



DEPARTMENT OF STATE

[Public Notice 11405]

Notice of Updated Department of State Public Guidance for the Protecting Europe's Energy Security Act (PEESA), as Amended

ACTION: Notice.

SUMMARY: The Protecting Europe's Energy Security Act (PEESA) was amended by the FY21 National Defense Authorization Act (NDAA) on January 1, 2021. The Department of State is issuing updated, clarifying public guidance and Frequently Asked Questions (FAQs) for PEESA, as amended, on April 09, 2021, to provide public notice of the Administration's implementation of PEESA, as amended, and the range of activities captured under the amended legislation.

APPLICABLE DATE: The public guidance and associated FAQs for PEESA, as amended, is effective on April 09, 2021.

ADDRESSES: The Department of State will publish the PEESA, as amended, public guidance and associated FAQs, on its website, replacing the October 2020 PEESA public guidance (<https://www.state.gov/protecting-europes-energy-security-act-peesa/>).

FOR FURTHER INFORMATION CONTACT:

Email CAATSA_PEESA_Energysanctions@state.gov.

SUPPLEMENTARY INFORMATION:

Frequently Asked Questions on PEESA, as amended by the National Defense

Authorization Act for FY2021

The Department of State is committed to fully implementing sanctions authorities in the Protecting Europe's Energy Security Act of 2019 ("PEESA" or "the Act," Title LXXV, National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92), as amended on January 1, 2021 by the National Defense Authorization Act for FY2021 (FY2021 NDAA), Pub. L. 116-283. PEESA (Sec. 7503 of FY2020 NDAA), as amended (by FY2021 NDAA Sec. 1242). We continue to call on Russia to cease using its energy resources for coercive purposes. Russia uses its energy export pipelines to create national and regional dependencies on Russian energy supplies, leveraging these dependencies to expand its political, economic, and military influence, weaken European security, and undermine U.S. national security and foreign policy interests. These pipelines also reduce European energy diversification, and hence weaken European energy security.

PEESA, as amended, provides the United States with the authority to advance U.S. national security and foreign policy objectives, in particular to address Russian pipeline projects that create risks to U.S. national security, threaten Europe's energy security, and consequently, endanger Europe's political and economic welfare.

In accordance with PEESA Section 7503, as amended, the Secretary of State, in consultation with the Secretary of the Treasury, is to submit a report to Congress for the relevant period, identifying, among other things, (A) vessels that engaged in pipe-laying or pipe-laying activities at depths of 100 feet or more below sea level for the construction of the Nord Stream 2 pipeline project, the TurkStream pipeline project, or any project that is a successor to either such project; and (B) foreign persons that the Secretary of State, in consultation with the Secretary of the Treasury, determines have knowingly: (i) sold, leased or provided, or facilitated selling, leasing, or providing those vessels for the construction of such a project; (ii) facilitated deceptive or structured transactions to

provide those vessels for the construction of such a project; (iii) provided for those vessels underwriting services or insurance or reinsurance necessary or essential for the completion of such a project; (iv) provided services or facilities for technology upgrades or installation of welding equipment for, or retrofitting or tethering of, those vessels if the services or facilities are necessary or essential for the completion of such a project; or (v) provided services for the testing, inspection, or certification necessary or essential for the completion or operation of the Nord Stream 2 pipeline.

In addition, the FY2021 NDAA amendments to PEESA expanded the types of vessel activity subject to reporting requirements in Section 7503(a)(1)(A) from solely “pipe-laying” to also include “pipe-laying activities,” which are defined in Section 7503(k)(5) as “activities that facilitate pipe-laying, including site preparation, trenching, surveying, placing rocks, backfilling, stringing, bending, welding, coating, and lowering of pipe.” Furthermore, pursuant to Section 7503(c), sanctions are to be imposed on those foreign persons that are determined to meet the criteria pursuant to Section 7503(a)(1)(B)(i-v) of PEESA, as amended, and who are not certified for wind-down under the applicable wind-down period and are not subject to the exceptions under PEESA, as amended. The amendments made to PEESA by the FY2021 NDAA require consultation with the governments of Norway, Switzerland, the United Kingdom, and member countries of the EU before imposing any sanctions.

Persons with additional questions are encouraged to contact the State Department at CAATSA_PEESA_Energysanctions@state.gov.

Frequently Asked Questions

Q: What conduct does Section 7503(a)(1)(B) of PEESA, as amended, cover?

A: Section 7503(a)(1)(B)(i), as amended, requires that the report to Congress include foreign persons that the Secretary of State, in consultation with the Secretary of the

Treasury, determines have knowingly “sold, leased, or provided or facilitated selling, leasing, or providing those vessels [i.e., the vessels listed for having engaged in pipe-laying or pipe-laying activities at depths of 100 feet or more below sea level] for the construction of such a project.” Such projects include Nord Stream 2, TurkStream, or any project that is a successor to either such project. Section 7503(a)(1)(B)(i) covers foreign persons who provide or finance the vessels and also covers certain forms of support provided to the vessels not already covered under Sections 7503(a)(1)(B)(ii-v).

Additionally, Section 7503(a)(1)(B)(ii) covers foreign persons that the Secretary of State, in consultation with the Secretary of the Treasury, determines have knowingly facilitated deceptive or structured transactions to provide those vessels for the construction of such a project. Such projects include Nord Stream 2, TurkStream, or any project that is a successor to either such project.

Further, Sections 7503(a)(1)(B)(iii)-(v) cover foreign persons that the Secretary of State, in consultation with the Secretary of the Treasury, determines have knowingly: provided for those vessels underwriting services or insurance or reinsurance necessary or essential for the completion of any of the aforementioned projects; provided services or facilities for technology upgrades or installation of welding equipment for, or retrofitting or tethering of, those vessels if the services or facilities are necessary or essential for the completion of any of the aforementioned projects; or provided services for the testing, inspection, or certification necessary or essential for the completion or operation of the Nord Stream 2 pipeline.

Q: Does PEESA provide for certain activities to be excepted from sanctions?

A: PEESA, as amended, includes a number of exceptions specifying activities to which sanctions under PEESA shall not apply. For example, pursuant to Section 7503(e)(3) of

PEESA, as amended, sanctions under this section shall not apply with respect to a person providing provisions to a vessel identified under Section 7503(a)(1)(A) if such provisions are intended for the safety and care of the crew aboard the vessel, the protection of human life aboard the vessel, or the maintenance of the vessel to avoid any environmental or other significant damage.

Pursuant to Section 7503(e)(4) of PEESA, as amended, sanctions under this section shall not apply with respect to a person for engaging in activities necessary for or related to the repair or maintenance of, or environmental remediation with respect to, Nord Stream 2, TurkStream, or any project that is a successor to either such project.

Pursuant to Section 7503(e)(6) of PEESA, as amended, sanctions under this section shall not apply with respect to the European Union; the government of Norway, Switzerland, the United Kingdom or any member country of the European Union; or any entity of the European Union or a government noted herein that is not operating as a business enterprise.

Q. How does the U.S. government plan to implement the wind-down specified in Section 1242(f) of the National Defense Authorization Act for Fiscal Year 2021 (NDAA)?

A: Upon passage of the FY2021 NDAA on January 1, 2021, the amendments made to PEESA pursuant to Section 1242(f) of the FY2021 NDAA immediately became effective. In accordance with the wind-down provision in Section 1242(f) of the FY2021 NDAA, persons that were knowingly engaged in conduct subject to sanctions under the amendments to PEESA would have needed to cease construction-related activity or engage in good faith efforts to wind down sanctionable activity no later than 30 days after PEESA, as amended, became effective. That date was January 31, 2021. The wind-

down provision in Section 1242(f) of the FY2021 NDAA is not applicable to activities that were already subject to sanctions under Section 7503 of PEESA prior to the amendments in the FY2021 NDAA. Following the conclusion of the wind-down period, the Secretary of State, in consultation with the Secretary of the Treasury, is required to impose sanctions on those foreign persons that are determined to meet the criteria pursuant to Section 7503(a)(1)(B)(i-v) of PEESA, as amended, and who are not otherwise subject to the exceptions under PEESA, as amended.

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