# NEW U.S. SANCTIONS ON RUSSIA AND BELARUS IMPOSE TRADE AND INVESTMENT RESTRICTIONS ON LUXURY GOODS AND RUSSIA'S ENERGY SECTOR

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**U.S. Policy and Regulatory Alert**

As an update to K&L Gates' previous alerts of 24 February and 25 February, U.S. President Joe Biden issued two executive orders (EOs) last week imposing additional sanctions against Russia. The first order, EO 14066, issued on 8 March 2022, prohibits: (1) U.S. imports of Russian oil and other energy products, and (2) new investments by U.S. persons in Russia's energy sector. The second order, EO 14068, issued on 11 March 2022, restricts: (1) exports of luxury goods to Russia and Belarus, (2) U.S. imports of Russian alcohol, seafood, and diamonds, and (3) the supply of U.S. dollar-denominated banknotes to Russia and the Russian Government worldwide. This alert describes these new developments in more detail.

## ENERGY IMPORTS & INVESTMENT

EO 14066 has two principal prohibitions. First, it bans all importation into the United States of Russian-origin crude oil, petroleum, petroleum fuels, oils, and products of their distillation, liquefied natural gas, coal, and coal products. In conjunction with the EO, the Office of Foreign Assets Control (OFAC) issued General License 16, which provides a “wind down” period authorizing transactions “ordinarily incident and necessary to” the prohibited imports if they are “pursuant to written contracts or written agreements entered prior to 8 March 2022,” and completed by 12:01 am EST on 22 April 2022.

Second, the EO prohibits U.S. persons, wherever they are located, from “new investment in the energy sector in the Russian Federation.” The term “energy sector” is not defined in the EO; however, based on the language of General License 8A, in which OFAC authorized certain transactions “related to energy,” it is likely OFAC will interpret “energy sector” to encompass, at least, all of the following:

- The extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, crude oil, lease condensates, unfinished oils, natural gas liquids, petroleum products, natural gas, coal, biofuels, uranium (in any form), and other products capable of producing energy; and
- The development, production, generation, transmission, or exchange of power, through any means, including nuclear, thermal, and renewable energy sources.

Similarly, the EO does not define the term “investment,” but, in other contexts, OFAC has interpreted the term “investment” broadly to include any transaction that constitutes a commitment or contribution of funds or other assets or a loan or other extension of credit to an enterprise. This would include, among other things, loans,

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extensions of credit, assumptions or guarantees, overdrafts, currency swaps, purchases of debt securities, loan purchases, sales of financial assets subject to an agreement to repurchase, renewals or refinancings whereby funds or credits are transferred or extended, and drawdowns on existing lines of credit.

This ban on investment, which is effective immediately, applies only to "new" investments by U.S. persons and, therefore, does not directly affect existing energy investments in Russia's energy sector. It is likely, although not entirely clear, that the investment ban covers new investments in companies and projects outside of Russia that are owned or controlled by persons in Russia. OFAC is likely to issue interpretive guidance on this and other issues in the coming days.

It is important to note that U.S. persons are prohibited, not only from engaging in the above energy imports and investments directly, but also indirectly, or by facilitating any aspect of a non-U.S. person's engagement in prohibited imports or investments (e.g., providing approval, financing, guarantees, or other support). U.S. persons are not prohibited, however, from transactions related to the importation of Russian energy commodities into jurisdictions outside the United States. For purposes of these new rules, U.S. persons are defined to include legal entities established under U.S. law and their foreign branch offices, U.S. citizens and permanent residents (i.e., green card holders) wherever located or employed globally, and other persons while in the United States.

## LUXURY EXPORTS, RUSSIAN IMPORTS, AND RESTRICTIONS ON U.S. BANKNOTES

EO 14068 contains the following import and export restrictions for luxury goods, seafood, diamonds, and U.S. banknotes.

### Luxury Exports to Russia and Belarus

The EO bars the exportation, reexportation, sale, or supply (directly or indirectly) from the United States, or by a U.S. person (wherever located), of "luxury goods" to Russia or Belarus, unless licensed. This prohibition is implemented by a newfinal rule, issued by the Bureau of Industry and Security, which identifies the significant number of goods subject to this restriction, listed by Schedule B number. In addition to barring the export of listed luxury goods to Russia and Belarus, the final rule restricts exports to certain Russian and Belarusian oligarchs and other individuals worldwide.

While the EO's restrictions on luxury good exports became effective immediately, the EO contains a limited savings clause. The savings clause permits covered exports that were en route aboard a carrier to a port of export, reexport, or transfer (in-country) on 11 March 2022, to proceed to their destination, provided that they were shipped pursuant to existing orders for export, reexport, or transfer to that destination.

It is important to note that these export restrictions apply to more than just U.S.-origin luxury goods. First, the restrictions apply to all goods listed under the final rule that are subject to the Export Administration Regulations (EAR). This includes products that are: (1) U.S.-origin (wherever they are located); (2) located in the United States (whatever their origin); (3) produced outside the United States with more than 25% (by value) U.S. controlled content; and (4) produced outside the United States and covered by the special "foreign direct product rules" for Russia, which is discussed in our prior alert. Second, even with regard to products that are not subject to the EAR, the text of the EO indicates that U.S. persons, wherever they are located, are barred from the

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exportation, reexportation, sale, or supply of covered luxury goods to Russia, Belarus, and designated parties, although further clarification on this point may be forthcoming.

### Seafood, Alcohol, and Diamond Imports

Additionally, the EO prohibits the importation into the United States of Russian-origin fish, seafood, seafood preparations, alcoholic beverages, and non-industrial diamonds. To aid in identifying goods subject to this import ban, OFAC issued guidance identifying specific codes in the Harmonized Tariff System of the United States, which can be found here. OFAC has made clear that non-U.S. persons are not prohibited under the EO from importing covered Russian goods into jurisdictions outside the United States. OFAC also issued General License 17, which authorizes the wind down of transactions related to the above prohibited imports if they are pursuant to existing contracts and concluded by 25 March at 12:01 am EST. In addition, U.S. importers are permitted to sell or re-direct shipments previously destined for U.S. ports to parties outside the United States.

### U.S. Banknote Restrictions

Finally, the EO prohibits the exportation, reexportation, sale, or supply (directly or indirectly) from the United States, or by a U.S. person (wherever located) of U.S. dollar-denominated banknotes (i.e., paper currency) to Russia and to the Government of the Russian Federation worldwide. The “Government of the Russian Federation” is defined broadly to include any subdivision, agency, instrumentality, or party owned, controlled, directed by, or acting on behalf of the Russian government. OFAC issued General License 18 to authorize transactions necessary for the transfer of U.S. dollar-denominated banknotes for noncommercial, personal remittances from: (1) the United States or a U.S. person, wherever located, to an individual located in the Russian Federation, or (2) a U.S. person who is an individual located in the Russian Federation.

Signaling additional sanctions to come, the EO authorizes the Department of Commerce to impose import restrictions on additional goods as well as authorizes the Department of the Treasury to impose restrictions on new investment in other sectors of the Russian economy.

## CONCLUSION

K&L Gates will continue to follow the impact and changes to the United States' imposition of economic sanctions with respect to Russia. If you have any questions regarding the sanctions discussed in this alert, please do not hesitate to contact the K&L Gates International Trade team.

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