

# THE OUTLOOK FOR U.S. SANCTIONS ON RUSSIA FOLLOWING THE MIDTERM ELECTIONS

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With the midterms having now come and gone, we have greater clarity as to how U.S. sanctions on Russia will develop in the coming two years. To be sure, sanctions will still be influenced by the president's personal disinclination to use pressure against Russia and by the desire of companies both in the United States and abroad to remain engaged in Russia's energy sector. But, with Democrats now poised to control the House of Representatives, there is a significant likelihood that both sets of interests will be overwhelmed by the commitment of members of Congress to impose real costs on Moscow for its involvement in violence in eastern Ukraine, threats to U.S. military assets, activities in Syria, and efforts to interfere with U.S. and European elections. Republicans will unquestionably have a say in the policy, given their control of the Senate and the presidency. However, sufficient numbers of Republicans appear ready to back a tougher approach toward Moscow, implying a distinctly more adversarial approach to Russia in 2019-2020 than was seen in 2017-2018. Sanctions will likely be a central component of this effort.

There are three main things to look out for as we approach the swearing in of a new Congress:

1. Relatively quick action on new congressional legislation;
2. Significant expansion of sanctions in both scope and severity; and,
3. Resistance from the Executive Branch that may be facilitated by good behavior from Russia.

## Quick action?

Congress is poised to act quickly on new sanctions legislation, with members having introduced in recent months multiple new bills that would cover various aspects of Russia's economy with new forms of sanctions. In order for this legislation to be considered it must be reintroduced to the new Congress, but this is a minor step.

More important will be the timeline for consideration of those bills so re-introduced.

It is possible that the press of other business will distract Congress from swift consideration of Russia sanctions. After all, Democrats will have just taken control of the House of Representatives for the first time in eight years and will now face a Republican president who is distinctly polarizing both personally and in the policies that he advocates. Nancy Pelosi outlined on 31 October a long list of priorities that Democrats plan to pursue once in

power, including a range of investigations into the Trump business and its activities since Donald Trump became president. The Russia agenda item may take a backseat to these other priorities — which include domestic tax legislation, climate change, and other oversight responsibilities — in the early days of this Congress.

However, Moscow's apparent involvement in election interference-related activities in 2018 (as demonstrated by the indictment of Elena Khusyaynova on 19 October), its persistent activities in Ukraine and Syria, and espionage operations will likely force Russia policy to the top of the foreign policy agenda of the new Democratic chairpersons in Congress. Moreover, if the Trump Administration fails to apply tough new sanctions against Russia in response to the attempted assassination of Sergei Skripal using chemical weapons (their decision is due by the end of November), then there will be even more pressure on Congress to take up the matter. Senior Democrats may also be all too ready to drive home the political message that the Trump Administration is behaving in too conciliatory a fashion with Russia.

For all of these reasons, it seems likely that new legislation could be moving through Congress for a vote — in at least one of the committees responsible for it, if not to the entire chamber — before the end of February 2019. After that, committee and chamber business may delay passage for some time. Republicans, who hold a majority in the Senate, could also seek delays out of deference to the president's own inclinations. If the case of the Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA), which obtained the strong support of Republicans and Democrats alike, holds any precedent, then it would be prudent to plan for an intensification of U.S. sanctions before the beginning of the August 2019 congressional recess.

## What to expect concerning sanctions provisions

Should Congress indeed seek to increase sanctions, they would likely target four areas:

- Energy;
- Finance;
- Targeting the oligarchs; and,
- Defense and arms sales.

With respect to energy, the reality is that Russia remains wholly dependent on its oil and gas sector to derive the majority of its export revenue and hard currency receipts, ensuring both will be of interest for future sanctions design efforts. Indeed, the current congressional bills targeting Russia all prioritize the energy sector, as have the sanctions measures adopted to date.

Within energy, of course, sanctions designers have many options to consider. It seems likely that three concepts will underpin what comes next:

- First, there will be a desire to spread the pain and level the playing field. U.S. energy companies have been outspoken in their criticism of sanctions measures that seem to affect disproportionately their business in deference to Europe. There will be a desire to ensure that no matter what measures are adopted, European and other energy sector players all bear some of the burdens of the enhanced pressure campaign.



- Second, there will be interest in closing down Russia's ability to expand its activities, particularly as it relates to technology transfer. There has already been a strong focus on targeting unconventional energy resources, but it is reasonable to expect that controls on a wider array of technologies — particularly those that will help Russia maintain its operations into the future — will be sought. Likewise, Congress will probably examine options for imposing sanctions on new pipelines and other distribution mechanisms to close down Russia's future opportunities.
- Third, lawmakers will target existing production, including by going after those who are engaged in assistance to Russia in its ongoing production of oil. The Menendez-Graham bill, for example, applies an Iran Sanctions Act (ISA) like approach to investment in Russia's energy sector and it seems likely that this measure — perhaps with caveats, a higher monetary threshold, or stronger Administration waivers — will be part of the mix.

At least initially, further measures on Nordstream-2 and other projects that have been either explicitly or notionally grandfathered are not likely to be included, given the probable objections from European and other governments to the unwelcome infringement of their economic interests. That said, there may be an opportunity here for Congress and the Administration to bridge their disagreements, given the opposition the Trump State Department has shown to Nordstream-2 in particular. It is therefore too early to say definitively that this pipeline will be left aside.

With respect to banking and finance, the sanctions concepts elucidated thus far in congressional legislation all prioritize targeting Russian banks and new sovereign debt. Moscow's efforts to reduce its exposure to such sanctions (including by Russia-based companies shifting their bank holdings to avoid major banks and the Russian sale of U.S. Treasuries) may result in a more modest set of effects from such sanctions. However, there remains a considerable view that Russia's economy is dependent on foreign debt and that, even if this dependency is waning, it is in the U.S. interest to use this leverage while it still exists. Sanctions in these areas should be anticipated, therefore.

Concerning "oligarchs," it has long been a tenet of U.S. sanctions policy that the men holding economic power hold some sway over Russian leadership, especially those in control of major parastatal companies. The imposition of sanctions against Oleg Deripaska, notwithstanding the Treasury Department's efforts to delay them since imposed in April 2018, is an example of the sort of measure that Congress may seek to replicate, given the negative effects these measures immediately had on Russia's companies operating in international markets. Indeed, though the White House may regret its decision to impose these sanctions (or, at least, may see them now as more trouble than perhaps they were worth), they have may have created the kind of turbulence that members of Congress and their staff desired. At a minimum, future U.S. sanctions concepts will likely continue to target specific oligarchs. It is also plausible that there will be a decision to go after specific parastatal companies, particularly those operating in the energy industry given the desire to apply pressure on this sector specifically.

Last, the defense sector — and arms sales in particular — will also remain a key focus for Congress, not least because it is here that Russia can exert influence on foreign partners in key countries and regions, such as Turkey, India, and the Middle East. In particular, India's



decision to buy two new frigates from Russia — worth \$950 million and due to be delivered in 2022 — may serve as an inspiration to remove from the White House any discretion to avoid imposition of sanctions on those involved in such trade.

## Administration responses

The Trump Administration can be expected to push back against moves to adopt new Russia sanctions. To some extent, this will be merely in keeping with the Executive Branch's longstanding disinclination to support sanctions bills from Congress. Executive Branch officials of both parties — and in contention with members of both parties — often discourage sanctions initiatives from Congress, even if they are contemplating similar measures but with the discretion allowed by Executive Orders and administrative regulations.

However, the Trump Administration will likely be particularly opposed to such sanctions given the overall disregard that Donald Trump has shown for sanctions in the U.S.-Russia relationship. He may desist in his pushback if Congress acts in a uniform, bipartisan fashion (as he did in July 2017 when he was reportedly considering vetoing CAATSA until shown how his veto would be overridden by large majorities) but the Executive Branch will resist new sanctions as long as possible. The Administration may even adopt new measures itself, just as it did with the oligarch sanctions in April 2018 and its September 2018 executive order that would ostensibly punish those engaged in election interference, to side-track sanctions from Congress.

In any case, such moves would likely still be seen as insufficient by a Congress partially controlled by Democratic members. Ironically, the most useful thing that the Trump Administration could perhaps do in order to defray interest in new sanctions would be to seek Russian cooperation in defusing tensions, particularly in Ukraine, and in offering commitments on cybersecurity and election interference. Such assurances and obligations may not be of interest or may be seen through political lenses in the halls of Congress. However, they are probably the best chance that Moscow — and its advocates in the Trump Administration — will have to sidetrack new sanctions initiatives that are soon to forthcoming in a new Washington.

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## 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.

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