

EU Sanctions Year-in-Review

February 2021

Contents

EU Sanctions Year-in-Review

3 ... Introduction

4 ... Guidance

7 ... Strengthening EU sanctions

12 ... EU Member States sanctions developments

20 ... Export controls and the COVID-19 world crisis

24 ... General developments

27 ... Digital innovation

29 ... EU jurisprudence



Introduction

The world of sanctions policy and enforcement saw quite a busy year in 2020 – and it seems the trend will not slow down in 2021. The end of 2020 saw the UK's exit from the EU, with the end of the Brexit transition period on December 31, 2020. The EU has been preparing for this historic moment throughout 2020, and although the UK and the EU have maintained a close cooperation, 2021 will most certainly bring significant changes as a consequence of Brexit.

2020 was also profoundly impacted by the Covid-19 pandemic. This pandemic prompted certain national governments to introduce measures aimed at controlling the unprecedented global turmoil created by the sanitary crisis, including measures affecting trade relations and export control. In response to some EU Member States' protectionist export controls rules, the EU adopted a series of their own measures to secure the supply of personal protective equipment (PPE) across the EU. The European Commission ("Commission") also released practical guidance on compliance with EU sanctions¹ when providing humanitarian aid, in particular medical assistance, to sanctioned countries including Iran, Nicaragua, Venezuela and Syria.

In addition, several EU sanctions programs were renewed in 2020, with some being strengthened, such as the case of Russia and Belarus. EU's neighboring countries continued to align themselves with most EU sanctions regimes.

2020 was also the year when two new innovative tools were implemented, to assist companies in their compliance needs. One of the tools is a Due Diligence Helpdesk on Iran sanctions and another – an online database for monitoring EU Member States' arm exports. What's more, in 2020 the Instrument in Support of Trade Exchanges ("INSTEX") announced its first successful transaction facilitating export of medical goods from Europe to Iran.

Finally, Member States' enforcement actions have again been significant this year, with countries such as Germany, France, the Netherlands and the Baltic States all adopting a more aggressive enforcement stance.

¹ EU sanctions are referred to as "restrictive measures" in EU legal texts



Guidance

COMMISSION OPINION ON THE “CONTROL” TEST IN EU’S TARGETED RUSSIA SANCTIONS

On June 19, 2020, the Commission (“Commission”) published an Opinion on the interpretation of the EU’s targeted Russia sanctions (Council Regulation (EU) 269/2014, hereafter “the Regulation”), read in conjunction with the EU’s Best Practices Guidance.² By way of background, the Regulation in question prohibits, among others, EU operators from making funds or economic resources available to persons listed in Annex I of the Regulation. A person listed in the Annex had a management role in a non-designated entity established outside of the EU, and the Commission was asked how the applicable prohibitions should be interpreted in relation to that entity.

In the Opinion, the Commission clarified that:

- If a designated person has control over an entity, it can be “presumed that the control extends to all assets nominally owned by” that entity which must

be frozen to avoid circumvention, unless the entity can show those assets are not controlled by the designated person.

- The Commission further clarified that this assessment should be made in first instance by the national competent authorities (“NCA”). In order to make such assessment, the NCA should take into account the facts of the matter, as well as the non-exhaustive list of relevant factors establishing control, as set out in paragraph 63 of the Best Practices Guidance.
- In order to facilitate transparency and avoid over-compliance, the NCA should publish its conclusions on whether an entity and its assets are controlled by a designated person, and indicate which assets should/should not be frozen in light of that assessment. The NCA should also inform the Commission, which stands ready to support Member States in complying with these obligations under the Regulation.

² https://ec.europa.eu/info/sites/info/files/200619-opinion-financial-sanctions_en.pdf; https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1126



EU COMMISSION STATEMENT OPPOSING US EXTRA-TERRITORIAL SANCTIONS

The long-standing issue surrounding the extra-territorial application of US sanctions and the EU's attempts to safeguard EU persons and companies from incurring liability thereunder became relevant again in 2020, mostly in relation to the construction of a system of natural gas pipelines from Russia to Germany known as Nord Stream 2.

In February 2020, responding to a question by a Member of the European Parliament ("MEP"), the Commission said that the EU does not recognize the extraterritorial application of US sanctions. In particular, in relation to Nord Stream 2, the Commission considers it contrary to international law. As a general legal principle, the EU opposes the imposition of sanctions against EU companies conducting legitimate business, in accordance with EU law. Specifically, as regards Nord Stream 2, the Commission posited, "should the companies concerned decide to build such pipelines, they should know they will need to be operated in line with EU law."³

On the same topic, in March 2020, another MEP asked the Commission about what it intended to do to ensure that European companies participating in the Nord Stream 2 project are able to remain part of it until its completion.⁴ In its response dated June 25, 2020, the EU High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the Commission ("HR/VP"), Josep Borrell, responded that the Commission was preparing a legal basis for the adoption of a reinforced sanctions mechanism. The mechanism will improve the EU's resilience when faced with the effects of the extraterritorial application of sanctions imposed by third countries.⁵ A month later, in July 2020, in another statement, Mr. Borrell expressed again his opposition to the use of sanctions by third countries against European companies carrying out legitimate business.⁶

Most recently, on December 1, 2020, at the request of the European Parliament's Committee on International Trade, the Directorate General for External Policies of the EU published a study on extraterritorial sanctions effect on trade and investments and European responses.⁷ On the issue of Nord Stream 2, the study acknowledged that US sanctions have become a critical challenge for the EU. More broadly, the study offers the following recommendations:

³ https://www.europarl.europa.eu/doceo/document/E-9-2019-002880-ASW_EN.pdf

⁴ https://www.europarl.europa.eu/doceo/document/E-9-2020-001783_EN.html

⁵ https://www.europarl.europa.eu/doceo/document/E-9-2020-001783-ASW_EN.html

⁶ https://eeas.europa.eu/headquarters/headquarters-homepage/83105/statement-high-representativevice-president-josep-borrell-us-sanctions_en

⁷ [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653618/EXPO_STU\(2020\)653618_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/653618/EXPO_STU(2020)653618_EN.pdf)



- Intensify “the coherent and joint voicing of the lack of legality of extraterritorial sanctions with third countries and institutions.” The study notes that “consistent statements may have an impact on the political discourse in the US, send a strong signal to the international community and contribute to the urgently needed international law clarification on the issue”;
- Encourage and assist EU businesses in bringing claims in international investor-state arbitration and in US courts;
- Invite Member States to initiate inter-State disputes under Friendship, Commerce and Navigation (“FCN”) Treaties;
- Bring a complaint against US measures in the World Trade Organization (“WTO”);
- Consider taking unfriendly acts or eventually countermeasures against illicit sanctions;
- Consider using SWIFT to block transactions as a sanction or countermeasure;
- Counter the effects of foreign sanctions by robust EU blocking legislation and enforcement by Member States, including by extending the Blocking Statute to cover US measures concerning Nord Stream 2;
- Improve INSTEX;
- Promote the Euro to take a larger role in the international financial system; and

- Establish an EU agency of Foreign Assets Control (“EU-AFAC”) to promote credibility and provide practical assistance to EU businesses.

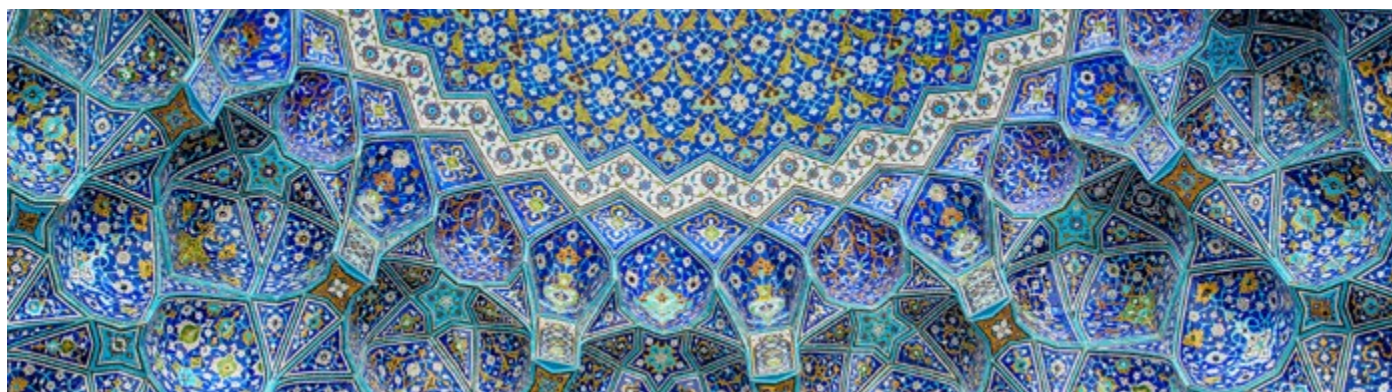
COMMISSION GUIDANCE ON COVID-19-RELATED HUMANITARIAN AID TO IRAN, VENEZUELA, SYRIA & NICARAGUA

The Commission released a guidance note on the provision of Covid-19-related humanitarian aid and medical assistance to countries subject to EU sanctions, more specifically Syria, Iran, Venezuela,⁸ and Nicaragua.⁹

The purpose of the guidance note was to clarify matters of compliance with EU sanctions when providing humanitarian aid, in particular medical assistance to fight the Covid-19 pandemic. As such, it is addressed to EU Member States NCAs as well as public and private operators involved in the supply of humanitarian aid to the population of the countries subject to EU sanctions (Humanitarian Operators) such as donors, international organizations, banks and other financial institutions as well as NGOs. The guidance note was intended to provide clarity on what constitutes humanitarian relief, banking activities, liaising with designated people / entities, import / export restrictions on items such as ventilators and testing kits, and whether medicine, equipment or assistance are “economic resources.”

8 <https://www.dentons.com/en/insights/alerts/2020/october/16/ec-guidance-on-provision-of-humanitarian-aid-to-fight-the-covid-19-pandemic-in-venezuela>

9 https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/201116-humanitarian-aid-guidance-note_en.pdf



Strengthening EU sanctions

SYRIA

- EU designated several Syrian government ministers, businessmen and entities

On October 16, 2020, the Council added seven Syrian government ministers to the Syria sanctions list as they share responsibility for the Syrian regime's violent repression of the civilian population.¹⁰ Later, in November 2020, the Council designated further eight newly appointed Syrian ministers to the sanctions list for the same reason.¹¹ Prior to this, on February 17, 2020, the Council also added eight prominent businessmen and two entities responsible for supporting and benefiting from the Assad regime including through the use of expropriated property.¹²

Furthermore, on May 28, 2020, the EU renewed its sanctions against the Syrian regime for one additional year.¹³ However, for the first time, the EU also de-listed two persons and one legal entity for "sanctionable behavior."¹⁴ They were added to the sanctions list in January 2019 on the basis that they supported the Syrian regime.

RUSSIA

- EU sanctioned six Russian officials & one entity for Navalny's poisoning

On October 15, 2020, the Council adopted restrictive measures against six individuals, including the Director of the Federal Security Service ("FSB"), and the State Scientific Research Institute for Organic Chemistry and

Technology for alleged involvement in the assassination attempt on Alexei Navalny.¹⁵ These sanctions were introduced in the framework of the existing measures against the proliferation and use of chemical weapons. They consist of an asset freeze and a travel ban to the EU for individuals, and an asset freeze targeting the State Scientific Research Institute for Organic Chemistry and Technology.

- EU listed six persons under the Russia sanctions for links to the Kerch bridge construction

On October 1, 2020, the EU introduced new sanctions for the construction of the bridge and railway tracks linking Russia to the Crimean peninsula via the Kerch Strait. The measures add two individuals and four entities to the list of those subject to restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.¹⁶

- EU Declaration on Ukraine/Russia sanctions calling on UN Member States to consider imposing similar non-recognition sanctions

In March 2020, the EU HR/VP made a declaration on the EU's continued non-recognition policy of any claim against Ukraine's sovereignty. This declaration calls on UN Member States to consider similar non-recognition measures in line with the UN General Assembly Resolution. The declaration also calls on Russia to ensure safe passage through the Kerch Strait and Sea of Azov, to stop "changing the demographic structure

10 Council Implementing Regulation (EU) 2020/1505 and Council Implementing Decision (CFSP) 2020/1506

11 Council Implementing Regulation (EU) 2020/1649 and Council Implementing Decision (CFSP) 2020/1651

12 Council Implementing Regulation (EU) 2020/211 and Council Implementing Decision (CFSP) 2020/212

13 Council Decision (CFSP) 2020/719

14 Council Implementing Regulation (EU) 2020/716

15 Council Implementing Regulation (EU) 2020/1480 and Council Decision (CFSP) 2020/1482

16 Council Implementing Regulation (EU) 2020/1367 and Council Decision (CFSP) 2020/1368



of the population by transferring its own civilian population to the peninsula” and to uphold the human rights of the Crimean Tartar community.

CYBER-ATTACKS

On July 30, 2020, the EU imposed restrictive measures against six individuals and three entities for their involvement in the ‘WannaCry’, ‘NotPetya’, and ‘Operation Cloud Hopper’ cyber-attacks and attempted attack on the Organization for the Prohibition of Chemical Weapons (“OPCW”) in the Netherlands.¹⁷ The measures introduced were in the form of a travel ban and an asset freeze. It is the first time the EU has used this tool, which is one of the options available in the EU cyber policy to respond to malicious cyber activities directed against the EU or its Member States. The legal framework for the measure against cyber-attacks was adopted in May 2019¹⁸ and renewed until May 18, 2021.¹⁹

- EU imposes sanctions for cyber-attack on German Parliament

In June 2020, the German government proposed to the EU Member States to jointly impose sanctions against Russia for a large-scale cyberattack on the German Bundestag in 2015. On October 22, 2020, the Council adopted targeted sanctions on two individuals and one entity for their involvement.²⁰ The cyber-attack targeted the Parliament’s information system and affected its operation for several days. A significant amount of data was stolen and email accounts of several MPs as well as of Chancellor Angela Merkel were compromised.

EU RENEWED ALL ITS EXISTING SANCTIONS REGIMES FOR SIX MONTHS TO ONE YEAR AND THIRD PARTIES ALIGNED

Similarly to 2019, 2020 reflected the close cooperation between certain neighboring countries, namely, North Macedonia, Montenegro, Albania, Iceland, the Republic of Moldova, Norway, Liechtenstein, Ukraine, Serbia, Georgia, Armenia, Bosnia, and Herzegovina, which all aligned themselves to most EU sanctions regimes.

In 2020, the EU also renewed most of its existing sanctions regimes that were in place last year. The EU renewed, among others, the sanctions regime against Belarus until February 28, 2021,²¹ Iran until April 12, 2021,²² Myanmar until April 30, 2021,²³ Syria until June 1, 2021,²⁴ and Chemical weapons regime until October 31, 2021.²⁵ Sanctions against Russia and Ukraine were renewed for six months twice in 2020 until January 31, 2021²⁶ respectively March 15, 2021.²⁷ In addition, the EU for the first time extended the existing framework for imposing targeted restrictive measures against Nicaragua until October 15, 2021.²⁸ Moreover, the EU renewed the arms embargo and asset freezes against the Zimbabwe’s Defense Industries until February 20, 2021, but suspended existing restrictive measures (travel restrictions and asset freezes) against four individuals subject to EU sanctions against Zimbabwe, including former first lady Grace Mugabe.²⁹

In addition, while adopting conclusions supporting the ongoing peace process in South Sudan and the work of

17 Council Implementing Regulation (EU) 2020/1125 and Council Decision (CFSP) 2020/1127

18 Council Decision (CFSP) 2019/797

19 Council Decision (CFSP) 2020/651

20 Council Decision (CFSP) 2020/1537 and Council Implementing Regulation (EU) 2020/1536

21 Council Decision (CFSP) 2020/214

22 Council Decision (CFSP) 2020/512 and Council Implementing Regulation (EU) 2020/510

23 Council Decision (CFSP) 2020/563

24 Council Decision (CFSP) 2020/719

25 Council Decision (CFSP) 2020/1466

26 Council Decision (CFSP) 2020/907

27 Council Decision (CFSP) 2020/1269

28 Council Decision (CFSP) 2020/1467

29 Council Decision (CFSP) 2020/215 and Commission Implementing Regulation (EU) 2020/219



the Revitalized Transitional Government, the EU called on the UN Security Council to renew the arms embargo against South Sudan for one year. On May 29, 2020 the Security Council renewed the arms embargo and targeted sanctions imposed on South Sudan for one year.³⁰

BELARUS

In October 2020, overcoming Cyprus' veto, the Council significantly strengthened sanctions against Belarus by imposing sanctions against 40 individuals identified as responsible for repression and intimidation in the wake of the 2020 presidential election in Belarus.³¹ A month later, the Council brought additional sanctions on 15 members of the Belarussian authorities, including Alexander Lukashenko.³² The total number of individuals subject to the Belarus sanctions has reached 59.

LIBYA

- EU designated 3 persons and 3 entities, and de-listed 2 others

On September 21, 2020, the EU imposed sanctions on two persons responsible for human rights abuses in Libya and three entities involved in violating the Libya UN arms embargo.³³ A few weeks later, the Council imposed further sanctions in the form of a travel ban and an asset freeze against Yevgeniy Prigozhin for engaging in and providing support to the Wagner Group's activities in Libya, which threaten the country's

peace, stability and security.³⁴ Concurrently, the Council delisted two other individuals subject to Libya sanctions, Agila Saleh for his constructive engagement in support of a negotiated political solution and Nuri Abu Sahmain for lack of any recent role in the Libyan political process.³⁵

- EU launched maritime and aerial operation to enforce Libya arms embargo

In March 2020, the EU stepped up its efforts to enforce the UN arms embargo against Libya, through the launch of a new Common Security and Defense Policy ("CSDP") military operation IRINI in the Mediterranean Sea. To implement the UN embargo, the operation resorts to aerial, satellite and maritime assets, and conducts naval patrols to inspect vessels on the high seas of the coast of Libya suspected to carry arms or related material.³⁶ In July, France, Italy and Germany expressed concerns regarding the increased military tensions. They urged all foreign actors to end their increasing interference and to fully respect the arms embargo.³⁷

VENEZUELA AND NICARAGUA

- EU designated eleven Venezuelan officials

On June 29, 2020, the Council added eleven leading Venezuelan officials for their role in undermining democracy and the rule of law in Venezuela. The officials were accused, inter alia, of initiating politically motivated prosecutions and creating obstacles to

30 Security Council Resolution 2521 (2020)

31 Council Implementing Decision (CFSP) 2020/1388 and Council Implementing Regulation (EU) 2020/1387

32 Council Implementing Decision (CFSP) 2020/1650 and Council Implementing Regulation (EU) 2020/1648

33 Council Implementing Decision (CFSP) 2020/1310 and Council Implementing Regulation (EU) 2020/1309

34 Council Implementing Decision (CFSP) 2020/1483 and Council Implementing Regulation (EU) 2020/1481

35 Council Decision (CFSP) 2020/1385 and Council Implementing Regulation (EU) 2020/1380

36 <https://www.consilium.europa.eu/en/press/press-releases/2020/03/31/eu-launches-operation-irini-to-enforce-libya-arms-embargo/>

37 <https://www.bundeskanzlerin.de/bkin-en/news/joint-statement-libya-1769814>



a political and democratic solution to the crisis in Venezuela.³⁸ This designation brings the total number of individuals subject to the Venezuela sanctions to 36. Switzerland followed the EU by adding these officials to its own Venezuela sanctions list.³⁹

- Venezuela's application to annul EU arms embargo ruled inadmissible (EU Court)

In September 2019, the EU General Court ("GC") declared the Bolivarian Republic of Venezuela's application to annul the EU arms embargo as inadmissible. The GC concluded on the inadmissibility on the ground that Venezuela was not directly concerned by the contested provision.⁴⁰ Venezuela appealed the decision in November 2019 claiming the GC erred in law and neglected to consider the factual

effects of the contested regulation on Venezuela. The appeal was published in the Official Journal of the European Union ("OJEU") on February 10, 2020 as is currently pending.⁴¹

- EU imposed sanctions on six Nicaraguan officials

Close to Venezuela, the EU also imposed sanctions on six Nicaraguan officials responsible for serious human rights violations in Nicaragua. The designations are a response to the lack of tangible advances on democracy and human rights in Nicaragua in the course of the year.⁴²

38 Council Decision (CFSP) 2020/898 and Council Implementing Regulation (EU) 2020/897

39 <https://www.seco.admin.ch/seco/en/home/seco/nsb-news.msg-id-79797.html>

40 Judgment of 20 September 2019, Bolivarian Republic of Venezuela v. Council of the European Union, T-65/18, EU:T:2019:649

41 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62019CN0872&from=FR>

42 Council Decision (CFSP) 2020/607 and Council Implementing Regulation (EU) 2020/606



TURKEY

On November 6, 2020, the EU imposed sanctions on two Turkish nationals, the Head of the Turkish Petroleum Corporation (“TPAO”) Exploration, R&D Center and Information Technology Departments (Mehmet Ferruh Akalin), and TPAO’s Deputy Director of the Exploration Department (Ali Coscun Namoglu) for their involvement in drilling activities unauthorized by the Republic of Cyprus.⁴³

OTHER SANCTIONS REGIMES

- EU issued conclusions on measures preventing/ countering terrorism & extremism

In light of the constantly evolving nature of the threat from international terrorism, the Council released its updated conclusions on EU external actions to counter and prevent terrorism and radicalization. The Council reaffirmed the importance of robust and effective sanctions regimes, as well as respect for fundamental rights and due process guarantees to ensure credibility and effectiveness of restrictive measures.⁴⁴

- EU opposed US sanctions on ICC

The EU condemned the economic sanctions and visa restrictions imposed by the US on senior staff officials of the ICC as unacceptable and unprecedented measures. The EU confirmed its unwavering support for the ICC and its commitment to defend it from any outside interference aimed at undermining and obstructing the Court’s investigations and judicial proceedings.⁴⁵ Seventy-two Parties to the Rome Statute also confirmed their support for the ICC as an independent and impartial judicial institution.⁴⁶

- UK, France and Germany (“E3”) do not support the lifting of the UN conventional arms embargo against Iran

The E3 opposed the lifting of the UN conventional arms embargo against Iran due in October 2020, following a provision to this effect in Resolution 2231(2015) by which the E3 endorsed the JCPOA in 2015, as it would have major implications for regional security and stability. In contrast, and despite overwhelming opposition, the US triggered the UNSC Resolution 2231 snapback mechanism and virtually restored all UN sanctions against Iran.⁴⁷

43 Council Decision (CFSP) 2020/1657 and Council Implementing Regulation (EU) 2020/1655

44 <https://www.consilium.europa.eu/media/44446/st08868-en20.pdf>

45 https://eeas.europa.eu/headquarters/headquarters-homepage/84721/international-criminal-court-statement-high-representativevice-president-josep-borrell-us_en

46 <https://onu.delegfrance.org/We-reiterate-our-commitment-to-uphold-and-defend-the-principles-and-values>

47 <https://www.gov.uk/government/news/e3-foreign-ministers-statement-on-the-jcpoa-19-june>



EU Member States sanctions developments

FRANCE

- French reference to the CJEU on enforcement action against frozen assets

The French Cour de cassation stayed proceedings and made a request to the CJEU for a preliminary ruling regarding a creditor's ability to take enforcement actions against frozen assets. The question arose in a case opposing Bank Sepah, an entity subject to UN sanctions from 2007 to 2016, to its creditors, Overseas and Oaktree. The French Court of Appeal considered that the interests accrued prior to May 2011 were prescribed and that nothing would have prohibited the two creditors from engaging enforcement measures on Bank Sepah's frozen assets to protect those interests. The Cour de cassation requested the CJEU to clarify whether relevant EU regulations precluded an enforcement action, such as those provided by the French Civil Code of Enforcement Proceeding, on frozen assets, without prior authorization of the competent national authority.⁴⁸

- EU updated terrorism sanctions list & designated French national

French national, Bryan d'Ancona, was added to the ISIL (Da'esh) EU sanctions list for his involvement with the organization.⁴⁹ Last year, the EU had already designated two other French nationals, Guillaume Pirotte and Brahim el Khayari.

- France released Iranian engineer accused of violating US sanctions

France released the Iranian national Jalal Rohollahnejad detained since February 2019 in a French prison for

alleged illegal exports of equipment with military application in violation of US sanctions. It appears he has been part of a swap arrangement with Iran for the release of French nationals imprisoned in Iran.⁵⁰

- OFAC requested information on Harmonic's French subsidiary transactions with Iran

Harmonic, a California-based video technology company, has disclosed in a SEC filing that it received in March 2020 an administrative subpoena from OFAC requesting information about transactions involving Iran. A French company, Thomson Video Networks, which Harmonic acquired in early 2016, conducted the said transactions. Harmonic products are subject to US export control laws, and may be exported outside the US only with the required export license or through export license exception, as products incorporating encryption technology. Harmonic has confirmed that it is cooperating fully with the investigation.⁵¹

- International Chamber of the Paris Court of Appeal finds US sanctions not to form part of international public policy

On June 3, 2020, the International Chamber of the Paris Court of Appeal found that, in contrast with UN and EU sanctions, US sanctions against Iran did not form part of international public policy. This case, rendered in the context of an application to set aside an international arbitration award, opposed Sofregaz, a French company, to its Iranian business partner, the Natural Gas Storage Company ("NGSC"). Sofregaz had informed NGSC that banks had refused to extend the bank guarantees necessary under the contract, seemingly because of existing sanctions against Iran.

48 https://www.courdecassation.fr/jurisprudence_2/communiqués_liés_activité_juridictionnelle_8004/gel_avoirs_9805/consequences_mesure_45129.html

49 Council Decision (CFSP) 2020/1126 and Council Regulation (EU) 2016/1686

50 <https://www.state.gov/frances-unilateral-release-of-iranian-national-jalal-rohollahnejad/>

51 <https://investor.harmonicinc.com/static-files/50bd2c15-41d7-447b-a998-fb228074aa6c>



In response, NGSC terminated the contract on the ground that Sofregaz had breach the contract and delayed the continuation of the project. The Arbitral tribunal ruled in favor of NGSC and the Court of Appeal confirmed that the tribunal did not violate international public policy in failing to consider the impact of US sanctions against Iran on the performance of the contract.⁵²

GERMANY

Germany maintained the pace we saw in 2019 and 2018 when it comes to sanctions and export controls developments and enforcement. With the UK about to leave the EU, Germany is bound to become the frontrunner EU jurisdiction and the regulatory benchmark in these fields, being the most export-oriented Member State. According to the 2020 LexisNexis® Risk Solutions True Cost of Financial Crime Compliance Study, Germany spent \$47.5bn on 2019 financial crime compliance, and in particular on increasingly complex regulations, data privacy limitations, sanctions violations and increased enforcement, et.al. The Study reflects the results from a comprehensive survey of banks and financial institutions in the EU, U.S. and Canada.

Below we present Germany's most important sanctions and export controls developments in 2020.

- 16th regulation amending the Foreign Trade Ordinance

On October 29, 2020, Germany's Federal Ministry for Economic Affairs and Energy published the 16th regulation amending the Foreign Trade Ordinance. This regulation expands the range of catalogue transactions and cross-sectoral screening, introduces changes to the EU-screening regulation, and names investor-related screening factors. It also codifies the administrative practice of the Federal Ministry of Economics and Energy.

- First preliminary ruling on the interpretation of Article 5 the EU Blocking Regulation

In June 2020, the Higher Regional Court of Hamburg made a reference to the CJEU seeking a preliminary ruling on the interpretation of Article 5 the EU Blocking Regulation (Council Regulation (EC) No 2271/96, as amended). Article 5 prohibits EU operators from complying with certain sanctions imposed by the US on Cuba and Iran, which are listed in the Annex to the EU Blocking Regulation. The background of the referral is a dispute between Bank Melli Iran and Telekom Deutschland GmbH ("Telekom"). Following the re-imposition of US sanctions on Iran in November 2018, Telekom decided to cancel telephone and internet services contracts with ten companies with links to Iran, as the Telekom Deutschland group generates 50 percent of its turnover in the US. Bank Melli Iran disputed Telekom's termination and commenced legal proceedings. Since one of Bank Melli's arguments was that Telekom's termination contravenes Article 5 of the EU Blocking Regulation and was therefore ineffective,

52 Cour d'Appel de Paris, Chambre commerciale internationale, Pole 5 – Chambre 16, 3 June 2020



the Hamburg Court subsequently sought a preliminary ruling from the CJEU on the proper interpretation of Article 5.

- France and Germany agreement concerning defense export controls under the Aachen Treaty

In October 2019, France and Germany reached an agreement concerning defense export controls, under the Aachen Treaty. The German Federal Office for Economic Affairs and Export Control ("BAFA") has issued General License 28 to implement this agreement. The license is effective from April 1, 2020. The license facilitates the transfer of military items between France and Germany for Franco-German joint military projects.

- Hezbollah designated as terrorist organization

In April 2020, Germany banned all Hezbollah activity on its soil and designated the Iran-backed group as a terrorist organization under the Act Governing Private Associations, thus aligning its policy with the US. German police conducted raids on mosque associations in cities across Germany, which officials believe are close to the heavily armed Shi'ite Islamist group. The reason for the designation is the fact that Hezbollah's activities "violate criminal law and the organization opposes the concept of international understanding."

- BAFA launches electronic "war weapons book" (Kriegswaffenbuches – eKWB)

On April 1, 2020, Germany's new electronic arms reporting system came into effect. BAFA established the electronic "war weapons book" (Kriegswaffenbuches – eKWB) under the War Weapons Control Act. It obliges all those who deal with war weapons to report their stocks and changes in stocks to BAFA every six months.

- Iranian arrested in Germany released at the request of the U.S. Justice Department

In February 2020, Germany released Ahmad Khalili, an Iranian citizen, arrested in Germany at the request of the U.S. Justice Department and subject to extradition to America for violating US sanctions. Khalili returned to

Iran, after intense consultations of the Iranian judiciary and the intelligence department of the Revolutionary Guards with the German authorities.

- Hostel situated on the grounds of the North Korean embassy in Berlin contravened UN Resolution 2321 (2016)

February 2020, the Berlin administrative court ordered the closing of a hostel situated on the grounds of the North Korean embassy in Berlin. The hostel's operators lease the premises from the embassy for 38,000 euros per month under a contract concluded in 2016. This economic activity contravened UN Resolution 2321 (2016), adopted to prevent financing of North Korea's nuclear and ballistic missile programs.

- Russian national living in Germany sentenced to seven years imprisonment

In January 2020, a Russian national living in Germany, charged with illegally exporting dual-use technology to Russia, was sentenced to seven years imprisonment. German prosecutors revealed that between 2014 and his arrest in December 2018, Vladimir D had sold over €1.83 million in dual-use items to various Russian recipients.

BALTIC STATES

In the Baltic States, Lithuania, Latvia, and Estonia, most of the 2020 sanctions news relates to the banning of and closing down of Russian-controlled news agencies. There were also certain enforcement actions, and an important development in relation to the ongoing saga of the US designation of the mayor of Ventspils.

- Latvian ban on 9 television channels owned by designated Russian

In November 2019, Latvia's National Electronic Mass Media Council ("NEPLP") had decided to ban nine Russian programs which were ultimately owned by EU sanctioned Yuri Kovalchuk. Following a complaint, the Riga Administrative Regional Court upheld that ban in July 2020.⁵³

53 https://www.baltictimes.com/court_upholds_ban_on_nine_russian_television_channels_in_latvia/



In the summer of 2020, NEPLP further banned seven channels all operating under the Russia Today (“RT”) brand, due to them being under the actual control of Dmitry Kiselev, a designated person in the EU.⁵⁴ The reason for the ban was that the channels attempt to present Latvia as a failed state. Several days later, Lithuania followed the move and banned the channels as well.

- Lithuania, Latvia & Estonia sanctioned Lukashenko and Belarus officials

On August 31, 2020, the three Baltic States first imposed sanctions on Belarus officials due to the violence following its presidential elections. At that time, a travel ban was imposed in relation to President Lukashenko and 29 other officials.⁵⁵ This action predated the imposition of sanctions by the EU. Subsequently, on September 25, 2020, the sanctions were extended and another 98 officials were included.⁵⁶

In response, Belarus imposed its own travel ban against roughly 100 officials of the Baltic States.⁵⁷

Most recently, on November 20, 2020, the Baltic States added another 28 names to their sanctions list in an effort to maintain pressure on the Lukashenko regime. In the meantime, the EU imposed sanctions (travel bans and asset freezes) on 59 people associated with President Lukashenko.

- Latvian Financial and Capital Market Commission fined Swedish bank SEB 1.79 million euros for anti-money laundering and sanctions violations

In December 2019, the Latvian financial regulator (“FCMC”) imposed a fine of €1.79 million on Swedish Bank SEB, which is the third largest bank in Latvia for non-compliance with anti-money laundering rules and sanctions infringements.⁵⁸ This was

concluded in the form of an administrative agreement, stipulating a settlement of €672,684 for anti-money laundering shortcomings, and €1,121,140 for sanctions infringements. Following a 2017 inspection, it appeared that the bank’s internal control systems were insufficiently detailed and lacked information on the bank’s clients. A 2019 inspection then revealed an infringement of the Latvian sanctions law, where it appeared that the bank had made payments to a designated individual, as its information was entered incorrectly in its systems.

- Estonia EU sanctions enforcement closed down Sputnik news agency

On January 1, 2020, Russian news agency Sputnik said it would close operations in Estonia following what it called pressure from Estonian police. Estonian law enforcement had earlier sent warnings to the agency stating that staff members could be prosecuted in light of EU sanctions targeting Russia since Sputnik Estonia is controlled by the Russian state media company, having as its Chief Executive Officer (“CEO”) Dmitry Kiselev, a designated person in the EU.⁵⁹

- Baltic States listed Hezbollah as a terrorist organization

On October 22, 2020, Estonia followed a group of countries, consisting of fellow Baltic state Lithuania, the US, UK, the Netherlands and Germany in designating the Lebanese militia Hezbollah as a terrorist entity. The measure consists of a travel ban to any member or affiliate of the group, however not differentiating therein between Hezbollah’s military wing and its political wing.

On December 1, 2020, Latvia followed Lithuania’s and Estonia’s lead and designated Hezbollah (again, the entire organization) as a terrorist entity.⁶⁰

54 <https://bnn-news.com/latvia-bans-kremlins-propaganda-television-channel-rt-214823>; <https://bnn-news.com/lithuania-bans-rt-tv-channel-estonia-looks-into-matter-215150>

55 <https://www.reuters.com/article/us-belarus-election-sanctions-idUSKBN25R0Z7>

56 <https://news.err.ee/1139668/estonia-latvia-lithuania-extend-sanctions-on-belarusian-officials>

57 <https://bnn-news.com/belarus-announces-sanctions-against-baltic-states-217337>

58 <https://eng.lsm.lv/article/economy/banks/seb-bank-fined-nearly-18-million-euros-by-latvian-financial-regulator.a342512/>

59 <https://www.rferl.org/a/russian-news-agency-sputnik-closes-estonia-operations-after-employees-quit/30355321.html>

60 <https://www.state.gov/on-latvias-actions-to-constrain-hizballah/>



- Mayor of Ventspils (Latvia) asked US court to de-list him from US sanctions

In December 2019, the mayor of the Latvian city Ventspils, Aivars Lembergs was designated by the US OFAC under the US Magnitsky Act for corruption allegations. In doing so, OFAC mentioned four organizations owned or controlled by Lembergs, i.e. the Ventspils Freeport authority, Ventspils Development Agency, Business Development Association and Latvian Transit Business Association.⁶¹

While this designation was understood by many to end Lembergs' political career, he maintained influence over the Ventspils City Council, which itself was not designated by OFAC. On August 20, 2020, following Lembergs' suspension due to a corruption investigation, he filed a complaint against OFAC with the US District Court in D.C. in relation to the sanctions imposed, seeking an order to vacate, rescind and declare his designation unlawful, along with reimbursement of costs and attorneys' fees.⁶²

NETHERLANDS

- Dutch crypto companies required to demonstrate sanctions compliance

As of May 21, 2020, crypto service providers – i.e. firms offering services for the exchange between virtual and regular currencies, and providers of custodian

wallets for virtual currencies – are required to register with the Dutch Central Bank ("DNB").⁶³ Effective from that date, crypto service providers are only permitted to carry out their activities if they are listed in DNB's public register. With the often lacking transparency on the identity of parties to crypto transactions, the Dutch authorities want to ensure the highest level of compliance with sanctions laws by encouraging crypto service providers to be more vigilant and rigorous when conducting due diligence on transactions. Therefore, one of the key elements of the DNB related registration requires describing the implemented policy and readily accessible measures and procedures guaranteeing compliance with the objectives, provisions and sanctions listings of the various EU and Dutch sanctions.

- Dutch Parliament called for Nagorno-Karabagh sanctions

The year 2020 has also seen political turmoil at Europe's doorstep followed by violent repression targeting civilians. The Dutch Parliament has fiercely discussed and condemned the alleged rigged re-election of President Lukashenko in Belarus as well as the Nagorno-Karabagh conflict at the Azerbaijan-Armenia border. While no national sanctions have been imposed on Belarus, the Dutch Parliament has vigorously condemned the ongoing turmoil in Belarus. With respect to the Nagorno-Karabagh conflict on the other

61 <https://bnn-news.com/usa-adds-aivars-lembergs-to-its-black-list-208260>; <https://bnn-news.com/aivars-lembergs-maintains-dominant-influence-over-ventspils-in-spice-of-us-sanctions-210017>

62 <https://eng.lsm.lv/article/society/crime/lembergs-turns-to-us-court-over-sanctions.a371161/>

63 "De Nederlandsche Bank, Register of crypto service providers, <https://www.dnb.nl/en/supervision/public-register/WWFTAC/index.jsp>



hand, the Dutch Parliament has introduced motions, calling on the Dutch Government to encourage the EU to:

- a) Apply a moratorium on exports of weapons to Turkey that could be used in the conflicts in the Nagorno-Karabagh region, Libya or Syria;⁶⁴
 - b) Impose sanctions on people in Azerbaijan and Turkey who are responsible for the violence in Nagorno-Karabagh;⁶⁵ and
 - c) Impose sanctions against Azerbaijani President Ilham Aliyev, his family members, other key figures in the Azerbaijani offensive, and the Syrian fighters deployed by Turkey in Nagorno-Karabakh.⁶⁶
- Latest cases by the Dutch Supreme Court and lower Dutch courts

Dutch courts rendered some interesting decisions this year. In a judgement of April 7, 2020 by the Netherlands' highest court, the Supreme Court of the Netherlands denied an Iranian national's challenge to a US extradition request to face sanctions and export control charges, and rejected the argument that extraditing the individual would violate the EU Blocking Regulation.⁶⁷ The court held that the regulation does not protect persons/entities whose trading activities may contribute to Iran's military capabilities on the basis that such trading is also criminalized under the EU's and Dutch domestic export controls. The court did not file any reference to the CJEU.

In another interesting case, the Supreme Court of the Netherlands ruled on the transit of military goods without an export license. The legal question raised was whether a professional airfreight carrier may deliberately transit military goods from South Africa through the Netherlands, to Ecuador, without a Dutch

export license. The military goods in this case were parts for military jet fighters. According to the Supreme Court, the lower courts in this case failed to provide enough evidence that there was criminal intent on the side of the suspect. As a result, the Dutch Supreme Court ruled that there was no criminal intent and referred the case back to the Court of Appeal.⁶⁸

On February 7, 2020, in a follow up on cases reported in last year's edition of this report, the Court of Limburg imposed penalties of €600,000 and €4 million on a Dutch company and its Bahrain-based subsidiary for breaching EU and Dutch export controls on Iran.⁶⁹ The penalties represent the value obtained by each entity as a result of their illegal transport of gas turbine components to Iran without an export license. These penalties are the highest imposed for export control matters in the Netherlands to date.

Finally, a Dutch company failed to perform various services it had contractually agreed to perform in Iran when US sanctions were re-imposed on Iran in May 2018, and relied on a clause in the contract exempting performance on grounds of force majeure including "governmental intervention." It was sued for breach of contract in the Rotterdam District Court.⁷⁰ The Court held (in brief summary) that the US secondary sanctions did not make performance of the contract impossible, and the negative consequences of US secondary sanctions did not amount to force majeure.

OTHER JURISDICTIONS

- Spain draft law to set out legal framework for enforcing compliance with EU and UN sanctions

On February 12, 2020, the Commission started an infringement proceeding against Spain for not having transposed the Fifth Anti-Money Laundering Directive

64 Motion available at: <https://www.tweedekamer.nl/kamerstukken/moties/detail?id=2020Z21505&did=2020D45822>

65 Motion available at: <https://www.tweedekamer.nl/kamerstukken/moties/detail?id=2020Z21495&did=2020D45812>

66 Motion available at: <https://www.tweedekamer.nl/kamerstukken/moties/detail?id=2020Z21493&did=2020D45810>

67 The Supreme Court of the Netherlands judgment of April 7, 2020, Case 19/03920 U

68 The Supreme Court of the Netherlands judgment of April 21, 2020, Case 18/05294

69 Limburg District Court judgments of February 7, 2020, Cases 04/990001-09 OWV and 04/990001-10 OWV

70 Rotterdam District Court judgment of April 1, 2020, Case C/10/572099 / HA ZA 19-352



(Directive (EU) 2018/843) before the January 10, 2020 deadline.⁷¹ In response, in March 2020, the Spanish Council of Ministers approved a draft bill, amending Law 10/2010 of April 28 and transposing into domestic law Directive 2018/843. In June 2020, the Spanish Ministry of Economic Affairs and Digital Transformation (“MINECO”) published the draft bill, which also sets out procedures for the application of UN sanctions.⁷²

- EU debated Spain’s violation of Venezuela Vice-President travel ban

In February 2020, a heated debate took place in the European Parliament over whether the EU should bring an infringement procedure against Spain over the country’s violation of EU sanctions against Venezuela. The controversial meeting between the Spanish Transport Minister and Venezuela’s vice-president, subject to an EU travel ban, took place at Madrid’s airport in January. According to the HR/VP, the Commission had no competence on the matter recalling that EU countries “are responsible in all cases for the implementation and the verification of sanctions adopted by the EU in their own jurisdiction” and that the Commission could not initiate any infringement procedure in this case.⁷³

- Danish companies & director charged with violating EU Syria sanctions

The Danish State Prosecutor for Serious Economic and International Crime (“SØIK”) brought charges against a Danish holding company, its subsidiary, and a director. The company is accused of violating EU sanctions against Syria from 2015 to 2017 by selling 172,000 tons of jet fuel, equivalent to €86 million to Russian companies. Through intermediaries, the jet fuel was delivered to various locations and eventually delivered to Syria in violation of EU sanctions that prohibit the sale, supply, transfer or export, directly, or indirectly,

of jet fuel and fuel additives to any person, entity or body in Syria, or for use in Syria.⁷⁴

- Helsinki Court dismisses Boris Rotenberg’s sanctions case

The Helsinki District Court dismissed Boris Rotenberg’s complaint against four banks, Nordea, Danske Bank, Handelsbanken and OP Bank that had refused to conduct various transactions for him thereby violating his right to equal treatment as an EU citizen. The Court rejected the claim on the ground that he was not entitled to basic banking services in Finland as he failed to prove his residency in the European Economic Area. Boris Rotenberg is subject to US Ukraine/Russia sanctions and the Court ruled that the banks’ concerns over financial risks related to Rotenberg’s transactions were justified.⁷⁵

- Switzerland to create statutory basis for export controls surveillance

The Grand Chamber of the Swiss National Council approved a change to the Goods Control Act, to transpose into law the ability of the Federal Council to regulate the export of devices and software for internet and mobile phone surveillance if it has reason to believe they are being used for repression. Prior to this amendment, the Federal Council could regulate exports of sensitive devices and software only through temporary legislations, which must be renewed every 4 years.⁷⁶

- Maltese authorities charged 5 individuals with violating EU Libya sanctions

Five Maltese men aged between 41 and 63 years, were charged with breaching EU sanctions imposed on Libya. The investigations determined that the men had allegedly exported two ships to Libya in June 2019 through a Maltese registered company and without

71 https://ec.europa.eu/commission/presscorner/detail/en/inf_20_202

72 https://portal.mineco.gob.es/en-us/comunicacion/Pages/20200612_NP_APL_V_DirectivaV1.aspx

73 <https://www.euractiv.com/section/global-europe/news/spanish-meps-clash-over-ministers-meeting-with-venezuelan-vice-president/>

74 <https://anklagemyndigheden.dk/da/virksomhed-tiltalt-saelge-jetbraendstof-til-syrien>

75 <https://www.reuters.com/article/us-finland-russia-sanctions-idUSKBN1ZC19L>

76 https://www.parlament.ch/de/services/news/Seiten/2020/20200303093643508194158159041_bsd061.aspx



authorization from the Maltese authorities.⁷⁷

- Swiss Court maintained sanctions on Ukrainian de-listed by the EU

The Swiss Federal Tribunal decided to maintain sanctions against a Ukrainian Member of Parliament close to Ukrainian president Viktor Yanukovych who was previously subject to EU sanctions. According to the Court, Swiss law is less demanding than EU law and allows the blocking of assets to a greater extent than other jurisdictions. The Court confirmed it was not the legislator's intention to bind the Federal Council to any foreign decisions.⁷⁸

- Gibraltar guidance on counter-proliferation financing

The Gibraltar Financial Intelligence Unit ("GFIU") and the Gibraltar Financial Services Commission ("GFSC") published a guidance document on Counter Proliferation Financing to strengthen the industry's understanding of its international and domestic obligations. The guidance sets out red flags and indicators to assist reporting entities in their identification of funds that may be related to the illicit proliferation of weapons of mass destruction. The guidance notes are generic but also include targeted guidance for specific sectors, such as banking, trust and corporate service providers.⁷⁹

- Finnish NGO granted UN sanctions exemption for North Korea Aid

The UN Security Council has granted Finnish NGO Finn Church Aid's request for exemption from the prohibitions on transfers of certain listed equipment to the Democratic People's Republic of Korea ("DPRK") to allow for the import of items within the scope of a humanitarian assistance project. The authorized transfer of items and services covers funds for experts on the grounds, for office management,

for transportation cost, learning materials, and technologies such as laptops and mobile phones. The transfer took place within six months of the authorization, and all items and services had to be shipped at once or in a consolidated manner. The project aimed to enhance food security of vulnerable primary school children in two counties in the North Hwanghae province.⁸⁰

- First transaction with Iran under the Swiss Humanitarian Trade Arrangement

In January, a Swiss pharmaceutical company successfully completed the initial financial transaction benefiting Iranian medical patients through the new Swiss humanitarian aid channel. The Swiss Humanitarian Trade Arrangement ("SHTA") allows Swiss-based companies to safely send medicines and other vital goods to Iran despite US sanctions. The humanitarian channel has been established in coordination with the US State Department and is subject to strict due diligence measures to avoid misuse by the Iranian regime.⁸¹ The SHTA became fully operational at the end of July 2020.⁸²



77 https://pulizija.gov.mt/en/media/press_releases/Pages/2020/PR_226_20.aspx

78 https://www.bger.ch/files/live/sites/bger/files/pdf/fr/2C_572_2019_2020_04_08_T_f_11_53_21.pdf

79 <https://www.gibraltar.gov.gi/press-releases/new-guidance-notes-issued-to-counter-proliferation-financing-4262020-5994>

80 https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/1718_finland_exemption_request_24jun20_e.pdf

81 <https://home.treasury.gov/news/press-releases/sm890>

82 <https://www.swissinfo.ch/eng/iran-receives-first-shipment-under-swiss-humanitarian-trade-channel/45929264>



Export controls and the COVID-19 world crisis

EU NOTICE ON MEMBER STATES' IMPLEMENTATION OF DUAL-USE EXPORT REGULATIONS

On January 17, 2020, the Commission published a notice in the OJEU⁸³ setting out information adopted by each Member State in conformity with Articles 4, 5, 6, 8, 9, 10, 17, and 22 of Council Regulation (EC) No 428/2009. Furthermore, the Commission and the Member States also decided to publish additional information on measures imposed by Member States under Article 4 in order to ensure that exporters have access to comprehensive information on controls application throughout the EU. The notice sets out in table form which of the Member States have taken steps to implement those Articles and describes the implementing legislation.

EU REACHED AGREEMENT ON NEW DUAL USE REGULATION

As foreseen in our 2019 edition of this review, the European Parliament and the Council finally reached a provisional political agreement on November 9, 2020 on a revised regulation setting out EU's regime for the control of exports, transfer, brokering, technical assistance, and transit of dual-use items.⁸⁴ Next, the Member States' ambassadors sitting on the Permanent Representatives Committee ("Coreper") need to approve this new regulation before the Parliament and Council adopt it. The Commission already welcomed this agreement and highlighted that it will work closely with the Parliament and the Member States to implement the new regulation effectively. The proposed agreement will recast Regulation 428/2009, initially adopted in 2009 and successively amended, to adapt the rules to the rapidly changing

technological, economic and political circumstances, making them fit for purpose in the current landscape. The new regulation will strengthen the EU's export controls toolbox, allowing the EU to tackle the risk of human rights violations associated with trade in cyber-surveillance technologies and gain a greater control of trade flows in sensitive new and emerging technologies.

COMMISSION NOTICE ON DUAL-USE EXPORTS AFTER THE BREXIT TRANSITION PERIOD

Continuing on the trend of dual-use exports, prior to the announcement that a provisional political agreement had been reached on the recast of Regulation 428/2009, the Commission released a Notice to Stakeholders⁸⁵ on how it expects the new rules to apply to the post-Brexit UK. In short, the Notice advises stakeholders that at the end of the transition period, export licenses issued by the UK under Regulation 428/2009 will no longer be valid for exports of dual-use items from the EU to third countries. Furthermore, former transfers of Annex IV items from the EU to the United Kingdom will constitute an export subject to authorization under the terms and conditions of Regulation (EC) No 428/2009. However, intra-EU transfer licenses issued by the competent authority of an EU Member State for transfers to the UK issued before the end of the transition period, will remain valid after the end of the transition period. The adoption of the new regulation will almost certainly come too late to be transposed into UK law after Brexit (only EU law that actually applies on December 31, 2020 will be carried into UK law). Therefore, it sets up export controls as an area where we may see early divergence between EU and UK rules in 2021.

83 https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158576.pdf

84 <https://data.consilium.europa.eu/doc/document/ST-12798-2020-INIT/en/pdf>

85 https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/dual-use-export-controls_en.pdf



EU RECOMMENDED UK BE ADDED TO THE EU001 COUNTRIES LIST

The Commission submitted a proposal⁸⁶ to amend Regulation 428/2009 to add the UK to the list of countries in Annex IIa, to which certain dual-use exports are authorized under the Union General Export Authorization EU001. This would effectively add the UK to the list of 'safe countries' to export dual-use items alongside the existing safe countries: Australia, Canada, Japan, New Zealand, Norway, Switzerland (including Lichtenstein), and the US. The aim of this proposal is to reduce the impact of the UK's withdrawal from the EU, and avoid creating a significant administrative burden on the authorities of the Member States and EU exporters. It was recognized that adding the UK to the list of countries in the EU001 will not negatively affect EU and international security, and will ensure a uniform and consistent application of controls throughout the EU, providing a level playing field for EU exporters.

EU APPROVED PROJECT TO PROMOTE ARMS EXPORT CONTROLS IN THIRD COUNTRIES

As part of the EU's continued efforts to offer third countries technical support to develop and/or

strengthen their export control systems, the EU adopted Council Decision (CFSP) 2020/1464 on October 12, 2020.⁸⁷ It provides that BAFA will implement a 2-year project to promote effective arms controls in 23 third countries across Eastern and South Eastern Europe, North Africa and Central Asia. The project will focus, *inter alia*, on drafting, updating, and implementing relevant legislation, training in licensing and enforcement, outreach to domestic arms industries, and accession to/ratification of the Arms Trade Treaty through regional workshops, study visits, awareness raising events, and remote assistance. BAFA has been mandated by the EU on similar outreach initiatives since 2006, and this latest decision will allow for continued development of efficient arms controls systems in non-EU jurisdictions.⁸⁸

EU RESTRICTED HONG KONG EXPORTS OF EQUIPMENT POTENTIALLY USED FOR INTERNAL REPRESSION

The EU agreed to limit exports to Hong Kong of equipment that could be used for surveillance and repression after Beijing imposed a controversial new national security law on June 30, 2020.⁸⁹ The EU's concerns relate both to the substance of the new

86 <https://ec.europa.eu/transparency/regdoc/rep/1/2020/EN/COM-2020-692-F1-EN-MAIN-PART-1.PDF>

87 Council Decision (CFSP) 2020/1464 of 12 October 2020 on the promotion of effective arms export controls.

88 Additional details on this latest outreach initiative can be found on the BAFA's website: https://www.bafa.de/EN/Foreign_Trade/Outreach_Projects/outreach_projects.html

89 <https://www.consilium.europa.eu/en/press/press-releases/2020/07/28/hong-kong-council-expresses-grave-concern-over-national-security-law/>



legislation and the process by which it was adopted, and believe the new rules restrict fundamental freedoms in Hong Kong. A coordinated response package of measures was set out by the EU covering various fields, including:

- asylum, migration, visa and residence policy;
- exports of specific sensitive equipment and technologies for end use in Hong Kong;
- scholarships and academic exchanges involving Hong Kong students and universities;
- support to civil society; and
- the operation of Member States' extradition arrangements and other relevant agreements with Hong Kong.

EU EXPRESSED CONCERN OVER CHINESE DRAFT RE-EXPORT CONTROL PROVISIONS

The EU, as well as the US and Japan, have expressed concerns over a draft export law introduced by China on July 3, 2020. This most recent draft explicitly applies to foreign entities and individuals who violate such law, remove the mandatory obligation for exporters to establish an internal compliance review system, and creates uncertainty in how long it would take to apply for an export license. It also strengthens the Chinese government's export controls over military, nuclear, biological, chemical, and dual-use items.

On October 17, 2020, the National People's Congress Standing Committee adopted the controversial new Chinese Export Control law, which came into force on December 1, 2020.

COVID-19: EXPORT CONTROLS MEASURES TAKEN DURING THE PANDEMIC

Various export control measures have been adopted since the beginning of the Covid-19 pandemic, both at the EU level and by Member States. France and Germany initially responded to Covid-19 shortages of medical personal protective equipment (PPE) by imposing a ban on exports, which was condemned as being against the spirit of the European Union. However, both countries subsequently lifted the export ban to align with later introduced EU-wide regulations.

On March 15, 2020, the Commission Implementing Regulation (EU) 2020/402 ("Implementing Regulation")⁹⁰ introduced a requirement for export authorization for PPE, pursuant to Article 5 of Regulation (EU) 2015/479. This was introduced, and swiftly amended, to secure the supply of PPE required across the EU during the Covid-19 pandemic. It was an immediate action of a limited duration by the Commission in order to ensure adequacy of supply of PPE in the EU to meet the vital demand. The regulation lasted for only six weeks and automatically ceased at the end its term.

90 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R0402&qid=1606832785187>



Towards the end of the six-week period, further EU regulations were then imposed to continue the requirement for export authorization for certain medical PPE from the EU. The Communication from the Commission published in the OJEU (2020/C 91 I/02)⁹¹ provided further guidance on making the exportation of certain products subject to the production of an export authorization. This exempted exports of medical and personal protective equipment to certain countries from the export authorization requirements.⁹²

An amendment to the Implementing Regulation effective from March 21, 2020⁹³ made clear that the regulation applied to all exports outside the EU. In that respect, it did not apply to trade between the EU Member States, nor did it apply to exports of the four member States of the European Free Trade Association (Norway, Iceland, Liechtenstein and Switzerland) given their deep integration within the internal market. Similarly, the Faroe Islands, Andorra, San Marino, and the Vatican City were exempt. The Commission published guidelines on the regulation and a list of competent authorities in each Member State to provide the authorization.⁹⁴

The Commission then concluded that protective masks were the only form of PPE that may encounter supply issues in the EU.⁹⁵ The Commission Implementing Regulation (EU) 2020/568⁹⁶ was introduced to require an export authorization when exporting certain type of PPE – protective spectacles and visors, mouth-nose-protection equipment and protective garments – only from the EU. Exemptions from the export authorization requirement further extended to include the Western Balkans, Gibraltar, and territories of Member States. Despite Brexit, the regulation made clear that the UK was to be treated as an EU Member State for these

purposes.⁹⁷ This regulation was also only in place for a limited duration, a period of 30 days commencing April 26, 2020. The regulation allowed for it to be extended in duration or in scope to other forms of PPE in line with supply and demand. However, there were no requests to prolong the measure and it came to an end on May 25, 2020 as there was an adequate supply of PPE across the EU.

Other export control measures adopted by the EU since the beginning of the Covid-19 pandemic were including the exemption of ship supplies from the export restrictions on PPE and the delay of invalidation of customs declarations for exportation.⁹⁸



91 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2020:091I:FULL&from=EN>

92 https://trade.ec.europa.eu/doclib/docs/2020/march/tradoc_158668.pdf

93 https://trade.ec.europa.eu/doclib/docs/2020/march/tradoc_158671.pdf

94 Further published by the European Commission at: https://trade.ec.europa.eu/doclib/docs/2020/march/tradoc_158674.pdf

95 <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2132>

96 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R0568>

97 Recital 24, Commission Implementing Regulation (EU) 2020/568

98 https://ec.europa.eu/taxation_customs/sites/taxation/files/covid-19-customs-guidance-for-trade.pdf



General developments

E3 ANNOUNCED 1ST INSTEX TRANSACTION

Our 2019 year in review announced the long-awaited set up of INSTEX, intended to allow EU businesses to trade with Iran despite US sanctions. On March 31, 2020, the E3 announced that INSTEX had made its first successful transaction by facilitating the export of medical goods from Europe to Iran. In a press release issued by the German Foreign Office announcing the transaction, it was stated that INSTEX and its Iranian counterpart STFI would work on more transactions thus enhancing the mechanism.

EU PUBLISHED ANALYSIS ON EU-IRAN RELATIONS & FUTURE OF JCPOA

At the request of the European Parliament Foreign Affairs Committee, in October 2020, the EU Directorate-General for External Policies published a report on the state of play of EU-Iran relations and the future of the JCPOA.⁹⁹

The report analyzed and took a deep dive into the effects of the JCPOA, the impact of the re-imposition of US sanctions on Iran, the effect on EU – Iran trade and the status of the Iranian nuclear program. The report recommended the E3 and the EU to remain committed to the JCPOA; coordinate closely with JCPOA signatories Russia and China; maintain a united front on Iran's disruptive behavior; aim to build mutual trust and understanding; continue to bolster economic ties; seek autonomy when building trade relations with Iran, and strive to expand topics of discussion beyond the nuclear issue.

EU AND IRAN TRIGGERED JCPOA DISPUTE RESOLUTION MECHANISM

The past year has seen not one but two separate activations of the Iran nuclear deal dispute settlement mechanism. In January, the E3 triggered the mechanism following Iran's declaration that it would no longer honor its JCPOA commitments. Following the E3 announcement, the EU's HR/VP, extended the JCPOA dispute resolution mechanism timeline, which was previously 15 days, to allow for consultations.¹⁰⁰ In a statement, the UK said it remained committed to the JCPOA, but that the deal was being "put at risk by systematic Iranian non-compliance." It called on Iran to engage with the dispute resolution mechanism process initiated by the E3.¹⁰¹ Six months later, in July, Iran's Ministry of Foreign Affairs also triggered the dispute resolution mechanism under the JCPOA on the basis of "significant non-performance" of the E3's obligations under the deal. The decision was taken due to the E3's resolution, adopted by the International Atomic Energy Agency ("IAEA"), which called for Iran's cooperation, and compliance with its safeguarding obligations.¹⁰² In response, the EU stated that it remained determined to continue working with the participants of the JCPOA and the international community to preserve the deal.

EU STRENGTHENED TRADE ENFORCEMENT ARSENAL WITH REVAMPED ENFORCEMENT REGULATION AND APPOINTS ITS FIRST CHIEF TRADE ENFORCEMENT OFFICER

On October 28, 2020, the Commission, the European Parliament and the Council reached a political agreement on reinforcing the EU's Enforcement

99 [https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/603515/EXPO_IDA\(2020\)603515_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/603515/EXPO_IDA(2020)603515_EN.pdf)

100 https://eeas.europa.eu/headquarters/headquarters-homepage/73436/statement-high-representative-josep-borrell-following-consultations-jcpoa-participants_en

101 <https://www.gov.uk/government/news/uk-statement-on-jcpoa-implementation-04-july>

102 <https://en.mfa.ir/portal/NewsView/601505>



Regulation, which will empower the EU to protect its trade interests in the face of the ongoing paralysis of the WTO's multilateral dispute settlement system or in bilateral agreements.¹⁰³ It also expands the scope of the regulation and of possible trade policy measures to services and certain trade-related aspects of intellectual property rights ("IPR"), which furthers the EU's possibilities in enforcing its rights by allowing it to adopt countermeasures.

The European Parliament and the Council will formally adopt the amended regulation with a view to its entry into force as soon as possible.

THE WTO MULTI-PARTY INTERIM APPEAL ARRANGEMENT ("MPIA") BECAME OPERATIONAL

On July 31, 2020, the participants in MPIA notified the WTO of the ten arbitrators who will hear appeals of WTO panel reports, thus indicating the final step to make it operational for disputes between the participants. The MPIA is a body aimed at ensuring that disputes between WTO members are handled despite the paralysis of the WTO Appellate Body.¹⁰⁴

Operating under the WTO framework, its members (Australia, Brazil, Canada, China, Chile, Colombia, Costa Rica, the EU, Guatemala, Hong Kong, China, Iceland, Mexico, New Zealand, Norway, Pakistan, Singapore, Switzerland, Ukraine, and Uruguay), may bring cases against each other. The MPIA provides them with a functioning and independent two-tier dispute settlement system until the WTO Appellate Body is again able to function.

While the MPIA remains a stop-gap solution, it allows participants to benefit from a functioning appeal process in the WTO dispute settlement system.

EU FOREIGN INVESTMENT SCREENING MECHANISM BECAME FULLY OPERATIONAL

As reported in last year's edition, the EU framework for screening foreign direct investment ("FDI") became operational on October 11, 2020.¹⁰⁵ Since the adoption of the framework in March last year, the Commission and the Member States worked together on developing operational requirements to make the FDI framework fully operational. The FDI framework steps include:

- notification by EU Member States of their existing national investment screening mechanisms to the Commission;
- establishing contact points and secure channels in each Member State and within the Commission for the exchange of information and analysis;
- developing procedures for Member States and the Commission to quickly react to FDI concerns and to issue opinions;
- updating the list of projects and programs of Union interest annexed to the Regulation.

Member States will also cooperate informally on FDI screening if a foreign investment could have an effect on the EU single market.

JOINT PROPOSAL ON HUMAN RIGHTS SANCTIONS

On October 19, 2020, the Commission and the HR/VP put forward a Joint Proposal concerning implementation of restrictive measures against serious human rights violations and abuses worldwide. Once in force, the new sanctions regime should provide for greater flexibility to target those responsible for serious human rights violations and abuses worldwide, no matter where they occur or who is responsible.¹⁰⁶

According to Ursula von der Leyen, President of the Commission, an EU sanctions regime that holds to account those responsible for abuses and violations

103 <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2204>

104 <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2176#:~:text=The%20WTO%20multi%2Dparty%20interim%20appeal%20arrangement%20gets%20operational,On%2031%20July&text=While%20the%20MPIA%20remains%20a,the%20WTO%20dispute%20settlement%20system>

105 <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2187>

106 https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1939



of human rights is long overdue. Dubbed the EU version of the US Magnitsky Act, the necessary legislation was adopted by the Council on December 7, 2020.

EU COMMISSION ACTION PLAN STRENGTHENS AML & TERRORIST FINANCING STRATEGY

In May 2020, the Commission put forward a comprehensive approach to strengthen the EU's fight against money laundering and terrorist financing through a multifaceted Action Plan, setting out specific measures that the Commission intended to take over in 2020 and the beginning of 2021 to supervise and coordinate EU rules on the subject matter.¹⁰⁷ The decision includes publishing a methodology to identify high-risk third countries having strategic deficiencies, and adopting a new list of such jurisdictions. The six pillars of the action plan are (i) effective application, (ii) having a single rulebook, (iii) EU-level supervision, (iv) coordination and support mechanism, (v) enforcing

EU-level criminal law provisions and information exchanges, and (vi) taking a global role.

CAMBODIA LOST DUTY-FREE ACCESS TO THE EU MARKET OVER HUMAN RIGHTS CONCERNS

In August 2020, some of Cambodia's typical export products (garments, footwear and travel goods) totaling about 20% of its exports to the EU became subject to EU customs duties. This was a result of the EU's decision to partially withdraw Cambodia's duty-free quota-free access to the EU market. The EU had taken its decision to end the preferential treatment under the "Everything But Arms" ("EBA") arrangement due to serious and systematic concerns over the country's treatment of human rights. The EBA arrangement is part of the EU's Generalized Scheme of Preferences ("GSP"), which allows vulnerable developing countries to benefit from lower duties or duty-free exports to the EU, and hence stimulate their economic growth.¹⁰⁸

107 https://ec.europa.eu/commission/presscorner/detail/en/ip_20_800

108 https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1469



Digital innovation

In a push to encourage digitalization of the EU economy, 2020 has also seen the introduction of new and innovative EU tools in the field of export controls and sanctions.

EEAS LAUNCHES ONLINE DATABASE ON MEMBER STATES ARMS EXPORTS

On October 26, 2020, the European External Action Service (“EEAS”) launched the highly anticipated online database under the review of Common Position 2008/944/CFSP.¹⁰⁹ The searchable database is available on the EEAS’ website.¹¹⁰ It allows the public to consult and analyze online data on Member States’ arms exports. Member States have been reporting on their arms exports in an EU annual report since 1999, but prior to the introduction of this latest digital tool, data was only published in a cumbersome PDF file in the OJEU. The new searchable online database reflects data reported as from 2013, and allows users to export data directly from the database. In fact, it allows for a clear and more user-friendly use of data.

EU COMMISSION LAUNCHED DUE DILIGENCE HELPDESK & SANCTIONS TOOLS FOR SMES

In an effort to assist SMEs to gain a better understanding of the scope of EU restrictive measures targeting Iran and how to comply with them, in October 2020, the Commission launched the Due Diligence Helpdesk on EU sanctions for EU Small-and-Medium enterprises (“SMEs”) dealing with Iran (the “Due Diligence Helpdesk”).¹¹¹ The Helpdesk’s objective is

to provide concrete support to EU SMEs by carrying out Due Diligence checks regarding EU sanctions compliance for specific business projects. It also aims at reducing transaction costs by providing due diligence checks free-of-charge, and at reassuring European banks, which may be reluctant to handle transactions involving Iran. Prior to registering on the Due Diligence Helpdesk, SMEs are invited to use the self-assessment tool available online. Once the Helpdesk receives a due diligence request, it will do a first level assessment based on the SME’s responses to a due diligence questionnaire and the completeness of the list of requested documents. Following the first level review, if further information is needed, the Helpdesk will escalate the case to a level 2 or 3 assessment. Dentons Europe LLP intervenes at Level 2 to perform additional independent verifications, including research of local Farsi databases.

The Helpdesk underscores the continued EU commitment to the full and effective implementation of the JCPOA. It also provides for ancillary services, such as guidance, trainings and webinars.

COMMISSION LAUNCHED ACCESS2MARKETS PORTAL TO SUPPORT TRADE BY SMALL BUSINESSES

Another new digital initiative by the Commission in 2020 is the launch of the Access2Markets portal to support SMEs trading beyond the EU’s borders.¹¹² This new tool was rolled out further to requests from

109 Press release, EEAS, *Arms exports control: launch of online database increasing transparency on EU arms exports* (Oct. 26, 2020), https://eeas.europa.eu/headquarters/headquarters-homepage/87534/arms-exports-control-launch-online-database-increasing-transparency-eu-arms-exports_en

110 The online database is available at: <https://webgate.ec.europa.eu/eeasqap/sense/app/75fd8e6e-68ac-42dd-a078-f616633118bb/sheet/ccf79d7b-1f25-4976-bad8-da886dba3654/state/analysis>

111 <https://sanctions-helpdesk.eu/>

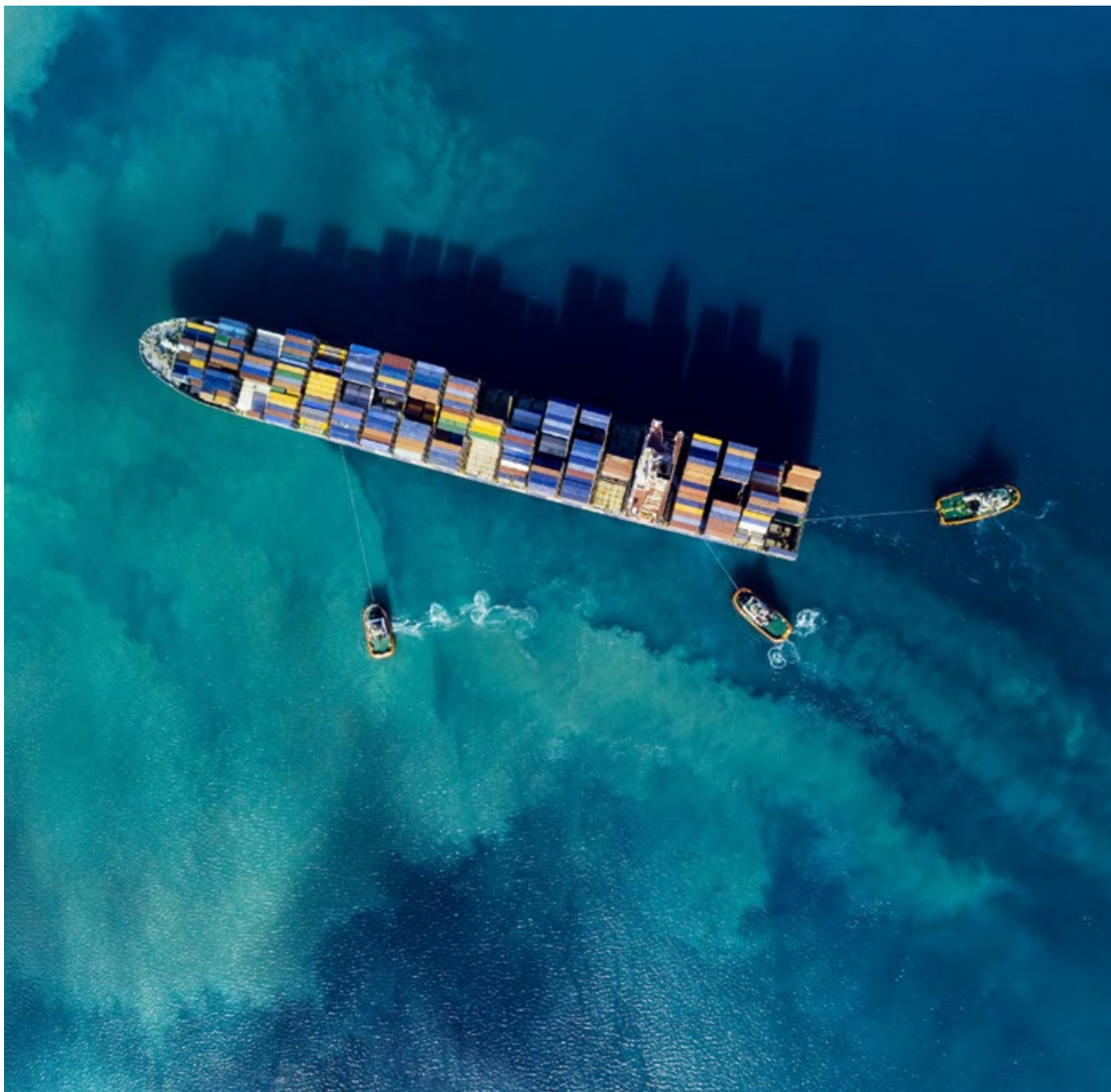
112 Press release, European Commission, *Commission launches Access2Markets portal to support trade by small businesses* (Oct. 13, 2020), https://ec.europa.eu/commission/presscorner/detail/en/mex_20_1891



stakeholders for the Commission to better explain trade agreements and help companies ensure their products are eligible for duty discounts. Access2Markets is an interactive, free, online service where EU companies can find information on import conditions for the EU Market, on export conditions for over 130 non-EU

countries, as well as information on intra-EU trade.¹¹³ The portal allows companies to look up in just a few clicks tariffs, taxes, rules of origin, product requirements, customs procedures, trade barriers and trade flow statistics related to a specific product they want to import or export.

113 The Access2Markets portal is available at: <https://trade.ec.europa.eu/access-to-markets/en/content/>



EU jurisprudence

COURT OF JUSTICE (“CJEU”) HAS JURISDICTION OVER EU SANCTIONS DAMAGES CLAIMS BASED ON CFSP DECISIONS

[C-134/19 P - Bank Refah Kargaran v Council, October 6, 2020](#)

The CJEU upheld the judgment of the General Court of the EU (“GC”) dismissing Bank Refah Kargaran’s action for damages for the harm suffered because of the restrictive measures adopted against it. The CJEU reached its decision in spite of also finding that the GC had erred in law by declaring that it lacked jurisdiction to hear and determine an action for damages resulting from Common Foreign and Security Policy (“CFSP”) decisions adopted under Article 29 Treaty of the European Union (“TEU”). The CJEU noted that insofar as an action for damages forms part of an entire system for judicial protection, contributing to the effectiveness of that protection, it necessitates an assessment guaranteeing the overall coherence of that system of protection. If the EU judicature does not have jurisdiction to hear and determine an action for damages resulting from CFSP decisions, this would lead to a lacuna in judicial protection.

THE GC ANNULS A SERIES OF DESIGNATIONS AND CONFIRMS THE RE-LISTING OF OTHERS:

- Ukraine misappropriation annulments

[T-289/19, Sergej Arbuzov \(former Prime Minister of Ukraine\) v. Council, T-291/19, Victor Pshonka \(former Prosecutor General\) v. Council, and his son T-292/19, Artem Viktorovych Pshonka, September 23, 2020](#)

The GC annulled the above individuals’ 2019 designations. However, all remain on the EU’s sanctions list, because their designations were renewed in March 2020. The CJEU concluded that the documents on which the Council relied (Ukrainian procedural judicial decisions and letters from the Ukrainian prosecutor) had not enabled the EU to verify whether the decisions had been taken in compliance with rights of defence and effective judicial protection.

[T-295/19, Oleksandr Viktorovych Klymenko v. Council, June 25, 2020](#)

The GC held that the Council had not properly verified whether Mr. Klymenko’s rights of defence were respected in the ongoing criminal proceedings against him in Ukraine.

[T-301/18, Oleksandr Viktorovych Yanukovych v. Council, September 24, 2019](#) and [C-11/18, Oleksandr Viktorovych Klymenko v. Council, September 26, 2019](#)

The GC stated that “it was in no way apparent from the statement of reasons for those [contested] acts that the Council had verified that the Ukrainian judicial authorities had respected the rights of defence and the right to effective judicial protection.”

[T-286/18, Mykola Yanovych Azarov \(former Ukrainian Prime Minister\) v. Council, September 11, 2019](#)

The GC found that the Council’s statement of reasons did not include any information about whether the Ukrainian judicial authorities had respected the applicant’s rights of defence, but had relied exclusively on a letter from Ukrainian authorities.

- Democratic Republic of Congo (“DRC”)

Jean-Claude Kazembe Musonda (T-177/18); Lambert Mende Omalanga (T-176/18); Éric Ruhorimbere (T-175/18); Kalev Mutondo (T-174/18); Emmanuel Ramazani Shadary (T-173/18); Muhindo Akili Mundos (T-172/18); Évariste Boshab (T-171/18); Alex Kande Mupompa (T-170/18); Roger Kibelisa Ngambasai (T-169/18); John Numbi (T-168/18); Célestin Kanyama (T-167/18); Ferdinand Ilunga Luyoyo (T-166/18); Delphin Kahimbi Kasawege (T-165/18); Ilunga Kampete (T-164/18); and Gabriel Kumba (T-163/18), February 12, 2020.

The GC dismissed 15 applications made by DRC officials to annul their EU targeted sanctions re-listings. They submitted that the 2017 renewal of their listings were not based on sufficiently precise and concrete facts to justify the allegations of human rights



violations. The GC said that remaining close to the DRC regime was enough even if the applicants were no longer officials or had moved abroad.

- Hamas

[T-308/18, Hamas v. Council, September 4, 2019](#)

The GC held that listing Hamas in 2018 was unlawful due to procedural flaws. The statement of reasons for including Hamas was unsigned, had no heading, and could not be identified as a Council act.

- Syria

[T-186/19, Khaled Zubedi v. Council, July 8, 2020](#)

The GC said the Council had enough evidence to show that the applicant is a leading Syrian businessmen and that he had not been able to rebut the presumption that he is associated with the regime of President Assad.

[T-510/18, Kaddour v Council, September 23, 2020](#)

The GC clearly circumscribes the obligations of the Council regarding designations to a precise order and logic, which the Council is obliged to maintain. "In that connection, it must consider, first, which criterion or criteria it intends to use in order to include or retain a person's name on the lists in question, and, secondly, whether it has a body of sufficiently specific, precise and consistent evidence to establish that each of the grounds for inclusion, which are based on the criterion or criteria that the Council has chosen, is well founded."

THE CJEU DISMISSED A NUMBER OF APPEALS AGAINST GC JUDGMENTS CONFIRMING SANCTIONS DESIGNATIONS:

- Syria sanctions

[C-350/19 P, Souruh SA v. Council, C-349/19 P, Almashreq Investment Fund v. Council, C-348/19 P, Drex Technologies v. Council, C-261-19, Cham Holdings v. Council, C-26-/19 P, Bena Properties v Council, C-159-19 P, Syriatel Mobile Telecom v Council, C-158/19 P, Othman v Council, C-157/19, P, Ehab Makhoul v Council, October 1, 2020](#)

The CJEU rejected appeals brought by six Syrian entities, along with Razan Othman (Rami Makhoul's wife), and Eham Makhoul (vice-president of one of the listed entities) challenging the GC's decision to uphold their 2016-2018 listings. The CJEU explained that EU's Syria sanctions include membership to the Makhoul family as a criterion on which a designation can be based.

[C-241/19 P, George Haswani v. Council, July 9, 2020](#)

Restrictive measures in respect of the designated person cannot be maintained if there is sufficient information that the person is not or is no longer associated with the sanctioned regimes. The CJEU sided with the GC finding that the documents provided by the Council did not contain any evidence that the appellant was in such a situation, and the latter did not provide any evidence to that effect either.

[C-540/18 P, HX v. Council, September 11, 2019](#)

The CJEU confirmed the GC's judgment upholding HX 2016 and 2017 listings in the EU's Syria sanctions for being an influential businessman operating in Syria. Through its judgment, the CJEU confirmed the GC's approach to assessing whether the Syrian businessman should be designated.

- Russia sanctions

[C-732/18 P, PAO Rosneft Oil Company and Others v. Council, September 17, 2020](#)

The CJEU upheld the judgment of the GC dismissing an action brought against the restrictive measures imposed on Russian oil companies' members of the Rosneft group in the context of the Ukraine crisis. The CJEU found that the export prohibitions at issue constitute measures of general application. Consequently, the GC was correct to hold that the Council was entitled to confine itself, in stating the reasons for those measures, to setting out the overall situation, which led to their adoption, on the one hand, and the general objectives, which they were intended to achieve, on the other. The Council was not required to state actual or specific reasons for those measures. As regards the statement of reasons for the restrictions of individual application imposed on the companies



concerned with respect to access to the capital market, the CJEU recalled that Rosneft is a major player in the Russian oil sector, whose share capital is predominantly owned by the Russian State. Consequently, according to the GC and CJEU, the companies in question could not reasonably have been unaware of the reasons why the targeted restrictions at issue were imposed on them.

[C-729/18 P, VTB Bank PAO, formerly VTB Bank OAO v. Council, June 25, 2020](#) and [C-231/18 P, Bank for Development and Foreign Economic Affairs \(Vnesheconombank\) v. Council, June 25, 2020](#)

The CJEU dismissed appeals brought by VTB Bank and Vnesheconombank against the GC's judgments upholding their inclusion in 2014 in the EU's sanctions restricting the access of some Russian banks to EU capital markets. The CJEU said the reasons given for including the banks were clear. Although no reasons are provided along with their names, it is clear from the regulation as a whole that the banks were listed because they were majority state owned Russian banks. Further, the measures were justified and proportionate because they were 'capable' of imposing a cost on the Russian government because the government might have to bail out the banks as the last resort.



Key Contacts



Laurens Engelen

Senior Associate
Brussels
D+32 2 552 29 33
laurens.engelen@dentons.com



Isabel Fressynet

Associate
Brussels
D +32 25 52 2978
isabel.fressynet@dentons.com



Semen Medvedkov

Professional Support Lawyer
Brussels
D +32 2 552 29 23
semen.medvedkov@dentons.com



Nadiya Nychay

Partner
Brussels
D +32 2 552 29 00
nadiya.nychay@dentons.com



Nicoleta Tuominen

Counsel
Brussels
D +32 2 552 29 16
nicoleta.tuominen@dentons.com

ABOUT DENTONS

Dentons is the world's largest law firm, connecting talent to the world's challenges and opportunities in more than 75 countries. Dentons' legal and business solutions benefit from deep roots in our communities and award-winning advancements in client service, including Nextlaw, Dentons' innovation and strategic advisory services. Dentons' polycentric and purpose-driven approach, commitment to inclusion and diversity, and world-class talent challenge the status quo to advance client and community interests in the New Dynamic.

dentons.com

© 2021 Dentons. Dentons is a global legal practice providing client services worldwide through its member firms and affiliates. This publication is not designed to provide legal or other advice and you should not take, or refrain from taking, action based on its content. Please see [dentons.com](https://www.dentons.com) for Legal Notices.