

# Growing Sanctions and Export Controls Risks Surrounding Turkey

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Since the start of the war in Ukraine in February 2022, many Western nations have imposed severe and expanding economic sanctions on Russia. While the United States (“US”), United Kingdom (“UK”), European Union (“EU”), and their allies present a largely united front, one NATO member—Turkey—has drawn significant attention for its reluctant stance on sanctions against Russia.

Since the early stages of the geopolitical crisis, Turkey has attempted to execute a delicate balancing act by presenting itself as a neutral party. For example, Ankara brokered a United Nations-backed deal with Russia and Ukraine to enable Ukraine to export grain and other agricultural products.<sup>1</sup> At the same time, Turkey’s engagement with Russia and Ukraine has gone beyond a neutral broker role. On the one hand, Turkey supplied Ukraine with armed drones.<sup>2</sup> On the other hand, Turkey has consistently refused to cut its economic and diplomatic ties with Russia. In fact, the volume of trade between Turkey and Russia has grown significantly over the past year, coinciding with a US warning that Turkish companies and banks should not seek to circumvent sanctions and export controls.<sup>3</sup> Although Turkey has recently taken some measures to restrict Western-sanctioned goods from flowing into Russia, it has resisted pressure to impose its own sanctions, and remains a key trade channel for Moscow.

As a consequence, Turkey is finding itself in the sanctions spotlight, as Western diplomatic efforts to persuade the Turkish government to align on sanctions measures are increasingly accompanied by enforcement actions taken by the US and its European

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<sup>1</sup> See Ayse Wieting and Suzan Fraser, ‘A Beacon of Hope’: Ukraine, Russia Sign Grain Export Deal, Associated Press (July 22, 2022), <https://apnews.com/article/russia-ukraine-middle-east-global-trade-a2c89d94a0f8473b40a1fcde5710bda8>. Russia has since pulled out of the agreement. See Olena Harmash, *Russia strikes Ukraine grain port after exiting export deal*, REUTERS (July 18, 2023), <https://www.reuters.com/world/europe/russia-strikes-ukraine-grain-port-after-pulling-out-export-deal-2023-07-18/>.

<sup>2</sup> Stephen Witt, *The Turkish Drone that Changed the Nature of Warfare*, The New Yorker (May 16, 2022), <https://www.newyorker.com/magazine/2022/05/16/the-turkish-drone-that-changed-the-nature-of-warfare>.

<sup>3</sup> Daphne Psaledakis and Humeyra Pamuk, *Exclusive: Top U.S. Treasury Official to Warn UAE, Turkey Over Sanctions Evasion*, REUTERS (Jan. 28, 2023), <https://www.reuters.com/world/top-us-treasury-official-warn-mideast-countries-over-sanctions-evasion-2023-01-28/>.

counterparts. Notably, at least one recent enforcement action involving Turkey was not related to Russia, signaling a broader focus on Turkey itself. This article examines the impact of the continuing commercial relationship between Turkey and Russia and highlights risks posed by increasingly aggressive enforcement against Turkish companies and individuals.

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## Background: Turkey's Trade Ties to Russia

Turkey's ties to Russia came under scrutiny well before February 2022. In December 2020, the US sanctioned Turkey's Presidency of Defense Industries ("SSB") pursuant to the Countering America's Adversaries Through Sanctions Act ("CAATSA"). At issue was SSB's procurement of the S-400 surface-to-air missile system from Russia's main arms export entity, Rosoboronexport, "despite the availability of alternative, NATO-interoperable systems to meet [Turkey's] defense requirements."<sup>4</sup> The US barred the SSB from holding any US export licenses or authorizations, imposed visa restrictions and asset freezes on SSB's president and other officers, and removed Turkey from the F-35 Joint Strike Fighter partnership.<sup>5</sup>

Since February 2022, Turkey's commercial ties to Russia have deepened. According to media reports, Turkey's exports to Russia increased by 262% between March 2022 and March 2023.<sup>6</sup> From 2021 to 2022, Turkish imports of Russian semiconductors rose from \$831 million to \$1.7 billion, and Turkish semiconductor exports to Russia ballooned from \$79,000 to \$3.2 million. According to a former US Treasury official, this made Turkey the fourth-largest semiconductor supplier to Russia.<sup>7</sup> In addition, the value of Turkey's total electronics and electrical machinery exports to Russia reached \$559 million in 2022, double the 2021 total.<sup>8</sup>

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<sup>4</sup> Press Release, Michael R. Pompeo, Secretary of State, The United States Sanctions Turkey Under CAATSA 231 (Dec. 14, 2020), <https://2017-2021.state.gov/the-united-states-sanctions-turkey-under-caatsa-231/index.html>.

<sup>5</sup> *Id.*

<sup>6</sup> Ceyda Caglayan, *Turkey's exports to Russia surge 262% in March from year ago*, NASDAQ (Apr. 4, 2023), <https://www.nasdaq.com/articles/turkeys-exports-to-russia-surge-262-in-march-from-year-ago>.

<sup>7</sup> Nathaniel Taplin, *How Russia Supplies Its War Machine; Following the trail of chips and other tech gear from China, Turkey, Hong Kong and elsewhere to Ukraine's battlefields*, Wall St. J. (Mar. 10, 2023), <https://www.wsj.com/articles/russia-ukraine-tech-chips-exports-china-f28b60ca>; Begum Donmez Ersoz, *US Sharpens Focus on Russia Sanctions Evasion, Warning Turkish Banks, Businesses*, VOA NEWS (Feb. 6, 2023), <https://www.voanews.com/a/us-sharpens-focus-on-russia-sanctions-evasion-warning-turkish-banks-businesses-/6950586.html>.

<sup>8</sup> Taplin, *supra* note 7.

In March 2023, Turkey acted to curtail the flow of Western-sanctioned products to Russia after sustained pressure from the US and the EU.<sup>9</sup> According to an EU official, the Turkish government provided the European Commission with “verbal assurance that from March 1 goods would not transit onward to Russia if they are covered by EU, [US,] or UK sanctions and export controls.”<sup>10</sup> According to a Turkish export association official, Turkish government followed that promise with instructions that businesses may not ship to Russia any goods included on a list of “banned foreign goods . . . no matter which country they come from.”<sup>11</sup> Goods produced in Turkey—including those with components from other countries—can still be shipped to Russia without restrictions.<sup>12</sup> The Turkish government insists that its technology exports are not used for military purposes, though Western governments worry that dual-use goods with civilian and military applications, such as semiconductors, help fuel Russia’s war effort in Ukraine.<sup>13</sup>

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## Growing Focus on Turkey in the Context of Circumvention

As the war in Ukraine continues, the US, the UK, and the EU are determined to plug the gaps in the Western sanctions against Russia, including those relating to Turkey. There have been several developments concerning the banking sector, technology transfers, and Russia’s interactions with its neighbors more broadly.

### Reaction by the US

In September 2022, the US Department of the Treasury (“Treasury”) cautioned that non-US banks using Russia’s MIR National Payment System “risk supporting Russia’s efforts to evade [US] sanctions.”<sup>14</sup> It warned that the Treasury’s Office of Foreign Assets Control (“OFAC”) is prepared to use its authority to impose blocking sanctions on “supporters of Russia’s sanctions evasion, including Russia’s efforts to expand the use of” MIR or its operator, the National Payment Card System Joint Stock Company (“NSPK”).<sup>15</sup> At the time, five of the largest banks in Turkey—VakıfBank, Ziraat Bank, İş

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<sup>9</sup> Ceyda Caglayan & Jonathan Spicer, *Turkey halts transit of sanctioned goods to Russia - exporter, diplomat*, REUTERS (Mar. 20, 2023), <https://www.reuters.com/world/middle-east/turkey-halts-transit-sanctioned-goods-russia-exporter-diplomat-2023-03-20/>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Ersoz, *supra* note 7.

<sup>14</sup> Henry Foy et al., *US and EU step up pressure on Turkey over Russia sanctions*, FIN. TIMES (Sept. 15, 2022), <https://www.ft.com/content/95243a73-22c8-447e-bbae-a10a206d7e9e>; OFAC Frequently Asked Question No. 1082 (Sept. 12, 2022), <https://ofac.treasury.gov/faqs/1082>.

<sup>15</sup> *Id.*

Bank, DenizBank, and Halkbank—were members of MIR.<sup>16</sup> Following OFAC’s warning, all five suspended use of the MIR system, and Turkish president Recep Tayyip Erdogan stated that Turkey would try to find an alternative platform for transactions.<sup>17</sup>

Earlier this year, the US warned that it would continue aggressively to enforce sanctions and advised Turkish companies to steer clear of transactions connected to dual-use technology, which could end up in the hands of Russian armed forces.<sup>18</sup> Soon afterward, the Treasury, the US Department of Commerce, and the US Department of Justice issued a joint compliance note, calling on companies to view the routing of purchases through Turkey as a “red flag” because Turkey—like China, Armenia, and Uzbekistan—is viewed to be “commonly used to illegally redirect restricted items to Russia or Belarus.”<sup>19</sup> The compliance note emphasized that the US will crack down on “businesses of all stripes” that seek to evade sanctions.<sup>20</sup>

The US has also recently pressured Turkey to prohibit Russian airlines from operating US-made airplanes to and from Turkey, threatening “jail time, fines, [and] loss of export privileges” for “Turkish individuals . . . if they provide services like refueling and spare parts to [US]-made planes flying to and from Russia and Belarus in violation of export controls.”<sup>21</sup>

## Reaction by the EU

Although Turkey’s commercial ties with Russia arguably undermine the EU’s sanctions regime, the EU has fewer options to combat sanctions evasion beyond its borders. EU sanctions generally do not have extraterritorial reach and, unlike the US, do not include the concept of “secondary sanctions.”

Nevertheless, the EU has taken steps to coordinate with the US in combating sanctions evasion attempts involving Turkey and signaled its support for the US enforcement efforts. For example, shortly after the five Turkish banks withdrew from MIR, the EU Commissioner for Financial Services, Financial Stability, and Capital Markets Union,

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<sup>16</sup> Foy, *supra* note 16.

<sup>17</sup> Can Sezer, *Turkey’s state banks suspend use of Russian Mir payment system -finance minister*, REUTERS (Sept. 29, 2022), <https://www.reuters.com/business/finance/turkeys-ziraat-bank-suspends-use-russian-mir-payment-system-ceo-2022-09-29/>.

<sup>18</sup> Daphne Psaledakis & Humeyra Pamuk, *Exclusive: Top U.S. Treasury official to warn UAE, Turkey over sanctions evasion*, REUTERS (Jan. 28, 2023), <https://www.reuters.com/world/top-us-treasury-official-warn-mideast-countries-over-sanctions-evasion-2023-01-28/>.

<sup>19</sup> Department of Commerce, Department of the Treasury, and Department of Justice Tri-Seal Compliance Note (Mar. 2, 2023), <https://www.justice.gov/file/1571551/download>.

<sup>20</sup> *Id.*

<sup>21</sup> Jared Malsin, *U.S. Leans on Turkey to End Russian Flights With American-Made Planes*, Wall St. J. (Jan. 26, 2023), <https://www.wsj.com/articles/u-s-leans-on-turkey-to-end-russian-flights-with-american-made-planes-11674731467>.

traveled to Turkey to update the Turkish public and private sectors on the latest round of EU sanctions.<sup>22</sup> Her visit was interpreted by the observers as a sign of alignment between the US and the EU.

On June 23, 2023, the EU Member States formally adopted the 11th package of sanctions targeting Russia, aimed at combating circumvention of existing measures.<sup>23</sup> The package created a new “anti-circumvention tool” that enables restrictions on sale, supply, transfer, or export of specified sanctioned goods and technology to third countries “whose jurisdictions are considered to be at continued and particularly high risk of circumvention.”<sup>24</sup> The EU also added 87 entities from China, Uzbekistan, the United Arab Emirates, Syria, and Armenia to the list of entities “directly supporting Russia’s military and industrial complex.”<sup>25</sup> Although Turkish entities were not the list, this development is one to watch, especially in light of EU’s concerns about surging demand for EU-made products from Russia’s neighbors, including Turkey.<sup>26</sup>

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## Recent Sanctions Enforcement Activity

US and EU authorities are increasingly targeting sanctions and export controls evasion involving Turkish entities and individuals. In January 2023, OFAC sanctioned the Russian cargo airline JSC Aviacon Zitotrans. “for operating or having operated in the defense and related materiel and aerospace sectors of the Russian Federation economy.”<sup>27</sup> Aviacon Zitotrans allegedly tried to evade sanctions by using a Turkish company, and Turkish officials, to facilitate the sale of Russian military equipment on behalf of a Russian government-owned defense firm.<sup>28</sup> Although no sanctions were imposed on Turkish entities, the action showed that OFAC is scrutinizing Turkey’s involvement in bringing Russian goods to the global market.

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<sup>22</sup> Thane Gustafson, *How the US and EU Are Working Together to Combat Sanctions Evasion by Russia and Turkey*, THE WIRE (Apr. 22, 2023), <https://thewire.in/world/russia-mir-card-turkey-us-sanctions-european-union>.

<sup>23</sup> Jan Strupczewski, *Factbox: EU targets sanctions circumvention with 11th package against Russia*, REUTERS (June 23, 2023), <https://www.reuters.com/world/eu-targets-sanctions-circumvention-with-11th-package-against-russia-2023-06-23/>.

<sup>24</sup> Press Release, European Commission, EU adopts 11th package of sanctions against Russia for its continued illegal war against Ukraine (June 23, 2023), [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_3429](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3429) [hereinafter “EU Sanctions Press Release”].

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Press Release, U.S. Department of the Treasury, Treasury Sanctions Russian Proxy Wagner Group as a Transnational Criminal Organization (Jan. 26, 2023), <https://home.treasury.gov/news/press-releases/jy1220>.

<sup>28</sup> *Id.*

In April 2023, the US announced sanctions against 120 targets, including several Turkish companies.<sup>29</sup> One Turkish company, Dexias Industrial Products and Trading Limited Company, allegedly served as an intermediary for Radioavtomatika LLC, which “specializes in procuring foreign items for Russia’s defense industry.”<sup>30</sup> According to OFAC, although Radioavtomatika was subject to US sanctions, Dexias engaged with Western companies to obtain US-origin electronics components for Radioavtomatika.<sup>31</sup> OFAC also sanctioned Azu International Ltd Sti, a Turkish electronics company founded shortly after February 2022, for allegedly shipping computer chips and other technology to Russia.<sup>32</sup>

Enforcement actions relating to Turkey have not been limited to the US and are also being brought outside the Russia context, signaling a potentially broader focus on Turkey. In May 2023, German prosecutors charged four individuals with violating dual-use technology licensing rules by selling surveillance technology to the Turkish National Intelligence Organization (“MIT”).<sup>33</sup> The individuals, who worked for a now-defunct company called FinFisher, allegedly sold the technology to MIT without the German government’s consent, thereby violating the German Foreign Trade and Payments Act that prohibits unauthorized sale of surveillance software to non-EU countries.<sup>34</sup> To evade the license requirement, FinFisher allegedly devised a company structure that obscured its German operations, processed the paperwork for the sales via Bulgaria, and listed as recipient of its products the nonexistent “General Directorate for Customs Control” in Turkey.

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## Looking Ahead

In light of the growing emphasis on sanctions and export controls circumvention, the US and its allies are likely to continue to scrutinize countries with close economic ties to

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<sup>29</sup> Daphne Psaledakis & Arshad Mohammed, *U.S. sanctions hit over 120 targets supporting Russia’s invasion of Ukraine*, REUTERS (Apr. 12, 2023), <https://www.reuters.com/world/us-imposes-sanctions-over-100-targets-action-over-russias-invasion-ukraine-2023-04-12/>.

<sup>30</sup> Press Release, U.S. Department of the Treasury, *Treasury Targets Russian Financial Facilitators and Sanctions Evaders Around the World* (Apr. 12, 2023), <https://home.treasury.gov/news/press-releases/jy1402>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Four indicted in Germany for violating export controls on surveillance software*, WORLDECR (June 1, 2023), <https://www.worldecr.com/news/four-indicted-in-germany-for-violating-export-controls-on-surveillance-software/>; Press Release, Staatsanwaltschaft München I, *Anklageerhebung wegen gewerbmäßigen Verstoßes gegen das Außenwirtschaftsgesetz durch den nicht genehmigten Verkauf von Überwachungssoftware an Nicht-EU-Länder* (May 22, 2023), <https://www.justiz.bayern.de/gerichte-und-behoerden/staatsanwaltschaft/muenchen-1/presse/2023/4.php> [hereinafter “FinFisher Complaint”].

<sup>34</sup> See FinFisher Complaint.

Russia, including Turkey. There are several takeaways for Turkish companies and companies that may have supply chain connections to Turkey.

- **Turkey has recently taken steps to limit circumvention of Western sanctions, but the extent of its efforts remains unclear.** The March 2023 announcement that Turkey will no longer allow the shipment of Western-sanctioned goods to Russia is a significant development that would please the US and its allies if implemented consistently. That said, Turkey has not restricted the transfer of Turkish-made goods to Russia, even if they include foreign components. It is unlikely that Turkey will further curb its economic ties to Russia or impose sanctions of its own. President Erdogan, who has spearheaded the policy of openness to Russia, was recently re-elected for another five-year term. Turkey may view its trade ties with Russia as a key commercial lifeline at a time when domestic economic conditions are challenging.
- **The US will seek to extend the extraterritorial reach of sanctions—and likely will continue to scrutinize Turkish companies.** As it recently demonstrated by sanctioning five Turkish companies, OFAC is determined to cut off access to US markets and financial systems to foreign companies that engage in prohibited transactions with Russia. If Turkey continues to provide a key economic channel to Russia, the US will likely step up scrutiny of Turkish businesses and individuals, which may lead to additional enforcement actions.
- **The EU is likely to continue to crack down on sanctions evasion through third countries.** Adoption of the 11th sanctions package against Russia empowers the EU with a new anti-circumvention tool to restrict the sale and transfer of sanctioned goods and technology to third countries determined to pose high circumvention risk. Even though it is framed as an “exceptional and last resort measure,” this development signals that circumvention is at the top of the agenda for the EU.<sup>35</sup>
- **Exports of dual-use technologies and goods carry heightened enforcement risks.** Western nations are particularly concerned about exports to Russia of dual-use products, such as microchips, ball-bearings, and chemicals.<sup>36</sup> Many of the dual-use goods that Russia seeks to obtain through Turkish intermediaries originate in the West. Controlling dual-use technology transfers is likely to present a significant challenge for the Turkish authorities.

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<sup>35</sup> See EU Sanctions Press Release, *supra* note 29.

<sup>36</sup> What are Dual-Use Goods? DOW JONES, <https://www.dowjones.com/professional/risk/glossary/dual-use-goods-definition/#:~:text=Examples%20of%20dual%20use%20goods,certain%20kinds%20of%20ball%20bearings> (last visited June 16, 2023).

- US, EU, and UK companies doing business with Turkish counterparts should consider enhanced due diligence steps.** As Western governments become increasingly determined to counter sanctions and export controls evasion, Western businesses will need to mitigate the risks by strengthening their compliance safeguards. Companies may consider obtaining representations from their Turkish counterparts about compliance measures and dealings involving Russia to assess any relevant risks. Companies may also want to include compliance provisions into contracts with Turkish counterparties to minimize potential sanctions and export controls exposure.

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