Iran and Russia Sanctions Pass U.S. Senate

20 June 2017

Last week, the U.S. Senate acted to pass both new Iran and Russia sanctions by large bipartisan margins. The House of Representatives has not yet acted on either piece of legislation. We anticipate that Congress will ultimately pass, and the President will sign, new Iran sanctions into law. The outcome on Russia sanctions is less clear, particularly in the context of the Russia-related investigations into the Trump presidential campaign and senior levels of the White House.

The Iran sanctions bill passed the Senate by a vote of 98-2. This reflects the strong sentiment on both sides of the aisle that, notwithstanding the nuclear relief provided under the 2015 nuclear agreement (which was implemented in January 2016), Iran should face tougher sanctions with respect to its ballistic missile program, support for terrorism, and human rights abuses.

While the Trump Administration is reviewing whether the U.S. will continue to comply with its sanctions relief commitments under the Joint Comprehensive Plan of Action (JCPOA), it has upheld these commitments to date. Critically, in May it renewed certain statutory waivers required to continue the promised relief from “nuclear-related” secondary sanctions.

Compliance with the nuclear deal does not mean new sanctions cannot be levied against Iran, and it is clear that the President favors additional sanctions. For its part, the Iranian government responded to the Senate’s move by stating that it was “unquestionably in breach of both the spirit and the letter of the nuclear deal," adding that the Iranian parliamentary committee monitoring the accord would consider developing a reciprocal response.

In the House of Representatives, there is already pending a bipartisan sanctions measure focused primarily on Iran’s ballistic missile program. It is unclear at this time whether the House will consider the Senate vehicle or its own. Notably, neither the Senate nor the House bills, in their current form, would interfere with implementation of the nuclear deal.

On Russia, the Senate legislation would expand sanctions and codify existing sanctions authority. The Russia sanctions were added as an Amendment to the underlying Iran sanctions legislation after a flurry of bipartisan negotiations, passing the chamber by a vote of 97-2. It is not yet clear whether the House will elect to pass a Russia sanctions bill, as the House leadership has been reluctant to consider such legislation to date. Even if the House does consider a Russia sanctions measure, it may not adopt completely the Senate package. Rather, the House leadership may opt to better align its legislation with the Administration’s preference for greater cooperation with Russia, preserving the flexibility to raise and lower pressure on Russia in recognition of diplomatic progress that the Administration seeks with the Kremlin.

Iran Sanctions

Fundamentally, the Countering Iran's Destabilizing Activities Act of 2017 requires that the President impose sanctions in relation to Iran's ballistic missile program, support for terrorism, and human rights abuses. As has been the practice with past Iran sanctions measures, it would authorize the President to waive, on a case-by-case basis, the requirement to sanction a particular target if the President determines that the waiver is in the vital national security interests of the United States and notifies and justifies the decision to Congress.

Under existing executive authorities, the President could impose most of the sanctions today that are proposed under the Senate legislation. As such, this legislation, were it be enacted and implemented by the President, would not necessarily represent a sea change in U.S. policy towards Iran. If anything, the legislation can be seen as the continuation of the Obama Administration's policy towards Iran, which set aside the nuclear file from Tehran's other destabilizing practices, and imposed sanctions—too selectively, critics would argue—with respect to these other areas of concern.

The legislation proposes the following key provisions:

- **Ballistic Missile Sanctions**: The legislation would require the President to impose sanctions on persons that engage in any activity that materially contributes to Iran's ballistic missile activity. This includes persons engaged in any efforts to manufacture, acquire, possess, develop, transport, transfer or use ballistic missiles.
- **Terrorism Sanctions**: The legislation would require the President to apply terrorism sanctions to the Islamic Revolutionary Guard Corps (IRGC) and officials, agents, or affiliates of the IRGC. The U.S. government has previously designated the IRGC's Quds Force—the organization's foreign activities branch—as a terrorist group and has sanctioned the IRGC for non-proliferation and human rights abuses.
- **Enforcement of Arms Embargo**: Consistent with the arms embargo placed on Iran by UN Security Council Resolution 2231, the legislation would require the President to block the property of any person or entity involved in specific activities related to the supply, sale, or transfer of prohibited arms and related material to or from Iran.
- **Human Rights Sanctions**: The legislation would authorize the President to impose sanctions on Iranians responsible for human rights violations against those who seek to promote human rights or expose illegal government activity.

Russia Sanctions

The Russia sanctions legislation was the product of a bipartisan agreement between the leadership of the Senate Committee on Banking, Housing and Urban Affairs and the Senate Foreign Relations Committee to broaden and strengthen current U.S. sanctions on Russia. The Senate passed the Amendment overwhelmingly on June 14th. Notably, one day later, the Senate passed an additional amendment to exempt NASA and the commercial space industry from the prohibitions in the Russia bill.

If enacted, the legislation would represent a major escalation against Russia, both symbolically and in concrete terms. It will be the first such escalation since President Obama imposed the existing sanctions in 2014.

To start with, the Senate bill would codify the existing, Obama-era executive orders on Russia and mandate new sanctions related to a diverse set of activities. The bill is a direct challenge to a President who had reportedly considered lifting those sanctions in his first days in office.

It would also broaden and deepen the existing sectoral sanctions, which could make it much more difficult for U.S. and other foreign companies to invest and facilitate transactions with a wide swath of sectors in the Russian economy. Potential future sanctions against the mining and shipping industries, for example, could affect imports of uranium from Russia. Further, an expansion of restrictions on financial transactions and financial institutions could result in Western banks offering less financing for Russia-related transactions. Perhaps even more impactful, energy and other companies could be prohibited from providing goods, services or technology in support of unconventional oil projects anywhere in the world if a sanctioned Russian energy firm is involved (as opposed to the current sanctions that target only unconventional projects in Russia or its territorial waters). Finally, increased and more frequent designations of Russian entities and individuals could make compliance with the Russian sanctions regime more challenging and complex.

Following are the most impactful provisions of the legislation:

1. **Sanctions on Russian Cybersecurity Activities** – The President is required to impose sanctions on persons whom he has determined knowingly engaged in significant activities undermining cybersecurity against any person, including a democratic institution, or government on behalf of the Government of the Russian Federation. The President is also required to impose sanctions with respect to any person that he determines has knowingly materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services (except financial services) in support of the aforementioned undermining cybersecurity activities. Finally, the President is required to impose sanctions with respect to any person that the President determines knowingly provided financial services in support of the aforementioned undermining cybersecurity activities.

2. **Sanctions on the Railway, Shipping, Metals, and Mining Sectors** – Section 223(a) would amend section 1(a) of Executive Order 13662, to add a new category to the existing sectoral sanctions – authorizing the Secretary of the Treasury to designate persons involved in a state-owned entity operating in the railway, shipping, or metals and mining sector of the economy of the Russian Federation. The President already has the authority under Executive Order 13662 to impose sanctions on persons in the metals and mining sector. In the future, the President could designate entities in the Russian railway and/or shipping industry, which could make it more difficult to transport goods to and from or within Russia.

3. **Sanctions on Financial Services and Energy Sectors** – The Amendment would codify and expand existing sanctions against the financial and energy sectors in Russia.

   - This includes requiring the Department of Treasury to modify Directives 1 and 2 to make debt financing with certain designated Russian financial institutions and energy companies on the Sectoral Sanctions Identification List more difficult by reducing the length of the maturity date for debt financing (or other extension of credit) that a U.S. person can offer to a Russian financial institution designated under the directives from 30 to 14 days.
   - The Amendment also would expand Directive 4 to prohibit U.S. persons from providing goods, services (except for financial services), or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects involving a designated Russian energy company, regardless of the location of the project (e.g., such projects outside of Russia would also be prohibited).
   - The legislation would authorize the President to impose sanctions on a person who has (1) been determined to knowingly make an investment that directly and significantly contributes to the enhancement of the Russian Federation to construct energy export pipelines, or (2) sells, leases, or provides to the Russian Federation, for the construction

of Russian energy export pipelines, goods, services, technology, information, or support (any of which has a fair market value of $1 million or more, or that, during a 12-month period, has an aggregate fair market value of $5 million or more) that could directly and significantly facilitate the maintenance or expansion of the construction, modernization, or repair of energy pipelines by the Russian Federation.

- Section 5 of the Ukraine Freedom Support Act of 2014 (22 U.S.C. 8924) would be amended by *requiring* the President to: (1) impose sanctions on foreign financial institutions determined to have knowingly facilitated certain defense- and energy-related transactions on behalf of the Russian Government, and (2) impose sanctions on foreign financial institutions determined to have knowingly facilitated a significant financial transaction on behalf of any Russian party listed on OFAC's SDN List. A national interest waiver is provided in this provision.

2. **Sanctions Against Corruption and Divestment of State Assets** – Section 9 of the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (22 U.S.C. 8908(a)) is amended to require the President to impose sanctions on persons in the Russian Federation complicit in or responsible for significant corruption. The Amendment requires the President to impose sanctions on persons determined to have knowingly made, or facilitated, an investment of $10 million or more if the investment directly and significantly contributes to the ability of the Russian Federation to privatize state-owned assets in a manner that "unjustly" benefits Russian Government officials or close associates or family members of those officials. The terms "unjustly benefit" and "close associate" are not defined. A national security waiver is provided for these provisions.

3. **Sanctions on Certain Transactions with Foreign Sanctions Evaders and Serious Human Rights Abusers in the Russian Federation** – The Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (22 U.S.C. 8901 et seq.) is amended by *requiring* the President to impose sanctions on foreign persons determined to have knowingly violated, or caused a violation of, any of the Russia-related Executive Orders or facilitated significant "deceptive or structured transactions" on behalf of persons (or close relatives) subject to sanctions imposed by the United States with respect to the Russian Federation. The Amendment also requires the President to impose sanctions on a foreign person determined, "based on credible information," to be involved with human rights abuses in territory controlled by the Russian Federation. There is a national security interest waiver provided therein for these provisions.

4. **Sanctions on the Russian Intelligence and Defense Sectors** – The Amendment requires the President to impose sanctions on persons that he determines knowingly engage in a significant transaction with a person that is part of, or operates for or on behalf of, the defense or intelligence sectors of the Government of the Russian Federation, including the Main Intelligence Agency of the General Staff of the Armed Forces of the Russian Federation or the Federal Security Service of the Russian Federation. There is a presidential waiver provided for in this section.

We will continue to monitor this space closely and report on the implications for U.S. sanctions and export control laws.

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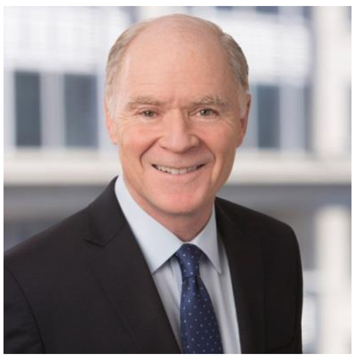

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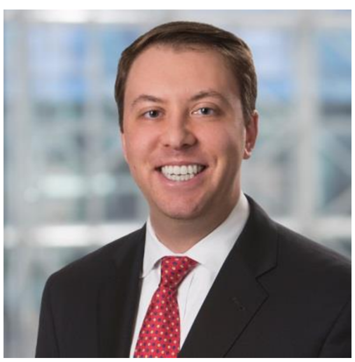

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