

US Sanctions Against Russia: Outlook Under President Trump

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Law360, New York (January 4, 2017, 12:28 PM EST) -- President-elect Donald J. Trump has expressed admiration for Russian President Vladimir Putin, and the two reportedly had a warm exchange about the future relationship of the two countries soon after the U.S. election outcome was announced. As a result, many have speculated that a Trump administration may relax the U.S. sanctions against Russia that were imposed in response to Russia's actions in Ukraine and its annexation of Crimea. In recent days, this speculation has intensified in the wake of Trump's choice for secretary of state and statements by his incoming White House chief of staff suggesting that lifting the sanctions is a real possibility. A President Trump will enjoy substantial discretion in reshaping the U.S. relationship with Russia, but relaxation of sanctions will likely be met with resistance from Congress, which generally has a much less favorable view of Russia's role in world affairs. This legal update discusses how the new president might reshape the U.S. relationship with and affect the sanctions against Russia.



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Trump and Putin

During the campaign, Trump remarked that "in terms of leadership, [Vladimir Putin]'s getting an A, our president is not doing so well."^[1] He also referred to President Putin as someone "highly respected within his country and beyond."^[2] Trump was reported to confirm in an ABC interview that if elected he would "look at" whether the United States should "recognize" Russia's current control over the Crimea region.^[3]

The relationship continued to warm after the election. President Putin sent a telegram to Trump the morning after his victory, stating that he hopes "for cooperation in ending a crisis in Russian-American relations."^[4] The two also held a teleconference on Nov. 14, 2016, after which the Kremlin announced that they agreed to "assess the current unsatisfactory state of bilateral relations," develop trade and economic ties, and establish joint efforts to fight international terrorism. President Putin wished Trump "success in the implementation of the pre-election program, and noted his willingness to build a partnership dialogue with the new administration on the principles of equality, mutual respect and non-interference in the internal affairs of each other."^[5]

On Dec. 13, 2016, incoming White House Chief of Staff Reince Priebus refused to take the position that the Trump administration will keep Russia sanctions in place, suggesting that the public take a “wait and see” approach.[6] Around the same time as Priebus’s statement, Trump’s transition team announced his plans to nominate ExxonMobil CEO Rex Tillerson to serve as the next secretary of state. Tillerson is perceived to have close financial ties to Russia and was awarded its “Order of Friendship” by President Putin in 2013. He has also spoken out against using sanctions as a policy tool.[7] These initial signals of possible change raise questions about whether the United States would, under a President Trump, reverse course by recognizing the legitimacy of Russia’s control of the Crimea region and removing the related sanctions.

The Current Sanctions against Russia

Since July 2014, the United States has imposed a series of sanctions on Russia as a result of Russian aggression against Ukraine. These sanctions primarily target the country’s financial services sector, energy sector (e.g., certain energy firms and certain deepwater-, Arctic offshore- and shale-related crude oil projects), and defense sector.[8]

In many respects, Russia sanctions have narrower applications than other sanctions programs maintained by the United States. For example, many individuals and entities designated under the Russia sanctions are listed as Sectoral Sanctions Identifications (SSIs). Unlike dealings with Specially Designated Nationals (SDNs), from which U.S. individuals and entities are broadly barred, dealings with SSIs are generally permitted with the exception of a few specified types of transactions. By contrast, the Crimea region of Ukraine, now under Russian control, is subject to comprehensive economic sanctions imposed by the United States.[9] U.S. persons are generally prohibited from having any business dealings related to the region.

Although the prospect of a President Trump lifting Russia sanctions in the short term has attracted public attention, the Obama administration continues to implement its foreign policy opposing Russia’s de facto control over Crimea. Approximately one week after the election, on Nov. 14, 2016, the U.S. Treasury Department designated six individuals who represent Crimea and Sevastopol in the Russian State Duma (Parliament) as SDNs, prohibiting in general U.S. persons from engaging in any transactions with these individuals and blocking their assets subject to U.S. jurisdiction.[10] And on Dec. 20, 2016, the U.S. Treasury Department announced additional SSI and SDN designations under the Russia sanctions.[11] Finally, on Dec. 29, 2016, President Obama imposed sanctions on several entities and individuals for their involvement in the alleged hacking intended to influence the U.S. elections.[12]

A Thaw in January?

The Senate confirmation hearings over Tillerson’s nomination may provide a forum for expressions of congressional concern, both Democratic and Republican, over Trump’s friendlier stance toward Russia. Nevertheless, upon taking office, President Trump will not need congressional authorization to terminate the Russia sanctions currently in place as they have been imposed pursuant to executive orders under presidential authority.

The only potential legal impediment to broad presidential rescission of the current sanctions against Russia is the Ukraine Freedom Support Act of 2014, which Congress passed in December 2014. Among other things, the act requires the president to impose sanctions against entities, owned or controlled by

the Russian government or by Russian nationals, that knowingly manufacture, sell, transfer, broker or assist with the transfer of defense articles into Ukraine, Georgia, Moldova, Syria or any other country designated by the president and against anyone who knowingly assists or provides support for these activities. President Obama stated, in the White House press release issued on the same day that he signed the act into law, that his administration “does not intend to impose sanctions under this law, but the Act gives the Administration additional authorities that could be utilized, if circumstances warranted.”

Nevertheless, various Russian entities are currently designated as SSIs and SDNs subject to U.S. sanctions in connection with Russia’s conduct in Crimea, pursuant to Executive Orders 13660, 13661, 13662 and 13685. These presidential orders were issued under legal authorities granted to the president by other laws, including the International Emergency Economic Powers Act and the National Emergencies Act. One may argue that some of the current SSI and SDN designations satisfy the above-mentioned mandatory sanctions requirement. For example, Directive 3 issued by the Treasury Department’s Office of Foreign Assets Control on Sept. 12, 2014, is an important component of the Russia sanctions. The text of Directive 3 specifies that it aims to target “the defense and related materiel sector of the Russian Federation economy,” the same sector that the mandatory sanctions requirement of the act seeks to target. If President Trump removed the Russia sanctions by rescinding all related SSI and SDN designations, then a legal issue could arise as to whether the president has violated the mandatory sanctions requirement of the act and what remedy may be available under U.S. laws. Ultimately, however, any challenge to the rescission authority of President Trump would be difficult, because the act also provides for a “national security waiver” that authorizes the president to waive the application of sanctions, or waive sanctions for a specific transaction, for purposes of U.S. national security and with congressional notification.

President Trump will also have to take into account the diplomatic effects of any executive action on the Russia sanctions. U.S. allies continue to stand behind their policy to oppose Russia’s territorial claims over Crimea and will keep in place their own Russia sanctions implementing this policy. On Nov. 11, 2016, Canadian Foreign Minister Stephane Dion urged all countries to remain firm on imposing sanctions against Russia for its actions toward Ukraine.[13] The European Union also extended its economic sanctions against Russia by another six months on Dec. 13, 2016.[14] Thus, if President Trump were to relax sanctions against Russia, the United States would be moving in a direction contrary to that of its closest allies.

Whether American allies or congressional leaders will persuade President Trump to moderate his expressed warmth toward Russia remains to be seen, but if the new president wishes to act on his campaign rhetoric, he will have substantial authority to do so. U.S. and foreign businesses that have an interest in Russia will need to remain alert and be prepared for possibly fundamental changes in U.S. sanctions against Russia.

See also U.S. Sanctions Against Cuba: Outlook Under President Trump and U.S. Sanctions Against Iran: Outlook Under President Trump.

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[1] Chris Cillizza, Donald Trump's answer on Russia and Vladimir Putin at the NBC forum was totally bananas, Washington Post (Sept. 8, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2016/09/08/donald-trumps-answer-on-russia-and-vladimir-putin-at-the-commander-in-chief-forum-was-bananas>.

[2] John Santucci, Trump Says 'Great Honor' to Get Compliments from 'Highly Respected' Putin, ABC News (Dec. 17, 2015), <http://abcnews.go.com/Politics/trump-great-honor-compliments-highly-respected-putin/story?id=35829618>.

[3] Chris Cillizza, Donald Trump's ABC interview may be his best/worst yet, Washington Post (Aug. 1, 2016), <https://www.washingtonpost.com/news/the-fix/wp/2016/08/01/donald-trumps-abc-interview-may-be-his-bestworst-yet>.

[4] Donald Trump and Vladimir Putin pledge to build a 'strong and enduring partnership' on the phone, National Post (Nov. 15, 2016), <http://news.nationalpost.com/news/world/donald-trump-and-vladimir-putin-pledge-to-build-a-strong-and-enduring-partnership-on-the-phone>.

[5] Id.

[6] Louis Nelson, Priebus: Trump won't rule out lifting Russia sanctions, Politico (Dec. 13, 2016), <http://www.politico.com/story/2016/12/russia-sanctions-trump-reince-priebus-232560>.

[7] Id.

[8] Mayer Brown Legal Update, US Congress Expands Sanctions against Russia (Dec. 19, 2014), <https://www.mayerbrown.com/US-Congress-Expands-Sanctions-against-Russia-12-19-2014/>.

[9] See generally, Office of Foreign Assets Control, Dept. of Treasury, Ukraine/Russia Related Sanctions Program, (updated June 2016), <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine.pdf>.

[10] Press Release, Dept. of Treasury, Treasury Sanctions Individuals for Activities Related to Russia's Occupation of Crimea (Nov. 14, 2016), <https://www.treasury.gov/press-center/press-releases/Pages/jl0609.aspx>; and Resource Center, Dept. of Treasury, Russia/Ukraine-related Designations (Nov. 14, 2016), https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20161114_33.aspx.

[11] Resource Center, Dept. of Treasury, Russia/Ukraine-related Designations and Identifications; Publication of Russia/Ukraine-related General License (Dec. 20, 2016), <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20161220.aspx>.

[12] <https://www.whitehouse.gov/the-press-office/2016/12/29/executive-order-taking-additional-steps-address-national-emergency>

[13] Aaron Maasho, Canada says Russian sanctions must be upheld by all countries, Channel NewsAsia, (Nov. 12, 2016), <http://www.channelnewsasia.com/news/world/canada-says-russian-sanctions-must-be-upheld-by-all-countries/3282628.html>.

[14] Charles Riley, Europe extends sanctions on Russia, CNN Money (Dec. 16, 2016), <http://money.cnn.com/2016/12/16/news/russia-trump-ties-europe-sanctions/>.