
US Sanctions in Respect of Nord Stream 2 / Turk Stream Gas Projects

July 2020

As noted in a [previous website article](#), the US Government has for some time applied sanctions in respect of certain European energy programmes in which Russia plays a significant role. Those sanctions are targeted at limiting Russia's influence over Europe's energy requirements, in particular the development of the Nord Stream 2 pipeline between Russia and Germany via the Baltic Sea, and the Turk Stream pipeline connecting Russia with Turkey via the Black Sea. The sanctions target the provision of cable-laying and other ships used in such projects, and a number of related services which could include the provision of P&I insurance. In recent weeks, the scope of those sanctions has been widened. Members are invited to take note of the developments set out below and, if affected by any of them, to contact the Managers for further advice and assistance.

Countering America's Adversaries Through Sanctions Act (CAATSA) 2017

The current US sanctions are based on the Countering America's Adversaries Through Sanctions Act (CAATSA) of 2017 which includes a provision (Section 232) allowing the US Government to impose sanctions in respect of certain activities related to the construction of energy export pipelines from Russia. The sanctions authority under CAATSA was discretionary. In addition related State Department [guidance](#) indicated that only projects initiated after CAATSA's enactment (2 August 2017) would be subject to sanctions, thereby effectively excluding Nord Stream 2 and Turk Stream.

On 15 July 2020 the US Government issued [updated guidance](#) indicating that involvement in gas projects pre-dating 2 August 2017 (including Nord Stream 2 and Turk Stream) would be targeted under Section 232 of CAATSA. The reasoning for the change of approach is explained as follows:

"Russia uses its energy export pipelines to create national and regional dependencies on Russian energy supplies and leverages these dependencies to expand its political, economic, and military influence and undermine U.S. national security and foreign policy interests. In this context, Nord Stream 2 and the second line of TurkStream – both of which are under construction – could undermine Europe's energy security by maintaining Russia's dominant share in Europe's gas markets for decades, discouraging investment in critical diversification projects, and limiting the ability of European countries to gain leverage over Russia on issues of price, commercial transparency, and the environment...The development of these projects also provides Russia with vehicles to further spread its malign influence in Europe".

With effect from 15 July 2020 persons involved in the financing, construction, pipelaying or related services for the targeted projects are at risk of being sanctioned if they cannot demonstrate that their continued involvement going forward only involves winding down activities.

In practical term these sanctions apply to activities related to, *inter alia*:

- the Nord Stream 2 pipeline, which if completed would deliver Russian natural gas to Germany;
- the Turk Stream project, which connects Russia with Turkey via the Black Sea. This was partially completed in January 2020. The widening of US sanctions would impact on the second line of the Turk Stream project.

Protecting Europe’s Energy Security Act of 2019 (“PEESA”)

A second limb of the US strategy against Russian energy export projects involves the Protecting Europe’s Energy Security Act of 2019 (“PEESA”), which formed part of the National Defense Authorization Act for Fiscal Year (“NDAA”) 2020, which was passed on 20 December 2019.

PEESA requires the US Secretary of State to issue a report within 60 days, and every 90 days thereafter, on:

(a) vessels engaging in pipe-laying activities for the construction of the Nord Stream 2 pipeline, the Turk Stream pipeline, or any successor project(s); and

(b) foreign persons determined to have knowingly:

- (i) sold, leased, or provided such vessels for the construction of any such pipeline; or
- (ii) facilitated deceptive or structured transactions to provide such vessels for such projects.

The application of the following sanctions would be mandatory:

(a) non-US persons would have any of their assets which are or which become subject to US jurisdiction frozen;

(b) the directors and principal shareholders of any company owning a vessel identified in such reports would be denied visas and prohibited from entering the US.

On 4 June 2020 a bi-partisan group of US senators introduced a bill - the "Protecting Europe's Energy Security Clarification Act," – that would, if passed, expand sanctions under PEESA to include penalties on parties involved in a wider range of activities related to pipe-laying. The amendment identifies the following as being targeted - "...activities that facilitate pipe-laying, including site preparation, trenching, surveying, placing rocks, backfilling, stringing, bending, welding, coating, and lowering of pipe."

In addition, the amendment would authorise the US Government to impose sanctions against providers of a number of ancillary activities including:

- (a) underwriting services, insurance, or reinsurance for vessels involved in targeted activities;
- (b) provision of services or facilities which deliver technology upgrades or installation of welding equipment for, or retrofitting or tethering of, performing vessels;
- (c) provision of services for the testing, inspection, or certification necessary for, or associated with the operation of, the targeted pipelines.

If enacted these amendments could have significant impact on the activities of non-US persons. Upon a vessel being identified in a PEESA report, the insurer of that vessel would also likely be identified, on the basis of having provided a prohibited service to the vessel. More importantly once a company is identified in the report, the imposition of sanctions would be mandatory, unlike under CAATSA.

Club Cover and Protective Steps

Members are reminded that the Club's rules and terms of entry include extensive provisions in respect of sanctions, including:

- 1) A cesser provision pursuant to which an entered vessel will cease to be insured from the point at which it is employed in a manner that may expose the member or the Club to the risk of any sanction or adverse action.**
- 2) An unlawful trading provision excluding recovery if an entered ship is employed in any way that exposes the Club to the risk of any sanction or adverse action.**
- 3) An exclusion of recovery in relation to any claim payment where such payment would expose the Club to the risk of any sanction or adverse action.**
- 4) An exclusion of liability in respect of any sums which are not recovered by the Club under its reinsurances by reason of sanctions applicable to such reinsurers.**

The expansion of the scope of existing sanctions under CAATSA, plus the mandatory nature of the sanctions under PEESA, present potentially significant sanctions risks to members involved in any of the targeted projects and activities, as well as to the Club.

The Managers invite members to carefully consider whether any of their vessels entered in the Club are or may be involved in activities which are or could be subject to these US sanctions, and if so, to consult their usual Club/Underwriting contacts as soon as possible.

Yours faithfully,

STEAMSHIP INSURANCE MANAGEMENT
SERVICES (EUROPE) LIMITED