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### ***Warn That Any Effort to Slow, Derail Deal Could Have Disastrous Consequences for Economy and Seriously Undermine U.S. Sanctions Policy***

Amid a last-minute effort to politicize the U.S. Treasury’s successful deal to wrest control of En+ Group Plc and United Co. Rusal Plc from Russian oligarch Oleg Deripaska, a wide range of former top Treasury officials and sanctions experts are warning any attempt to derail the agreement could have dire worldwide economic consequences and undermine future attempts by the U.S. to level sanctions against foreign actors. Describing the **“smart sanctions”** approach by Treasury as a **“good policy outcome,”** these experts say the playbook OFAC deployed with EN+/RUSAL **“should frighten other Russian oligarchs who cooperate with Russian President Vladimir Putin’s misadventures abroad or are part of his corrupt circle.”**

### **What the Experts Are Saying About the Tough Approach Taken by Treasury ...**

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## Taking Control: How the Barker Plan Permanently Removes Oleg Deripaska from Control of En+ and Rusal

The OFAC Plan will end Deripaska's control of this global business while ensuring he personally remains under tough US sanctions.

~~Deripaska loses over \$2B forever, t~~The Board ~~will~~would be ~~2-1~~two-thirds/ one third independent of ~~against~~ Deripaska, ~~Deripaska will not receive any dividends for as long as he remains subject to sanctions, and the Company and its operations will remain under the eyes~~scrutiny of U.S. regulators. The agreement ~~will~~would allow the world's ~~second~~<sup>2<sup>nd</sup></sup> largest producer of aluminum to stay out of Russian state or Chinese ownership.

~~Voting against the agreement would puts a huge "For Sale" sign on the business and the buyers would likely~~be either Chinese or Russian state. Offers have already been made and turned down by Lord Barker, ~~the independent Chairman of the En+ Board of Directors~~. Voting against the agreement is a vote to sell 10% of the world's aluminum stock to Putin or China. ~~Whichever country buys Rusal, the check would say the same thing: "Pay to the order of Oleg Deripaska."~~

U.S. sanctions basically took the Rusal checkbook out of Deripaska's hands. ~~One of T~~the first things the independent directors did was to stop dividends from being paid, resulting in Rusal now having over \$1.2B in cash on hand. Voting against the agreement ~~would~~ puts that checkbook back in Deripaska's hands. The first check he ~~would~~ write will say "Pay to the order of Oleg Deripaska."

Killing this agreement ~~would~~ snatches defeat from the jaws of victory. The alternative to the Barker Plan is the Putin Plan or the Xi Plan, because this strategic asset ~~would~~ likely fall into the hands ~~belong to of the~~ Russian government or China. ~~No one else will buy it under sanctions and the status quo will not stay long.~~

Voting down the plan would mean plants in Ireland, Sweden and Jamaica would be shuttered, workers laid off. European market would be destabiliz~~ed~~ and US consumer prices would rise.

The Barker Plan is not perfect, but it is the one solution that protects U.S. jobs, U.S. interests and U.S. influence ~~for as long as while inflicting real pain on~~ Deripaska ~~remains subject to sanctions.~~

**Background:** After months of negotiations, the Treasury Department announced December 19 that it had reached an agreement with the independent chairman of En+ to affect a major restructuring of the company's corporate governance and ownership structure to comply with U.S. policy goals. Specifically, the agreement calls for sanctioned Russian oligarch Oleg Deripaska to be removed from his control of En+, forcing him to divest his majority stake in the company and constituting a new board of directors dominated by an independent group that will include six distinguished U.S. and U.K. nationals who have been vetted by the U.S. Treasury Department.

**The bottom line:** The Treasury Department's agreement will permanently eliminate Deripaska's control while forcing him to take ~~significant financial losses a loss of billions of dollars while still facing under continuing~~ aggressive sanctions from the U.S. government.

### Severing Deripaska's Control – The Specifics

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- Deripaska's shareholding in En+, the holding company for RUSAL, **falls from 70% to 44.95%. A further 10% of Deripaska's holdings are vested in an independent trust approved by OFAC. His tangible voting rights are reduced to 35%.**
- **Independent directors vetted by OFAC will make up 8 of 12 seats** on a newly constituted board, including six U.S. or U.K. citizens.
- **The number of independent directors will increase to eight from three.**
- **Two-thirds of the company's voting rights will be held by independent trustees or minority shareholders.**
- **Any dividends or potential revenue from transferred shares will never be provided to Deripaska for as long as he remains sanctioned.**
- Voting rights for additional shares – those held by VTB Bank and any Deripaska family member or related party – are similarly vested in **a one of three independent U.S. trustees.**

#### Further Protections for the United States

- OFAC's plan is **designed to cement enduring changes at En+ and RUSAL.**
- The binding agreement requires the companies to submit to **unprecedented ongoing transparency with Treasury, including extensive and regular auditing, certification and reporting requirements.**
- Any breach of the agreement by En+ or RUSAL would result in the companies being immediately sanctioned again.
- **All of Deripaska's property will remain blocked and he will remain on the SDN list.** His investments in En+ and RUSAL are frozen, and **he cannot obtain cash either in return for his shares or from future dividends issued by these companies.**
- As Treasury has stated, **"These companies will be subject to ongoing compliance and will face severe consequences if they fail to comply."**

#### Alternatives?

- If sanctions are not removed, the U.S. Government will lose its ability to eliminate Mr. Deripaska's control of EN+ and Rusal.
- Moreover, these companies and their affiliates, including operating companies in Europe, the United States and Jamaica, will lose their ability to operate in a manner consistent with U.S. sanctions law and policy, creating the likelihood that the companies will either be nationalized by Russia or purchased by the Chinese.

#### Other Positives

- Deripaska remains blocked as do all other entities in which he has 50 percent or more ownership, **in a manner that is entirely consistent with long-established OFAC policy, practice and precedent.**
- Aluminum customers/suppliers (including number in US - such as chemical suppliers for aluminum production, those using aluminum) will benefit**ed.**
- Sends strong signal re: seriousness of USG sanctions in that relief only given if key elements of oligarch ownership and control are surrendered under USG oversight.

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- Provides credible pathway for others to follow suit and at same time make oligarchs pay for support to Putin. ~~Conversely, flip side of coin~~, overturning this decision would undermines OFAC's ability to secure this type of concession/reduction in future (and there are other sanctions targets and entities looking at this as they decide what to do).

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**The bottom line:** The Treasury Department's agreement will permanently eliminate Deripaska's control while forcing him to take a loss of billions of dollars while still facing aggressive sanctions from the U.S. government.

### **Severing Deripaska's Control – The Specifics**

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- Deripaska's shareholding in En+, the holding company for RUSAL, **falls from 70% to 44.95%. A further 10% of Deripaska's holdings are vested in an independent trust approved by OFAC. His tangible voting rights are reduced to 35%.**
- **Independent directors vetted by OFAC will make up 8 of 12 seats** on a newly constituted board, including six U.S. or U.K. citizens.
- **The number of independent directors will increase to eight from three.**
- **Two-thirds of the company's voting rights will be held by independent trustees or minority shareholders.**
- **Any dividends or potential revenue from transferred shares will never be provided to Deripaska for as long as he remains sanctioned.**
- Voting rights for additional shares – those held by VTB Bank and any Deripaska family member or related party – are similarly vested in a U.S. trustee.

#### **Further Protections for the United States**

- OFAC's plan is **designed to cement enduring changes at En+ and RUSAL.**
- The binding agreement requires the companies to submit to **unprecedented ongoing transparency with Treasury, including extensive and regular auditing, certification and reporting requirements.**
- Any breach of the agreement by En+ or RUSAL would result in the companies being immediately sanctioned again.
- **All of Deripaska's property will remain blocked and he will remain on the SDN list.** His investments in En+ and RUSAL are frozen and **he cannot obtain cash either in return for his shares or from future dividends issued by these companies.**
- As Treasury has stated, **"These companies will be subject to ongoing compliance and will face severe consequences if they fail to comply."**

#### **Alternatives?**

- **If sanctions are not removed, the U.S. Government will lose its ability to eliminate Mr. Deripaska's control of EN+ and Rusal.**
- **Moreover, these companies and their affiliates, including operating companies in Europe, the United States and Jamaica, will lose their ability to operate in a manner consistent with U.S. sanctions law and policy, creating the likelihood that the companies will either be nationalized by Russia or purchased by the Chinese.**

#### **Other Positives**

- Deripaska remains blocked as do all other entities in which he has 50 percent or more ownership.
- Aluminum customers/suppliers (including number in US - such as chemical suppliers for aluminum production, those using aluminum) will benefited.
- Sends strong signal re: seriousness of USG sanctions in that relief only given if key elements of oligarch ownership and control are surrendered under USG oversight.

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- Provides credible pathway for others to follow suit and at same time make oligarchs pay for support to Putin; flip side of coin, overturning this decision undermines OFAC's ability to secure this type of concession/reduction in future (and there are other sanctions targets and entities looking at this as they decide what to do).

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WALL STREET JOURNAL

## Schumer's Russia Sanctions Gambit

There's no evidence to doubt the Treasury's negotiation with Rusal.

By  
The Editorial Board  
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The goal of U.S. sanctions is to change behavior. But tell that to Senate Democratic leader Chuck Schumer, who is trying to score political points by killing an agreement between the Treasury Department and owners of Rusal, Russia's aluminum giant. Mr. Schumer is talking tough on Moscow, without even trying to explain what a better final outcome would be.

In April the Treasury announced sanctions on Oleg Deripaska, one of Vladimir Putin's oligarch cronies. Since Mr. Deripaska controls EN+ Group, which controls Rusal, both companies were implicated. But the U.S. penalty seems to have worked. In [a Dec. 19 letter](#), Treasury told Congress it would lift sanctions on the companies—though not on Mr. Deripaska—under an agreement with the Russian parties.

The law gives Congress 30 days to overturn this action by passing a resolution of disapproval. Since it's procedurally privileged, Mr. Schumer can force a vote—and he has suggested he intends to, possibly Tuesday. He wants to put Republicans on the spot so he can portray them as soft on Russia.

“The Treasury Department's proposal is flawed,” the Minority Leader said, “and fails to sufficiently limit Oleg Deripaska's control and influence of these companies.”

Did he read the same Treasury letter that we did? Under its terms Mr. Deripaska's stake in EN+ will drop from about 70% to 45%, where it will be frozen. He will get no cash from the restructuring. Shares will be taken by [VTB Bank](#), the Swiss mining company [Glencore](#), and a charitable foundation.

To further dilute control, Mr. Deripaska will vote only 35% of his shares. The rest will be voted by a trust, which will be required to side with the majority of non-Deripaska shares. Shares held by VTB Bank will be voted by a third party. So will shares whose owners have “professional or family ties” to Mr. Deripaska.

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EN+ will get a new board. Two-thirds of its directors will be independent of Mr. Deripaska, and half will be American or British. Rusal's chairman will step down, and the majority of its board will be independent. The companies have agreed to auditing and reporting requirements, such as providing the Treasury with quarterly reports and board minutes.

Keep in mind, EN+ and Rusal are not accused of anything other than entanglement with Mr. Deripaska. Consider, too, the implications if Mr. Schumer succeeds in blocking the Treasury deal. Other entities under U.S. sanction will take the lesson that negotiating is fruitless and changing ownership or business practice is no guarantee of relief.

The eventual outcome with Rusal may end up worse. Russia could nationalize the aluminum producer or broker a deal for the Chinese to buy it. That would disentangle the company from Mr. Deripaska, but not in a way that advances America's interests.

Mr. Schumer adds that the sanctions should stay because Robert Mueller hasn't concluded his special counsel investigation. The insinuation is that President Trump could be intervening here as a favor to the Russians. There's zero evidence for that—and the Trump Administration has been far tougher on Russia than the Obama Administration was even after the Kremlin's 2016 election interference.

When a party under sanctions shapes up, the penalty ought to be lifted. There's no reason Rusal should be an exception.

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