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Sanctions Year-in-Review

March 2021

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Canada Sanctions

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Canada Sanctions Year-in-Review

A. 2020 IN BRIEF

Canada continues to monitor and enforce its sanctions regime and continues to use and update sanctions to respond to international and geopolitical events.

In 2020, Canada made several notable changes to the United Nations (UN) sanctions regime. These changes largely reflect changes made under the UN administered list. Canada also imposed sanctions on Belarus and amended sanctions to Ukraine, North Korea, Somalia, South Sudan, Central African Republic, and the Democratic Republic of the Congo.

Canada continues to use its authority under the *Justice for Victims of Corrupt Foreign Officials Act (Magnitsky Act)* sanctions to target alleged human rights abuses and corruption worldwide, in several instances in a manner closely tied to specific current events and foreign policy objectives. That said, Canada did not add any individuals to the list in 2020, nor did Canada amend the Entity List under the *Criminal Code*.

Overall, there are currently 20 states in Canada subject to country-based or list based sanctions, including Russia, Ukraine, and Iran, among others with specific regulations for the Taliban, ISIL, and Al-Qaeda. Additionally, there are 70 individuals named under the *Magnitsky Act*, 19 individuals under the *Freezing Assets of Corrupt Foreign Officials Act* and 59 designated entities and individuals under the *Criminal Code*.

Here are some highlights, which we explore further in this report:

In 2020, claims filed in US courts targeting cruise ships, Hotels, booking agencies, and airlines, among others, under Title III of the *Helms-Burton Act* continued.

Lastly, one of the civil penalties publicly announced in 2019 concluded in 2020. Further, the Royal Canadian Mounted Police charged an executive under the *Corruption of Foreign Officials Act*.



B. 2021 OUTLOOK

In 2021, we anticipate several significant developments in the international sanctions sphere.

Canada will continue to monitor developments and actions relating to the actions of Iran and its non-compliance with the Joint Comprehensive Plan of Action (JCPOA), especially under a new US administration.

Equally, Canada is closely monitoring the situation in northern Syria and any further incursions or actions taken by the Turkish government in that area. We anticipate that in addition to the suspension of export permits to Turkey, Canada will look to impose sanctions on Turkey for their recent military action in Syria.¹ Furthermore, Canada has shown increasing concern over the actions taken by the government of Myanmar and its treatment of the Rohingya people.

It continues to be expected that Canada will begin to develop an expansion of its existing Magnitsky legislation to include a framework for victim protection. This will include developing measures to transfer seized assets from those who commit grave human rights violations.

We anticipate that 2021 will see an increase in multilateral action as more countries look towards working together and impose sanctions collaboratively. Further, we will see an increased action on the modern slavery and forced labor front as Canada looks to actively protect victims of forced labor.

2021 will see certain enforcement actions including the conclusion of the Royal Canadian Mounted Police's investigation into an individual for bribing a public official in Botswana.

¹ Global Affairs Canada, "Statement from Minister Champagne on suspension of export permits to Turkey" Government of Canada (5 October 2020), online: <https://www.canada.ca/en/global-affairs/news/2020/10/statement-from-minister-champagne-on-suspension-of-export-permits-to-turkey.html>



Country programs

A. CUBA

As we reported last year, as of May 2, 2019, US nationals were able to file lawsuits in federal court under Title III of the *Helms-Burton Act* against any individual or entity that “traffics” in property confiscated by the Cuban government on or after January 1, 1959.

As of October 2020, 29 lawsuits have been filed under Title III. While most of the cases remain before the courts, several decisions have been rendered rejecting the plaintiffs’ claims. Such decisions have clarified the statute’s requirement that alleged trafficking must be known and intentional, and that claimants must have acquired ownership of the properties before March 12, 1996, among other issues.

This requirement has stopped certain US claims moving forward. At the same time, this does not mean that all such claims will be unsuccessful, and the Helms-Burton case law remains in its early stages.

B. BELARUS

Canada has closely monitored the situation in Belarus. Since the contested presidential elections in August 2020, the Government of Belarus has conducted a systematic campaign of repression and state sponsored violence against public protests and the activities of opposition groups. Canada remains deeply concerned by ongoing reports of human rights violations, including against freedom of the press, freedom of expression and peaceful assembly.

On September 28, 2020, the *Special Economic Measures (Belarus) Regulations* (the “Regulations”) came into force.² In coordination with the United Kingdom,

Canada imposed sanctions against several Government of Belarus officials in relation to alleged electoral fraud and subsequent “repression and state-sponsored violence against public protests...”.³ The sanctions prohibit various dealings with the listed individuals, their associates, family, and entities they owned or controlled.

The Belarus sanctions also provide an acute case study for international investors and financiers. Namely, that sanctions law is a dynamic area subject to rapid change that heightens compliance risk.

Further, Canada has temporarily suspended the issuance of all new permits for the export and brokering of controlled goods and technology to Belarus.⁴

On October 15, 2020, Canada announced further sanctions against additional Belarusian officials.

Currently, there are fifty-five (55) individuals on the list, and the Regulations prohibit any person in Canada and any Canadian outside Canada from:

- dealing in property, wherever situated, that is owned, held or controlled by listed persons or a person acting on behalf of a listed person;
- entering into or facilitating any transaction related to a dealing prohibited by these Regulations;
- providing any financial or related services in respect of a dealing prohibited by these Regulations;
- making available any goods, wherever situated, to a listed person or a person acting on behalf of a listed person; and
- providing any financial or other related services

² Special Economic Measures (Belarus) Regulations, SOR/2020-214 [Belarus Regulation].

³ Global Affairs Canada, “Canada imposed sanctions on Belarusian officials” *Government of Canada* (29 September 2020), online: <https://www.canada.ca/en/global-affairs/news/2020/09/canada-imposes-sanctions-on-belarusian-officials.html>

⁴ Global Affairs Canada, “Notice to Exporters and Brokers – Export and Brokering of items listed on the Export Control List and the Brokering Control List to Belarus” *Government of Canada* (9 November 2020), online: <https://www.international.gc.ca/trade-commerce/controls-controles/notices-avis/1033.aspx?lang=eng>



to or for the benefit of the listed person.⁵

- Nonetheless, the above-noted asset freezes and dealings do not apply to certain activities and transactions:
- payments made by or on behalf of a listed person that is due under a contract entered into before the person became a listed person, provided that the payment is not made to a listed person or to a person acting on behalf of a listed person;
- any transactions necessary for a Canadian to transfer to a non-listed person any accounts, funds or investments of a Canadian held by a listed person on the day on which that person became a listed person;
- any dealings with a listed person required with respect to loan repayments made to any person in Canada, or any Canadian outside Canada, for loans entered into with any person other than a listed person, and for enforcement and realization of security in respect of those loans, or payments by guarantors guaranteeing those loans;
- any dealings with a listed person required with respect to loan repayments made to any person in Canada, or any Canadian outside Canada, for loans entered into with a listed person before that person became a listed person, and for enforcement and realization of security in respect of those loans, or payments by guarantors guaranteeing those loans;
- any benefit paid under the Old Age Security Act, the Canada Pension Plan or an Act respecting the Québec Pension Plan, CQLR, c. R-9, any superannuation, pension or benefit paid under or in respect of any retirement savings plan or under any retirement plan, any amount paid under or in respect of the Garnishment, Attachment and Pension Diversion Act or the Pension Benefits Division Act and any other payment made in respect of disability to any person in Canada or any Canadian outside Canada;

⁵ Belarus Regulation *supra* note 2.



- financial services required in order for a listed person to obtain legal services in Canada with respect to the application of any of the prohibitions set out in these Regulations;
- any transaction in respect of any account at a financial institution held by a diplomatic mission, if the transaction is required in order for the mission to fulfill its diplomatic functions as set out in Article 3 of the Vienna Convention on Diplomatic Relations or, if the diplomatic mission has been temporarily or permanently recalled, when the transaction is required in order to maintain the mission premises;
- any transaction with any international organization with diplomatic status, with any United Nations agency, with the International Red Cross and Red Crescent Movement or with any entity that has entered into a grant or contribution agreement with the Department of Foreign Affairs, Trade and Development; and
- a transaction by the Government of Canada that is provided for in any agreement or arrangement between Canada and Belarus.

C. CHINA

In 2020, Canada made significant efforts to address modern slavery and forced labor.

Though Canada has not imposed any sanctions on China or Chinese officials, Canada has denounced governments that engage in modern slavery and forced labor.

Canada showed grave concern from evidence and reports of human rights violations in the People’s Republic of China involving members of the Uyghur ethnic minority and other minorities within the Xinjiang Uyghur Autonomous Region (Xinjiang), including repressive surveillance, mass arbitrary detention, torture and mistreatment, forced labor and mass transfers of forced laborers from Xinjiang to provinces across China. These activities strongly run counter to China’s international human rights obligations.⁶

In coordination with the United Kingdom and other international partners, Canada adopted a comprehensive approach to defending the rights of Uyghurs and other ethnic minorities, including by

⁶ Global Affairs Canada, “Canada announces new measures to address human rights abuses in Xinjian, China” *Government of Canada* (12 January 2021), online: <https://www.canada.ca/en/global-affairs/news/2021/01/canada-announces-new-measures-to-address-human-rights-abuses-in-xinjiang-china.html>



advancing measures to address the risk of goods produced from forced labor from any country from entering Canadian and global supply chains and to protect Canadian businesses from becoming unknowingly complicit.⁷

Canada's approach included the following seven measures:⁸

- The Prohibition of imports of goods produced wholly or in part by forced labor;
- A Xinjiang Integrity Declaration for Canadian companies;
- A Business Advisory on Xinjiang-related entities;
- Enhanced advice to Canadian businesses;
- Export controls;
- Increasing awareness for Responsible Business Conduct linked to Xinjiang; and
- A Study on forced labor and supply chain risks.

D. UKRAINE

In 2019, Canada imposed sanctions measures against Ukraine, for the involvement of Ukrainian individuals and entities related to Russia's illegal annexation and occupation of the Crimean Region. In 2020, Canada imposed new sanctions.

In late January 2020, Canada updated its Ukrainian sanctions under the *Special Economic Measures Act*. Six Ukrainian individuals were added to the *Special Economic Measures (Ukraine) Regulations* for their involvement in the elections held in Russian-occupied Crimea on September 8, 2019.⁹ The addition of these individuals to Canada's Ukraine sanctions was coordinated with the United States and the European Union. Since Russia's annexation of Crimea in 2014, Canada has sanctioned more than 430 individuals and entities.

The sanctions measures targeting the Crimea region encompass one of the broadest prohibitions under Canadian sanctions legislation and restrict Canadian-incorporated entities, Canadian citizens and other persons in Canada from:

- Making any investments that involve the property of the Russian-controlled Crimea region or individuals or entities in the region
- Providing or acquiring financial or other services in connection with such investments or tourism to the region
- Importing and exporting any goods from or to the region
- Providing or communicating technical data or services to or from the region, or any individual or entity there
- Engaging in other prohibited activities specified in the *Special Economic Measures Regulations*.



⁷ Ibid.

⁸ Ibid.

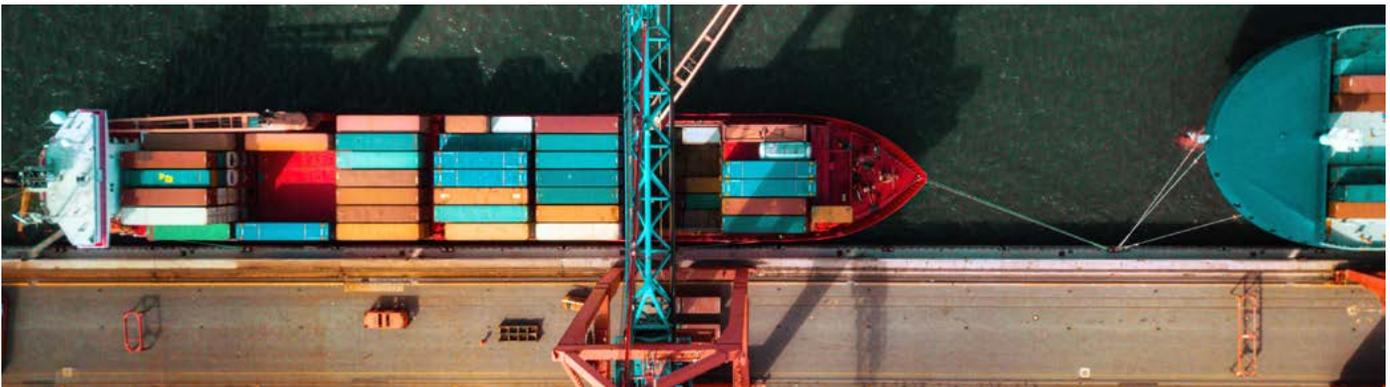
⁹ Special Economic Measures (Ukraine) Regulations, SOR/2014-60.



Other sanctions programs

As of June 1, 2020, Canada made a significant update to its UN-based sanctions, under the United Nations Act. The amendments cover the following key changes:

- The *United Nations Al-Qaida and Taliban Regulations* has been expanded to include ISIL (Da'esh).
- The Regulations Implementing the *United Nations Resolution on Eritrea* have been repealed following a Security Council decision to lift sanctions against Eritrea.
- The *Regulations Implementing the United Nations Resolutions on the Democratic People's Republic of Korea (DPRK)* have been amended to include a prohibition on knowingly selling, leasing or otherwise making available real property to North Korea a national or any person acting on behalf or at the direction of North Korea or a national. The prohibition against opening a new branch in North Korea has also been expanded to include a new office, subsidiary or bank account in North Korea.
- The Regulations Implementing the *United Nations Resolutions on Somalia* have been amended to update the exceptions to the Somali arms embargo and create an exception to the asset freeze for humanitarian assistance programs delivered by the United Nations. The amendments further extended the exemptions to the arms embargo and the asset freeze until November 15, 2020.
- The Regulations Implementing the *United Nations Resolution on South Sudan* have been amended to create an arms embargo while including a number of exceptions to that embargo. The amendments also extended the duration of the sanctions against South Sudan until May 31, 2020.
- The amendments to the *United Nations Sudan Regulations* repeal the exemption to the arms embargo and create exemptions to the asset freeze for extraordinary expenses or property subject to judgment.
- The amendments to the *Regulations Implementing the United Nations Resolutions on the Central African Republic* update the exemptions to the asset freeze and the arms embargo imposed by the sanctions. They also amend the notification and approval requirements to be in line with Security Council recommendations.
- The amendments to the *United Nations Democratic Republic of the Congo Regulations* update the exemptions to the asset freeze, and the arms embargo amend notification requirements to require advance notification to the Committee of the Security Council for the provision of non-lethal humanitarian military equipment and technical assistance.



Published civil penalty settlements

Canada does not have much enforcement action. However, 2020 saw the end of Mohamad Kalai's ("Kalai") case and the investigation of an executive under the *Corruption of Foreign Public Officials Act*.

A. THE CASE OF MOHAMAD KALAI

Canada has established sanctions against Syria in 2011 after the country's president, Bashar al-Assad, violently cracked down on peaceful protesters. Kalai was the first person to face trial over allegedly breaching *Canada's Special Economic Measures Act*. After multiple postponements due to COVID-19, his trial took place in early December 2020. Kalai appeared in the Nova Scotia Supreme Court in Halifax via a video link from Beirut, Lebanon, for the start of what was supposed to be a two-day trial. At the start of the trial, the Crown attorney prosecuting the case announced he would be offering no evidence. A month prior to the trial in a pre-trial hearing the judge had ruled that documents

seized from Kalai's home and Yahoo email account by investigators were admissible at trial for only a limited purpose but would not allow for the documents to prove the truth of their contents. Mr. Kalai was acquitted by the trial judge. The case stands as a clear warning to prosecutors of the difficulty of collecting evidence and prosecuting sanctions cases.

B. THE CASE OF DAMODAR ARAPAKOTA

In November 2020, Royal Canadian Mounted Police charged Mr. Damodar Arapakota under section 3(1) of the *Corruption of Foreign Public Officials Act* for bribing a public official from Botswana. It is alleged that Arapakota, a former executive from IMEX Systems Inc., provided financial benefit for a Botswanian public official and his family. Arapakota was set to appear in court on December 15, 2020, however, no recent developments have been made.



EU Sanctions

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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-lemborgs-to-its-black-list-208260>; <https://bnn-news.com/aivars-lemborgs-maintains-dominant-influence-over-ventspils-in-spite-of-us-sanctions-210017>

62 <https://eng.lsm.lv/article/society/crime/lemborgs-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 authorization from the Maltese authorities.⁷⁷

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

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



- 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 Yanukovich 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 Finish 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



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 EURO01 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:2020:091: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 Arbutov \(former Prime Minister of Ukraine\) 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 Makhlof v Council, October 1, 2020](#)

The CJEU rejected appeals brought by six Syrian entities, along with Razan Othman (Rami Makhlof's wife), and Eham Makhlof (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 Makhlof 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.



UK Sanctions

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UK – Sanctions review of 2020

EU sanctions laws applied in and to the UK throughout 2020 (as an EU Member State until 31 January 2020, then as part of the arrangements for the transition period established by the Withdrawal Agreement). Consequently, save as described below, UK sanctions laws remained aligned with EU sanctions in 2020.

NEW GLOBAL HUMAN RIGHTS (MAGNITSKY) SANCTIONS

The one exception is that the UK established in July 2020, in addition to EU sanctions, a new human rights sanctions regime: the **Global Human Rights Sanctions Regulations 2020** (commonly known as Global Magnitsky sanctions).

This was the first autonomous sanctions regime under the Sanctions and Anti-Money Laundering Act 2018 (SAML A) to come into force. It imposed asset freezes and travel bans on 47 people and 2 entities (now 65 persons and 3 entities) whom the UK Government has reasonable grounds to suspect have been involved in serious violations of human rights.

The Regulations enable the UK to impose asset freezes, dealing bans and travel restrictions on those suspected of being “involved in” serious violations of the right to life, the right not to be subjected to torture or cruel or inhuman or degrading treatment, and the right to be free from slavery, adding those who are owned or controlled by or associated with such a person or who acts on his/ her behalf. The envisaged measures can also apply to those who facilitate, incite, promote, or support these violations/abuses, as well as those who financially profit from human rights violations and abuses. According to the Foreign Secretary’s statement, the Government is working on adding further violations of other human rights and

corruption as grounds for designation. The sanctions currently target:

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

Beyond the symbolism of these sanctions being the UK’s first autonomous sanctions (i.e. outside of EU or UN frameworks) the Regulations are significant for enabling the targeting of individuals and entities for human rights breaches separately from targeting a country.

SANCTIONS ENFORCEMENT IN 2020

OFSI' enforcement (financial sanctions) - Standard Chartered Bank

In March 2020, Standard Chartered Bank (SCB) was fined £20.47 million for breaching the EU/UK Russia sanctions. The monetary penalty represents a significant step up from the three previous penalties

1 Office of Financial Sanctions Implementation, part of HM Treasury



issued by OFSI (the highest of which was for £146,341). The SCB breaches related to a series of over 100 loans that SCB had made to Denizbank, which was owned by Sberbank (an entity subject to the investment ban measures in the EU sanctions on Russia). SCB had assessed that the loans fell within the trade finance exemption under the EU Sanctions Regulation, but OFSI disagreed.

Initially OFSI had imposed a penalty totalling £30.1 million applying its Monetary Penalties Guidance; but this amount was reduced by 30% in the Ministerial Review which SCB requested. The Minister considered that more weight should be given to the fact that the breaches were unintentional, that SCB had acted in good faith, had intended to comply with the relevant restrictions, had fully co-operated with OFSI and had taken remedial steps following the breach. SCB did not exercise its right of appeal to the Upper Tribunal within the time limit meaning that the case has now concluded.

Equally notable is that OFSI has not issued any further sanctions penalties since March. This may be simply that no further violations came to OFSI's attention, or may reflect that the focus of OFSI's attention in the

latter half of 2020 was more on the development of the post-Brexit sanctions regime.

Export control and trade sanctions enforcement

Although we do not have figures for the whole of 2020, an HMRC notice² reports that during the 6 month period March-Sept 2020, 19 fines for export controls violations were issued totalling just over £700k, with the largest individual fine being for £211,250.

OFSI GUIDANCE

OFSI has issued a steady stream of guidance during 2020. Much of this is to help persons and entities prepare for the new UK sanction on 1 January 2021:

- Am I dealing with a sanctioned entity? (December 2019);
- General Guidance on Financial Sanctions (January 2020 and December 2020);
- Russia financial sanctions guidance (June 2020);
- Guidance on making a sanctions challenge – how to seek a variation or revocation of a sanctions designation under SAMLA 2018 (July 2020);

² The notice can be found [here](#).



- Maritime Guidance (July 2020);
- Monetary penalties for breaches of financial sanctions: guidance (December 2020)
- Libya sanctions guidance (December 2020)
- Charity Sector guidance (December 2020)
- Importers and Exporters FAQs (December 2020)

EVALUATION OF HUMANITARIAN SANCTIONS

The COVID situation has caused some consideration in 2020 of the effect of sanctions in restricting the provision of medical and humanitarian support. In this regard, two reports are of note:

- **UK House of Commons Briefing Paper on coronavirus & sanctions (May 2020):** The paper considers the calls for sanctions relief by humanitarian groups stating that sanctions impede the fight against the pandemic. Furthermore, it analyses the humanitarian exemptions to sanctions, and the ability of INSTEX and the Swiss payment mechanism to facilitate humanitarian exports.
- **ACAMS Guide on risk management principles for sending humanitarian funds into Syria and other high-risk jurisdictions (May 2020):** The guide has been developed to offer background information and practical tips for how banks, humanitarian organizations and donors can work together to ensure aid can reach civilians in need of assistance within Syria, and in a manner which is compliant with EU/US/UN sanctions plus wider regulatory obligations. Although primarily developed in the context of Syria, the principles contained within the guide offer a transferable framework for working together in other high-risk jurisdictions where sanctions, conflict and terrorist financing concerns are prevalent.

DECISIONS ON INTERPRETATION OR APPLICATION OF SANCTIONS

Two court decisions of interest in 2020 are particularly noteworthy in relation to the application of sanctions in the UK in commercial activity:

Lamesa Investments v Cynergy Bank (Court of Appeal)

This case was an appeal from a 2019 High Court decision. It concerned interest repayments under a facility agreement between two EU parties, governed by English law.

Lamesa does not appear on any sanctions list. However it became a “Blocked Person” under US sanctions when its ultimate beneficial owner, Viktor Vekselberg, was added to the US SDN List. As a consequence, a non-US entity which participated in a “significant financial transaction” with Lamesa risked being subjected to US secondary sanctions measures.

Cynergy, the borrower, an EU entity with significant US business and assets, ceased to make repayments to Lamesa under the facility agreement on the basis that further payments would have exposed it to the risk of US measures. It asserted that US measures could affect, in particular, its US business and assets which, it asserted, would have been “ruinous” for it. Cynergy argued that the US secondary sanctions constituted “mandatory provisions of law” under the facility agreement and that compliance with the sanctions was a legitimate basis for non-payment under the agreement.

The Court of Appeal found that the US secondary sanctions were a “mandatory provision of law” under the facility agreement such that the borrower was entitled to withhold payment of interest instalments.

The Court of Appeal had particular regard to three aspects while interpreting the relevant loan agreement:

- the relevant clause is a standard clause, not one that was negotiated bespoke for this agreement;
- the EU Blocking Regulation refers to EU persons “complying” with US secondary sanctions; and this use of “comply” must be taken to have been known to the parties and to the drafters of the standard clause; and
- “*context and commercial common sense*” may prevail over a black letter meaning of the words when interpreting and applying a provision.



Banco San Juan Internacional Inc v Petroleos De Venezuela SA [2020] EHCW 2937

The English High Court granted summary judgment to a Puerto Rican bank (BSJI) against Venezuela's state-run oil company (PDVSA) to recover \$48m including interest, and \$38m pursuant to two credit agreements made in 2016 and 2017. Both credit agreements included a covenant that PDVSA would not repay the loans with the proceeds of (i) activities prohibited by US sanctions or (ii) business in a country or territory subject to sanctions.

The claim was based on a liquidated damages clause of the credit agreements, which were governed by English law. The existence of the credit agreements was not in issue, and nor was the non-payment of the relevant sums. PDVSA did not dispute the payment defaults or its liability. Instead, it sought for time to pay, citing the impact of US sanctions upon it.

The Court considered whether the terms of the relevant loan agreements, properly construed, had suspended PDVSA's payment obligations on the imposition of relevant US sanctions. The Court:

- Rejected PDVSA's argument that US sanctions on Venezuela made it illegal for PDVSA and its US correspondent bank to make the payments and

said PDVSA had not tried to make the payments by applying to OFAC for a licence or by trying to agree a new mandate with a bank capable of facilitating the transfer.

- Rejected the submission that the *Lamesa* judgment demonstrates that *"it is perfectly normal and sensible in commercial agreements to suspend payment obligations where payment would otherwise be in breach of unilateral US sanctions."*
- Held that the covenant in the credit agreement stipulating that PDVSA will not repay loans with the proceeds of business activities that are subject to OFAC sanctions did not suspend PDVSA's payment obligations even if it applied here.

The case illustrates the limits to the scope of the decision in *Lamesa Investments v Cynergy Bank*. Taking the two cases together, it appears that the courts will determine issues of US secondary sanctions on the basis of the wording of the clause in question, and the relevant context.

OTHER SIGNIFICANT SANCTIONS DEVELOPMENTS DURING THE PAST YEAR

- **UK bans 5G Huawei equipment due to US sanctions:** Following an announcement in July 2020 that it will ban the purchase of Huawei 5G



equipment after 31 December 2020, the Department for Digital, Culture, Media & Sport (DCMS) has laid out a roadmap to phase out Huawei, with one new key measure being a ban on installation of the firm's 5G gear from September 2021. The decision follows advice from the National Cyber Security Centre (NCSC) on the impact of US sanctions against Huawei, which were imposed in May 2020. The new Telecommunications Security Bill will also enable to fine telecoms firms up to 10% of turnover or £100,000 a day if they fail to comply with the rules. According to Digital Secretary Oliver Dowden "the bill will give the UK one of the toughest telecoms security regimes in the world."

- **UK to resume granting arms export licences for Saudi Arabia:** In the written statement, the Secretary of State for International Trade announced that the UK will resume the granting of export licences for the sale or transfer of military arms or equipment to Saudi Arabia.

Following a Court of Appeal ruling in June 2019, the UK Government suspended the export of arms which could be used in the conflict in Yemen. The key issue in the Court of Appeal case was the Criterion 2c of the Consolidated EU and National Arms Export Licensing Criteria, which the Government uses to assess export licence applications. The Court had held that the Government, when assessing whether there was a "clear risk" that exports might be used to commit violations of international humanitarian law (IHL), had not even attempted to consider whether past IHL violations had occurred or whether Saudi Arabian law prohibited such violations.

The Secretary of State reports that she has now evaluated "all credible incidents of concern" using a revised methodology, and established that there is no pattern of non-compliance with IHL. As a result, notwithstanding isolated incidents, there is "not a clear risk that the export of arms and military equipment to Saudi Arabia might be used in the commission of a serious violation of IHL." Therefore, export licences will be granted if the Licensing Criteria are satisfied.

- **UK to extend China arms embargo to Hong Kong:** On 20 July 2020, the UK Foreign Secretary announced that the UK will extend to Hong Kong an EU arms embargo that has applied to mainland China since 1989 (the "Arms Embargo"). This extension forms part of the UK Government's response to the new Hong Kong National Security Law, and the increasing role that the UK Government claims China is exerting over law enforcement in Hong Kong.

SANCTIONS LAWS IN THE UK FROM 1 JANUARY 2021

In preparation for the UK leaving the EU legal framework, the UK government adopted the **Sanctions and AML Act 2018 ("SAML")** and has laid more than 30 statutory instruments (Regulations) for specific sanctions regimes under the framework of SAML.

According to the OFSI guidance issued in December 2020, the new UK regulations are "intended to deliver substantially the same policy effects" as the existing regimes. However, the UK's post-Brexit Regulations include a number of specific but important differences. Key changes include:

- The OFSI Consolidated List of Financial Sanctions Targets does not include all EU designated persons and entities; some EU designations do not meet the UK evidential threshold;
- Each Sanctions Regulation must state the purpose(s) for which the Regulation is made. This could be relevant in judicial reviews and in relation to allegations of circumvention of sanctions;
- The concepts of "ownership and control" are more clearly and more broadly defined than is the case in current EU law, with further concepts such as "connected persons" introduced. By contrast, the EU does not define the concept of "control"; instead, its guidance sets out illustrative examples of when an entity might be deemed to be controlled by a designated person;
- A new broad licensing ground permits issuing a licence to "enable anything to be done to deal with an extraordinary situation;"
- Under SAML the UK can continue to grant licences or exemptions from sanctions requirements.



- The new legal framework for the UK offers a new approach to licencing, such as the issuance of general licences “to respond to unforeseeable circumstances, technical implementation issues and/or where HM Treasury decides that the purpose of the regime would be better served through the issuance of a general licence.” Applying this power:
 - OFSI issued its first general licence on 1 January 1 (INT/2020/059, under Regulation 64 of The Russia (Sanctions) (EU Exit) Regulations 2019. It permits payments to the State Unitary Enterprise of the Crimean Republic ‘Crimean Sea Ports’ for services provided at the ports of Kerch Fishery Port, Yalta Commercial Port and Evpatoria Commercial Port, and for services by Gosgidrografiya and Port-Terminal branches of the Crimean Sea Ports, and for reimbursement out of non-frozen funds for such payments; and
 - DIT issued its first General Trade licence on 31 December 2020 under the Russia (Sanctions) (EU Exit) Regulations 2019 in respect of activities under regulations 43, 44, 45 – energy-related goods. The licence permits such activities as long as they do not concern energy-related goods “for use in Russia.” The provider of these activities must register with the DIT and keep records of activities.

There are also a small number of situations where the establishment in the UK of a measure corresponding to an EU measure has a restrictive effect. For example, in the Russia sanctions, UK subsidiaries of the investment-ban target entities were previously exempt from EU sanctions on those entities, but will not be after the UK leaves the EU framework. Correspondingly, EU subsidiaries of such entities will be subject to UK sanctions.

The UK Government has carried the EU Blocking Statute into UK law.

Sanctions regime in Jersey, Guernsey and the UK Overseas Territories after Brexit

The UK Crown Dependencies (Jersey, Guernsey and the Isle of Man) implement sanctions through their respective domestic regulations, but apply the same sanctions as the UK. As the UK now implements its own autonomous sanctions regimes, it is the intention of all 3 Crown Dependencies to continue their policy of sanctions alignment with UK sanctions. Their sanctions applicable domestically will continue to mirror those in the UK in 2021. The necessary legislative steps to achieve this have been put in place.

Similarly, the sanctions applicable in UK overseas territories (including, for example, Cayman Islands and BVI) will going forward be aligned with UK sanctions, not with EU sanctions.



US Sanctions

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US Sanctions Year-in-Review

INTRODUCTION

2020 was an incredibly active and consequential year for US sanctions, as the Trump administration and Congress continually turned to economic pressure to address policy challenges, intensifying pressure on longstanding targets, creating new tools to take on China, and demonstrating the challenges - and importance - of compliance amid a highly dynamic policy landscape.

2020 was marked by unprecedented events that reshaped the way business, work, and social life occurred throughout the globe. The emergence of the novel coronavirus and the COVID-19 global pandemic that ensued caused significant changes to cross-border commercial flows, giving rise to new demands for certain categories of goods while reducing, if not eliminating, the demand for others. The pandemic also changed the way that commerce happened, as national-level lockdowns disrupted and reconfigured supply chains and distribution networks, and as financial institutions, insurers, and business of all sizes and stripes sought to protect their solvency and continue generating revenue, while reducing expenses and transitioning to a remote legal and compliance function. The end of the year was also marked by significant political upheaval as Joseph R. Biden was elected the 46th president of the United States, and as the Democrats retained control of the House with a significantly reduced margin and assumed control of the Senate following two runoff elections in early January.

These changes in the US and global policy and commercial landscape carried notable effects in the conduct of US sanctions policy. As humanitarian trade and demand for medicines and medical devices grew, the US Department of the Treasury's Office of Foreign Assets Control ("OFAC") faced calls to ease sanctions targeting some of the hardest-hit nations. Although such sanctions were not eased and, in some notable instances, were further escalated, OFAC made

efforts to provide further clarity on how humanitarian trade could occur under existing authorizations. In 2020, OFAC also continued to expand the use of secondary sanctions targeting Iran, Russia, and Syria. For the first time, OFAC also issued and utilized new sanctions authorities targeting China. An even more unlikely novel target of US sanctions in 2020 was the International Criminal Court ("ICC"), a move which drew international rebuke from US allies. The aggressive use of secondary sanctions as a tool of foreign policy was also accompanied by a further shift away from targeted sanctions toward more broad-ranging sectoral measures.

With the incoming Biden administration, US sanctions policy is likely to shift in significant ways. Although sanctions will likely remain a key tool of foreign policy, the way in which such measures are promulgated is likely to change as Biden is expected to return to a more multilateral approach to sanctions policymaking. 2021 is also likely to see an easing or reversal of some of the sanctions measures implemented by the prior administration, particularly those involving Iran, the ICC, and Cuba. At the same time, it remains to be seen how the new administration will approach certain other sanctions, particularly those targeting China, given the Biden administration's stated intent to maintain an aggressive approach to addressing a growing range of US policy concerns with that country.

THE YEAR THAT WAS

Additional guidance as to humanitarian trade

The global spread of the coronavirus meant an increased demand for medicines and medical devices around the world. As needs grew in certain countries hit most severely by US sanctions, US sanctions appeared to continue unabated. However, OFAC took steps aimed at offering clarity on existing humanitarian exemptions and authorizations from its sanctions programs. Specifically, in April 2020, OFAC published a new fact sheet providing a consolidated list of existing



exceptions, authorizations, and guidance applicable to trade in humanitarian items, including food, medicine, and medical devices. The publication of the fact sheet largely signaled that OFAC views its existing carve-outs as sufficient to meet humanitarian needs and, thus, is not amenable to easing sanctions to address potential gaps in this arena.

Iran - The “maximum pressure” campaign continued, as Trump sought to entrench sanctions

The “maximum pressure” sanctions targeting Iran grew in intensity in 2020. For a fourth year in a row,

the United States continued to promulgate additional sanctions against the country, this time expanding the scope of US secondary sanctions to new sectors of the Iranian economy. Specifically, Executive Order (“EO”) 13902 of January 10, 2020, authorized the Secretary of the Treasury to designate persons operating in Iran’s construction, mining, manufacturing, and textile sectors. Notably, EO 13902 also authorizes sanctions on any other sector of the Iranian economy as determined by the Secretary of the Treasury. The EO expands the scope of secondary sanctions applicable to Iran to foreign persons knowingly





engaging in significant transactions in these newly identified sectors. Such new sanctions were largely perceived as measures aimed at imposing hurdles for any future return to the Joint Comprehensive Plan of Action (“JCPOA”) - the nuclear accord between Iran and world’s major powers - by subsequent political administrations.

Soon after EO 13902, in February 2020, OFAC issued General License 8, authorizing certain humanitarian transactions involving the Central Bank of Iran (“CBI”), which OFAC had designated in 2019 pursuant to counter-terrorism-related authorities. That designation caused humanitarian transactions involving CBI to become prohibited. General License 8 created an exception from that prohibition for the conduct of certain transactions with CBI as related to the sale of food, agricultural commodities, medicine, and medical devices.

Using the authorities in EO 13902, in October 2020, OFAC again expanded the scope of secondary sanctions by targeting Iran’s financial sector. As part of this action, OFAC sanctioned, *inter alia*, sixteen Iranian banks, including banks that had previously been designated under EO 13599 but not subject to secondary sanctions. As a result of the action, financial institutions and other persons that engage in certain transactions or activities with these banks may now expose themselves to secondary sanctions or be subject to an enforcement action. Because nearly all banks in Iran are now designated pursuant to EO 13902, nearly all financial dealings involving Iran now carry some secondary sanctions risk for the parties,

including the foreign financial institutions, involved. In issuing these sanctions, however, OFAC has clarified that activity previously authorized under the Iran Transactions and Sanctions Regulations (“ITSR”), including humanitarian trade authorizations therein, continue to apply.

In addition to these new sector-based sanctions, OFAC also undertook significant new designations under existing authorities. In December, OFAC designated four entities for facilitating the export of Iranian petrochemical products, noting that “Iran’s petrochemical and petroleum sectors are primary sources of funding for the Iranian regime” and reiterating its commitment to “act against persons who support illicit actors engaged in the movement of Iranian petroleum and petrochemical sales.” OFAC also targeted, among other persons, Iranian persons it deemed to support the Houthi movement in Yemen; an organization involved in Iran’s chemical weapons research and its director; and Iran’s Bonyad Mostazafan, which comprises some 160 holdings in various sectors of the Iranian economy, including its finance, energy, construction, and mining sectors. Such escalation was largely perceived as an attempt by the Trump administration to put the US relationship with Iran beyond repair for any subsequent administration.

Russia - New secondary sanctions targeted Russian defense exports and energy projects

The most notable Russia/Ukraine-related sanctions developments in 2020 involved secondary sanctions imposed and authorized late in the year.



In December, OFAC imposed sanctions under Section 231 of the Countering America's Adversaries Through Sanctions Act of 2017 ("CAATSA") on four individuals and one entity in Turkey in connection with Turkey's purchase of the S-400 missile system from Russia. Section 231 mandates the imposition of menu-based sanctions on a person who has knowingly engaged in a significant transaction with a person who is part of, or operates for or on behalf of, the defense or intelligence sectors of the Russian government. In an extraordinary measure targeting a NATO ally, OFAC imposed a variety of non-blocking menu-based sanctions on the Presidency of Defense Industries, or SSB, which handles procurement for Turkey's Ministry of National Defense, and added four senior executives of SSB to the SDN List. OFAC also established the Non-SDN Menu-Based Sanctions ("NS-MBS") List to identify SSB and other companies subject to menu-based sanctions in the future.

The National Defense Authorization Act ("NDAA") for Fiscal Year 2021 also contained key secondary sanctions provisions targeting Russia. First, it declared Turkey's S-400 purchase as a sanctionable transaction under CAATSA, though, as noted above, OFAC took sanctions action before the NDAA was passed. The 2021 NDAA also escalated its 2020 predecessor's targeting of pipe-laying vessels involved in NordStream

2, by expanding sanctionable activities to include insurance and reinsurance of the vessels engaged in pipe-laying for the NordStream 2 project, as well as the testing and certification of the pipeline, among other things.

Finally, while 2020 saw a number of Russia-related sanctions designations, noteworthy actions included OFAC's continued use of election interference sanctions, including against persons involved in an effort to influence the 2020 presidential election by spreading misinformation intended to harm now President Biden's candidacy.

China - the US created new tools to address a wide range of policy concerns while avoiding a general embargo

The United States used a broad array of legal mechanisms to continue to increase pressure on China. Some of this pressure occurred under the export control mechanisms of the Export Administration Regulations ("EAR"), administered by the Department of Commerce's Bureau of Industry and Security ("BIS"). BIS continued a multi-year trend of adding Chinese companies to the Entity List, imposing licensing requirements for items subject to the EAR. BIS also modified its foreign direct product rule specifically as applied to certain such companies,



effectively expanding the scope of foreign-produced items that are subject to the EAR and therefore the Entity List's licensing requirements. And BIS modified its existing Military End Use/End User rules to include a Military End User List (the "MEU List"), to which additional licensing requirements apply for certain items subject to the EAR. While not specifically targeted at China, over half of the entities initially added to the MEU List are in China, with the remainder in Russia.

OFAC also used existing sanctions authorities - in particular, the human rights-focused Global Magnitsky program - to designate individuals and entities on the basis of concerns over China's treatment of Uighur Muslims in the Xinjiang region.

But there were also a number of new sanctions authorities created that specifically targeted China or Chinese companies. In July, EO 13936 directed implementation of certain authorities under the 2019 Hong Kong Human Rights and Democracy Act and the 2020 Hong Kong Autonomy Act. Among other measures, the Executive Order established a basis to impose sanctions on persons determined to have been involved in activity undermining or restricting democracy and autonomy in Hong Kong, including limiting freedom of speech or association, or to have engaged in human rights abuses with respect to Hong Kong. OFAC used this authority to designate a number of government officials in China and Hong Kong.

In November, EO 13959 established prohibitions on certain transactions by United States persons in securities issued by, or securities derivative of or designed to provide investment exposure to securities issued by, companies designated by the United States as Communist Chinese military companies ("CCMCs"). By the date EO 13959 was issued, the US Department of Defense had already designated over thirty companies as CCMCs pursuant to the NDAA for Fiscal Year 1999. OFAC began implementing EO 13959 shortly before year-end, and EO 13959 was amended in January 2021 to expand the types of transactions prohibited under it and require US persons to divest from affected securities within an applicable wind-down period.

Finally, the United States sought to target certain specific Chinese-origin applications on the basis that they were being used by the Chinese government to target the national security, foreign policy, and economy of the United States by collecting personal data from users. In August, EOs 13942 and 13943 targeted TikTok and WeChat, and, if implemented, would have prohibited US persons from providing services to these applications that would enable their continued operation in the United States. However, before those prohibitions could take effect, federal courts in the United States enjoined their implementation. The status of the legal challenges to EOs 13942 and 13943 remained pending as of February 25, 2021, though the Biden administration has requested that all proceedings be held in abeyance while it has a chance to review the Trump administration's policies and determine whether the lawsuits are still necessary.

Venezuela - "maximum pressure" continued, as the US also used sanctions with agility to help achieve policy goals

In the past year, the United States' "maximum pressure" policy vis-à-vis Venezuela continued to escalate. These measures were largely intended to remove the Maduro regime and continue to further disrupt Venezuela's oil sector.

The United States put its criminal laws to use in this fight, announcing indictments against President Maduro and fourteen other Venezuelan government officials, including Venezuela's chief justice and defense minister. These indictments alleged that the officials had engaged in sanctions evasion, corruption, and money laundering, among other crimes. This move came on the heels of a determination by the United States that Maduro is not the legitimate leader of Venezuela and thus open to prosecution despite the US's long-standing policy against prosecution of foreign heads of state.

In addition, OFAC cemented its commitment to the disruption of the Venezuelan oil economy by designating various additional entities operating in that sector. In February and March, OFAC designated two subsidiaries of the Russian state-controlled



oil company Rosneft for facilitating the sale and transport of Venezuelan crude. In June 2020, OFAC also designated numerous shipping companies and tankers for transporting Venezuelan crude. OFAC removed these entities and their vessels from the SDN list shortly thereafter upon their agreement to end participation in the Venezuelan oil sector and improvement of their sanctions compliance programs. These measures cumulatively have imparted a warning to companies and other third-party intermediaries, including financial institutions, that transportation of oil from Venezuela can carry sanctions risk under US law. They have also shown that US sanctions can be flexible and are intended to induce changes in behavior: as the sanctioned parties corrected course, the US delisted them.

Other Notable Developments - sanctions remained a popular policy tool, across a range of policy objectives, some bipartisan and with broad support, others without

In June, the Caesar Syria Civilian Protection Act (the “Caesar Act”) went into effect, which authorized the imposition of sanctions on non-US persons found to be acting in support of the government of Syria or other sanctioned individuals or entities in Syria. Although use of the Caesar Act has been limited thus far, the law represents yet another expansion of the US’s increasing willingness to deploy secondary sanctions.

Also in June, the Trump administration took the unilateral step of issuing EO 13928, authorizing sanctions against foreign persons determined to have engaged in any effort by the ICC to investigate, arrest, detain, or prosecute US or US-ally personnel absent the consent of the United States or the ally. The move was seen as a response to the ICC’s March 5th announcement to investigate alleged US war crimes in Afghanistan.

In September, OFAC designated ICC Prosecutor Fatou Bensouda for having directly engaged in an effort to investigate US personnel, and the ICC’s Head of the Jurisdiction, Complementarity and Cooperation Division Phakiso Mochochoko for having materially assisted Prosecutor Bensouda. This unilateral measure drew wide criticism from US allies, which view the ICC as an important international organization. The designation actions are currently the subject of a legal challenge filed on October 1, 2020, by the Open Society Justice Initiative and four law professors.

NOTABLE ENFORCEMENT ACTIONS

In 2020, OFAC published a total of 16 civil penalty settlements, with an aggregate penalty amount of \$23,565,657, and one finding of violation. This was a significant reduction in published settlement notices from the total number of published actions in 2019 at 26 actions totaling \$1,289,027,059. Notably absent from 2020’s publicly-announced enforcement actions as compared to the prior years’ were large



dollar-amount enforcement actions against financial institutions. Indeed, unlike 2019, OFAC published only two actions against financial institutions with comparatively low settlement amounts: one for \$583,100 and the other for \$653,347. Nevertheless, given the reportedly 1,400 enforcement actions that were settled privately, these numbers may be a lagging indicator of the true scope of activity aimed at banks.

OFAC's 2020 enforcement activity demonstrated that enforcement of sanctions targeting Iran, global terrorism, and Cuba continued to be a priority with three ITSR-related actions, two global terrorism-related actions, and two Cuba-related actions.

Of note, on July 16, 2020, OFAC announced a settlement with Essentra FZE Company Limited ("Essentra") for apparent violations of the North Korea sanctions. The settlement notice alleges that Essentra, a non-US company, used deceptive practices to export cigarette filters to North Korea through use of a network of Chinese front companies and receipt of payment in an account at a foreign branch of a US bank. OFAC alleged that Essentra had, via its actions, caused the US bank to export financial services and/or engage in transactions involving North Korea. This action highlights OFAC's continued enforcement of sanctions targeting non-US persons on grounds that they have caused US persons to violate sanctions.

OFAC also targeted Amazon.com, Inc. ("Amazon"), highlighting the importance of effective screening protocols. The July 8, 2020 settlement agreement with Amazon reflects that the company's screening process did not take into account certain compliance-related data, including location information, common alternative spellings of sanctioned jurisdictions, and names and addresses of persons involved.

OFAC also published an unusual settlement agreement with an individual on August 11, 2020. Specifically, an unnamed individual agreed to settle his or her potential liability under the Foreign Narcotics Kingpin Sanctions Regulations for a sum total of \$5,000. The violations arose when the US person, who was a civilian employee of the US Army stationed at the US Embassy in Bogota, Colombia entered into a personal relationship with a Specially Designated Narcotics

Trafficker ("SDNT") and provided him or her with gifts, meals, jewelry, clothing, and hotel rooms.

In the first enforcement action of the year, OFAC announced a settlement agreement highlighting the distinction between legal services, which are often authorized under general licenses, and other professional services. Specifically, on January 21, 2020, OFAC announced a settlement with Park Strategies, LLC ("Park Strategies") for apparent violations of the Global Terrorism Sanctions Regulations ("GTSR"). OFAC alleged that Park Strategies violated the GTSR when it provided lobbying services to Al-Barakaat Group of Companies Somalia Limited, a Specially Designated Global Terrorist. In issuing the notice, OFAC highlighted that professional services such as "lobbying, public relations, government affairs, consulting, and business development are not legal services," and therefore "generally not covered by general licenses authorizing the provision of legal services to blocked persons."

Finally, 2020 saw OFAC's first enforcement action against a digital asset company when, on December 30, 2020, OFAC published a settlement agreement with BitGo, Inc. ("BitGo") for apparent violations of multiple sanctions programs relating to numerous digital currency transactions. Specifically, OFAC found that the sanctions compliance procedures of BitGo, a company based in Palo Alto, California, failed to prevent persons located in Crimea, Cuba, Iran, Sudan, and Syria from using its non-custodial secure digital wallet management service despite the fact that the location of these users was known via their Internet Protocol addresses. The action highlights the importance of conducting sound know-your-customer due diligence and reflects an example of the types of information that can constitute screening red flags arising from such due diligence.

In each of the above settlement notices and other public enforcement actions announced in 2020, OFAC continued its trend of highlighting the compliance lessons and recommendations to be learned from each action, providing one additional source of guidance for parties seeking to comply with US sanctions.



THE YEAR AHEAD

Like nearly all recent administrations before it, President Biden's administration is also likely to continue using sanctions as a key tool of foreign policy in 2021. How this powerful tool will be deployed under President Biden, however, will likely differ from his predecessor in important respects.

A return to multilateralism where possible. First, contrary to the Trump administration's "America First" approach and willingness to engage in unilateral measures over the voiced disagreement of US allies (particularly in Western Europe), the Biden administration is likely to return to a more multilateral approach that rests on coordination and collaboration with US allies.

More structured and deliberative procedures - potentially avoiding unintended consequences and uncertainties. Second and relatedly, the Biden administration's approach to sanctions policymaking is likely to take on a more deliberate nature as compared to the often rapid-fire and dramatic actions of the Trump administration. The Biden administration is also likely to use sanctions in a manner that advances considered, long-term US foreign policy, rather than taking a more mercurial or transactional approach that

seeks to advance shorter-term presidential objectives. Administration sources have indicated that, although the Biden administration intends to begin a course correction quickly, it will do so after taking time to deliberate on contemplated changes. Accordingly, unlike the swift measures implemented by President Biden to reverse President Trump's policies on issues such as climate change and immigration, US sanctions changes may appear more gradually throughout the year as such domestic and international deliberations occur.

A new view on Iran and, perhaps, the end of "maximum pressure." Regardless of the pace of change, certain policy shifts are nevertheless expected. On the campaign trail, President Biden stated his intent to return to the Iran nuclear deal, which the Trump administration left in 2018 despite the objections of European allies. President Biden's picks to lead the State Department and the National Security Council (Antony Blinken and Jake Sullivan, respectively) indicate that the administration remains amenable towards a return to the deal. Nevertheless, the Trump administration and subsequent actions by Iran have imposed hurdles to such return in numerous respects so the return process will likely require maneuvering new obstacles.



Potential early-term signaling on purely unilateral ICC sanctions. Near-term change is more likely with respect to the Trump administration's ICC sanctions. These sanctions were largely viewed as a controversial and significant expansion of prior US sanctions policy, which some viewed as undermining US international standing. Although the move will carry minor economic effects in the United States, it would be symbolically significant as a measure of good will towards the international community, including European allies, and a renewed commitment to the rule of law.

A return to Obama-era Cuban sanctions. In Cuba, the Biden administration is likely to remove certain restrictions re-imposed under the Trump administration. As part of its maximum pressure campaign there, the Trump administration reinstated Cuba's designation as a state sponsor of terrorism, removed long-standing waivers of Title III of the Helms Burton Act (and thus allowed private litigation for claims of "trafficked" confiscated property), and reinstated restrictions eased by President Obama as to travel, personal remittances, trade, telecommunications, and banking and financial services. In 2021, the Biden administration is likely to again lift some of these re-imposed restrictions.

Consistency on China. As mentioned above, the last year also saw the deployment of both regulatory and statute-based actions against another new sanctions target: China. Overall, significant rollback

of US sanctions and other trade and investment controls imposed under the Trump presidency are unlikely, absent a change in the circumstances that led to the imposition of these restrictions given that successive US administrations have shared the Trump administration's concerns on China. In addition, certain of these measures, including the Hong Kong-related export controls and sanctions, among others, were mandated by statute and thus are unlikely to change as a result of a new administration. Nevertheless, more guidance is expected with respect to the measures, particularly in the context of the new EO targeting securities of CCMCs and the TikTok and WeChat EOs.

A tougher line on Russia. Finally, in 2021, the Biden administration is likely to impose additional measures against Russia, particularly under existing election interference sanctions authorities, as a result of the Solar Winds hack, and in response to the poisoning of Alexei Navalny, a leading Russian opposition figure. In September 2020, German officials concluded that Navalny had been poisoned in Russia with a chemical nerve agent known as a Novichok. In 2018, the Trump administration imposed sanctions on Russia under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 in response to a previous Novichok attack against a UK national and his daughter. In response to the Navalny attack, the Biden administration may consider making a new determination that Russia has used a chemical weapon in contravention of international law and impose additional sanctions on the country.



In sum, going into the next year, US sanctions policy and policymaking is likely to change in important respects. Pursuing a more deliberate and multilateral approach, the Biden administration’s priorities will part ways with the Trump administration’s with respect to Iran, Cuba, and Russia, and remain at least somewhat the same in other respects, namely China. What is sure to continue as we enter the new year, however, is the central role of US sanctions in the conduct of US foreign policy.



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