

AVIATION ADVISORY

BIS Takes Enforcement Action Against Russian Airlines – but not Lessors or Financers – For Flights to or Within Russia

April 8, 2022

KEY POINTS

- In an April 7 press release, the US Department of Commerce's Bureau of Industry and Security (BIS) announced orders suspending the export privileges of three Russian airlines – Aeroflot, Azur Air, and UTair – for flying aircraft with US content to or within Russia.
- Such orders constituted the first enforcement action taken by BIS in response to Russia's invasion of Ukraine. The orders are in effect for 180 days and may be renewed.
- Although the press release does not announce any enforcement action against any lessor or financier of any aircraft involved in any such flight, the text of the press release reiterates the risk that BIS will find such parties in violation of export controls.

Overview

As we discussed in our [March 21 advisory](#) and [March 31 advisory](#), on February 24, in response to the invasion by Russia of Ukraine, [BIS issued new rules](#) (the Rules). The Rules effectively prohibit the export, re-export, or in-country transfer or use of Boeing (or other US-manufactured) aircraft (as well as other aircraft and aircraft components with at least 25 percent US content) in or to Russia without a license. On [March 18](#) and [March 30](#), BIS issued press releases identifying over 170 US-manufactured aircraft, most apparently on lease to Russian airlines, as having violated the Rules because such aircraft had since the issuance of the Rules flown from third countries into Russia. The effect of these violations is that such aircraft are thereafter prohibited from being sold, transferred, exported, re-exported, financed, ordered, bought, removed, concealed, stored, used, loaned, disposed of, transported, forwarded or otherwise serviced by any person anywhere who has knowledge of the violation (which BIS just notified the public of). 15 CFR § 736.2(b)(10). As such, the continued leasing and financing of such an aircraft by a person with knowledge of the violation would be prohibited without a license. However, such prohibition is not limited to aircraft having flown into Russia since the issuance of the Rules. It extends also to aircraft flying within Russia. BIS cautioned that lists were not exhaustive, and will continue to be updated. BIS also cautioned that the restrictions apply whether or not an aircraft is on the list.

Enforcement Action Against Russian Operators Only

On April 7, BIS issued a press release stating that it had just issued orders denying export privileges of three Russian airlines — Aeroflot, Azur Air, and UTair, for violations of the Rules arising because of the recent flights to Russia on US-manufactured aircraft, which BIS first identified in its March 18 and March 30 press releases. Although the April 7 press release did not announce any enforcement action against parties other than the Russian airlines themselves, the press release reiterated the Rule that “prohibits continuing with transactions knowing that a violation has occurred or is about to occur.” This points out the ongoing risk to lessors and financiers of US-content aircraft operated by Russian airlines. Assistant Secretary of Commerce for Export Enforcement Matthew S. Axelrod stated, “Companies that violate the expansive export controls we have imposed on Russia will find themselves the target of Commerce Department enforcement action.”

Conclusion

The content and tone of the April 7 BIS press release indicate that the focus of BIS in applying the Rules is on Russian nationals, at least for the time being. However, in the press release BIS again cites provisions of the Rules that include lessors and finance parties in their scope and highlights the need if possible to engage with BIS as described in our March 31 advisory.

As we pointed out in our earlier advisories, other rules may apply to leasing and financing of commercial aircraft in Russia including the rules of the Office of Foreign Assets Control (OFAC) of the US Department of Treasury, and the rules issued by the European Union in response to the Russian invasion. Lessee parties to a leasing transaction, including airline majority shareholders, require screening against sanction regimes to ensure OFAC violations do not occur separate from the export licensing issues covered here.

If you have any questions, please reach out to any of the individuals listed on the next page.

CONTACTS

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