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New Russia Sanctions Legislation

Background

The U.S. Senate passed this week a measure to codify, strengthen and expand sanctions against the Russian Federation in response to its activities in Ukraine, cyber-attacks, interference in the U.S. Presidential election, and activities in Syria. The measure was added as a new title to legislation that already was under consideration dealing with new sanctions for Iran. The Russia sanctions amendment passed on June 14 by a vote of 97-2. The underlying Iran sanctions bill passed on June 15 by a vote of 100-0.

This Russia sanctions amendment, entitled "Sanctions With Respect to The Russian Federation and Combating Terrorism and Illicit Financing" emerged with extraordinary speed last week. The ease and alacrity with which it was considered and passed are credited to a hardening of Senate views on Russia and a bipartisan desire to "punish" Russia for perceived misbehavior impacting the U.S. and other nations. This included former FBI Director Comey's strong public affirmation in an open Senate Intelligence Committee hearing that it had been his view as Director of the FBI that Russian interference in the election had been with "purpose… sophistication… and overwhelming technical efforts. It was an active measure campaign driven from the top of that government."

Hours before the floor vote, Secretary of State Rex Tillerson, testifying before the Senate Foreign Relations Committee, objected to the measure, saying that imposing more sanctions on Russia could endanger recent efforts to develop a productive dialogue on matters of mutual interest, including cooperation on counter-terrorism and ending the conflict in Syria. The Administration may present greater opposition to the measure when it moves to the House of Representatives where its fate at this time is unknown.

Many elements of the amendment were derived from the "Countering Russian Hostilities Act of 2017", a bipartisan bill introduced in January and referred to the Senate Foreign Relations Committee where it is still awaiting action. Its chairman, Senator Bob Corker (R-TN), earlier said that before acting on the legislation, he wanted to see how the investigation into Russian interference progressed and how the new Administration intended to deal with Russia. Last week, however, Chairman Corker changed his position and announced that some new sanctions measures would "certainly" pass the

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Senate soon. Then, he and others from both parties quickly crafted the amendment that was brought to the floor and passed on the following day.

Prognosis

The measure now goes to the House of Representatives where its fate is not certain, but most observers assume it will pass the House easily, especially considering the near-unanimous support in the Senate.

As Secretary Tillerson indicated, President Trump would prefer to retain flexibility in managing the Russia relationship without these new measures imposed by congressional action. Likely all Presidents would share that view since management of foreign affairs is principally an Executive branch function. Nevertheless, actually vetoing the bill – if it in fact arrives on his desk – will be difficult considering the controversy surrounding Russia-related issues and policy. The coming vote in the House of Representatives should indicate whether a veto proof majority exists there as it does in the Senate.

Key Elements

- Mandates congressional review of any proposed changes to sanctions.

  A principal purpose of this legislation is to ensure a Congressional role in any steps to relax, suspend or terminate existing sanctions on Russia. A similar mechanism to do so was created by the Senate when the Obama Administration sought to implement the Joint Comprehensive Plan of Action (JCPOA) reached with Iran to curb its nuclear activities. Since that agreement was not a treaty requiring ratification, the Senate legislatively created a role for itself in the Iran Nuclear Agreement Review Act of 2015. Following that pattern, the new Russia sanctions measure requires the President to submit reports to relevant Congressional committees and leadership describing any proposed actions intended to change or lift Russia sanctions. Congress then would have a defined period of time (60 or 90 days) to consider the proposed steps and possibly pass a "resolution of disapproval" that would prevent the President from taking these steps. In the absence of such a resolution, the President would be free to take the proposed actions.

- Codifies existing sanctions.

  All existing U.S. sanctions on Russia related to Ukraine, cyber intrusions and interference in elections were implemented by a series of Executive Orders during the Obama Administration. This new legislation codifies those sanctions measures so that they can no longer be suspended or terminated by executive action alone without the congressional review process described above.

Other Sanctions Provisions

- Strengthens certain existing sectoral sanctions.

  Executive Order 13662 imposed sanctions on specified entities operating in the Russian economy in the financial services sector and energy sector, including deep-water, Arctic offshore, or shale projects that have the potential to produce oil in the Russian Federation, or in maritime area claimed by the Russian Federation and extending from its territory. The new legislation modifies and strengthens the directives that implement that executive order, including:

- Adds new sectors subject to E.O. 13662 sanctions.

Railway and shipping sectors are added to metals, mining, and energy sectors. E.O. 13662 authorized the Treasury Department to sanction entities identified in certain sectors of the Russian economy. This resulted in a series of four Directives that constitute the Russian sectoral sanctions and prohibit certain types of transactions, as discussed below.

- Tightens the sanctions related to debt transactions.

  Previously, Directive 1 – under which financial institutions are sanctioned – prohibited all transactions in, provision of financing for, and other dealings in new debt of longer than 30 days maturity of persons (including entities) determined to be subject to this Directive, their property, or their interests in property. Under the new legislation, the maturity date for new debt is changed from 30 to 14 days.

  Previously, Directive 2 – under which energy companies are sanctioned - prohibited all transactions in, provision of financing for, and other dealings in new debt of longer than 90 days maturity of persons (including entities) determined to be subject to this Directive, their property, or their interests in property. Under the new legislation, the maturity date for new debt is changed from 90 to 30 days.

- Expands the scope of energy sanctions.

  The new legislation expands Directive 4 – under which energy companies are sanctioned – by prohibiting the provision, exportation, or reexportation, directly or indirectly, of goods, services (except for financial services), or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects:

  1) that have the potential to produce oil;

  2) in which a Russian energy firm is involved; and

  3) that involve any person determined to be subject to the directive or the property or interests in property of such a person.

  The previous version of Direct 4 proscribed similar prohibitions but limited them to "projects that have the potential to produce oil *in the Russian Federation, or in maritime area claimed by the Russian Federation and extending from its territory*, and that involve any person determined to be subject to this Directive, its property, or its interests in property." In the new version, the prohibitions are extended to support for exploration or production for deepwater, Arctic offshore, or shale projects involving persons subject to Directive 4 which have the potential to produce oil *anywhere in the world*.

- Imposes sanctions related to crude oil projects and energy- and defense-related transactions.

  The Ukraine Freedom Support Act of 2014 specifies that the President "may impose" certain sanctions on a person who knowingly makes a significant investment in certain Russian crude oil projects. This new legislation specifies instead that the President "shall" impose such sanctions, "unless the President determines that it is not in the national interest of the United States to do so."

  Similarly, the Ukraine Freedom Support Act of 2014 specifies that the President "may impose" certain sanctions on *foreign financial institutions* engaged in transactions involving the defense and energy sectors. The new legislation specifies the President "shall" impose such sanctions, "unless the President determines that it is not in the national interest of the United States to do so."

- Imposes mandatory new sanctions on those conducting malicious cyber activity on behalf of the Russian government.

  The President "shall" impose certain sanctions—asset blocking and visa revocation or refusal—on any person that he determines "knowingly engages in significant activities undermining cybersecurity against any person, including a democratic institution, or government, on behalf of the Government of the Russian Federation."

- Imposes mandatory new sanctions on corrupt Russian actors.

  Section 9 of the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 authorizes the President to sanction Russian officials and other individuals responsible for "acts of significant corruption." This new legislation specifies that the President "shall" impose sanctions on such individuals. Sanctions include asset blocking and visa revocation or denial.

- Imposes mandatory new sanctions on those who seek to evade sanctions and on serious human rights abusers.

  The Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 is amended by this legislation, adding two new sections to mandate sanctions for foreign persons who (1) facilitate the violation of sanctions or conduct transactions in support of sanctioned persons and (2) are serious human rights abusers. Sanctions include asset blocking and visa revocation or denial.

- Imposes mandatory new sanctions on those who:

  - engage in transactions with the intelligence or defense sectors of the Russian Federation.

  - invest in privatization of state-owned assets in a manner that unjustly benefits Russian officials or their family members or close associates.

- Imposes discretionary sanctions on those who:

  - facilitate development of pipelines in the Russian Federation.

  Several of the new sanctions provisions require the President to impose sanctions measures from a list of measures that includes constraints on loans, export assistance, International Financial Institutions assistance, foreign exchange, banking and property transaction services and others.

- Imposes mandatory sanctions on those who provide financial, material, or technological support to the Government of Syria, contributing to the ability of that government to acquire or develop chemical, biological, or nuclear weapons, ballistic or cruise missiles, and other destabilizing weapons acquisitions. The President will impose sanctions in the form of blocking property and visa revocation or refusal for these violations.

Countering Russian Influence in Europe and Eurasia

The legislation authorizes assistance to strengthen democratic institutions and counter disinformation across Central and Eastern European countries that are vulnerable to Russian aggression and interference.

The legislation authorizes $250 million for two fiscal years, intended to protect critical infrastructure and electoral mechanisms from cyber-attacks in NATO countries and those involved in the NATO and EU enlargement projects.

Other Elements

Numerous requirements throughout this legislation mandate periodic reports to Congress on most of its elements.

Importantly, the new legislation includes customary national security waiver authorities, allowing the President to waive application of sanctions under certain specified conditions, including that the President finds such waiver to be in the national security interest of the United States.