

Bipartisan Group of Senators Introduces Draft Bill to Expand U.S. Sanctions against Russia

January 13, 2017

On January 11, 2017, a bipartisan group of senators introduced a draft bill that, if adopted, would cement and significantly broaden U.S. sanctions relating to the Russian Federation and Ukraine. The authors have dubbed the bill the “Counteracting Russian Hostilities Act of 2017,”¹ but the scope of the bill goes well beyond recent allegations of cyber activities said to have targeted the U.S. presidential election. The bill appears to have broad support, but the position of the Senate Republican leadership is not yet clear, nor is that of the incoming Trump Administration. It is theoretically possible, though not likely, that the bill could be enacted during the last days of the Obama Administration. Amendments prior to enactment are also possible.

If adopted, the proposed legislation would codify into law existing sanctions on the Russian Federation, preventing the incoming Trump Administration from unilaterally terminating these sanctions. The bill would also create significant new secondary sanctions targeting transactions relating to core sectors of the Russian economy, regardless of the jurisdictions involved or the currencies used. Persons of any nationality engaging in such transactions could find themselves on U.S. sanctions lists, limiting or prohibiting their interaction with the United States economy and financial system.

The targeted transactions include:

- investing in or providing goods and services to oil, gas, and pipeline projects in the Russian Federation, or the civil nuclear sector
- investing in or facilitating the issuance of new debt by the Russian Federation or any state-owned or state-controlled entity
- investing in or facilitating investment in Russian state-owned assets being privatized.

Other provisions target human rights abuses, entities involved in cyberattacks on the United States, Russian defense and intelligence agencies, and Russia-backed media outlets.

¹ S.94, 115th Congress (2017). The text of the bill as introduced can be found [here](#).

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Cybersecurity Sanctions

Cyberattacks on Infrastructure and Elections. The bill would authorize² the President to impose visa bans and asset freezes on persons who, on behalf of the Government of the Russian Federation, knowingly use computer networks or systems to engage in significant activity undermining the cybersecurity of the public or private infrastructure of, or that result in the compromise the democratic institutions of, the United States or its allies, and would also impose sanctions on those who materially assist, sponsor, or provide financial, material, or technological support for such activities.

Transactions with the Intelligence or Defense Sectors. The bill authorizes the imposition of secondary sanctions on persons found to have knowingly engaged in a significant transaction with a person that is a part of, or operates for or on behalf of, the defense or intelligence services of the Russian Federation. These sanctions are known as “secondary” sanctions because, like earlier secondary sanctions on Iran, they may be applied whether or not the transaction in question involves a U.S. person³ or any other jurisdictional connection to the United States. In effect, the enforcement mechanism is “if you do X, the United States can impose sanctions on you.” The impact of the potential secondary sanctions on persons engaged in targeted transactions varies widely, from relatively minor restrictions to effectively barring the sanctioned person from the U.S. economy. If a person is sanctioned, five or more of the following twelve sanctions would be imposed:

- Denial of Export-Import Bank assistance for exports to the sanctioned person
- Prohibition of foreign exchange transactions within U.S. jurisdiction in which the sanctioned person has an interest
- Denial of export licenses for exports to the sanctioned person
- Prohibition on any payment subject to U.S. jurisdiction in which the sanctioned person has an interest by, to, or through any financial institution
- Prohibition on U.S. banks lending more than \$10 million per year to the sanctioned person
- Blocking all property within U.S. jurisdiction in which the sanctioned person has an interest
- U.S. opposition to any loan from an international financial institution to the sanctioned person
- Prohibition on U.S. persons’ investing in equity or debt of the sanctioned person
- If the sanctioned person is a financial institution, prohibition on acting as a primary dealer for U.S. Government debt or acting as depository for U.S. Government funds
- Visa bans on corporate officers and controlling shareholders
- Disqualification from U.S. Government procurement
- Imposition of any of the sanctions above on the principal executive officers of the sanctioned person.

The President is authorized to waive the imposition of sanctions if he determines that the waiver is vital to United States security interests or furthers enforcement of the bill, and certifies that the Government of the Russian Federation has made significant efforts to reduce the number and intensity of cyber intrusions it conducts.

² In a number of places, the draft bill uses mandatory language purportedly requiring the President to impose sanctions. However, this language is largely unenforceable, and as a practical matter the imposition of sanctions pursuant to similar language adopted in the past has been a discretionary act.

³ The proposed legislation uses the term “person” to cover both individuals and legal entities such as corporations.

Codification of Prior Cyber Sanctions. The bill would also codify Executive Order 13694, which authorizes the imposition of sanctions on persons found to have engaged in malicious cyber-related activities, and all sanctions imposed pursuant to it as in effect on the day before the passage of the bill. Visa bans and asset freezes have been imposed pursuant to a number of Russian persons pursuant to Executive Order 13694, and the bill would appear to prevent de-listing of any currently designated person.

Termination. The cyber-related sanctions (including the codification of Executive Order 13694) would terminate on the date on which the President submits a certification that the Government of the Russian Federation has ceased cyberattacks on U.S. official and unofficial entities.

Additional Sanctions

Energy Sector Sanctions. The bill adds extensive secondary sanctions against the Russian energy sector. The mechanism is the same as in the cyber-related sanctions above (*i.e.*, if secondary sanctions are imposed because a person engaged in targeted activity, at least five of the twelve sanctions listed above will be applied).

- *Investment in oil or gas production.* The bill provides for the imposition of secondary sanctions against any person making an investment that directly and significantly contributes to the Russian Federation's ability to develop petroleum or natural gas resources if the investment (a) is \$20 million or more, or (b) involves multiple investments of \$5 million or more totaling \$20 million or more in any 12-month period.
- *Provision of goods and services to the oil and gas sector.* Secondary sanctions may also be imposed against any person who

sells, leases, or provides goods, services, technology, information or support that could directly and significantly facilitate the maintenance or expansion of the production of petroleum or natural gas in the Russian Federation, including petroleum refineries and natural gas infrastructure, if any such transaction has a value of \$1 million or more or the aggregate value of all such transactions exceeds \$5 million in any 12-month period.

- *Maintenance and construction of pipelines.* The bill permits the imposition of secondary sanctions on any person (a) making an investment that directly and significantly contributes to the enhancement of the Russian Federation's ability to construct energy export pipelines, or (b) providing goods, services, technology, information, or support that could directly and significantly facilitate the construction, modernization, or repair of energy pipelines by the Russian Federation, if the value of any such transaction is \$1 million or more or the aggregate value of all such transactions is more than \$5 million in any 12-month period.
- *Civil nuclear projects.* The bill permits the imposition of secondary sanctions on any person (a) making an investment that directly and significantly contributes to the enhancement of the Russian Federation's ability to construct civil nuclear power plants, or (b) providing goods, services, technology, information, or support that could directly and significantly facilitate the construction, modernization, or repair of civil nuclear plants by the Russian Federation, if the value of any such transaction is \$1 million or more or the aggregate value of all such transactions is

more than \$5 million in any 12-month period.

Sanctions on Russian Federation Debt and Debt of State-Owned or Controlled Entities. The bill authorizes secondary sanctions against any person who knowingly purchases, subscribes to, or facilitates the issuance of (a) any sovereign debt of the Russian Federation issued after the date of enactment, or (b) debt of any entity owned or controlled by the Government of the Russian Federation issued on or after the date of enactment. This would go beyond the existing sectoral sanctions on State-owned energy, banking, and defense companies and target even new short-term debt, whether or not the State-owned or controlled entity is specifically listed.

Sanctions on Privatization of State-Owned Assets. The bill authorizes secondary sanctions against any person who (a) makes an investment of \$10 million or more, or multiple investments of \$1 million or more totaling \$10 million or more in any 12-month period, or (b) facilitates any such investment, if the investment directly and significantly contributes to the privatization of assets owned by the Russian State.

Sanctions for Human Rights Abuses. The bill provides for visa bans and asset freezes on any person found to have been involved in, or to have materially assisted, sponsored, or provided financial, material, or technological support for or goods and services to a person involved in, serious human rights abuses in any territory forcibly occupied or otherwise controlled by the Government of the Russian Federation.

Codification of Existing Ukraine-Related Sanctions. The bill would codify into law the four Executive Orders issued by President Obama imposing sanctions relating to Ukraine (Executive Orders 13660, 13661, 13662, and 13685), as well as all sanctions issued pursuant to those Executive

Orders.⁴ Existing sanctions could not be lifted by President Trump or future Administrations prior to the termination date below.

No Recognition of Crimea. United States government agencies would be prohibited from recognizing Russian sovereignty (*de jure* or *de facto*) over Crimea or the independence of South Ossetia and Abkhazia.

Waiver and Termination. All of these additional sanctions could be waived if the President made a determination that (a) such a waiver is vital to the national security of the United States, or would further the goals of the bill, and (b) the Government of the Russian Federation is taking steps to implement the Minsk Agreements and to substantially decrease its military activities in Syria. The sanctions would remain in force until the President submits a certification that the Government of the Russian Federation (a) is no longer involved in significant acts undermining the peace, security, sovereignty, or territorial integrity of Ukraine (including through an agreement among the appropriate parties), and (b) has halted military operations in Syria.

In the case of the human rights sanctions, the President would have to certify that the waiver is vital to the national security interests of the United States and that the Government of the Russian

⁴ For more information on existing U.S. sanctions against Russia, please refer to our Alert Memoranda dated March 17, 2014 ("[Developments in US and EU Sanctions Relating to Ukraine](#)"), March 21, 2014 ("[Further Developments in US Sanctions Relating to Ukraine](#)"), July 17, 2014 ("[Ukraine-Related Sanctions: Limited U.S. Sanctions Against Four Russian Energy and Financial Firms; Other Developments](#)"), July 29, 2014 ("[Extension of U.S. Sectoral Sanctions to Three Additional Russian Financial Institutions](#)"), September 14, 2014 ("[Ukraine-related Sanctions: Expanded U.S. Sanctions Against Russian Financial, Energy, and Defense Sectors](#)"), December 17, 2014 ("[Ukraine-related Sanctions: New U.S. Statute Creates Secondary Sanctions Targeting Certain Dealings with Russia](#)"), and December 21, 2014 ("[U.S. Imposes Comprehensive Sanctions Against Crimea](#)").

Federation has made efforts to reduce serious human rights abuses in any territory it forcibly occupies or otherwise controls.

Other Provisions

Media Outlets. The bill requires an annual report describing in detail media outlets controlled and funded by the Government of the Russian Federation that “routinely propagate anti-Western falsehoods and disinformation” and identifying multinational corporations headquartered in the United States, and subsidiaries and local franchisees of such corporations, that advertise on one or more such outlets.

FinCEN. The bill directs FinCEN (the U.S. anti-money laundering regulator) to establish a unit focusing on tracing, mapping, and prosecuting illicit financial flows linked to the Russian Federation that interact with the U.S. financial system, as well as using liaison officers in key embassies abroad (particularly in Europe) to work with local authorities to target networks responsible for such flows.

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