

ALERT

OFAC Announces Intent to Terminate Sanctions on En+ Group, Rusal, and EuroSibEnerg

December 20, 2018

In a letter dated December 19, 2018, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) notified Congress that it intends to terminate its sanctions on En+ Group plc (En+), aluminum giant UC Rusal plc (Rusal), and JSC EuroSibEnerg (ESE) in 30 days. The three Russian companies were designated as Specially Designated Nationals (SDNs) in April of this year because of their ties to Russian oligarch Oleg Deripaska.

The current sanctions on En+, Rusal, and ESE are broad in scope. Assets of SDNs are blocked, and U.S. persons generally are prohibited from engaging in transactions with SDNs, as well as entities 50% or more owned by SDNs. Additionally, non-U.S. persons can be subject to sanctions for knowingly facilitating "significant transactions" for or on behalf of Russian SDNs. As such, it is no surprise that the April designations of En+, Rusal, and ESE sent ripples throughout the marketplace, particularly the aluminum market, although the impact of OFAC's sanctions was blunted somewhat by general licenses—or broad authorizations—that permitted companies to continue doing certain business with the three Russian entities.

In its letter, OFAC justified removal of the Russian companies from its SDN List by citing a number of changes and commitments made by the companies, including corporate restructuring that will reduce Deripaska's ownership stake in En+ (the parent company) from 70 percent to 44.95 percent; limits on Deripaska's voting rights; creation of an independent, 12 director board for En+ (with half of the board now comprised of U.S. or UK nationals); and stringent auditing, certification, and reporting requirements that will give OFAC a

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considerable level of transparency into the companies. The justification set forth by OFAC is important, as Congress could utilize provisions in the Countering America's Adversaries Through Sanctions Act (CAATSA) to attempt to block the lifting of sanctions during a 30-day review period provided for by the law if it does not believe terminating the sanctions is warranted.

The Trump administration has faced significant criticism in Congress for what many view as the administration's failure to adequately punish the Russian government for engaging in "malign" activities. Notably, on the same day that it submitted its delisting notification to Congress, OFAC also sanctioned several Russian individuals and entities for election interference, hacking of the World Anti-Doping Agency, and other bad acts. These new designations, along with the corporate changes and pledges highlighted by OFAC in its notification, may well placate Congress so that it does not oppose the delistings of En+, Rusal, and ESE, but stay tuned for further developments.