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International Sanctions – Considerations for Insurers

Gotham Insurance Webinar Series

March 16, 2021

Today, we will discuss, from a US, EU and UK compliance perspective:

- Jurisdiction
- Designated persons
- Sectoral and trade sanctions restrictions
- Conflict of sanctions laws - blocking regulation(s)
- Contractual provisions and approaches
- Maritime issues/advisories

The context and the sanctions building blocks



Overview of US Sanctions

US sanctions Summary

Sanctions are legal instruments of public policy	Restrict with whom, where, and how someone can do business - or penalties for doing so without authorization
Sanctions don't just apply in the United States	May be imposed by the United Nations , the European Union , or by individual countries , like the United States, Canada or (since Brexit) the United Kingdom
Compliance is critical	Sanctions can apply globally , especially if the US Dollar or US-origin items are involved They can affect day-to-day business , up and down the supply chain, customers, and vendors Violations can result in criminal prosecution, fines , administrative penalties, breach of contract / insurance, debarment from contracting and reputational damage . . . For entities and for individuals

Where do US sanctions come from? Legal history

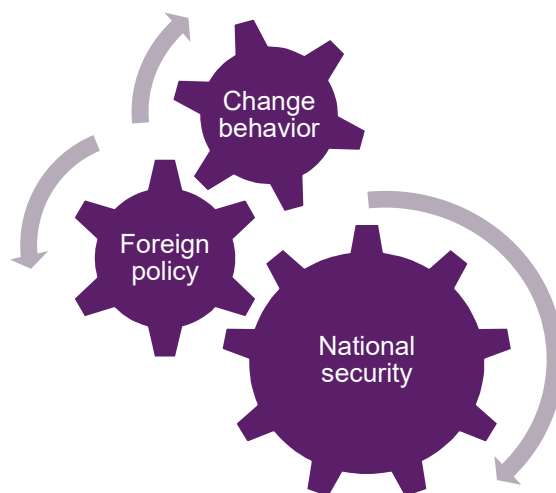
- US trade policy has been used to advance national security and foreign policy goals since the American Revolution
 - Blocking
 - Prohibiting
 - Licensing
- The Office of Foreign Funds Control (WWII - era)
- The Office of Foreign Assets Control (1950 - today)



Where do US sanctions come from? Legal foundations

- US Constitution
- Trading With the Enemy Act (1917)
- United Nations Participation Act (1945)
- International Emergency Economic Powers Act (1977)
- And a growing range of other, more specific authorities, such as:
 - CISADA
 - CAATSA
 - NDAAAs

Why are they used? The purpose



Why are they used?

The impact of sanctions

- Aggressive oversight and enforcement
- Broad extraterritorial reach
 - Most transactions in US Dollars (clearing)
 - US-origin items (or foreign items with US content), anywhere in the world
 - Conduct in the United States (including e-mails, phone calls, and text messages, using US-based servers)
 - Transactions involving US citizens, green card holders, and companies
- Strict liability for some sanctions; "should-have-known" for others
- Counterparties are on high alert (particularly financial institutions)
- Reputational risks

Key terms

Types of sanctions

"Comprehensive" sanctions

- Crimea, Cuba, Iran, North Korea, Syria

List-based designations

- SDN, SDNTK, SDGT, FSE, Iran Government, Cuba Government, etc.

Sectoral sanctions

- Russia, Venezuela

Secondary/extraterritorial sanctions

- Penalties on non-US Persons that do business with certain sanctioned persons, or certain types of sanctioned activities

Key terms

How sanctions work

"Facilitation"

- Approving, financing, facilitating, or guaranteeing any transaction by a non-US person when the transaction would be prohibited if performed by a US Person

Blocking/Freezing

- Obligates any party in possession or control of funds or property of a sanctions target to block or freeze those assets and file certain reports

50% Rule

- Where there is a restriction against a designated sanctions target, the same restriction automatically applies to entities which the target owns 50% or more

"Control"

- Entities "controlled" by a sanctions target are subject to the same controls - but ONLY upon a finding by US authorities

Licenses

- General License means no further authorization required
- Specific License requires authorization in advance

Key terms

Current sanctions programs

Comprehensive sanctions

- Cuba, Iran, North Korea, Syria
- Crimea region of Ukraine

Sectoral sanctions

- Russia
- Venezuela

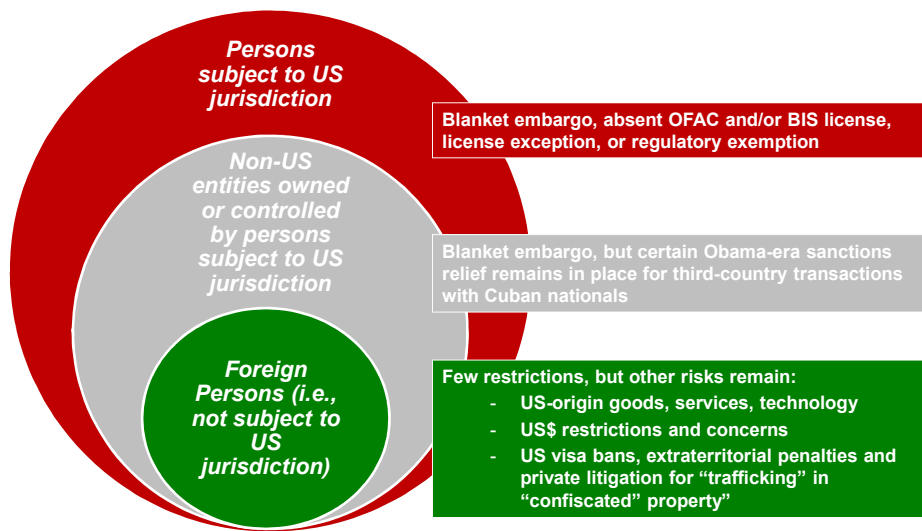
List-based sanctions

- W. Balkans, Belarus, Burundi, Central African Republic, DR Congo, Iraq, Lebanon, Libya, Mali, Nicaragua, Somalia, South Sudan, Ukraine, Yemen, Zimbabwe, etc.
- Terrorism, WMD, human rights violators, transnational criminal organizations, narcotics traffickers, Magnitsky, rough diamonds, foreign sanctions evaders, etc.

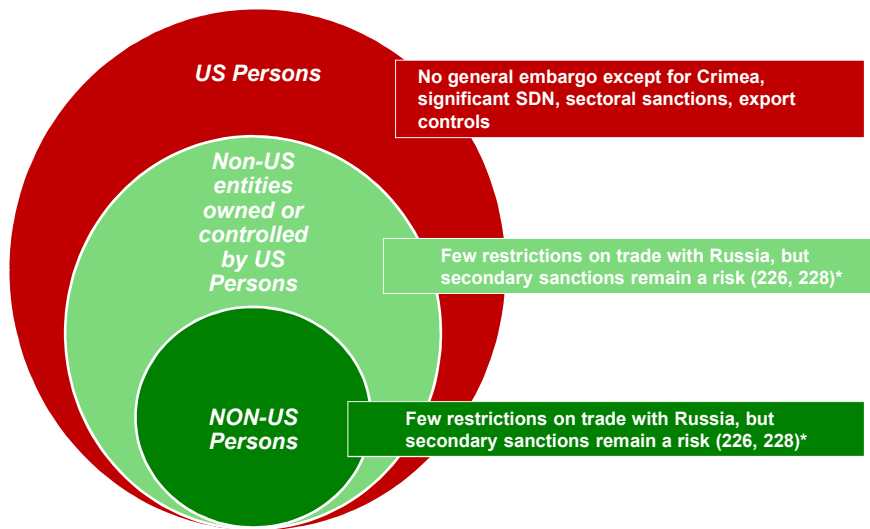
Secondary sanctions

- CAATSA (NS2, TS2, Russia program designations, etc.)
- Iran

Cuba sanctions, for example



Russia-related sanctions, for another example



*Sections 226 and 228 of the Countering America's Adversaries Through Sanctions Act penalize foreign persons engaged in "significant" transactions involving sanctioned people and entities

Key terms

Core US sanctions compliance principles

- US Persons may **NOT** engage in or facilitate a transaction directly or indirectly involving a country (or Crimea) or person subject to sanctions, absent a license or other authorization from OFAC
 - US Persons cannot buy, sell, or transfer any goods, services or technology to, from or involving any sanctioned country or person, absent OFAC approval
 - **no de minimis** threshold
 - no requirement that money or goods change hands, or that a transaction be consummated
- US law also prohibits “facilitation,” aiding-and-abetting, conspiracy, etc.
 - Rule of thumb: if a US Person cannot engage in the transaction directly, then he/she cannot do so indirectly
- OFAC expects risk-based compliance measures, including 5 essential elements
- Documentation and recordkeeping is critical

Iran Sanctions

Iran Sanctions

Statutory sources

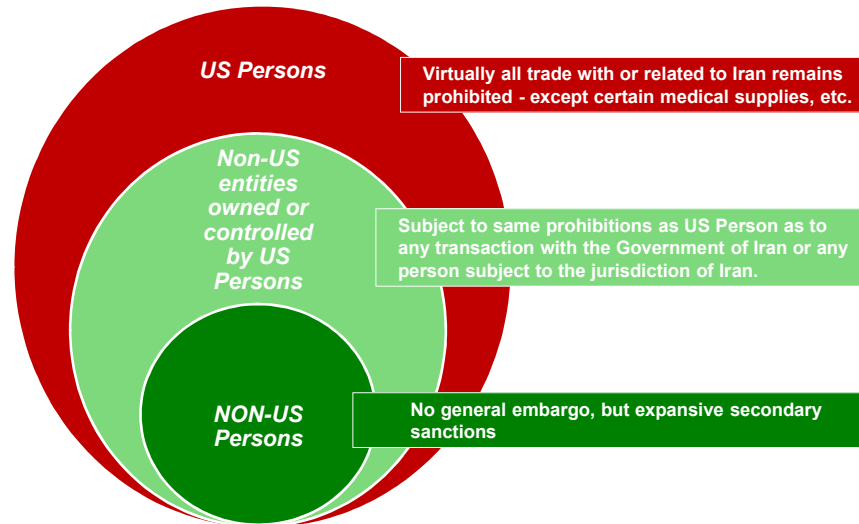
- International Emergency Economic Powers Act (IEEPA)
- Countering America's Adversaries Through Sanctions Act (CAATSA)
- Iran Freedom and Counter-Proliferation Act (IFCA)
- Iran Threat Reduction and Syria Human Rights Act
- Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA)
- Iran Sanctions Act of 1996
- Section 1245 of the National Defense Authorization Act (NDAA) for Fiscal Year 2012, as amended
- Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA)

Iran Sanctions

Regulatory authorities and agency guidance

- Codified Regulations
 - Iranian Assets Control Regulations (31 CFR Part 535)
 - Iranian Transactions and Sanctions Regulations (31 CFR Part 560)
 - Iranian Financial Sanctions Regulations (31 CFR Part 561)
 - Iranian Human Rights Abuses Sanctions Regulations (31 CFR Part 562)
- As of December 13, 2020, 26 Executive Orders
- General Licenses
- Agency guidance
 - Interpretive guidance
 - Trade advisories
 - Frequently Asked Questions (over 200)
 - List of medical devices requiring specific authorization

Iran sanctions commercial landscape



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Iran Sanctions

Key concepts

- *What* do the Iran sanctions prohibit?
- *Who* must comply? (Jurisdictional question)
- "Primary" typically refers to the prohibitions that govern the conduct of *US Persons* and, in certain cases, dealing in US-origin goods
- "Secondary" typically refers to sanctions that can be imposed on *NON-US Persons* for specified types of conduct
- United States Person
 - US citizens
 - US permanent residents
 - Entities organized under the laws of the United States and foreign branches
 - Any person while in the United States

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Iran Sanctions

Prohibitions under the Iranian Transactions and Sanctions Regulations (ITSR) (not an exclusive list)

- Importing goods and services into the US from Iran (not limited to US Persons)
- Exporting or re-exporting to Iran any goods or services from the US or by a US person
- Exporting or re-exporting certain goods to Iran by *non*-US persons
- Dealing in any goods of Iranian origin or providing goods to Iran or the Iranian government by US Persons
- Transactions in blocked property

Iran Sanctions

Prohibitions under the Iranian Transactions and Sanctions Regulations (ITSR) (not an exclusive list)

- Several notable features of the ITSR and sanctions generally expand these prohibitions beyond their own terms
 - Foreign companies owned or controlled by a US person may not engage in any transaction with the Government of Iran or any person subject to the jurisdiction of Iran, if the transaction would be prohibited to a US person
 - Causing, conspiring, attempting, evading
 - Facilitation: *no United States person, wherever located, may approve, finance, facilitate, or guarantee any transaction by a foreign person where the transaction by that foreign person would be prohibited by this part if performed by a United States person or within the United States.* 31 CFR 560.208
 - Certain changes to policies to allow transactions prohibited to US persons
 - Referring a foreign person business opportunities involving Iran or the GOI that a US person could not pursue

Iran Sanctions

General Licenses

- A general license is an authorization of transactions otherwise prohibited under the regulations. They are available to the public and do not require a specific request to OFAC
- They have specific terms and limitations, all of which must be complied with for the license to cover the transaction
- Authorize transactions that are consistent with or advance US foreign policy and other interests (examples on next page)

Iran Sanctions

General Licenses

- Exporting food, medicine, and medical devices to Iran; other humanitarian activities
- Exporting goods and services relating to telecommunications and mail, personal communications
- Journalism and journalistic activities; publishing
- Legal services and certain legal proceeding and other activities

Iran Sanctions

“Secondary” Sanctions

- Restrictive measures imposed on non-US persons for certain conduct
- The “sanctions relief” extended under the JCPOA and subsequently rescinded by the Trump administration almost entirely involved secondary sanctions
- Certain authorities apply to foreign financial institutions, while others apply to any person
- Key concept: “significant transaction”
 - (a) the size, number, and frequency of the transactions, financial services, or financial transactions; (b) the nature of the transactions, financial services, or financial transactions, including their type, complexity, and commercial purpose; (c) the level of awareness of management and whether the transactions are part of a pattern of conduct; (d) the nexus of the transactions, financial services, and financial transactions and blocked persons; (e) the impact of the transactions, financial services, and financial transactions on statutory objectives; (f) whether the transactions, financial services, and financial transactions involve deceptive practices; (g) whether the transactions solely involve the passive holdings of Central Bank of Iran (CBI) reserves or repayment by the CBI of official development assistance or the transfer of funds required as a condition of Iran’s membership in an international financial institution; and (h) other relevant factors that the Secretary of the Treasury deems relevant.
- Exceptions relating to humanitarian trade and transactions for which a US Person would not require a specific license

Iran Sanctions

“Secondary” Sanctions

- OFAC can impose a range of restrictive measures on conduct it deems sanctionable
 - Blocking sanctions
 - Visa ban and exclusion from the U.S.
 - Denial of ExIm bank financing
 - Government contracting debarment
 - Licensing debarment
 - Restrictions on loans from or equity investment by U.S. persons
 - Restrictions on foreign exchange, correspondent and payable-through accounts and transactions

Iran Sanctions

“Secondary” Sanctions (not an exhaustive list)

- EO 13902
 - Significant transactions for the sale, supply, or transfer to or from Iran of significant goods or services used in connection with the construction, mining, manufacturing, or textiles sectors of the Iranian economy, or other sectors specified by the Secretary of the Treasury, in consultation with the Secretary of State, pursuant to EO 13902
- EO 13871
 - Significant transactions for the sale, supply, or transfer to Iran of significant goods or services used in connection with the iron, steel, aluminum, or copper sectors of Iran;
 - Significant transactions for the purchase, acquisition, sale, transport, or marketing of iron, iron products, aluminum, aluminum products, steel, steel products, copper, or copper products from Iran

Iran Sanctions

“Secondary” Sanctions (not an exhaustive list)

- EO 13846
 - Significant transactions
 - the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran
 - the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran
 - the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran
 - the purchase or sale of Iranian rials or a derivative, swap, future, forward, or other similar contract whose value is based on the exchange rate of the Iranian rial
 - As to foreign financial institutions, conducting or facilitating a significant financial transaction with certain SDNs or NIOC or NICO, or the foregoing types of transaction involving the automotive sector of Iran, or petroleum, petroleum products, or petrochemicals from Iran
 - Providing significant financial, material, technological, or other support to, or goods or services in support of
 - the National Iranian Oil Company (NIOC), Nafiran Intertrade Company (NICO), or the Central Bank of Iran
 - Iranian persons included on the list of Specially Designated Nationals and Blocked Persons, and certain other SDNs (other than certain Iranian depository institutions listed solely because they are owned by the Government of Iran and not for other activity such as weapons proliferation, support for international terrorism, or human rights abuses)
 - a person determined to be a part of the energy, shipping, or shipbuilding sectors of Iran, or a person determined to operate a port in Iran

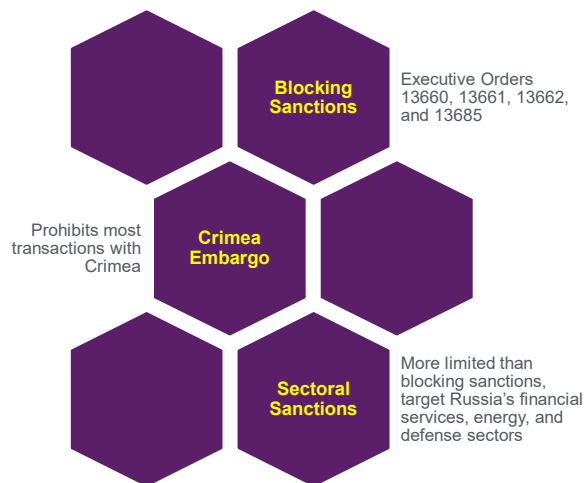
Russia Sanctions

Russia Sanctions

Overview of US Sanctions Policy Aims

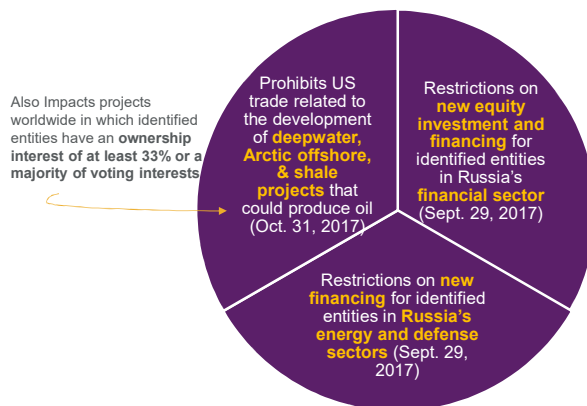
- Russia's invasion of Ukraine
- Interference in US elections
- Other malicious cyber activity
- Human rights abuses
- Use of a chemical weapon against Sergei Skripal and his daughter
- Weapons proliferation
- Illicit trade with North Korea
- Support to Syria and Venezuela
- Preventing the completion of Nord Stream II and TurkStream pipelines
- Use of a chemical weapon against Alexei Navalny

Russia Sanctions US Primary Sanctions



Russia Sanctions Sectoral Sanctions

Sectoral sanctions on Russia's financial, energy, and defense sectors:



Secondary sanctions related to energy sector, malign behavior; sectoral sanctions; more sanctions possible

- Corruption of Russian government officials (s. 227)
- Human rights abuses in territories controlled or forcibly occupied by the Russian government (s. 228)
- Transactions with the Russian defense and intelligence sectors (s. 231)
- Investment in or facilitation of the privatization of Russian state assets in a manner that unjustly benefits Russian government officials (s. 233)
- Arms sales to Syria (s. 234)
- Cybersecurity (s. 224) (blocking and more limited sanctions)

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Russia Sanctions

CAATSA Section 228

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graph TD; A["Impose blocking sanctions on any person that OFAC determines has knowingly facilitated significant transactions for or on behalf of 'any person subject to US sanctions with respect to the Russian Federation'"] --> B["Applies to both SDNs and SSIs"]; B --> C["Requires the presence of deceptive practices"]; C --> D["Persons knowingly facilitating significant transactions with a blocked person can be added to the SDN List"];
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Impose blocking sanctions on any person that OFAC determines has **knowingly facilitated significant transactions for or on behalf of "any person subject to US sanctions with respect to the Russian Federation"**

Applies to both **SDNs and SSIs**

Requires the presence of deceptive practices

Persons knowingly facilitating significant transactions with a blocked person **can be added to the SDN List**

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Russia Sanctions CAATSA Section 226

Requires the President to prohibit the opening of a **US correspondent or payable-through account, or prohibit or impose strict conditions on the maintenance of a US correspondent or payable-through account, for a foreign financial institution** that, “on or after the date that is 30 days after 2 August 2017 [i.e., 1 September 2017], knowingly facilitates a significant financial transaction on behalf of any Russian person” on the SDN List.

Russia Sanctions CAATSA Section 232

Authorizes the President to impose a menu of sanctions against any person who knowingly:

makes investments that directly and significantly contribute to the enhancement of the ability of the Russian Federation to construct energy export pipelines; or

provides to the Russian Federation, for the construction of Russian energy export pipelines, goods, services, technology, information, or support.

Russia Sanctions

PEESA and PEESCA

PEESA targets foreign persons who knowingly:

- Sold, leased, or provided vessels for the construction of the Nord Stream 2 pipeline, the Turkstream pipeline, or any successor project; or
- Facilitated deceptive or structured transactions to provide those vessels for such a project.

PEESCA further targets foreign persons who knowingly:

- Engage in "pipe-laying activities" in connection with the construction of the enumerated projects;
- Include "activities that facilitate pipe-laying, including site preparation, trenching, surveying, placing rocks, stringing, bending, welding, coating, lowering of pipe, and backfilling";
- Facilitate the sale, lease, or provision of vessels identified as engaged in pipe-laying or pipe-laying activities for the construction of the enumerated projects; or
- Provide underwriting, insurance, reinsurance, services or facilities for technology updates or installation of welding equipment for, or retrofitting or tethering of, vessels identified by the Secretary of State pursuant to PEESA.

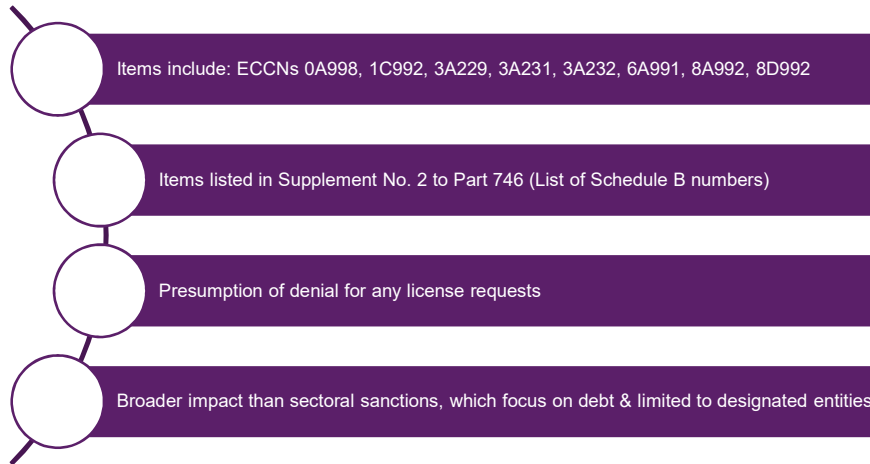
Russia Sanctions

Other Agency Actions



Russia Sanctions

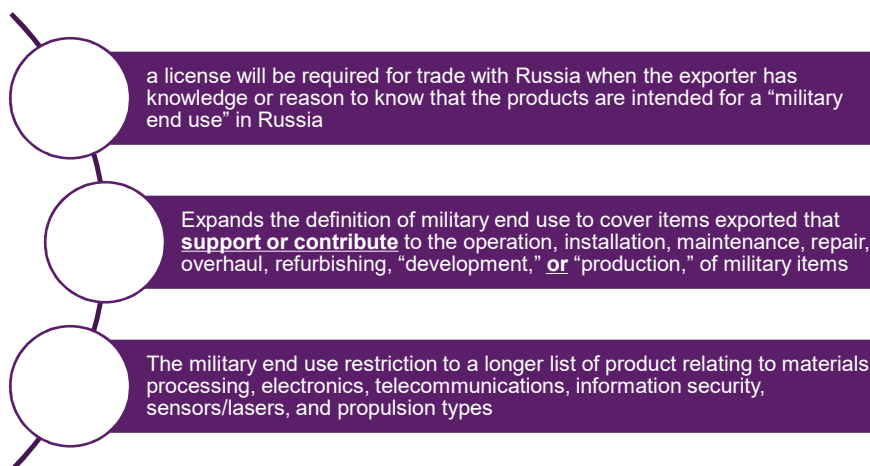
Russia Industry Sector Sanctions



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Russia Sanctions

New Military End-Use / End-User Controls



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China & Hong Kong Sanctions

US/China

- Multiple areas of focus
- Variety of US Agencies
- Impacts to Business

US/China Sanctions Focus Areas

Cybersecurity Concern over access to US systems, and use of technology to gain that access

Human Rights Targeting specific instances of forced labor or concerns over specific populations

Involvement with other sanctions programs Designation of Chinese entities in the context of Iran and Venezuela programs

US/China Sanctions Multiple US Authorities

- OFAC
 - Hong Kong Autonomy Act
 - EO 13936
 - GLOMAG
- Commerce Department
 - Designation of Chinese firms to Entity List
 - Designation of Chinese firms tied to Chinese Government/Military
- Homeland Security/CBP
 - Seizure of goods produced with forced labor
- Department of Defense
 - Limits on procurement - 2019 NDAA
 - Designation of entities connected to Chinese military

US/China Sanctions Basis for Sanctions

- Chinese officials involved in undermining Hong Kong autonomy
- Foreign financial institutions that “materially support” designated individuals or entities
- Government officials or Chinese firms that are responsible for, or complicit in, human rights abuses in Xinjiang
- Prohibitions on contracts to any entity that utilizes systems that are made by or significantly incorporate technology from specified Chinese technology companies

US/China Sanctions Recent Developments

- Designation of CEIC under Venezuela Program
 - Targeted both for Venezuela and military ties
- First Report under Hong Kong Autonomy Act - 10.14.2020
 - Identified 10 individuals, trigger for potential future sanctions related to financial transactions
- OFAC Designation of 10 Chinese officials - 8.7.2020
 - Precursor to Autonomy Act Report - blocking measures
- GLOMAG designations related to Xinjiang - 7.9.2020
- Joint BIS/OFAC Xinjiang supply chain advisory - 7.1.2020

US/China Sanctions Implications for Business

- Supply chain disruption related to source of inputs or products
- Enhanced “great Firewall” protocols for operations in China/Hong Kong
- Enhanced due diligence on Chinese partners/customers/suppliers
- Increased certifications related to use of Chinese technology in commercial operations
- Increased licensing requirements for sales of US components or technology incorporating US-origin items

North Korea Sanctions

North Korea Sanctions

Comprehensive Embargo

Complements and adds to existing international sanctions maintained by the United Nations and the international community

Aimed at impeding North Korea's **development of missile and nuclear technology, cyber attacks, human rights violations, censorship, and money laundering**

A comprehensive embargo **prohibits US persons from importing, exporting, or facilitating transactions** involving North Korea

New investments in North Korea by US persons are also prohibited

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North Korea Sanctions

Recent Increased Pressure

2020 saw an **increase in the pressure** on the North Korean government

Issuance of three separate sanctions **advisories**

Amendments expanding restrictions in the **North Korea Sanctions Regulations**

Criminal indictments of sanctions evaders that supported NK's **nuclear program**

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North Korea Sanctions Joint Cybersecurity Advisory

Malicious cyber activity from North Korea declared a **significant threat to integrity and stability of global financial system**

NK has used state-owned organizations to run cyberattacks against US and international **financial institutions, critical infrastructure, government and military networks, private industry, and individuals**

Encourage industry to **adopt enhanced security measures**

Recommend that industry reach out to the **Cybersecurity and Infrastructure Security Agency and the FBI Cyber Division** if they are targeted

North Korea Sanctions Joint Ballistic Missile Procurement Advisory

Intends to put the international community on notice as to **North Korean ballistic missile procurement entities and deceptive techniques**

Highlights industries most at risk: **electronics, chemical, metals, and materials industries as well as the financial, transportation, and logistics sectors**

Identifies **numerous types of products** that are likely to be implicated

Recommends **additional due diligence and Know-Your-Customer policies and procedures**

North Korea Sanctions Joint Maritime Advisory

Updates previous guidance issued for Syria, Iran, and Venezuela

Intended for the **maritime industry as well as the energy and metals sectors**

Outlines tools for the industry in these sectors to **counter illicit shipping and sanctions evasion** vis-à-vis North Korea

Common deceptive techniques: **disabling or manipulation of automatic ID systems on vessels, physical alteration of vessel IDs, falsifying cargo and vessel documents, and ship-to-ship transfers, etc.**

Recommends due diligence and monitoring for the **entire supply chain and transaction lifecycle**, among other best practices

North Korea Sanctions Amendments to the NKSR

Intensify the pressure against the North Korean regime by:

Implementing secondary sanctions for certain transactions

Adding potential sanctions restrictions on the use of correspondent accounts for non-US financial institutions that have provided significant services to SDNs

Updates key terms such as "luxury goods" for purposes of certain sanctions prohibitions

Venezuela Sanctions

Venezuela Sanctions Program

Sanctioned 144 individuals under the Venezuela sanctions program

Expansion of Venezuela Sanctions Scope

"Material Support" provisions of EO 13850 and 13884

Venezuela Sanctions

Government of Venezuela designation pursuant to EO 13884

Sanctions targeting the Maduro regime

- Blocking sanctions on [Petróleos de Venezuela, S.A. \(“PdVSA”\)](#) and its subsidiaries (Jan. 28, 2019)
- Limitations on dealing in [pre-sanctions bonds](#) issued by the **Government of Venezuela** (Feb. 1, 2019)
- Blocking sanctions against [Banco de Desarrollo Económico y Social de Venezuela \(“BANDES”\)](#) and four of its subsidiaries (Mar. 22, 2019)
- Designation of the [Central Bank of Venezuela](#) (Apr. 17, 2019)

Sanctions targeting sources of support for the Maduro regime

- Designation of Russia’s [Evrofinance Mosnarbank](#) for helping funnel revenue from oil sales (Mar. 11, 2019)
- Designations of [shipping companies](#) and blocking of related vessels **involved in the shipment of oil** from Venezuela to Cuba (Apr. 2019)
- Designation of [Rosneft Trading](#) in connection with **crude swaps and sales** (February and March 2020)
- Designation of [China National Electronic Import-Export Company](#), for supporting Maduro regime (November 30, 2020).

Venezuela Developments (Cont.)

Open question as to how OFAC will implement EO 13850 relating to Venezuela’s gold sector as well as **“any other sector of the Venezuelan economy”**

- Expansive in scope as it allows designation of any sector the Secretary of Treasury wishes

Open question as to how **“material support”** provision in EO 13850 and EO 13884 will be interpreted

- Although **no statutory secondary sanctions authorities**, there is a “material support” provision that authorizes OFAC to block the property of any person who provides material assistance or support for persons designated under the EO and designate these entities or individuals as SDNs

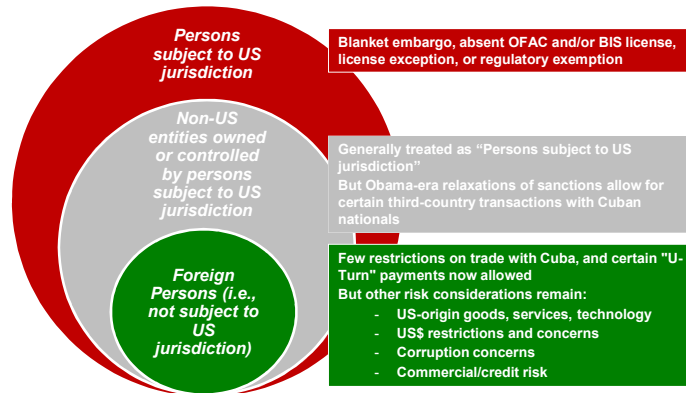
No formal guidance from OFAC about its **licensing criteria or policy**; however, OFAC has been providing some information to companies who have reached out via informal channels

Venezuela

- EO 13884 requires blocking of Government of Venezuela assets in the possession of US Persons, and prohibits transactions with any Government of Venezuela Entities
- This broadly prohibits US Persons from engaging in any transactions with the Government of Venezuela, including its subsidiaries and instrumentalities, unless authorized by a general or specific license
- Over **two dozen** general licenses have been issued authorizing various transactions otherwise prohibited, including by carving out certain PdVSA or GoV-owned entities, allowing transactions with Guaido government, winding down transactions, authorizing humanitarian and certain infrastructure-related transactions
- Many current and former government officials are also on the SDN list

Cuba Sanctions

ii. Major country programs - Cuba



Cuba Sanctions Developments

<p>A national security presidential memorandum by Trump in 2017 reversed sanctions relief provided by the Obama administration</p>	<p>Title III of the Helms-Burton Act permits US nationals that own certain confiscated property to sue any person who "traffics" in such property for damages</p>
<ul style="list-style-type: none"> • State Department's issuance of a "Restricted Entities" List • Removal of the authorization for "U-turn" transactions • Limits on remittances to Cuba • Reversal of policy to allow non-family travel to Cuba 	<ul style="list-style-type: none"> • The EU and Canada criticized the action, promising to block the enforcement of judgments obtained under the Act • Numerous lawsuits filed so far

Global Magnitsky Sanctions

Global Magnitsky “Glomag”

- Global Magnitsky Human Rights Accountability Act (2016)
- Authorizes blocking sanctions and US visa ban/revocation on “any foreign person” engaged in:
 - Human rights abuses, or
 - Corruption
- The President “shall” consider information provided by appropriate congressional committees, AND “credible information obtained by other countries and nongovernmental organizations that monitor violations of human rights”
- For information submitted by the appropriate congressional committees, President “shall” make a determination “not later than 120 days” after receiving

Global Magnitsky “Glomag”

- Executive Order 13818
- As of 12 March 2021, there are:
 - 127 individual designations, and
 - 117 entities
- Wide and diverse range of targets - both human rights and corruption
 - Individuals: 60 human rights / 42 corruption / 3 both
- An exception to an increase in unilateral sanctions?

EU Sanctions

History and some key points about EU sanctions

In the EU legal acts, “sanctions” are referred to as “restrictive measures”

EU sanctions evolved since the Maastricht Treaty 1992:

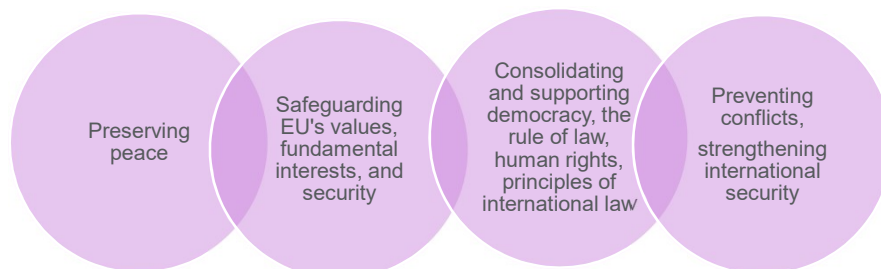
- Not full embargoes and
- Not just target states but also individuals and non-state entities

EU are preventive, not punitive

- They are designed to respond swiftly to political challenges and developments in the target country
- Bring minimum adverse consequences for the civilian population and legitimate activities

EU sanctions objectives

- The Treaty on European Union (TEU) includes restrictive measures as one of the possible tools that can be employed to pursue and promote the objectives of the **Common Foreign and Security Policy** (« **CFSP** »)



EU sanctions (restrictive measures) regimes

Nature:

- Transposing UN Security Council Resolutions
- Adopted autonomously by the EU (e.g. Iran “Serious Human Rights Violations” regime)
- Mixed (e.g. Iran “Weapons of Mass Destruction” regime)

Adopted through a package consisting of:

Council Decision

- Addressed to the EU Member States

Council Regulation

- EU law creating obligations on persons and entities under EU jurisdiction

The process of adoption is regulated by Articles 30 and 31 of the TEU.

Role of the European Commission

Law-making

(Drafts Council Regulations, on the basis of Council Decisions)

Supporting uniform implementation

(Delivers legal opinions and public guidance on the application of sanctions)

Monitoring

(Oversees enforcement of sanctions by the EU Member States)

Who must comply with EU sanctions

- Any person within the territory of the EU;
- Any person on board of any aircraft or any vessel under the jurisdiction of a Member State;
- Any national of a Member State inside or outside the territory of the EU;
- Any legal person, entity or body, inside or outside the territory of the EU, which is incorporated or constituted under the law of a Member State;
- Any legal person, entity or body in respect of any business done in whole or in part within the EU.

Main forms of EU sanctions

Targeted financial sanctions

- Restrictions against specific individuals and entities, which include **asset freezes** (the obligation to block all assets belonging to a sanctions target), **prohibition to make funds and economic resources available** and, very rarely, capital market limitations

Restrictions on movement

- Travel bans (prohibiting the entry of specific individuals onto EU territory)

Targeted trade and economic sanctions

- Bans on import/export of specific goods and technologies
- Arms embargoes
- Restrictions on transactions with specific economic sectors within a targeted jurisdiction (e.g. the financial or energy sector); these usually only prohibit certain types of dealings (e.g. providing loans or supplying equipment for specific projects).

Countries targeted by EU sanctions



Examples of current EU sanctions regimes

Russia

-  Arms export
-  Arms import
-  Embargo on dual-use goods
-  Financial measures (transferable securities and money-market instruments)
-  Financial measures (new loan or credit)
-  Prohibition to satisfy claims
-  Other items
-  Restrictions on services
-  Asset freeze and prohibition to make funds available and restriction on admission

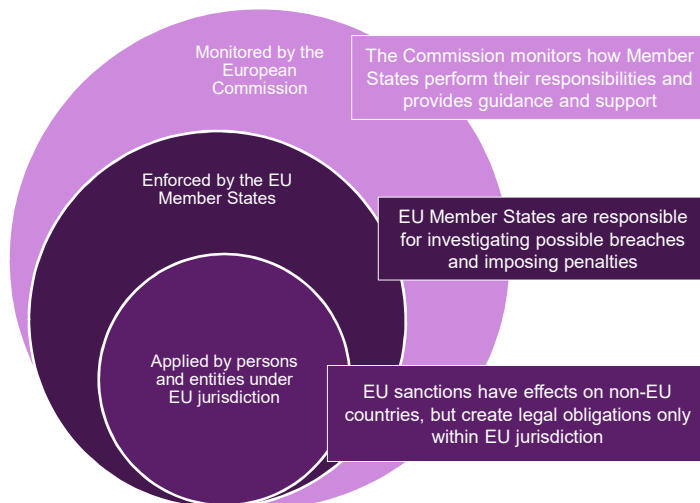
Iran

-  Arms export
-  Arms import
-  Asset freeze and prohibition to make funds available
-  Embargo on dual-use goods
-  Inspections
-  Prohibition to satisfy claims
-  Restriction on admission
-  Restrictions on goods

Venezuela

-  Arms exports
-  Asset freeze and prohibition to make funds available
-  Restriction on admission
-  Restriction on equipment used for internal repression
-  Telecommunication equipment

Implementation of EU sanctions



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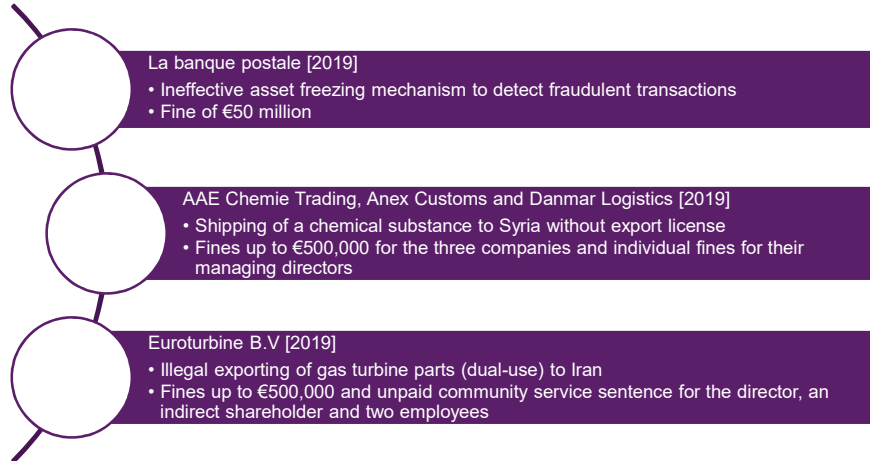
Key EU sanctions concepts

EU sanctions also affect transactions with entities « **owned or controlled** » by designated persons or entities, where

- **Ownership:** possession of more than 50% of the proprietary rights of an entity or majority interest in it;
- **Control:**
 - Power to appoint or remove a majority of the board members;
 - Controlling majority of shareholders' or members' voting rights;
 - Having the right or power to exercise a dominant influence over a legal person or entity;
 - Having the right to use all or part of the assets of a legal person or entity;
 - Managing the business of a legal person or entity on a unified basis, while publishing consolidated accounts;
 - Sharing jointly and severally the financial liabilities of a legal person or entity, or guaranteeing them.

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Select enforcement actions

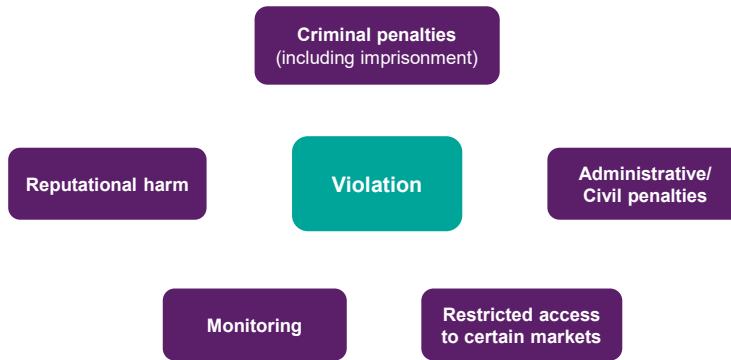


Key elements of compliance



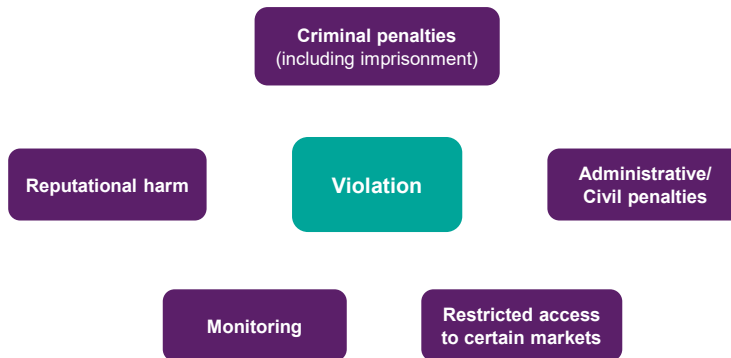
Why EU sanctions matter

Possible consequences of a violation:



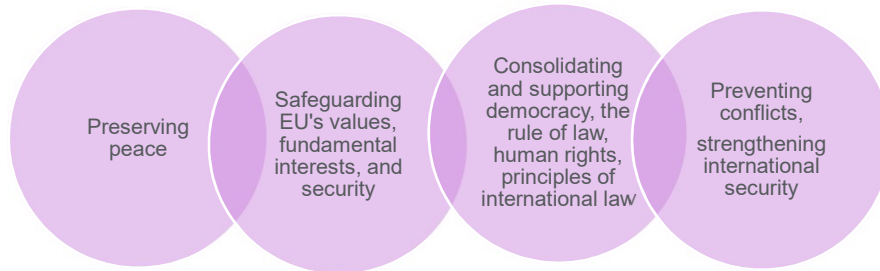
Why EU sanctions matter

Possible consequences of a violation:

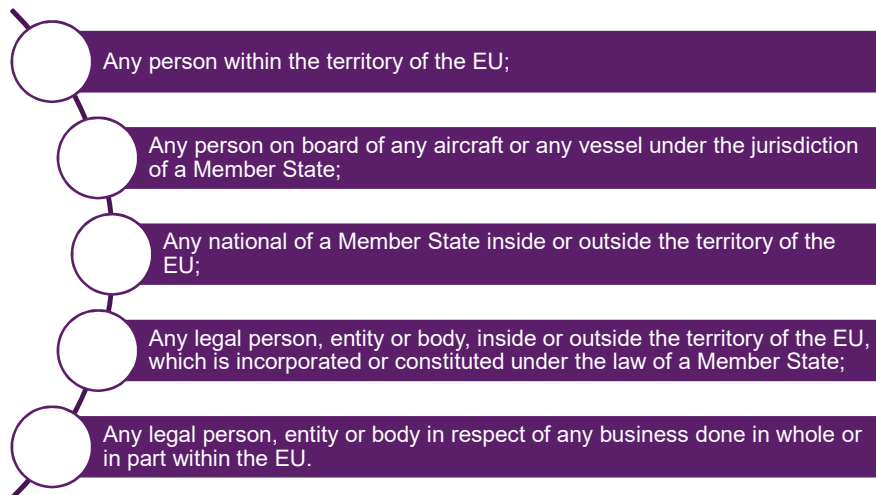


EU sanctions objectives

- Sanctions are one EU tool to promote the objectives of the **Common Foreign and Security Policy** (« **CFSP** »)



Who must comply with EU sanctions



Key EU sanctions concepts

EU sanctions extend automatically to entities « **owned or controlled** » by designated persons or entities, where

- **Ownership:** possession of more than 50% of the proprietary rights of an entity or majority interest in it;
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 - Sharing jointly and severally the financial liabilities of a legal person or entity, or guaranteeing them.

EU sanctions regimes

Nature:

- Transposing UN Security Council Resolutions
- Adopted autonomously by the EU (e.g. Iran "Serious Human Rights Violations" regime)
- Mixed (e.g. Iran "Weapons of Mass Destruction" regime)

Adopted through a package consisting of:

**Council
Decision**

- Addressed to the EU Member States

**Council
Regulation**

- EU law creating obligations on persons and entities under EU jurisdiction

Main forms of EU sanctions

Targeted financial sanctions

- Restrictions against specific individuals and entities, which include **asset freezes** (the obligation to block all assets belonging to a sanctions target), **prohibition to make funds and economic resources available** and, very rarely, capital market limitations.

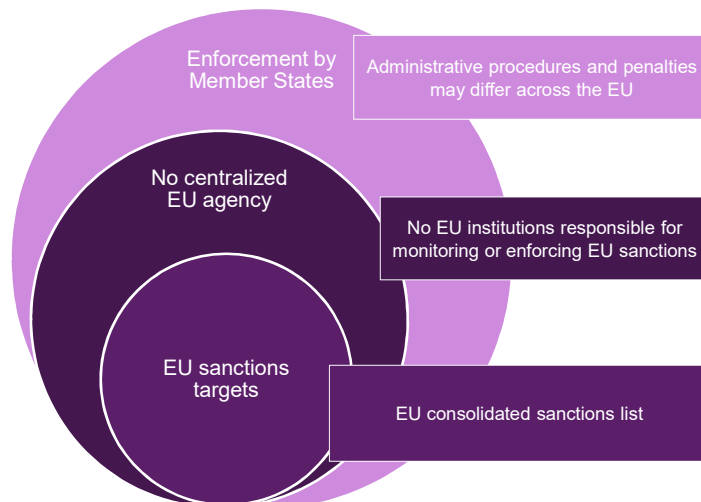
Restrictions on movement

- Travel bans (prohibiting the entry of specific individuals onto EU territory).

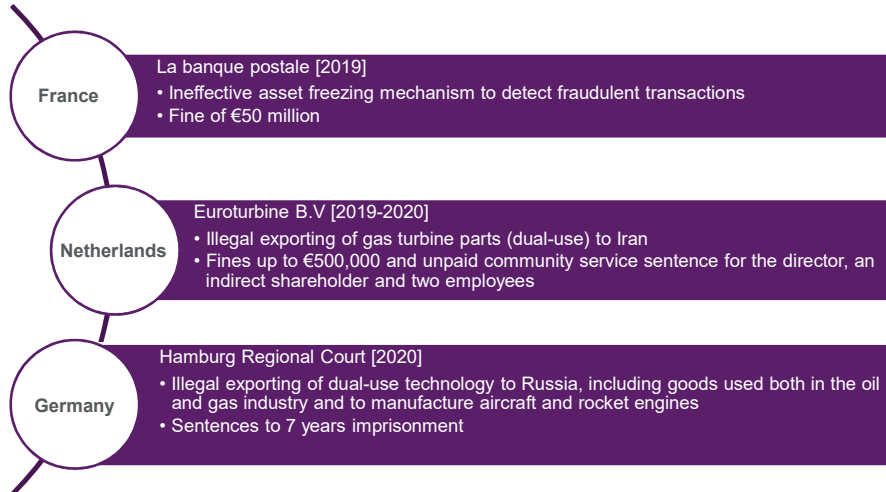
Targeted trade and economic sanctions

- Bans on import/export of specific goods and technologies
- Arms embargoes
- Restrictions on transactions with specific economic sectors within a targeted jurisdiction (e.g. the financial or energy sector); these usually only prohibit certain types of dealings (e.g. providing loans or supplying equipment for specific projects).

Enforcement of EU sanctions



Select enforcement actions



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Key elements of compliance



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Key elements of compliance

Brokers

Must perform due diligence checks before referring the customers to the insurers.

Common mistake includes to :

- Rely on the bank's own due diligence screening;
- View sanctions screening as an unnecessary expense to cover a limited relationship with a customer;
- Consider that up until the moment the broker gets paid, the relationship has not yet been created.

Insurers

And re-insurers, must also perform their own due diligence checks.

Common mistake includes to consider that:

- The broker performed the due diligence checks prior to introducing the customer to the insurer;
- Insurance activity is not as risky as bank accounts;
- Insurers are safe from prosecutions.

EU Blocking Statute

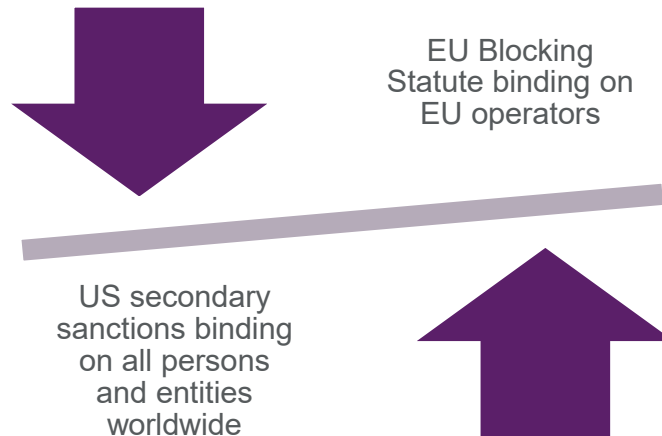
To whom does the Blocking Statute apply?

- It applies to “EU operators”, meaning:
 - Any natural person being resident of the Union and national of a Member State;
 - Any legal person incorporated within the Union;
 - Any national of a Member State established outside the Union and any shipping company established outside the Union and controlled by nationals of a Member State, if their vessels are registered in that Member State;
 - Any other natural person being a resident in the Union, unless that person is in the country of which he is a national; and
 - Any other natural person within the Union, including its territorial waters and air space and in any aircraft or on any vessel under the jurisdiction or control of a Member State, acting in a professional capacity.
- EU subsidiaries of US companies are EU operators, but not branches of US companies in the Union and subsidiaries of EU companies in the US.

Main elements of the Blocking Statute

- Art. 2** EU operators must notify the Commission when their economic and/or financial interests are affected by certain US secondary sanctions
- Art. 4** No judgment of a court or tribunal and decision of administrative authority giving effect to US secondary sanctions should be recognized or enforced
- Art. 5** EU operators must not comply with any requirements or prohibitions of the US secondary sanctions, except duly authorized by the EU Commission
- Art. 6** EU operators are entitled to recover damages arising from any EU operator's decision to comply with US secondary sanctions

Main elements of the Blocking Statute



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Select enforcement actions in the EU

Italy

Two cases from Italian national Courts [2019]

- Injunction to prevent a bank from terminating its services to an Italian company controlled by partners in Iran
- Italian bank froze payment to be made through a US-designated bank and was ordered by the court to release the funds

Germany

Bank Melli Iran v. Telekom Deutschland GmbH [2020]

- Telekom canceled its services contracts Bank Melli following re-imposition of US sanctions
- Hamburg Court sought a preliminary ruling from the CJEU on the proper interpretation of Article 5.

Netherlands

Supreme Court Judgment [2020]

- Rejected the argument that extraditing the individual would violate the EU Blocking Regulation

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EU Sanctions targeting Russia in view of the situation in Ukraine

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Sanctions in place

- Implemented pursuant to a series of Council Decisions and Regulations, beginning in February 2014.
- The key measures currently in place include:
 - [EC Regulation 833/2014](#) (sectoral financial sanctions)
 - [EC Regulation 692/2014](#) (sanctions in relation to Crimea)
 - [EC Regulation 208/2014 and 269/2014](#) (asset freezing measures against designated persons and entities)
- Other European States have adopted similar measures, including Albania, Iceland, Liechtenstein, Norway, and Switzerland.

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EU sanctions – asset freezing measures (1/2)

- **192 individuals and 51 entities** are currently designated by the EU for asset freezing measures under EU sanctions measures relating to the Ukraine crisis.

- The EU includes a number of significant commercial entities (e.g., Russian National Commercial Bank, Sevastopol seaport), as well as major Russian oligarchs (e.g., Arkady Rotenberg, Yuriy Kovalchuk).

- Certain delisting pursuant to EU courts decisions

EU sanctions – asset freezing measures (2/2)

- Asset freezing measures (1) require the blocking of any funds or other economic resources owned, held, or controlled by designated parties, and (2) prohibit the provision, directly or indirectly, of any funds or economic resources to designated parties.
 - The term “economic resources” is defined broadly to cover any asset that could be used to obtain funds, goods, or services.

- These prohibitions extend to any parties specially designated under EU regulations, or to any non-designated party that is **50% or more owned, or otherwise controlled**, by a designated party.

EU sanctions against Russia: Oil/Gas Sector controls (1/4)

- Articles 3/3a of Council Regulation 833/2014

- prohibit the unlicensed **sale, supply, transfer or export to Russia, or for use in Russia**, or certain oil/gas equipment, as listed in Annex II of the regulation, as well as the provision of **technical, financial, or brokering services** relating to Annex II items.
- Annex II includes a broad range of oil and gas exploration and production equipment, including various types of casings, pipes, drilling tools, vessels, and other items.

EU sanctions against Russia: Oil/Gas Sector controls (2/4)

- Articles 3 and 3a to Council Regulation 833/2014

Licenses under articles 3/4 may not be issued for projects involving **Arctic, deepwater, or shale oil exploration / production projects**, unless:

- the activities are required pursuant to contracts executed prior to 1 August 2014, or ancillary contracts necessary for the execution of such contracts; or
- the services are necessary for health, safety or environmental considerations.

EU sanctions against Russia: Oil/Gas Trade controls (3/4)

- Article 3a to Council Regulation 833/2014:
 - prohibits the provision, directly or indirectly, of **drilling, well testing, well logging / completion, and specialised floating vessel supply services** for Arctic, deepwater, or shale oil projects in Russia.
 - Does not extend to the execution of an obligation arising from a contract or a framework agreement concluded before 12 September 2014 or ancillary contracts necessary for the execution of such a contract.
 - Exemptions also apply for services necessary for health, safety, or environmental considerations.

EU sanctions against Russia: Oil/Gas Sector controls (4/4)

- The EU sanctions define “Arctic”, “deepwater”, and “shale” as follows:
 - Arctic: oil exploration and production in the offshore area north of the Arctic Circle.
 - Deepwater: oil exploration and production in waters deeper than 150 metres.
 - Shale: projects that have the potential to produce oil from resources located in shale formations by way of hydraulic fracturing; it does not apply to exploration and production through shale formations to locate or extract oil from non-shale reservoirs.

EU sanctions against Russia: Military Trade controls

- The EU sanctions also broadly prohibit (subject to certain limited exemptions) the provision of the following to Russia, or for use in Russia:
 - arms (as defined by Member State law) or related technical, financial, or brokering services;
 - dual-use items (as defined in EC Regulation 428/2009), or services relating to those items, to any military end user or for a military end use; or
 - other items if known to support a military end use.

(Article 4 of Regulation 833)

EU sanctions against Russia: Financial sector restrictions

- Article 5 to Council Regulation 833/2014: Additional EU financial sector sanctions restrict (subject to certain exemptions):
 - the provision of “new” loans or credit, with a maturity exceeding 30 days, to certain designated parties, and
 - dealing in new transferable securities or money market instruments issued by those parties.
 - Trigger date is 1 August 2014 or 12 September 2014 (depending on the designated party in question).
- Current list includes Rosneft, certain Gazprom affiliates, and a number of major Russian banks and defence companies.
- Restrictions extend to majority-owned, non EU affiliates of designated parties.

Sanctions in relation to Crimea

- Council Regulation 692/2014 imposes a range of sanctions in relation to Crimea, including:
 - Broad bans on investing in Crimean companies or real estate, or providing financial assistance or investment services relating to those investments;
 - Bans on the sale, supply, transfer, or export to Crimea of certain restricted items (as listed in Annex II – note that this list is much broader than the Russia sanctions “Annex II” list), as well as technical, financial, or brokering support relating to those items;
 - Military trade restrictions;
 - Trade measures;
 - Bans on the provision of services for the tourism industry; and
 - Exceptions for certain pre-existing obligations.

Venezuela

Sanctions in place

- Legal basis:
 - Regulation 2017/2063 of 13 November 2017
 - a range of restrictions on dealing with or in Venezuela
- Export restrictions:
 - Embargo on arms
 - Restriction on equipment that might be used for internal repression
 - Restriction on communication, technology or software equipment
- Smart sanctions:
 - Asset freezes targeting designated persons (individuals and entities):
 - Freezing of assets
 - Prohibition to make funds available
 - Travel bans

Export restrictions

Items on the EU Common Military List

Council Common Position
2008/944/CFSP

- Always covered by arm embargo, unless specified otherwise
- Prohibit:
 - the sale, supply, transfer or export of arms, as well as
 - technical assistance, or the provision of financing

Equipment used for internal repression

- The list is found in **Annex I of the Regulation (EU) 2017/2063**
- Prohibit:
 - the sale, supply, transfer or export, as well as
 - technical assistance, or the provision of financing
 - Ex: firearms not covered by the EU Common Military List, protective equipment such as body armor, special kind of vehicle

Restrictions on telecommunication equipment

- **Annex II of EU Regulation 2017/2063**
- Prohibit the sale, supply, transfer or export of equipment, technology or software
- Ex: deep market packet inspection equipment, radio frequency, monitoring equipment, pattern recognition and pattern profiling equipment, etc.

Targeted sanctions

Freezing of all funds and economic resources belonging to or **owned**, held or **controlled** by designated persons (listed in Annex IV or V of Regulation (EU) 2017/2063), i.e.:



Natural or legal persons, entities or bodies whose actions, policies or activities otherwise undermine democracy or the rule of law in Venezuela;



Natural or legal persons, entities or bodies responsible for serious human rights violations or abuses or the repression of civil society and democratic opposition in Venezuela;



Natural or legal persons, entities and bodies associated with the persons, entities or bodies referred above

Prohibition on making funds and economic resources available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex IV or V.

Iran

Sanctions in place

- On 20 July 2015, the United Nations Security Council adopted Resolution 2231 (2015) regarding the **Joint Comprehensive Plan of Action (JCPOA)**.
 - On 16 January 2016 (JCPOA Implementation Day), **the EU lifted all its economic and financial sanctions imposed in connection with the Iranian nuclear programme**.
 - However, a number of measures related to **the non-proliferation of weapons of mass destruction (WMD)** have remained in place even after Implementation Day, in accordance with the JCPOA.
 - **Council Regulation (EU) No 267/2012**
 - In addition, since 2011 the EU has imposed sanctions in response to **serious human rights violations** in Iran.
 - **Council Regulation (EU) No 359/2011**
- <https://ec.europa.eu/info/sanctions>
<https://sanctions-map.eu>

Proliferation related sanctions: export restrictions (1/2)

- In place until JCPOA's transition day (October 2023)
- Prohibitions:
 - Arms embargo: items on the EU Common Military List (Council Common Position 2008/944/CFSP)
 - Annex III: items, including goods and technology, contained on the Missile Technology Control Regime List (list found in Regulation 428/2009 on dual-use goods).

Proliferation related sanctions: export restrictions (2/2)

- Restrictions (authorisations regime)
 - Annex I: items including goods, technology and software, contained in the Nuclear Group List
 - The national competent authority have to submit a request for authorization to the UNSC on a case-by-case basis and cannot grant authorization until approval is received
 - Annex II: Goods and technology, other than those of Annex I and III, that could contribute to reprocessing, or enrichment-related, or heavy water-related or other activities inconsistent with the JCPOA
 - Annex VIIA: Enterprise resource planning software designed specifically for use in nuclear and military industries
 - Annex VIIB: graphite and raw or fabricated semi-finished metals

Proliferation related sanctions (1/2)

Freezing of all funds and economic resources belonging to or **owned**, held or **controlled** by designated persons (listed in Annex VIII* and IX of Regulation (EU) 267/2012), i.e.:



Natural or legal persons entities or bodies who have been identified as **being engaged in, directly associated with, or providing support for Iran's proliferation-sensitive nuclear activities or development of nuclear weapon delivery systems** by Iran, including through involvement in the procurement of prohibited goods and technology, or being owned or controlled by such person, entity or body, including through illicit means, or acting on their behalf or their direction



Natural or legal person, entity or body that **has evaded or violated, or assisted a listed person**, entity or body to evade or violate, the provisions of this Regulation, Council Decision 2010/413/CFSP or UNSCR 1737 (2006), UNSCR 1747 (2007), UNSCR 1803 (2008) and UNSCR 1929 (2010)



Natural or legal persons, entities or bodies who has been identified as **a member of the Islamic Revolutionary Guard Corps (IRGC)** or a legal person, entity or body owned or controlled by the IRGC or by one or more of its members, or a natural or legal person, entity or body acting on their behalf, or a natural or legal person, entity or body providing insurance or other essential services to IRGC, or to entities owned or controlled by them or acting on their behalf

*Annex VIII: persons, entities and bodies designated by the UNSC or by the Sanctions Committee

Proliferation related sanctions (2/2)

Freezing of all funds and economic resources belonging to or **owned**, held or **controlled** by designated persons nuclear or ballistic missiles activities (listed in Annex VIII and IX of Regulation (EU) 267/2012), i.e.:



Natural or legal persons, entities or bodies who has been identified as providing support, such as material, logistical or financial support, to the Government of Iran and entities owned or controlled by them, or persons and entities associated with them



Legal person, entity or body owned or controlled by the Islamic Republic of Iran Shipping Lines (IRISL), or a natural or legal person, entity or body acting on its behalf, or a natural or legal person, entity or body providing insurance or other essential services to IRISL, or to entities owned or controlled by it or acting on its behalf.



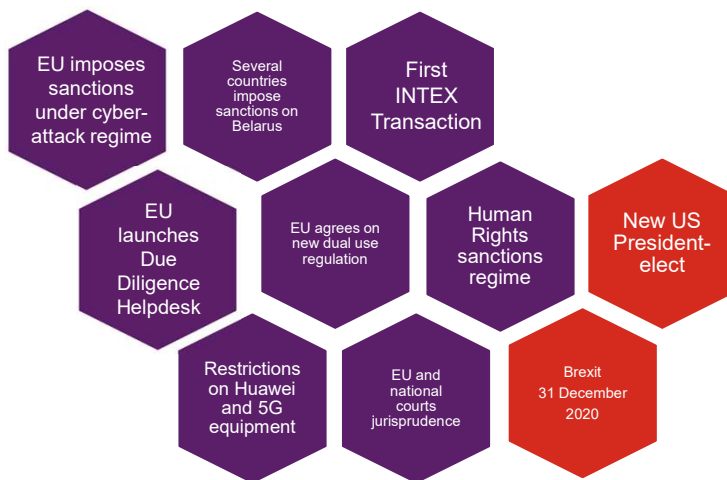
Prohibition on making funds and economic resources available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex VIII and IX.

It shall also be prohibited to supply specialised financial messaging services, which are used to exchange financial data, to the natural or legal persons, entities or bodies listed in Annex VIII and IX

Measures responding to serious human rights violations

- Regulation EU 359/2011
- Export restrictions
 - Annex III: Equipment used for internal repression
 - Annex IV: Restriction on telecommunication equipment
- Asset freeze
 - Annex I: Persons who have been identified by the Council as being responsible for serious human rights violations in Iran, and persons, entities and bodies associated with them

2020 overview



UK Sanctions

(from 1 Jan 2021)

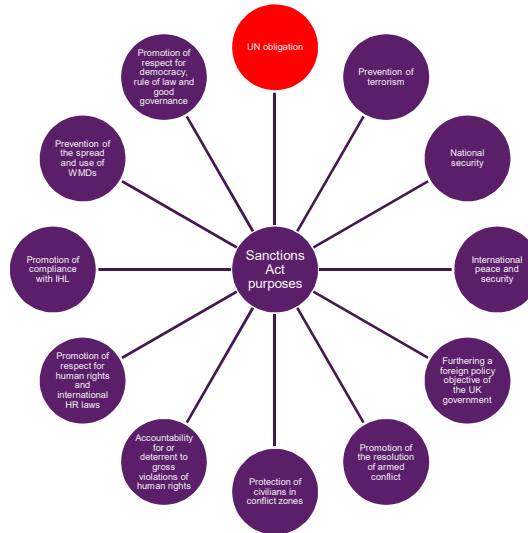
Why UK sanctions matter

- Broad reach – not as broad as US, but UK sanctions:
 - can apply to non-UK subsidiaries of UK entities (depending on governance)
 - define “control” very broadly
 - apply to a UK person involved in a transactions between non-UK entities
 - apply where a transaction uses UK clearing services
 - apply in UK overseas territories
- Serious consequences for breach:
 - Criminal offence (fines for companies, poss jail for persons)
 - Regulatory penalties (up to £1m or 50% of value of funds/transaction, whichever is greater);
 - Reputational damage
 - Regulatory supervision (monitorship etc)
 - Contractual liabilities possible
- Some strict liability elements; little get-out for not taking compliance steps
- Particularly high expectation and enforcement risk for financial institutions

UK sanctions framework

- **Sanctions and Anti-Money Laundering Act 2018** (the “**Sanctions Act**”, sometimes known as “**SAMLA**”)
- **Secondary Legislation** - Regulations corresponding (broadly) to each current EU regime:
 - Geographical sanctions regimes
 - Thematic sanctions regimes
- **Other legislation re:**
 - Counter Terrorism Act 2008
 - Anti-Terrorism, Crime and Security Act 2001
 - Terrorist Asset-Freezing etc. Act 2010
- **Statutory guidance** for each regulations
- **OFSI Guidance** (General guidance, monetary penalties, ad hoc)

Purposes of UK sanctions (Sanctions Act, s1)



UK sanctions administration

- UK government departments and agencies involved in sanctions:

Foreign, Commonwealth & Development Office

- UK's **international sanctions policy**, including developing all international sanctions regimes and taking designation decisions

HM Treasury
(Office of Financial Sanctions Implementation - **OFSI**)

- **implements UK financial sanctions** including issuing guidance on compliance, licensing decisions and enforcement

Dept for International Trade
(Export Control Joint Unit - **ECJU**)

- implements **trade sanctions** and embargoes including guidance, licensing decisions and enforcement

Dept for Transport

- implements **transport sanctions**: ships and aircraft in UK waters and airspace

Home Office

- implements **immigration sanctions** (right of entry to and exit from UK for those subject to restrictions)

UK sanctions: relationship with EU sanctions?

- Entirely separate legal regime; but ...
- ... the objective of UK Gov is to not change the substance of any existing EU sanctions as applied in/by the UK;
- UK and EU lists of sanctions targets similar in Jan 2021 (but not identical – over 100 differences and further divergence likely over time)
- No further formal relationship.
- **Questions**
 - Will there be policy coordination and/or data-sharing between UK & EU?
 - Will EU guidance (eg on Russia sanctions) continue to be relevant to new UK measures?

Who must comply with UK sanctions



Difference between UK and EU sanctions

Concepts

(examples only)

- **Ownership:** Automatic application of UK sanctions to entities more than 50% owned or controlled by designated persons/entities
- **Control:** arises where it is reasonable, to expect that P would (if P chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of C are conducted in accordance with P's wishes.
- **Financial assistance (for prohibited exports etc)**
 - EU prohibits "financial assistance" (which does not include provision of payment services, post *Rosneft*)
 - UK prohibits "financial services" including payment services.
- **Persons exempt from sectoral sanctions (Russia):**
 - EU-based subsidiaries exemption not available for UK-based subsidiaries of designated entities. Only exemption from the UK equivalent of this restriction

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Differences between UK and EU sanctions

Licensing

- UK General Licences (EU does not provide for general sanctions licences)
- UK licences only give derogation from UK sanctions – may need EU licence too.

Designations

- **Criteria for designation are different:** not all EU designations will be UK designated (and vice versa)
- **Designation by description** when "*it is not practicable to identify and designate by name all the persons falling within that description at the time*".
- **Process for challenging designations:**
 - *UK designations:* Ministerial review, then judicial review by the UK courts
 - *Implemented UN designations:* request Secretary of State to use their "best endeavours" to secure removal

Sanctions lists

- **Changes to the structure of UK sanctions lists:**
 - The *UK Sanctions List:* SAML A only (but includes other sanctions, not only financial)
 - *OFSI Consolidated list:* all financial sanctions listings made under any UK legislation

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UK/EU contrast – same substance, different laws

Example – what is financial assistance?

- **EU:** “*financing and financial assistance*”:
 - illustrative definition: “... *including in particular grants, loans and export credit insurance ...*”
 - *Rosneft* CJEU case gives further partial clarification
- **UK:** uses the term “*financial services*” to refer to same concept:
 - full legislative definition
 - broader (captures activities excluded by EU)

Meaning of “financial services” and “financial products”

(1) In this Act “financial services” means any service of a financial nature, including (but not limited to)—

(a) insurance-related services consisting of—

- direct life assurance;
- direct insurance other than life assurance;
- reinsurance and retrocession;
- insurance intermediation, such as brokerage and agency;
- services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;

(b) banking and other financial services consisting of—

- accepting deposits and other repayable funds;
- lending (including consumer credit, mortgage credit, factoring and financing of commercial transactions);
- financial leasing;
- payment and money transmission services (including credit, charge and debit cards, travellers’ cheques and bankers’ drafts);
- providing guarantees or commitments;
- financial trading (as defined in subsection (2));
- participating in issues of any kind of securities (including underwriting and placement as an agent, whether publicly or privately) and providing services related to such issues;
- money laundering;
- asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
- settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments);
- providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services);
- providing advisory and other auxiliary financial services in respect of any activity listed in sub-paragraphs (i) to (li) (including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy).

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Challenging UK sanctions designations under Sanctions Act

- **Procedure set out in:**
 - Sanctions Review Procedure (EU Exit) Regulations 2018;
 - UK Government Guidance
- **Ministerial review upon request from sanctioned person / entity:**
 - Complete prescribed form and send, with evidence, to FCDO
 - Decision “as soon as reasonably practicable” in writing with reasons unless barred from stating reasons on grounds of national security, international relations, prevention of crime, justice.
- **Challenge the Ministerial decision by Judicial Review in the UK courts**
- **Note: implemented UN designations – different process from designations under SAMLA:**
 - request Secretary of State to use their “best endeavours” for removal

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Select sanctions decisions

Standard Chartered Bank – OFSI enforcement decision (2020)

- £20.47 million fine by OFSI for breaches of Article 5(3) of EU Council Regulation 833/2014 and Regulation 3B of the UK Regs.
- Standard Chartered made 70 loans to Denizbank A.Ş., a subsidiary of a Russian entity, Sberbank that were not exempt under the EU regulation
- The fine imposed by OFSI represents a discount from the penalties originally sought – Ministerial review

Lamesa Investments Ltd v Cynergy Bank Ltd – Court of Appeal (2020)

Concerned interpretations of sanctions clauses

Cynergy Bank was entitled to refuse to pay interest payments to Lamesa Investments Ltd, under a facility agreement, due to a concern that Cynergy would be subject to US secondary sanctions

Banco San Juan Internacional Inc v Petroleos De Venezuela – High Court (2020)

Bank claimed to recover amounts from a defaulting borrower.

PDVSA argued that US sanctions prevented it paying sums to the bank.

Commercial Court allowed Bank's claim:

- limited applicability of a defence of foreign illegality;
- importance of considering the availability of licences permitting performance

Mamancochet Mining v Aegis Managing Agency Ltd & Oths – High Court (2018)

- interpretation of marine sanctions insurance clause
- Whether payment under the claim would expose to US sanctions
- Application of EU Blocking Regulation to the sanctions clause

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UK Global Human Rights Sanctions 2020 (1)

- First Regulations to be made under the Sanctions Act
- Corresponds to US Global Magnitsky sanctions, but does not target corruption (unlike US GloMag)
- Aim: to deter/provide accountability for those involved in activities that compromise a person's:
 - right to life,
 - right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, or
 - right to be free from slavery, not to be held in servitude or required to perform forced or compulsory labour,
- Does not matter whether the activity is carried out by or on behalf of a State.
- **NB:** EU also adopted Human Rights sanctions late in 2020.

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UK Global Human Rights Sanctions 2020 (2)

- UK has so far used GHRs to target 68 person and 3 entities:
 - 25 people involved in murder of Magnitsky (20 of them Russians)
 - 20 people involved in Khashoggi murder (all Saudi nationals)
 - 2 Myanmar officials for atrocities against Rohingya
 - 8 from Belarus for violence against protestors in Minsk following election
 - 1 from Gambia/2 from Equatorial Guinea re Gambia regime
 - 1 Pakistani staging police encounters leading to death of Naqeebullah Mahsud in 2018
 - 3 Russians for human rights violations in Chechen Republic
 - 3 Venezuelans for various HR violations including extra-judicial executions.

Counter-measures

Counter measures (1)

- **EU Blocking Regulation and UK Blocking Regulation**
 - Originally a 1996 EU law to counteract US sanctions against Cuba, Iran and Libya
 - Updated in 2018 to include the extraterritorial sanctions the US re-imposed on Iran
 - prohibits EU companies from "direct" or "indirect" compliance with the laws listed in US sanctions annex
 - does not recognise any verdicts by courts that enforce US penalties
 - Carried over into UK law on Brexit (as retained EU law)
- INSTEX SPV to facilitate payments from non-US entities to Iran.

Countermeasures (2)

- **Russia:**
 - Economic counter-measures against Ukraine
 - Restricting the disclosure of information on sanctioned persons
 - Import ban on agricultural products from the EU and US / increased customs duties
 - Draft blocking law imposing liability for sanctions compliance
- **China**
 - retaliatory sanctions against senior US officials including Rubio and Cruz and the U.S. Congressional-Executive Commission
 - "unreliable entities list"
 - Sanctions regime enabling to restrict "foreign enterprises, other organisations and individuals": measures include fines, restrictions on import-export business or investment in China, and the entry of personnel or equipment

Discussion

Comparison and consideration

- Changing ways in which sanctions are used (eg supporting trade interests?)
- How do US, EU and UK sanctions compare?
- How relevant are other Western sanctions given the breadth and assertiveness of US sanctions?
- How might Biden's use of sanctions differ from Trump's
- Has OFAC gone too far? Will it ever row back?
- Does the entry of UK sanctions as a separate jurisdiction change anything?
- Are there any indications of EU's approach to sanctions having differed since UK left?

Overview

Introduction

EU sanctions

- Why they matter
- Key terms and concepts
- Core compliance principles

UK sanctions

- Why they matter
- Key terms and concepts
- Core compliance principles

Who to contact

Recap of the main points from Session 1

Executive summary

Sanctions are laws and regulations	Restrict with whom, where and how companies can do business
	May be imposed by the United Nations , by the European Union , or by individual countries, like the United States and UK
Sanctions don't just apply in the United States	Sanctions can apply globally , especially if there is nexus to a specific jurisdiction, such US Dollar or US-origin items extends US sanctions jurisdictions beyond US borders
	They can affect day-to-day business , up and down the supply chain, customers, and vendors
Compliance is critical	Violations can result in criminal prosecution, fines , administrative penalties, breach of contract / insurance, debarment from contracting and reputational damage . . .
	For the company and for individuals

Thank you



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Sanctions Year-in-Review

Please view Dentons' Sanctions Year-in-Review report [here](#), a recap and analysis with global developments and policy updates from Canada, the European Union, the United Kingdom and the United States.

[Click here](#) to sign up to receive the latest updates on the world of sanctions and enforcement directly to your inbox.

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