

U.S. House of Representatives Passes Russia Sanctions Bill

by Lawrence Ward and T. Augustine Lo

On July 25, 2017, the U.S. House of Representatives passed a Russia sanctions bill, “Countering America’s Adversaries Through Sanctions Act” (“H.R. 3364”) by an overwhelming vote of 419 to three.¹ This broad-ranging sanctions bill follows the earlier passage of a nearly identical bill in the Senate on June 15, 2017, by a vote of 98 to two.² The House passed H.R. 3364 after extensive negotiations to overcome initial objections from House Republicans and the White House to the Senate bill and lobbying efforts by energy industry groups and companies.³ The Senate must now consider the differences in H.R. 3364 from the earlier bill. Because the legislation has gained veto-proof supermajorities in both houses of Congress, the Trump Administration faces a hard choice. If President Trump vetoes the legislation, it is likely that veto would be overridden by Congress. However, if the President signs the legislation into law, it will lock in a sanctions regime and, indeed, it will remove his ability to lighten those sanctions without separate Congressional approval.

If enacted, the sanctions legislation will affect a wide variety of companies in the energy, mining, and financial services sectors, among other areas. Because of their broad scope, the expanded sanctions may impact contemplated transactions involving Russian persons who may become targeted. Moreover, the legislation seeks to impose penalties extraterritorially on foreign persons who become involved in transactions that have a U.S. nexus. Of course, much will depend on precisely how the U.S. Treasury Department’s (“Treasury”) Office of Foreign Assets Control (“OFAC”) implements the legislation in its regulations. The following are some highlights:

- **Codification of Existing Sanctions:** Section 222 would codify the existing Russia sanctions that the Obama Administration previously promulgated under Executive Orders 13660, 13661, 13662, and 13685. Unless granted permission by Treasury, U.S. persons may not engage in any transactions with persons designated for sanctions under these Executive Orders. To date, Treasury has designated 291 entities and individuals under that authority.
- **Expansion of “Sectoral” Sanctions** in Financial Services, Energy, Mining, and Railway

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Sectors: Section 223 would expand the “sectoral” sanctions that Treasury promulgated under Executive Order 13662. These sanctions target Russian firms in the financial services, energy, and defense sectors, as well as Russian oil production projects, by prohibiting certain types of transactions. To date, Treasury has designated 278 Russian entities for these sectoral sanctions. Section 223 specifically states that Russian state-owned companies in the railway, metals, and mining sectors may be targeted for sanctions under Executive Order 13662. Section 223 also would increase the scope of prohibited transactions with respect to financial services and energy sectors. In a significant departure from prior practice, Section 223 would target Russian oil projects in which a sanctioned person holds 33% or more interest, whereas Treasury generally applies its prohibitions to companies in which a sanctioned person holds a majority interest of 50% or more.⁴

This “33% rule” presents a possible due diligence conundrum for many U.S. and E.U. energy and mining companies working on projects in Russia of “peeling the onion” to figure out precisely who their Russian partners are. In light of last week’s OFAC enforcement action against ExxonMobil, many U.S. and E.U. energy and mining companies may be very cautious about work they undertake on such Russian projects until clear and precise guidance from OFAC is set forth. Even then, OFAC’s guidance typically is “generic” and not “fact-specific” and so many companies may seek interpretive guidance requests from OFAC before proceeding with any project that appears to present a high risk.

- **Extraterritorial Penalties:** Section 228 would expand the scope of persons who are potentially subject to penalties, which may include foreign persons outside the United States. In general, the Russia sanctions prohibit U.S. persons from engaging in transactions with designated Russian persons, which has limited impact outside the United States. If enacted, Section 228 would extend penalties to foreign persons who “cause[] a violation” by a U.S. person. This provision would impose liability even on secondary actors who unwittingly contributes to a violation.
- **Prohibition of Investments in Russian Energy Export Pipelines:** Section 232 would authorize sanctions against persons who make major investments in Russia energy export pipelines. When the Senate passed its version of the bill with this provision, major U.S. allies, including Austria, France, and Germany, protested because of their nationals’ participation in the proposed Nord Stream 2 natural gas pipeline project. Perhaps in an effort to address such concerns, the House bill would require the President to coordinate with “allies of the United States” before imposing sanctions. Unfortunately, H.R. 3364 does not define which countries qualify as “allies” that require consultation.
- **New Sanctions Relating to Cybersecurity, Human Rights, and Other Issues:** The legislation would create new categories of retaliatory sanctions. Section 224 would authorize sanctions against designated persons who undermine U.S. cybersecurity. Section 228 would authorize sanctions against designated foreign persons who contributed to human rights abuses. Section 231 would prohibit transactions with designated persons affiliated with Russian defense or intelligence sectors. Section 233 would authorize sanctions against persons found to have made major investments that facilitate the privatization of Russian state firms which unfairly

benefits associates of Russian officials. Section 234 would authorize sanctions against foreign persons found to have provided significant armaments to Syria.

- **Constraint of President Trump's Discretion to Reduce Russia Sanctions:** To address widespread concern that the Trump Administration intends to depart from established U.S. foreign policy and eliminate or reduce Russia sanctions, H.R. 3364 would impose Congressional oversight on any such efforts. If enacted, the President would need to submit proposed actions to waive or suspend sanctions for Congressional review. When the Senate passed its version of this legislation, House Republicans and the White House expressed concern that the Congressional minority (i.e., Democrats) would have too much power to block presidential action. H.R. 3364 places additional limits on these Congressional oversight procedures, but otherwise retains the Senate's proposal to constrain President Trump.

Because the House bill makes revisions to the Senate's earlier bill (and adds provisions on North Korea), the Senate must consider this bill before it goes to President Trump. In view of the numbers of favorable votes in both houses of Congress, which is sufficient to override any presidential veto, the ultimate enactment of this legislation is likely. Dorsey will continue to monitor this evolving situation.

¹ The text of the bill is available here:

<https://www.congress.gov/115/bills/hr3364/BILLS-115hr3364ih.pdf>.

² The Senate bill is titled, "Countering Russian Influence in Europe and Eurasia Act of 2017," which passed along with Iran sanctions provisions in S. 722.

³ https://www.washingtonpost.com/powerpost/house-prepares-to-pass-sanctions-bill--and-set-up-veto-dilemma-for-trump/2017/07/25/ece80164-7138-11e7-8839-ec48ec4cae25_story.html?utm_term=.3a9fa90abaaa.

⁴ https://www.treasury.gov/resource-center/sanctions/Documents/licensing_guidance.pdf.