Trade Compliance Flash: OFAC Amends Directives 1 and 2 to Tighten Sanctions on Russian Finance and Energy Sectors

International Alert
10.02.2017

As required by the Countering Russian Influence in Europe and Eurasia Act of 2017 (CRIEEA), on September 29, 2017, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC), amended Directives 1 and 2 issued under Executive Order 13662, which imposed sanctions on the Russian financial and energy sectors.

Effective as of November 28, 2017, the amended Directives will further limit transactions or dealings by U.S. persons or in the United States in debt issued by persons designated under the Directives on or after the effective date by shortening the maturity periods of debt not subject to the Directives.

CRIEEA also requires amendments to Directive 4, which focuses on certain other types of transactions in the Russian energy sector, but OFAC has until early November to amend this directive.

Under the amended Directive 1, transactions or other dealings by U.S. persons or in the United States in debt of longer than 14 days maturity of persons designated under Directive 1 issued on or after the effective date of November 28, 2017 will be prohibited. Through November 27, the provisions of Directive 1 will continue to prohibit dealings in debt of longer than 30 days maturity issued by designated entities in the Russian financial sector, such as Sberbank, VTB Bank, and Vnesheconombank. The provisions of Directive 1 related to new equity remain in place and are not affected by the amendment.

Under the amended Directive 2, transactions or other dealings by U.S. persons or in the United States in debt of longer than 60 days maturity of persons designated under Directive 2 issued on or after the effective date of November 28, 2017 will be prohibited. Through November 27, the provisions of Directive 2 will continue to prohibit dealings in debt of longer than 90 days maturity issued by designated Russian oil companies – e.g., Rosneft, Gazprom Neft, and Transneft.

The amendments were not accompanied by new designations. Furthermore, although the relevant OFAC guidance was updated to reflect the amendments to Directives 1 and 2, no additional substantive guidance was issued. FAQ 371 continues to provide that “debt” includes “bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper.”

The CRIEEA requirement to amend Directives 1, 2, and 4 can be rescinded only by another congressional statute, rather than by a unilateral decision of the president or OFAC. CRIEEA also codified of the Russia/Ukraine-related executive orders, including Executive Order 13662 under which the sectoral sanctions were imposed. The result is that flexibility of the president and the administration to alter the Russia/Ukraine-related sanctions regime is extremely limited.

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