

## International Sanctions and Russia

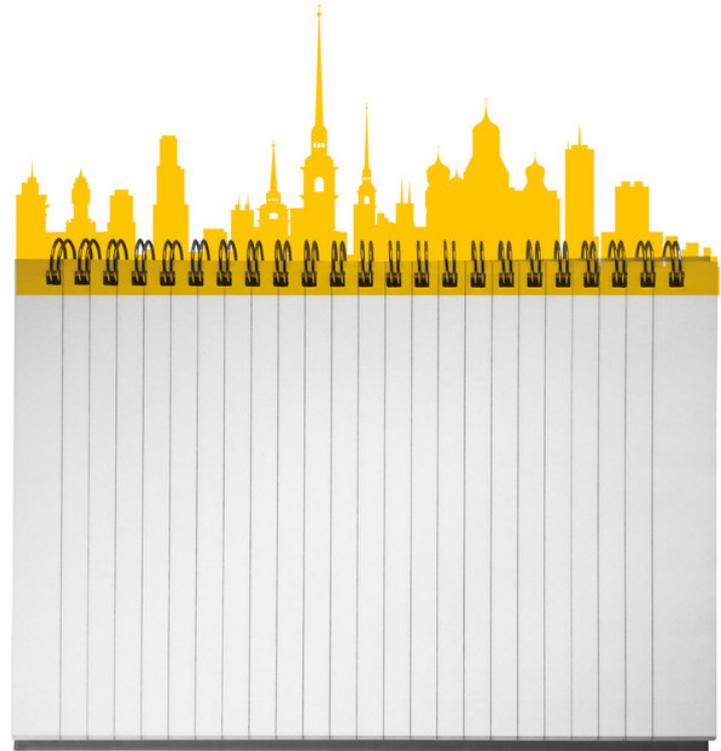
What are international sanctions?

Are you in compliance?

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## **What Are International Sanctions?**

*A tool for foreign policy (and economic warfare)  
without any clear definition*

*Used to compel the target to comply with  
international law or to punish the target for a  
breach of international law or to limit/stabilise  
armed conflicts*

# Inter(National)

1. Trade embargo might have triggered the Peloponnesian War
2. 1990's was the "Sanctions Decade". Shift from state oriented to targeted sanctions
3. Sanctions may be unilateral (USA on Cuba) or multilateral (EU on Russia)
4. Imposed by an individual state, a group of countries or by an international organisation
5. Used for achieving various goals
6. Targeted against a country, a group of countries, a geographical area (territory), persons (legal or natural) or a group of persons or a sector of business
7. Listed persons have not themselves necessarily committed any violations of law/crime, but there is a criminal liability for violating the sanctions regulations

# Sanctions Programs are Tailored for Targets

Admission Restrictions  
(travel and visa bans)

Asset Freeze

Trade Sanctions

Financial Sanctions

Restrictions on traffic and  
transport

Territorial Sanctions

Sectoral Sanctions

Seizure of Foreign  
Assistance, Bilateral Aid

Diplomatic Sanctions

# Regulatory framework (Finland) (non-exhaustive)

- International Law
- EU Law
- Main national legislation:
  - the "Sanctions Act": Act on the Enforcement of Certain Obligations of Finland as a member of the United Nations and of the European Union (659/1967)
  - Criminal Code, Chapter 46, section 11 "Säännöstelyrikos" (Rikoslaki 39/1889)
- Competent Authority in Finland
  - The Ministry for Foreign Affairs in Finland (restrictive measures)
  - The Ministry of Defense
  - The Enforcement Authority

## Some basic principles (EU)

- It is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the restrictive measures
- Restrictive measures cannot be bypassed by acting indirectly (i.e. through intermediaries, distributors etc.) (US sanctions prohibit facilitation)
- The criterion of ownership  $>50\%$  (OFAC  $\geq 50\%$ )
- There is no exact definition given for control, but the EU recommendations provide list of examples in which criterion of control is fulfilled, e.g.
  - Having the right to appoint or remove a majority of the members of the management bodies of a legal person/entity
  - Controlling alone a majority of shareholders' voting rights in / exercising a dominant influence over a legal person/entity
  - Sharing jointly and severally the financial liabilities of a legal person/entity (or guaranteeing)

# Some lingo and abbreviations

- Blocking/(asset) freezing = controlling / seizing the targeted person's property – not confiscating
- Listed / designated entity/person = an entity / a person that appears on an international sanctions list and is subject to restrictive measures (not necessarily asset freeze)
  - SDN list = Specially Designated Nationals and Blocked Persons List (OFAC)
  - SSI List = Sectoral Sanctions Identifications (OFAC)
  - FSE List = Foreign Sanctions Evaders (OFAC)
  - FFI = Foreign Financial Institutions (OFAC)
- OFAC = the Office of Foreign Assets Control, operates under the US Department of the Treasury, administers and enforces US sanctions
- Restrictive measures = sanctions
- Financial/economic/trade/sectoral sanctions = context specifies the meaning, contents differ in different sanctions programs

**Who must comply with sanctions**

# EU Sanctions

- Any person (natural or legal) within the EU territory
- All EU citizens regardless of where they are located
- All EU incorporated legal entities regardless of where located.

# US Sanctions (and export regulations)

(non-exhaustive list)

- Any person (natural or legal) within the United States (US)
- All US persons (including all US citizens and permanent resident aliens (“green card” holders)) regardless of where they are located
- all US incorporated entities regardless where they are located

# US Sanctions (and export regulations)

(non-exhaustive list)

- In certain programs (e.g. Cuba and Iran) also foreign subsidiaries owned or controlled by US companies must comply
- Certain programs require non-US persons in possession of US -origin goods, software or technology to comply
- US dollar denominated financial transaction and/or transactions that clear through the US financial system
- Under certain programs extraterritorial secondary sanctions may apply to non-US persons outside US territory

## **Consequences for breach of sanctions regulations**

*Penalties may apply even if the person was not aware of and had no intention of doing so*

# EU Sanctions (Finland)

- > Criminal liability
- > Sanctioned through national legislation
- > Chapter 46 of the Criminal Code (offences connected to import and export)
- > Penalties ranging from fines to imprisonment (up to four years)
- > The applicable penalties are directed at those private individuals who are considered having committed the relevant offence or participated in the decision making leading to such offence
- > Corporate criminal liability may entail corporate fine ranging from EUR 850 to EUR 850,000
- > The Ministry for Foreign Affairs is responsible for coordination of supervision regarding compliance
- > National Bureau of Investigation (FIU Finland) investigates potential breaches in cooperation with competent authorities

# US Sanctions

- > Civil and/or criminal penalties
- > Depending on the sanctions program
- > Penalties ranging from fines imprisonment (up to 20 years)
- > Forfeiture of goods or profits
- > Addition to the SDN, FFI or FSE List
- > Fines can be significant, e.g. BNP Paribas was fined USD8.9 billion

# **Russian Sanctions**

# EU Russia Sanctions – Asset Freeze and Travel Bans

Council Regulations (EU) 208/2014 and 269/2014 as amended

- All funds and economic resources frozen and not made available, directly or indirectly
- A prohibition to conduct any kind of business (directly or through intermediaries) with listed persons subject to asset freeze or companies owned (>50%) or controlled by persons subject to asset freeze
- Travel and visa bans
- EU Consolidated list:  
[https://eeas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-sanctions\\_en](https://eeas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-sanctions_en)

# EU Russia Sanctions – Sectoral Sanctions

Council Regulation (EU) 833/2014 as amended

- The sectoral (economic) sanctions targeted against specific companies involved with a specific industry such as oil exploration, crude oil and natural gas, defence industry, dual-use goods and capital markets.
- In case a contracting party is on a list of sectoral sanctions and it is not on asset freeze list, then other than the restricted activities can be carried out with this contracting party.

# EU Russia Sanctions – Sectoral Sanctions

Restrictions related to capital markets and loans

Russian state owned financial institutions	Russian defence companies	Russian energy sector
➤ Sberbank	➤ OPK Oboronprom	➤ Rosneft
➤ VTB Bank	➤ United Aircraft Corporation	➤ Transneft
➤ Gazprombank	➤ Uralvagonzavod	➤ Gazprom Neft'
➤ Vnesheconombank (VEB)		
➤ Rosselkhozbank		

# EU Russia Sanctions – Sectoral Sanctions

Restrictions related to dual use goods and technology

- For military use if to be used by the Russian military
- For any use if to be used by:
  - JSC Sirius
  - OJSC Stankoinstrument
  - OAO JSC Chemcomposite
  - JSC Kalashnikov
  - JSC Tula Arms Plant
  - NPK Technologii Maschinostrojenija
  - OAO Wysokototschnye Kompleksi
  - OAO Almaz Antey
  - OAO NPO Bazalt

# EU Russia Sanctions – Sectoral Sanctions

- Restrictions related to military goods and technology (EU Common Military List)
- Restrictions related to specific listed technologies relating to the oil industry for the purpose of deep water oil exploration and production, arctic oil exploration and production, and shale oil projects in Russia

# EU Russia Sanctions – Crimea and Sevastopol

Council Regulation (EU) 692/2014 as amended

- Prohibitions on investments and financing
- Prohibitions related to listed goods and technology suited for the use of in transport, telecommunications and energy and in relation to exploitation of oil, gas and minerals in Crimea and Sevastopol
- Prohibitions related to tourism services
- Prohibition to import goods originating from Crimea and Sevastopol

# US Russia Sanctions in a nutshell

- Active sanctions programs (not exhaustive)
  - Ukraine-/Russia
    - Executive Orders 13660, 13661, 13662, 13685
  - Countering America's Adversaries Through Sanctions Act 2017 (CAATSA)(6 April 2018 amendments)
  - Cyber-related Sanctions
- Sanctions types in use are similar to EU sanctions but lists are more extensive
  - Asset Freeze and Travel Bans
  - Sectoral Sanctions
- Secondary Sanctions

# **Russian Counter Sanctions**

# Russian Sanctions Regimes

- > So called counter measures
  - Ban on import of certain listed agricultural products, raw materials, foodstuffs from the United States of America, the European Union countries, Canada, Australia, Norway, Ukraine, Albania, Montenegro, Iceland, Liechtenstein
  - Travel and visa bans against certain EU, American and Canadian politicians and military leaders from entering to Russia
- > Russia implements UN sanctions
- > Arms embargoes, restrictions on export and import, travel bans
- > Consequences for a breach of sanctions
  - Administrative and criminal liability
  - Fines (RUB 5,000-1,000,000), confiscation of goods and imprisonment (up to 7 years)

# **How to Comply and Mitigate the Risks**

## What do I need to know

- > Know your products:
  - Is it on a sanction list (customs code)
  - Can it be used for sanctioned purposes
  - Is it US origin or does it have US origin components, technology
- > If sanctions may apply to your products, prepare product lists for your organisation with respective notes on how to proceed

## What do I need to know

- > Know your contracting party
  - Identify ultimate beneficial owner owning / controlling indirectly > 50% (EU)
  - Limited information on Russian companies available from public sources, but some information from <http://egrul.nalog.ru/>
  - Understand who has effective “control” over the potential counterparty
  - If material not available from public sources, it should be requested from the contract party
  - Personal Data regulations to be observed
- > Know also the delivery chain and the final destination
- > Ongoing monitoring and keep the records

## Can I be prepared

- > Know your business and identify the sanctions risks
- > Check, and if needed, update your contract clauses (e.g. currency, Compliance clause, Force Majeure, Termination)
- > Remember no circumvention or facilitation
- > Consider political and legal limitations for wordings in local agreements
- > Check whether you have contractual obligations to comply with US sanctions and export regulations
  - Analyse contents and what it means for your company
  - Ensure that your subsidiaries and dealers commit to the same obligations

## Can I be prepared

- > Members of management (EU and US citizens), also in non-EU/US entities, should abstain from decision making concerning transactions with sanctioned
- > US sanctions may oblige a US person to resign
- > Have in place a compliance policy / guidance and processes
- > Mere written contract clauses and existing policy are not adequate, compliance needs to be supervised
- > Ongoing monitoring and keep the records
- > If you cannot identify key elements, consider twice, final decision is made based on your risk assessment

## If there is a “sanction hit”

- Asset freeze list:
  - seize all activities;
  - analyse status with contracts (contractual relations prior the sanctions entered into force / new contractual relations);
- Sectoral sanctions list:
  - Legal persons/entities: analyse whether sanctions apply to the contemplated transaction/business
  - Products, services: analyse whether sanctions apply to the goods, services or to the purpose of use/end-user
  - Analyse how the sanctions affect the case
- Potential reporting obligation
- Potential need to request prior authorisation/license

# How to find and check the sanctions lists?

## > United Nations

- <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>

## > EU: Check out the instructions and links on the Ministry of Foreign Affairs web page:

- <http://formin.finland.fi/public/default.aspx?nodeid=49611&contentlan=1&culture=fi-FI>
- Consolidated list [https://eeas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-sanctions\\_en](https://eeas.europa.eu/topics/sanctions-policy/8442/consolidated-list-of-sanctions_en)

## > OFAC

- <https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>

## > UK (note: has also other designated persons than those on EU lists)

- <https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets>

# What should I remember about sanctions

- Sanctions regulations apply to us all, even if we do only domestic business
- US sanctions and export regulations may have extraterritorial effect, especially banks face these requirements
- It is prohibited to circumvent the restrictive measures
- Sanctions cannot be bypassed by acting indirectly (the criterion of ownership/control >50% (OFAC ≥50%))
- You should know your contracting party, product, and destination
- Listed persons have not necessarily committed any crime, but violation of sanctions is a crime

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