

**Baker  
McKenzie.**

# **Export Controls and Sanctions**

20 – 22 September 2022

**ANNUAL COMPLIANCE CONFERENCE**



# Annual Compliance Conference 2022

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**Anti-Bribery and Corruption and Economic Crime**

6 – 8 September 2022

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2

**Customs and Key Compliance Developments**

13 – 15 September 2022

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**Export Controls and Sanctions**

20 – 22 September 2022

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**Antitrust Compliance**

27 – 29 September 2022

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5

**ESG, Supply Chain and Product Compliance**

4 – 6 October 2022

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# This week: Export Controls and Sanctions

## **Tuesday 20 September**

2.30 - 3.30 pm BST  
3.30 - 4.30 pm CEST  
9.30 - 10.30 am EDT

Russia/Ukraine Sanctions  
- Focus on Financial  
Sanctions

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## **Wednesday 21 September**

2.30 - 3.30 pm BST  
3.30 - 4.30 pm CEST  
9.30 - 10.30 am EDT

Russia/Ukraine Sanctions  
- Focus on Trade and  
Product Sanctions

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## **Thursday 22 September**

2.00 - 3.00 pm BST  
3.00 - 4.00 pm CEST  
9.00 - 10.00 am EDT

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## **Thursday 22 September**

3.45 - 4.45 pm BST  
4.45 - 5.45 pm CEST  
10.45 - 11.45 am EDT

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National Security and  
Foreign Investment  
Review Developments

**Baker  
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# **Global Sanctions and Export Controls Update**

22 September 2022, 2.00 – 3.00 pm BST

**ANNUAL COMPLIANCE CONFERENCE**



# Speakers



**Sunny Mann**  
Partner,  
London (Chair)



**Terry Gilroy**  
Partner,  
New York



**Frank Pan**  
Partner,  
Shanghai



**Alison Stafford-Powell**  
Partner,  
Palo Alto



**Ross Evans**  
Senior Associate,  
London



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**China**

# China-related developments

## United States



### Focus on Chip Sector:

- "Is Informed" letters issued under EAR 744.21(b) and 744.6 to various US semiconductor equipment vendors -> heralding upcoming broader regulatory change to EAR
  - Impact on products incorporating covered chips
  - Expansion to restrict exports of manufacturing equipment for producing at 14nm or below



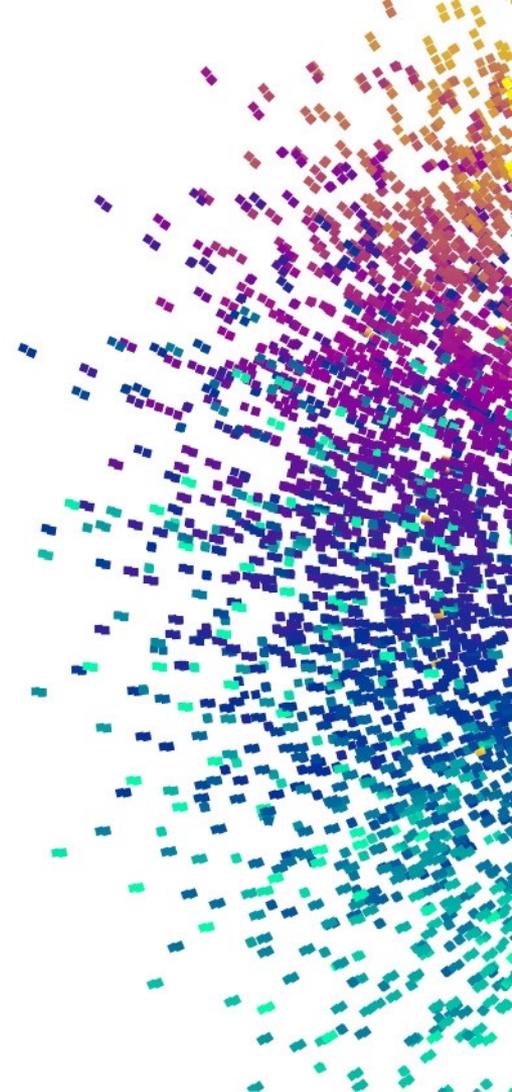
### Entity List designations ongoing



Controlling data flows to China – PII and AI algorithm data sets → new regime?



Outbound investment review mechanism?



# China-related developments

## China



### Chinese retaliatory sanctions and blocking regime

- Who have been actually "sanctioned" and prospect of future enforcement
- Risk of expanded "damage claim" under the blocking regime



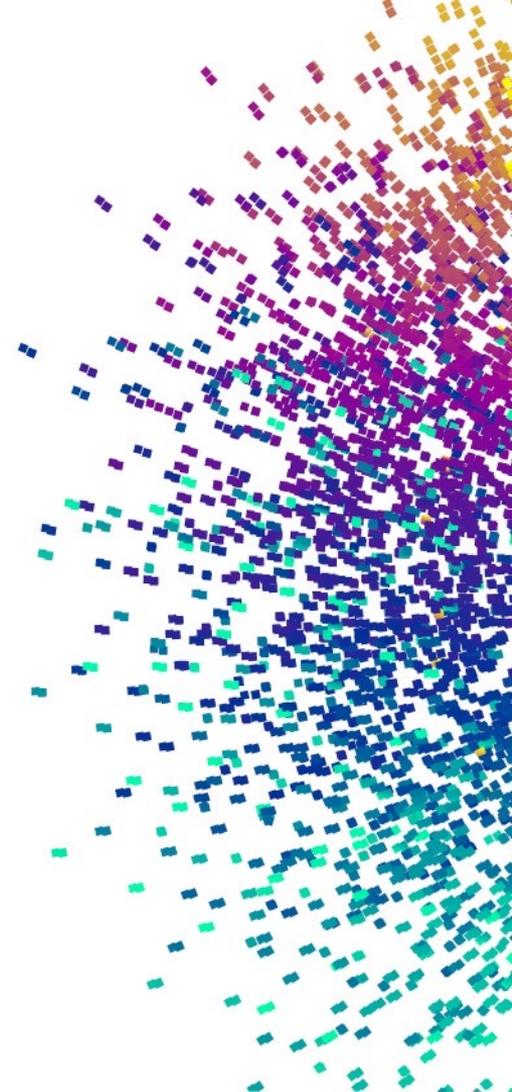
The data protection regulation restricts trade due diligence efforts undertaken under the "western" trade regimes



The "national security" considerations for end-use-based controls under the Chinese export control law



Import and export controls and cybersecurity measures over encryption technologies and items



# China-related developments

EU / UK



UK expanded military end-use export control, for items **not listed in Annex I**

- for use by any military, para-military or police forces, security services or intelligence services ("**Relevant Entity**") of an **embargoed destination** or by any person involved in the procurement, research, development, production or use of the items at the direction of the Relevant Entity

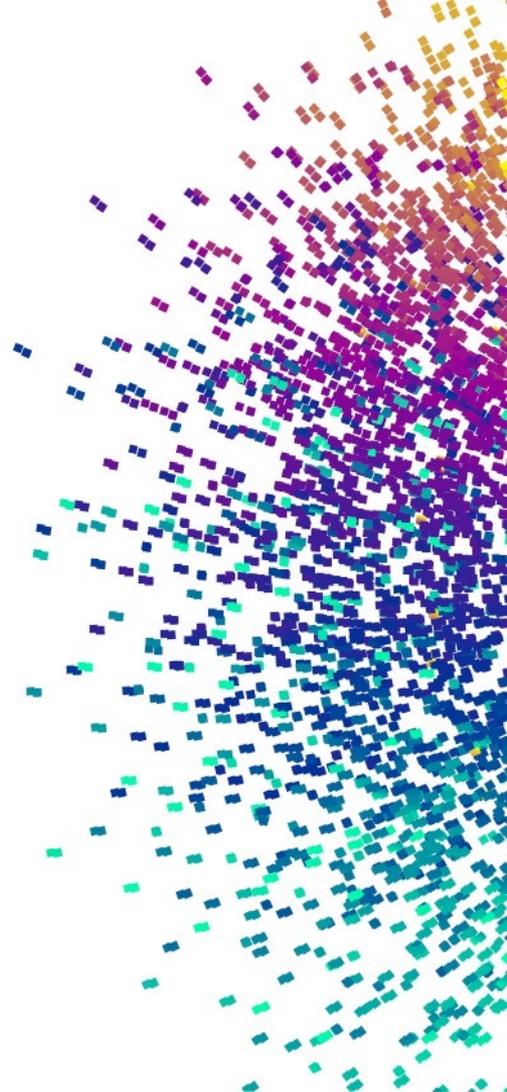


China, Hong Kong SAR and Macao SAR added to list of UK embargoed destinations



EU: last year introduced first sanctions (designations - human rights / Xingjian) against China since 1989 embargo

- NB: EU Supply Chain Due Diligence proposals





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Iran

# Iran



No significant changes to US sanctions since US exit from JCPOA



Restoration of JCPOA top Biden Administration foreign policy priority, but public reporting indicates parties are not close to a deal



Iran insistence on termination of current IAEA investigation into Iran's nuclear program relating to identification of nuclear material at undeclared sites

# Iran

## CJEU ruling on blocking regulation



Judgement from the Court of Justice of the European Union in **Bank Melli Iran** (C-124/20), relating to application of the EU blocking statute (Regulation (EC) No 2271/96).

- Possible to terminate contracts concluded with a person included in blocked US sanctions without providing reasons - however in civil proceedings, if prima facie evidence suggests that the terminating party complied with the blocked US sanctions, that party has the burden of proving to the requisite legal standard that his or her conduct did not seek to comply with those laws
- The termination of contracts (which were terminated to comply with blocked US sanctions) may be annulled provided that such annulment does not entail disproportionate effects, including economic loss, for the person concerned

The background of the slide is a dark blue field filled with a dense pattern of small, multi-colored squares. The colors range from deep blue and purple to bright cyan and yellow, creating a vibrant, abstract effect that resembles a digital globe or a data visualization. The squares are scattered across the entire frame, with a higher concentration of yellow and cyan squares on the right side.

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# Other sanctions regimes

# Other US developments



Myanmar/Burma - US sanctions response to February 2021 coup has been largely list-based (activity from OFAC GTO relating to potential Burma targets)



Cuba - Some relaxation on travel restrictions that were tightened under Trump Administration, but generally no significant movement on Cuba policy (BIS "not focused on Cuba")

- General License authorizing travel by US persons to Cuba for purposes of attending professional meetings and conferences
- Amendments to general license authorizing travel for educational activities, removing certain restrictions
- No authorizations for tourism or individual "people to people" travel

# Thematic sanctions programmes

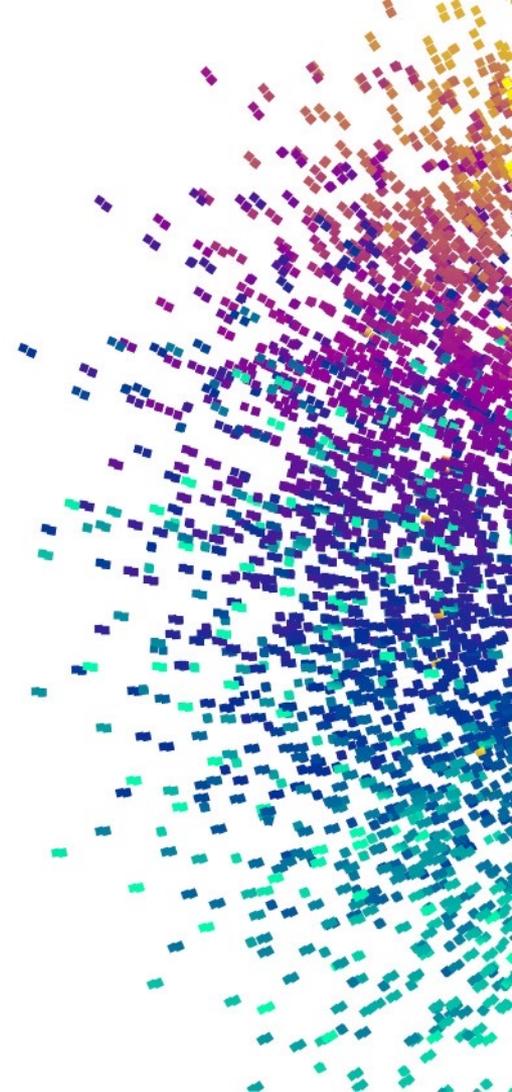


## Cyber

- OFAC issued guidance for virtual currency industry in October 2021 - reiterating requirement to block virtual assets in which an SDN has an interest (stressed importance of geolocation tools for virtual currency market participants to identify and prevent IP addresses that originate in sanctioned jurisdictions from accessing a company's website)
- SDN designation of virtual currency mixers Blender.io and Tornado Cash (issuance of FAQs concerning dealings by US persons with Tornado Cash)



## Human Rights – Continued OFAC focus on Magnitsky designations



# Other EU/UK developments



## Myanmar / Burma

- February 2022 - 4<sup>th</sup> round of sanctions (asset freeze)
- Existing range of trade sanctions – goods, services, telecoms



## Afghanistan

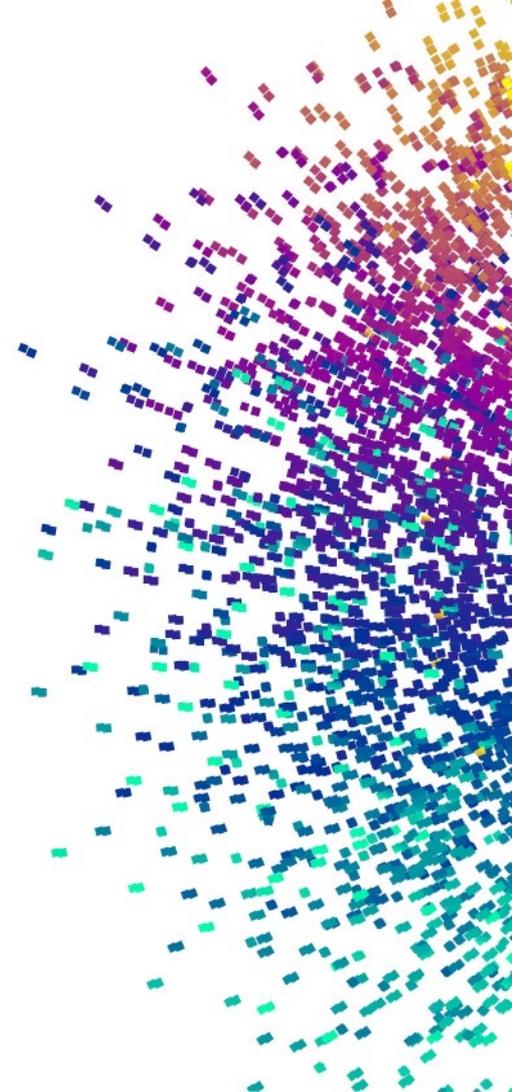
- UK export licences reviewed
- Humanitarian assistance exemption



## Continued use of thematic sanctions regimes



## Crypto-assets / Expanded sanctions toolkit?





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# Export controls and emerging technology

# US export control developments



## Emerging and Foundational Technology (Section 1758) developments:

- Aug 2022 interim rule: advanced semiconductor technologies, inc. EDA design tools for GAAFET technology; PGC technology
- Sept 2022 ANPRM – instruments for automated chemical synthesis of peptides
- Critical and Emerging Technologies List Report (Feb 2022)



**Foreign Direct Product Rule:** Feb 2022 Final Rule consolidating into EAR §734.9 the National Security FDP rule; 9X515 FDP rule, "600 series" FDP rule; Entity List FDP rule; Russia/Belarus FDP rule; Russia/Belarus Military End User FDP rule



## Cybersecurity Items: May 2022 updated rule

- License Exception ACE: Illustrative list of government end users
- License Exception ENC: New end user restriction



**Standards Setting:** Expansion/clarification re participation in standards setting activities with Entity List parties (9 Sept 2022 Interim Final Rule)

# EU: Recast dual-use regulation

Regulation (EU) 2021/821, one year on



Licensing changes

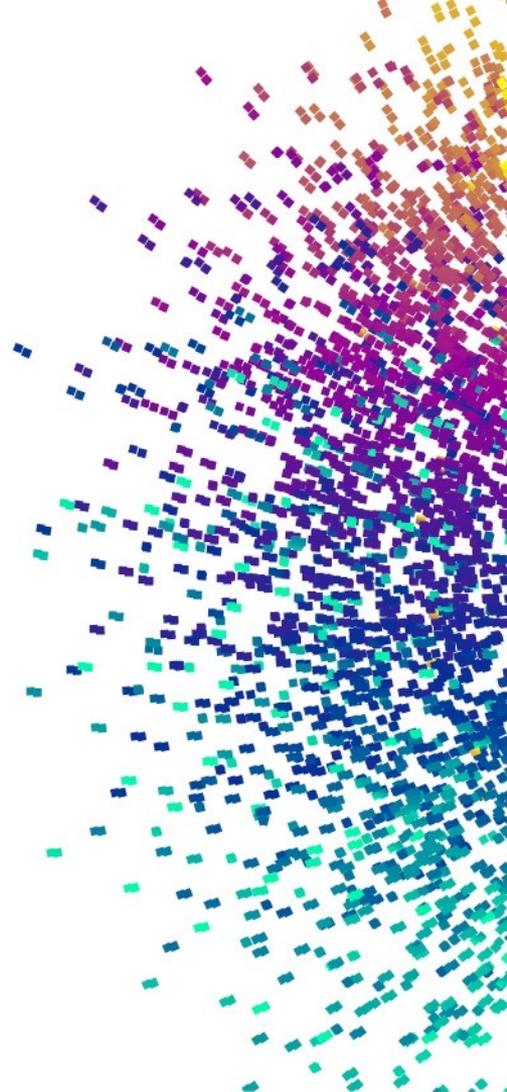


New controls: brokering, tech assist, cyber-surveillance

- BAFA “Leaflet on Art. 5 of the EU Dual-Use Regulation” provides guidance on cyber-surveillance control
  - items subject to control
  - prohibited end-uses
  - exporter awareness and due diligence expectations



Internal compliance programmes – required for certain licences



# UK: Export control developments



## Controls:

Expanded military end use control  
(+ China added to list of embargoed destinations)



## Licences:

New **Strategic Export Licensing Criteria** published in December 2021  
  
2 India OGELs



## Compliance:

Post-Brexit administrative requirements for exporters / licenses

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# Enforcement

# Enforcement trends

## US

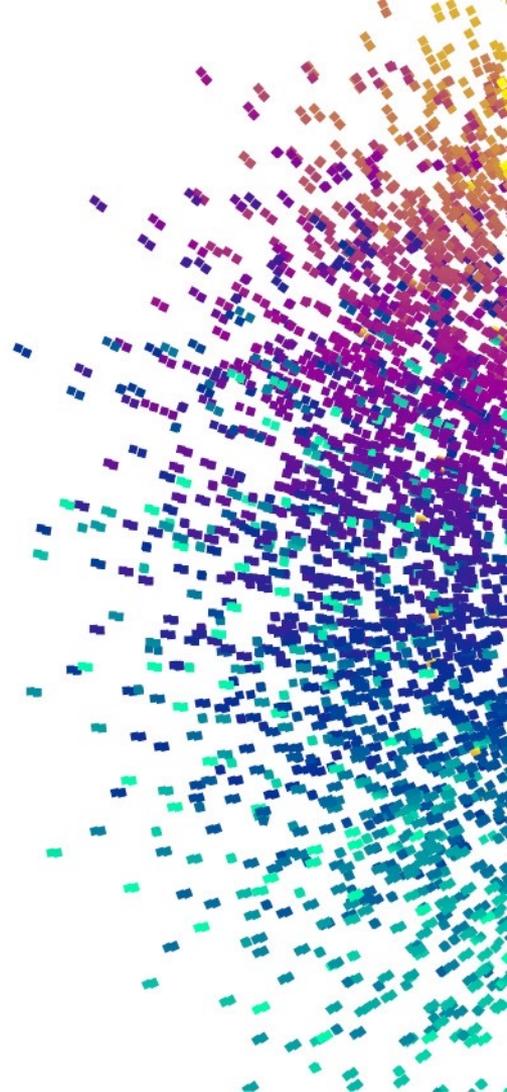


"Sanctions [is] the new FCPA" - DOJ DAG Lisa Monaco recently emphasized the importance of national security to DOJ's enforcement efforts and commitment to sanctions enforcement.



REPO Task Force ("Russian Elites, Proxies, and Oligarchs Task Force") - G7 and EC commitment to work together to seize assets of Russian sanctions targets

- Civil Asset Forfeiture - Key tool for DOJ sanctions enforcement (and high-profile evidence id US sanctions policy at work)



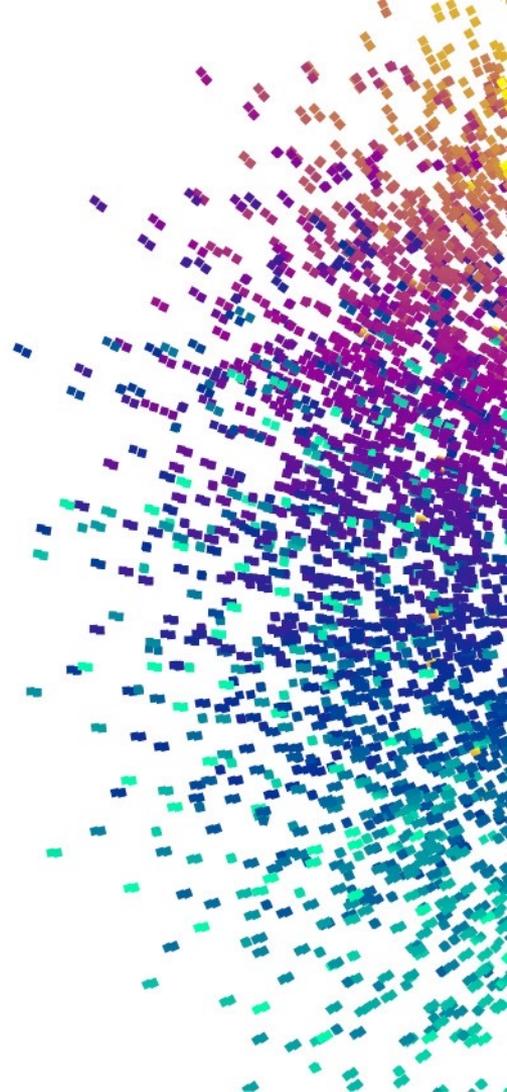
# Enforcement trends

## US



OFAC contains to expand reach of US sanctions with extraterritorial enforcement

- Enforcement actions against two non-US companies under "causing" theories (i.e., non-US companies caused US persons to violate sanctions) - Sojitz (Hong Kong) Limited and Toll Holdings Limited



# EU Enforcement

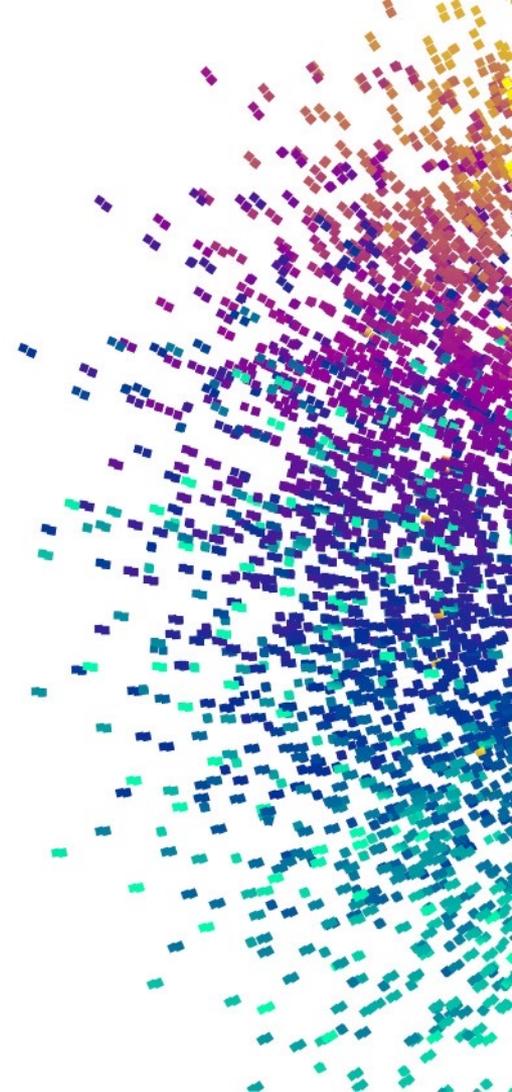


Sanctions enforcement handled at Member State level



Proposals to strengthen sanctions enforcement

- European Commission encouraging remaining Member States introduce domestic legislation to criminalize sanctions violations
- Pan-EU enforcement body? (or giving powers to “AMLA” – proposed new anti-money laundering financial crime and cryptocurrency agency)
- Potential confiscation of assets



# UK Enforcement



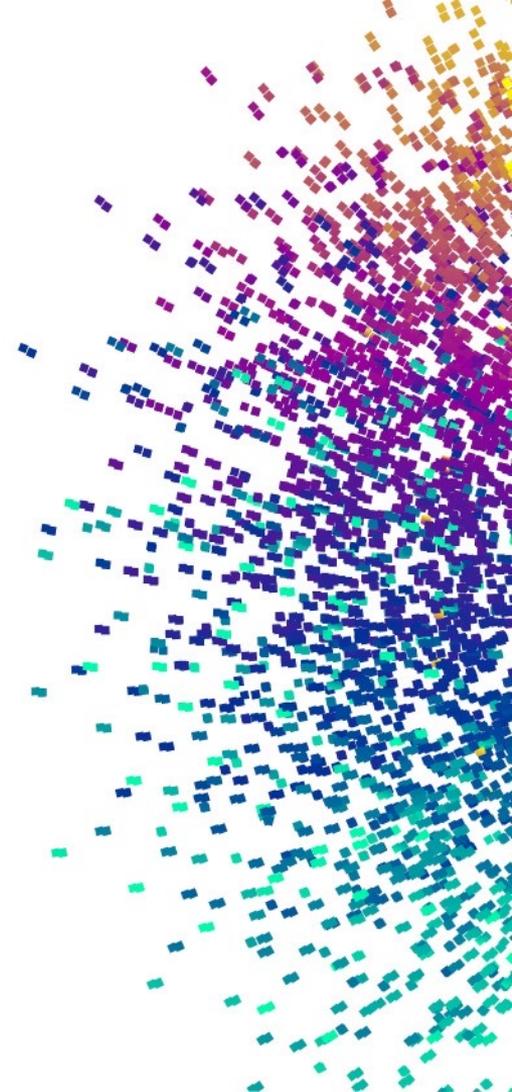
## Sanctions: Expanded civil enforcement powers:

- For breaches of financial sanctions that are committed after 15 June 2022, **OFSI will be able to impose civil monetary penalties on a strict civil liability basis**
- There will be greater flexibility on challenging OFSI's decisions to issue monetary penalties for sanctions violations.
- OFSI will now have the power to **publicise details of financial sanctions breaches** in cases where a breach has been found, but it has not imposed a monetary penalty



## Export controls: Focus on post-Brexit compliance

- Enforcement statistics show wide range of enforcement tools



# Questions



# Next session

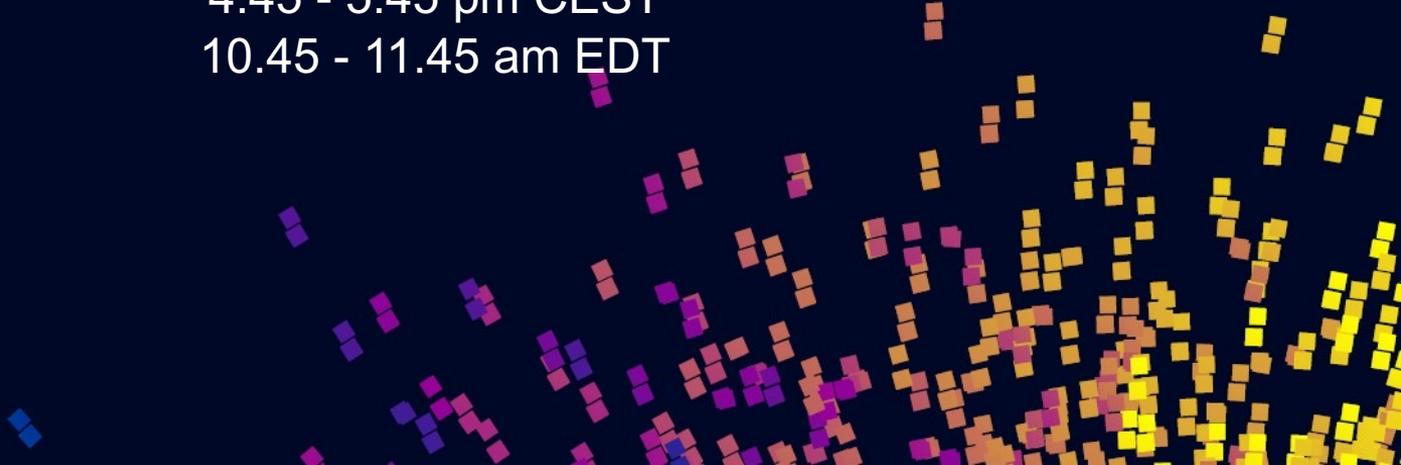
## National Security and Foreign Investment Review Developments

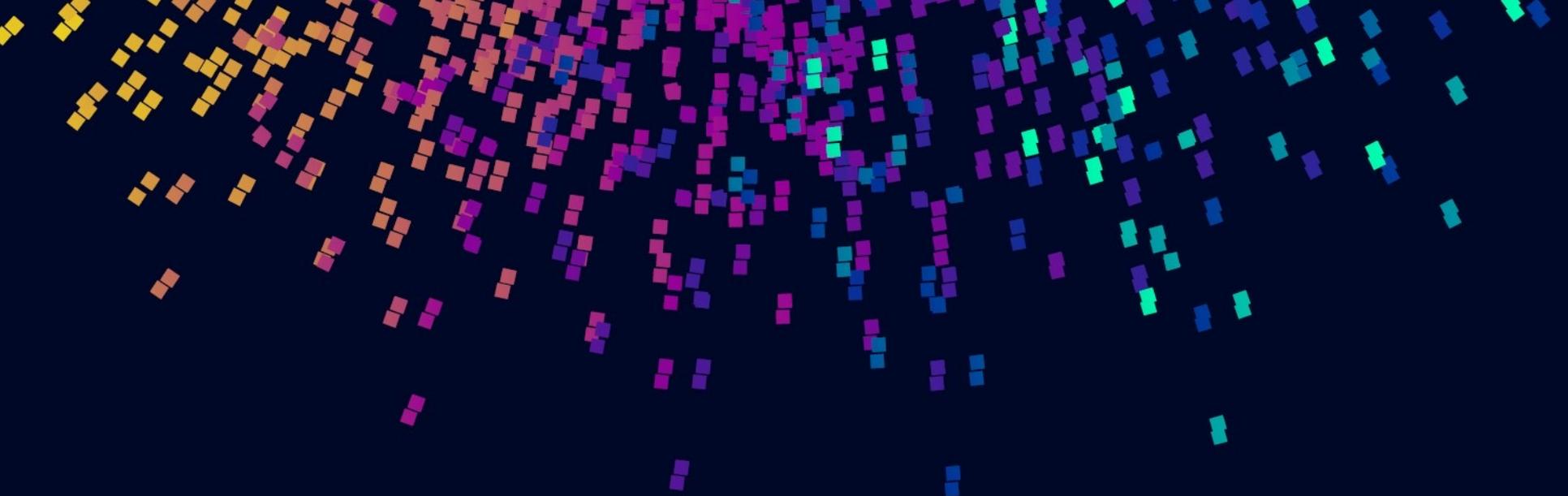
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