

Recent US sanctions designations and their implications

Association of European Businesses
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The April 6th SDN designations

- On 6 April 2018, OFAC designated 7 purported oligarchs, 13 legal entities and 17 government officials as SDNs
- Stated rationale was that “Russian government operates for the disproportionate benefit of oligarchs and government elites ... [and] engages in a range of malign activity around the globe ... Russian oligarchs and elites who profit from this corrupt system will no longer be insulated from the consequences of their government’s destabilizing activities.”
 - Essentially prompted by Congressional hectoring about minimalist implementation of CAATSA
 - And also Salisbury & Syria chemical weapons incidents
 - Yet April 6th SDNs have little or no apparent connection
 - And Trump administration has backed off plans to target Russian chemical firms dealing with Syria
 - Easily the most significant sanctions for business community since July/September 2014 sectoral sanctions

Who was designated?

Individuals include

- Vladimir Bogdanov (Surgutneftegaz)
- Oleg Deripaska (En+, Rusal, Russian Machines (GAZ), EuroSibEnergo, Glavstroy, Agroholding Kuban, certain airports, etc.)
- Sergey Fursenko (Gazprom Neft)
- Suleiman Kerimov (Polyus, PIK)
- Andrey Kostin (VTB)
- Alexey Miller (Gazprom)
- Igor Rotenberg (Gazprom Burenie, Mosenergo)
- Kirill Shamalov (Sibur)
- Andrei Skoch (Metalloinvest, Vnukovo airport)
- Viktor Vekselberg (Renova Group, etc.)

Companies include

- Agroholding Kuban
- B-Finance Ltd
- En+ Group
- EuroSibEnergo
- GAZ Group
- Gazprom Burenie
- Ladoga Management
- NPV Engineering
- Renova Group
- RFC Bank
- Rosoboronexport (upgrade from SSI)
- Russian Machines
- Rusal

Plus: entities covered by OFAC's "50% rule"

General Licenses

General License No. 12

- permits all “all transactions and activities ... necessary to the maintenance or wind down of operations, contracts or other agreements” involving newly sanctioned companies (except Rosoboronexport/RFC Bank)
- Payments to be made to or for the benefit of the SDN must be paid into a blocked account at a financial institution in the US, not to the SDN
- Export of goods from USA not authorised
- License applies through 4 June 2018
- Report to OFAC is required

General License No. 13

- Allows divestiture or transfer (and facilitating, clearing, settling of same) to a non-US Person of debt or equity of:
 - En+ Group PLC
 - GAZ Group
 - United Company RUSAL PLC
- Not extended per OFAC’s 50% rule
 - Effectively covers the new SDNs with publicly listed debt or equity securities (although it is not restricted to publicly listed securities)
- Does not allow US persons to sell to new SDNs or purchase debt or equity of SDN
- License applies through 6 May 2018
- Report to OFAC is required

Direct consequences of SDN designations

- Designation as an SDN is the strictest type of sanction available to OFAC.
- US Persons are required to block (freeze) an SDN's property and interests in property that come within the custody or control of the US Person.
- US Persons are also prohibited from, in particular:
 - making any contribution or provision of any funds, goods or services by, to or for the benefit of the SDN;
 - receiving any contribution or provision of funds, goods or services from any SDN;
 - engaging in any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the above restrictions;
 - attempting or conspiring to do any of the above.
- No prohibition on dealing with a non-sanctioned entity that is led by an SDN.
 - But SDN should not derive personal benefit
 - OFAC cautions against SDN signing contracts even in purely official capacity
 - Exxon's \$2m fine (under court challenge)

Application to non-US persons

- Except for evading & avoiding and conspiracy provisions (where a US Person is also involved), SDN restrictions (in US sanctions targeting Russia, unlike certain other US sanctions programs) are not binding on non-US Persons
- Executive Orders (13661/13662) do permit sanctioning persons that provide financial, material, or technological support for, or goods or services to, any SDN
 - But this was never done
- CAATSA section 228 changed the calculus for non-US persons by **requiring** imposition of sanctions found by Treasury Secretary (in consultation with Secretary of State) to have knowingly:
 - “materially violate[d]” the restrictions on dealing with an SDN; or
 - “facilitated a significant transaction or transactions, including deceptive ... transactions,” with an SDN or a close relative of an SDN.
- But ... first this requires an affirmative determination. And also subject to a limited waiver on US national security grounds.
- CAATSA section 226 also contemplates lesser sanction of loss or restriction of US correspondent banking privileges for foreign financial institutions that process significant financial transactions for sanctioned persons.

CAATSA s. 228: “facilitated” & “significant”

- “Facilitated” has broad meaning and includes the transmission of anything of value; purchasing, selling, transporting, financing or approving; or the provision of services of any kind.
- Whether a transaction is “significant” depends on seven broad factors:
 - size, number, and frequency of the transaction(s);
 - their nature of the transaction(s);
 - level of awareness of management; existence of a pattern of conduct;
 - nexus between the transaction(s) and a blocked person;
 - impact of the transaction(s) on statutory objectives;
 - whether the transaction(s) involve deceptive practices; and
 - other factors that the Secretary of the Treasury deems relevant on a case-by-case basis.
- But cannot be “significant” if a US person would not require a specific license to engage in the transaction
 - Close relatives of SDNs?

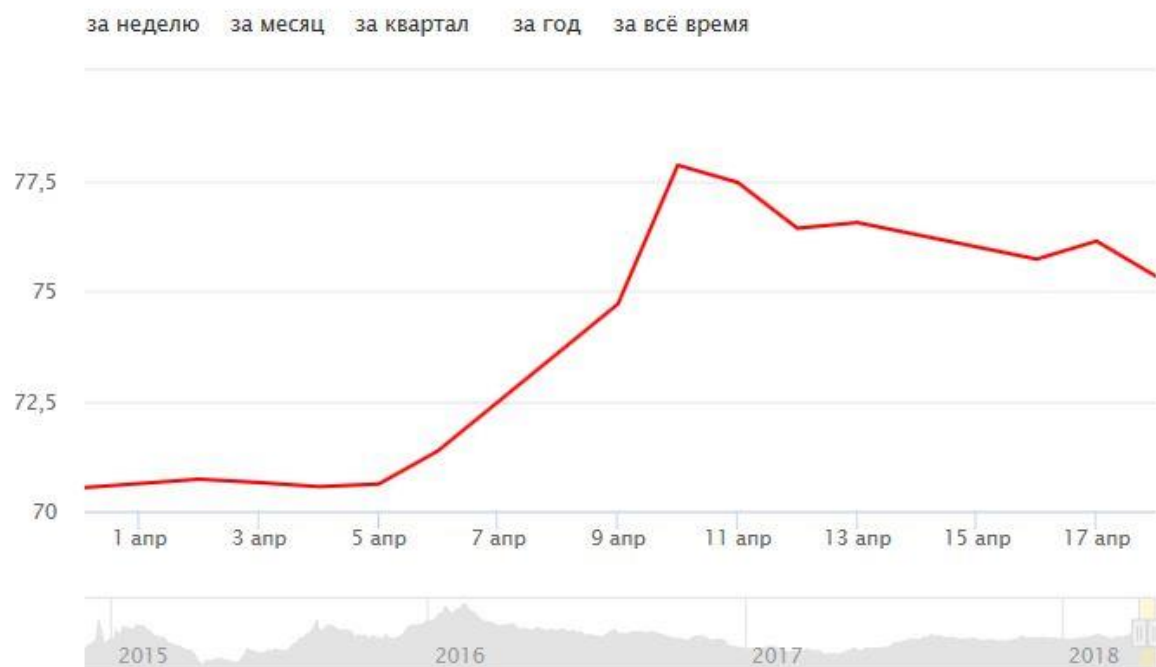
Immediate consequences of new designations

- Suspension of London trading/Clearstream & Euroclear settlement of En+ and Rusal
- Job losses for US employees/directors of sanctioned companies (and eventually probably some non-US employees)
- RUB decline
- Metals (esp. aluminium) price rise; LME physical settlement issues
- Transactions: Sulzer's dilution of Vekselberg; Glencore's cancellation of Rusal swap
- Perception that no one is necessarily off limits anymore
 - Previous SDN designations hit persons directly involved in Crimea, Donbass, etc., plus a handful of "friends of Putin"
 - Sectoral sanctions against state banks, state oil companies inflicted certain financial pain, but still permitted most operations
 - April 6th sanctions have inflicted grievous harm on two major Russian industrial concerns, arguably "civilian" victims
- Further decoupling of US & EU sanctions against Russia

Commercial impact of new sanctions (1)

- Significant fall in RUB

Динамика курса евро к рублю (EURTOM_UTS, MOEX)



За последние 10 дней

Дата	Курс	Изменение
18.04.18	75,3275	-0,8025 ↓
17.04.18	76,1300	0,4100 ↑
16.04.18	75,7200	-0,8300 ↓
13.04.18	76,5500	0,1300 ↑
12.04.18	76,4200	-1,0425 ↓
11.04.18	77,4625	-0,3875 ↓
10.04.18	77,8500	3,1500 ↑
09.04.18	74,7000	3,3200 ↑
06.04.18	71,3800	0,7600 ↑
05.04.18	70,6200	0,0600 ↑

Commercial impact of new sanctions (2)

- Significant rise in certain commodities, especially aluminium

LME ALUMINIUM HISTORICAL PRICE GRAPH



What's next?

- To date, no one has been sanctioned under CAATSA s. 228. A matter of time?
 - Treasury's warning to British banks
- Continuing mixed signals from the Trump administration
 - Cancellation of anticipated measures against Russian chemical companies supplying Syria
 - Impact of special counsel investigation?
- Pressure from US Congress
 - H.R.5428, the Stand with UK against Russia Violations Act
 - Would prevent US persons from dealing in RF sovereign debt & Russian state bank debt, designate at least one bank as SDN
 - Treasury's CAATSA s. 242 report already warned against sovereign debt ban due to impact on global economy, etc.
 - S. 2313, Defending Elections from Threats by Establishing Redlines
 - The nuclear option... unlikely, especially in its current form
- SWIFT?
 - Very unlikely. Russia has warned this would be economic warfare; and SWIFT's general director pledged neutrality.
- The rebirth of European blocking statutes?
 - Council Regulation (EU) 2271/96 of 22 November 1996
 - National laws, e.g. section 7 of the German Foreign Trade Ordinance (*Außenwirtschaftsverordnung*)

Questions?



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Disclaimer: the views expressed in this presentation are entirely my own and not those of Dentons or any other person. They do not constitute legal advice or create an attorney-client relationship. Specific advice should always be sought before engaging in any transaction with potential sanctions implications.

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