

U.S. sanctions imposed on Nord Stream 2 and Turkstream pipelines

On 20 December 2019, President Trump signed the National Defence Authorisation Act 2020 (the Act) into law.

The Act contains numerous sanctions related elements, including Russia-related sanctions targeting certain vessel types engaged in pipe-laying at depths of 100 feet or more below sea level for the construction of the Nord Stream 2 and Turkstream pipelines, and on companies supplying those vessels. The U.S. Office of Foreign Assets Control (OFAC) have issued guidance through FAQs which make clear that sanctions can be imposed unless parties “immediately cease construction-related activity.”

The following information, originally published by [Crowell & Moring](#), is useful for Members' reference.

As 2019 draws to an end, Congress has been busy on economic sanctions legislation. This includes passing new Russia-related sanctions and a Venezuela-related government contracts procurement restriction as part of the National Defense Authorization Act for Fiscal Year 2020 (NDAA 2020). The U.S. Senate Foreign Relations Committee has also approved two new pieces of legislation that would increase sanctions on Russia and Turkey, respectively. Full details on each of these developments are explained below.

Section I: National Defense Authorization Act for Fiscal Year 2020

The President signed the [NDAA 2020](#) into law on Friday, December 20, 2019. It contains numerous sanctions related elements including, but not limited to, the following:

Russia-Related Sanctions

The Protecting Europe's Energy Security Act (PEESA) (incorporated as Section 7501 *et seq.* of the NDAA 2020), which requires:

- **State Department Reports:** The State Department is required to produce a report within 60 days (e., by February 18, 2020) and every 90 days thereafter that identifies the following:
 - (1) any vessels that engaged in pipe-laying at depths of 100 feet or more below sea level for the construction of Nord Stream 2 or TurkStream pipelines;
 - (2) any non-U.S. persons that have knowingly sold, leased, or provided those vessels for the construction of such a project; or

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- (3) any non-U.S. persons that facilitate deceptive or structured transactions to provide those vessels for the construction of such a project.
 - **Sanctions:** The United States is then required to:
 - (a) freeze the property of all persons identified in the report; and
 - (b) prohibit the entry into the United States of “corporate officers” or “controlling shareholders” of persons designated under (a).
 - **Exceptions:** There are very limited exceptions to the mandatory imposition of these sanctions.
 - **Grace Period:** There is no “wind down” period for these reports; the first report will identify all parties determined to have engaged in the described activity since the passage of PEESA on December 20, with subsequent reports identifying additional entities found to have engaged in these activities during the preceding 90 day period. However, there is a limited exception to sanctions for parties that are determined by the President to have initiated “good faith efforts to wind down operations” within 30 days after December 20, 2019. OFAC simultaneously issued guidance, in the form of a frequently asked question (FAQ) stating that sanctions can be imposed unless parties “immediately cease construction-related activity.” See [FAQ No. 815](#).
 - **Safety:** Sanctions also will not apply if the activities are “intended for the safety and care of the crew aboard the vessel, the protection of human life aboard the vessel, or the maintenance of the vessel to avoid any environmental or other significant damage.”
 - **Repair and Maintenance:** Sanctions will not apply if activities are “necessary for or related to the repair or maintenance of, or environmental remediation with respect to, a pipeline project” described above.

The subjective nature of these limited exceptions will mean that entities that believe they may qualify for an exception to these sanctions should strongly consider taking affirmative steps to clarify as soon as possible whether they will qualify for these limited exceptions.

Venezuela-Related Procurement Restriction

While the NDAA 2020 does not contain any Venezuelan sanctions *per se*, it does contain a broad procurement prohibition tied to sanctions that arguably exposes an entire corporate family to a Department of Defense procurement restriction if any member of that corporate family has unlicensed Venezuelan business. Specifically, it provides (in Section 890):

- **Procurement Prohibition:** “The Department of Defense may not enter into a contract for the procurement of goods or services with any person that has business operations with an authority of the Government of Venezuela that is not recognized as “the legitimate Government of Venezuela by the United States Government.” Since January 23, 2019, the United States has recognized the government of Juan Guaidó as the legitimate Government of Venezuela.
- **Relevant Definitions:**
 - **Business Operations:** The term “business operations” is defined broadly to include “engaging in commerce in any form,” which includes acquiring or

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- possessing equipment, facilities, personnel, products, services, real property, or other apparatus of business or commerce.
 - **Person:** Person is also defined broadly to not only capture natural and legal persons, but any “parent entity, or subsidiary of, or any entity under common ownership or control with” the aforementioned.
 - **Exceptions:**
 - **OFAC:** The restrictions do not apply if a person “has a valid license to operate in Venezuela” issued by OFAC.
 - **Discretionary Exception:** The Secretaries of Defense and State can issue an exception if the contract is necessary for providing humanitarian assistance to Venezuela, carrying out disaster relief or urgent life-saving measures, or carrying out noncombatant evacuations.

Turkey-Related Provisions

Earlier drafts of the NDAA contained material Turkey-related sanctions. The final version removed these elements and simply contains a limitation on Turkey’s ability to participate in the F-35 program (Section 1245). The more material Turkey sanctions remain pending in Congress (see below).

Miscellaneous Sanctions

The NDAA contains a range of additional sanctions provisions, including:

- **North Korea Sanctions:** The NDAA includes the “Otto Warmbier North Korea Nuclear Sanctions and Enforcement Act of 2019” (Section 7101), which requires: (1) the imposition of sanctions on any foreign financial institution that knowingly provides significant financial services to any person sanctioned pursuant to certain U.S. or UN Security Council North Korea-related sanctions (“North Korea Sanctioned Persons”); (2) prohibits non-U.S. entities that are owned or controlled by U.S. financial institutions from knowingly engaging in certain transactions with the Government of North Korea or North Korea Sanctioned Persons; and (3) amends the North Korea Sanctions and Policy Enhancement Act of 2016 (22 U.S.C. 9214) to add authorities by which the President can designate any person for certain knowing transactions involving exports to North Korea, imports from North Korea, or other activity involving North Korean persons (these authorities largely duplicate those already contained in Executive Order 13810 (September 20, 2017)).
- **Syria Sanctions:** The “Caesar Syria Civilian Protection Act of 2019” (Section 7401 *et seq.*) requires the imposition of sanctions on non-U.S. persons that knowingly engage with the Government of Syria in certain ways, including: (a) operating in a military capacity inside Syria for the Government; or (b) facilitating the maintenance or expansion of Syria’s domestic production of natural gas, petroleum, or petroleum products.
- **Opioid Sanctions:** The “Fentanyl Sanctions Act” (Section 7201 *et seq.*) requires the creation of a sanctions program that targets non-U.S. persons that are identified as “foreign opioid traffickers” in a report provided to Congress or that are owned/controlled

by, supplying or sourcing precursors for, or knowingly acting on behalf of those persons. It follows a process similar to that used by OFAC under the Foreign Narcotics Kingpin Designation Act to designate foreign narcotics traffickers.

Legislation Still Pending in Congress

In addition to the NDAA, the U.S. Senate has taken steps to advance two other pieces of sanctions legislation targeting Russia and Turkey respectively.

Russia-Related Sanctions: Defending American Security Against Kremlin Aggression Act of 2019 (DASKA)

On Tuesday, December 17, the Senate Foreign Relations Committee (SFRC) also approved the “Defending American Security from Kremlin Aggression Act” (DASKA) by a vote of 17-5. The bill is also now awaiting a vote on the full Senate floor.

Referred to by Senator Lindsey Graham (R-SC), one of its sponsors, as the “sanctions bill from hell,” DASKA includes:

- **Conventional Oil or Crude Oil**(Section 603 (creating new Section 239A & 239B in the Countering America’s Adversaries Through Sanctions Act (22 U.S.C. 9521 *et seq*) (CAATSA)): Mandatory sanctions on any person knowingly: (1) undertaking an investment in excess of \$250 million in a project to explore for or produce crude oil or natural gas outside of Russia in which a Russian state-owned entity (SOE) has a 33 percent or greater ownership interest or ownership of a majority of the voting interests; or (2) selling or providing goods, services, or financing with a value in excess of \$1 million in one transaction (or \$5 million in aggregate) that supports Russia’s ability to develop crude oil resources in Russia.
- **Russian Sovereign Debt**(Section 602 (creating a new Section 238 in CAATSA (renumbering previous Section 238 as Section 239H)): If the Director of National Intelligence (DNI) determines, through a process provided in DASKA, that Russia engages in “malicious cyber activities targeting election infrastructure” after DASKA’s passage, then the President shall prohibit U.S. persons from transacting in Russian sovereign debt issued 90 days or more after the DNI reaches his/her determination.
- **Liquefied Natural Gas (LNG) Export Facilities**(Section 602 (creating a new Section 237 in CAATSA (renumbering previous Section 237 as Section 239G))): “Secondary” sanctions for any person determined to knowingly making a significant investment (defined as any individual transaction of \$1 million or more, or \$5 million in a year in aggregate) in Russia’s LNG export facilities outside of Russia; and
- **Designation of Oligarchs and Entities Close to Putin**(Section 602 (creating a new Section 235 in CAATSA (renumbering previous Section 235 as Section 239D))): Sanctions on political figures, oligarchs and their families, Russian parastatal entities, and other persons that facilitate illicit and corrupt activities on behalf of the President of the Russian Federation, as well as persons acting for or on behalf of such persons. “Persons, including financial institutions, that knowingly engage in significant

transactions” with designated oligarchs, political figures, and parastatal entities are also subject to sanctions designation.

- **State Sponsor of Terrorism**(Sec. 701): Requiring the State Department to determine whether or not Russia should be considered a state sponsor of terrorism.

Turkey-Related Sanctions: Promoting American National Security and Preventing the Resurgence of ISIS Act of 2019 (PANSPRIA)

On Wednesday, December 11, 2019, the SFRC approved the [Promoting American National Security and Preventing the Resurgence of ISIS Act of 2019](#) (PANSPRIA) (S. 2641) on an 18-4 vote. PANSPRIA contains a series of potential new sanctions, including:

- **Administration Certification:** PANSPRIA requires the Secretary of State, the Secretary of Defense, and the DNI to jointly submit a certification within 45 days of its passage (and every 90 days thereafter) that certifies that the Government of Turkey is not: (a) engaged or knowingly supporting offensive operations against the Syrian Democratic Forces, Kurdish or Arab civilians, or other religious or ethnic minorities in Syria; (b) committing, directing, or knowingly facilitating the commission of serious violations of internationally recognized human rights in Northeast Syria; (c) hindering counterterrorism operations against ISIS and its affiliates; or (d) engaged in the forcible repatriation of Syrian refugees from Turkey to Syria. If the Administration can make that certification, no sanctions are imposed. If not, the following sanctions come into effect.
- **Halk Bankasi:** PANSPRIA requires the President to impose a minimum of three of a choice of a menu of 11 restrictions on Halk Bankasi, Halkbank, and any successor entities within 90 days of its passage (collectively “Halkbank”). This menu parallels those contained in CAATSA, the Iran Sanctions Act as amended, and other “secondary” sanctions programs and includes restrictions ranging from cutting off access to the U.S. Export-Import bank to a full “blocking” or asset-freezing sanction. If the President fails to take the aforementioned action in 90 days, PANSPRIA requires that Halkbank be subject to the same restrictions as persons on the SDN list.
- **Restriction on Defense Articles:** PANSPRIA contains a number of defense-related restrictions, including:
 - On or after the date that the above certification cannot be made (e., 45 days from PANSPRIA’s passage, or on a 90 day interval thereafter), no U.S. defense articles, services, or technology may be transferred to Turkey if they are “likely to be used in operations by the Turkish Armed Forces in Syria.” Further, using a process that Congress developed in CAATSA to retain involvement in Russia-related licenses, PANSPRIA requires the President to give Congress a 30 day advance warning about the issuance of any potential license for the transfer of defense articles or services to Turkey and then provides an expedited mechanism whereby Congress can block the issuance of that license. Neither of these restrictions applies if the ultimate end use is (a) by the U.S. Armed Forces, (b) military operations approved by NATO, or (c) “for verified incorporation into defense articles for re-exports to other countries.”
 - No funds may be obligated to: (1) facilitate or transfer F-35 aircraft to Turkey; (2)

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- transfer intellectual property or technical data necessary for or related to the maintenance or support of F-35 aircraft in Turkey; or (3) construct a storage facility for or facilitate the storage in Turkey of F-35 aircraft. These requirements can be waived if the Government of Turkey no longer owns, or operates, or exercises control over the S-400 missile defense system.
- No licenses may be issued to export F-16 aircraft or logistics, training, provision of spare parts or components or other support for F-16 aircraft to the Government of Turkey, and no U.S. defense articles or services can be provided until the President certifies to Congress that the Government of Turkey no longer operates, possesses, or exercises control over the S-400 air defense system and no such system is maintained by Russian nationals or persons acting on their behalf inside Turkey.
 - **Asset-Freezing Designations:** PANSPIRIA requires the President to designate the following persons for blocking sanctions on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List):
 - The Minister of National Defence of Turkey;
 - The Minister of Treasury and Finance of Turkey;
 - The Chief of the General Staff of the Turkish Armed Forces;
 - The Commander of the 2nd Army of the Turkish Armed Forces;
 - Any person identified by the President:
 - On a list submitted to Congress that includes (a) senior officials of the Turkish Armed Forces leading offensive operations against the Syrian Democratic Forces, civilians, or other minorities in northeast Syria; or (b) officials of the Government of Turkey significantly facilitating such operations.
 - Any official of the Government of Turkey or member of the Turkish Armed Forces responsible for serious abuses of internationally recognized human rights relating to Turkey's invasion of northeast Syria
 - On a list submitted to Congress by the Secretary of State of Russian persons that knowingly exports, transfers, or otherwise provides to Syria significant support that materially contributes to the Government of Syria's ability to acquire defense articles, services, and related information.
 - **Menu-Based Designation Authorities:** PANSPIRIA authorizes the Administration to impose three of a menu of sanctions on any non-U.S. person that the Secretary of State, in consultation with the Secretary of Defense and the DNI, determines meet the following criteria:
 - Any foreign persons determined to have knowingly provided defense articles, services, or technology to Turkey if such articles, services, or technology could be used in operations by the Turkish Armed Forces (a term used, but not defined, in PANSPIRIA) in Syria;
 - Any foreign financial institution found to have knowingly facilitated transactions for the Turkish Armed Forces for the purpose of supporting military operations of Turkey in Syria; or
 - Russian persons who knowingly export, transfer or otherwise provide to Syria significant financial, material, or technological support that

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- contributes materially to the ability of the Government of Syria to acquire defense articles, defense services, and related information.
- **Russia-Related Sanctions:** PANSPRIA would also require the Administration to sanction Turkey for its purchase of Russian missile defense systems by defining this transaction as a “significant” transaction with the Russian defense industry within the meaning of CAATSA. This in turn would require the Administration to choose 5 of 12 possible sanctions, ranging from measures as restrictive as full asset blocking (e., designation as an SDN) to as limited as losing access to U.S. government contracts.

Notice to Members

Given the limited exceptions detailed within the Act, Members who may be impacted are strongly advised to identify and assess the risks involved.