

The sanctions landscape: what to expect in 2018

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In 2017 there were a number of major sanctions developments in both the EU and the US, with implications for businesses both in terms of keeping their compliance processes effective, and in terms of what to do if breaches are discovered. Already, 2018 has brought some changes, and looks set to be another key year for sanctions compliance with developments likely both in changes to some countries' regulatory approach, and substantive sanctions measures. This article considers some key changes to expect in 2018.

Regulatory issues

UK: Sanctions reporting obligation

In August 2017, the UK expanded its sanctions reporting obligation (which previously applied only to FCA-regulated entities) to other categories of person, including lawyers, accountants tax advisers and trust and company service-providers (see our [OnPoint here](#)). Those to whom it applies are now required to report breaches of UK sanctions to OFSI (save where legal privilege applies), if discovered in the course of business, with criminal penalties for failure to comply. However the scope of the obligation remains unclear in a number of ways, and teething problems with the application of these requirements in 2018 are likely; it is clear that OFSI takes this reporting obligation seriously, and it is expected that it may issue guidance to clarify what is required of those to whom it applies.

Increased sanctions enforcement activity in EU

In the US, 2017 was another busy year for OFAC, even if the fines never reached the dizzy heights of *BNP Paribas*. However in the EU, sanctions enforcement has generally been achieved by the gentle prod of regulatory engagement rather than the stick of penalties or prosecution. In 2017, signs emerged that some Member States' approaches to enforcement are hardening: OFSI (in the UK) was empowered, from April 2017 to issue monetary penalties for sanctions breaches administratively (ie without having to bring court proceedings, and on the basis of the lower civil evidential standard); it has yet to use this power, but there are reportedly 50 to 60 cases under active investigation, so it is only a matter of time. In France and Belgium, sanctions enforcement authorities recently raided the offices of entities suspected of Syria sanctions breaches; and there have been a number of prosecutions in the Netherlands in 2017. We expect to see a continuation of this trend into 2018, and we advise businesses, especially those in regulated sectors, to ensure that their internal sanctions compliance policies and processes are robust, and that any possible breaches are proactively reviewed when discovered; OFSI has been very clear in recent guidance that it expects self-disclosure from businesses where they know of past or current breaches, and that it will reserve its highest penalties for those that do not self-report known breaches.

Brexit: Sanctions and AML Bill

In 2017, as part of its preparations for Brexit (29 March 2019), the UK government published its Sanctions and Anti-Money-Laundering Bill. The Bill (as introduced) introduces a legal framework, whereby many of the substantive decisions will be taken in secondary legislation in relation to individual sanctions regimes. The Bill therefore does not clarify key issues in relation to the jurisdictional reach of UK sanctions, its likely approach to licensing, and the requirements on ownership and control (which are key concepts in shaping what is required of business' sanctions compliance policy), nor does it clarify whether or not UK sanctions are likely to align closely with EU sanctions, either in form or substantive content. There will likely be considerable changes to the Bill as it

passes through Parliament in 2018. It remains unclear whether it will apply during any “transition period”, or whether EU sanctions regulations would continue to apply for that period. Clarity on at least some of these issues can be expected during 2018; businesses will need to take steps at that stage to ensure that their compliance procedures are appropriate for the transitional period landscape.

Substantive sanctions measures:

Sanctions are dependent on political events, so it follows that their course can rarely be predicted with any certainty. But it is possible to pick out some areas where changes are likely:

Iran

The easing of international sanctions on Iran in 2016 was subject to a “snap back” provision: if Iran ceases to comply with its commitments to abandon its nuclear weapons programme, the pre-JCPOA¹ sanctions would reapply. In January this year, President Trump indicated that the US will withdraw from the JCPOA in May 2018 if “our European allies” do not agree to “fix the terrible flaws” in the agreement. It seems unlikely that the EU allies in question (UK, France and Germany and the EU itself) will agree, and even if they were to do so, other parties (Russia, China, Iran) would need to agree any changes. If President Trump’s words are to be taken at face value, US withdrawal from the JCPOA in May 2018 now seems a likely outcome.

US withdrawal would not itself trigger snap back if it does not entail any assertion of non-compliance by Iran. But Iran may consider the whole JCPOA at an end following US withdrawal, and it may then take actions that in themselves constitute breaches. This could see the UN sanctions snap back; and potentially also the (wider) EU sanctions. Much therefore hangs on the US President’s decision in May, and (if the US does indeed withdraw), Iran’s reaction to it. Businesses which have started to operate in Iran since January 2016 will need to prepare for the various scenarios that may ensue.

At the same time, the US has steadily been adding to its list of Iranian designations under its other sanctions programmes, and there have been calls in the UK for IRGC to be designated as a terrorist entity. This trend is likely to continue, in view of Iran’s regions assertion of power (and thereby adding to the compliance burdens for affected businesses), no matter how the nuclear sanctions situation develops.

Russia

In 2017, the US passed the Countering America’s Adversaries Through Sanctions Act (“CAATSA”), which ushered in a number of new measures in relation to Russia and broadened others, as well as placing the whole US Russia sanctions on the statute book, with the effect that they are less likely to be lifted any time soon (the US measures were previously delivered through Presidential Executive Orders). One of the CAATSA measures which raised particular concern in the EU was the proposal that entities supporting the construction and maintenance of oil or gas pipelines may be targeted by US sanctions (a number of prominent EU companies have involvement in such projects). The measure remains, but now includes a proviso that it will be used only “*in coordination with allies of the United States*”, which offers some (but limited) reassurance to those non-US businesses potentially implicated.

CAATSA also required that the Secretary of State report to Congress detailing senior political figures and oligarchs in Russia. That report, which attracted much attention in Russia, has now been published (we report on it in more detail in [a separate On Point note](#)). Persons named in this report are not, for now, subject to any further legal restrictions, but US Treasury Secretary Mnuchin has indicated in Congress that “*there will be sanctions that*

¹ Joint Comprehensive Plan of Action

come out of this report'. So it is to be expected that further US sanctions on Russia may follow in the coming months.

On the EU side, no new sanctions measures regarding Russia appear likely for now. However judgments are expected this year in respect of challenges in the Court of Justice of the EU by Sberbank and VTB to the validity of their listings under the EU's capital markets restrictions in its Russia sanctions regime. These rulings will have implications for the permissibility of dealing with those entities, and potentially more generally for dealings with all the entities targeted for capital markets restrictions by the EU.

North Korea

The UN expanded the sanctions on North Korea significantly in 2017 in response to the North Korea's ongoing nuclear and ballistic missile-development activities. The result is that to a very large extent, business with North Korea is off-limits. The prospects of a significant thaw in relations and de-escalation of the sanctions in 2018 look slim, although the recent alignment with South Korea at the Winter Olympics may hint at a desire to pursue a less confrontational approach going forward, which could – if pursued – lead to some possibilities for resumption of certain trade.

Venezuela

In 2017, the US and EU imposed sanctions on Venezuela in response to the growing political crisis in the country, the erosion of democratic institutions and human rights concerns. The sanctions have taken rather different shape in the US, where measures include prohibitions on dealing in new sovereign debt and certain bonds and securities, and the EU which established an arms export ban and the framework for a targeted asset freeze. Initially, no individuals or entities were designated under the EU asset freeze. However, in January 2018 the EU designated 7 Venezuelan officials. Also this year, Venezuelan president Maduro has announced the pre-sale of its proposed "petro" crypto-currency, apparently in part to overcome international sanctions. Further developments this year appear likely.

Other possible sanctions developments

There are a number of other areas where further measures might also be seen: most prominently, further sanctions against Burma have been discussed in relation to on continuing violence in Rakhine State, and the ongoing complexities of the situation in Syria may lead to changes in the sanctions in and around that country.

Separately, a noticeable recent trend is the expanded use of thematic (rather than geographically-focussed) sanctions: anti-terrorism sanctions are by now well established, as are (in the US) anti-narcotics sanctions, and the international rough-diamond trade is similarly restricted, albeit not characterised as a sanctions framework. The US and a handful of other countries have recently established human-rights related sanctions (known as Global Magnitsky in the US), which look likely to gather momentum. A UK regime has recently come into force. Cyber-sanctions remain at the early stages in the US, and at the policy stage in the EU, but may accelerate if cyber-attacks continue on a significant scale, and other categories of thematic sanctions may yet emerge.

How Dechert can help

Our highly rated sanctions and international trade team, based in London and Washington DC with experts across key jurisdictions, stand ready to assist businesses in ensuring the robustness of their processes, adjusting to the many changes which may occur during the course of the year, and advising on any concerns as to compliance.

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