



## ONPOINT / A legal update from Dechert's International Trade Group

March 2019

### U.S., EU, Canada and Australia Take Coordinated Action Targeting Russia as Congress Considers Further Sanctions

#### Introduction

Last week, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), the EU Council, and Canada imposed further sanctions targeting Russian individuals and entities allegedly involved in the escalation of tensions between Russia and Ukraine in the Kerch Strait and the Sea of Azov last November. Australia imposed similar measures on March 18, 2019. In addition, the U.S. imposed sanctions on a Russian-controlled bank which it accused of being used to support the Maduro regime in Venezuela.

These moves come against the backdrop of the recent re-introduction of a bipartisan bill in the Senate seeking to impose tougher sanctions against Russia, Congressional criticism over the Administration's recent lifting of sanctions on the aluminum company Rusal and EN+, delays in implementing a second tranche of mandated sanctions against Russia under the Chemical and Biological Weapons Act ("CBW Act"), and the looming specter of the Mueller investigation into Russian intervention in the 2016 election. Given the continued pattern of escalation against Russia, companies should be alert to the possibility of new sanctions being imposed in the near future.

#### March 15 Designations Targeting Russian Activity in Ukraine

On March 15, in response to Russia's seizure of Ukrainian naval vessels in the Kerch Strait and the subsequent detention of 24 Ukrainian crew members on November 25, 2018, OFAC added to the List of Specially Designated Nationals and Blocked Persons ("SDN List") eight entities and six Russian individuals. Using Executive Order ("E.O.") 13662 and E.O. 13685, OFAC designated six Russian firms with ties to the defense industry, as well as a construction firm and an oil and gas logistics entity operating out of Crimea. The targeted companies include one of the largest ship manufacturers in Russia, a ship-building plant and producers of diesel engines, electronics and hydroacoustics.<sup>1</sup> The targeted individuals are four senior officials of Russia's Federal Security Service ("FSB") sanctioned under E.O. 13661 who were allegedly involved in the Kerch Strait incident.<sup>2</sup> OFAC also designated two Ukrainian individuals for their involvement in the organization of the separatist elections in November 2018.<sup>3</sup>

As a result of being added to the SDN List, all property and interests in property of these individuals and entities are blocked, and U.S. persons are generally prohibited from transacting with them. Moreover, any entities owned 50 percent or more by these SDNs are blocked by operation of law.

According to OFAC, it took these actions in coordination with Canada, Australia and the EU, which also announced new measures in response to the November 25, 2018, Kerch Strait incident and the ongoing Russian occupation of Crimea, although the parties added to the respective sanctions lists are not identical. Canada announced that it was imposing sanctions on 114 individuals and 15 entities as part of the joint effort, while Australia imposed sanctions and travel bans against ten individuals. Most notably, the EU Council added eight Russian individuals to the list targeting those "undermining the territorial integrity,

sovereignty or independence of Ukraine.”<sup>4</sup> The restrictions mainly concern employees of the FSB’s border service, and consist of a travel ban and an asset freeze. EU persons are also forbidden from making funds available to those listed. At present, 170 people and 44 entities are now subject to the Ukraine-related sanctions.<sup>5</sup>

The Russian Foreign Ministry commented in a statement released on March 16 that Russia will respond to the “EU’s unfriendly action.”<sup>6</sup>

Coincidentally, the March 15 actions came on the same day that Oleg Deripaska, the Russian billionaire and founder of Rusal and EN+ who was added to the SDN List in April 2018, sued the U.S. Department of the Treasury and OFAC in federal court to have the sanctions on him lifted.

### **Key Takeaways**

- These actions underscore OFAC’s continued emphasis on targeting entities operating in and facilitating the development of Crimea, which is a criterion for designation and has been a component of nearly all of OFAC’s sanctions action targeting Russia since 2014. Companies doing business in Crimea or with Crimean entities – Russian or otherwise – are at heightened risk of potential sanctions action.
- The apparent coordinated timing of the sanctions appears to suggest increased unity between the U.S., the EU, Australia and Canada with respect to the imposition of sanctions on Russia for its actions with respect to Ukraine, essentially for the first time since the U.S. passed the Countering America’s Adversaries Through Sanctions Act (“CAATSA”) in August 2016 in response to Russia’s alleged interference in the U.S. presidential election.

### **Targeting Russia’s Support of the Venezuelan Regime**

On March 11, 2019, OFAC designated Evrofinance Mosnarbank (“Evrofinance”), a Moscow-based bank that is jointly owned by Russian and Venezuelan state-owned enterprises (“SOEs”), for providing support for Petroleos de Venezuela S.A. (“PdVSA”).<sup>7</sup> PdVSA, a Venezuelan state-owned oil company, had been designated on January 28, 2019, pursuant to E.O. 13850 for operating in the oil sector of Venezuela. (See [1/29/2019 OnPoint](#).)

OFAC accused Evrofinance of attempting to circumvent U.S. sanctions on Venezuela, suggesting that Evrofinance offered itself as a “lifeline” for Nicolas Maduro’s regime by willingly financing Venezuela’s alleged cryptocurrency, the petro.<sup>8</sup> OFAC further highlighted that Russia had been “a long-time ally of Venezuela, dating back to Maduro’s predecessor, Hugo Chavez.”<sup>9</sup>

### **Key Takeaways**

- U.S. officials had publicly threatened “secondary sanctions” on third-country companies supporting the Maduro regime and Venezuelan-sanctioned entities for several weeks prior to the designation of Evrofinance. However, it is notable that the U.S. government made Russia – and specifically a partially Russian SOE – the target of its first such action.
- On the same day OFAC added Evrofinance to the SDN List, U.S. Secretary of State Mike Pompeo accused the Russian state-owned oil company Rosneft of purchasing crude from PdVSA in defiance of U.S. sanctions, and alleged Rosneft’s sanctioned CEO, Igor Sechin, continued to “throw a lifeline” to the Venezuelan regime.<sup>10</sup> PdVSA reportedly owes Rosneft substantial sums under deals entered into between 2014 and 2016. In addition, Rosneft reportedly holds stakes in five upstream oil projects in Venezuela.<sup>11</sup> Although imposing new sanctions on Rosneft would be an enormous escalation, the U.S. government has apparently concluded that increased sanctions pressure on Russia is a point of leverage over the Maduro regime.

### **Congress Continues to Threaten Further Sanctions**

On February 13, 2019, a bipartisan group of U.S. Senators, led by Senator Lindsey Graham, introduced an expanded version (S. 482) of last year’s proposed bill (S. 3336), *Defending American Security from Kremlin Aggression Act* (“DASKAA”). (We discussed DASKAA 2018 in an [8/27/2018 OnPoint](#).) DASKAA 2019 – like DASKAA 2018, which never progressed in the Senate last year – is aimed at addressing a wide range of activities involving Russia, including possible interference in U.S. elections, aggression in Ukraine, human rights abuses, corruption and support for Syrian President Bashar al-Assad. The proposed sanctions in the bill target several fronts, including:

- **Russian sovereign debt:** Like the prior version of DASKAA, the current bill would mandate prohibitions on U.S. persons transacting with, financing, or dealing in new Russian sovereign debt, which explicitly includes bonds issued by the Central Bank, National Wealth Fund, or Federal Treasury, but extends

much further to include any instruments the President “determines otherwise represents the sovereign debt” of Russia. This could conceivably include the debt of Russian SOEs.

- **Russian LNG projects:** A new provision of the bill would require the imposition of sanctions on knowing investments in Russian liquefied natural gas (“LNG”) projects outside of the country that have a fair market value of at least \$1 million or an aggregate fair market value of at least \$5 million during a 12-month period. Russia is not known to have any such LNG plants outside the country, although it has touted plans to increase its share of global LNG exports over the coming decades.
- **Energy projects supported by Russian SOEs or parastatals:** DASKAA would directly take aim at the financing of any Russian-linked energy projects located outside of Russia by imposing sanctions on *any* investments in such projects if the value of the project itself (not the investment) is reasonably expected to exceed \$250 million. Unlike CAATSA Section 232, which specifically targets investments in Russian energy export pipelines, there are no value thresholds on the investment itself, which means anyone playing even a small role in financing such projects is at risk.
- **Russian crude oil development:** The bill would target Russia’s development and production of on-shore crude oil resources by imposing sanctions on any provision of goods, services, financing, technology, or other support to such projects that has a fair market value of at least \$1 million or an aggregate fair market value of \$5 million during a 12-month period. Coupled with existing prohibitions on the provision of support to Russian frontier oil development, this measure could seriously impact long term prospects for Russia’s crude oil industry.
- **Senior political figures, oligarchs, and parastatals facilitating corrupt activities:** The bill mandates sanctions against political figures, oligarchs, and other persons that facilitate illicit and corrupt activities on behalf of Vladimir Putin. The same provision would also target family members of any such persons who derive significant benefits from those activities. Oligarchs and their family members have been a consistent focus for Congress, which included similar provisions in CAATSA.

As notable is what is not in the revised version of DASKAA – a measure that would have required the imposition of sanctions on at least one from among eight identified Russian banks. That provision, which was included in DASKAA 2018, provoked widespread concern over major collateral impact, particularly if full blocking sanctions had been levied against Sberbank, VTB, or Gazprombank, which together account for the vast majority of Russia’s banking industry. However, the bill does include a provision mandating sanctions against any Russian financial institutions determined to have supported the Russian government’s interference in any future elections of any country outside Russia.

It is too soon to tell whether DASKAA 2019 will fare better than DASKAA 2018, as there has been little movement in Congress to date. However, Congress expressed bipartisan disapproval with OFAC’s decision to lift sanctions on Rusal in January, and there is widespread frustration over the Administration’s failure to timely implement a second round of Russia sanctions under the CBW Act, which was expected last November. Last week’s actions targeting Russia’s activity in Ukraine and Venezuela may reassure some on the Hill, but the anticipated conclusion of the Mueller investigation could upend the politics around Russia sanctions at short notice.

## Conclusion

The most recent designations of Russian individuals and entities pursuant to U.S. sanctions with respect to Russia and Venezuela, along with the recent rhetoric from OFAC and the State Department, indicate the Administration’s willingness to take a multi-pronged approach to escalate sanctions, including new designations and coordination with other countries. Given the increasing political pressure on the Administration to move more aggressively against Russia, companies should anticipate an expansion of sanctions targeting Russia in the near future, whether imposed under executive authorities or through new legislation.

## Footnotes

1) See <https://home.treasury.gov/news/press-releases/sm629>.

2) See *id.*

3) See *id.*

4) See <https://www.consilium.europa.eu/en/press/press-releases/2019/03/15/ukraine-eu-responds-to-escalation-at-the-kerch-straits-and-the-azov-sea-and-renews-sanctions-over-actions-against-ukraine-s-territorial-integrity/>.

5) See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2019:073:FULL&from=EN>.

6) See <http://tass.com/politics/1048969>.

7) <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20190311.aspx>.

8) <https://home.treasury.gov/news/press-releases/sm622>.

9) *See id.*

10) <https://www.state.gov/secretary/remarks/2019/03/290269.htm>.

11) See <https://www.spglobal.com/platts/en/market-insights/latest-news/oil/031219-rosneft-rejects-us-claims-venezuelan-operations-defy-sanctions>.

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