

National Security Counsel

Key Contacts

Kay C. Georgi
*International Trade & Investment
Practice Leader, DC*
202.857.6293
kay.georgi@afslaw.com

Marwa M. Hassoun
Partner, LA
213.443.7645
marwa.hassoun@afslaw.com

Matthew Tuchband
Counsel, DC
202.857.6212
matthew.tuchband@afslaw.com

Sylvia G. Costelloe
Associate, LA
213.988.6697
sylvia.costelloe@afslaw.com

John A. Gurtunca
Associate, DC
202.857.6174
john.gurtunca@afslaw.com

Aman Kakar
Associate, DC
202.350.3632
aman.kakar@afslaw.com

US Sanctions Belarus and Piles on More Russian Sanctions: What You Need to Know

1. [New Russia export controls now apply to Belarus, including military end use and military intelligence end user rules](#)
2. [BIS has drastically narrowed the license exceptions available for encryption items \(license exception ENC and mass market\) for both Russia and Belarus to subsidiaries of A5 and A6 countries, and excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from license exception AVS](#)
3. [Almost 100 additions to the Entity List](#)
4. [US Department of Justice has launched Task Force KleptoCapture to enforce the new sanctions](#)
5. [New BIS export controls on oil and gas equipment](#)
6. [Additional actions against Russian elites, Russian-backed Disinformation Outlets, and the Russian defense industry](#)
7. [OFAC issues additional Russia General Licenses and FAQs](#)

In a coordinated effort, on March 2, 2022, the [White House](#) announced another round of broad trade controls and sanctions against Russia and now Belarus in response to Russia's military invasion of Ukraine. The White House indicated these actions are intended to "hold Belarus accountable for enabling Putin's invasion of Ukraine," continue to weaken the Russian defense sector and, notably, degrade Russia's oil refining capability. The US Department of Commerce, Bureau of Industry and Security (BIS) was first out the door with export controls on Belarus that mirror new export controls on Russia, as well as an expansion of certain end user and end use controls applicable to Belarus, and a reduction on the available encryption license exceptions to both countries. The Office of Foreign Assets Control (OFAC) and the US Department of State issued a large number of new blocking actions against individuals and entities. OFAC also issued new Russia General Licenses and FAQs.

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john.gurtunca@afslaw.com

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Associate, DC
202.350.3632
aman.kakar@afslaw.com

1. New Russia export controls now apply to Belarus, including military end use and military intelligence end user rules

[BIS subjected Belarus](#) to the same controls [imposed on Russia](#) on February 24, 2022. To save the eyes of the reader, we have summarized the additions [by taking our alert from last week](#) and adding Belarus:

- **New License Requirements.** Impose new license requirements for Russia **AND BELARUS** on all Export Control Classification Numbers (ECCNs) in Commerce Control List (CCL) Categories 3-9, from semi-conductors to aircraft parts.
- **Foreign Direct Product Rules.** Add two new “foreign direct product” rules (FDPRs), one for Russia **AND BELARUS** and one for Russian/**BELARUSIAN** “military end users,” but exempt allied countries with similar sanctions against Russia **AND BELARUS**.
- **De minimis rule.** Change de minimis analysis of foreign-produced products to take into account all the newly controlled ECCNs in Categories 3-9 as U.S.-controlled content for reexports to and in-country transfers within Russia **AND BELARUS** – except for exports from certain allied countries, to which the old de minimis rules apply.
- **Licensing Policy.** Implement a licensing policy of denial with a few limited exceptions, including one that will allow case-by-case review of license applications for subsidiaries and JVs of companies. The Belarus rule adds another very good reason for a case-by-case review of license applications for Belarus and Russia, applications for civil nuclear safety.
- **Military End Use/End User controls (MEU) controls.** Last week, the Russia MEU rule expanded the scope of the Russia “military end use” and “military end user” controls to include all items “subject to the EAR” other than food and medicine designated EAR99 or ECCNs 5A992.c or 5D992.c, unless for Russian “government end users” and Russian state-owned enterprises (SoEs). This Belarus rule adds Belarus, and it also deletes the exceptions for food and medicine designated as EAR99 and the partial exception for ECCNs 5A992 and 5D992. In other words, ALL items subject to the EAR going to military end uses and military end users in Russia and Belarus require a license.

Oddly, the Entity Listing (discussed below) still includes the food and medicine exception, and, for Belarusian entities, the partial 5A992 and 5D992 exception. It is not clear why BIS has only included this exemption for Entity List entities, but we may see conforming regulations published in the coming days adding the same exemption to Russian and Belarusian MEUs generally.

New to Belarus:

- **Military-Intelligence End-Use/End-User Rules:** Belarus was also added to the “military-intelligence end use” and “military-intelligence

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aman.kakar@afslaw.com

end user” (MIEU) restrictions which prohibit the export, reexport, or transfer (in-country) of all items subject to the EAR. US persons also require BIS authorization to “support” Belarusian military-intelligence end-users or military-intelligence end-use. The term “support” is defined extremely broadly, as we covered in our [MIEU alert](#) last year, and encompasses a range of activities with the potential to significantly disrupt business with any Belarusian entity or end use deemed to fall under this rule. This change adds Belarus to the list of MIEU restrictions that were already applicable to Russia.

Country Chart changes:

- **X marks the spot** (and not in a good “there lies the Treasure” way): Belarus received a lot of Xs in BIS’s [Country Chart](#) which determines what requires an export license. BIS added an “X” in the nuclear nonproliferation (NP) column 1 for Belarus and an “X” in NP Column 2 for both Belarus and Russia. A license is now required for exports and reexports to Belarus for NP:1 items under the EAR and for both Belarus and Russia for NP:2 items, which will be indicated in the Country Chart. Belarus was taken off the good Country Group A:4 Nuclear Suppliers Group list and had bad Xs added to it for 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. This means additional licensing requires for certain nuclear and missile technology end uses.

[Back to Top](#)

- BIS has drastically narrowed the license exceptions available for encryption items (license exception ENC and mass market) for both Russia and Belarus to subsidiaries of A5 and A6 countries, and excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from license exception AVS**

BIS decided to resolve the hullabaloo occurring among US export control lawyers (that nearly came to fisticuffs!) by drastically reducing license exception ENC for encryption items that were properly classified under that license exception ([15 CFR §740.17](#)) and applying essentially the same restrictions for mass market encryption items (ECCNs 5A992 and 5D992) (also in 15 CFR §740.17!) in exemption language at the beginning of §746.8(a). Both exceptions (albeit in restricted form) are available to overcome the licensing requirements in new §748.6(a)(1) (regular exports, reexports and transfers of items subject to EAR to Russia and Belarus) and new §748.6(a)(2) (FDPR for all of Russia and Belarus), **but not for** §748.6(a)(2) (FDPR for Russian/Belarusian MEUs).

Encryption items that have been “classified in accordance with §740.17,”

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aman.kakar@afslaw.com

including mass market commodities and software classified under ECCNs 5A992 or 5D992 do not require a license to or within Russia or Belarus for:

civil end-users that are wholly-owned U.S. subsidiaries, foreign subsidiaries of U.S. companies that are joint ventures with other U.S. companies, joint ventures of U.S. companies with companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740 of the EAR countries, the wholly-owned subsidiaries of companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740, or joint ventures of companies headquartered in Country Group A:5 and A:6 with other companies headquartered in Country Groups A:5 and A:6.

Say what? This means that, for routers, phones, laptops, and the like that use encryption for data confidentiality reasons and are subject to US export controls, you can export, reexport or transfer them **ONLY**:

- to companies in Russia and Belarus that are subsidiaries of the [A:5 and A:6 countries](#), or
- if they are mass market encryption items that qualify for license exception [CCD](#) to customers who are not the Russian or Belarusian Governments, government officials, or state-run press.¹

[Back to Top](#)

3. Almost 100 additions to the Entity List

BIS added almost 100 new entities to the Entity List as a result of the Russia invasion of Ukraine in two different actions, one in the [March 2 Federal Register Notice](#) implementing sanctions against Belarus, adding two entities and revising eight previous entries, and one in a [March 3 Federal Register Notice](#) specific to the Entity List, adding 96 entities.

In the March 2 action, BIS added two Belarusian entities to the Entity List with a footnote 3 designation, meaning a license is required to export,

¹Ineligible Belarusian government are: Alyaksandr Lukashenko; Prime Minister and Deputy Prime Ministers; members of the Council of Ministers; members of the Security Council of Belarus; members and employees of the National Assembly of the Republic of Belarus; members and employees of the Supreme Court and the Constitutional Court; Chief and all employees of the General Staff of the armed forces; employees of the Ministry of Defense, including the National Armed Services (Army and Air Force), the National Guard and National Police; and employees of Government Intelligence or Reconnaissance Organizations of the Republic of Belarus, including the Director and employees of the State Security Committee (BKGB); employees of the Ministry of Internal Affairs; employees of state committees; employees of the State Authority for the Military Industry; employees of the Border Control Committee of the Republic of Belarus; chief editors, editors and deputy editors of Belarusian state-run media organizations and programs, including newspapers, television, and radio; offices, services, agencies and other entities organized under or reporting to the federal government.

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reexport, and transfer in-country to those entities all items subject to the EAR except for food or medicine designated as EAR99, or ECCNs 5A992.c or 5D992.c unless for Belarusian "government end users" and Belarusian state-owned enterprises (SoEs).

- a. JSC Integral, a.k.a., the following two aliases: -OAO Integral; and -Joint-Stock Company Integral – Holding Managing Company. 121A, Kazintsya I.P. Str., Minsk, 220108, Belarus; and 12 Korzhenevskogo Str., Minsk, 220108, Belarus; and 137 Brestskaya Str., Pinsk, Brest region, 225710, Belarus.
- b. The Ministry of Defence of the Republic of Belarus, including the Armed Forces of Belarus and all operating units wherever located. This includes the national armed services (army and air force), as well as the national guard and national police, government intelligence or reconnaissance organizations of the Republic of Belarus. All addresses located in Belarus.

In the same action, BIS also revised eight designations of footnote 3 Russian entities to remove the allowance of the export, reexport, or transfer in-country of ECCN 5A992.c and 5D992.c.

In the March 3 action, BIS added to the Entity List 91 entities in ten countries: Belize, Estonia, Kazakhstan, Latvia, Malta, Russia, Singapore, Slovakia, Spain, and the United Kingdom. None of these entities were designated with a footnote 3, and all items subject to the EAR, including EAR99, require a license for export, reexport, or in-country transfer. BIS noted that several of the newly listed entities are in allied countries, including the EU and NATO, but clarified the rule is not an action against the countries in which the entities are located or their governments.

For the vast majority of the entities BIS will review license applications under a policy of denial. However, applications for five entities (Elara; JSC Element; Radioavtomatika; Russian Space Systems; and Scientific Research Institute NII Submikron) for US Government supported space programs will be reviewed on a case-by-case basis.

[Back to Top](#)

4. US Department of Justice has launched Task Force KleptoCapture to enforce the new sanctions

On March 2, 2022, the US Department of Justice (DOJ) announced the launch of [Task Force KleptoCapture](#), which aims to enforce sanctions related to Russia. DOJ indicated that its mission includes:

- Investigating and prosecuting violations of new and future sanctions imposed in response to the Ukraine invasion, as well as sanctions imposed for prior instances of Russian aggression and corruption;

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- Combating unlawful efforts to undermine restrictions taken against Russian financial institutions, including the prosecution of those who try to evade know-your-customer and anti-money laundering measures;
- Targeting efforts to use cryptocurrency to evade U.S. sanctions, launder proceeds of foreign corruption, or evade U.S. responses to Russian military aggression; and
- Using civil and criminal asset forfeiture authorities to seize assets belonging to sanctioned individuals or assets identified as the proceeds of unlawful conduct.

The Task Force is being led by a “veteran corruption prosecutor” from the Southern District of New York’s US Attorney’s Office and is made up of several US Government agencies, including the FBI, US Marshals Service, US Secret Service, US Department of Homeland Security–Homeland Security Investigations, IRS–Criminal Investigation, and the US Postal Inspection Service.

[Back to Top](#)

5. New BIS export controls on oil and gas equipment

BIS has also issued an [expansion of export controls on oil and gas extraction equipment](#). The Russia industry sector sanctions ([15 CFR §746.5](#)) already require a license for eight ECCNs (0A998, 1C992, 3A229, 3A231, 3A232, 6A991, 8A992, and 8D999) and a list of Schedule B numbers when an exporter or reexporter knows the item will be used, directly or indirectly, in the exploration for, or production of oil and gas in Russian deepwater or Arctic offshore locations or shale formations in Russia, or is unable to determine whether the item will be used in such projects. They also require licenses for the export of all items subject to the EAR to specifically listed Russian oil and gas entities for those end uses.

The new BIS rule imposes a license requirement on a list of equipment used in the oil refinery industry. The list appears in a new Supplement 4 to Part 746 and lists products by Schedule B and HTS number as they are evidently not items on the Commerce Control List. The new list of Schedule B items subject to licensing requirements can be found [here](#).

Unlike the old rule, no knowledge of any intended end use is required. All exports, reexports, and in-country transfers of the items on the list to Russia require a license.

The new BIS rule also establishes a policy of denial for the new license applications and changes the old (2014) license application policy for deepwater, Arctic offshore, or shale project end uses in Russia to a policy of denial, except for license applications concerning items that may be necessary for health and safety reasons, which will be reviewed on a case-by-case basis.

[Back to Top](#)

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6. Additional actions against Russian elites, Russian-backed Disinformation Outlets, and the Russian defense industry

On [March 3, 2022](#), OFAC added 47 individuals and 42 entities to its Specially Designated Nationals and Blocked Persons (“SDN”) List, thereby prohibiting all transactions with them and blocking all of their property and interests in property that are in the United States or that come within the possession or control of US persons, including any funds transfers in which they have an interest that pass through the US financial system (such as almost all US dollar-denominated international funds transfers). Additionally, and with the unique exception of one of the listed individuals (discussed below), all entities directly or indirectly owned fifty percent or more, whether individually or in the aggregate, by one or more of these blocked persons are also blocked. One vessel and two aircraft were also identified as blocked property. These new blocking actions primarily target Russian elites and their family members and companies, Russian and Ukrainian individuals and entities spreading disinformation (including several websites), and, as announced by the White House on March 2, 2022, US Department of State-designated Russian defense-related entities. You can find the entire new list [here](#).

Notable among the newly designated Russian elites is Alisher Usmanov, whose vast business network has significant interests in the metals and mining, telecommunications, and information technology sectors. The extensive reach of his businesses was apparently too big to sanction, and OFAC therefore issued its first ever general license undoing the [Fifty Percent Rule](#) with respect to a sanctions target. Russia-Related General License 15, which you can find [here](#).

Finally, on March 3, the [US Department of State announced](#) visa restrictions for certain Russian oligarchs, their family members, and close associates. The initial action targeted 19 oligarchs and 47 family members and close associates. The [State Department press release](#) stated that State would continue to add names to the visa restriction policy as long as individuals continued to support and carry out destabilizing activity on behalf of the Kremlin, and State welcomed similar action by its Allies and partners. State's list does not appear to be public, but we assume that the individuals are in addition to the many oligarchs and family members whose assets have been blocked, as such individuals are already subject to visa restrictions.

[Back to Top](#)

7. OFAC issues additional Russia General Licenses and FAQs

In addition to Usmanov-related GL 15 discussed above, OFAC amended two general licenses, added two new ones, and updated and added several new FAQs primarily to resolve issues raised by OFAC’s February 28 issuance of [Directive 4](#) under [E.O. 14024](#), which prohibits US persons from engaging in

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john.gurtunca@afslaw.com

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202.350.3632
aman.kakar@afslaw.com

any transaction involving the Central Bank, National Wealth Fund, or Ministry of Finance of the Russian Federation (the “Directive 4 Entities”):

- General License 9, which authorizes certain debt and equity transactions through May 24, 2022, is now [General License 9A](#) and additionally authorizes through May 24, 2022, the receipt of interest, dividend, or maturity payments in connection with debt or equity issued by one of the Directive 4 Entities before March 1, 2022.
- General License 10, which authorizes transactions related to winding down certain derivative contracts through May 24, 2022, is now [General License 10A](#) and additionally authorizes through May 24, 2022, the winding down of derivative contracts, repurchase agreements, or reverse repurchase agreements entered into prior to March 1, 2022, that include one of the Directive 4 Entities.
- New [General License 13](#) authorizes the payment of taxes, fees, and import duties as well as the purchase or receipt of permits, licenses, registrations, or certifications that involve one of the Directive 4 Entities and are necessary for the day-to-day operation of US persons in Russia. Somewhat out of step with similar OFAC licenses, such as the one allowing tax payments to the otherwise blocked Government of Venezuela with no termination date, this General License 13 is only good through June 23, 2022. This could be an empty threat or an ominous sign regarding the future of US companies’ operations in Russia.
- New [General License 14](#) authorizes transactions where a Directive 4 entity’s sole function is to act as an operator of a clearing and settlement system, provided that there is no transfer of assets to or from a Directive 4 entity no such entity is a counterparty or beneficiary to the transaction. Unlike the other General Licenses amended or added in this tranche, General License 14 has no termination date.

OFAC also added [several new FAQs](#) and [amended several existing](#) ones to provide interpretations related to territorial-based sanctions of [E.O. 14065](#) and the recently issued Directive 4. They are too detailed and numerous to warrant listing here, but some of the more interesting ones include:

- [FAQ 1009](#) clarifies that the territorial-based sanction contained in E.O. 14065 apply only to the so-called Donetsk People’s Republic (DNR) and Luhansk People’s Republic (LPR) regions of Ukraine (or such other regions as publicly announced and added by the Secretary of the Treasury in the future) and does **not** currently apply to the entire Donetsk and Luhansk oblasts. As such, **not** all of the zip codes listed in our [February 22, 2022, alert](#), which initially reported on the sanctions on the DNR and LPR, may be relevant. The first two digits of the postal codes for the DNR are [83 through 87](#) and LNR are [91 through 94](#) will be impacted, but it certainly does not hurt to screen all zip codes and subsequently clear those not DNR and LPR.
- [FAQ 1004](#) clarifies that Directive 4’s prohibition on all transactions with the relevant entities is not the same as blocking the property of those entities, but it is very close. Such property is “immobilized” in the hands

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john.gurtunca@afslaw.com

Aman Kakar

Associate, DC
202.350.3632
aman.kakar@afslaw.com

of US persons, but new transactions are required to be rejected and not frozen.

- [FAQ 1001](#) clarifies that the Fifty Percent Rule does not apply to Directive 4. Thus, an entity that is directly or indirectly owned fifty percent or more, individually or in the aggregate, by one or more of the Directive 4 Entities is **not** subject to Directive 4 unless it is individually listed by OFAC under Directive 4. This seemed to be the case based on certain language used in all other OFAC Directives but that was absent from Directive 4. Still, it is nice that OFAC is making this clear.