

Baker McKenzie. Welcome

12 June 2018

Stockholm



Trade
Update

2018



Agenda

08.30-09.00 **Registration and breakfast**

09.00-09.45 **Global Trade Environment and Policy - navigating in a complex world**

09.45-10.30 **US sanctions against Russia and counter sanctions**

10.30-11.00 **Coffee break**

11.00-11.45 **Sanctions and GDPR - how to navigate**

11.45-12.30 **Sanctions Update on Iran**

12.30-13.30 **Lunch and networking**

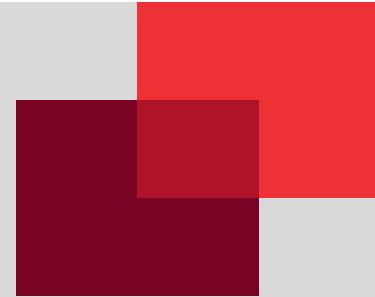


Global Trade Environment and Policy - navigating in a complex world

Mattias Hedwall



Baker McKenzie.



What will this mean?

- Higher costs for doing business
- Adjusting the supply chain
- Alternative trade partners
- China and Asia impact
- Uncertainty of what's next





China Export Control Law

China – Draft Export Control Law Background

- 16 June 2017 MOFCOM proposed a new Export Control Law (**ECL**)
- Key Changes
 - The controlled items – i.e., dual-use items, military products, nuclear materials and other products that have implications for national security – are defined to include not only the tangible goods, but also the related technologies and services
 - Allows for licensing authorities to issue “general licenses”
 - The government’s intention to adopt international practices in defining “dual-use items”
 - Remains to be seen whether the new catalogue of dual-use items would conform to that of the Wassenaar Arrangement

China – Draft Export Control Law Background

- Key Changes (Continued)
 - Authorizes the government to list *any* goods or technologies as controlled items in times of war or in “urgent situations”, and take provisional measures to control items that are not listed in the existing catalogue for up to two years
 - Includes a black-listed control that includes foreign importers and end-users who fail fulfil the end-user or end-use commitments, who may pose threats to national security or who may use the exported items for terrorist purposes
 - Encourages enterprises to establish internal compliance program (“ICP”) for export control, and may grant licensing facilitations to enterprises which adopt ICP
 - Introduces concepts of "deemed export" and “re-export”, which are adopted by the US



Brexit

Brexit

- Businesses are already feeling the impact of Brexit.
- 84% of respondents in Sweden are actively assessing Brexit-related risks, 79% have made changes.
- 45% of respondents – and 54% of respondents in Sweden, see opportunities.
- 33% would like to see the UK punished for leaving the EU, but (98%) say continuing to trade with UK on good terms is important .





US sanctions against Russia and counter sanctions

Paul Amberg and Vladimir Efremov





US Russia Sanctions

US Sanctions and Export Controls

- Complete US embargo of Crimea (since December 2014)
- Sanctioned (blocked) parties (SDNs)
 - Includes non-listed entities 50% or more owned by one or more SDNs
 - Targets prominent oligarchs, banks, and military companies, among others
- Export restrictions on items subject to US jurisdiction
 - Certain items for exploration or production related to **deepwater, Arctic offshore, or shale formation projects in Russia (Russian Oil Industry End-Uses)** that have the potential to produce OIL or GAS
 - Prohibited end-users (Entity List)
 - Parties subject to restrictions related to Russian Oil Industry End-Uses
 - Aug. 2015 designation of Yuzhno-Kirinskoye Field
 - Military end-user/end-use restrictions

US Sectoral Sanctions

- Sectoral Sanctions, targeted under 4 Directives
- Identified on Sectoral Sanctions Identification List, but also includes 50% or more owned entities
- Affected by “Countering America’s Adversaries Through Sanctions Act” (“CAATSA”)
- Ban on **new debt** of longer than **14 days** and **new equity** for **Directive 1** banks (i.e., *Bank of Moscow, Gazprombank, Russian Agricultural Bank, Sberbank, VEB, VTB*)
- Ban on **new debt** of longer than **60 days** for **Directive 2** energy companies (i.e., *AK Transneft, Gazprom Neft, Novatek, Rosneft*)
- Ban on **new debt** of longer than **30 days** for **Directive 3** military companies (i.e., *Rostec*)
- Ban on US or non-US goods, non-financial services, or technology for **Directive 4** energy companies involved in exploration or production projects related to Russian Oil Industry End-Uses that have the potential to produce OIL
 - In **Russia** or
 - **Anywhere in the world** for projects initiated as of January 29, 2018 in which a Directive 4 entity has a **33% or greater ownership interest** or a **majority of the voting interest**
 - Directive 4 entities = *Gazprom, Gazprom Neft, Lukoil, Rosneft, Surgutneftegas*

CAATSA Secondary Sanctions (all persons)

- General
 - US has significant discretion in implementing secondary sanctions
 - No civil or criminal penalties – restrictions on doing business involving the United States
- Russian energy export pipelines
 - Targets both investments and supply of goods/services for pipeline construction, modernization, or repair
 - Monetary thresholds: (1) single transaction $\geq \$1$ M or (2) aggregated transactions in 12-month period $\geq \$5$ M
- Investments in the privatization of Russia's state-owned assets $\geq \$10$ M
 - Targets privatizations that contribute to Russia's ability to privatize state-owned assets in a manner that unjustly benefits Russian government officials or their close associates or family members
- Significant transactions with Russian defense/intelligence sector
- Foreign sanctions evaders for dealings with Russian sanctioned parties

CAATSA Secondary Sanctions (non-US persons)

- Significant investments in “special Russian crude oil projects” (aka projects involving Russian Oil Industry End-Uses)
- Non-US financial institutions that knowingly engage in significant financial transactions with Russian SDNs
- Sanctions on Russian government officials and their close associates and family members for acts of “significant corruption” in Russia or elsewhere
- Parties involved in serious human rights abuses in any territory forcibly occupied or otherwise controlled by the Russian government

Most Recent Developments

- October 27, 2017 – List of persons operating in Russian defense and intelligence sectors
- January 29, 2018 – List of senior Russian political figures and oligarchs and Russian parastatal entities
- April 6, 2018 – SDN designation of 7 Russian oligarchs, 12 companies they own or control, and 17 senior Russian Government officials, including RUSAL, EN+ Group, GAZ Group, Gazprom Burenje, Renova Group
- OFAC General Licenses
 - 13B - debt/equity/holdings EN+ Group, GAZ Group, RUSAL through August 4, 2018
 - 14, 15, and 16 – wind down/maintenance through October 22, 2018
 - RUSAL, GAZ Group, EN+ Group, JSC EuroSibEnergo



Russian Protectionism and Counter-Sanctions

Russia's Response – General Overview

- **Travel ban** for certain western politicians (list is not fully disclosed)
- **Food import ban** – covers US/EU and others
- **Restrictions in sphere of public procurement:**
 - Public procurement in Russian IT sector
 - Ban on foreign software products
 - ✓ State register of “Russian” software (covers all types of software)
 - ✓ Statutory exemption: absence of Russian analogues
 - Restrictions on local certification of software/hardware information security tools (IST)
 - Ban on public procurement of foreign goods in sphere of:
 - Defense/national security; industrial machines, motor vehicles; light industry
 - Restrictions for certain types of foreign products
 - **“3 is crowd” principle**
 - ✓ Radio-electronic goods; medical devices; vital/essential medicinal preparations; food products
 - **“2 is crowd” principle**
 - ✓ Disposable medical products made from PVC (requirement to participate in special localization projects)

Law on Russian Countermeasures (1)

- The Law "On Measures (Countermeasures) in Response to Unfriendly Actions of the USA and (or) other Foreign States" was adopted by the Russian State Duma on May 22, 2018 and approved by the Federation Council on May 30, 2018 ("The Law on Countermeasures")
- The Law on Countermeasures is expected to enter into force by the end of June 2018
- The proposed new countermeasures include the following:
 - **Suspension or termination of international cooperation** of Russia and Russian legal entities with (i) unfriendly states, (ii) entities subject to jurisdiction of unfriendly states that are directly or indirectly controlled by, or affiliated with, unfriendly foreign states (in accordance with decision of the President of Russia)
 - **Import ban or import restrictions** with respect to products and/or raw materials (i) originating from unfriendly states, or (ii) manufactured by entities subject to jurisdiction of unfriendly states that are directly or indirectly controlled by, or affiliated with, unfriendly foreign states (the list of products and/or raw materials will be determined by the Russian Government)
 - **Export ban or export restrictions** with respect to products and/or raw materials, if exported by (i) citizens of unfriendly states, (ii) entities subject to jurisdiction of unfriendly states that are directly or indirectly controlled by, or affiliated with, unfriendly foreign states (the list of products and/or raw materials will be determined by the Russian Government)
 - **Prohibition or restriction on** the provision (in Russia) of works/services for state and municipal needs and for the needs of certain kinds of legal entities (as defined by Article 2 (1) of Federal Law of July 18, 2011 № 223-ФЗ), if such works/services are provided by entities subject to jurisdiction of unfriendly states that are directly or indirectly controlled by, or affiliated with, unfriendly foreign states (the list of works/services will be determined by the Russian Government)

Law on Russian Countermeasures (2)

- **Prohibition or restriction on** (i) privatization of state and municipal property, (ii) provision of works/services related to organization for the sale of federal property and/or (iii) performance of the functions of the seller of federal property for entities subject to jurisdiction of unfriendly states that are directly or indirectly controlled by, or affiliated with, unfriendly foreign states
- **Other measures as determined by the President of Russia**
- Other provisions of the Draft:
 - Possibility to introduce a **special national regime for goods and services originating from the unfriendly states** if such states introduce any restrictions for goods and services originating from Russia
 - **Import ban or import restrictions** shall not cover vital goods analogues to which cannot be found in Russia
 - **Import ban or import restrictions** shall not cover imports of articles for personal use by Russian and foreign citizens and persons without citizenship

Draft Bill on Criminal Liability for Compliance with Sanctions (1)

- On May 16, 2018 the State Duma adopted in the first reading the Draft Bill No. 464757-7 “On Amendments to the Criminal Code of the Russian Federation” (“**Draft**”), envisaging criminal liability for complying with Western sanctions
- The Draft after the first reading introduces Article 284.2 of the Russian Criminal Code, which envisages criminal liability for the following types of crimes:
 - **Actions (or omission to act) aimed at fulfillment of a decision** of a foreign state, union of foreign states or international organization **to impose restrictive measures against Russia**, its citizens and legal entities (including “controlled” public and private entities) **if such actions (omission to act) lead to the restriction or refusal to fulfil “ordinary economic operations or transactions”** by Russia, its citizens and legal entities
 - Maximum liability:
 - imprisonment: **up to four years**; and
 - fine:
 - ✓ up to **RUB 200,000 (approx. USD 3,300)**; or
 - ✓ in the amount of the **salary or other income** of the convicted person for a period of up to **one year**

Draft Bill on Criminal Liability for Compliance with Sanctions (2)

- Willful actions of a Russian citizen that contribute to the imposition of restrictive measures by a foreign state, union of foreign states, international organization on Russian public and private entities (including their controlled entities). Such willful actions may involve recommendations and provision of information that led to the imposition of such restrictive measures
 - imprisonment: up to three years; and
 - fine:
 - ✓ up to RUB 200,000 (approx. USD 3,300); or
 - ✓ in the amount of the salary or other income of the convicted person for a period of up to one year



Draft Bill on Criminal Liability for Compliance with Sanctions (3)

- The second reading of the Draft initially scheduled for May 17, 2018 was postponed
- The current version of the Draft is being strongly criticized by business community in Russia, which claims that the Draft in its current version leads to severe inadequate risks for all market players because of its vague and poorly thought-out wording
- It has been announced that Russian lawmakers agreed to introduce some changes into the Draft, in particular:
 - Either to completely exclude the first part or significantly redraft it or to introduce administrative liability instead of criminal liability
 - Actions that contribute to tightening of the sanctions regime towards Russia would likely remain criminally punishable



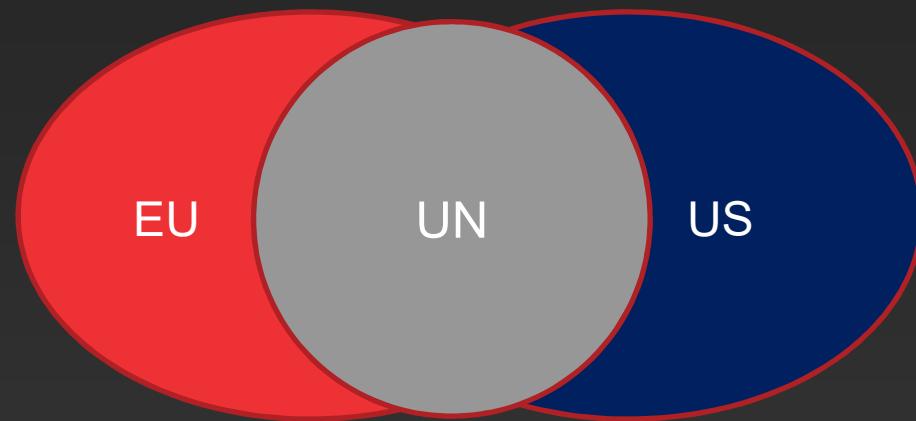
Sanctions and GDPR – how to navigate

Jennie Nilsson, Olof Johannesson and Florian Tannen



Sanctions | Designated Person ("DP") Controls

- *"No funds or economic resources shall be made available, **directly or indirectly**, to or for the benefit of the natural or legal persons, entities or bodies"*
- DPs can include a wide range of parties, e.g.;
 - entities
 - individuals
 - organisations
 - charities
- Failure to comply...
- Knowledge defence of *"did not know, and had no reasonable cause to suspect"*



Sanctions | Screening Procedure

Screening of third parties in high-risk countries is required!

However...

- What information?
- From which source?
- When/How often?
- How to screen?
- Which lists should I screen against?
- Documentation?



“had no reasonable cause to suspect”

Conflict between screening and data privacy rules



GDPR | Art. 10 Processing of personal data related to criminal convictions and offences

Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6

(1) shall be carried out only under the control of official authority or when the processing is authorised by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority.



GDPR | Prop. 2017/18:105

International trade.

Avoidance of competitive disadvantage for Swedish companies related to permissibility to screen against foreign sanctions lists.

Applications for exceptions – heavy administrative burden for companies and the Swedish Data Protection Authority.

GDPR | Regulation or application for exceptions?

Swedish Protection Authority regulation DIFS 2018:2

Heavily criticized for not generally allowing U.S. screening requirements based on legitimate interest

General exception for the Swedish Bankers' Association



GDPR | Processing factors

Processing of personal data from sanctions lists constitutes processing of personal data related to criminal convictions and offences.

Legal basis for processing due to legal obligation is only applicable for EU or member state law.

Limited integrity intrusion, publicly available.

No other means to fulfill the purpose, i.e. to comply with sanctions regulations.



GDPR | Accountability

1. DPIA "high risk to the rights and freedoms of natural persons"
2. Minimization
3. Access controls
4. Storage limitation
5. Information in Privacy Policy (also for screening against EU sanctions lists)
6. Education of employees



Going forward

Two possible ways

1. Wait until the Swedish Data Protection Authority has issued additional regulation(s), or
2. Apply for an exception

Meanwhile...

- Assess your procedures regarding processing of personal data
- Assess your screening procedures



Sanctions Update on Iran

Paul Amberg and Olof König



US Iran Sanctions

- **Complete US embargo of Iran** (applicable to US Persons and non-US subsidiaries owned or controlled by US Persons)
 - Some licenses available: Ag/Med, General License D-1, J-1
- **US secondary sanctions** (can be imposed on non-US persons)
 - Related to certain sectors of Iranian economy including automotive, energy and petrochemical, insurance, shipping/shipbuilding, financial, dealing with Iranian SDNs
- **Joint Comprehensive Plan of Action** (Iran Nuclear Deal) – January 16, 2016
 - Deal by US, UK, France, Russia, China, Germany, and Iran to lift nuclear-related sanctions in exchange for restrictions to Iran's nuclear program
 - US lifted most secondary sanctions
 - US withdrew on May 8, 2018
- **Main takeaway:** risk of US secondary sanctions returns following expiration of 90-day (August 6, 2018) and 180-day (November 4, 2018) wind-down periods
 - Exact risk of secondary sanctions risks is difficult to assess

US Sanctions to Be Re-Imposed

> US Secondary Sanctions

> Revoking General Licenses, Specific Licensing Policy

- General License H: authorized non-US owned/controlled subsidiaries of US companies to conduct business with Iran
- General License I: authorized US persons to engage in transactions ordinarily incident to negotiation/entry into contingent contracts for activities related to commercial passenger aircraft and related parts and services
- Importation into United States of Iranian-origin foodstuffs and carpets

> Re-Listing of SDNs

Secondary Sanctions Re-Imposed on August 7

- Sanctions on Iran's automotive sector
- Sanctions on purchase or acquisition of US dollar banknotes by the Government of Iran
- Sanctions on Iran's trade in gold or precious metals
- Sanctions on the direct or indirect sale, supply, or transfer from Iran, of graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes
- Sanctions on significant transactions related to the purchase or sale of Iranian rials, or the maintenance of significant funds or accounts outside the territory of Iran denominated in the Iranian rial
- Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt

Secondary Sanctions Re-Impost on November 5

- Sanctions on Iran's energy sector
- Sanctions on Iran's port operators, and shipping and shipbuilding sectors, including Islamic Republic of Iran Shipping Lines (IRISL), South Shipping Line Iran, or their affiliates
- Sanctions on petroleum-related transactions with, among others, National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), and National Iranian Tanker Company (NITC), including the purchase of petroleum, petroleum products, or petrochemical products from Iran
- Sanctions on transactions by foreign financial institutions with Central Bank of Iran and designated Iranian financial institutions
- Sanctions on the provision of specialized financial messaging services to the Central Bank of Iran and certain Iranian financial institutions
- Sanctions on the provision of underwriting services, insurance, or reinsurance

OFAC Guidance on Winding Down

- Non-US persons advised to use the wind-down periods to wind down their activities in or with Iran that will become sanctionable after the wind-down period ends
- OFAC will consider **new business** entered into during wind-down period when deciding whether to impose secondary sanctions after wind down
- Receipt of **payment** after wind-down period allowed if:
 - Goods/services fully provided prior to end of wind-down period
 - Pre-May 8 Written agreement/contract
 - Activities consistent with US sanctions in place at time
- Receipt of **repayment** of debt or obligation after wind-down period allowed if:
 - Loan/credit was extended prior to end of wind-down period
 - Pre-May 8 Written agreement/contract
 - Activities consistent with US sanctions in place at time



EU Blocking Regulation

EU Blocking Regulation (1)

Background

- The EU opposes extra-territorial application of foreign sanctions legislation as violation of international law and seeks to neutralise such legislation.
- EU Regulation (EC) 2271/96 ("Blocking Regulation") was adopted in 1996 as a reaction to the US embargo of Cuba and certain US sanctions on Iran and Libya.
- It aims to protect against and counteract the effects of the extra-territorial application of the respective non-EU sanctions.

EU Blocking Regulation (2)

Scope

- It covers **all EU persons**, including
 - all EU-incorporated companies;
 - EU residents/ nationals; and
 - non-EU nationals resident in the EU in respect of their acts in a professional capacity.

EU Blocking Regulation (3)

Content

1. **Judgments, awards or decisions** of administrative authorities located outside the EU giving effect, directly or indirectly, to US sanctions on Iran are **not recognized or enforceable** in the EU against EU persons.
2. Intentionally worded broadly, it **prohibits EU persons from complying with any requirement or prohibition** of a non-EU sanctions law listed in the Regulation's Annex.
 - This may include terminating Iran-related agreements, businesses, or even negotiations
3. **"Claw-Back-Clause"** - Entitlement to recover any damages caused by the application of the specified measures.
4. Obligation **to inform the Commission** of any effects on the economic and/or financial interests of that person caused by a measure blocked in the Annex.

EU Blocking Regulation (4)

Enforcement Risk

- Breaching the Regulation by complying with relevant US sanctions law may lead to
 1. Penalty under the law of the relevant EU Member State
 - may include e.g. effective, proportional and dissuasive criminal/civil liability, fines, etc.
 2. Liability for Damages
 - Any person who suffers losses as a result of the compliance with US sanctions is entitled to claim damages against the EU person.



Latest Developments

EU Response to US Withdrawal

EU Commission plans to

1. **Re-activate EU Regulation (EC) No. 2271/1996** (“EU Blocking Regulation”) in relation to Iran.
 - On 6 June 2018, the Commission announced that it had formally adopted an update of the Blocking Statute.
 - The European Parliament and Council now have a period of two months to object to these measures before they enter into force.
2. Propose **further measures** to make it easier for EU businesses to obtain financing for their Iran-related business and to process Iran-related money transfers



Further EU Measures

The European Commission

1. launched a formal process to remove obstacles to the **European Investment Bank** to finance activities outside the EU, e.g. in Iran, in order to help facilitate its support of EU investments in Iran;
2. encourages EU Member States to explore the possibility of one-time bank transfers to the **Central Bank of Iran**; and
3. plans to continue and strengthen ongoing sectoral cooperation with, and assistance to, Iran, including in the energy sector and with regard to small and medium-sized companies.



Thank you!



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