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Three Weeks In, the West Continues to Impose Severe Sanctions on Russia; U.S. Begins Enforcement Push

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As the Russian invasion of Ukraine continued through its third week, the Western and other governments have continued to add to the unprecedented economic sanctions on the Russian economy, military sector and political and business elite they began to impose beginning on February 22, 2022. In the more than 20 days that have passed since the beginning of the invasion, the Western powers have essentially disconnected much of corporate Russia from large portions of the global economy. And, while the measures imposed to date are draconian, there remain potentially even harsher measures the U.S., EU, UK and others could take which, if implemented, potentially could raise the prospect of a severe economic collapse in the Russian Federation. Where such events would lead—including when one contemplates the possibility of Chinese-focused U.S. sanctions should that country support the Russian war effort—is an open question with potentially significant escalatory risks.

In addition to the imposition of sanctions, the United States and others have also begun enforcement efforts, by standing up new investigative teams of prosecutors, and searching for and seizing assets of sanctioned individuals and companies around the world. The standing up of such enforcement groups such as the U.S. Department of Justice's "KleptoCapture" initiative—which is already active—not only increases the sanctions enforcement capacity of the Western powers, it also signifies the authorities' expectations that the new sanctions regimes in place, and subject parties' attempts to evade them, will be a long-term feature of the foreign policy and commercial landscape regardless of the outcome of the current Russia-Ukraine conflict, and that companies and financial institutions need to prepare themselves accordingly.

The following details developments since our February 28, 2022 Client Alert.[1]

Measures Imposed from March 1, 2022 to March 15, 2022

Measures imposed since the initial days of the Russian military campaign have gone beyond the initial determination by the U.S. and others to impose initial—although very significant—costs on Russia. Instead, the most recent rounds of sanctions have sought to isolate the mainstream Russian economy from global commerce, increase pressure on the Russian regime by pressuring its supporters, and begin enforcement of the new measures imposed. The breadth, depth and speed of the re-orientation of Western policy towards Russia has been remarkable: whereas Russian oil and gas shipments had been essentially off-limits to sanctions and other restrictions just a few weeks ago—largely due to certain

European countries' needs to continue to power their economies—not only has United States prospectively banned Russian oil imports, major European economies have announced dramatic prospective reductions in their Russian oil and gas purchases. These announcements have increased commodity prices, and contributed to rising gasoline prices globally raising the prospect of whether political support for the West's robust response to the invasion can be sustained long-term.

United States

As to the oil-related measures, on March 8, the Biden Administration issued Executive Order (E.O.) 14066 "Prohibiting Certain Imports and New Investments with respect to Continued Russian Federation Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine" which prohibits the United States from importing Russian origin oil.[2] Notably, the prohibition covers a wider range of products than simply Russian crude, such as crude oil, petroleum, petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products.[3] Russian-origin oil, in turn, is defined as "goods produced, manufactured, extracted, or processed" in Russia, but excludes Russian-origin goods that have been "incorporated or substantially transformed into a foreign-made product."[4] The broad definition of "oil" thus seeks to make the newly-implemented sanctions acutely felt by the Russian economy while what will operate as a temporary exclusion of foreign-made products derived from Russian oil (until existing stocks already purchased run out) seeks to insulate primarily European-based businesses from disruptions in their own markets.

While the U.S. may have banned Russian crude imports, the major Russian oil and gas producers have heretofore not themselves been subject to formal sanctions (although many major Western market participants have announced their intent to abandon the Russian market). That said, U.S. persons are now prohibited from making new investments in the energy sector of Russia after March 8, 2022.[5] The definition of "new investment" is similarly broad, and includes any contribution of funds or other assets for, or a loan or other extension of credit to, new energy sector activities in Russia.[6] While what constitutes "new" energy sector activities is not entirely clear, the new prohibitions make clear that maintenance and repairs on existing activities remain permissible.[7]

OFAC issued General License 16 to accompany the E.O., which will allow a wind down period of now prohibited transactions and investment until April 22, 2022 for all written contracts or written agreements entered into prior to March 8, 2022.[8] Under the E.O., U.S. persons may also engage in transactions to sell or re-direct shipments of oil that were previously destined for the U.S.[9]

Transactions "related to energy" which were explicitly permitted in General License 8A (issued on February 28, 2022, and relating to Russian banks VEB, Otkritie, VTB, Sovcombank,

Sberbank, the Russian Central Bank or their 50%-or-more-owned subsidiaries) will still be allowed until June 24, 2022, as previously outlined.[10]

The past two weeks also saw a number of additional measures implemented by the United States, including an export control policy of denial on license applications for "sensitive items" for export to Belarus that support its defense, aerospace, and maritime industries, and the imposition of the Foreign Direct Product Rule on Belarus.[11]

The next day, on March 3, 2022, The U.S. Department of the Treasury, Office of Foreign Assets Control ("OFAC") designated additional Russian billionaires who provide direct and indirect support to the Kremlin, and entities who continued to spread misinformation with Russian intelligence services-directed content.[12] Additional entities and persons close to the Putin regime were designated on March 11, when the U.S. also moved to ban the exportation of U.S.-denominated banknotes to Russia, and prohibit certain imports of Russian luxury goods into the United States.[13]

European Union

In keeping with the theme of broadly coordinated sanctions between and among the Western allies, the EU also has implemented additional restrictions during this timeframe targeted at the same sectors. Some of the most significant financial sanctions have been imposed at the level of the EU. The expulsion of seven Russian and three Belarus banks from SWIFT has been impeded Russia's ability to conduct cross-border payment transactions. Regulators have also been clear that alternative financial products and, in particular, crypto-currencies should not be used as a means of circumventing prohibitions to channel payments to designated parties. Warnings about the misuse of crypto have been issued at the EU level by both the European Central Bank and the European Commission. Similarly in the UK, the Bank of England and the Financial Conduct Authority have issued a joint statement on this matter. Other important financial measures include the prohibition on Russian persons or residents holding deposits of in excess of €100,000, the restriction on the sale of Euro denominated securities to Russians, a prohibition on the use by Russian entities of European Central Securities Depositories and a prohibition on the admission of certain Belarus and Russian state owned entities' securities to European trading venues.

While there has been significant focus on imposing financial restrictions and disruption to the Russian economy, the sanctions at the EU level also cover diverse matters such as a broadcasting prohibition and a prohibition on the sale of luxury goods.

For example, the EU adopted on March 2, 2022:

- Export controls on the provision of dual-use goods and technology to any person/body in Belarus or for use in Belarus, or any related technical or financial assistance; prohibiting certain listed goods and technology which might contribute to Belarus's military and technological enhancement, or to the development of its defense and security sector, being exported to Belarus;

- An asset freeze on senior Belarusian ministers and military personnel;

- Prohibitions on participating in projects co-financed by the Russian Direct Investment Fund;

- Prohibitions on the provision of euro denominated banknotes to Russia including the Government and the Central Bank of Russia;[14];

- Bans on Bank Otkritie, Novikombank, Promsvyazbank, Bank Rossiya, Sovcombank, VEB, and VTB using the SWIFT interbank messaging systems starting March 12, 2022.

Further measures have since been imposed. These include a fourth package of sanctions against Russia imposed by the EU on March 15, 2022, covering in summary the following:

- Prohibitions on transactions with certain Russian state-owned enterprises, the provision of credit rating services to any Russian person entity and a prohibition on new investments in the Russian energy sector;

- Expansion of the list of persons regarded as being connected to Russia's defense and industrial base on whom tighter export restrictions were imposed regarding dual-use goods, and goods and technology which might contribute to Russia's technological enhancement of its defense and security sector;

- Trade restrictions in the iron, steel and luxury goods sectors; and
- Sanctions on an additional 15 individuals and 9 entities.

United Kingdom

- For its part, the UK also has continued to expand its sanctions since March 1 and on 15 March the sanctions provisions in the new Economic Crime (Transparency and Enforcement) Act 2022 (the "**Economic Crime Act**") came into force which makes it easier and quicker for the UK to designated persons who have been designated elsewhere without determining the full criteria under UK law. The new provisions allow persons to be designated under the "standard" or "urgent" procedure. Under the urgent procedure, a person may be designated where (i) he is also designated or similarly sanctioned under the law of the US, the EU, Australia, Canada or any other country specified in the Regulations, and (ii) it is in the interests of justice for the urgent procedure to be used. Designation under the urgent procedure initially lasts for only 56 days but after which the person can be designated under the standard procedure or again under the urgent procedure if the criteria are still met. Since March 1, the UK has imposed restrictions including the following:
- In the short period in which the urgent procedure has been available, 364 persons have been designated with only a handful not being made under the new streamlined procedure.[15]
- Asset freezes and travel bans on a significant number of individuals—including the high-profile owners of a London football (soccer) club, several entities including the Russian Direct Investment Fund and 386 members of the State Duma of the Russian Federation who voted in favor of a law endorsing Putin's decision to recognize the Donetsk People's Republic and the Luhansk People's Republic as independent states.[16]
- A prohibition on the export of "restricted goods" which includes critical-industry goods, dual-use goods, military goods and aviation and space goods and technology, such as electronic devices, computers, telecommunications and infosec equipment, sensors and lasers, navigation and avionics, marine vessels, aerospace and propulsion.[17] These restrictions are subject to certain important exceptions such as the exception for consumer communication devices. The prohibition includes the direct or indirect supply and delivery of "restricted goods" from a third country to Russia and from Russia to a third country, and making available (including transferring) or acquiring, providing technical assistance in relation to such goods and restricted technology, including to persons connected with Russia[18]. The UK has also announced that in common with the U.S. and E.U, the UK will implement a prohibition on the sale of luxury goods. The UK has so far not published any regulations in relation to these matters.
- A prohibition on the import of arms and related material consigned from or originating from Russia. This includes all military goods.
- A prohibition on the movement of Russian aircraft and vessels over and on UK territory. This applies to any aircraft registered in Russia, or owned, chartered or operated by a designated person, a person connected with Russia.

- Under the Economic Crime Act, the UK's sanction enforcement agency, the Office of Financial Sanctions Implementation ("**OFSI**") now has the power to impose civil monetary penalties for a breach of financial sanctions on a strict liability basis (i.e. without proof of knowledge or a reasonable cause to suspect that the conduct amounted to a breach of sanctions). The position in relation to criminal liability is unchanged, and knowledge or reasonable cause to suspect is required before an offence is made out. In addition to this OFSI have been given a "name and shame" power which might be used as an alternative to imposing a financial penalty.

A number of financial restrictions went into place, including:

- Prohibitions on UK credit/financial institutions having correspondent banking relationships with or processing sterling payments to any designated person or credit/financial institutions owned/controlled by a designated person;[19]

- Capital markets prohibitions on dealings with certain transferable securities and money market instruments;[20] and

- Prohibitions on granting certain loans to Russia sanctions Schedule 2 (persons named in relation to financial restrictions) entities such as loans with a maturity exceeding 30 days.[21]

On March 7, 2022, the UK introduced prohibitions on the provision of insurance or reinsurance services relating to specific aviation and space goods or technology—measures likely to have a significantly negative effect on the Russian aviation sector in light of the importance of the UK to the aircraft leasing industry.

Prohibitions on Russian Oil in the U.S. and U.K.

United Kingdom

As for the UK's position on crude oil imports, the UK government announced it will phase out imports of Russian oil by the end of 2022, and announced a coordinated strategy dialogue to seek alternative fuel supplies in order eliminate dependence on Russian hydrocarbons going forward.

Trade-Related Measures

In addition to the oil-related and financial sanctions imposed over the last two weeks, the U.S., EU and UK have begun to take more radical steps to effectively cut Russia off from the world economy. Those steps have included:

- Removing additional Russian and Belarussian financial institutions from the SWIFT messaging system and prohibiting dealings with the Belarussian Bank;[22]

- Prohibiting the listing and provision of services in relation to shares of Belarus state-owned entities on EU trading venues as of April 12, 2022;[23]

- Limiting financial inflows from Belarus to the EU, the regulation prohibits the acceptance of deposits exceeding €100,000 from Belarusian nationals and residents, the holding of accounts of Belarusian clients by EU central securities depositories, as well as the selling of Euro-denominated securities to Belarusian clients.[24]

- Restricting the export of maritime navigation and radio communication technology;[25]

- Adding the Russian Maritime Register of Shipping to the list of state-owned enterprises subject to financing limitations;[26]

- Confirming the common understanding that loans and credit can be provided by any means, including crypto assets, as well as clarified the notion of "transferable securities" so as to clearly include crypto-assets;[27]

United States, G7 Nations, and the European Union

- The U.S. government moving to revoke Russia's Most Favored Nation (MFN) trade status under the WTO Agreements[28]

- Denying borrowing privileges at multilateral financial institutions such as the World Bank and International Monetary Fund[29]

- A ban on the export of luxury goods to Russia, and the importation from Russia of certain goods such as seafood, spirits, and non-industrial diamonds;[30]

Enforcement Measures

In addition to the long list of new measures since March 1 detailed above, the U.S. and other governments have begun robust enforcement efforts to capture and seize the assets of persons and entities newly named to the SDN and other lists. This effort is being spearheaded in the U.S. by the Department of Justice's KleptoCapture task force—a new unit specially created as part of an international collaboration with allies to "go after the crimes of Russian oligarchs."[31] Those law enforcement collaboration efforts are already bearing fruit, as evidenced by the numerous reports of luxury superyachts, aircraft and other assets seized by European and U.S. officials in recent days. Behind the scenes, the KleptoCapture initiative is proactively reaching out to companies for their cooperation: we are expecting DoJ to be very active in this respect, and are already seeing evidence of that activity.

Recommendations and Conclusion

In addition to having a strong risk mapping and understanding of their exposure to Russian-sanctioned parties and parties who may be subject to sanctions in the future, the unprecedentedly rapid expansion of sanctions on Russia generally raises the prospect that, should the war in Ukraine continue or even further escalate, of a comprehensive sanctions regime being imposed on the country in a coordinated manner by the U.S., EU, UK and rest of the West. While such an eventuality is probably still unlikely, press reports of multinationals pulling out of the Russian market suggest at least some may be already planning for this eventuality.

Prudent companies and institutions are also looking beyond Russia to other possible escalation points. In recent days, media outlets have reported that the Russian regime has reached out to China to request military and economic support in its invasion of Ukraine.[32] If China agrees to actively support the Russian invasion, the U.S. government has implied that it will impose retaliatory sanctions.[33] While the nature and scope of such measures is difficult to forecast, the prospect of an escalatory spiral of sanctions implementation between the world's two largest economies suggests that prudent companies might begin to map their exposure to the Chinese economy and potential increased sanctions as well – a prospect that could result in serious dislocation for the world economy going forward.

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1 https://www.paulhastings.com/insights/client-alerts/western-countries-enact-sweeping-sanctions-packages-in-response-to-invasion.

2 Exec. Order 14,066 on Prohibiting Certain Imports and New Investments With Respect to Continued Russian Federation Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine, 87 Fed. Reg. 13625 (Mar. 8, 2022), https://www.govinfo.gov/content/pkg/FR-2022-03-10/pdf/2022-05232.pdf [hereinafter "E.O. 14066"].

3 Id.

4 FAQ 1,019, U.S. Department of the Treasury Office of Foreign Assets Control, (Mar. 8, 2022), https://home.treasury.gov/policy-issues/financial-sanctins/faqs/1019.

5 E.O. 14066, supra note 2.

6 FAQ 1,019, supra note 4.

7 Id.

8 Russia Related General License No. 16, U.S. Department of the Treasury Office of Foreign Assets Control, (Mar. 8, 2022), https://home.treasury.gov/system/files/126/russia_gl16.pdf.

9 FAQ 1,016, U.S. Department of the Treasury Office of Foreign Assets Control, (Mar. 8, 2022), https://home.treasury.gov/policy-issues/financial-sanctions/faqs/1016.

10 FAQ 1,017, U.S. Department of the Treasury Office of Foreign Assets Control, (Mar. 8, 2022), https://home.treasury.gov/policy-issues/financial-sanctions/faqs/1017.

11 Imposition of Sanctions Against Belarus Under the Export Administration Regulations (EAR), 87 Fed. Reg. 13048 (Mar. 8, 2022).

12 Sanctioned persons include Alisher Burhanovich Usmanov, Nikolay Petrovich Tokarev, and Yevgeniy Prigozhin. Press Release, OFAC, Treasury Sanctions Russians Bankrolling Putin and Russia-Backed Influence Actors (Mar. 3, 2022), https://home.treasury.gov/news/press-releases/jy0628.

[13] Exec. Order No. 14,068, 87 Fed. Reg. 14381 (March 11, 2022), https://www.govinfo.gov/content/pkg/FR-2022-03-15/pdf/2022-05554.pdf.

[14] Limited exceptions apply for persons travelling to Russia and for official purposes of diplomatic missions.

[15] OFSI Financial Sanctions Notice, Mar. 15, 2022, Notice__Russia_150322.pdf (publishing.service.gov.uk)

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[20] *Id.*

[21] *Id.*

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[23] Council Implementing Regulation (EU) 2022/398 of 9 March 2022, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:082:FULL&from=EN

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[26] Council Implementing Regulation (EU) 2022/394 of 9 March 2022, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R0394&from=EN.

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[30] Id.

[31] Council Implementing Regulation (EU) 2022/394 of 9 March 2022, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R0394&from=EN.

[32] Edward Wong and Julian E. Barnes, Russia Asked China for Military and Economic Aid for Ukraine War, U.S. Officials Say, The New York Times, (Mar 13, 2022), https://www.nytimes.com/2022/03/13/us/politics/russia-china-ukraine.html.

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