

OFAC to delist prominent Russian companies, announces new designations

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On December 19, 2018, the Department of Treasury's Office of Foreign Assets Control (OFAC) notified Congress of its intention to terminate in 30 days sanctions imposed on three companies tied to sanctioned individual Oleg Deripaska.¹ Simultaneously, OFAC separately designated additional Russian individuals and entities over allegations of acting on behalf of Oleg Deripaska, election interference, cyber hacking of several international nonpolitical organizations, and the March 2018 Novichok nerve agent attack.²

Notification of Intention to Delist En+, Rusal, and ESE

Earlier this year, on April 6, 2018, OFAC added En+ Group plc (En+), UC Rusal plc (Rusal), and JSC EuroSibEnergo (ESE) to the List of Specially Designated Nationals and Blocked Persons (SDN List).³ OFAC designated En+ for being owned or controlled by sanctioned Russian individual Oleg Deripaska and other entities he owns or controls, directly or indirectly.⁴ In that same action, OFAC designated Rusal – the second-largest aluminum producer in the world – for being owned or controlled by En+, directly or indirectly. OFAC also designated ESE, a wholly owned subsidiary of En+, for being owned or controlled by Oleg Deripaska and En+, directly or indirectly.⁵

On December 19, 2018, OFAC notified Congress of its intention to terminate the sanctions imposed on En+, Rusal, and ESE in 30 days.⁶ According to OFAC, the Department of Treasury (Treasury) has established a

¹ <https://home.treasury.gov/news/press-releases/sm576>.

² <https://home.treasury.gov/news/press-releases/sm577>.

³ <https://www.whitecase.com/publications/alert/us-sanctions-prominent-russian-individuals-and-companies>.

⁴ Mr. Deripaska is designated (1) pursuant to Executive Order (E.O.) 13661 for having acted or purported to act for or on behalf of a senior Russian government official, and (2) pursuant to E.O. 13662 for operating in the energy sector of the Russian Federation economy.

⁵ On April 6, 2018, OFAC designated seven Russian "oligarchs," including Oleg Deripaska, and 12 companies they own or control. This action also targeted 17 senior government officials as well as a state-owned Russian weapons trading company and its subsidiary, a Russian bank.

⁶ The date corresponding to the 30-day deadline is January 18, 2019.

framework through a binding “Terms of Removal” agreement with the three companies, which entails significant restructuring and corporate governance changes for En+, Rusal, and ESE.⁷ This agreement will enable these companies to meet the criteria for delisting, the terms of which include: (i) reducing Mr. Deripaska’s direct and indirect shareholding stake in all three companies; (ii) overhauling the composition of the En+ and Rusal boards of directors; (iii) taking other restrictive steps related to the companies’ corporate governance; and (iv) committing to full transparency with Treasury by undertaking extensive, ongoing auditing, certification, and reporting requirements. According to OFAC, the companies’ compliance with the terms of their removal from the SDN List will be closely monitored and OFAC reserves the right to relist the companies should they fail to comply with the Terms of Removal. Mr. Deripaska will remain on the SDN List.

The Countering America’s Adversaries Through Sanctions Act (“CAATSA”) requires the submission of a report to Congress, which triggers a 30-day review period, before the President can take specified actions that eliminate or reduce sanctions on Russia.⁸ Under CAATSA Section 216, Congress may either approve or disapprove of the notified action, in this case delisting, by passing a joint resolution. If Congress enacts a joint resolution approving the delisting, which it may do at any time within the 30-day period, OFAC may proceed with delisting. If Congress takes no action during the 30-day review period, OFAC may proceed with the delisting at the end of the 30-day period. If Congress alternatively passes a joint resolution disapproving the delisting, the President may veto the disapproval resolution, allowing OFAC to proceed with the delisting unless Congress votes to override the veto. If a disapproval resolution is ultimately enacted, OFAC may not proceed with the delisting.⁹

For parties designated on the SDN List, all of their property and interests in property located in the United States or within the possession or control of a US person¹⁰, wherever located, are considered blocked and may not be dealt in. Any entity in which one or more blocked persons directly or indirectly holds a 50 percent or greater ownership interest in the aggregate is itself considered blocked by operation of law. US persons may not engage in any dealings, directly or indirectly, with blocked persons.

Additional Russian Designations

Also on December 19, 2018, OFAC added 18 individuals and 4 entities to the SDN List for the following reasons: (1) actions relating to Oleg Deripaska, (2) interference in US elections, (3) hacking of several international nonpolitical organizations, and (4) the March 2018 Novichok nerve agent attack.

Specifically, OFAC designated a former officer of Russia’s Main Intelligence Directorate (GRU) for having acted on behalf of sanctioned individual Oleg Deripaska. OFAC also issued new designations related to the Internet Research Agency (IRA), an entity sanctioned on March 15, 2018 for its efforts to interfere in US elections.¹¹

⁷ https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/20181219_notification_removal.pdf.

⁸ En+, Rusal, and ESE were designated pursuant to authority provided under E.O. 13661 and E.O. 13662, authorities codified by CAATSA, as well as E.O. 13582.

⁹ See CAATSA § 216(b). The specific procedures are as follows:

- If Congress were to pass a joint resolution, the President may (1) sign it into law within 10 days (excluding Sundays) beginning at midnight on the date it is presented to the President; (2) allow it to become law without his signature (at the end of the 10-day period); or (3) veto it. CAATSA prohibits the President from implementing the sanctions relief during this period (*i.e.*, it specifically prohibits him from taking such action during the 12 calendar days following Congressional passage of the joint resolution).
- If the President vetoes the disapproval resolution, he cannot implement the sanctions relief during a 10-day period following his veto. If Congress overrides the Presidential veto within the 10-day period (which requires an affirmative two-thirds vote in both chambers) the disapproval resolution will be enacted and OFAC cannot proceed with the delisting. If Congress fails to override the President’s veto within the 10-day period, OFAC may proceed with the delisting.

¹⁰ US persons include US citizens and permanent residents, wherever located, entities organized under US law (including foreign branches), and parties located within the United States.

¹¹ <https://home.treasury.gov/news/press-releases/sm0312>.

The sanctions also include the designation of 15 members of the GRU, a previously designated Russian military intelligence organization, for their involvement in “a wide range of malign activity, including attempting to interfere in the 2016 US election, efforts to undermine international organizations through cyber-enabled means, and an assassination attempt in the United Kingdom.”¹² These 15 GRU operatives are being sanctioned pursuant to CAATSA. Under the Trump Administration, Treasury has sanctioned 272 Russia-related individuals and entities, including 150 individuals and entities under Ukraine/Russia-related sanctions authorities codified by CAATSA.¹³

Oleg Deripaska Related Designation

Victor Alekseyevich Boyarkin was designated pursuant to E.O. 13661 and 13662 for having acted or purported to act on behalf of Oleg Deripaska.

According to OFAC, Mr. Boyarkin is a former GRU officer who reported directly to Oleg Deripaska and has led business negotiations on Mr. Deripaska’s behalf. Treasury’s press release states that Mr. Deripaska and Mr. Boyarkin were involved in providing Russian financial support to a Montenegrin political party ahead of Montenegro’s 2016 elections.¹⁴

Attempted US Election Interference

OFAC also designated several entities and individuals related to “Project Lakhta,” which according to Treasury is a broad Russian effort that includes the IRA—designated previously under E.O. 13694, as amended—which “has sought to interfere in political and electoral systems worldwide.” According to Treasury’s press release, since at least 2014 Project Lakhta has pursued efforts to interfere in US elections, as the IRA did during the 2016 US election.

According to Treasury’s press release, since 2014, Project Lakhta concealed its activities by operating through several entities including the IRA, Nevskiy News LLC, Economy Today LLC, and the Federal News Agency LLC. The IRA was designated on March 15, 2018; the latter three entities were designated on December 19, 2018, pursuant to E.O. 13694, as amended, for being owned or controlled by or having acted or purported to act for or on behalf of, directly or indirectly, Concord Management and Consulting LLC and Concord Catering.¹⁵

After the designation of the IRA in March 2018, the Federal News Agency LLC announced that it was creating a new Russian-funded, English-language website called USA Really, which was also designated on December 19, 2018, pursuant to E.O. 13694, as amended, for being owned or controlled by the Federal News Agency LLC. Additionally, USA Really’s operator Alexander Aleksandrovich Malkevich and the Chief Accountant of Project Lakhta’s finance department Elena Alekseevna Khusyaynova were designated by OFAC.

Furthermore, nine Russian GRU officers were designated for their direct involvement in efforts to interfere in the 2016 US election by targeting election systems and political parties, as well as releasing stolen election-related documents. These individuals are also subjects of a grand jury indictment for hacking offences related to the 2016 election, which was announced by the Department of Justice (DOJ) on July 13, 2018.¹⁶

These nine GRU officers have been designated pursuant to CAATSA Section 224 for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution or government, on behalf of the Government of the Russian Federation, and for acting or purporting to act for or on behalf of, directly or indirectly, the GRU.

¹² <https://home.treasury.gov/news/press-releases/sm577>.

¹³ <https://www.whitecase.com/publications/alert/us-expands-russian-defense-and-intelligence-sanctions-targets-chinese-parties>.

¹⁴ <https://home.treasury.gov/news/press-releases/sm577>.

¹⁵ Concord Management and Consulting LLC and Concord Catering were designated pursuant to E.O. 13694, as amended, on March 15, 2018 for providing funding to the IRA’s operations.

¹⁶ <https://www.justice.gov/opa/pr/grand-jury-indicts-12-russian-intelligence-officers-hacking-offenses-related-2016-election>.

Cyber Hacking of International Organizations

Four GRU officers – Aleksei Morenets, Evgenii Serebriakov, Oleg Sotnikov, and Alexey Minin – were designated on December 19, 2018, under CAATSA Section 224 for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution or government, on behalf of the Government of the Russian Federation, and for acting or purporting to act for or on behalf of, directly or indirectly, the GRU.

According to Treasury, between 2016 and 2018, Russia targeted the World Anti-Doping Agency (WADA), the Organization for the Prohibition of Chemical Weapons (OPCW), and other international nonpolitical organizations using cyber hacking techniques.

On October 4, 2018, the DOJ indicted and Dutch authorities announced the expulsion of four GRU officers involved in malicious cyber activity targeting the OPCW, the international organization responsible for eradicating chemical weapons worldwide under a United Nations mandate.

In 2016, WADA announced that malicious actors, now alleged to be the GRU, had accessed data on its networks through spear phishing attacks and then illegally released confidential medical data pertaining to professional athletes, with modifications from the original records in some instances. Two of the GRU officers involved in the OPCW cyber attacks played an integral role in the WADA hacking, according to OFAC.

Novicok Nerve Agent Attack

OFAC also designated Alexander Petrov and Ruslan Boshirov, who, according to Treasury's press release, are the GRU officers who attempted to assassinate Sergei Skripal and his daughter by using a military grade nerve agent called Novichok in Salisbury, England. This attack resulted in Mr. Skripal, his daughter, and a police officer being injured. Additionally, months later, two other British nationals were exposed to the agent, one of whom died as a result.

Mr. Petrov and Mr. Boshirov were designated pursuant to CAATSA Section 224 for acting or purporting to act for or on behalf of, directly or indirectly, the GRU.

These are not the first sanctions in relation to the Novicok nerve agent attack. Previously, in August 2018, the Department of State imposed sanctions with respect to Russia pursuant to Section 307(a) of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.¹⁷ Those sanctions continue to remain in place.

Designated Individuals and Entities

In sum, the following individuals have been added to OFAC's SDN List as a result of actions taken by OFAC on December 19, 2018:

- ANTONOV, Boris Alekseyevich, Russia; DOB 19 Dec 1980; nationality Russia; Gender Male (individual) [CAATSA - RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).
- BOYARKIN, Victor Alekseyevich (Cyrillic: БОЯРКИН, Виктор Алексеевич) (a.k.a. BOYARKIN, V.A. (Cyrillic: БОЯРКИН, В.А.); a.k.a. BOYARKIN, Victor; a.k.a. BOYARKIN, Victor Alekseevich; a.k.a. BOYARKIN, Viktor), #189, 20, BLD1, Generala Beloborodova, Moscow, Federal District 125222, Russia; DOB 12 Oct 1958; POB Meschovsk, Russia; nationality Russia; citizen Russia; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport 200042334 (Russia); alt. Passport 642348547 (Russia) (individual) [UKRAINE-EO13661] [UKRAINE-EO13662] (Linked To: DERIPASKA, Oleg Vladimirovich).
- CHEPIGA, Anatoliy Vladimirovich (a.k.a. BOSHIROV, Ruslan), Moscow, Russia; DOB 05 Apr 1979; alt. DOB 12 Apr 1978; POB Nikolaevka, Amur Oblast, Russia; alt. POB Dushanbe, Tajikistan; nationality

¹⁷ <https://www.whitecase.com/publications/alert/united-states-imposes-sanctions-related-russias-use-chemical-weapons>.

Russia; Gender Male (individual) [CAATSA - RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

- KHUSYAYNOVA, Elena Alekseevna, St. Petersburg, Russia; DOB 17 Feb 1974; Gender Female; Passport 639092215 (Russia) (individual) [CYBER2] (Linked To: LIMITED LIABILITY COMPANY CONCORD MANAGEMENT AND CONSULTING).
- KOVALEV, Anatoliy Sergeyeovich, Russia; DOB 02 Aug 1991; nationality Russia; Gender Male (individual) [CAATSA - RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).
- KOZACHEK, Nikolay Yuryevich, Russia; DOB 29 Jul 1989; nationality Russia; Gender Male (individual) [CAATSA - RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).
- LUKASHEV, Aleksey Viktorovich, Russia; DOB 07 Nov 1990; nationality Russia; Gender Male (individual) [CAATSA - RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).
- MALKEVICH, Alexander Aleksandrovich, St. Petersburg, Russia; DOB 14 Jun 1975; POB Leningrad, Russia; Gender Male; Passport 717637093 (Russia); National ID No. 781005202108 (individual) [CYBER2] (Linked To: USA REALLY).
- MALYSHEV, Artem Andreyevich, Russia; DOB 02 Feb 1988; nationality Russia; Gender Male (individual) [CAATSA - RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).
- MININ, Alexey Valerevich, Russia; DOB 27 May 1972; nationality Russia; Gender Male; Passport 120017582 (individual) [CAATSA - RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).
- MISHKIN, Alexander Yevgeniyevich (a.k.a. PETROV, Alexander), Moscow, Russia; DOB 13 Jul 1979; POB Loyga, Russia; alt. POB Kotlas, Russia; nationality Russia; Gender Male (individual) [CAATSA - RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).
- MORENETS, Aleksei Sergeyeovich, Russia; DOB 31 Jul 1977; nationality Russia; Gender Male; Passport 100135556 (individual) [CAATSA - RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).
- NETYKSHO, Viktor Borisovich, Russia; DOB 08 Sep 1966; nationality Russia; Gender Male (individual) [CAATSA - RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).
- OSADCHUK, Aleksandr Vladimirovich, Russia; DOB 17 Nov 1962; nationality Russia; Gender Male (individual) [CAATSA - RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).
- POTEMKIN, Aleksey Aleksandrovich, Russia; DOB 20 Mar 1983; nationality Russia; Gender Male (individual) [CAATSA - RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).
- SEREBRIAKOV, Evgenii Mikhaylovich, Russia; DOB 26 Jul 1981; nationality Russia; Gender Male; Passport 100135555 (individual) [CAATSA - RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).
- SOTNIKOV, Oleg Mikhaylovich, Russia; DOB 24 Aug 1972; nationality Russia; Gender Male; Passport 120018866 (individual) [CAATSA - RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).
- YERMAKOV, Ivan Sergeyeovich, Russia; DOB 10 Apr 1986; nationality Russia; Gender Male (individual) [CAATSA - RUSSIA] (Linked To: MAIN INTELLIGENCE DIRECTORATE).

In addition, the following entities have been added to OFAC's SDN List:

- ECONOMY TODAY LLC (a.k.a. EKONOMIKA SEGODNYA), d. 19 Litera A. Pom. 423, Ul. Zhukova, St. Petersburg, Russia [CYBER2] (Linked To: LIMITED LIABILITY COMPANY CONCORD MANAGEMENT AND CONSULTING).

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- FEDERAL NEWS AGENCY LLC (a.k.a. FEDERALNOE AGENTSTVO NOVOSTEI OOO), d. 18 litera A. pom. 2-N, UL. Vsevoloda Vishnevskogo, St. Petersburg, Russia; Moscow, Russia [CYBER2] (Linked To: LIMITED LIABILITY COMPANY CONCORD MANAGEMENT AND CONSULTING).
 - NEVSKIY NEWS LLC (a.k.a. NEVNOV; a.k.a. NEVSKIYE NOVOSTI), d. 11 korp. 2 pom. 327-N, ul. Staroderevenskaya, St. Petersburg, Russia [CYBER2] (Linked To: LIMITED LIABILITY COMPANY CONCORD MANAGEMENT AND CONSULTING).
 - USA REALLY, St. Petersburg, Russia; Moscow, Russia; Website www.usareally.com [CYBER2] (Linked To: FEDERAL NEWS AGENCY LLC).

State Department Concurrent Action

In a concurrent action, the State Department added 12 individuals and entities to the List of Specified Persons (LSP) pursuant to Section 231 of CAATSA for being part of, or operating for or on behalf of, the defense or intelligence sector of the Government of the Russian Federation.¹⁸ Any person determined to knowingly engage in a significant transaction with any LSP-listed person will be subject to CAATSA Section 231 sanctions.

The following individuals and entities were added to the LSP in addition to SDN designation: Chepiga, Anatoliy; Khusyaynova, Elena Alekseevna; Malkevich, Alexander Aleksandrovich; Minin, Alexey; Mishkin, Alexander; Morenets, Aleksei; Serebryakov, Evgenii; Sotnikov, Oleg; Economy Today LLC; Federal News Agency LLC; Nevskiy News LLC; USA Really.

Conclusion

These developments place additional importance on screening transaction parties and their ownership structures for US sanctions risk. Failure to do so may result in non-compliance and could result in severe penalties for sanctions violations.

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¹⁸ <https://www.state.gov/r/pa/prs/ps/2018/12/288213.htm>.