

U.S. Sanctions List Sets Dangerous Precedent

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The U.S. sanctions imposed on high-ranking Russian officials caused many to gasp in dismay that the U.S. had targeted figures believed to be close to President Vladimir Putin. The U.S. government's decision to include the likes of Yury Kovalchuk, Arkady and Boris Rotenberg and Gennady Timchenko were shocking — but more for the groundless allegations against Russian officials than anything else.

It is relatively easy for the U.S. to sanction members of a government deemed to be acting in a hostile way, but what are the grounds for extending them to people who had no formal connection to that government?

The U.S. statement that accompanied the list described the targeted individuals as being part of Putin's "inner circle," a term that is presumably somewhat difficult to define legally. But it also contained some surprisingly bold statements. It claimed that Putin has investments in the commodities trader Gunvor, whose former Russian shareholder, Timchenko, is one of the Treasury Department's new targets. Similarly, the document claimed that Bank

Rossiya, now a sanctioned "Specially Designated National," or SDN, along with its main shareholder, Yury Kovalchuk, is the "personal bank" for senior officials. Kovalchuk, according to the statement, is the "personal banker" of senior officials, including Putin.

If Putin does have an equity interest in Gunvor, then Gunvor has been lying about the company's ultimate beneficial ownership, and its disclosed shareholders have been "fronting" for the Russian president. The press release is implying that Gunvor and Bank Rossiya, as well as Timchenko and the other named individuals, have been helping to launder the proceeds of grand corruption. Although Gunvor can say that the sanctions do not extend to it because Timchenko is no longer involved — he reportedly sold his shares in the company a day before the sanctions were announced — its alleged role in concealing Putin's commercial interest could make it a difficult counterparty for Western banks.

None of the allegations in the Treasury Department's statement are new. They have been circulating since 2004, when politician Ivan Rybkin placed an advertisement in Kommersant newspaper calling Putin "the biggest oligarch in Russia." He claimed that the then little-known Timchenko and Kovalchuk, along with the better-known Roman Abramovich, were responsible for Putin's business affairs. Newspapers such as The Economist and The Guardian have subsequently run stories alleging that Putin is a multi-billionaire, and suggesting that Timchenko is a front for his business interests. But we have not seen any actual "smoking gun" proof of a financial relationship between Putin and these other individuals. Russia's oligarchs have been successful in bringing libel charges against several prominent newspapers and magazines over the past 20 years.

The journalists who have made such allegations understandably feel vindicated now that the same claims are being made, without any mealy mouthed terms like "allegedly" or "reportedly," by the U.S. government. Economist editor Ed Lucas tweeted a "smiley face" emoticon to remind everyone of the near-global reach of U.S. sanctions, and the dire consequences if those are breached.

Some naively believe that if the U.S. government has put this stuff in black and white, then they must know it to be true. After all, they have access to the vast intelligence-gathering capabilities of the FBI and CIA, the theory goes.

Maybe so. But the Treasury Department's press release contains some puzzling factual errors. Vladimir Yakunin's position as head of state-owned company Russian Railways does not, as the document claims, confer on him an "official position in the Russian government." He is not "chairman of the board" but the chief executive of the company, an important difference for anyone who understands how companies work. (The company's chairman is a man named Kirill Androsov, which was not hard to find. A one-minute search on the company's website is enough to reveal this information.)

Maybe I am just being pedantic, but these errors suggest that the quality of U.S. intelligence is not impeccable. The Treasury Department is not saying where it got its information from. When asked by reporters, a spokesman said it had been drawn from a variety of sources, which he refused to name. It sounds like the same information we have heard from the likes of anti-corruption blogger Alexei Navalny or former "political technologist" Stanislav Belkovsky.

Navalny has been good at finding evidence of high-level Russian corruption and putting it in the public domain, but he hasn't yet provided any proof of Putin's financial relationship to Gunvor or Bank Rossiya. Belkovsky just makes the allegations, says he has "trusted sources" and lets others go looking for the evidence.

This begs the question of why the U.S. government would open itself up to legal action by not being sure of its facts, especially given that the likes of Timchenko have some pretty powerful lawyers. But there is a problem with this line of reasoning. If sanctions were wide open to legal challenge from every named individual and company, Washington's war on drugs and terrorism would be significantly handicapped.

There is an appeal process for people who feel they have been wrongly included on the SDN list. It starts with a formal request to the agency responsible, the Office for Foreign Assets Control for removal from the list. The Office for Foreign Assets Control can take as long as two years to reach a decision on this. If the office says no, you can take the matter to a U.S. court, and there are U.S. lawyers for hire who are happy to help you with that. But in court, the burden of proof is not on the Office for Foreign Assets Control to provide the solid grounds for their decision to include you on the list and reject your appeal. No, the burden of proof is on you to demonstrate that their decision was "arbitrary and capricious."

I would not want to put bets on the U.S. allegations against the blacklisted members of Putin's inner circle being false. But I believe in the value of evidence. So instead of concluding from the U.S. government's endorsement that the "Putin the kleptocrat" narrative is now a matter of fact, I'd urge journalists and everyone else to keep an open mind. The proof is still lacking, and the sanctions do not change that fact.

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