

Russia sanctions update: U.S. expands secondary sanctions regime for foreign financial institutions

January 8, 2024 | Client Update | 13-minute read

The United States continues to expand sanctions targeting Russia. A new executive order authorizes OFAC to impose secondary sanctions on non-U.S. financial institutions that facilitate transactions with Russia's military-industrial base and broadens import restrictions on certain Russian goods.

Through a series of measures adopted in late December 2023, the United States and its allies once again expanded economic sanctions and trade restrictions targeting Russia. On December 22, 2023, the Biden administration issued [Executive Order \(EO\) 14114](#) which, among other things, authorizes the Office of Foreign Assets Control (OFAC) to impose secondary sanctions on foreign financial institutions that facilitate transactions that support Russia's military-industrial base and broadens existing import restrictions on Russian-origin goods to include third-country goods incorporating Russian content.¹ Separately, on December 20, OFAC tightened enforcement of the price cap policy on Russian oil and petroleum products through new recordkeeping and attestation requirements, following on a series of designations of non-U.S. vessels and firms violating the cap. The new measures reflect the recent commitment made by the G7 to curtail Russia's use of the international financial system to support its military-industrial base and limit Russia's revenue from key economic outputs.² The European Union and United Kingdom have also amended their sanctions programs to broaden import, export, and other financial services restrictions.³

As discussed in previous [client updates](#), the United States and allies have increasingly targeted third-country actors that facilitate Russia's evasion of sanctions and export controls. While previous sanctions have generally targeted individuals and entities directly involved in Russia's evasion of sanctions, the secondary sanctions regime under EO 14114 is broader, authorizing OFAC to target financial institutions involved in the underlying transactions that support Russia's military-industrial base. In a [Compliance Advisory](#) released on December 22 (the Compliance Advisory), OFAC stated that it believes this secondary sanctions regime is the "natural evolution" of the steps taken to date to "counter evasion and hold accountable those perpetuating Russia's war against Ukraine, including financial facilitators."⁴ OFAC also made clear that it expects foreign financial institutions to implement robust, risk-based controls to identify and minimize their exposure to Russia's military-industrial base.

Secondary sanctions on foreign financial institutions

What does EO 14114 do?

EO 14114 amends EO 14024⁵ to authorize OFAC to impose secondary sanctions on any foreign financial institution (including banks, broker-dealers, and money services businesses such as cryptocurrency companies)⁶ that is determined to have:

- conducted or facilitated a significant transaction or transactions for any persons designated pursuant to EO 14024 for operating in the technology, defense and related materiel, construction, aerospace, or manufacturing sectors of the

Russian Federation economy; or

- conducted or facilitated any significant transaction or transactions, or provided any service, involving Russia's military-industrial base, including, but not limited to, the sale, supply, or transfer, directly or indirectly, to the Russian Federation, of any item or class of items as may be determined by the Secretary of the Treasury, in consultation with the Secretaries of State and Commerce (the specified items).

On the same day that EO 14114 was issued, OFAC released an initial list of specified items identified by broad category, which include, among other things, manufacturing materials for semiconductors and related electronics, advanced optical systems, machine tools and manufacturing equipment, and other key manufacturing components, lubricants, and chemicals.⁷

EO 14114 and the Compliance Advisory identify a number of activities that may expose foreign financial institutions to sanctions which include, among other things:

- Maintaining accounts, transferring funds, or providing other financial services (i.e., payment processing, trade finance, insurance) for any persons designated for operating in the specified sectors;
- Maintaining accounts, transferring funds, or providing other financial services to any persons, either inside or outside Russia, that “support” Russia's military-industrial base (including those that operate in the specified sectors);
- Facilitating the sale, supply, or transfer of specified items to Russian importers or companies shipping the items to Russia; and
- Facilitating the evasion of sanctions on Russia's military-industrial base, including through altering payment information and customer names or arranging non-transparent payment mechanisms.

OFAC's guidance, consistent with past secondary sanctions programs, indicates that “significant transaction” will be interpreted broadly and flexibly based on all the facts and circumstances.⁸ Similarly, Russia's “military-industrial base” is broadly defined to include Russia's technology, defense and related materiel, construction, aerospace, and manufacturing sectors, as well as other individuals and entities that support the sale, supply, or transfer of specified items.⁹ With respect to identifying “persons designated pursuant to EO 14024 for operating in the technology, defense and related materiel, construction, aerospace, or manufacturing sectors of the Russian Federation,” OFAC indicates that it intends to amend its SDN List to identify the relevant entities (as it has in the past); in the interim, it refers institutions to the original designation notices for each SDN.¹⁰ While transactions involving SDNs designated in the identified sectors or specified items are specifically identified as a basis for secondary sanctions, the authority to designate foreign financial institutions dealing with Russia's military-industrial base is not limited to such transactions.

Under EO 14114, OFAC has authority to impose full blocking sanctions on foreign financial institutions or to restrict or prohibit their access to U.S. correspondent accounts, effectively cutting off their access to U.S. dollar transactions.¹¹

Unlike primary sanctions prohibitions, which apply to conduct by U.S. persons or with a U.S. nexus, the secondary sanctions authorized under EO 14114 may be imposed even when a financial institution acts entirely outside of U.S. jurisdiction. The secondary sanctions do not apply automatically, however, and the decision to impose restrictive measures is discretionary to executive agencies and based on policy as well as legal considerations. Historically, the U.S. government has been highly selective in actually targeting foreign financial institutions for secondary sanctions, but it has aggressively used the prospect of such sanctions to encourage institutions to cease or reduce involvement in potentially sanctionable activity. We expect this to be the case with respect to this new authority as well.

What are the expectations for financial institutions?

The activities that can trigger secondary sanctions are broadly defined, and they may place significant compliance burdens on foreign financial institutions. The Compliance Advisory indicates that foreign financial institutions are expected to implement additional risk-based compliance controls, beyond their baseline customer due diligence and anti-money laundering controls, to identify and monitor customers and transactions that may have secondary sanctions implications.

The Compliance Advisory lists a number of steps that financial institutions may take to mitigate their risk exposure. These steps generally align with standard risk-based compliance measures, such as conducting appropriate risk assessments, communicating compliance expectations to customers, obtaining attestations that customers do not engage in targeted activities where appropriate, implementing mitigation measures for customers engaged in high-risk activities (e.g., controls to impose restrictions on accounts and permissible activities), and carefully reviewing underlying documentation in trade finance transactions. OFAC does not prescribe specific compliance requirements (and, in the case of secondary sanctions, foreign financial institutions are typically acting outside of U.S. jurisdiction), but the presence or absence of a

compliance program appropriate to the size and nature of the institution and its customers will be a factor in any decision to impose secondary sanctions (as it is for enforcement actions involving violations of direct sanctions).

New import restrictions, updated oil price cap rules, and designations

Restrictions on imports

At the G7 Leaders' Summit in early December, the G7 committed to imposing further import restrictions on key Russian goods and limiting Russia's circumvention of trade controls. Consistent with those commitments, EO 14114 also broadens import restrictions on Russian-origin goods that are modified in a third country or incorporated into other products. In particular, EO 14114 amends EO 14068¹² to authorize OFAC to prohibit the importation of seafood, diamonds, and other items identified by Treasury that have been "mined, extracted, produced or manufactured wholly or in part in Russia or harvested in waters under Russian jurisdiction or by Russia-flagged vessels," where such items are substantially transformed or incorporated into other products outside of Russia. OFAC subsequently released a directive¹³ applying the expanded restrictions to products incorporating Russian-origin seafood¹⁴ and indicated that it plans to further extend the restrictions to diamonds.¹⁵

Updates to oil price cap rules

To limit Russia's revenue from energy sales, OFAC also revised its rules to tighten due diligence expectations for service providers involved in the maritime transportation of Russian crude oil and petroleum products to better support enforcement of the G7 price cap on those products. As discussed in our client updates of [December 5, 2022](#), and [March 14, 2023](#), the oil price cap policy was adopted by the United States, the G7, the European Union, and Australia (the Price Cap Coalition) to limit the revenue the Russian government earns from oil sales while avoiding the disruption to global energy markets that would be caused by outright bans on the purchase or transportation of Russian oil. To implement the policy, OFAC released determinations that prohibit U.S. persons from providing certain services related to the maritime transport of Russian crude oil and petroleum products (Covered Services)¹⁶ unless that oil is purchased at or below a price cap. Providers of Covered Services benefit from a safe harbor presuming that the underlying transaction does not violate the price cap, provided that they comply with certain recordkeeping and attestation requirements set out in OFAC guidance.

On December 20, 2023, OFAC strengthened its oil price cap rules by revising its Guidance on Implementation of the Price Cap Policy for Crude Oil and Petroleum Products of Russian Federation Origin (the [Updated Price Cap Guidance](#)). The Updated Price Gap Guidance outlines new expectations for certain providers of Covered Services relying on the safe harbor to 1) receive attestations within a specified timeframe for each lifting or loading of Russian oil or Russian petroleum products, and 2) retain, provide, or receive itemized ancillary cost information as required.¹⁷ The Updated Price Cap Guidance changes due diligence expectations for Insurers, P&I Clubs, and flagging registries, which will only be eligible for the safe harbor provided by the guidance if they obtain specific attestations each time a vessel lifts or loads Russian oil or petroleum products rather than general contractual provisions. The safe harbor is now also conditioned on providers of Covered Services who request, but do not receive, documentation or attestations from a counterparty (1) ceasing doing business with the counterparty and (2) disclosing the refusal to OFAC.

OFAC expects U.S. providers of Covered Services to be in compliance with the Updated Price Cap Guidance by February 24, 2024.

Designations of shippers violating the price cap rules

The Treasury Department has also been increasingly active in enforcing the price cap by imposing sanctions on foreign vessels and shipping companies engaged in transactions that violate the cap. Shipping companies, managers, traders, and related vessels based in Hong Kong, the UAE, Turkey, and the Marshall Islands have all been designated for blocking sanctions in a series of actions this fall.¹⁸ Although there are no secondary sanctions explicitly targeting evasion of the price cap *per se*, Treasury has aggressively used the more general authorities of EO 14024 (for example, operating on behalf of the Government of the Russian Federation, operating in the maritime sector of the Russian Federation, dealing with U.S. sanctioned entities, engaging in deceptive transactions, or using U.S.-origin services in violation of U.S. sanctions) to target vessels and companies engaged in the maritime trade of Russian oil at prices above the cap. In a number of cases in the most recent set of designations, there was no allegation that the underlying transactions involved prohibited U.S.-origin services or had any other link to U.S. jurisdiction.¹⁹ These designations

underscore the risks to foreign entities in the maritime and energy sectors of transactions, often deceptive or opaque, that circumvent the price cap.

Looking Ahead

As the conflict in Ukraine approaches its second year, the United States and its allies have increasingly focused on narrowing Russia's avenues to evade sanctions and export controls and have targeted third-country facilitators and intermediaries. The secondary sanctions regime established under EO 14114 reflects this focus on third-country actors; indeed, OFAC stated that it views the secondary sanctions targeting foreign financial institutions as the "natural evolution" of the measures taken to date. OFAC and other regulators have also repeatedly signaled their willingness to take enforcement action in response to violations of sanctions and export control laws and to use existing sanctions authorities to designate actors undermining U.S. foreign policy objectives.²⁰ Collectively, the U.S. government's actions and statements to date make clear that financial institutions, traders, and other intermediaries (both U.S. and non-U.S.) are expected to maintain robust compliance controls that are tailored to address Russia-specific risks. Although OFAC will likely be highly selective in imposing secondary sanctions, regulators will likely continue take a more aggressive approach to violations of sanctions and export controls more broadly.

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- ¹ Exec. Order No. 14114, 88 Fed. Reg. 89,271 (2023), <https://www.govinfo.gov/content/pkg/FR-2023-12-26/pdf/2023-28662.pdf>. EO 14114 amends EO 14024 and EO 14068.
- ² White House, Press Release, G7 Leaders' Statement (December 6, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/06/g7-leaders-statement-6/#:~:text=We%2C%20the%20Leaders%20of%20the,become%20a%20symbol%20of%20peace> (G7 Leaders' Statement).
- ³ European Commission, EU Adopts 12th Package of Sanctions Against Russia for Its Continued Illegal War Against Ukraine (December 18, 2023), https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6566; Office of Financial Sanctions Implementation, Updates to Correspondent Banking Restrictions (December 21, 2023), <https://ofsi.blog.gov.uk/2023/12/21/updates-to-correspondent-banking-restrictions/>
- ⁴ OFAC, Guidance for Foreign Financial Institutions on OFAC Sanctions Authorities Targeting Support to Russia's Military-Industrial Base (December 22, 2023), <https://ofac.treasury.gov/media/932436/download?inline>.
- ⁵ Exec. Order No. 14024, 86 Fed. Reg. 20,249 (2021), <https://www.govinfo.gov/content/pkg/FR-2021-04-19/pdf/2021-08098.pdf>.
- ⁶ "Foreign financial institution" is defined under EO 14114 to mean "any foreign entity that is engaged in the business of accepting deposits; making, granting, transferring, holding, or brokering loans or credits; purchasing or selling foreign exchange, securities, futures or options; or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions; banks; savings banks; money services businesses; operators of credit card systems; trust companies; insurance 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; dealers in precious metals, stones, or jewels; and holding companies, affiliates, or subsidiaries of any of the foregoing."
- ⁷ A full list of the specified items is included in an annex to the determination. See OFAC, Determination Pursuant to Section 11(a)(ii) of Executive Order 14024 (December 22, 2023), <https://ofac.treasury.gov/media/932446/download?inline>.
- ⁸ OFAC, FAQ 1151 (December 22, 2023), <https://ofac.treasury.gov/faqs/1151>. OFAC stated that it will consider one or more of the following factors: (a) the size, number, and frequency of the transaction(s); (b) the nature of the transaction(s); (c) the level of awareness of management and whether the transactions are part of a pattern of conduct; (d) the nexus of the transaction(s) to persons sanctioned pursuant to EO 14024, or to persons operating in Russia's military-industrial base; (e) whether the transaction(s) involve deceptive practices; (f) the impact of the transaction(s) on U.S. national security objectives; and (g) such other relevant factors that OFAC deems relevant.
- ⁹ *Id.*

- ¹⁰ OFAC, FAQ 1153 (December 22, 2023), <https://ofac.treasury.gov/faqs/1153>.
- ¹¹ U.S. financial institutions must close any correspondent account or payable-through account maintained for or on behalf of targeted foreign financial institutions. Russia-related [General License 84](#) authorizes the closures of such accounts within 10 days of the imposition of sanctions, subject to certain conditions. See OFAC, FAQ 1149 (December 22, 2023), <https://ofac.treasury.gov/faqs/1149>.
- ¹² As discussed in our March 21, 2022 [client update](#), in Executive Order 14068, the Administration banned the importation of the following products of Russian Federation origin: fish, seafood and preparations thereof; alcoholic beverages; non-industrial diamonds; and any other products as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State and Secretary of Commerce.
- ¹³ OFAC, Determination Pursuant to Section 1(a)(i)(b) of Executive Order 14068 (December 22, 2023), <https://ofac.treasury.gov/media/932451/download?inline> (the Seafood Directive).
- ¹⁴ Seafood is defined under the Seafood Directive to include salmon, cod, pollock, and crab.
- ¹⁵ OFAC, FAQ 1154 (December 22, 2023), <https://ofac.treasury.gov/faqs/1154>.
- ¹⁶ Covered Services include trading/commodities brokering, shipping, insurance, flagging, customs brokering and financing, as they relate to the maritime transport of crude oil of Russian origin. OFAC, Prohibitions on Certain Services as They Relate to the Maritime Transport of Crude Oil of Russian Federation Origin, https://home.treasury.gov/system/files/126/determination_11222022_eo14071.pdf.
- ¹⁷ OFAC now requires such providers who regularly have direct access to price information in the ordinary course of business (Tier 1 Actors), to retain itemized ancillary cost information. OFAC now requires such providers who are sometimes able to request and receive price information from their customers in the ordinary course of business (Tier 2 Actors), to request and retain, to the extent practicable, documents that include ancillary cost information. OFAC now requires such providers who do not regularly have direct access to price information in the ordinary course of business (Tier 3 Actors), to require counterparties to share itemized ancillary costs upon request. OFAC requires certain Tier 2 and Tier 3 Actors who choose to obtain and retain signed customer attestations to fall within the protections of the safe harbor, to obtain such attestations within 30 days of each lifting or loading of Russian oil or petroleum products.
- ¹⁸ Dept. of the Treasury, Treasury Tightens the Price Cap with New Sanctions and Updated Guidance (Dec. 20, 2023), <https://home.treasury.gov/news/press-releases/jy2008>; Dept. of the Treasury, Treasury Imposes Additional Price Cap-Related Sanctions (Dec. 1, 2023), <https://home.treasury.gov/news/press-releases/jy1940>; Dept. of the Treasury, Treasury Sanctions Additional Maritime Companies, Vessels Transporting Oil Sold Above the Coalition Price Cap (Nov. 16, 2023), <https://home.treasury.gov/news/press-releases/jy1915>; Dept. of the Treasury, Treasury Sanctions Entities for Transporting Oil Sold Above the Coalition Price Cap to Restrict Russia's War Machine (Oct. 12, 2023), <https://home.treasury.gov/news/press-releases/jy1795>;
- ¹⁹ Dept. of the Treasury, Treasury Tightens the Price Cap with New Sanctions and Updated Guidance, *supra*.
- ²⁰ See, e.g., Dept. of Commerce, Dept. of the Treasury, and Dept. of Justice, Tri-Seal Compliance Note: Cracking Down on Third-Party Intermediaries Used to Evade Russia-Related Sanctions and Export Controls (March 2, 2023), https://home.treasury.gov/system/files/126/20230302_compliance_note.pdf.