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Knowledge Network

Global Sanctions Update

Perspectives from the EU, UK and USA

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1.30 pm - 2.30 pm



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Key points for discussion – EU, US and UK sanctions

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- Birdseye view of key features of each sanctions regime:
 - Focus on sanctions against Russia
 - Potential for divergence between US, EU and UK?
 - Trends in each jurisdiction, due diligence and cross border considerations
 - Enforcement and liability
 - Managing risk and contracts review
 - Horizon scanning

Overview of EU, UK and US Sanctions

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- Key features and developments
- While there are similarities, watch out for important differences between each sanctions regime, including:
 - How ownership and control is assessed for the purpose of asset freezing measures, (including aggregation)
 - Differences in designated persons under each regime;
 - Differences in safe harbour provisions;
 - Differences in liability; and
 - Differences in approach by national competent and enforcement authorities, including across the EU.



US sanctions regime - Framework

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- Administered by United States Treasury's Office of Foreign Assets Control (OFAC) – Aggressive, Longstanding Regulator
- Multiple US sanctions programs
- Primarily regulate US persons
- In combination with Export Controls Laws (for US goods)
- Russia program largely stems from Executive Order 14024 but others exist from 2014 sanctions (Executive Orders 13660, 13661, 13662, 13665 and 13685)



US sanctions regime – Russia Program Since 2022

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- Large Scale Targeting of Russian Financial, Governmental and Defense Sectors With Blocking Sanctions
- Prohibition on New Investments and various exports of services to Russia
- New, broad licensing requirements for many U.S. origin goods for export, reexport to Russia and in country transfers within Russia
- Restrictions on many Russian imports into US
- Addition of broad secondary sanctions in 2024
- Enforcement focus on diversion of goods and evasion of sanctions
- Use of additional sanctions authorities at the end of 2024



EU sanctions regime - overview

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Successive rounds of sanctions packages introduced since March 2022 as the war has escalated, building on existing measures first introduced in 2014.

- **Regulation 269/2014** – financial restrictions and asset freezes for designated persons and persons/ entities they own / control
- **Regulation 833/2014** - restrictive measures concerning goods and services imported from and exported to Russia and certain parts of Ukraine.

No extra territorial application – BUT :

Need for scrutiny in a cross- border context and assess if an *EU nexus*

Expanded scope - best efforts obligations for non-EU subsidiaries of EU entities

- 16th package of sanctions adopted on 25 February 2025.
- 17th package underway - clamp down on circumvention activities and core Russian sectors



EU sanctions regime – recent focus

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- Circumvention
 - Article 12g of Regulation 833/2014
 - No Re-Export to Russia Clause
 - Third country circumvention hubs
 - CHP Goods/Dual-use goods/semi-conductors
 - China, HK, Dubai, Kazakhstan, India, Serbia, Thailand, Sri Lanka, Türkiye, etc. – 760 entries in total
 - Asset Freezes
 - Oil Price Cap
 - Shadow Fleet (ban on entry EU ports and services)
- Enabling divestments from Russia
- No liability-clauses
- Von der Leyen / Kallas: Allocating frozen funds Russian State to Ukraine



UK sanctions regime - overview

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- Sanctions and Anti-Money Laundering Act 2018
- Russia (Sanctions) (EU Exit) Regulations 2019
- Jurisdiction
- Asset freeze restrictions – ownership and control
- Introduction of “secondary sanctions”



Jurisdictional insights

US - key updates / trends

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- Applies only to U.S. persons (unlike Iran, Cuba)
- Diversion hubs (Turkey, China, UAE) have been focus of recent enforcement actions and sanctions modifications
- Recent additional secondary sanctions authorities for same reason



- Convergence with EU sanctions: “no-Russia” clauses
- New trade sanctions in force 24 April 2025: including sectoral software sanctions
- Upcoming UK Supreme Court decisions on designations:
 - *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs*
 - *Dalston Projects Ltd and ors v Secretary of State for Transport*



EU – key updates / trends (1)

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- “Best efforts” obligation re: non-EU subsidiaries
- Anti-circumvention provisions expanded – including non deliberate participation, but having an awareness and “*accepting that possibility*”
- Disparity in regulator approaches to interpretation of ownership and control and extent of comfort available (e.g. Ireland / Germany / Netherlands / Romania)
- CJEU case law on meaning of “*associated with*” in context of assessing validity of listing due to a person’s association / relationship with another sanctioned person (*Nikita Mazepin* T-743/22; *Timchenko* (C-703/23P, AG Medina Opinion)



EU – Due Diligence requirements

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- Due Diligence requirements
- EU Guidance – Commission Opinions; EU Best Practices Guidance, July 2024; EU FAQs
- What are the “red flags” to look out for?
- Must you freeze funds / payments or can you still engage with entity to make payment / perform contract?

New EU Sanctions Helpdesk for SMEs:

outreach@eu-sanctions-helpdesk.eu



Due Diligence and Circumvention – ‘Red flags’

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‘Red flags’ requiring ‘enhanced due diligence’ measures:

- Indirect transactions involving intermediaries or shell companies that make little or no economic sense
- New customer/transactions with companies located in so-called “circumvention hub” countries, involving so-called high-priority battlefield items
- Transit through countries labelled as “circumvention hubs”
- Change of UBO shortly before or after sanctions are imposed
- Complex corporate or trust structures
- A business partner that was recently established or has merged with a sanctioned entity or an entity linked to sanctioned entities or persons
- Potential control / de facto control of an entity by a designated person, even if their direct ownership appears to be under the 50% threshold (e.g., member of the Board, beneficial owner, managing director, other entities or persons in the ownership structure linked with a DP)



Managing Sanctions Risk / Due Diligence

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NB. Apply screening to identify risks: All organizations must comply with sanction screening requirements and have robust controls, identify 'red flags'

1. Which sanctions regimes apply? Consider "nexus" to determine jurisdiction – e.g. Irish or EU company, EU citizens on company board, "doing business in the EU"

3. Who? Are your business partners subject to an asset freeze? Need to vet individuals, groups and companies against designated sanction lists and their alliances – check against EU, OFAC, UK lists

4. What? Are any of your activities affected by other financial sanctions? e.g. re: grant of new loans or credit, new investment or acquisitions or provision of investment services

5. Are the products or services restricted? Consider trade sanctions, dual use products or on the CHP list?

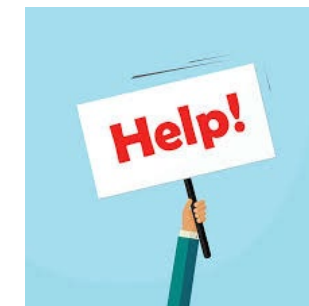
6. Where? – What is the origin of goods, destination of goods and jurisdictions through which they will transit?

7. Why? - Intended end-use or end-user of the goods or services?

6. How are you responding to the risks? Consider auditing compliance programmes, sanctions training, reviewing contractual commitments

How much DD is enough?

Greater sanctions risk = increased due diligence



EU Commission Guidance on Implementation of Firewalls in cases of EU entities owned or controlled by a designated person or entity (29 November 2023)

Safeguard – recognition that in some cases non-designated EU entities at risk of bankruptcy if cannot trade. Permissible so long as no funds reach or made available to designated person (“DP”)—funds must remain frozen

Which entities? Not prescriptive – look at significance of entity on national / EU market – assess market position and employment volume. Entities operating in sectors “essential” sectors should have firewalls as a minimum (incl. food production, pharmaceuticals, fertilisers, chemicals, water management, sanitation, nuclear power.)

Implementing firewall: (1) Remove “control” of DP – no influence or involvement in running business; (2) ensure no company resources funnel to DP, directly or indirectly; (3) implement firewall pursuant to national legislation (will vary depending on MS); OR (4) implement own firewall (external auditor appointed / declaration of removal of control – engage with NCA to approve)

- Increase in “Article 11” claims
 - No-claims clause
 - “Claims”
 - “Acting through or on behalf of”
 - Onus of proof that satisfying the claim is not prohibited lies with the person seeking the enforcement of the claim
- Case 1: repayment of prepaid funds = “claim”
- Case 2: EU producer and EU distributor: qualifies as party acting through or on behalf of Russian customers
- What if EU operator wishes to satisfy claim?
Prohibition → Criminal Act?



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- A breach of sanctions may impose strict liability offences, and both civil and / or criminal penalties
 - Offences can relate to a breach of sanctions and also circumvention of same – a high degree of caution is required
 - Inadvertent breaches are a huge risk for organizations, particularly where there is a possibility of criminal liability for senior executives
 - Many jurisdictions lack sufficiently robust legal frameworks to seize criminal assets
 - Safe harbour provisions / defences?

- *Directive (EU) 2024/1226 defining criminal offences and penalties for the violation of EU restrictive measures* - harmonises criminal liability for breach of sanctions and provides for different categories of criminal offences and respective minimum penalties
- Member States must define certain activities as “criminal offences”, such as:
 - Making funds available to a designated person
 - Trading sanctioned goods / running transactions with entities or States that are restricted
 - Performing financial activities or providing financial services which are prohibited or restricted
- Any intentional violation of sanctions, and certain conduct carried out with ‘serious negligence’ should constitute a criminal offence.
- Criminal penalties applicable to both natural and legal persons:
 - Maximum prison sentence of 5 years for natural persons
 - Significant criminal fines for companies of up to 5% of worldwide turnover or €40 million



Current – strict liability criminal law regime, prescribed by successive SIs

Future - *General scheme of the Criminal Justice (Violation of EU Restrictive Measures) Bill 2025*

- On 10 April 2025, the Department of Justice published the Draft Bill, which once final will transpose Directive (EU) 2024/1226.
- Member States have until 20 May 2025 to transpose the Directive.
- Key observations on the Draft Bill



- ***The Netherlands ECLI:NL:RBROT:2023:10071***

- Dutch-Russian citizen sentenced to 18 months in jail and fined €200,000 after being found guilty of exporting computers and computer parts to Russia in breach of EU sanctions; Dutch court found this to be a deliberate breach- forged documents to alter the appearance of the destination of the goods; April 2024: Winding up of the company ordered
- Seven companies subject to enforcement for construction of Kerch bridge (after 10yrs); Dieseko Group BV highest penalty: €1.8 million fine (settlement) / cases against certain managers still pending
- Just announced: Criminal investigation against the Dutch shipbuilder Damen Shipyard as well as the current and two former chairmen of the board for bribery, money laundering, and violating sanctions against Russia → intermediaries in Turkey and Hong Kong: spare parts for crab-fishing vessels sold to Russia.

- ***Germany***

- In March 2024, prosecutors charged 5 individuals with breaching EU sanctions by exporting Siemens-made gas turbines to Crimea. German prosecutors allege that the individuals were aware that the ultimate destination of the 111 million euros worth of gas turbines would be 2 power plants in the annexed region of Ukraine.
- A defendant was sentenced to seven years in prison for exporting machinery capable of producing sniper rifles to a Russian weapons manufacturer, using falsified customs data to disguise the destination.

- ***Estonia/Denmark/Finland/Latvia/Lithuania***

Enforcement of sanctions - UK

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- Criminal offences and civil monetary penalties
 - Liability for directors/other senior management
 - “Name and shame”
- First UK criminal convictions for breaching Russia sanctions
- OFSI ramping up enforcement



Enforcement of sanctions – US

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- OFAC priorities
- Post 2024 Enforcement Focus Shift (“Maximum Pressure” and Middle East Shipping, LATAM Cartels, Yemen)
- Peace process?



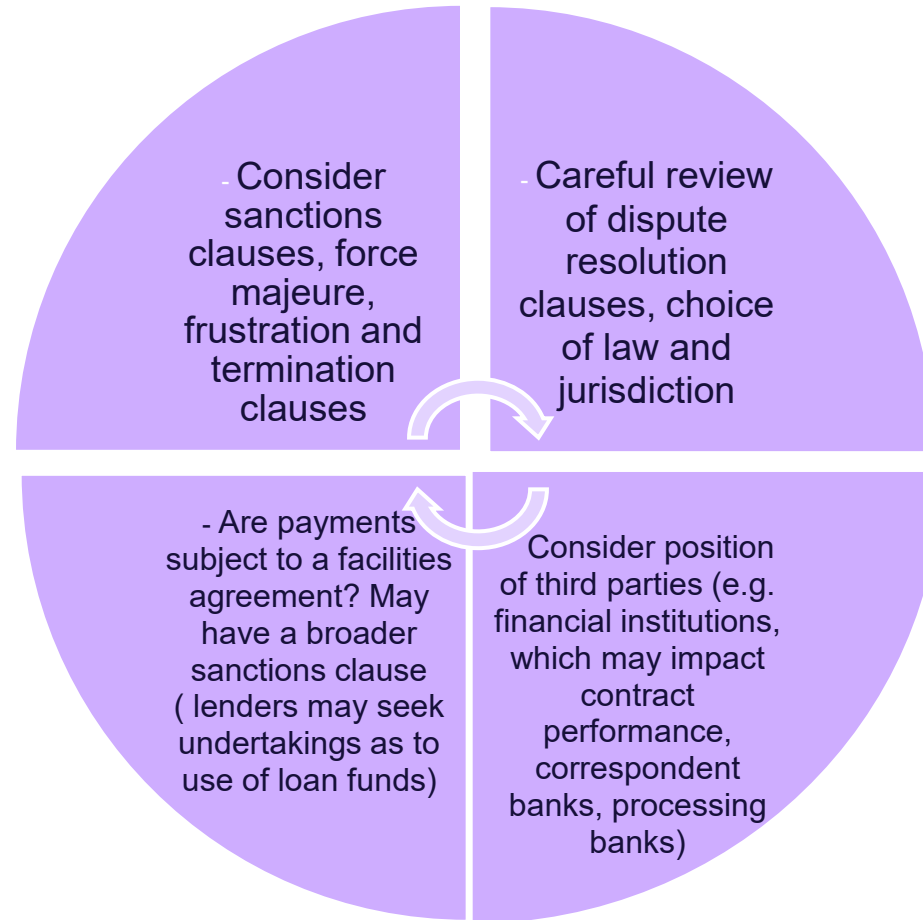
- Sanctions may have significant consequences for contractual relationships, as performance of contract may be in breach of restrictive measures
- Significant complexities in international disputes/cross border transactions which may engage multiple sanctions regimes and multiple regulators
- Differing regulator approaches



How to future proof and manage risk?

Commercial contracts

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- Sanctions are not confined to particular financial products. Lenders and insurance providers will also have stringent obligations to comply with sanctions.
 - For lenders, stringent due diligence must be carried out not only on the potential borrower but all parties to the transaction both directly and indirectly. Where there is potential for sanctions compliance to be at risk, undertakings in respect of how the loan proceeds are to be used and repaid are essential
 - A mandatory prepayment clause can also be used to include prepayment in the case of a sanctions related event
 - Insurers must also take great care to ensure a claimant and the proceeds resulting from a claim are not in breach of the restrictive measures
 - Sanctions clauses will also protect from an onset of claims as cover is nullified once sanctions are present

- Lasting Russian cease fire or further sanctions?
- Political climate - increased co-operation or divergence between Heads of State / regulators? (EU/ G7 / US)
Russian / Iran sanctions
- Increased enforcement with a focus on anti-circumvention and clamp down on Russian-accomplice States
- Use of proceeds of Russian windfall profits to re-build Ukraine and bolster military defence – confiscation of assets?

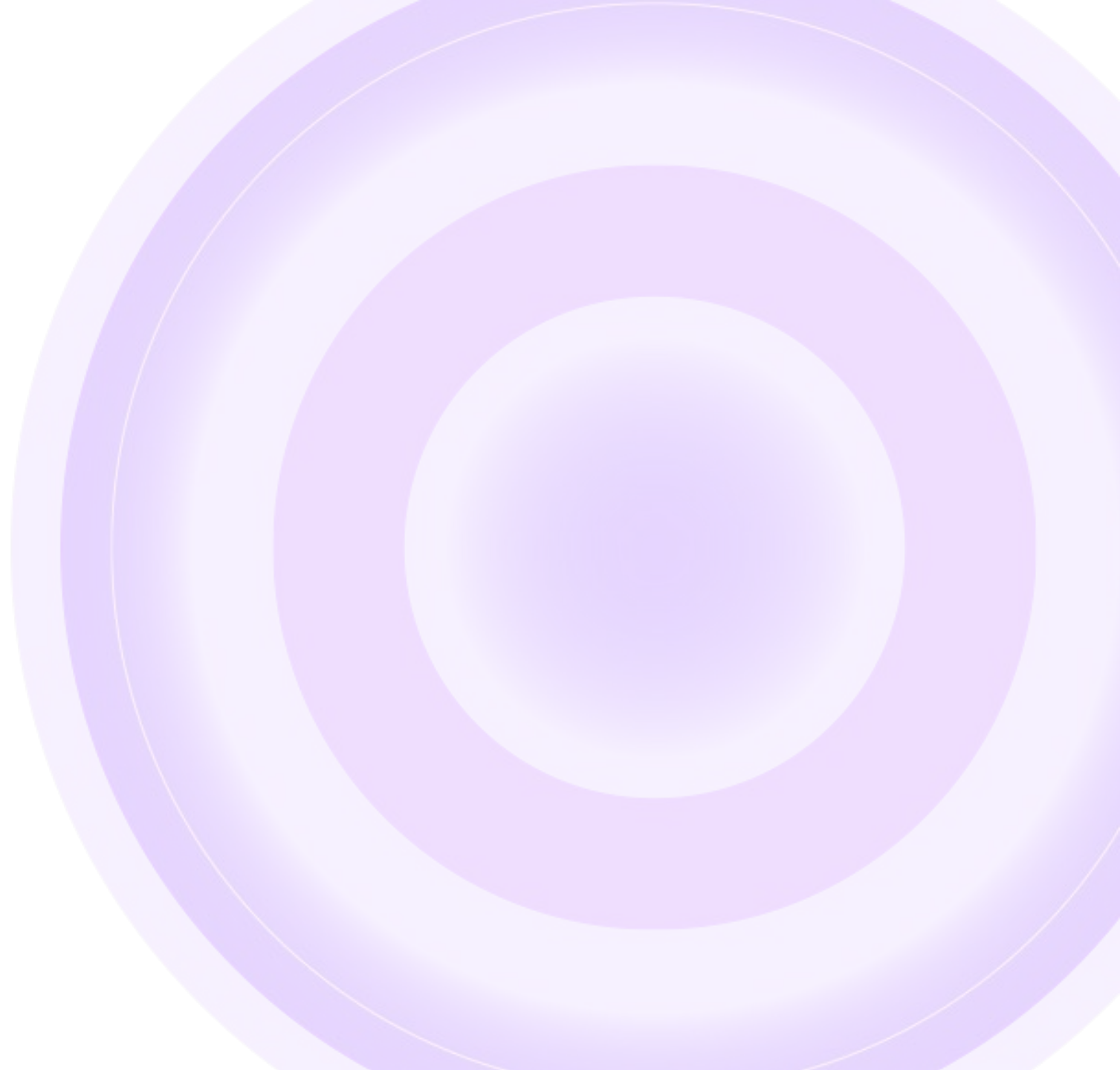


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