

ClientAlert

Russia/International Trade

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Russia Restricts the Foreign Activities of Strategic Russian Enterprises

On 11 September 2012, Russian President Vladimir Putin signed a Decree that will significantly restrict the ability of so-called “strategic” Russian companies to carry out their foreign operations.

Decree 1285 “On Protection Measures for the Interests of the Russian Federation When Russian Legal Entities Perform Their Foreign Economic Activities” (“Decree 1285”) requires that companies listed as “strategic”¹ by the Russian government, as well as their subsidiaries, obtain permission from the Russian government before engaging in certain activities with foreign governments (including their regulatory and controlling bodies), international organizations and unions of foreign states. Specifically, when requested “by the bodies of foreign states or by international organizations, unions of foreign states, or bodies (institutions) of these organizations and unions,” such companies and their subsidiaries must not, without prior consent of the Russian government:

- Provide to such “bodies, organizations or unions” information relating to their business activities;²
- Amend contracts entered into with foreign counterparts, or amend any other documents related to their business policies, including pricing policies, in foreign countries; or
- Dispose of their (i) shares in foreign companies; (ii) rights to conduct business in foreign countries; or (iii) immovable property in foreign states.

Permission for such activities will be refused if it is deemed that they could harm the economic interests of the Russian Federation.

Decree 1285 is allegedly a response by the Russian government to a recent European antitrust investigation into the activities and business dealings of Gazprom. Gazprom, the state-controlled gas export monopoly, is listed as “strategic” in Decree 1009. The list of “strategic” companies contained in Decree 1009 includes Russian state unitary enterprises and Russian state-owned companies that are active in certain specific sectors of the Russian economy and are considered to be of importance for Russian national defense and security, for the protection of good morals, and of the rights and interests of Russian citizens. Such sectors include nuclear energy, space activities, weapons, precious stones, international airports and federal television channels, while the majority of the entities on the list are engaged in R&D in these spheres. Apart from Gazprom, the list includes only a few dozen other state-owned companies such as Russian Railways, Zarubezhneft, Sheremetievo airport, and Rosneft.



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1. The Decree No.1009 dated 4 August 2004 “On Approving the List of Strategic Enterprises and Strategic Joint Stock Companies” (“Decree 1009”).

2. This excludes information that is subject to publication and disclosure pursuant to Russian legislation and in the course of issuance, circulation and acquisition of securities.

On 5 October 2012, the Russian Government passed Resolution No. 1017 "On Measures Aimed at Implementation of Decree 1285 dated 11 September 2012" nominating eleven federal bodies authorized to provide or refuse permissions for restricted activities, depending on the sector in which "strategic" companies operate. For instance, Russian Railways and Aeroflot must seek permission from the Ministry of Transport; Gazprom and RAO UES from the Ministry of Energy; TV channel "First" from the Ministry of Communications and Mass Media. Within a two-month period, the competent authorities shall adopt the procedures for issuing permissions for restricted activities. The resolution has not been officially published yet, and will enter into force after seven days of its official publication.

By prohibiting "strategic" Russian companies from disclosing to foreign governments information relating to business activities, Decree 1285 could cause problems for strategic Russian exporters and their subsidiaries that are subject to trade remedy investigations abroad. Anti-dumping and anti-subsidy investigations conducted by foreign authorities require the cooperation of the companies investigated, if those companies are to disprove allegations of dumping or subsidization, or at least minimize the level of duties imposed. Where a company under investigation refuses access to, or otherwise does not provide, necessary information, or it significantly impedes an investigation, WTO rules permit investigating authorities to resort to "facts available" in order to calculate whether dumping or subsidization is taking place. This means that authorities may rely upon information other than that provided by the parties to the investigation, including publicly available information, irrespective of the potential inaccuracies. This often leads to the imposition of much higher duties at the border.

Decree 1285 entered into force on 12 September 2012. Its unofficial English language summary is available at: <http://eng.kremlin.ru/acts/4401>.

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