

Understanding and Assessing the New US Sanctions Legislation Against Russia

By Richard Nephew
February 15, 2019

On 13 February 2019, Senators Menendez, Graham, Gardner, Cardin and Shaheen introduced the *Defending American Security from Kremlin Aggression Act (DASKA) of 2019*. Their draft bill, which is still going through the administrative process for formal publication, would do much to intensify U.S. sanctions against Russia. As [anticipated](#) in November 2018, the 2019 version of DASKA looks much like the 2018 version, in that it prioritizes energy, finance, and targeting of Russian oligarchs. However, there have been some important changes that ratchet up the pressure on the energy sector that are worthy of greater attention.

This short note describes key elements of the bill, offers a brief assessment of their implications and provides a forecast of the process that may be involved in bringing the legislation from its present draft to enacted law.

Key elements

Stretching over 100 pages, DASKA 2019 is a formidable piece of legislation, encompassing several sections and elements of the current U.S.-Russia relationship. Five points are worth highlighting, however.

1. The legislation begins with a firm refutation of any attempt by the Trump Administration to withdraw the United States from NATO. Beyond protecting U.S. interests in this regard, Congress is probably trying to provide some reassurance to Europe after the Warsaw Conference on the Middle East and broader tensions. A similar desire is manifest in the many references throughout the bill to increased U.S.-EU cooperation on sanctions matters, made most striking in the Congressional decision to reconstitute the Office of the Coordinator of Sanctions Policy. One of the key tasks of this office will be to facilitate collaboration and coordination between the United States and Europe on sanctions matters. Additional staffing would also be authorized in the legislation to support this mission.



WHERE THE WORLD CONNECTS FOR ENERGY POLICY

2. Of course, some of this reassurance is necessary because the operative provisions of the underlying sanctions in the bill will probably affect European energy and business interests directly. Though Nordstream-2 is not addressed in the bill, several of the provisions would target both U.S. and foreign energy activities. Specifically, sanctions would be required against:
 - a. Any individual or entity that provides support for foreign energy projects valued above \$250 million, except for liquefied natural gas (LNG) projects, which would be sanctionable if they involved transactions above \$1 million and \$5 million in aggregate annually.
 - b. Any individual or entity that provides support for domestic Russian crude oil-related projects valued at \$1 million per transaction or \$5 million in aggregate annually. This would include, crucially, repair work as well as new project activities but not maintenance, which the State Department would be required to define shortly after legislation would be enacted.
 - c. Any “political figures, oligarchs and other persons that facilitate illicit and corrupt activities...” on behalf of President Putin, as well as any parastatal entities, family members or banks that engage in similar conduct.
 - d. The Russian ship-building sector, unless the Secretary of State is able to report that the Russian navy and coast guard is no longer interfering with freedom of navigation.
 - e. Any Russian banks identified as helping the Russian government and its proxies to interfere with democratic processes in the United States and elsewhere.

Importantly, though the first two listed items above would involve sanctions similar to those contained in the Iran Sanctions Act, the latter three would be implemented via the addition of those entities and individuals to the U.S. Specially Designated Nationals and Blocked Persons (SDN) list. This could create a real risk of secondary sanctions application, with banks and companies around the world affected just as with the Deripaska sanctions of April 2018.

Russian sovereign debt is also targeted for sanctions, but this would only affect U.S. persons and new debt, which might reduce some of the immediate impact and diplomatic sensitivity.

3. The legislation also maintains the waiver from the Countering America’s Adversaries Through Sanctions Act (CAATSA), offering some degree of flexibility to the Trump Administration. However, as the Deripaska case from 2018 shows, the degree to which this flexibility is abused may be a source of serious strain for members of Congress and the Administration as well as embarrassment for Republicans as we move into 2020, an election year.

4. There are potentially significant reporting requirements that, while not serving as an immediate source of sanctions, would generate pressure on the Trump Administration and make it difficult to avoid the imposition of sanctions (as with the oligarch report of January 2018). Topics include the activities of Russia's oligarchs, the extent of Russia's involvement in cyber attacks, oil investments in Russia after enactment of CAATSA in 2017, banking related to these investments, and corruption involving Russian parastatal companies. Importantly, Congress will also demand a report on Russia's activities involving chemical weapons, as a pointed rebuke to the Trump Administration for its refusal to implement the Chemical Weapons Act within the expected timeframe established in the law by applying robust sanctions against Russia for its attacks on Sergei Skripal and refusal to address these concerns.
5. More than anything, the legislation is aimed at disrupting the sense of normalcy that seems to persist around Russia now five years removed from the events that saw Crimea detached from Ukraine and absorbed into Russia, along with the persistent violence and instability that is now the norm in Eastern Ukraine. [Moody's decision](#) to upgrade Russia's rating on 8 February 2019 underscores the common assessment that Russia can both weather any future storm better than it has in the past and that future sanctions steps may be more moderate than U.S. hardliners would prefer. This draft bill attempts to undermine this sense directly by threatening a range of sanctions that would cover Russian international interests well beyond finance, touching energy in several respects and possibly suggesting a reprise of the Deripaska/EN+ sanctions saga from last year.

Impact

It is too early to project fully the effects of these sanctions, not least because it is certain that the bill will change as stakeholders read and reflect upon it. Two points leap out, however:

1. If brought into law, U.S. and foreign energy companies would be under immediate scrutiny and pressure. For example, even the reporting requirement mentioned above in #4 is intended to serve as a source of name and shame attention for those companies that increased their investments in Russia after August 2017 and an avenue for additional pressure, both reputational and legal. Even if the Trump Administration utilizes its flexibility to avoid sanctions imposition, there may be shareholder and political risk attached to doing so, especially depending on the outcome of the 2020 elections in the United States.
2. The grandfathering that exists throughout the bill will mute the immediate effect on Russia's economy. Depending on the definition of "maintenance" used with respect to crude oil

projects, for instance, the Trump Administration may be able to insulate the majority of ongoing projects in Russia and this will lengthen the time in which Russia is able to operate “normally.” However, if implemented with any real rigor, this legislation will begin choking off Russia’s access to finance and capital and that will – in time – affect Russian production, as [Russian analysts](#) at Skolkovo noted in 2018. That said, the muted immediate effect may prompt some on Capitol Hill to argue that DASKA 2019 needs to be strengthened, with an eye toward affecting Russia today.

Process

As with any introduced legislation, DASKA 2019 now needs to go through the Senate process for review and evaluation. This could be, in theory, extensive, especially if senior Republicans do not wish to bring it forward.

However, with Democrats now in charge of the House of Representatives, there is a reasonable chance that they will either introduce their own companion legislation soon or simply take DASKA 2019 as it stands through their own process. If so, given Democratic majorities, it is reasonable to argue that this legislation could pass through the House very quickly and with minimal debate. House contacts, however, note a real desire to run a normal process on legislation of this magnitude, so this may delay action.

Regardless, it seems reasonable to argue that the House could pass Russia sanctions legislation of some form or another by the end of March. Pressure on the Senate would then mount to push this legislation forward, especially given frustration among some Republicans with that January EN+ relief vote and the presence of two Republican senators as original sponsors of the bill. For all of these reasons, it is possible that Russia sanctions – very likely involving amended versions of the provisions identified here – could be put to a vote in the Senate before the beginning of the August recess and put before the President shortly thereafter.

ABOUT THE AUTHOR

Richard Nephew joined the Center on Global Energy Policy in February 2015 directly from his role as Principal Deputy Coordinator for Sanctions Policy at the Department of State, a position he held since February 2013. Nephew also served as the lead sanctions expert for the U.S. team negotiating with Iran. From May 2011 to January 2013 Nephew served as the Director for Iran on the National Security Staff where he was responsible for managing a period of intense expansion of U.S. sanctions on Iran.

The views in this commentary represent those of the author.

This work was made possible by support from the Center on Global Energy Policy. More information is available at <http://energypolicy.columbia.edu/about/mission>.