

Cleary Foreign Investment and International Trade Watch

OFAC Imposes Sanctions on Belarusian Sovereign Debt, Announces New Designations

By Chase D. Kaniecki & Samuel H. Chang on December 3, 2021

On December 2, 2021, the U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”) issued a **new directive** (Directive 1) prohibiting with immediate effect U.S. persons from transacting or participating in the primary and secondary markets of new Belarusian sovereign debt, in any denomination, with a maturity of greater than 90 days.[1] In coordination with the European Union, United Kingdom, and Canada, OFAC also designated over 30 individuals and entities determined to have contributed to “ongoing attacks on democracy, human rights, and international norms” on the list of Specially Designated Nationals and Blocked Persons (“SDN List”) and issued **General License No. 5**, authorizing transactions and activities ordinarily incident and necessary to the wind down of transactions involving newly sanctioned Open Joint Stock Company Belarusian Potash Company or Agrorozkvit LLC, or any of their subsidiaries, until April 1, 2022.[2]

The new sanctions were issued under Executive Orders **13405** and **14038**, and build upon a growing body of sanctions against Belarus.[3] In April 2021, OFAC revoked a general license authorizing dealings with a number of sanctioned Belarusian state-owned entities, as discussed in our **earlier blog post**. [4] In August 2021, OFAC designated on the SDN List a number of Belarusian businessmen, government officials and agencies, and companies linked to President Alexander Lukashenko. [5] The latest round of designations include officials and defense sector companies, as well as key state-owned enterprises critical to the mining and export of potash. Among the designations are Open Joint Stock Company Belarusian Potash Company, which serves as the primary trade and export organ of previously sanctioned Belaruskali OAO, one of the largest potash suppliers in the world, and cargo carrier JSC Transaviaexport Airlines.[6]

Sovereign Debt

Directive 1 effectively cuts Belarusian sovereign debt off from the U.S. economy and more closely aligns U.S. sanctions with existing EU, UK, Canadian, and Swiss restrictions against primary and secondary market dealings in Belarusian sovereign debt.

More specifically, Directive 1 prohibits U.S. persons (including U.S. citizens, green card holders, or companies) from engaging in “all transactions in, provision of financing for, and other dealings” in new debt with a maturity of greater than 90 days issued on or after December 2, 2021 by the Ministry of Finance of the Republic of Belarus (“Ministry of Finance”) or the Development Bank of the Republic of Belarus (“DBRB”), which is responsible for financing government programs and investments.[7] As with U.S. sanctions on **Russian sovereign debt**, Directive 1 restricts dealings in all denominations of debt.[8] Unlike the current sanctions against Russia, however, the prohibitions in Directive 1 are not limited to U.S. financial institutions and include secondary trading in debt issued on or after December 2, 2021.

Under OFAC guidance, “debt” includes “bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers’ acceptances, discount notes or bills, or commercial paper,” as well as derivatives “whose value is linked to” covered debt.[9] Drawdowns and disbursements of existing revolving credit facilities are not prohibited even if repayment terms exceed 90 days so long as the terms of such drawdowns and disbursements (including the length of the repayment period, the interest rate applied to the drawdown, and the maximum drawdown amount) were contractually agreed to prior to December 2, 2021 and have not been subsequently modified.[10] OFAC guidance further provides that U.S. financial institutions are permitted to continue to maintain correspondent accounts and process U.S. dollar-clearing transactions for the Ministry of Finance and DBRB.[11]

Entities 50% or more owned by the Ministry of Finance or DBRB are not automatically subject to the restrictions and U.S. persons generally are not prohibited from engaging in other transactions or activities with those entities.[12] In some respects, Directive 1 is thus narrower in scope than the EU, UK, Canadian, and Swiss restrictions, which target, to varying degrees, a wider range of financial instruments and/or entities linked to the Government of Belarus.

[1] See OFAC, “Directive 1 Under Executive Order 14038” (December 2, 2021), https://home.treasury.gov/system/files/126/belarus_sovereign_debt_prohibition_directive_1.pdf.

- [2] See Department of State, “Accountability for the Lukashenka Regime’s Continued Acts of Repression and Disregard for International Norms” (December 2, 2021), <https://www.state.gov/accountability-for-the-lukashenka-regimes-continued-acts-of-repression-and-disregard-for-international-norms/>.
- [3] See Exec. Order 13405, “Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus” (Jun. 16, 2006), <https://home.treasury.gov/system/files/126/13405.pdf>; Exec. Order 14038, “Blocking Property of Additional Persons Contributing to the Situation in Belarus” (Aug. 9, 2021), <https://home.treasury.gov/system/files/126/14038.pdf>.
- [4] Cleary Trade Watch, “OFAC Revokes Key General License Under Belarus Sanctions Program” (April 26, 2021), https://www.clearytradewatch.com/2021/04/ofac-revokes-key-general-license-under-belarus-sanctions-program/#_ftn3.
- [5] White House, “FACT SHEET: Executive Order Imposing Costs on Alyaksandr Lukashenka and Belarusian Authorities for Ongoing Attacks Against Democratic Freedoms, Human Rights, and International Norms” (Aug. 9, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/09/fact-sheet-executive-order-imposing-costs-on-alyaksandr-lukashenka-and-belarusian-authorities-for-ongoing-attacks-against-democratic-freedoms-human-rights-and-international-norms/>.
- [6] U.S. Dep’t of the Treasury, “Treasury Expands Sanctions Against Belarusian Regime with Partners and Allies” (Dec. 2, 2021), <https://home.treasury.gov/news/press-releases/jy0512>.
- [7] See OFAC, “Directive 1 Under Executive Order 14038” (December 2, 2021), https://home.treasury.gov/system/files/126/belarus_sovereign_debt_prohibition_directive_1.pdf.
- [8] See OFAC, FAQ #940 (December 2, 2021), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/940>; OFAC FAQ #941 (December 2, 2021), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/941>.
- [9] See OFAC, FAQ #944 (December 2, 2021), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/944>; OFAC, FAQ #948 (December 2, 2021), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/948>.

[10] See OFAC, FAQ #947 (December 2, 2021), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/947>.

[11] See OFAC, FAQ #946 (December 2, 2021), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/946>.

[12] See OFAC, FAQ #943 (December 2, 2021), <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/943>.

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