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*Russia*

## The Future of Russia Sanctions: It's Getting Murkier and Murkier



By *Laura Jehl and Fatema Merchant*

Throughout the course of the U.S. presidential campaign and especially in the transition period, President

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Donald Trump praised Russia's President Vladimir Putin and indicated his desire for the U.S. to have a warmer relationship with our former cold-war adversary. Now, Trump has suggested that he's open to rolling back two sets of sanctions against Russia imposed by the Obama administration. First, Trump reportedly stated that he was open to lifting the sanctions President Obama imposed in December 2016 in response to a series of Russian cyberattacks against the Democratic National Committee (DNC), Clinton campaign advisor John Podesta and state voter registration databases, all aimed at disrupting the 2016 U.S. Presidential election if Russia partnered with the U.S. to defeat Islamic State Group. "If you get along and if Russia is really helping us, why would anybody have sanctions if somebody's doing some really great things?," Trump said. Then, in a joint interview with reporters from the U.K.'s *The Times of London* and Germany's *The Bild*, Trump suggested that he may lift earlier sanctions imposed in response to the Russian occupation of parts of Ukraine in exchange for a reduction in nuclear weapons. "They have sanctions on Russia—let's see if we can make some good deals with Russia," Trump said.

Trump's comments sparked strong responses from high-ranking Obama administration officials. On Sunday, Jan. 15, then-CIA Director James Brennan suggested that Trump has a lot to learn about Russia's role in the world and its relation to the U.S. "I think he has to be mindful that he does not have a full appreciation and understanding of what the implications are of going down that road," Brennan said. In a meeting with the President of Ukraine on Monday, Jan. 16, former Vice President Joe Biden said "the Crimea-related sanctions against Russia must remain in place until Russia returns full control to the people of Ukraine." And on Jan. 18, in Obama's last press conference as President, he explained that the reason the sanctions in 2014 were imposed "was not because of nuclear weapons," but instead because the "independence and sovereignty of Ukraine had been encroached upon by force by Russia." Obama noted that the sanctions stand for the U.S. foreign policy principle that "big countries don't go around invading and bullying smaller countries," and that "as soon as you stop doing that, sanctions will be removed."

### Ukraine-Related Sanctions

For in-depth discussion of the Ukraine-related sanctions, see [here](#) and [here](#). As a refresher, the economic sanctions imposed in 2014 severely impacted Russia's financial and energy sectors. The sanctions, which were ratcheted up during the course of 2014 as Russia's aggression in Ukraine increased, prevent U.S. companies from dealing in new debt or equity with many Russian financial institutions, energy companies and entities in the defense sector. The sanctions also prohibit energy investments in deepwater, Arctic offshore, or shale projects that have the potential to produce oil that benefits Russia.

### Cyber-Related Sanctions

On Dec. 29, 2016, Obama announced targeted sanctions against Russia in response to Russia's cyberattacks on the DNC, state voter registration databases and other U.S. targets aimed at disrupting the 2016 presidential election. Since the sanctions were announced, U.S. intelligence agencies have published declassified reports about Russia's activities and intentions. Specifically, a joint report issued on Dec. 30, 2016 by the Federal Bureau of Investigation (FBI) and Department of Homeland Security (DHS) described the tools and infrastructure used by Russian civilian and military intelligence services to exploit U.S. networks associated with U.S. election. On Jan. 6, U.S. intelligence agencies released a declassified version of a report assessing that Putin ordered an influence campaign aimed at the 2016 U.S. Presidential election, "to undermine public faith in the U.S. democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency." The report also concluded that "Putin and the Russian Government developed a clear preference for President-elect Trump."

In response to the alleged Russian state-sponsored hackings, Obama amended Executive Order 13694 the "Cyber Sanctions Executive Order" to authorize sanctions on Russian individuals and entities. EO 13694 was origi-

nally issued in April 2015 to respond to cyber-enabled malicious activities that are intended to:

- harm or significantly compromise the provision of services by networks that support the critical infrastructure sector;
- cause significant disruptions to the availability of networks; or
- cause significant misappropriations of funds or economic resources, trade secrets, personal identifiers or financial information for commercial advantage or private financial gain (for example, by stealing large quantities of credit card information, trade secrets or sensitive information).

President Obama amended EO 13694 to expand the scope of the EO's authorization to impose sanctions on those who tamper with, alter or cause "a misappropriation of information with the purpose or effect of interfering with or undermining election processes or institutions."

Using this authority, Obama imposed blocking sanctions against four individual Russian officers of the Main Intelligence Directorate (Glavnoe Razvedyvatel'noe Upravlenie (GRU)); two Russian intelligence services: the GRU and the Federal Security Service (Federalnaya Sluzhba Bezopasnosti (FSB)); and three Russian companies that provided material support to the GRU's cyber activities. Additionally, under the pre-existing authority to sanction cyber-activities, the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) designated two Russian individuals for stealing funds and personal information through cyber-means. Finally, in response to increased harassment of U.S. diplomats in Russia by security personnel and Russian police, the U.S. expelled 35 Russian diplomats from the U.S. and closed two Russian compounds in Maryland and New York.

Rejecting a proposal by his foreign minister to expel 35 U.S. diplomats from Russia and close two U.S.-owned properties in Moscow, Putin publicly announced that Russia would not expel anyone or "prevent their families and children from using their traditional leisure sites." While Trump applauded Mr. Putin's statement with an enthusiastic tweet, President Obama received criticism from both sides of the aisle that the sanctions were not tough enough. Further roiling the political and diplomatic waters, later reports indicated that Trump's National Security Advisor had five telephone calls with the Russian ambassador to the U.S. that same day, before Putin announced that he would not retaliate.

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### The Countering Russian Hostilities Act of 2017

On Jan. 10, Senate Republicans and Democrats introduced bipartisan legislation called the “Countering Russian Hostilities Act of 2017” that would impose a broad range of sanctions on Russia. “We have been attacked by Russia,” said Sen. Ben Cardin (D-Md.), a co-sponsor of the Act. “It cannot be business as usual.” The Act would codify the sanctions President Obama imposed in response to Russia’s cyberattack on the U.S. to influence the 2016 Presidential election and the Ukraine-related sanctions President Obama issued in 2014. Importantly, the legislation introduces beefed up economic sanctions related to Russia’s energy and financial sectors on Russia for both Russia’s interference in the election and related to Russia’s activities in Ukraine and Syria.

If passed, the new sanctions embodied in the Act would have a significant impact on the global energy and financial markets, broadening the restrictions on companies looking to invest in Russia. It would also make reversing the 2014 Ukraine-related sanctions very difficult. Currently, those sanctions have been implemented through executive action. If Trump were inclined to ease those sanctions, he could do so quite easily through revocation of executive orders. Though there is reportedly strong support for the Act, it is unclear at this point whether and how fast the bill would move through Congress. If passed, the Act would require Trump to impose sanctions on an individual or entity that:

- conducts transactions of more than \$1 million or transactions over \$5 million over a 12-month period that support Russia’s energy sector;
- makes an investment of over \$20 million that would enhance Russia’s energy sector;
- conducts transactions of more than \$1 million or transactions over \$5 million over a 12-month period that facilitate the building of Russian pipelines;

- conducts transactions of more than \$1 million or transactions over \$5 million over a 12-month period that support Russia’s ability to construct civil nuclear power plants;
- purchases, subscribes, or facilitates the issuance of Russian sovereign debt;
- makes an investment of over \$10 million in support of privatizing Russian state-owned assets; and
- conducts transactions with persons responsible for human rights abuses in Russia.

The legislation includes the ability for the U.S. President to waive the sanctions, but only after certain certification requirements are met showing Russia’s progress on human rights and other issues. The menu of sanctions include export restrictions, denial of loans from U.S. banks, visa bans, asset freezes, among others.

Though the cosponsors of the bill have indicated that they have wide-ranging, strong support, and Democratic leader Sen. Chuck Schumer (D-N.Y.) has reportedly asked that Congress take up the bill “promptly,” it is unclear whether and when the legislation might actually pass Congress and come to the President-elect for his signature.

If this legislation lands on Trump’s desk, what will he do? The tea leaves are murky. A veto would mean open defiance of Republican leaders in the Congress. And, in light of reported but unconfirmed allegations that Russia may hold compromising information about the President, any action viewed as being “soft on Russia” might fuel more speculation about the Trump administration’s ties to Russia. But Trump’s recent comments on lifting the cyber-related sanctions—which are very targeted—in exchange for partnering with the U.S. in the fight against ISIS and rolling back the Ukraine-related sanctions in exchange for a reduction in arms suggest that the President-elect would veto this bill.

If Trump were to sign the bill, however, then his thus-far enthusiastic overtures to Putin end in a very awkward “It’s not you, it’s me” conversation. In addition, the U.S. would likely face significant reciprocal action from the Russian government. Enacting these sanctions embodied in the Act would have far-reaching consequences for the global business community. But even if the bill is not signed, and even if Trump does not lift sanctions on Russia through revocation of executive orders, his stated openness towards Russia may affect the rigor with which OFAC enforces the existing sanctions laws. These are interesting and quickly changing times in the sanctions and foreign policy worlds.