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Countering America's Adversaries Through Sanctions Act

On August 2, 2017, President Trump signed into law H.R. 3364/P.L. 115-44, the Countering America's Adversaries Through Sanctions Act. The act establishes requirements and discretionary authorities for the President to impose sanctions on Iran, Russia, and North Korea.

In signing the act, the President stated that several provisions overstep Congress's responsibilities established in the Constitution. The President identified as problematic the sections that could affect his authority to determine who gains entry into the United States (§§104, 107, 222, 224, 227, 228, 234), to recognize foreign governments (§§253, 257), or to conduct foreign policy (§§254, 257). He also noted that the congressional review procedure for Russia sanctions, established in §216, does not meet Constitutional requirements for each branch's full participation in enacting and implementing legislation (<https://www.whitehouse.gov/the-press-office/2017/08/02/statement-president-donald-j-trump-signing-hr-3364>).

Countering Iran's Destabilizing Activities Act of 2017

Title I of the act addresses Iran's missile proliferation, human rights violations, international terrorism, and activities that destabilize the Middle East. A key question is how the provisions of the act comport with U.S. sanctions relief requirements of the July 2015 multilateral nuclear agreement, the Joint Comprehensive Plan of Action (JCPOA). According to that agreement, sanctions lifted to implement the JCPOA—affecting Iran's civilian economy, such as its energy, banking, shipping, manufacturing, and other sectors—are not to be reimposed. The act's Iran-related provisions mandate sanctions already established in executive orders (EOs) that address proliferation, terrorism, and human rights issues and do not appear to reimpose U.S. sanctions that were suspended to implement the JCPOA. The main operative provisions

- require imposition of penalties similar to those in EO 13382 (weapons proliferation) on entities determined by the Administration to be assisting Iran's ballistic missile program (§104).
- require imposition of sanctions contained in EO 13224 (terrorism) on the Iranian Revolutionary Guard Corps (IRGC), its officials, agents, and affiliates. Currently, the IRGC as a whole is sanctioned under several other EOs, including EO 13382 (proliferation), but not under EO 13224. The IRGC's Qods Force, which supports pro-Iranian governments and factions throughout the Middle East, is designated under EO 13224 (§105).
- authorize, but do not require, sanctions (such as those in EO 13553 on human rights abusers) on persons responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human

rights in Iran. The section has the effect of expanding the authority of EO 13553, which generally refers to human rights abuses against Iranians in connection specifically with the 2009 uprising in Iran (§106).

- require sanctions (those in EO 13382) on entities that sell weapons to Iran. The weapons systems specified are the same as those that U.N. Security Council Resolution 2231 generally prohibits for sale to Iran. The provision appears to expand the definition of prohibited weapons sales to Iran beyond those in current law, such as the Iran-Iraq Arms Nonproliferation Act, which imposes sanctions on those who trade in “destabilizing numbers and types” of conventional weapons (§107).
- require review of designated entities to assess if such entities contribute to Iran's ballistic missile program or to Iranian support for international terrorism. No entities to be delisted by the United States in October 2023, under the JCPOA, appear to fall into these categories; thus the requirement would not appear to preclude delisting any entities as required to implement the JCPOA by October 2023 (§108).

Countering Russian Influence in Europe and Eurasia Act of 2017

Title II strengthens Ukraine- and cyber-related sanctions on Russia, currently established in executive orders. It requires the President to impose sanctions in areas that are currently left to his discretion for activities discussed below, and establishes a mechanism for Congress to review any action the President takes to ease or lift sanctions.

Codifying and Tightening Existing Sanctions

The act makes permanent Ukraine-related sanctions provided for in four EOs from 2014 (EOs 13660, 13661, 13662, 13685) unless certain conditions are met and Congress reviews any proposed changes (§222). The act also makes permanent cyber-related sanctions provided for in EO 13694 related to malicious cyber-enabled activities, as amended by EO 13757, which expands the scope of the original order to include election-related activities (§222).

The act strengthens sectoral sanctions provided for in EO 13662 to prohibit persons under U.S. jurisdiction from providing goods, services, and technology in support of exploration or production for deepwater, Arctic offshore, and shale oil projects in Russian territory to such projects worldwide that involve any designated persons that have an ownership interest of not less than 33 percent (§223).

The act restricts new lending to designated financial institutions to a maturity of up to 14 days (down from 30 days) and to designated energy companies to a maturity of no more than 60 days (down from 90 days) (§223).

The act enlarges the scope of prohibited cyber-related activities to include a range of activities conducted on behalf of the Russian government that undermine the cybersecurity of any U.S. or foreign person (§224).

Mandating Existing Discretionary Sanctions

The act (§225, §226) requires sanctions—currently discretionary, under the Ukraine Freedom Support Act of 2014 (P.L. 113-272)—on foreign persons who make “a significant investment” in special oil projects in Russia, and on foreign financial institutions that fund such projects; foreign financial institutions that engage in transactions related to defense articles that end up in Syria, or in Ukraine, Georgia, or Moldova (or other countries as designated by the President) without the consent of their governments; and foreign financial institutions that engage in transactions for any person subject to Ukraine-related sanctions.

The act makes mandatory sanctions that are currently discretionary, under the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (P.L. 113-95). These sanctions target Russian government officials, associates, family members, and others responsible for committing or facilitating acts of corruption (§227).

Requiring New Sanctions

The act requires sanctions on foreign persons who violate sanctions, facilitate transactions for designated persons and their relatives (§228), are responsible for or support serious human rights abuses in territory Russia occupies or controls (§228), or provide support to Syria (§234).

The act also requires restrictions on U.S. or foreign persons who engage in significant transactions with persons related to Russia’s defense or intelligence sectors (§231), or make or facilitate investments of \$10 million or more that contribute to Russia’s privatization of state-owned assets where the privatization is a factor in corruption (§233).

Authorizing New Discretionary Sanctions

The act authorizes, but does not require, sanctions on U.S. or foreign persons who trade or make investments of a certain value that enhance Russia’s ability to construct energy export pipelines (§232).

Congressional Review

The act adds to each existing legislative and executive branch action referred to in Title II—including the blocking of Russian access to diplomatic compounds in Maryland and New York—specific conditions that the President would certify have been met when he takes steps to waive or terminate a restriction, at which point Congress could adopt a Joint Resolution of Disapproval to block the President’s decision. Congress, however, is not required to approve the President’s actions. If Congress agrees with the President, he could ease or lift sanctions without Congress weighing in. Each existing sanction, and modifications or additional requirements to impose new sanctions stated in the act, would be subject to congressional review under Section 216 before they could be waived or terminated.

Korean Interdiction and Modernization of Sanctions Act

Title III strengthens the use of sanctions—in part by amending the North Korea Sanctions and Policy Enhancement Act of 2016 (P.L. 114-122)—on those who facilitate North Korea’s nuclear weapons and missile programs. It both requires and authorizes sanctions on those who evade U.N. sanctions, use DPRK exported labor, provide correspondent banking, or trade in DPRK’s exports in fuel, textiles, food and agricultural products.

Possible Designation as a State Sponsor of Terrorism

The act requires the Secretary of State to determine, within 90 days, whether DPRK “meets the criteria for designation as a state sponsor of terrorism” (§324).

Mandatory Sanctions

The act expands the categories of activities of those whom the President must designate as subject to sanctions, to include those who purchase various precious metals and rare earth elements from DPRK; provide to DPRK fuel and related services, vessel registration, or insurance; or maintain a correspondent bank account with any DPRK financial institution (§311(a)).

In addition, the act names specific entities for which Congress requires a determination as to whether each should be subject to sanctions under the 2016 Act (§311(d)); denies access to the U.S. financial systems to any foreign financial institution that is indirectly providing banking services to a North Korean entity or person subject to sanctions (§312); and restricts U.S. foreign aid to any foreign government found not to be in compliance with UNSC sanctions requirements (§313).

The act requires the President to identify foreign seaports and airports that fail to adequately inspect and interdict vessels (authorizing seizure of such vessels); names a number of ports in China, Iran, Russia, and Syria in which Congress is particularly interested (§314); and blocks U.S. importation of goods made by slave labor (§321).

Discretionary Sanctions

The act authorizes the President to impose sanctions on those who violate UN Security Council sanctions requirements related to DPRK; acquire coal, iron, or iron ore from DPRK in excess of UNSC limits; acquire textiles, fishing rights, food, agricultural products; hire exported labor; trade in property or bulk cash, precious metals, or gemstones; sell fuel to DPRK; engage in online commercial activities run by the North Korean government; engage in DPRK’s transportation, mining, energy, or financial services sectors; or facilitate the opening and operation of a DPRK financial institution (§311(b)).

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