US Sanctions Target Russia’s Energy Sector and Ban Imports of Russian Oil, LNG, and Coal as Enforcement Efforts Increase and Agencies Consider Cryptocurrency and Other Digital Assets

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On March 8, 2022, President Biden issued an Executive Order (the “March 8 Executive Order”) prohibiting the importation of Russian-origin oil, liquified natural gas ("LNG"), and coal into the United States and prohibiting US persons from making new investments in Russia’s energy sector. The March 8 Executive Order also prohibits US persons from providing any approval, financing, facilitation, or guarantee to a foreign person seeking to import Russian-origin oil into the United States or make new investments in Russia’s energy sector. The March 8 Executive Order follows on a series of significant US sanctions actions against Russia in recent weeks. The US Department of Justice and Treasury Department also announced additional efforts and guidance intended to emphasize US sanctions efforts and to provide guidance on detecting and preventing efforts by blocked persons to evade sanctions, including through the use of cryptocurrency. On March 9, 2022, President Biden issued an Executive Order (the “Executive Order on Digital Assets”) directing US government agencies to study and report on cryptocurrencies and other digital assets and consider, among other things, the use of digital assets to circumvent US sanctions.

Our team’s coverage of the earlier US sanctions is available here: February 24, 2022, February 25, 2022, and March 1, 2022.

The Bottom Line:

US sanctions on Russia continued to escalate in response to Russia’s invasion of Ukraine by targeting, for the first time since the invasion began, Russia’s energy sector. The stated goal of the March 8 Executive Order is to “deprive Russia of billions of dollars in revenues from U.S. drivers and consumers” and to end the flow of US investment in energy production inside Russia. The action follows on a series of significant US sanctions actions against Russia and a growing list of sanctions designations that have until now avoided directly targeting Russia’s energy sector. In addition, new guidance was issued to address efforts to evade sanctions, including through the use of cryptocurrency, and US government agencies will study and report on, among other things, the use of cryptocurrency to evade sanctions in the coming months.
The Full Story:

Following Russia’s recognition of breakaway regions in Eastern Ukraine on February 21, 2022, the United States responded with a number of economic sanctions on Russia’s financial sector as well as regional embargoes on Russia-controlled parts of Ukraine. On February 24 and 28, 2022, the US Department of Treasury’s Office of Foreign Assets Control (“OFAC”) announced more expansive sanctions on Russia in response to Russia’s military escalation into a full-scale invasion and occupation of Ukraine. Over the past week, OFAC has continued to designate Russian individuals and entities as Specially Designated Nationals (“SDNs”) subject to blocking sanctions. Prior to issuance of the March 8 Executive Order, these recent US sanctions actions have avoided directly targeting Russia’s energy sector.

The March 8 Executive Order

The March 8 Executive Order broadly prohibits the importation into the United States of oil, LNG, and coal products vital to Russia’s export economy. Specifically, the March 8 Executive Order prohibits importation of the following products of Russian Federation origin: crude oil, petroleum, petroleum fuels, oils and products of their distillation, liquefied natural gas, coal, and coal products. OFAC has issued guidance clarifying that “Russian Federation origin” for the purposes of the March 8 Executive Order means “goods produced, manufactured, extracted, or processed in the Russian Federation, excluding any Russian Federation origin good that has been incorporated or substantially transformed into a foreign-made product.”[4] OFAC has issued a General License permitting the importation of such Russian-origin oil, LNG, and coal products under contracts or written agreements entered into prior to March 8, 2022, until April 22, 2022.5

Effective immediately, the March 8 Executive Order also prohibits US persons from new investment in Russia’s energy sector. OFAC has issued guidance clarifying that the prohibition extends to any “transaction that constitutes a commitment or contribution of funds or other assets for, or a loan or other extension of credit to, new energy sector activities (not including maintenance or repair) located or occurring in the Russian Federation beginning on or after March 8, 2022.”6 OFAC has further clarified that the “energy sector” in the context of the March 8 Executive Order includes the procurement, exploration, extraction, drilling, mining, harvesting, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, or transport of petroleum, natural gas, liquified natural gas, natural gas liquids, or petroleum products, or other products capable of producing energy, such as coal or wood or agricultural products used to manufacture biofuels and for the development, production, generation, transmission, or exchange of power through any means, including nuclear, electrical, thermal, and renewable.

The March 8 Executive Order now also prohibits US persons from participating in any approval, financing, facilitation, or guarantee of a transaction by a foreign person where the transaction by that foreign person would be prohibited by the March 8 Executive Order if performed by a US person or within the United States. In addition to extending the reach of the prohibition on imports to the United States, this prohibition essentially cuts foreign investors off from using US companies and financial institutions to effectuate new investments in Russia’s energy sector. Notably, this prohibition also effectively shrinks the scope of authorized activity for US persons under OFAC’s previously issued General License 8A, which authorized transactions “related to energy” involving specified Russian Financial institutions through June 24, 2022.7 OFAC has issued guidance that, while General License 8A remains valid, the General License does not authorize any transaction prohibited by the March 8 Executive Order.8
US authorities are stepping up efforts to enforce US sanctions against Russia, bringing increased scrutiny of attempts to evade the prohibitions of the March 8 Executive Order and other sanctions on Russia. On March 2, 2022, US Attorney General Merrick Garland announced “Task Force KleptoCapture,” an interagency law enforcement task force dedicated to enforcing sanctions against Russia.9 The Task Force’s stated mission is to investigate sanctions violations, prosecute those who attempt to evade know-your-customer and anti-money laundering measures, target efforts to use cryptocurrency to evade sanctions, and use asset forfeiture authorities to seize assets belonging to sanctioned individuals or identified as the proceeds of unlawful conduct.

On March 7, 2022, the Financial Crimes Enforcement Network (FinCEN) issued an alert advising financial institutions to use increased vigilance to detect and prevent attempts to evade sanctions, including guidance on red flags and know-your-customer requirements for financial institutions.10 FinCEN flagged specific potential issues that might arise from efforts by sanctioned Russian or Belarusian actors to evade sanctions by using Convertible Virtual Currency (“CVC”)—broadly speaking, cryptocurrency—such as by using CVC exchangers or administrators within or outside of Russia to circumvent US sanctions.

On March 9, 2022, President Biden issued the Executive Order on Digital Assets directing the US Department of Treasury, in consultation with the US Department of State, US Department of Justice, and other federal agencies, to study and report on the future of money and payment systems. This study will include analysis of sanctions risk and evasion to inform US policies and regulations on digital currencies to ensure that cryptocurrency is not a viable means for bad actors to evade sanctions.

US persons and companies doing business, directly or indirectly, with Russia or involving Russia’s energy sector, should review sanctions exposure carefully and deploy sufficient compliance controls to limit sanctions risk. Non-US individuals and companies should also be aware of applicable sanctions regimes, and the authority of OFAC to sanction non-US persons and companies engaged in activities that would be prohibited by a US person in certain circumstances, and should similarly review their sanctions exposure carefully and adopt appropriate policies. Financial institutions should adopt policies consistent with FinCen guidance to prevent evasion of sanctions, including through the use of cryptocurrency. Finally, persons and companies seeking to divest from Russian assets should review and carefully consider obligations under US sanctions law as well as potentially overlapping sanctions regimes from other countries.

ENDNOTES:


3 White House, FACT SHEET: United States Bans Imports of Russian Oil, Liquefied Natural Gas, and Coal (Mar. 8, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/08/fact-sheet-united-

4 OFAC, FAQ #1,019.


6 OFAC, FAQ #1,019.


8 OFAC, FAQ #1,017.


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National Law Review, Volumes XII, Number 69