

OFAC ANNOUNCES INTENT TO REMOVE SANCTIONS ON UC RUSAL PLC, EN+ GROUP PLC, AND JSC EUROSIBENERGO

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By: Steven F. Hill, Jerome J. Zaucha, Jeffrey Orenstein, Lana A. Yaghi, Erica L. Bakies, Stacy J. Ettinger

On December 19, 2018, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") [notified](#) Congress of its intent to remove UC Rusal plc ("Rusal"), the major Russian aluminum producer, and two other Russian companies, En+ Group plc ("En+") and JSC EuroSibEnergO ("ESE"), from the Specially Designated Nationals and Blocked Persons List ("SDN List") after 30 days.^[1] Assuming, as seems likely, that Congress will not succeed in blocking the proposed action, these three entities will be taken off the SDN List and no longer be subject to a comprehensive prohibition under U.S. sanctions. Based on OFAC's issuance of revised general licenses as discussed below, it appears that the removals will occur on or before January 28, 2019.

Rusal, En+, and ESE were placed on the SDN List presumably because of their majority ownership by Oleg Deripaska, a Russian oligarch who is the founder of Basic Element, one of Russia's largest industrial groups. The SDN designations were made in April 2018, under the enhanced Russia sanctions provided for in the 2017 Countering America's Adversaries through Sanctions Act ("CAATSA"), which is summarized in our prior alerts (see [here](#) and [here](#)). Among other things, CAATSA required the President to identify Russian oligarchs with ties to the country's ruling government for possible designation on the SDN List. Mr. Deripaska is one of the identified oligarchs designated on the SDN List.

U.S. persons are barred from engaging in transactions with SDNs as well as entities in which an SDN has a 50% or greater ownership interest (either singly or jointly with one or more other SDNs) without authorization from OFAC. Additionally, under CAATSA, non-U.S. persons can be subject to "secondary" sanctions if they are determined to have engaged in significant transactions involving "any person subject to sanctions imposed by the United States with respect to the Russian Federation," which includes the Deripaska-owned companies that are designated as SDNs. In conjunction with the designation of Rusal, En+, and ESE, OFAC has issued a series of short-term general licenses that authorize U.S. persons to transact with those companies in limited circumstances, principally to maintain and wind down pre-existing business relationships. There have been some uncertainties, however, as to the scope of authorized maintenance and wind-down-related activities. Moreover, these authorizations do not cover new business, and thus the SDN listings, even with the general licenses, have been increasingly limiting the ability of U.S. companies (and non-U.S. companies seeking to avoid application of secondary sanctions) to continue ongoing business with these companies and their subsidiaries.

The proposed delisting of Rusal, En+, and ESE comes after several months of negotiation with U.S. authorities, a result of which was an agreement reducing Mr. Deripaska's direct and indirect shareholdings in these companies below 50% and the adoption of other internal reforms and safeguards to further reduce Mr. Deripaska's involvement and control. (The terms of this agreement are outlined in OFAC's letter to Congress noted above.)

Under CAATSA, a modification to the Russia sanctions measures, such as the removal of Rusal, En+, and ESE from the SDN List, requires 30 days advance notification to Congress. During that time, both houses of Congress can disapprove of the proposed action by joint resolution. Senator Chuck Schumer (D-NY), the Senate Minority

Leader, introduced a resolution of disapproval in the Senate. Although this resolution received a majority of 57 votes (including 12 Republicans), it fell short of the 60 votes needed to advance. The House of Representatives also subsequently passed a resolution of disapproval by a lopsided 362 to 53 vote. However, without final Senate approval the joint resolution will fail.

On January 16, 2019, OFAC issued two new general licenses (see [here](#) and [here](#)) extending the authorization period to maintain and wind down pre-existing business relationships with Rusal, En+, and ESE to January 28, 2019. Accordingly, barring unforeseen circumstances, the delisting of these entities will occur on or before the expiry of the revised general licenses.

The delisting of Rusal, En+, and ESE does not extend to Mr. Deripaska himself, who will remain an SDN, or to other companies he owns or controls that were designated as SDNs, such as GAZ Group. Additionally, any entity in which Mr. Deripaska has a 50% or greater ownership interest, directly or indirectly, must be treated as an SDN even if not specifically identified on the SDN List.

It should be noted that certain reporting requirements remain in force for all U.S. persons engaging in transactions that involve Rusal, En+, and ESE pursuant to the general licenses mentioned previously. Specifically, OFAC requires a report of all transactions within 10 days after the expiration of the operative general license. These reports must detail the names and addresses of all parties involved, the type and scope of activities conducted under the general license, and the dates on which those activities occurred. It is likely that OFAC will revoke the general licenses related to Rusal, En+, and ESE on the day those entities are delisted or the licenses will be allowed to expire on January 28. If that occurs, reports will be due 10 days after the date of revocation or date of expiration, unless OFAC modifies the reporting requirement in connection with the termination of the general licenses. Failure to submit the required reports could result in OFAC finding that the underlying transactions were not authorized by the general licenses.

Finally, one potential result of the congressional challenge to the proposed delisting of Rusal, En+, and ESE from the SDN List is that the Administration may in the future be reluctant to designate companies on the SDN List only on the basis of majority ownership or control by a Russian oligarch, but instead rely on parties to be aware of and comply with OFAC's "50% rule," an interpretation of the sanctions laws under which any entity that is owned 50% or more directly or indirectly by one or more SDNs must itself be treated as an SDN even if it is not specifically identified on the SDN list. The administration could take the view that, for companies caught under the 50% rule, it could negotiate to reduce SDN ownership below the 50% threshold and, because specific removal from the SDN List would not be necessary, the 30-day notification requirement under CAATSA is not triggered. This potential outcome further underscores the need for thorough diligence on transaction parties in Russia (as well as other higher-risk jurisdictions) to determine the complete ownership structure and confirm that no direct or indirect shareholders are on the SDN list.

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The international trade practice group of K&L Gates is available to assist with these developments and with questions regarding compliance with international trade laws.

Notes

[1] An OFAC press release announcing this action can be found [here](#).

KEY CONTACTS



STEVEN F. HILL
PARTNER

WASHINGTON DC
+1.202.778.9384
STEVEN.HILL@KLGATES.COM



JEROME J. ZAUCHA
SENIOR OF COUNSEL

WASHINGTON DC
+1.202.778.9013
JEROME.ZAUCHA@KLGATES.COM



JEFFREY ORENSTEIN
PARTNER

WASHINGTON DC
+1.202.778.9465
JEFFREY.ORENSTEIN@KLGATES.COM

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