



United States Department of State

Washington, D.C. 20520

The Honorable  
Robert Menendez, Ranking Member  
Committee on Foreign Relations  
Washington, DC 20510

DEC 17 2019

Dear Senator Menendez:

Please find enclosed the views of the Administration regarding the amendment in the nature of substitute (ANS) to S.482, Defending American Security from Kremlin Aggression Act of 2019 (DASKA), filed on December 12, 2019 for the Committee's business meeting on December 18.

Sincerely,

Mary Elizabeth Taylor  
Assistant Secretary  
Bureau of Legislative Affairs

Enclosures:

Administration Views on ANS S. 482

**S. 482, the Defending American Security from Kremlin Aggression Act of 2019 (DASKA)**  
**August 16, 2019 (updated 12/17/19)**

The Administration provides the following preliminary, informal views on S. 482, as would be revised by a substitute amendment filed on Dec. 12, 2019, by Senators Graham and Menendez. The Administration shares the goal of deterring and countering Russian subversion and aggression. However, the Administration strongly opposes this bill in its current form for the reasons detailed below. If the sponsors are willing to address the concerns described below and other technical concerns, the Administration is open to working on an improved version.

• **Top-Line Concerns**

- DASKA is unnecessary. The Administration has considerable existing robust authorities to address malign Russian behavior and to target Russian malign activity. The Administration has aggressively imposed sanctions that are targeted, tailored, and impactful to address Russian malign activities while mitigating negative effects on allies and close partners utilizing these authorities.
- DASKA has a number of constitutional problems discussed in more detail below.
- Harsh mandatory sanctions provide limited flexibility in implementation. Specifically, among the new bill's most objectionable provisions are the mandatory energy, secondary oligarch, cyber, and navigation-related sanctions that are scoped very broadly. With respect to energy sanctions specifically, the bill requires mandatory sanctions on crude development in Russia and on new investments in energy projects outside of Russia involving Russian owned entities or parastatals and adds sanctions on investments on liquefied natural gas export facilities outside of Russia. These will negatively impact other U.S. priorities, such as the Southern Gas Corridor, energy projects in the Eastern Mediterranean, and regional energy security for Egypt – as well as U.S. businesses and jobs, and global energy markets.
- Significant changes are needed. As with other sanctions legislation, among key revisions needed include: making these new sanctions permissive instead of framed as mandates; providing for an additional unconditioned waiver authority for these new sanctions--possibly vested in the Secretary of State, in consultation with the Secretary of Treasury; narrowing the scope of sanctionable misconduct because of impacts to several benign sectors with modest Russian interests and because it will roil European and U.S. commercial markets; ensuring that the provisions target significant misconduct knowingly engaged in (after the date of enactment); providing a much broader menu of penalties from which to select sanctions to otherwise mitigate the harshness of the sanctions, to name a few.
- Revisions to the waiver authority are recommended. The Administration would welcome a discussion of improved waiver authority in CAATSA, as would be amended by DASKA, so it is unconditioned without a protracted review and disapproval process as is typically included in major sanctions legislation, and edits to narrow the scope of



sanctionable activity to only misconduct that is significant and knowingly engaged in prospectively, among other edits, to mitigate negative effects on allies and partners.

- In this regard too, sec. 605 amending the Magnitsky Act waiver to make it subject to the CAATSA sec. 216 lengthy review and disapproval process is of great concern and should be stricken as it widens the range of sanctions made subject to this disruptive procedure.
- DASKA's provisions would undermine existing U.S. and EU efforts to maintain solidarity on sanctions targets. The 2019 bill's addition of sweeping, new energy (liquefied natural gas "LNG" export facilities outside of Russia) to the 2018 bill's creation of another set of sweeping mandatory sanctions authorities would likely cause significant economic damage to benign civilian American, European and global business interests.
- The bill, like its predecessor, makes any waiver of the Magnitsky Act mandatory sanctions subject to the CAATSA lengthy congressional review and disapproval process. At the same time the bill, like its predecessor, lacks an unconditioned waiver authority for all sanctions provisions in the bill, relying instead on the heavily conditioned waiver in CAATSA.
- ODNI and the IC have serious concerns with the aspects of DASKA that directly impact the IC. The DNI should not be in the position of, and should not be seen as being in the position of, automatically imposing sanctions. The IC provides assessments to Executive Branch policymakers, and then they decide what to do vis-à-vis sanctions. Any legislation in this area should separate adequately the IC and IC assessments from the policy decision to impose sanctions. In particular, the DNI should not have a joint role with the Secretary of State in any sanction-related determination/certification mechanism. In addition, any legislation not should not conflate IC assessments using confidence levels based on available information with evidentiary determinations or certifications regarding whether a foreign government is or is not engaged in or knowingly supporting certain activities. Further, in order to evaluate possible foreign interference and prepare an assessment, the IC would require sufficient time for analytic research, drafting, coordination, and review. This type of coordinated assessment would require at least 45 days, and, depending on the circumstances, 90 to 120 days following a federal election. From the standpoint of resources and impact on the IC's mission, the continuous 90-day certification of the absence of broad, vague conditions contemplated by the revised sections 602(a) and 603(a) would be wholly unworkable for the IC.
- DOJ opposes many of the INTERPOL provisions because they have been largely overtaken by reforms already instituted by INTERPOL since 2017. It would imprudently discount all notices and diffusions from a given country when making critical decisions on benefits in the United States. The vast majority of notices and diffusions represent legitimate foreign charges or investigations, even for those countries alleged to abuse the INTERPOL system. [DOJ has prepared a separate document with needed edits to section 707.]



- Implementation of DASKA would divert resources from the ongoing aggressive targeting of Russian malign actors under existing authorities, such as CAATSA, as well as from efforts with respect to Iran, North Korea, ISIS, Venezuela, Hezbollah, counterterrorism, human rights and corruption and other USG priorities. Treasury, for instance, advises that the sanctioning of the individuals and entities detailed in this bill will require the implementation of extensive mitigation measures by Treasury's OFAC.
- The Graham-Menendez substitute amendment filed Dec. 12, 2019, makes a few key revisions, most notably and problematically by adding new sections 602(a) and 603(a), that provide a trigger mechanism(as in ANS S. 2641) that essentially creates a two-step damning process requiring joint findings and certifications by both the Secretary of State and the DNI to negative circumstances—always opposed as too challenging to make—that the Russian Federation (RF) is not engaged in or knowingly supporting interference in the U.S. democratic process or in offensive military operations in Ukraine. Failure to certify operates like a finding of guilt of the RF requiring the sanctions provisions to apply—although individual determinations for each person sanctioned still must be made—and in any event these persons bear no responsibility for the RF facts that led to failure to certify. The purpose of this seems not to helpfully delay the operative sanctions provisions from applying but to provide a basis for conceding an initial broad RF culpability that taints the sanctions determinations processes.
  - Specifically new sec. 602(a) provides that pursuant to this trigger mechanism, sanctions provisions in that section will only apply if the Secretary of State and the DNI fail to jointly submit a finding and certification (required every 90 days) that the RF is not engaged in or knowingly supporting operations to interfere in the democratic process, including the administration of elections, in the United States.
  - This trigger mechanism is unmanageable, as stated in the Administration views on the ANS, S. 2641, in many respects, and would have to be vested in just the Secretary of State since the DNI assesses the reliability of information typically provided to the President or a Secretary to make the final determination. From a technical perspective, if retained the provision should be revised to vest such an authority in the Secretary of State as legislation calling for determinations is routinely formulated in a single decision-maker, and making such certifications is not within the responsibilities or mission of the DNI.
  - The trigger concept could also wreak havoc in that once the sanctions provisions become effective they could in effect be “turned on and off” by subsequent certifications finding no Russian interference. More substantively, this trigger which purports to be a delay mechanism requires findings and a certification as to a very vague, exceedingly broad, and not necessarily even very significant misconduct, e.g., that the RF is not engaged in or knowingly supporting operations to interfere in the democratic process, including the administration of elections, in the United States. If intended to draw out the process of applying sanctions or make it more rigorous, it does not state useful, clear or even significant, high thresholds of misconduct that need to be surpassed to justify sanctions. It creates a new very low threshold indeed that may be impossible to certify to that Russia is not doing anything malign- a



negative certification that seems impossible to make and which failure seems designed to stigmatize the RF immediately for facts establishing a negative that cannot be attested to.

The section 602 trigger mechanism is designed for failure. It requires certifying to a negative, that the RF is not engaged in or knowingly supporting operations to interfere in the US democratic process (which is always opposed due to the challenges of attesting to the absence of facts). This essentially sets up a 2 step process, so the sanctions provisions become effective as of the date of enactment but do not apply or become operative until the Secretary of State and DNI fail to make a certification that Russia is not interfering in the democratic process.

Given that even insubstantial interference in any democratic related activities , which is potentially a vast scope, would easily lead to failure to make the certification to delay applying the sanctions sections, such failure automatically leads to application of these sanctions provisions.

Although individual Presidential determinations still will be required to impose the actual sanctions penalties to particular persons once there has been no certification that that Russia is not engaged in any interference, this approach in effect means that now Russia under this first step is considered culpable. While many of the sanctions in the amendments to CAATSA require a Presidential determination with respect to responsible individuals, there will likely be a presumption and expectation that individuals can be readily identified who would be sanctionable. Note however that the particular individual does not have to be responsible for the specific interference that prompted failure to make the certification.

- 
- To avoid such a chaotic circumstance, it would be imperative also to include for this provision, and for all the bill's provisions and amendments imposing sanctions and restrictions, an unconditioned flexible waiver authority, as has been repeatedly requested in the Administration views opposing DASKA. Currently all this bill's new sanctions are subject to the only available waiver, i.e., the highly conditioned CAATSA waiver authority and its protracted sec. 216 review and expedited procedures to pass joint resolutions of disapproval process. However, even that waiver would not apply to this new sec. 602(a) trigger provision.
- Sec. 603, Sanctions relating to RF actions with respect to Ukraine, now similarly includes a new trigger in subsec. (a) that provides that the amendments to CAATSA in that section only apply if the Secretary of State and DNI fail to submit jointly the finding and certification required every 90 days that the RF is not engaged in or knowingly supporting offensive military operations in Ukraine.
- The substitute amendment also revises the sanction in sec. 603 related to investments in energy projects supported by the Russian owned entities outside of the RF "to apply to a project to explore for or produce crude oil or natural gas outside of the RF, initiated after the date of enactment and in which the RF has a 33 percent or more ownership interest in the entity or a majority of the voting interest". The prior version

applied to “an energy project outside of the RF that is supported by a Russian entity owned or controlled by the” Government of the Russian Federation; the latter clearly applied only to extant projects versus the exploration for such resources.

- The adverse implications of this revised energy sanction requiring sanctions for any new exploration or development of crude is even more far reaching than the initial sanction. In fact, the energy sanctions are so extremely broad, it appears the purpose of this is to halt foreign investment in Russia’s crude oil development. The way it is written it would also apply to Russian entities making the investments. So, if Rosneft or any other Russian oil company started a new development project in Russia, the company itself would be sanctioned.

- **Unnecessary**

- The Administration already has considerable robust authorities to address malign Russian behavior and to target Russian malign activity. These authorities include statutes passed by Congress, including the International Emergency Economic Powers Act (IEEPA), the Countering America’s Adversaries Through Sanctions Act (CAATSA), the Ukraine Freedom Support Act (UFSA), the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 (SSIDES), and the Chemical and Biological Weapons Act (CBW Act), as well as Executive Orders (E.O.s) 13660, 13661, 13662, 13685, 13694, and 13848.
- The Administration has aggressively imposed sanctions that are targeted, tailored, and impactful to address Russian malign activities while mitigating negative effects on allies and close partners utilizing these authorities. In addition, Treasury and State have leveraged the deterrent effect of secondary sanctions to make clear that sanctioned Russian individuals and entities are radioactive, and those who choose to continue doing business with them do so at their own peril.
- The United States can apply much more economic pain using this powerful range of authorities – and the Administration will not hesitate to do so if Russia’s conduct does not demonstrably and significantly change.
- DASKA would likely roil U.S. and global markets, causing significant damage to civilian American, European, and other global business interests. DASKA risks undermining existing US/EU sanctions solidarity because of its creation of a new set of sweeping mandatory sanctions that would directly and indirectly target allies and partners. DASKA also would directly and indirectly target almost the entire range of foreign commercial activities with Russia, which risks crippling the global energy, commodities, financial, and other markets.
- The Fusion Center, as proposed in section 704, appears to overlap with several ongoing interagency initiatives that currently address the primary missions of the Center. In addition to creating potential coordination issues with existing processes, the creation of



superfluous working groups could compound existing resource constraint challenges. In addition, there are already six cyber centers in addition to the Global Engagement Center, which coordinates USG efforts to counter propaganda and misinformation. This section also appears redundant with section 1043 of the FY 2019 NDAA, which requires the NSC to designate a person "for the coordination of the interagency process for combating malign foreign influence operations and campaigns." Because Congress has already addressed coordination of influence operations through this recently enacted requirement, section 704 is unnecessary.

- **Insufficient Waivers, and other legislative devices providing flexibility**

- The 2019 version of DASKA adds to and worsens the scope of DASKA's new mandatory sanctions, making it imperative that an unconditioned national interest waiver be included to permit waiver effectively notwithstanding section 216 of CAATSA, for all sanctions provisions in the bill, as well as for amendments to other laws made by DASKA, for the following reasons, among others:

- to mitigate the significant and real risks to the American, European, and global economies from broad, mandatory sanctions targeting globally-interconnected trade in key energy resources and commodities, as well as on a globally-integrated financial market,
- to permit the Commander-in-Chief the flexibility to tailor and calibrate the various instruments of U.S. power, as needed, to address and deter Russian aggression, consistent with overall U.S. foreign policy and national security objectives and other non-Russia-related legislation, and
- to permit flexibility to the Commander-in-Chief to proceed with other, non-economic means to respond to Russian aggression without also having to impose the broad, mandatory sanctions proposed in the bill.

It is not appropriate if the only waiver authority available is that under CAATSA (section 236(b)) for the amendments to CAATSA in bill section 601, as that is severely conditioned and not reliably available on short notice (as often needed).

- If not made permissive, mandatory sanctions should state that they shall be imposed "unless the President determines that to do so is not in the United States national interest".

- **Constitutionally Problematic**

- The Administration is committed to the North Atlantic Treaty, including Article 5, as the President said in his landmark speech in Poland in July 2017. The Administration's record of modernizing and strengthening NATO is clear. The Administration has also been steadfast in its refusal to recognize Russia's attempted illegal annexation of Crimea.
- Sections 3 and 102 are therefore unnecessary. In addition, those provisions violate the constitutional separation of powers. Sections 103 and 104 even invite a constitutional

dispute between two branches of government. Several other provisions of the current legislative text also raise constitutional concerns.

- The infirmity in section 102 is not cured by the fact that the provision is styled as a restriction on the use of appropriated funds.
- With respect to section 3, it remains the policy of the Administration, as recently articulated in the July 2018 Crimea Declaration, that the United States does not and will not recognize Russia's claims of sovereignty over Crimea. Nevertheless, the President's constitutional authority to conduct foreign relations affords him the exclusive responsibility to recognize the legitimacy and territorial bounds of foreign sovereign nations, as the Supreme Court has made clear. In this context, section 3 would be more aptly structured as a sense of Congress endorsing the Crimea Declaration and other recent steps to combat malign activity and exercise existing sanctions authorities in concert with European partners.
- Section 502 adds a new ground for inadmissibility in the country without recognizing a Presidential waiver authority, as the Immigration and Nationality Act does for other inadmissibility grounds. This could conflict with the President's powers under the Reception Clause of the Constitution.
- Several reporting requirements in the bill could potentially intrude on the President's constitutional prerogative to control the dissemination of information that is subject to Executive privilege. These provisions - sections 111, 305, 623, 704, and 709 - should be revised to recognize or it should otherwise be acknowledged that the President has standing authority and responsibility to withhold from public reports national security information and diplomatic communications, where appropriate.
- **Overly broad scope of activities that are sanctionable**
  - DASKA should be revised to more precisely target Russian malign activity and to limit negative effects on U.S., European, and other key economies, businesses, and individuals. For example, textual revisions are needed to narrowly target significant misconduct that is malign and knowingly engaged in prospectively (after enactment) and deserving of penalization.
  - In many instances, the bill would inflict damage on global markets and U.S., EU, and other key economies without sufficient benefit to justify the collateral damage.
  - Energy sanctions now targeting crude development in Russia (Section 603 adding Section 239B), investment in energy projects outside of Russia supported by Russian entities or parastatals (Section 603 adding Section 239A), and LNG export facilities outside of Russia (Section 602 adding Section 237)) must be scoped and calibrated to allow the Executive flexibility in implementation. Absent this flexibility and clarification, there is potential for spillover into Europe that threatens our ability to coordinate with the EU and overall transatlantic unity on Russia sanctions.



- The Administration is committed to curtailing Russian malign influence, including the activities of certain oligarchs and other persons outside the Russian government, and will continue to leverage the array of tools the United States has to do this. The mandatory and secondary sanctions against persons and institutions (the proposed, amended CAATSA Section 235) would not allow the flexibility to calibrate U.S. actions against these persons and the like would also capture significant economic interests in the United States Europe, Asia, and elsewhere, with significant unintended consequences undermining U.S. national security and foreign policy interests.
- Section 602 (adding Section 235) should be removed or made permissive or its scope should be narrowed to address only "significant deceptive or structured transactions". This also is the case with the reference in Section 228 of CAATSA which had added a mandatory sanction (Section 10(a)(2)) on anyone who "facilitates a significant transaction or transactions, including deceptive or structured transactions" for the Russians; it should instead refer to facilitating only "significant deceptive or structured transactions".
- For measures in Section 602, there is a proven model of permitting the Administration to select several sanctions from a broader menu of sanctions, which would allow the Administration to calibrate sanctions to match the foreign malign behavior. As written, several measures in Section 602 provide no flexibility to calibrate U.S. actions as appropriate. Using the existing menu in CAATSA section 235, a revised, less harsh provision could state that two or more of the sanctions described in the bill or in the existing CAATSA section 235 (which numbering this bill changes) shall be applied. Such an approach would still permit the full imposition of more sanctions, if the offender's behavior warranted such an approach.

Critical edits needed to the new sections of CAATSA are outlined here:

- New Section 235 of CAATSA (sanctions with respect to transactions with certain Russian political figures and oligarchs):
  - Section 235 should be modified to provide that the President shall impose the specified sanctions on "persons determined by the President to be" the types of persons described.
  - In subparagraphs (1) and (2), the phrase "illicit and corrupt activities" should be replaced with "illicit or corrupt activities," so as to avoid the need to demonstrate both types of activity.
  - Subparagraph (3) regarding "family members" should be removed, as sanctions are more appropriately imposed on family members to the extent that they are "other persons" engaged in the activities described in subparagraph (1). If not removed, subparagraph (3) should pertain only to adult family members."
  - Subparagraph (4) should be modified to impose sanctions on financial institutions "knowingly" engaging in significant transactions.

- Also, if Section 235(4) is not removed, it (and its corresponding provisions in Section 228 of CAATSA) should be narrowed to apply only to “deceptive or structured transactions”. These provisions are the main inhibitor to further sanctions cooperation with Europe, as they remove the possibility for diplomatic outreach to close backfill, and instead threaten EU economies with sanctions for minimal benefit (and actual damage) to US interest. If amended, they will allow for State to bolster transatlantic unity and conduct thorough diplomatic outreach (with revised sections still there as leverage) in the proper manner befitting the Russia sanctions program. Many of these new sanctions provisions will be viewed in a negative light by the EU, so extending an olive branch by addressing their concerns over 228 would be a significant step in the right direction, and perhaps bring some countries on board in adopting similar measures.
- New Section 235 should, prior to mandating the imposition of sanctions, require an Intelligence Community report to Congress assessing the impacts of the envisioned sanctions, given the recent history of wide-ranging negative effects on U.S. and partner country businesses with respect to the April 6, 2018 sanctions on certain oligarchs and their businesses.
- New Section 236 of CAATSA (sanctions with respect to transactions with Russia’s cyber sector) should be removed given its duplication of existing authorities — including Section 224 of CAATSA and E.O. 13694, as amended, which is codified by Section 222 of CAATSA — which already authorize sanctions on various malicious Russian cyber actors, and which already carry secondary sanctions implications under Section 228 of CAATSA. New Section 236 therefore does not add value to ongoing efforts to impose primary and secondary sanctions pressure on Russian cyber actors, but it will divert limited resources to implement the provision and explain it to the private sector compliance community.
- If Section 236 remains, it should be made permissive, provide an implementation timeline of 180 days, and apply the secondary sanction in Section 236(2) only to a person who “is knowingly owned or controlled by” a sanctioned person. Also the phrase “on or after the date of enactment” should be added after “the President determines”.
- While Section 237 may be viewed as allaying some allied concerns that USG sanctions would target LNG platforms in Russia, there could be considerable unintended consequences that even by targeting with mandatory sanctions LNG export facilities outside of the RF, which would adversely impact U.S. and global interests. If the provision were made permissive, it could be implemented in a way that would have a limited impact, constraining only Russia’s ability to expand its gas investments over the long run. However, not only are revisions needed to make the sanction permissive, but also to apply it only to more “significant” new investments than now. As currently written, the mandatory sanction would likely disproportionately target European individuals and entities who are more heavily involved in these endeavors, complicating sanctions collaboration with European



partners and contradicting the emphasis in sections 601, 611, and 613 of DASKA on maintaining sanctions coordination with the European Union.

- Prohibitions on dealings in Russian sovereign debt in Section 238 that are not narrowly tailored could have widespread consequences, including: disadvantaging U.S. banks and asset managers over their foreign peers, who would not be limited in participating in this significant debt market; and facilitating widespread repricing of sovereign debt issued by other emerging markets, as market participants may begin pricing in the risk of potential U.S. sovereign debt sanctions. To mitigate some of these concerns and afford sufficient time for implementation, the prohibitions in Section 238 should: (i) be limited to the primary debt market, so as to avoid potentially unmanageable spillover effects of sanctioning debt traded on the secondary market; (ii) exclude paragraph (b)(3), as a prohibition on “any other financial instrument, the duration or maturity of which is more than 14 days” would present significant compliance difficulties for the private sector; and (iii) provide 180 days for the issuance of implementing regulations, as 60 days is not feasible.
- New section 239 indicates that these sanctions are in response to Russian interference in democratic processes and elections, most of these new sanctions are not specifically tied to future Russian interference in elections. Each sanction mandated in this section should be modified to take effect only if interference by Russia is observed in future elections after the date of enactment, to clarify the relation of the sanctions to election interference such that the institution should be determined to be providing “significant” support and to deter such interference through the specter of sanctions.
- Section 603 (sanctions relating to Russia’s actions in Ukraine) inserts new sections into CAATSA, as noted below, imposing sanctions with respect to Russian actions in Ukraine. The Executive Branch already has the authorities necessary — including Executive orders codified by CAATSA — to impose sanctions in response to Russia’s activities in Ukraine. This Administration has used these authorities to sanction more than 280 Russia-related targets, including persons sanctioned on March 15, 2019 in response to the Kerch Strait incident. Implementation of the new sanctions mandated by Section 603 will divert resources from implementation of the already robust range of Ukraine-related authorities. If these provisions move forward, they must be scoped and calibrated to all the Executive flexibility in implementation. Absent this flexibility and clarification, there is potential for spillover into Europe that threatens our ability to coordinate with the EU and overall transatlantic unity on Russia sanctions. Comments on Section 603’s specific amendments to CAATSA are included below.
- Section 239 of CAATSA (sanctions with respect to Russian financial institutions that support interference in democratic processes or elections) should be modified to specify the imposition of sanctions on financial institutions that “knowingly” engage in the activities described. The imposition of blocking sanctions on Russian financial institutions can have wide-ranging negative effects, including on financial institutions and credit card companies in the United States and allied and partner countries, so



this section should be discretionary rather than mandatory and should provide for the imposition of sanctions from the menu in New Section 239E (currently Section 235 of CAATSA). This section should provide a timeline of 180 days for the imposition of sanctions, allowing for flexibility in appropriately preparing and timing the rollout of designations.

- Section 239A of CAATSA (mandatory sanctions with respect to transactions related to investments in energy projects, including those to explore for or produce crude oil or natural gas supported by Russian state-owned or parastatal entities outside of Russia) targets “persons,” which would include U.S. energy companies involved in Russian energy projects outside of Russia. The sanctions, however, would likely disproportionately target European individuals and entities who may be more heavily involved in these endeavors, complicating sanctions collaboration with European partners and contradicting the emphasis in sections 601, 611, and 613 of DASKA on maintaining sanctions coordination with the European Union. This section should be revised to apply only to “foreign” persons who knowingly make a “significant” investment in an energy project outside the RF that is “owned or controlled by” vs “supported”) by a Russian parastatal or by a Russian government owned or controlled entity, as otherwise described. Such revisions could help avoid, for example, sanctioning persons who hold a small number of shares in a publicly traded company involved in a relevant energy project. Because of the potential breadth and unintended consequences, this provision should be revised to be permissive, especially as it could have potentially extensive impact on businesses in the United States and allied and partner countries. As newly revised by the ANS to capture exploration, the sanction in sec. 603 related to investments in energy projects supported by the Russian owned entities outside of the RF “appl[ies] to a project to explore for or produce crude oil or natural gas outside of the RF, initiated after the date of enactment and in which the RF has a 33 percent or more ownership interest in the entity or a majority of the voting interest”. The prior version applied to “an energy project outside of the RF that is supported by a Russian entity owned or controlled by the” GRF; the latter clearly applied only to extant projects versus the exploration for such resources.
- There are serious adverse implications, perhaps unintended, of this revised energy sanction requiring sanctions for any new exploration or development of crude is even more far reaching than the initial sanction. In fact, the energy sanctions are so extremely broad, it appears the purpose of this is to halt foreign investment in Russia’s crude oil development. The way it is written it would also apply to Russian entities making the investments. So, if Rosneft or any other Russian oil company started a new development project in Russia, the company itself would be sanctioned.
- Section 239B of CAATSA (mandatory sanctions with respect to support for the development of crude oil resources in Russia) also target “persons,” including U.S. and European energy companies, complicating sanctions collaboration with European partners. The requirement for guidance suggests an expectation of exemptions to



these sanctions, so these sanctions should be permissive rather than mandatory. If these sanctions are to remain mandatory, the section should further be revised to add “significant” before “goods, services, technology, financing or support that could directly and significantly contribute” in Section 239B(b). If these sanctions are to remain mandatory, Section 239B should, prior to mandating the imposition of sanctions, require an Intelligence Community report to Congress assessing the impacts of the envisioned sanctions, given the potentially extensive impact of these sanctions on businesses in the United States and allied and partner countries.

- Section 239C of the prior versions mandated sanctions on 24 FSB officers until Russia releases the 24 Ukrainian sailors captured after the November Kerch Strait attack, although this has been stricken, likely as sanctions have already been imposed as needed..
- Section 239C (mandatory sanctions for Russian violations of freedom of navigation) is very troublesome and presents considerable implementation difficulties. It is not feasible to simultaneously impose blocking sanctions on “all entities operating in the shipbuilding sector of the Russian Federation” and identify such sanctioned entities on its Specially Designated Nationals and Blocked Persons List. Nor is it feasible for the Secretary of State to determine and certify to Congress whether Russia has interfered with freedom of navigation of one or more vessels in the Kerch Strait or elsewhere within 90 days of enactment and every 180 days thereafter. It further casts too wide of a net by mandating full blocking sanctions on all entities in the Russian shipbuilding sector. The section should be revised to address only the Kerch Strait violations, by the Secretary of State determining that the RFG “knowingly and significantly” interferes with “the freedom ... in the Kerch Strait in material violations of international law.” Even with this revision, sanctions — including secondary sanctions — on Russia’s shipbuilding sector will have negative spillover effects on allied and partner countries. Therefore, this section should be discretionary (rather than mandatory) and provide that where the Secretary of State makes a certification of material violation of international law, then “the President is authorized to impose sanctions enumerated s from the menu in sec. 235 [renumbered section 239D,” to a narrower range of entities, possible Russian defense shipbuilding companies with knowingly engaging in significant operations in in Kerch Strait. If blocking sanctions are to be included instead of menu sanctions, New Section 239C should mirror other new sections by referring to the “sanctions described in section 224(b)(1)” rather referring to “the same restrictions as an entity included on the [SDN List].” If new section 239C section is enacted, it should provide an implementation timeline of 180 days rather than 90 days. Any report should be done once yearly.
- If retained, the provision should be made permissive, to allow for flexibility in implementing to avoid spillover to European economies. For example, Denmark and Norway have significant ties to Russia’s shipbuilding sector. If forced to sanction a private company with limited Kremlin connections that has spillover into Denmark and Norway, impacting jobs and the economies of those countries, then the provision will have effectively backfired. If permissive, unintended consequences such as being forced to sanction one of our closes allies would be avoided. Second, the scope of entities that could qualify as being within the shipbuilding sector is too broad. This could be



scoped down by either focusing on defense companies involved in shipbuilding or companies with operations in the Kerch Strait. Third, it should not mandate full blocking sanctions but rather allow the Executive to choose from the menu of sanctions penalties used in many other provisions, to avoid immediate recourse to the harshest sanctions. This would permit avoiding the issues raised above re: EU countries with shipping ties to Russia.

- Additionally, “knowingly and significantly” should be added after “including the armed forces or coast guard of the Russian Federation, has” in Section 239D(a)(1) and 239D(c)(1), and after “Government of the Russian Federation has” in Section 239D(b).
- Section 604 adds, among other things, New Section 239F of CAATSA, which includes a definition of “Russian financial institution.” This definition should be removed so that the Administration can instead define it in regulations. The definition as drafted could lead to the sanctioning of any foreign financial institution in Russia, including U.S. banks, as well as any foreign branch of a Russian financial institution. Such a definition could have major implications for European economies where Russian financial institutions have large branches or subsidiaries.
- Section 612 has long been opposed as written by the State Department. At most, it should be a permissive authority for the Secretary of State to establish such an office and to appoint a head who may have the rank indicated. Similarly in this regard sec. 211 establishing the creation of a cyberspace and digital economy office within State and mandating the rank of the head of the office must be revised to state discretionary authorities as the Department is engaged in preparing to establish this office within existing flexible authorities of the Secretary to do so.
- The purpose of including Section 622 updating the report on oligarchs and parastatals is not apparent. As described in the report submitted under Section 243 of CAATSA, the report required under Section 241 of that act required substantial investments of time and resources, and the Administration continues to rely on that report and other relevant information in countering illicit Russian financial activities. Treasury recommends Congressional engagement to understand the rationale for this provision and potentially address the interest behind it through other means (e.g., subsequent Section 243 reports, which pertain to illicit finance relating to the Russian Federation and are required annually until 2021). The ANS revised this report slightly to exclude any individual with respect to which there is no credible information suggesting the individual has close financial or political relationships or engages in illicit activities. If there was an unclassified list published, it would, in effect, be exposing that the Administration has derogatory information on those identified. In light of this revision, the Administration would anticipate only being able to update the classified report. Therefore, this requirement should be vested with the DNI.
- The reporting requirements in Sections 623–628 are overly burdensome and will divert resources away from the actual implementation of these and other sanctions related to



Russian malicious activities and other threats to U.S. national security and foreign policy. In lieu of reports, relevant officials can brief Congress as actions are taken. Requirements for such briefings should sunset after three years. If reporting requirements remain, these sections should be modified to correct the current requirement of a first report 60 days after enactment of DASKA (subsections (a)), followed by a second report 90 days after enactment, which is only 30 days after the 60-day report (subsections (c)).

- Section 701 requiring the Secretary of State to submit a determination of whether the Russian Federation meets the criteria for designation as a State Sponsor of Terrorism, has long been opposed, and should be removed. The underlying authority provides the Secretary with appropriate flexibility to make such determinations where appropriate and this additional determination would be intrusive and interfere with the useful discretion the Secretary exercises in this regard as well as purporting to interfere with his or her deliberative judgments. This should be stricken, and if retained should only be a hortatory call for a classified briefing on RF activities of concern in this regard. Such a report could inadvertently hand Russia a propaganda tool if State were ultimately to conclude, after carefully verifying available credible and corroborated info/intel, that Russia has not repeatedly provided support for international terrorism.
- Section 702 would amend 31 U.S.C. 5326 to require Treasury to promulgate regulations to issue an order requiring title insurance companies to obtain beneficial ownership information in certain high value real estate transactions. This approach is unworkable and likely would be legally challenged under the Administrative Procedure Act (APA) because it conflates orders (which are temporary measures, generally not subject to notice and comment requirements), with regulations (which can and most often are permanent measures that usually must be noticed and subject to public comment). In addition, title insurance is not required for all-cash transactions and making this reporting requirement permanent for title insurance companies would create an easy avenue of evasion for those illicit actors willing to take on the additional risk of having no title insurance. Treasury recommends that Congress discuss with FinCEN potential alternative approaches to obtaining the desired information that would not present these potential APA and evasion challenges.
- **The provisions imposing and selecting sanctions should be permissive rather than mandatory to protect U.S. national security and economic interests**
  - The bill fails to recognize the broad range of tools that might be used to deter Russian malign influence or aggression. The bill would demand the imposition of economic sanctions, even if there is a more effective way to establish deterrence or respond through non-economic means. This bill should include permissive authority to choose when to apply sanctions to offending parties and when to utilize non-economic tools other than sanctions to apply pressure to governments engaged in election interference.
  - The bill would compel sanctions that would impose economic harm on U.S., allied, and European persons and companies without first providing the President the opportunity to work in conjunction with allies on a unified, more effective sanctions regime.

- Making the operative sanctions provisions permissive and waivable, and narrowing the scope of misconduct to be targeted as previously indicated, would go some way toward addressing this flaw to ensure robust execution of efforts to apply pressure to Russia and other foreign adversaries.

- **Collateral Economic Damage to U.S., U.S. Allies and other U.S. Priorities**

- Effective implementation of sanctions must balance imposing costs to disrupt malign actors ability to finance and conduct their malign activities while minimizing negative spillover economic damage to the United States, its European allies, and the global economy. The sanctions mandated by DASKA would undoubtedly harm Russia, but they would also cause significant damage and major disruptions to markets and to unsanctioned civilian business operations in Europe, Asia, and other parts of the world which are not targets of these sanctions.
- Among the bill's most problematic and harmful provisions are the new mandatory energy, secondary oligarch, and cyber sanctions, which are scoped very broadly and could negatively impact other U.S. priorities - such as the Southern Gas Corridor, energy projects in the Eastern Mediterranean, and regional energy security for Egypt - as well as U.S. businesses, jobs, and energy markets.
- In addition, Russian entities could easily weaponize these sanctions (such as revised section 238 of CAATSA) sanctions related to certain energy projects outside of Russia supported by Russian state-owned enterprises/parastatals) by deliberately increasing their participation in Joint Ventures and consortiums to reach the dollar amount triggering sanctions and force out U.S. companies and investments that are currently involved in those projects.
- In addition, several of the bill's new energy provisions could also target U.S. persons, or in effect penalize them by forcing them to extricate themselves from international business ventures previously allowed.
- Section 239B mandates sanctions for low-cost commercial transactions supporting crude oil development and production in Russia. The breadth of the activities should be narrowed, the monetary thresholds increased, and the entire provision made permissive.
- In addition, section 239B appears to contradict the emphasis in other sections of DASKA on maintaining sanctions coordination with the European Union because sanctions on those investing in Russian energy projects outside of Russia would likely target persons in Europe. Because such sanctions would almost certainly complicate efforts to collaborate with European partners in imposing sanctions on Russia, this section should be permissive rather than mandatory to ensure flexibility needed to effectively coordinate with allies.



- Expanding sanctions to include sovereign debt (Section 238) could hinder the competitiveness of large U.S. assets managers and market makers, as Russian debt comprises a meaningful part of major emerging market indices and is widely traded.
- In addition, permissiveness is needed to avoid roiling European and U.S. commercial markets and to avoid unintended consequences that could quickly spiral out of control.

- **Intelligence Community (IC) Concerns**

- ODNI and the IC have serious concerns with the aspects of DASKA that directly impact the IC.
- The extensive new reporting requirements in the bill would impose a heavy burden on the IC's analytic components and force the IC to change priorities and potentially stop work on the country's highest intelligence priorities (NIPF 1) duties and detract from the IC's core warning mission.
- Furthermore, many of the timelines are impractical or unworkable. For example, section 627 would require the President to submit a report to Congress within 60 days that identifies individuals who have invested a certain amount of money in such a way as to benefit not only officials of the Russian government, but also their close associates or family members. The IC almost certainly could not fulfill such a requirement within 60 days.
- ODNI and the IC have concerns with the proposed National Fusion Center. The envisioned Fusion Center would require significant resources and new authorities, and it would involve substantial implementation and coordination efforts to stand up. This type of an approach would largely duplicate and detract from existing interagency efforts, including regular senior-level meetings. These existing efforts are more effective and adaptable for the issues at hand, and are generally a better model for addressing influence operations than building a Fusion Center.

- **Threat to U.S.-EU Transatlantic Ties**

- U.S. policy toward Russia cannot successfully incentivize changes in Russia behavior unless we are united with Europe.
- The sanctions in DASKA, if not properly scoped or accompanied by sufficient permission or discretion for the Executive branch to waive, could have significant spillover into energy projects and other markets. This could cause such significant damage to unsanctioned civilian European business interests that the European Union could possibly drop its existing Russia sanctions, resulting in a split with Europe.
- Vladimir Putin could easily trumpet this as a split between the United States and Europe.

- From an effectiveness standpoint, unilateral U.S. sanctions on Russia would not bite as much as coordinated U.S.-EU sanctions, because Russia does more business with Europe than with the United States.
- **INTERPOL Provision Unlikely To Achieve Objective, Overly Broad, and Counterproductive (Section 707)**
  - Section 707(c)(4) would direct the Attorney General “to censure member countries that repeatedly abuse and misuse INTERPOL's red notice and red diffusion mechanisms, including restricting the access of those countries to INTERPOL's data systems.”
  - We believe that seeking additional sanctions against Russia and other countries would be ineffective and likely would provoke retaliation against the United States and its extensive use of INTERPOL notices and diffusions.
  - The United States Government has supported INTERPOL in instituting new, more rigorous review procedures to ensure compliance with INTERPOL’s Constitution and to prevent abuse. These new procedures already have had a disciplining effect upon Russian requests for red notices and diffusions.
  - The United States law enforcement community relies upon INTERPOL’s proven ability to communicate sensitive criminal investigative information in a secure manner among police officials worldwide. The Government takes very seriously its responsibility to uphold the integrity of the INTERPOL Notice Program and strongly encourages all member countries to do the same.
  - INTERPOL has examined the use of red notices and red diffusions extensively. During 2015 and 2016, in response to allegations of abuse of INTERPOL and its notice system, an INTERPOL expert working group conducted an extensive study of INTERPOL’s supervisory mechanisms. The group included the United States as a participant. The expert working group recommended several changes, and INTERPOL has instituted measures to reinforce the integrity of notices.
    - In January 2017, INTERPOL created the Notice and Diffusion Task Force (“NDTF”) and instituted a rigorous legal review process for all requests for red notices and “wanted person” diffusions. The NDTF now reviews all requests for red notices prior to their publication and all “wanted person” diffusions prior to their recording in INTERPOL’s database. This gives INTERPOL the tools to address potential abuses of INTERPOL’s notices and diffusions by Russia and other countries, while balancing their effective and legitimate use to combat crime and protect the public.



- New rules enhance the powers of INTERPOL's redress body by giving it binding decision making authority over the activities of INTERPOL and the ability to provide effective remedies for petitioners.
- Section 707(c) needs to be revised from "CENSURE OF ABUSIVE ACTIVITY AND INSTITUTIONAL REFORMS" to "REVIEW OF ABUSIVE ACTIVITY AND SUPPORT FOR INSTITUTIONAL REFORMS". Censure is not an appropriate or available action for member countries in the INTERPOL system. The United States' focus should be on supporting institutional reforms to prevent abuse of INTERPOL by member countries. Additional conforming edits would be made to include "support and" before "advance institutional reforms" in section 707(c)(2) and removal of section 707(c)(4) to not provoke retaliation against the United States and its use of INTERPOL for various programs and cases, including extensive use of red notices, diffusions, including for foreign terrorist fighters.
- Section 707(d) directs the Secretary of State, in consultation with the Attorney General, to submit a report to appropriate congressional committees on U.S. support for institutional reforms needed to address abuse and misuse of red notices and red diffusions. The elements to be included in the report include the number of requests rejected by INTERPOL, how INTERPOL identifies requests as politically motivated or in violation of INTERPOL's rules. INTERPOL has largely implemented the institutional reforms to address abuse of red notices and diffusions, and the elements to be reported are considered confidential by INTERPOL and not available to member countries. The result was the creation of the Notice and Diffusion Task Force (NDTF) in January 2017 to conduct a rigorous review of all requests for red notices and diffusions prior for compliance prior to publication and recording in INTERPOL's databases. The group also drafted new rules for INTERPOL's redress body, the Commission for Control of INTERPOL's Files (CCF). The new CCF rules entered into force in March 2017, and provide the CCF with enhanced authority to make binding decisions and order appropriate remedies for non-compliance with INTERPOL's constitution and governing rules. Therefore, the need for such a report has largely already been addressed by reforms instituted by INTERPOL, making the report unnecessary. Given the confidential nature of the information, the report would further be unable to include the desired information. Section 707(d)(2)(A)(i)-(iv) must be deleted as this information is considered confidential by INTERPOL and is not provided or available for this purpose.
- Section 707(e) would prohibit United States officials from taking any action against a person based solely on a red notice or diffusion issued by a country reported pursuant to section 707(d)(2)(B) unless the Secretary of State, in consultation with the Attorney General, certifies to the appropriate congressional committees that the notice or diffusion was not issued for political purposes. The Administration opposes this provision and requests its deletion.
  - The vast majority of notices and diffusions represent legitimate foreign charges or investigations, even for those countries alleged to abuse the

INTERPOL system. We believe that it would be imprudent to discount all notices and diffusions from a given country when making critical decisions on benefits in the United States.

- The U.S. considers INTERPOL red notices and diffusions to be only “look outs’ and not a basis for arrest. In addition, the vast majority of red notices and diffusions relate to legitimate charges and individuals who are potential threats to public safety. This section would unduly hamstring U.S. law enforcement and border security efforts.

- **Diverting Resources from Implementing Other Sanctions Regimes**

- The effective implementation of sanctions must ensure that the U.S. government is able to appropriately dedicate resources to a full range of Executive and Congressional priorities with respect to Russia and other threats.
- Even if greater mitigation provisions are included, this bill would divert significant resources at Treasury and State, the key implementing agencies of Russia sanctions, away from the ongoing implementation of various sanctions authorities, including CAATSA sanctions and other efforts with respect to Iran, North Korea, ISIS, Venezuela, Hezbollah, counterterrorism, human rights and corruption and other USG priorities.
- The breadth and number of reports identified in the bill, including sections 623-628 that require reporting every 90 days, would have the practical effect of diverting limited resources away from the actual implementation of these and other sanctions related to Russian malicious activities and other threats to U.S. national security. The Administration cannot support provisions that reduce the capacity to implement critical sanctions programs.
- In addition, section 622 seems duplicative to existing reporting requirements that require substantial time and resources. The IC reports that making the oligarch report under CAATSA a standing requirement as envisioned under section 622 of this bill is impractical under current staffing.

- **Illustrative – Not Comprehensive -- List of Key Other Technical Concerns**

- Section 202 of the bill includes an exemption to the Privacy Act and would require the Secretary of State to appoint a Director of Research and Evaluation “to conduct regular research and evaluation of public diplomacy programs and activities of the Department.” The bill text does not indicate from which part of the Privacy Act section 202(e) would provide an exemption. Moreover, it does not establish the scope or definition of the term “public diplomacy efforts.”
- While the State Department supports maintaining senior officials leading cyber security and sanctions coordination efforts, it cannot support as written sections 211



and 612, as the mandates that such offices be established, be headed by an individual with Senate advice and consent, and report through named Under Secretaries seriously interfere with the authority of the Secretary to manage the Department as he or she sees fit. Instead these provisions should be revised to be stated as permissive authorities, leaving the Secretary the degree of flexibility and discretion needed.

- The report required by Section 305 is likely to be repetitive with respect to other compliance reporting, in view of our annual reporting requirements on Russian compliance with the Chemical Weapons Convention and the Biological and Toxin Weapons Convention, which the Department of State does consistent with Condition 10(C) of the Senate's Resolution of Advice and Consent to Ratification of the CWC and pursuant to 22 U.S.C. 2593a.
- DOJ suggests inserting "tangible or intangible" in the descriptions of forfeitable property in section 403(a) and elsewhere in those subsections.
- Section 502 of the bill would make "improper interference in a United States election" a ground of inadmissibility under section 212 of the Immigration and Nationality Act. We note that "improper interference" is not clearly defined and is subject to broad interpretation.
- The ability to sanction targets under the new Section 235 of CAATSA included in Section 602 would depend upon the ability to build legally sufficient evidentiary packages for designations based on available sources. As such, an extended deadline for designations and flexibility in preparing and rolling out the designations would be key to proper implementation.
- The Executive branch would have difficulty identifying key information to implement the new section 237 of CAATSA, as proposed by Section 602 of this bill. These sanctions should be permissive rather than mandatory.
- In Section 602 adding Section 239, add "knowingly" after "has" on p. 60, line 16, and add "significant" after "provided" on p. 60, line 17.
- There are concerns regarding section 711 that can be sent in a classified form.
- Sanctions provisions throughout should be drafted to ensure that they target entities knowingly engaging in significant misconduct after the date of enactment.
- New unconditioned waiver authority is needed for new sanctions under this legislation, including amendments made by this legislation to other law, and the sanctions, when imposed, should expire in not more than two years.

- **Supported Provisions:**

- The Administration appreciates that exceptions have been included in this legislation so as to not hamper NASA's civil space activities, including those in support of the continuing

operation of the International Space Station.

- The Administration continues to support Title IV -- International Cybercrime Prevention Act (ICPA).