

February 23, 2022

President Biden Sanctions So-called “People’s Republics” in Ukraine; Imposes “First Tranche” of Sanctions Targeting Russia

For weeks, the Biden Administration has warned that Russian escalation in Ukraine would result in significant costs in the form of sanctions. Starting on Monday, the Administration has begun taking these actions.

Specifically, on Monday, February 21, 2022, in response to Russian President Putin’s announcement that Russia would be recognizing the so-called Donetsk and Luhansk People’s Republics (the “DNR” and “LNR regions of Ukraine” respectively) as “independent,” President Biden issued an executive order (the “EO”) targeting the DNR and LNR with comprehensive economic sanctions.¹ The sanctions that the EO imposes with regard to these regions are very similar to the 2014 sanctions imposed on the Crimea region and effectively create an embargo of these regions.

On Tuesday, February 22, 2022, in response to President Putin’s recognition of the DNR and LNR as well as his announcement that Russia would deploy troops to these regions, President Biden announced a “first tranche” of additional sanctions targeting Russia and stated that the United States and its allies are prepared to impose additional sanctions in response to further actions that may be taken by Russia in Ukraine.² This first tranche of sanctions included: the imposition of blocking sanctions on two major Russian financial institutions (*i.e.*, adding these entities to OFAC’s SDN List), expanded prohibitions on U.S. financial institutions’ ability to deal in Russian sovereign debt, and blocking sanctions targeting several prominent high-profile Russians and members of their families. President Biden also announced that the Secretary of the Treasury has determined that any institution in the financial services sector of the Russian economy is now a potential target for future tranches of sanctions.

Further, on Wednesday, February 23, 2022, OFAC added Nord Stream AG 2, the Swiss company building the Nord Stream 2 pipeline, and its Chief Executive Officer to the SDN List. The Biden Administration characterized these designations as “another piece” of the “initial tranche of sanctions” in response to Russia’s actions in Ukraine.³

Below we provide more detail on these U.S. government actions and their implications. The situation is rapidly evolving and additional sanctions are likely forthcoming.

¹ The White House, “Executive Order to Impose Costs for President Putin’s Action to Recognize So-Called Donetsk and Luhansk People’s Republics” (Feb. 21, 2022), available [here](#).

² The White House, “Fact Sheet: United States Imposes First Tranche of Swift and Severe Costs on Russia” (Feb. 22, 2022), available [here](#).

³ The White House, “Statement by President Biden on Nord Stream 2,” (Feb. 23, 2022), available [here](#).

Sanctions Imposed by the EO

Monday’s EO very closely follows the model of Executive Order 13685 of December 19, 2014, which imposed comprehensive sanctions on the Crimea region of Ukraine in response to Russia’s annexation of that region. The new EO likewise imposes comprehensive sanctions on the DNR and LNR regions of Ukraine, prohibiting virtually all U.S.-nexus transactions or dealings with these regions.⁴ A U.S.-nexus transaction can include transactions involving U.S. persons, the use of U.S. dollars (or other currencies) that flow through the U.S. financial system, and U.S.-origin products. Following this EO, the list of comprehensive U.S. sanctioned countries and regions is now as follows: Cuba, Iran, North Korea, Syria, and three regions of Ukraine (Crimea, DNR, and LNR).

In addition to targeting these regions, the EO provides a framework for the expansion of regions targeted by these comprehensive sanctions if the Secretary of the Treasury, in consultation with the Secretary of State, deems that additional regions in Ukraine should be subject to the same prohibitions. As a practical matter, this will enable the U.S. government to quickly impose these same level of comprehensive sanctions on additional regions in Ukraine, should Russia recognize them as “independent” or send troops to occupy them.

OFAC has issued six general licenses, which permit the following activities notwithstanding the comprehensive sanctions on the DNR and LNR regions:

- *Wind Down Transactions.* General License 17 authorizes certain transactions ordinarily incident and necessary to the wind down of transactions involving the DNR and LNR regions, including the divestiture or transfer to a non-U.S. person of a U.S. person’s share of ownership in any pre-February 21, 2022 investment located in the DNR and LNR regions, and permitting the winding down of operations, contracts, or other agreements in effect prior to February 21, 2022 involving the exportation, reexportation, sale, or supply of goods, services, or technology to, or importation of any goods, services or technology from, the DNR or LNR regions of Ukraine through 12:01 am EDT on March 23, 2022.⁵
- *Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, or Software Updates.* General License 18 authorizes the export and reexport to the DNR and LNR regions of certain agricultural commodities, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices, as well as certain transactions related to the prevention, diagnosis, or treatment of COVID-19.⁶
- *Telecommunications, International Organizations, Non-Commercial Remittances, Internet-Based Communications Consistent with authorizations in other comprehensive sanctions programs,* OFAC issued generally licenses authorizing certain telecommunications and mail transactions,⁷ certain official business of specified international humanitarian organizations,⁸

⁴ The EO prohibits the following, which taken together constitutes a comprehensive sanctions regime targeting the regions:

- New investment in the DNR or LNR region by a U.S. person, wherever located;
- The importation into the United States, directly or indirectly, of any goods, services, or technology from the DNR or LNR regions;
- The exportation, reexportation, sale, or supply, direct or indirectly, from the United States or by a U.S. person, wherever located, of any goods, services, or technology to the DNR or LNR regions; and
- Any approval, financing, facilitation, or guarantee by a U.S. person, wherever located, of a transaction by a non-U.S. person where the transaction by that non-U.S. person would be covered by these prohibitions if performed by a U.S. person or within the United States.

⁵ OFAC, “Ukraine General License Number 17,” (Feb. 21, 2022), available [here](#).

⁶ OFAC, “Ukraine General License Number 18,” (Feb. 21, 2022), available [here](#).

⁷ OFAC, “Ukraine General License Number 19,” (Feb. 21, 2022), available [here](#).

⁸ OFAC, “Ukraine General License Number 20,” (Feb. 21, 2022), available [here](#).

certain non-commercial personal remittances and related operation of financial accounts,⁹ and the exportation of certain services and software incident to internet-based communications.¹⁰

Additionally, the EO authorizes OFAC to impose blocking sanctions on persons that are determined to meet certain criteria specified in the EO. These criteria include, for example, operating or having operated since the date of the EO in the DNR or LNR regions; being a leader, official, senior executive officer, or board member of an entity operating in the DNR or LNR regions; being owned or controlled or acting on behalf of a person blocked under the EO; or materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services to or in support of any persons blocked under the EO.

The “First Tranche” of Sanctions Targeting Russia

Following President Biden’s speech announcing the “first tranche” of sanctions targeting Russia as a result of its recent activities in and around Ukraine, on February 22, 2022, OFAC announced¹¹ the following additional sanctions:

- Pursuant to Executive Order 14024, “Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation” (issued April 15, 2021; “EO 14024”), the Secretary of the Treasury, in consultation with the Secretary of State, determined that section 1(a)(i) of EO 14024 applies to the financial services sector of the Russian economy, and therefore persons determined to operate or have operated in this identified sector can be the target of U.S. sanctions. This action has no legal impact on the financial services sector as a whole, but instead authorizes OFAC to sanction any company or individual that operates or has operated in Russia’s financial services sector (including the two banks that were designated on the SDN List as a part of this tranche of sanctions).
- Adding two Russian banks, the Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank (“VEB”) and Promsvyazbank Public Joint Stock Company (“PSB”), along with 42 of their subsidiaries, to the SDN List. The Biden Administration stated these financial institutions collectively “hold more than \$80 billion in assets and finance the Russian defense sector and economic development,” and that these measures would, among other things, “shut them out of the global financial system, and foreclose access to the U.S. dollar.”
- Adding several “elites and families close to Putin” to the SDN List (although some of these individuals had already been designated, such that their addition under this new basis is largely symbolic).
- Increasing restrictions on U.S. financial institutions’ dealings in Russia’s sovereign debt. Specifically, OFAC issued Russia-related Directive 1A under EO 14024, “Prohibitions Related to Certain Sovereign Debt of the Russian Federation” (the “Russia-related Sovereign Debt Directive”), amending and superseding Directive 1 under EO 14024. The prior Directive 1 imposed prohibitions on U.S. persons’ participation in the primary market for ruble or non-ruble denominated bonds issued by, or the lending of ruble or non-ruble denominated funds to, the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation. Directive 1A expands upon the existing prohibitions to also prohibit, as of March 1, 2022, U.S. persons’ participation in the secondary market for ruble or non-ruble denominated bonds issued by these entities¹² after March 1, 2022.¹³

⁹ OFAC, “Ukraine General License Number 21,” (Feb. 21, 2022), available [here](#).

¹⁰ OFAC, “Ukraine General License Number 22,” (Feb. 21, 2022), available [here](#).

¹¹ OFAC, “U.S. Treasury Imposes Immediate Economic Costs in Response to Actions in the Donetsk and Luhansk Regions,” (Feb. 22, 2022), available [here](#).

¹² To effect this prohibition, OFAC added the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation to its non-SDN Menu Based Sanctions List in connection with Directive 1A.

¹³ OFAC FAQ 965, available [here](#).

On February 23, 2022, the Biden Administration added Nord Stream AG 2, the Swiss company building the Nord Stream 2 pipeline and its Chief Executive Officer, Matthias Warning, to the SDN List pursuant to Executive Order 14039, “Blocking Property with Respect to Certain Russian Energy Export Pipelines.” OFAC issued related General License 4, authorizing the wind down of certain transactions involving Nord Stream AG 2 through 12:01 eastern standard time, March 2, 2022. This action is consistent with Germany’s February 22, 2022 decertification of the Nord Stream 2 pipeline (which had previously been the target of sanctions bills in the U.S. Congress), an \$11 billion pipeline which was completed in 2021 and which links Germany and Russia.¹⁴

Implications

The U.S. sanctions targeting Russia as a result of its recognition of the DNR and LNR regions as “independent” states and President Putin’s ordering of Russian troops to enter these regions were made in parallel with actions taken by U.S. allies, including Germany’s actions against the Nord Stream 2 pipeline and the EU’s sanctioning of a number of high-profile Russian government officials and business leaders.¹⁵ When announcing the “first tranche” of U.S. sanctions targeting Russia for its activities relating to Ukraine, President Biden warned that the United States and its allies were prepared to impose additional tranches of sanctions targeting Russia if Russian forces were to expand the scope of their activities of Ukraine. Media reports have indicated that, were Russia to escalate its actions, the Biden Administration has considered potentially taking the following measures: designating additional major Russian financial institutions and companies as SDNs or removing Russian financial institutions’ ability to have correspondent banking relationships with U.S. banks; imposing strict new controls on exports of U.S. origin goods, software, and technology to Russia; and designating additional individuals with close ties to President Putin or involved in Russia’s actions with respect to Ukraine.¹⁶

The sanctions imposed thus far may provide a view as to what future tranches of U.S. sanctions targeting Russia would look like if Russia expands its activities in Ukraine, *i.e.*, any additional regions that Russian troops enter may become comprehensively sanctioned and the scope and impact of the sanctions targeting Russian companies, government officials, and business leaders would be likely to increase in response. Whether future tranches of U.S. sanctions are imposed will depend on the situation on the ground in Ukraine, which is highly dynamic and challenging to predict.

U.S. and non-U.S. companies with business in or exposure to Russia and Ukraine would be well advised to closely monitor the situation on the ground, as there is a potential for a rapid increase in sanctions. Additionally, companies should consider the following:

- Companies should review and update their sanctions screening and IP or geolocation blocking procedures to ensure they reflect the new comprehensive sanctions targeting the DNR and LNR regions, similar to the approach taken with respect to the Crimea embargo. Sanctions filters should also of course be updated to reflect the newly designated SDNs.
- Prior OFAC enforcement actions have shown that OFAC not only expects that companies will screen customers’ and counterparties’ names against lists of sanctioned persons, including the SDN List, but also that companies will perform screening of other information about customers and counterparties that companies receive during the normal course of their business, including information that would make a company aware of the country or region in which their customer or counterparty is located.¹⁷ As a result, companies should consider adding to their sanctions filters place names (such as cities,

¹⁴ Melissa Eddy, “Germany Puts a Stop to Nord Stream 2, a Key Russian Natural Gas Pipeline,” THE NEW YORK TIMES (Feb. 22, 2022), available [here](#).

¹⁵ Matina Stevis-Gridneff, “European Sanctions Target Putin’s Inner Circle,” THE NEW YORK TIMES (Feb. 23, 2022), available [here](#).

¹⁶ Alexandra Alper and Karen Freifeld, “EXCLUSIVE U.S. Plans to Cut Ties with Targeted Russian Banks if Ukraine is Invaded – Sources,” REUTERS (Feb. 21, 2022), available [here](#).

¹⁷ See Paul, Weiss “OFAC Enforcement Action against U.S. Payments Company Shows the Importance of Robust Sanctioned Person and Location Screening” (Aug. 13, 2021), available [here](#).

regions, ports, and common alternative spellings of the same), as well as postal codes, associated with the DNR and LRN regions.¹⁸

- Following the U.S. government’s embargo on Crimea, OFAC issued an advisory warning of practices to evade sanctions. These practices included the partial or complete omission from wire messages of address information of individuals or entities located in Crimea.¹⁹ Also, trade documentation or agreements may list Crimea-located counterparties as being located in “Russia.” Companies should consider this advisory and its recommended actions with reference to the new DNR and LRN sanctions.

We will continue to monitor actions taken by the U.S. government with respect to the situation in and around Ukraine and provide further updates as appropriate.

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¹⁸ See OFAC, “OFAC Settles with Amazon.com, Inc. with Respect to Potential Civil Liability for Apparent Violations of Multiple Sanctions Programs,” (Jul. 8, 2020), available [here](#) (OFAC faulted a screening filter that did not flag transactions involving, among other things, cities in Crimea or alternate spellings of Crimea such as “Krimia”).

¹⁹ See OFAC, “Crimea Sanctions Advisory: Obfuscation of Critical Information and Trade Transactions Involving the Crimea Region of Ukraine,” (Jul. 31, 2015), available [here](#).

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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