

Tricky tracery – sanctions

As war and conflict intensifies in different regions, so economic weapons – sanctions – are increasing in number, scope and complexity. Businesses are scrambling to keep up, while authorities are looking to clamp down on violations. **Paul Cochrane** reports on a dynamic frontline in compliance.



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The USA leads in sanctions issuance and enforcement but other jurisdictions are also notably active. On 12 February [2024], the UK designated four Israeli settlers in the West Bank [1], while Russia did the same to British officials, historians and academics. [2] Moscow's move is considered a 'counter-sanction' in response to London's measures against Russian entities for its invasion of Ukraine.

No longer the exception

Currently, more than 25% of countries worldwide and nearly a third of the global economy is subject to sanctions by the United Nations, the USA and the European Union (EU), according to a 2023 report by the US-based Center for Economic and Policy Research on the human costs of sanctions. Economic sanctions imposed by the USA, EU (which

started issuing its own measures in 1980) and UN targeted 4% of all countries in the early 1960s, rising to 27% in 2023, while over the same period the share of world GDP produced in sanctioned countries has gone from less than 4% to 29%. [3]

While sanctions have been used as a foreign policy tool for over a century, the trend accelerated after 1962, when Washington first imposed a trade embargo on Cuba, which remains in place today. [4] Comprehensive sanctions on the Islamic Republic of Iran followed the 1979 revolution. But it was the 11 September 2001 terrorist attacks on the US that produced a seismic shift, with anti-money laundering (AML) and combating the financing of terrorism (CFT) coming to prominence, alongside sanctions compliance.

"For the last 22 years, post 9/11, sanctions have been an ever increasingly important part of the US arsenal to achieve its economic and national security objectives," said Carol Van Cleef, of Counsel at Washington, DC-based law firm Lewis Baach Kaufmann Middlemiss. She said 9/11 marked a "massive wake-up call for the industry on sanctions law and compliance", with the second most significant "wake-up call" coming in 2022 when Russia invaded Ukraine and the USA, UK and EU aggressively imposed a wide range of Russian related sanctions.

Sanctions originated by the US Office of Foreign Assets Control (OFAC) surged by 933% between 2000 and 2021, as 9,421 persons and entities were added to its Specially Designated Nationals and Blocked Persons (SDN) list. [5]

OFAC put 743 individuals and entities on the SDN list in 2021; and 2,275 in 2022, with 1,698 linked to Russia. Out of the 519 entity designations, 72% were Russian, followed by 13% Chinese, where companies have been sanctioned for making precursors for the artificial opiate fentanyl [6], according to think-tank the Center for a New American Security. [7]

Last year [2023], OFAC added more than 100 new Russia-related targets; the EU designated over 100 Russian individuals and entities on three occasions [8], and the UK 86 entities. [9]

Shilpa Arora, senior director – anti-financial crime segment solutions at ACAMS (Association of Certified Anti-Money Laundering Specialists), said this has generated an intense workload for anti-money laundering officers (AMLO) and other compliance executives, with some of their employers "scrambling to know their exposure to sanctions on Russia, as sanctions on this scale have never been applied before". As a result, AMLOs cannot afford to be reactive: "Now it is about anticipating the sanctions and variations of controls that will come, so financial institutions need to identify risk," she told *MLB*, building action templates "to be able to respond quickly. Doing internal fire drills will help prepare for these sanctions situations."

Part of the challenge is that sanctions are not only being focused on predictable targets such as Russia Iran Myanmar and North Korea. The US, especially, has also designated terrorist organisations, drug traffickers, weapons of mass destruction (WMD) proliferators, violators of human rights, cyber criminals, and transnational crime organisations outside these key sanctions jurisdictions, which piles on compliance complexity, said a London-based consultant. "It is getting more complicated to get decisions right about AML, terrorist financing [TF] and sanctions, as there is a nexus of all these things coming together. There are, for instance, TF-related sanctions on (Palestinian militant group) Hamas, on (Lebanese militant group) Hizbullah, and sanctions on Ukrainian, Russian and Belorussian officials," said Nick Henderson-Mayo, director of learning and content at compliance e-learning and software provider VinciWorks.

OFAC focus

Financial institutions, including those handling virtual currency, have come under increasing scrutiny by OFAC over the past two years, said van Cleef. Last year [2024], OFAC issued US\$1.5 billion in fines: 10 out of the 17 cases involved financial services firms and VASPs (virtual asset service providers); seven dealt with alleged violations of Ukraine- and Russia-related sanctions; [10]

"The crypto space is the focus of a disproportionate amount of attention as crypto-related cases are often easier to work and prove (by prosecutors) than "old fashioned" sanctions or AML cases," said Van Cleef. "At the same time, the crypto space is in many ways setting a new bar for sanctions compliance with new and powerful tools, and this will put more pressure on the traditional banking industry to up its compliance efforts."

DoJ engaged

The US is certainly getting more serious about prosecuting violations of these laws. In 2023, the Department of Justice (DoJ) appointed 25 new National Security Division prosecutors, and six new prosecutors in the Bank Integrity Unit of the Money Laundering and Asset Recovery Section. [11]

"There are a lot of new resources on the table and the DOJ has made a very significant commitment to pursue sanctions law violations, in addition to OFAC, which has its own enforcement section. If OFAC finds cases it is reviewing to be really egregious they may be referred to the DoJ," said Van Cleef

On the plus side for industry and services struggling with the new sanctions workload, in May 2023, the US Treasury established a sanctions economic analysis unit, hiring two economists to research the "collateral damage of sanctions before they're imposed, and after they've been put in place to see if they should be adjusted". [12] Amir Fadavi, a senior director at risk advisory firm K2 Integrity, in Washington, DC welcomed the move: "More can be learned, especially if you study Iran sanctions, as you can study evasion techniques and may be able to pre-emptively address them."

Measures against Iran, in place for 44 years, are already comprehensive: Fadavi notes that "there are few targets left to sanction in Iran on the US side, with so many blocked persons and secondary sanctions, except for food, medicine and humanitarian aid." He does, however, expect further designations of Iranians supporting Yemen's Houthis, following the Islamist group's attacks on international shipping in the Red Sea, as well as those supporting Hamas and Hizbullah, and on the country's arms sector, in a bid to ratchet up pressure on Tehran to curb the sale of military drones to Russia for use against Ukraine..

Brussels' broadsides – evaded?

The EU has also had greater recourse to sanctions since the invasion of Ukraine, having released 12 packages of measures against Russia, with expected to be approved this month [February 2024], which would take the number of listed Russian companies and those with Russian links (including companies based in China, India, Sri Lanka, Turkey, Thailand, Serbia and Kazakhstan) under sanctions to 643. More than 200 individuals are slated to be designated as well, according to the *Financial Times*. [13]

Saskia Rietbroek, executive director of the Association of Certified Sanctions Specialists (ACSS), noted an increasing EU focus on circumvention through third countries. "The growth of exports of banned items is extremely worrying and the authorities are tackling that issue – not just through more new sanctions, or listing additional products or entities, but [by looking at] how can we tackle or enforce what we have now. That is what saw in the [EU's] twelfth package, on enforcement and circumvention," she said. [14] So far though, an mechanism, introduced in 2023, to ban the export of goods to a country suspected of circumventing sanctions "has not yet been used," said Rietbroek. [15]

The European Commission sees it as a measure of last resort that "will allow the EU to restrict the sale, supply, transfer or export of specified sanctions goods and technology to certain third countries whose jurisdictions are considered to be at continued and particularly high risk of circumvention". [16]

Same penalties, single enforcer

Another prospect is more consistency across EU member states though a common basic standard for penalties, which includes a prison term of at least five years for specific sanctions offences: "The levelling of the playing field, with criminal fines for violation of sanctions, is a step in the right direction, but we ultimately need authorities at a national level to take action," said Rietbroek.

Creation of a new centralised EU enforcement agency is also being discussed, following a Dutch government proposal last February [2023]. [17] If agreed, it would be "a huge step," she remarked.

The outlook is for more and targeted sanctions as well as stronger enforcement. Counter-sanctions are also expected: "I think you will see sanctioned countries pushing back, as we have [already] seen Russia and China do. It is complex for companies that have operations in those countries," said Rietbroek.

Notes

- <https://www.gov.uk/government/news/uk-sanctions-extremist-settlers-in-the-west-bank-and-russia>
<https://www.gov.uk/government/publications/the-uk-sanctions-list>
- <https://www.reuters.com/world/europe/russia-slaps-sanctions-british-officials-academics-2024-02-12/>
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- <https://yalebooks.yale.edu/2022/02/24/the-history-of-economic-sanctions-as-a-tool-of-war/>
- <https://home.treasury.gov/system/files/136/Treasury-2021-sanctions-review.pdf>
- <https://home.treasury.gov/news/press-releases/jy1779>
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- <https://www.euractiv.com/section/global-europe/news/netherlands-calls-for-eu-sanctions-enforcement-headquarters/>

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