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Sanctions compliance basics

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Supporting Organization



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**, **fin**es, administrative **penalties**, **breach** of contract / insurance, **debarment** from contracting and **reputational** damage . . .

For the company **and for individuals**



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:

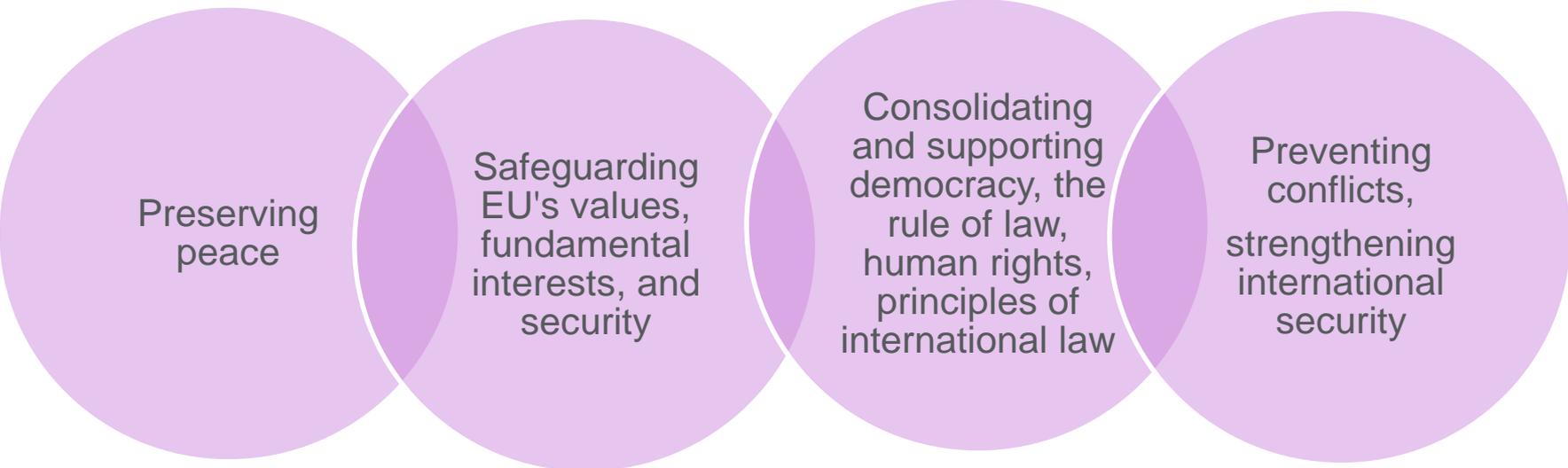
- Not full embargoes and
- Not just target states but also individuals and non-state entities

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** »)



Preserving
peace

Safeguarding
EU's values,
fundamental
interests, and
security

Consolidating
and supporting
democracy, the
rule of law,
human rights,
principles of
international law

Preventing
conflicts,
strengthening
international
security

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

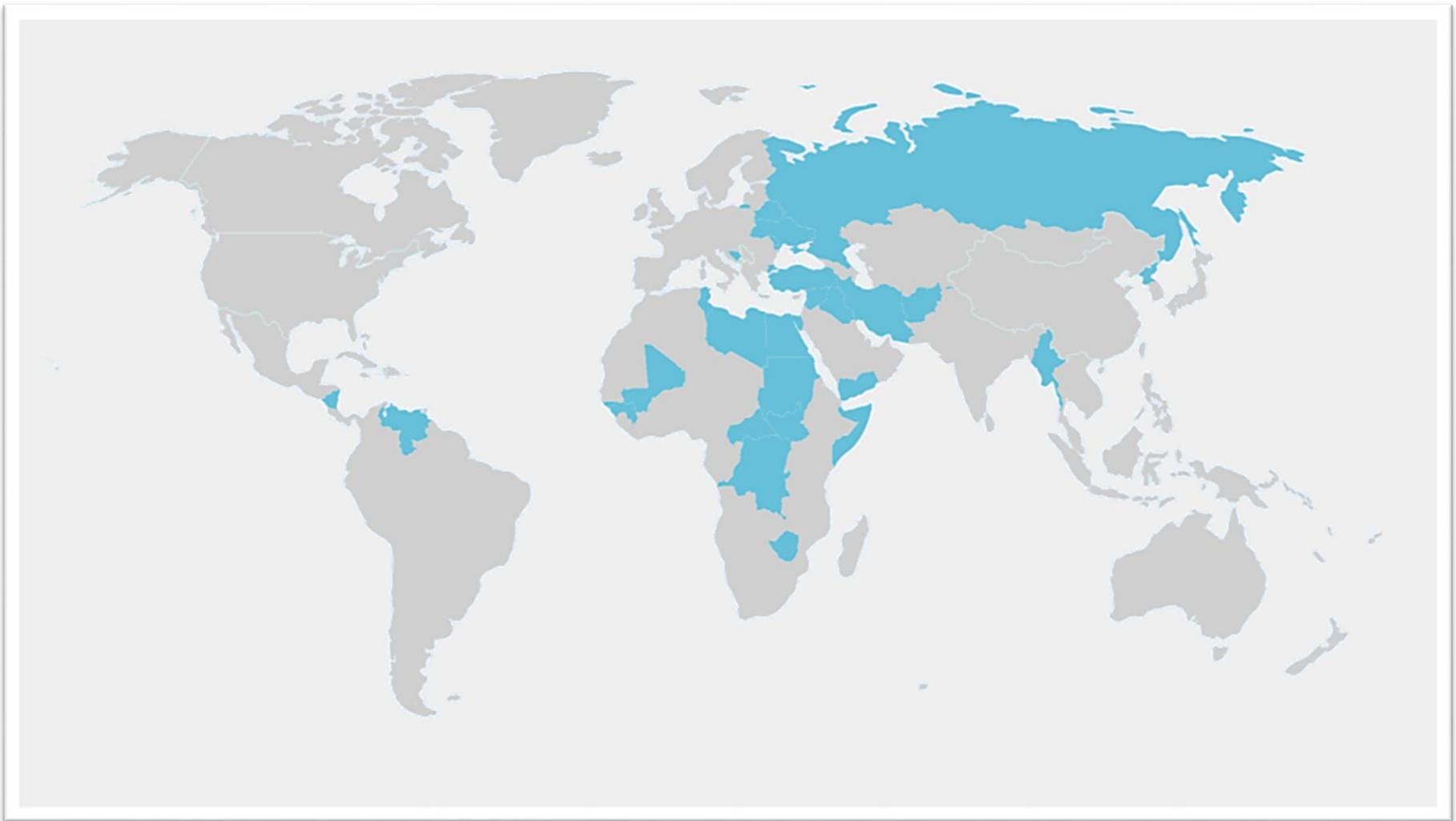
Restrictions on movement

- 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

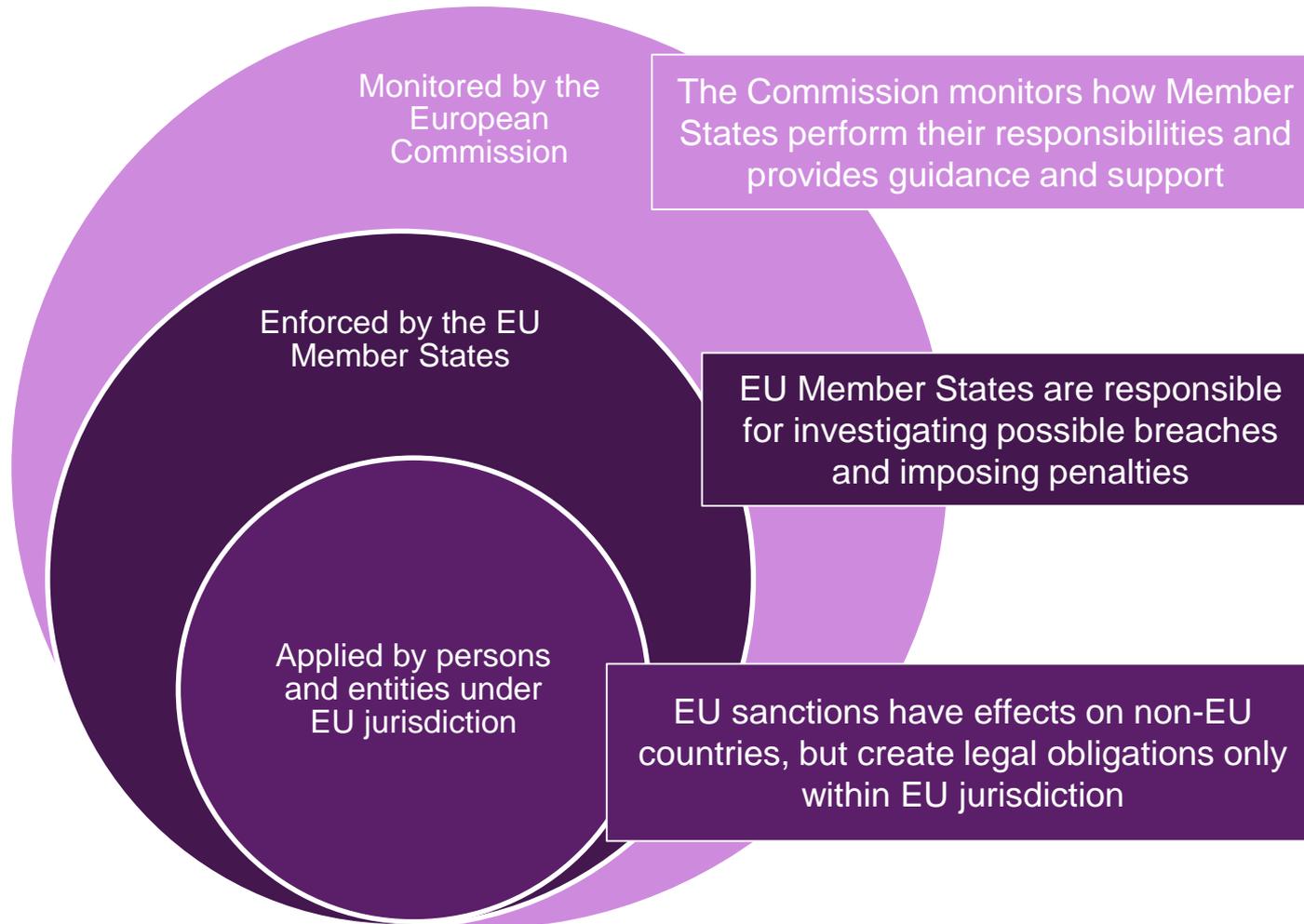
Iran

-  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



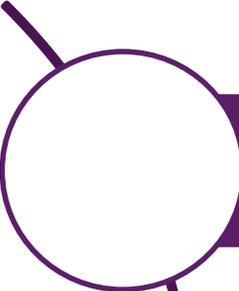
Key EU sanctions concepts



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

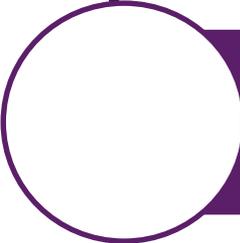
- **Ownership**: possession of more than 50% of the proprietary rights of an entity or majority interest in it;
- **Control**:
 - Power to appoint or remove a majority of the board members;
 - Controlling majority of shareholders' or members' voting rights;
 - Having the right or power to exercise a 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.

Select enforcement actions



La banque postale [2019]

- Ineffective asset freezing mechanism to detect fraudulent transactions
- Fine of €50 million



AAE Chemie Trading, Anex Customs and Danmar Logistics [2019]

- Shipping of a chemical substance to Syria without export license
- Fines up to €500,000 for the three companies and individual fines for their managing directors



Euroturbine B.V [2019]

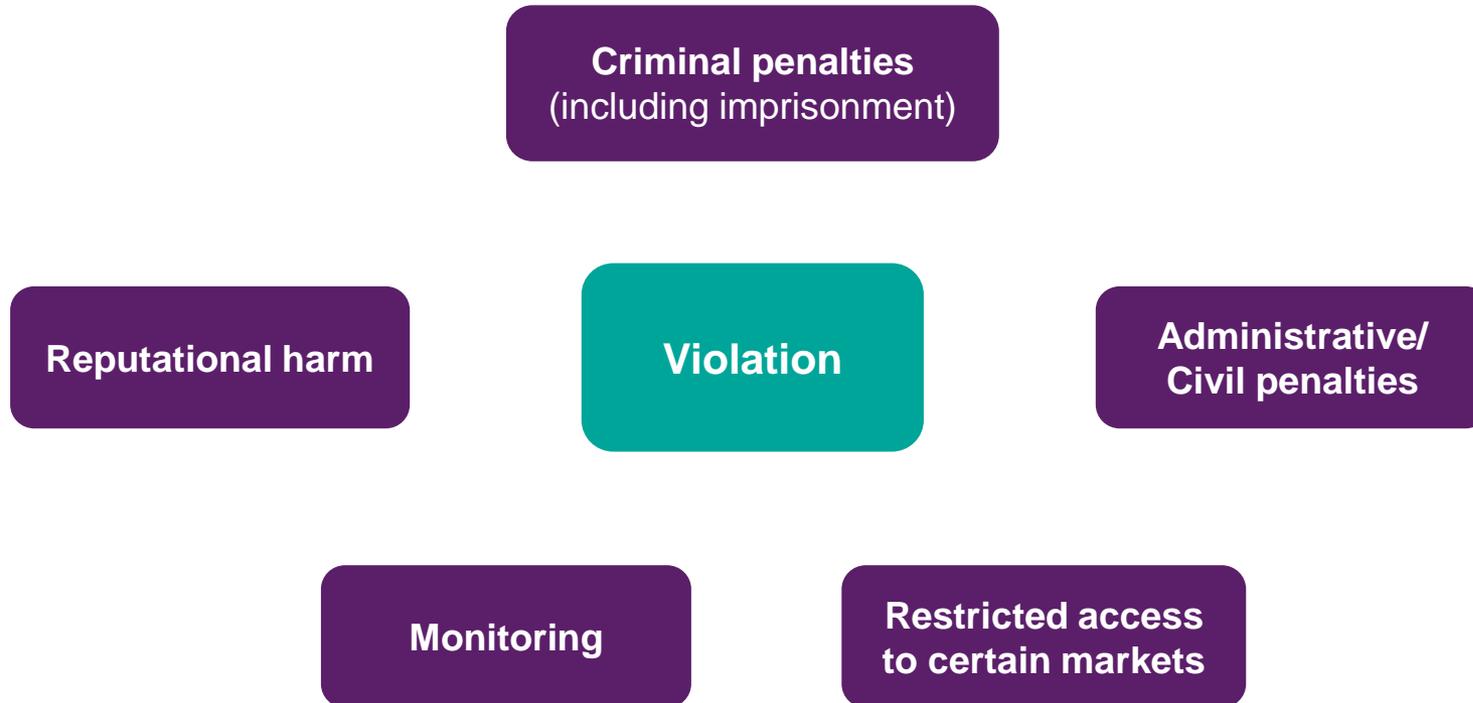
- Illegal exporting of gas turbine parts (dual-use) to Iran
- Fines up to €500,000 and unpaid community service sentence for the director, an indirect shareholder and two employees

Key elements of compliance



Why EU sanctions matter

Possible consequences of a violation:





EU Sanctions targeting Russia in view of the situation in Ukraine

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.

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:
 - prohibitions 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 USCN 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

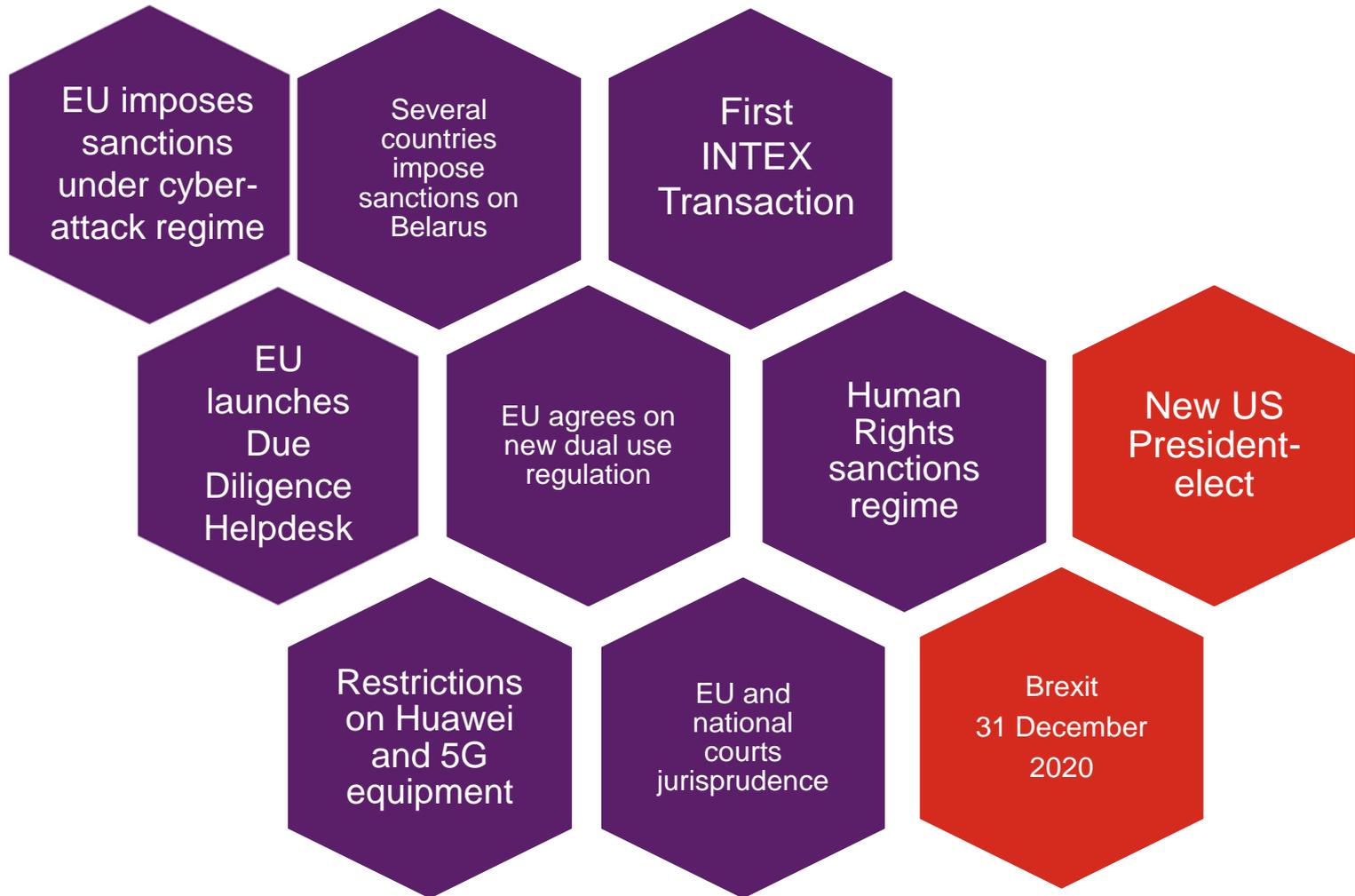


- Regulation EU 359/2011

- 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

Why UK sanctions matter

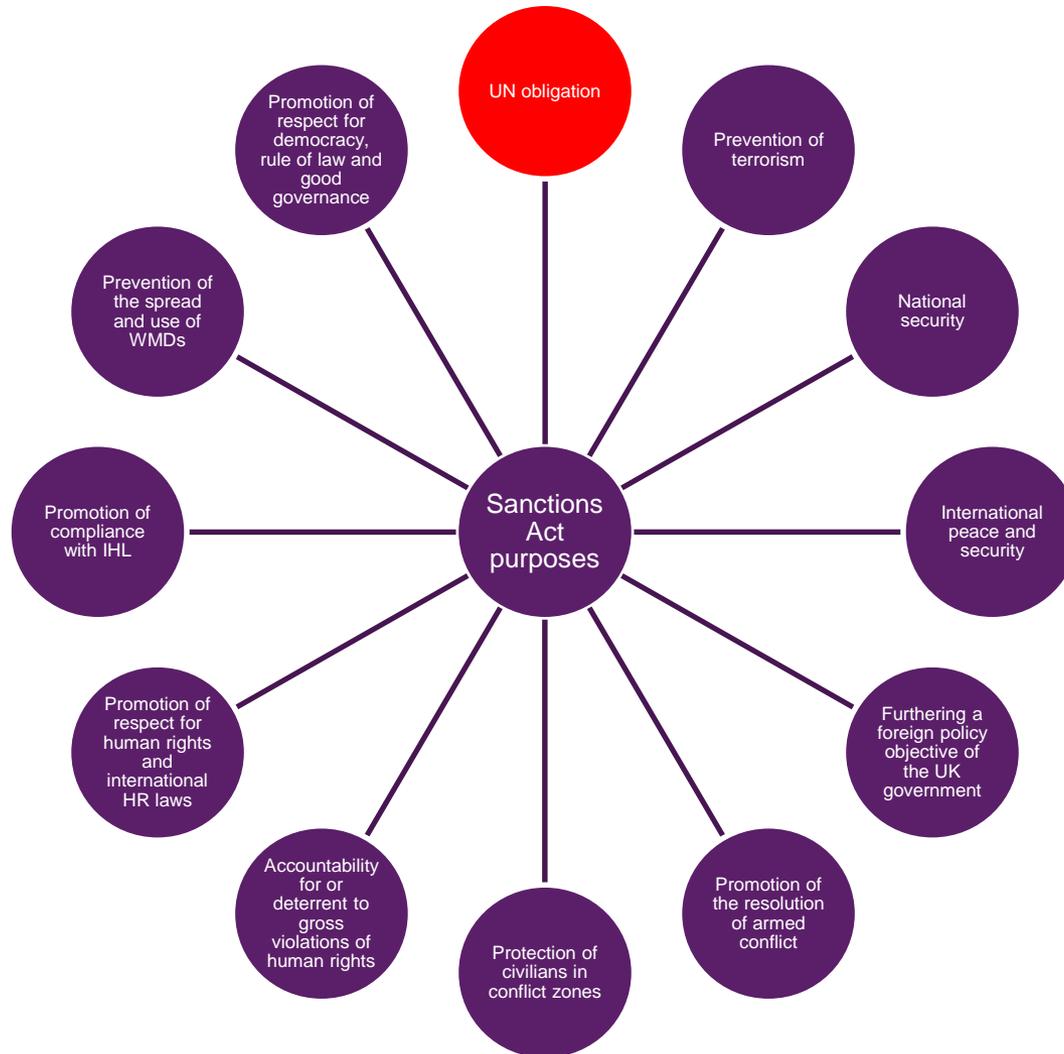


- Broad reach – not as broad as US, but UK sanctions:
 - can apply to non-UK subsidiaries of UK entities (depending on governance)
 - define “control” very broadly
 - apply to a UK person involved in a transactions between non-UK entities
 - apply where a transaction uses UK clearing services
 - apply 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 (from 1 January 2021)

- **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?

- Some EU sanctions regimes may carry over as **retained EU law** (eg UK hasn't yet published Libya regulations)
- 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 v similar in Jan 2021 (but not identical and further divergence likely over time)
- Likely some level of political co-ordination and possible information-sharing (poss UK-EU security deal).
- No further formal relationship.

Who must comply with UK sanctions



Any person within the territory and territorial sea of the UK



Any person on board of any aircraft or any vessel under UK's jurisdiction



All UK nationals wherever they are in the world



legal entities established under UK law, including their branches, irrespective of where their activities take place.



Individuals and legal entities who are within or undertake activities within the UK's territory

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

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—
 - (i) direct life assurance;
 - (ii) direct insurance other than life assurance;
 - (iii) reinsurance and retrocession;
 - (iv) insurance intermediation, such as brokerage and agency;
 - (v) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;
- (b) banking and other financial services consisting of—
 - (i) accepting deposits and other repayable funds;
 - (ii) lending (including consumer credit, mortgage credit, factoring and financing of commercial transactions);
 - (iii) financial leasing;
 - (iv) payment and money transmission services (including credit, charge and debit cards, travellers’ cheques and bankers’ drafts);
 - (v) providing guarantees or commitments;
 - (vi) financial trading (as defined in subsection (2));
 - (vii) 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;
 - (viii) money brokering;
 - (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (x) settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments);
 - (xi) providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services);
 - (xii) providing advisory and other auxiliary financial services in respect of any activity listed in sub-paragraphs (i) to (xi) (including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy).

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: SAMLA only (but includes other sanctions, not only financial)
 - OFSI Consolidated list: all financial sanctions listings made under any UK legislation

Challenging UK sanctions designations under SAMLA



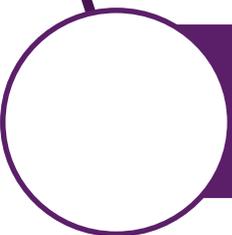
- **Procedure set out in:**
 - Sanctions Review Procedure (EU Exit) Regulations 2018;
 - UK Government Guidance
- **Ministerial review upon request from sanctioned person / entity:**
 - Complete prescribed form and send, with evidence, to FCDO
 - Decision “as soon as reasonably practicable” in writing 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

Select sanctions decisions



Standard Chartered Bank – OFSI enforcement decision (2020)

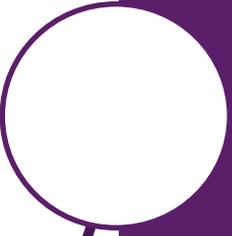
- £20.47 million fine by OFSI for breaches of Article 5(3) of EU Council Regulation 833/2014 and Regulation 3B of the UK Regs.
- Standard Chartered made 70 loans to Denizbank A.Ş.; a subsidiary of a Russian entity, Sberbank that were not exempt under the EU regulation
- The fine imposed by OFSI represents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

UK Global Human Rights Sanctions 2020 (1)



- First Regulations to be made under the Sanctions Act
- Correspond 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 now also has Human Rights sanctions but no designations yet.

UK Global Human Rights Sanctions 2020 (2)



- UK has so far used GHRS to target 65 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 Nageebullah 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?

Thank you

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