

Turkey: U.S. and EU Sanctions Developments

December 22, 2020

Key Points:

- On December 14, 2020, in response to Turkey's procurement of the S-400 surface-to-air missile system from Russia in 2019, the Trump administration imposed new sanctions on the Turkish Presidency of Defense Industries (SSB) and four of its officers pursuant to the CAATSA sanctions provisions enacted by Congress against Russia in 2017. This follows Congressional approval of the NDAA for Fiscal Year 2021 by a veto-proof majority on December 11, 2020, which includes specific provisions to compel the imposition of the new sanctions measures.
- The European Union separately has also recently adopted new sanctions against Turkey in connection with disputed Turkish drilling activities in the Eastern Mediterranean.
- Notwithstanding these developments, Turkey's status as a NATO member country and strategic partner of both the United States and the EU, and continuing interests in maintaining those alignments, remains as a complicating factor that may moderate the way in which U.S. and EU sanctions measures are ultimately implemented.
- U.S. and non-U.S. companies with business interests in Turkey, particularly in the defense and energy sectors, should be aware of the practical impact of these developments, as well as potential risks of additional sanctions on Turkey in the future that these recent developments suggest may be forthcoming.

U.S. – CAATSA Sanctions

Background and FY 21 National Defense Authorization (NDAA) Language

Pursuant to [Section 231](#) of the Countering America's Adversaries Through Sanctions Act (CAATSA), the President must impose five or more menu-based sanctions [listed](#) in CAATSA with respect to a person who knowingly "engages in a significant transaction with a person that is part of, or operates for, or on behalf of, the defense or intelligence sectors of the Government of the Russian Federation." The State Department maintains a [list](#) (Section 231 List) of Russian defense and intelligence sector entities that meet these criteria.

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In the last several years, members of Congress have **urged** the State Department to impose CAATSA 231 sanctions on Turkey due to its entry into agreements for the purchase of the S-400 air defense system from Rosoboronexport OJSE, an entity on the Section 231 List. Last week, in an effort to compel the Trump administration to act, the U.S. House of Representatives and U.S. Senate passed the National Defense Authorization Act for Fiscal Year 2021 (FY21 NDAA), including provisions which:

1. identify the acquisition of the S-400 air defense system from Russia as a “significant transaction” for purposes of Section 231 of CAATSA; and
2. require the President to impose at least five sanctions from the menu of 12 sanctions options provided under Section 235 of CAATSA “with respect to each person that knowingly engaged in the acquisition of the S-400” within 30 days of the FY21 NDAA’s enactment.

The FY21 NDAA was presented to President Trump for signature on December 11. Although as of the date of this alert, President Trump has threatened to veto the NDAA for unrelated reasons, there appear to be enough votes in Congress to override a presidential veto.

U.S. Government Action Targeting SSB and Officers

On December 14, ahead of the NDAA’s passage into law, the Trump administration took initial targeted action against Turkey pursuant to Section 231 of CAATSA by adding four Turkish officers of the SSB to the Office of Foreign Assets Control’s Specially Designated Nationals and Blocked Persons (OFAC SDN) List¹ and imposing the following **sanctions** on the SSB itself:

- a prohibition on granting U.S. licenses or other authorizations for exports or re-exports to SSB of goods or technology;
- a prohibition on loans or credits by U.S. financial institutions to SSB totaling more than \$10 million in any 12-month period;
- a ban on U.S. Export-Import Bank assistance for exports of any kind to SSB; and
- a requirement for the U.S. to oppose loans benefitting SSB by international financial institutions, such as the International Monetary Fund.

These sanctions measures do not fully block SSB assets in the U.S. or generally prohibit U.S. persons from dealing with the agency, as SSB has not been added to the SDN List. Rather, SSB is now subject to “**Non-SDN Menu-Based Sanctions List**” (NS-MBS), a new OFAC list designed to provide a source of reference for companies to identify entities or individuals subject to such non-blocking menu-based sanctions and associated risk concerns.

DDTC and BIS Guidance Concerning Prohibitions on Exports to SSB

On December 14, 2020 the U.S. Department of State’s Directorate of Defense Trade Controls (DDTC) issued the following **guidance** on the new U.S. export control restrictions imposed on SSB:

- Effective “immediately,” DDTC will not approve any specific license or authorization to export or re-export any defense articles, including technical data, or defense services where SSB is a party to the transaction;

- The prohibition does not apply to temporary import authorizations or to current, valid, non-exhausted export and re-export authorizations;
- However, the prohibition does apply to new export and re-export authorizations, including amendments to previously approved licenses or agreements and licenses in furtherance of previously approved agreements;
- This sanction does not apply to subsidiaries of SSB; however, licenses submitted to DDTC which name subsidiaries of SSB are still subject to a standard case-by-case review, including a foreign policy and national security review;
- DDTC is not imposing a prohibition on U.S. government procurement from SSB in connection with this action.

Separately, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) issued guidance giving notice that the agency has "implemented a policy of denial for export license applications" for exports of dual-use U.S.-origin items to SSB.

Policy Considerations Associated with Imposition of CAATSA Sanctions on Turkey

Provisions of the FY21 NDAA regarding Turkey explicitly state that it is in the national security interest of the U.S. that Turkey remain a NATO ally and military partner for the U.S. Moreover, in announcing the sanctions against SSB, the Department of State noted that "[these] actions are not intended to undermine the military capabilities or combat readiness of Turkey or any other U.S. ally or partner, but rather to impose costs on Russia in response to its wide range of malign activities." In response to the sanctions, SSB's President [stated](#), "We expect this will not influence our relations much . . . We are NATO allies. As [the United States] said, there is cooperation with Turkey in many areas. We . . . expect this to continue." However, notwithstanding these statements, the sanctions requirements under the FY21 NDAA and the sanctions issued against SSB and related individuals are a complicating factor in the U.S. relationship with Turkey and it remains to be seen what this may mean in practice over time.

EU Sanctions Developments

On November 11, 2019, the EU [adopted](#) a sanctions framework targeting Turkey's unauthorized drilling activities in the Eastern Mediterranean. In February 2020, the EU targeted two Designated Parties (DPs) under this framework: Mehmet Ferruh Akalin and Ali Cosgun Namoglu, both officials of the Turkish Petroleum Corporation (TPAO). The EU did not sanction TPAO itself.

EU restrictions on DPs include (1) a ban on travel to the EU; (2) an asset freeze on all funds and economic resources belonging to, owned, held or controlled by the DP; and (3) a prohibition on the making available of funds or economic resources, directly or indirectly, to or for the benefit of DPs.

During a meeting of the European Council on December 10-11, 2020, the Council [released](#) a statement calling for sanctions targeting Turkey's gas drilling in Cypriot-claimed waters:

"The European Council invited the Council to adopt **additional listings based on its Decision of 11 November 2019 concerning restrictive measures** in view of Turkey's unauthorized drilling activities in the Eastern Mediterranean. It also invited the

High Representative and the Commission to submit a **report on the state of play concerning the EU-Turkey political, economic and trade relations and on instruments and options on how to proceed**, including on the extension of the scope of the above-mentioned decision, for consideration at the latest at the March 2021 European Council . . . The EU will seek to coordinate with the US on matters relating to Turkey and the situation in the eastern Mediterranean.”

Further, the U.K. has **published** The Unauthorized Drilling Activities in the Eastern Mediterranean (Sanctions) (EU Exit) Regulations 2020, which will come into effect at the end of the transition period, at 11 p.m. U.K. time on December 31, 2020. These implement the existing EU sanctions measures into U.K. law.

With President-Elect Biden’s focus on multilateralism and coordination with allies, and the call by the EU to seek coordination with the U.S. on matters relating to Turkey, close monitoring of new EU DP designations in the coming weeks is warranted.

Outlook

These developments increase potential risks for U.S. and non-U.S. companies with business interests in Turkey, particularly in the defense and energy sectors.

With respect to the latest U.S. sanctions implemented under CAATSA, such risk focuses on the Turkish defense sector, specifically among entities and individuals connected with the S-400 air defense system acquisition from Russia. While a key military ally, Turkish procurement of military systems from Russia, at a time when bilateral tensions between the U.S. and Russia are increasing, including in connection with allegations of substantial Russian cybersecurity incursions in the U.S., raises significant strategic questions and potential concerns from a U.S. national security and foreign policy perspective, just as the new Biden Administration is preparing to assume office.

Accordingly, it remains to be seen whether the new U.S. administration will find that the actions taken against Turkey thus far are sufficient or whether additional actions against Russia will be undertaken in ways that have significance for Turkey. Moreover, other countries that have purchased S-400-related equipment from Russia, including India, Egypt, and Saudi Arabia, may continue to face sanctions risks if they move forward with operationalizing the S-400 in their respective countries.

At this time, risks associated with the new EU sanctions on Turkey are focused on Turkey’s energy sector. The current measures target Turkish drilling activities in the Eastern Mediterranean. However, that action raises potential questions as to whether such measures might, at some point in the future, be expanded to affect the Turkish energy sector more broadly

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