

## Russia Sanctions Update

FEBRUARY 1, 2018

### **Political Figures and Oligarch Report Released**

#### **President Declined to Issue Defense and Intelligence Sector Sanctions**

#### **Directive 4 – Oil Projects Initiated after January 29th Subject to Expanded Directive 4**

Several key deadlines for the implementation of the Russian sanctions portion of the Countering America's Adversaries Through Sanctions Act ("CAATSA") fell on January 29, 2018. Specifically, on that date the Department of the Treasury was required to submit several reports to Congress, including a report identifying Russian senior political officials, oligarchs, and parastatal entities;<sup>1</sup> and (2) President Trump was required to impose the sanctions on persons who engaged in significant transactions with the defense and intelligence sector of the Russian Federation.

On January 29, Treasury released the report as required, and the President used his waiver authority to avoid imposing sanctions relating to transactions with the Russian defense and intelligence sector.

In addition, January 29, 2018, marked the date on which newly initiated oil projects are subject to the expanded definition of Directive 4.<sup>2</sup>

## Section 241 Report

On January 29, 2018, as required by Section 241 of CAATSA, Treasury submitted a report to Congress naming senior political figures and oligarchs in the Russian Federation as well as Russian parastatal entities. The unclassified portion of the report is nine pages long and lists 114 senior political figures and 96 oligarchs from the Russian Federation. The required list of parastatal entities is not included in the unclassified portion of the report but was included in the classified annex. This classified annex is reportedly hundreds of pages long. Much of the detailed information required under CAATSA is presumably included in the classified report.<sup>3</sup>

The Treasury Department took care to note, both in this report and in guidance released by the Office of Foreign Assets Control on January 30th, that the report is not a sanctions list. Furthermore, the government emphasized

repeatedly that “inclusion in this report does not, in and of itself, imply, give rise to, or create any other restrictions, prohibitions, or limitations on dealings with such persons by either U.S. or foreign persons.”

We note that the criteria for inclusion in this unclassified report, as laid out below, was broad. Prior to the release of the report, there was uncertainty as to what criteria the Department of Treasury would use to identify senior political figures, oligarchs, and parastatal entities. The decision to use broad criteria underscores the report’s statements that inclusion on the list does not indicate that the U.S. Government is sanctioning or otherwise restricting activities involving such persons.

Although the Department repeatedly made clear that the list is not intended to be a sanctions list, it also noted that individuals on this list may be subject to sanctions if they meet the requirements for the use of other existing sanctions authorities. OFAC continues to add names to sanctions lists under the Ukraine/Crimea-related authorities, the Magnitsky authorities, and other programs. In fact, persons were recently added to the SDN list under the Ukraine/Crimea-related authorities on January 26, 2018.

### **Senior Political Figures**

There are 114 senior political figures<sup>4</sup> named in the unclassified portion of this report, including: i) senior members of the Russian Presidential Administration; ii) members of the Russian Cabinet, Cabinet-rank ministers, and heads of other major executive agencies; iii) other senior political leaders, including the leadership of the State Duma and Federation Council, other members of the Russian Security Council, and senior executives at state-owned enterprises.

The Department noted in its report, however, that the classified annex it submitted to Congress may include individuals not identified in the unclassified portion of the report as well as individuals who hold a position lower than those included in the unclassified portion of the report.

### **Russian Oligarchs**

There are 96 individuals named in the unclassified list of Oligarchs. The criteria used by the Department was to identify all Russian individuals with a reported estimated net worth of \$1 billion or more. The Department noted that the classified annex may include individuals who have a net worth below \$1 billion.

### **Parastatal Entities**

There are no parastatal entities listed in the unclassified portion of the report; however, the Department indicated that a list was included in the classified annex of the report to Congress. For purposes of this report Treasury defined parastatals as “companies in which state ownership is at least 25 percent and that had 2016 revenues of approximately \$2 billion or more.”

## **Sanctions on Persons Engaging in Transactions With the Defense and Intelligence Sectors**

On January 29th, President Trump declined to impose sanctions on persons identified as engaging in a significant transaction with individuals identified as members of (or operating on behalf of) the defense and intelligence sectors of the Russian Federation. While Section 231(a) of CAATSA states that “the President shall impose” these sanctions, Congress also gave President Trump waiver authority over this requirement in Section 231(b). This waiver authority was what President Trump exercised on January 29th by informing Congress that CAATSA’s implementation was deterring Russian defense sales and that sanctions were not needed at this time.

## **Directive 4 Expansion**

January 29th was also an important date for the expanded sanctions under Directive 4, as amended by OFAC on October 31, 2017.

OFAC's amendment, required under section 223(d) of CAATSA, now prohibits U.S. persons or persons within the United States from providing goods, services (except for financial services), or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects that are *initiated on or after January 29, 2018*, and that have the potential to produce oil in any location, and in which any person determined to be subject to the Directive or any earlier version thereof, their property, or their interests in property has (a) a 33 percent or greater ownership interest, or (b) ownership of a majority of the voting interests.<sup>5</sup>

## Effect on Business

As always, companies should undertake careful diligence to ensure compliance with U.S. sanctions laws, including the increasingly complex Russian sanctions. Businesses that operate in the oil and gas sector should exercise additional caution to ensure that their transactions do not run afoul of the newly expanded prohibitions of Directive 4.

It is important to note, however, that no new sanctions have been imposed as a result of the section 241 report, and the fact that an individual or entity was included in the report does not mean, by itself, that U.S. persons and businesses cannot conduct business with that individual or entity.

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<sup>1</sup> On January 29, 2018, the Department of the Treasury also submitted the following reports to Congress as required by the Russian sanctions section of CAATSA: a Report on Effects of Expanding Sanctions to Include Sovereign Debt and Derivative Products and a Report Examining the Counter-Terror Financing Role of the Department of the Treasury in Embassies.

<sup>2</sup> For more information on CAATSA, its impacts, and its implementation, see our prior briefings [here](#), [here](#), and [here](#).

<sup>3</sup> For identified senior political figures and oligarchs:

- An assessment of the relationship between these individuals and President Vladimir Putin or other members of the Russian ruling elite
- An identification of any indices of corruption with respect to those individuals
- The estimated net worth and known sources of income of those individuals and their family members
- An identification of the non-Russian business affiliations of those individuals

For Russian parastatal entities:

- Discussion of the emergence of Russian parastatal entities and their role in the economy of the Russian Federation (this was briefly included in the unclassified report, but may be more expansively discussed in the classified version)
- Their leadership structures and beneficial ownership
- The scope of their non-Russian business affiliations
- The exposure of key economic sectors of the United States to Russian politically exposed persons and parastatal entities
- The likely effects of imposing debt and equity restrictions on Russian parastatal entities, as well as the anticipated effects of adding them to the specially designated nationals and/or blocked persons lists.

The potential impacts of imposing secondary sanctions with respect to Russian oligarchs, Russian state-owned enterprises, and Russian parastatal entities, including impacts on the entities themselves and on the economy of the Russian Federation, as well as on the economies of the United States and allies of the United States.

<sup>4</sup> To determine the list of senior political figures, the Department of the Treasury considered the definition in CAATSA section 241(c)(2), which incorporates by reference the definition of "senior foreign political figure" in 31 C.F.R. section 1010.605.

<sup>5</sup> For more information on the Directive 4 expansion and its impacts, see our prior briefing [here](#).

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