

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

Nordwind Airlines)
Leningradskaya str.,)
building 25, office 27. 28,)
Moscow region,)
Khimki city,)
141402, Russia)
)
Pegas Touristik)
a/k/a Pegas Touristik OOO)
5 building 1 Volokolamsk Highway)
Moscow, Russian Federation, 125080)
)
and)
)
Yenigöl, Nergiz Sk. No:94/1,)
Muratpaşa/Antalya, Türkiye, 07230)
)

ORDER RENEWING TEMPORARY DENIAL OF EXPORT PRIVILEGES

Pursuant to Section 766.24 of the Export Administration Regulations, 15 C.F.R. Parts 730-774 (2021) (“EAR” or “the Regulations”),¹ I hereby grant the request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued in this matter

¹ On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. § 2401 *et seq.* (“EAA”), (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.* (“IEEPA”), and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, Section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. § 4820(a)(5).

on December 20, 2022. I find that renewal of this order, along with the addition of Pegas Touristik a/k/a Pegas Touristik OOO (“Pegas Touristik”) as a related person, is necessary in the public interest to prevent an imminent violation of the Regulations.

I. Procedural History

On June 24, 2022, I signed an order denying the export privileges of Nordwind Airlines (“Nordwind”) for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to Section 766.24(a) of the Regulations and was effective upon issuance.² This temporary denial order was subsequently renewed in accordance with Section 766.24(d) of the Regulations.³ The renewal order issued on December 20, 2022 and was effective upon issuance.⁴

On May 18, 2023, BIS, through OEE, submitted a written request for renewal of the Nordwind TDO that issued on December 20, 2022. The written request was made more than 20 days before the TDO’s scheduled expiration. A copy of the renewal request was sent to Nordwind in accordance with Sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received. OEE submitted a separate written request that Pegas Touristik be added to the TDO as a related person to Nordwind in accordance with Section 766.23 of the Regulations.

² The TDO was published in the *Federal Register* on June 29, 2022 (87 Fed. Reg. 38704).

³ Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order. Renewal requests may include discussion of any additional or changed circumstances, and may seek appropriate modifications to the order, including the addition of parties as respondents or related persons.

⁴ The December 20, 2022 renewal order was published in the *Federal Register* on December 27, 2022 (87 Fed. Reg. 79725).

II. Renewal of the TDO

A. Legal Standard

Pursuant to Section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an "imminent violation" of the Regulations, or any order, license or authorization issued thereunder. 15 C.F.R. §§ 766.24(b)(1) and 766.24(d). "A violation may be 'imminent' either in time or degree of likelihood." 15 C.F.R. § 766.24(b)(3). BIS may show "either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations." *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge "is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]" *Id.* A "lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation." *Id.*

Pursuant to Sections 766.23 and 766.24, a TDO may also be made applicable to other persons if BIS has reason to believe that they are related to a respondent and that applying the order to them is necessary to prevent its evasion. 15 C.F.R. §§ 766.23(a)-(b) and 766.24(c). A "related person" is a person, either at the time the TDO's issuance or thereafter, who is related to a respondent "by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business." 15 C.F.R. § 766.23(a). Related persons may be added to a TDO on an *ex-parte* basis in accordance with Section 766.23(b) of the Regulations. 15 C.F.R. § 766.23(b).

B. The TDO and BIS's Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation's ("Russia's") further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (ECCN) 9A991 (Section 746.8(a)(1) of the EAR).⁵ BIS will review any export or reexport license applications for such items under a policy of denial. *See* Section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (AVS) (Section 740.15 of the EAR).⁶ Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

⁵ 87 Fed. Reg. 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List ("CCL") under Categories 0-2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 Fed. Reg. 22130 (Apr. 14, 2022).

⁶ 87 Fed. Reg. 13048 (Mar. 8, 2022).

OEE's request for renewal is based upon the facts underlying the issuance of the initial TDO, the renewal order subsequently issued in this matter on December 20, 2022, and the evidence developed over the course of this investigation, which indicate a blatant disregard for U.S. export controls, as well as the TDO. Specifically, the initial TDO, issued on June 24, 2022, was based on evidence that Nordwind engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022 from destinations including, but not limited to, Yerevan, Armenia, Istanbul, Turkey, and Sharm el-Sheikh, Egypt, without the required BIS authorization.⁷

As discussed in the December 20, 2022 renewal order, evidence presented by BIS indicated that, after the initial order issued, Nordwind continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and out of Russia, in violation of the Regulations and the TDO itself.⁸ Specifically, the December 20, 2022 renewal order detailed Nordwind's continued operation of aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Sharm el-Sheikh, Egypt, Hurghada, Egypt, and Bokhtar, Tajikistan.⁹

In its May 18, 2023 request for renewal of the TDO, BIS has submitted evidence that Nordwind continues to operate in violation of the December 20, 2022 TDO and/or the Regulations by operating aircraft subject to the EAR and classified under ECCN 9A991.b.

⁷ Publicly available flight tracking information shows, for example, that on March 7, 2022, serial number ("SN") 40874 flew from Yerevan, Armenia to Kazan, Russia; SN 40233 flew from Istanbul, Turkey to Kazan, Russia; and SN 40236 flew from Sharm el-Sheikh, Egypt to Moscow, Russia.

⁸ Engaging in conduct prohibited by a denial order violates the Regulations. 15 C.F.R. §§ 764.2(a) and (k).

⁹ Publicly available flight tracking information shows that on December 3, 2022, SN 42059 flew from Sharm el-Sheikh, Egypt to Orenberg, Russia and on December 2, 2022, SN 40874 flew from Hurghada, Egypt to Moscow, Russia. In addition, on November 29, 2022, SN 35700 flew from Bokhtar, Tajikistan to Moscow, Russia.

Specifically, BIS’s evidence and related investigation demonstrates that Nordwind has continued to operate aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Bokhtar, Tajikistan, Tehran, Iran, and Osh, Kyrgyzstan. Information about those flights includes, but is not limited to, the following:

| Tail Number | Serial Number | Aircraft Type | Departure/Arrival Cities | Dates |
|-------------|---------------|----------------|--------------------------|---------------|
| RA-73313 | 35700 | 737-82R (B738) | Bokhtar, TJ / Orsk, RU | June 2, 2023 |
| RA-73313 | 35700 | 737-82R (B738) | Bokhtar, TJ / Orsk, RU | June 3, 2023 |
| RA-73313 | 35700 | 737-82R (B738) | Bokhtar, TJ / Orsk, RU | June 4, 2023 |
| RA-73313 | 35700 | 737-82R (B738) | Bokhtar, TJ / Orsk, RU | June 11, 2023 |
| | | | | |
| RA-73317 | 40874 | 737-82R (B738) | Tehran, IR / Moscow, RU | May 16, 2023 |
| RA-73317 | 40874 | 737-82R (B738) | Dushanbe, TJ / UFA, RU | June 8, 2023 |
| RA-73317 | 40874 | 737-82R (B738) | Osh, KG / Samara, RU | June 11, 2023 |
| | | | | |
| RA-73314 | 42233 | 737-8KN (B738) | Dushanbe, TJ / Kazan, RU | June 4, 2023 |
| RA-73314 | 42233 | 737-8KN(B738) | Osh, KG / Tyumen, RU | June 10, 2023 |
| RA-73314 | 42233 | 737-8KN (B738) | Dushanbe, TJ / Kazan, RU | June 11, 2023 |
| RA-73314 | 42233 | 737-8KN (B738) | Bokhtar, TJ / Orsk, RU | June 12, 2023 |

C. Pegas Touristik as a Related Person

OEE’s investigation and open source documents establish that Russia-based Pegas Touristik is related to Nordwind “by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business.” Multiple press reports, including from Russian outlets, identify Pegas Touristik, a tour company headquartered in Moscow, as Nordwind’s owner.¹⁰ A May 2023 Russian corporate profile for Pegas Touristik lists as its founder an individual who is also reported to be Nordwind’s founder (“Person A”). Additionally, a February 3, 2022 article in Kommersant, a national distributed daily newspaper

¹⁰ https://seatguru.com/airlines/Nordwind_Airlines/information.php.

in Russia, states in part that “in addition to [controlling] NordWind and Pegas Fly, Person A is also the founder of the tour operator Pegas Touristik.” The same article also indicates that the general director of Pegas Touristik is the wife of Person A. OEE’s on-going investigation and corporate registration documents reveal additional overlap in personnel, addresses, and management with Pegas Touristik.

Moreover, OEE has reason to believe that Pegas Touristik has made additional efforts to evade export controls on Russia in part by entering into charter agreements with a Turkish airline that started shortly after the imposition of stringent Russia-related export controls described, *supra*, for international flights into Russia on U.S-origin aircraft without the required BIS authorization. As noted, *supra*, aircraft registered in, owned, or controlled by, *or under charter* or lease by Russia or a national of Russia are ineligible for license exception AVS.¹¹

III. Findings

Under the applicable standard set forth in Section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Nordwind has acted in violation of the Regulations and the TDO; that such violations have been significant, deliberate and covert; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Nordwind, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

¹¹ 15 C.F.R. § 746.8(c)(5).

Additionally, I find that Pegas Touristik meets the criteria set out in Section 766.23 and should be added to the TDO as a related person.

IV. Order

IT IS THEREFORE ORDERED:

FIRST **Nordwind Airlines**, with an address at Leningradskaya str., building 25, office 27. 28, Moscow region, Khimki city, 141402, Russia; **Pegas Touristik a/k/a Pegas Touristik OOO**, with addresses at 5 building 1 Volokolamsk Highway, Moscow, Russian Federation, 125080, and Yenigöl, Nergiz Sk. No:94/1, Muratpaşa/Antalya, Türkiye, 07230, when acting for or on their behalf, any successors or assigns, agents, or employees (each a “Denied Person” and collectively the “Denied Persons”) may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations.

SECOND, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of a Denied Person any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to Section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

THIRD, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Nordwind by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of Sections 766.24(e) of the EAR, Nordwind may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

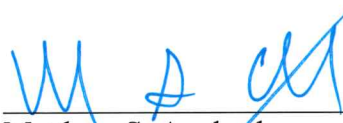
In accordance with the provisions of Sections 766.23(c)(2) and 766.24(e)(3) of the EAR, Pegas Touristik may, at any time, appeal their inclusion as a related person by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Nordwind as provided in Section 766.24(d), by filing a

written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Nordwind and Pegas Touristik and shall be published in the *Federal Register*.

This Order is effective immediately and shall remain in effect for 180 days.



Matthew S. Axelrod
Assistant Secretary of Commerce
for Export Enforcement

Dated: June 15, 2023.