. banks have already been prohibited from participating in the primary market for *non-ruble* denominated bonds of the Russian sovereign and lending *non-ruble* denominated funds to the Russian sovereign (which includes the three named Russian entities). As of June 14, 2021, however, this prohibition is extended to U.S. financial institutions, as defined in the Directive and outlined above - which includes, but is not limited to, U.S. banks - and to

ruble denominated bonds and loans.

- FAQ 891 clarifies that the 50 Percent Rule does not apply to Directive 1 under EO 14024. Accordingly, these prohibitions do not apply to any entity that is owned, directly or indirectly, 50 percent or more by one or more of the three named Russian entities in the Directive, whether individually or in the aggregate.

In addition to the above, OFAC also amended FAQ 673 to 676, which address the scope of the prohibitions in the CBW Act Directive.

New Sanctions Designations

In addition to issuing the above new authorities and guidance, OFAC also undertook a large-scale designation action. In so doing, Treasury sanctioned 32 entities and individuals that it deemed to have carried out “Russian government-directed attempts to influence the 2020 U.S. presidential election, and other acts of disinformation and interference.” In addition, OFAC designated six companies operating in Russia’s technology sector that Treasury deemed to have supported Russian Intelligence Services under the first use of the new EO. In addition, OFAC, in a coordinated action with the European Union, the United Kingdom, Australia, and Canada, sanctioned eight individuals and entities it determined to be associated with Russia’s ongoing activity in Crimea.

You can find OFAC’s press releases on these actions [here](#), [here](#), and [here](#).

Additional Political Actions

Beyond these sanctions measures, the United States also took numerous political actions targeting Russia. Such steps included expelling ten individuals, including representatives of Russian intelligence services, from the Russian diplomatic mission in Washington, DC. The U.S. also formally named the Russian Foreign Intelligence Service as the perpetrator of the cyber espionage campaign that exploited the SolarWinds Orion platform and other information technology infrastructures.

You can find the advisory [here](#) and a White House Fact Sheet providing a synopsis of all actions undertaken by the administration [here](#).

Conclusion

Taken together, the Biden administration’s recent sanctions and other actions against Russia are intended to punish past behavior and deter future misdeeds. While these actions are significant, the Biden administration does not intend to abandon its ongoing diplomatic engagement with Russia, in the hope that there may now be an opportunity to de-escalate tensions between the two nations. As such, the Biden administration now plans to assess the impacts of these sanctions and other measures on markets and bystander stakeholders, as well as assess the Russian response. Depending on the latter, the U.S. is prepared to take further action, including escalation of these new penalties.

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