

# A pipeline runs through it: US government strikes delicate balance on Nord Stream 2

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On 20 August 2021, the Biden administration issued a new executive order ('EO') entitled 'Blocking Property with Respect to Certain Russian Energy Export Pipelines'. At the same time, the Treasury Department's Office of Foreign Assets Control ('OFAC') added five entities and 13 vessels to the List of Specially Designated Nationals and Blocked Persons ('SDN') List under the new EO.

These developments – the latest in a series of US actions related to the Nord Stream 2 and TurkStream pipelines – suggest that the United States is attempting to strike a balance between formally opposing the Nord Stream 2 project and cooperating with major allies who favor the pipeline's completion, such as Germany. Importantly, the sanctions under the new EO are not as incrementally significant as they may seem: of the 18 new SDNs, all but four (two entities and two vessels) were already subject to sanctions under the Protecting Europe's Energy Security Act of 2019 as amended ('PEESA'), which were imposed in May 2021 and were virtually identical to the new sanctions. Rather than reflecting a more aggressive US stance in opposition to Nord Stream 2, the new EO appears to be driven primarily by legal technicalities including

a limitation on the sanctions that could be imposed under PEESA.

## Statutory framework and initial sanctions

Under PEESA, the Secretary of State, in consultation with the Secretary of the Treasury, is required to submit periodic reports to Congress identifying foreign persons and vessels that are involved in certain pipe-laying or related activities for the construction of the Nord Stream 2 and TurkStream pipelines. PEESA also requires the President to exercise all powers granted under the International Emergency Economic Powers Act ('IEEPA') to block all property and property interests of the persons named in those reports that is within US jurisdiction. The authority to impose blocking sanctions under PEESA is subject to certain exceptions including an exception for the importation of goods.

On 19 May 2021, the State Department announced that it had submitted a report to Congress as required by PEESA. The report identified five entities, four vessels, and one individual involved in the construction of the Nord Stream 2 pipeline. The Secretary of State waived the PEESA sanctions with

respect to one entity and one individual (Nord Stream 2 AG and its CEO Matthias Warnig). The remaining four entities and four vessels, as well as several other vessels owned by one of the entities, were subject to mandatory sanctions under PEESA.

On 21 May 2021, acting solely under PEESA (not under IEEPA), OFAC then announced that three entities and 11 vessels would be added to the Non-SDN Menu-Based Sanctions List ('NS-MBS List'). Each of the targets' US property and property interests were blocked – apparently under the authority granted by subsection 7503(g)(1) of PEESA – but the continued importation of goods from the entities was allowed, as specified in PEESA. The fourth entity subject to PEESA sanctions was already on the SDN List in relation to activities in Crimea, and OFAC added two of its vessels to the SDN List on 21 May 2021, as well.

## New executive order

Drawing on IEEPA, the new EO fills in the authority OFAC was lacking to fully block the US property and property interests of the persons named in the State Department's PEESA reports. As the State Department observed in

a statement and OFAC explained in a new FAQ, the new EO allows the United States to impose blocking sanctions that are not limited by PEESA's exception relating to the importation of goods. (It appears that IEEPA's standard exemptions relating to informational materials and travel-related transactions will still apply with respect to the SDNs designated under the new EO.)

OFAC transferred the three entities and 11 vessels that were previously blocked solely under PEESA from the NS-MBS List to the SDN List as a result of the new EO. Ultimately, only two new entities and two additional vessels were designated on 20 August 2021, under the new EO.

## Conclusion

While the issuance of a new sanctions-related EO is often a major development, there is less than meets the eye when it comes to the new EO of 20 August 2021. The EO fine-tunes the pre-existing legal framework regarding Nord Stream 2 and TurkStream. Moving forward, it is likely that additional designations under the new EO will be announced from time to time because PEESA still requires the State Department to submit periodic reports to Congress. [🔗](#)