



**Baker
McKenzie.**

Export Controls and Sanctions

4 October - 8 October 2021

Annual Compliance Conference

Key UK, EU, US and Middle East Sanctions Update

Tuesday 5 October

3.00 - 4.30 pm BST / 4.00 - 5.30 pm CEST / 10.00 - 11.30 am EDT

Agenda

**Tuesday 5 October,
3.00 - 4.30 pm BST
4.00 - 5.30 pm CEST
10.00 - 11.30 am EDT**

Key UK, EU, US and Middle East
Sanctions Update

**Wednesday 6 October,
3.30 - 5.00 pm BST
4.30 - 6.00 pm CEST
10.30 am - 12.00 noon EDT**

Key EU, UK and US Exports
Controls Update

**Thursday 7 October,
2.00 - 3.00 pm BST
3.00 - 4.00 pm CEST
9.00 - 10.00 am EDT**

Foreign Investment Review: The
New UK National Security &
Investment Act

**Thursday 7 October,
4.00 - 5.30 pm BST
5.00 - 6.30 pm CEST
11.00 am - 12.30 pm EDT**

Foreign Investment Review:
Global Developments

Speakers



Sunny Mann
Partner,
London (Chair)



Olof Konig
Partner,
Stockholm



Alex Lamy
Partner,
Washington, DC



Ben Smith
Partner,
London



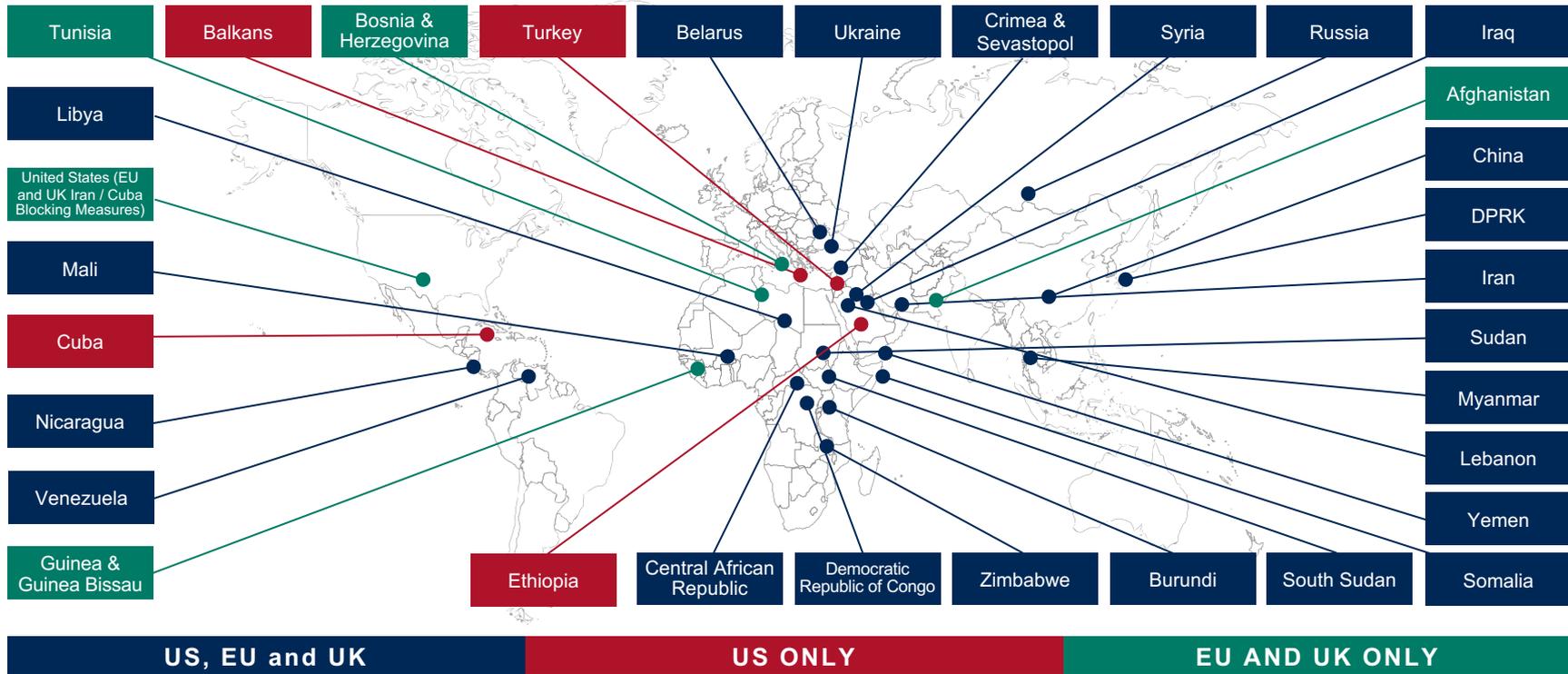
Laya Aoun Hani
Senior Associate,
Dubai



Akash Sikka
Associate,
London

Current UK, EU and US Sanctions Targets

Country-Based (NB: Separate Regimes by Conduct e.g., Human Rights, Terrorism, Anti-Corruption, Chemical Weapons, Cyber)



UK Sanctions Post-Brexit



UK has adopted its own autonomous sanctions regime, under the **Sanctions and Anti-Money Laundering Act 2018 ("SAML")** - with the EU regime no longer having direct effect after Brexit



Divergences between UK and EU regimes are already apparent - and likely to become more pronounced

- Not all designations carried over from EU to UK
- UK foreign policy objectives will be a key driver in its sanctions regime
- Greater flexibility for the UK in a number of areas - such as designations by description, ability to issue directions, and licences for 'extraordinary situations'



Key changes to note in the post-Brexit regime:

- UK drift from EU rules already taking place – UK showing itself to be more nimble
- Importance of screening against UK lists, including factoring in different approach to "owned / controlled" entities
- Global sanctions policies will need to factor in UK approach going forward

UK Sanctions Developments

UK

-  July 2020 - UK established its **Global Human Rights Sanctions Regulations 2020**, targeting perpetrators of serious human rights violations
-  April 2021 - UK introduced its **Global Anti-Corruption Sanctions Regulations 2021**, empowering the UK to impose sanctions on persons involved with serious incidents of corruption
-  UK's **Cyber (Sanctions) (EU Exit) Regulations 2020** came into force on 31 December 2020, intended to deter and respond to cyber-attacks or attempted cyber-attacks
-  January 2021 – UK announced new measures to ensure that UK companies are not complicit / do not profit from alleged human rights violations in Xinjiang. In March, UK designated four individuals and one entity linked to Xinjiang

US Sanctions and Biden Administration



Three big themes of the Biden Administration, as identified by OFAC

- Multilateralism – this means international cooperation with allies on sanctions policies – can already see this in the designations by the US as well as its allies of parties in sanctioned countries such as Myanmar and Russia
- Focus on the impact of COVID-19, including a mandate to review sanctions impacts on relief efforts
- Overall sanctions review and consultations with industry and policy makers that is being conducted by the Deputy Secretary of the Treasury, Wally Adeyemo



Otherwise, the Biden Administration thus far has been tempered in their approach to sanctions – MUCH different approach (expecting more immediate changes re Cuba and Venezuela but none so far)

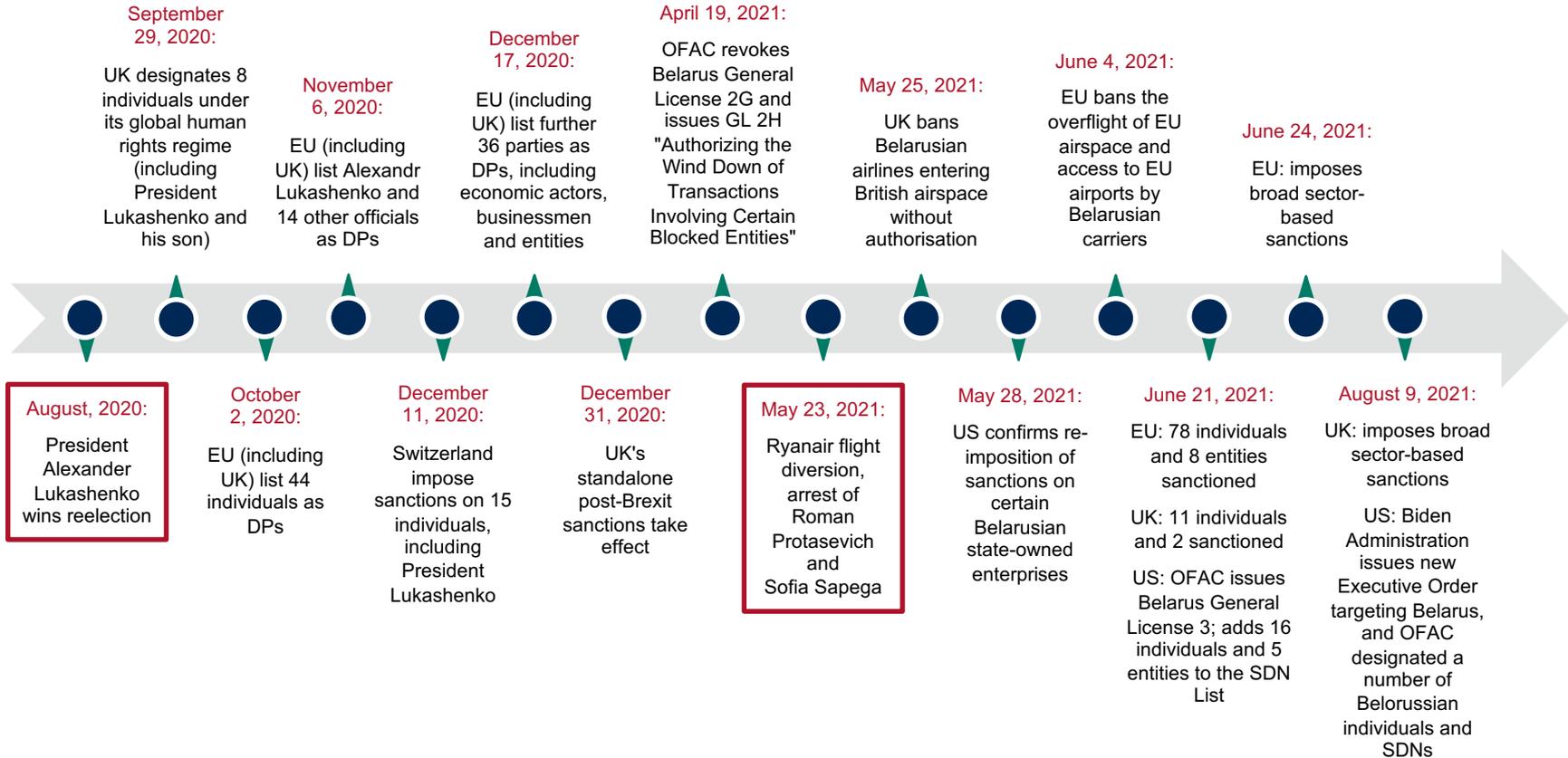


JCPOA remains an open question – still room for re-entry

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Belarus

Belarus Timeline



UK/EU Sectoral Sanctions (Swiss Closely Aligned)



Financial services

- Restrictions on (i) dealing with, transferable securities and money-market instruments with a maturity exceeding 90 days, and (ii) provision of loans or credit with a maturity exceeding 90 days maturity, to:
 - The Belarusian state and its government, Belarussian public bodies, corporations and agencies
 - Certain state owned financial institutions (i.e. banks) and their non-UK/EU subsidiaries, and persons acting at their behalf / on their direction
- Prohibition on provision of insurance or re-insurance to the Belarusian Government and related entities
- Above prohibitions subject to exception for the financing of legitimate UK/EU trade



Telecoms/internet monitoring/interception items

(including controls on technical assistance, brokering and financial assistance; services to Belarusian Government and related entities)



Dual-use items

(heightened re military end-use/users; including controls on technical assistance, brokering and financial assistance)



Tobacco-related items

(listed goods for the production/manufacturing of tobacco products)



Import restrictions on petroleum products and potash

(including controls on technical assistance, brokering and financial assistance for petroleum products)

US: Jurisdiction and Recent Developments



US Developments: Focused on Sanctions; No Actions on Export Controls (Yet?)

- Companies covered by Belarus General License No. 2G had remained SDNs and lost benefits of that GL in June 2021
- New SDN designations have focused on officials and entities in the Belarussian Government
- Belarus General License No. 3 authorizes certain dealings with State Security Committee (modeled on general license for Russian Federal Security Service under cyber sanctions)



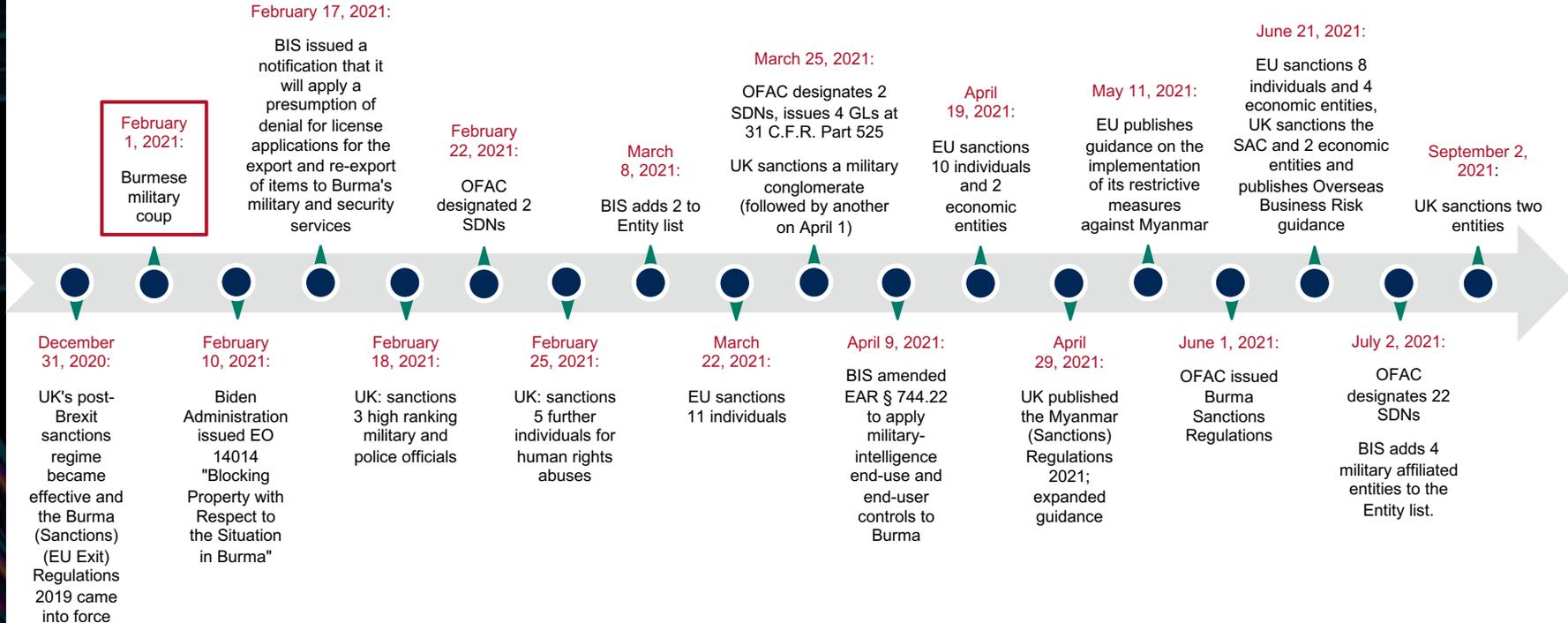
Executive Order 14038 (August 2021) – New Designation Authority

- Leaders, officials, executives, and board members of SDN Belarussian entities
- Leaders and components of the Government of Belarus
- Defense and related materials sector, security sector, energy sector, potash sector, tobacco products sector, construction sector, and transportation sector
- Parties engaged in certain illicit activities in Belarus (e.g., human rights abusers, election interference, public corruption)
- Entities owned or controlled by the Government of Belarus



Myanmar

Burma/Myanmar Timeline



UK/EU Myanmar Developments

- EU sanctions had been significantly relaxed in 2012; incremental increases since 2018, until more material developments this year
- In February 2021, the UK imposed its first designations under its post-Brexit autonomous sanctions regime, in response to the coup. On March 11, 2021 the EU likewise imposed sanctions against 11 individuals
- On March 25 and April 1, 2021 the UK imposed sanctions against MEHL (and 40 of its subsidiaries) and MEC (and 64 of its subsidiaries) under its global human rights sanctions regime
- On April 11, 2021 the EU imposed sanctions against 10 further individuals and targeted MEHL and MEC
- On June 21, 2021 the EU designated 8 further individuals and 4 entities; the UK targeted the SAC and 2 entities and published its Overseas Business Risk guidance which reiterated the importance of enhanced due diligence for companies when conducting business in Myanmar (as well as noting anti-bribery and human rights concerns)
- Pre-existing EU (and now UK) sanctions against Myanmar remain, ramped up since 2018, including designated party controls; arms embargo; heightened dual-use controls; controls on internal repression items and monitoring/interception of internet/telephone communications

US Myanmar Developments



US previously relaxed US sanctions on Myanmar in 2016 – recent re-escalation of sanctions due to military coup



Executive Order 14014 issued on February 10, 2021 (less comprehensive than previous regime) – authorizes sanctions on certain Burmese parties, targeting those associated with Myanmar military, defence, and security sectors. Burma Sanctions Regulations (abbreviated) published on June 1, 2021.



US export restrictions including but not limited to:

- Presumption of denial for items requiring a license for export/re-export to Burmese armed forces, etc.
- Elimination of license exceptions
- Inclusion of Myanmar in EAR's military end-use and end-user restrictions, and inclusion of Myanmar entities on MEU List, as well as restrictions on military-intelligence end-uses/end-users
- Move to Country Group D:1

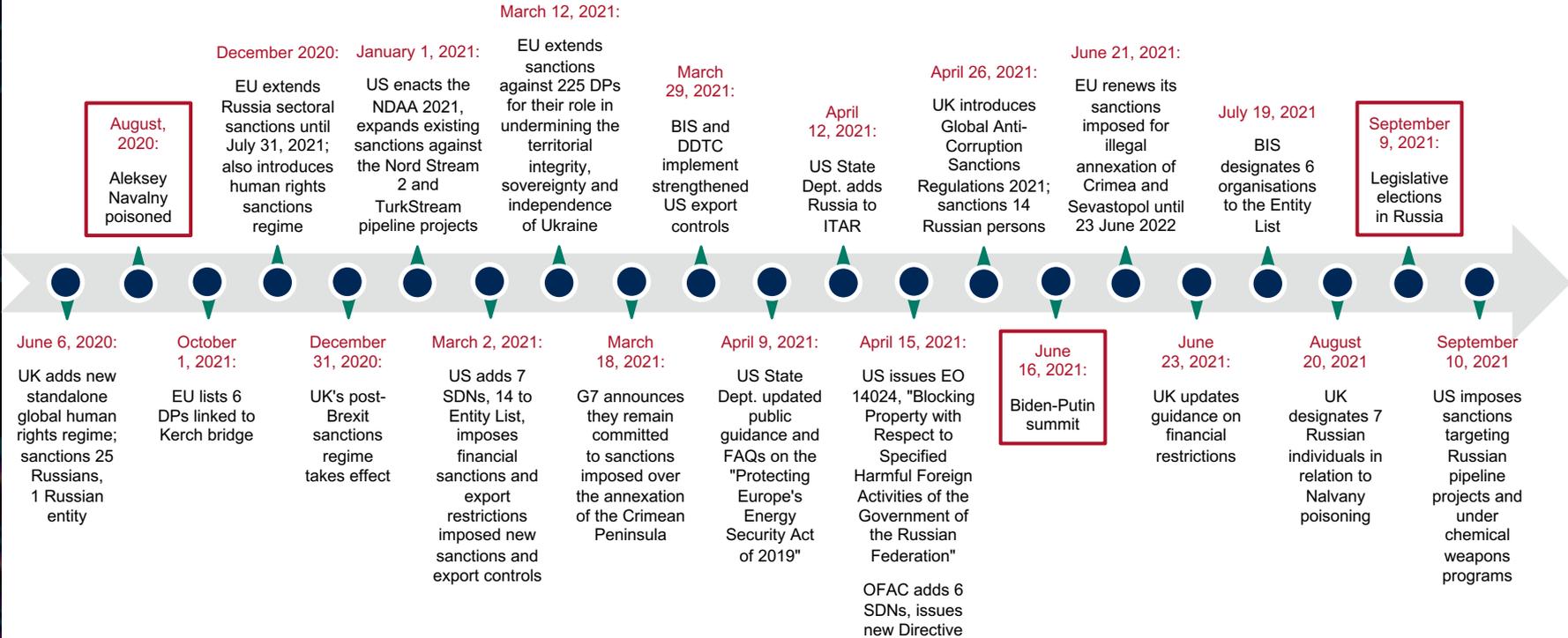


Designation of MEC, MEHL, and State Administrative Council ("SAC")

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Russia

Russia Timeline



US Russia Developments

1

Restricted party controls

- Recent additions to the Specially Designated Nationals and Blocked Persons List ("SDN List") for: (i) CAATSA/PEESA (see, e.g., Fortuna) and (ii) Sanctions due to poisoning of Navalny
- New Executive Order 14024 – BROAD authorization for sanctions on Russian Government individuals agencies, bans dealings in Russian sovereign debt, etc. (Directive 1 under EO also issued)

2

Nord Stream 2

- Passing of PEESA – sanctions for those involved in completing NS2 outside of vessels
- Restricted party designations (as mentioned above) under PEESA/CAATSA
- May 2021 – State identifies NS2AG and CEO as engaged in sanctionable activity – waiving sanctions EO 14024
- August 2021 – New Executive Order 14039 – further sanctions under PEESA
- September 2021 – Additional sanctions focused on energy pipelines / relating to Navalny

3

Export/product Controls

- Military End-User List – includes Russian parties
- License applications to export/reexport items controlled for NS reasons – DENIAL
- Increased controls due to poisoning of Navalny
- Russia subject to an arms embargo

4

Crimea/Sectoral Sanctions – No Developments

- US continues to maintain sectoral sanctions on those entities subject to "Directives" 1-4 which target specific sectors of the Russian economy (i.e., financial, energy, defense)
- US sanctions targeting Crimea continue

Russia/Crimea Sanctions: US Overview

1 Restricted party controls ("SDNs")

- SDNs: blocked and prohibited as to US Persons
- On OFAC List or 50% or more owned by one or more SDNs in aggregate (ownership test)

2 Sectoral Sanctions ("SSILs")

- Not blocked; more targeted restrictions on US Persons under four OFAC Directives
- Finance: new debt/new equity e.g., VEB, Gazprombank, VTB, Sberbank
- Energy: new debt or Russian Oil Industry End-Uses e.g., Rosneft, Lukoil, Gazprom Neft, Gazprom
- Defense: new debt e.g., Rostec

3 Export/product Controls

- Russian Entity List parties (inc. Yuzhno-Kirinskoye Field, GGE, FSB)
- Russian Oil Industry End-uses – any items
- Military end-user/end-use controls – specific items (e.g., telecoms)
- Denial policy; "high technology" items

4 Crimea

- Virtually complete embargo
- Applies to "US Person" dealings
- Export ban (minor exceptions) for exports/re-exports by anyone of US origin/content items

Russia/Crimea Sanctions: UK and EU Overview

1 Restricted party controls

- UK/EU DP Lists (as well as Russia-specific lists, now expanded across regimes relating to human rights, chemical weapons, cyber-attacks and, in the UK's case, anti-corruption)
- UK/EU ownership or control test (broader than US 50% Rule)
- UK/EU Defence if no "knowledge" or "reasonable cause to suspect"

2 Sectoral Sanctions

- UK/EU maintain restrictions against Gazpromneft, Rosneft, Transneft; Gazprombank, Sberbank, VEB, VTB, Rosselkhozbank
- Similar scope but some differences to US (fewer entities targeted; no secondary sanctions; broader equity restrictions; narrower controls on payment terms)

3 Export/product Controls

- UK/EU target certain listed oil and gas items – license required regardless of end-use; licenses denied for deepwater, arctic, shale oil projects
- Heightened controls on dual-use items/ML end-use
- Broad controls on related services (now even broader under UK standalone sanctions)

4 Controls regarding Crimea

- UK/EU has not introduced complete embargo, but restrictions are significant
- Import ban on any items "originating" in Crimea & Sevastopol
- Broad restrictions on investments, products and services related to targeted sectors
- Note: lengthy Annex II list, also broad controls on related services

Brexit Impact

Examples



Narrower sectoral sanctions exemptions:

- Exemption applicable to EU subsidiaries of sectorally sanctioned parties will no longer apply in UK, and vice versa
- UK's equivalent to the EU "trade finance exemption" under Article 5(3) of Regulation 833/2014 maintained and substantially same as under EU law, but will only apply to trade with a UK nexus, and vice versa



Two general licences already issued:

- Granting payment exemptions in relation to certain sea ports in Crimea
- Permitting provision of technical assistance, financial services and funds, and brokering services related to "energy-related goods" where for use outside Russia

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Iran

Iran: US Overview



Comprehensive embargo prohibiting virtually all Iran-related transactions by US Persons and entities owned or controlled by US Persons for purposes of US sanctions targeting Iran



The P5+1 and Iran entered into the Joint Comprehensive Plan of Action ("JCPOA") regarding Iran's nuclear program in July 2015, which was implemented in 2016. The US Government maintained most of its sanctions on US Person dealings with Iran, but it relaxed "secondary sanctions" measures that affected non-US parties, and authorized non-US subsidiaries of US companies under GL H



On May 8, 2018, the Trump administration announced the withdrawal of the US Government from the JCPOA, which was completed by November 2018



Since the US withdrawal from the Iran nuclear deal, US sanctions targeting Iran have primarily focused on secondary sanctions, i.e., increased pressure on non-US parties not to engage in "sanctionable activity" with Iran, including targeting transactions involving the Iranian oil sector



Certain transactions are authorized under general licenses. Recent regulatory developments including three pandemic-related general licenses through June 16, 2022 and Iran General License N to authorize COVID-related transactions



Iran has been negotiating to revive JCPOA through other deal countries, with the US as an observer. No date to resume talks after Iranian Presidential Election in June

Iran



What's next with the JCPOA?

US

- Iran has been in negotiations to revive the deal with the UK, France, Germany, Russia, China, and the EU since April. The US has been an observer under Biden
- Sixth round of indirect talks between the United States and Iran finished in June
- Still no date for resumption of talks following the June Iranian Presidential election
- Reports indicate the new Iranian regime will seek additional concessions from the US in return for compliance; the Biden administration is exploring other options to confront Iran if talks fail
- Recent regulatory developments including three pandemic-related general licenses through June 16, 2022 and Iran General License N to authorise COVID-related transactions

UK/EU

- The UK/EU has repeatedly stressed continued support for the JCPOA since the US' withdrawal
- E3 (UK, France, Germany) triggered the JCPOA dispute resolution procedure in January 2020
- E3 released a statement on 19 August 2021 noting with "grave concern" alleged violations of Iran's commitments, in particular given the interruption of the Vienna talks
- On 12 September, the UN atomic watchdog reached an agreement with Iran
- On 21 September, EU and Iran's foreign ministers agreed to re-commence negotiations

Iran



EU (and now UK) Blocking Regulation – risks remain

- Increase in EU Blocking Regulation Judgements across the EU
- Recent AG opinion in **Melli Bank v Telekom Deutschland** indicates possible strict interpretation of the EU Blocking Regulation which could enhance practical challenges for companies
- UK version of Blocking Regulation in force - The Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2019
- This is in addition to the remaining EU and UK sanctions relating to Iran

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Middle East Developments

The Qatar Restrictions



The UAE, KSA, Bahrain and Egypt - "Quartet" imposed extensive restrictions on Qatar, which began on 5 June 2017



Scope of the Qatar Restrictions: (i) severing diplomatic relations; (ii) imposing restrictions on the movement of goods and people; (iii) prohibition on dealings with individuals, organizations listed on the updated terrorist watch list; and (iv) enhanced due diligence on transactions with certain Qatari banks



Did not prohibit doing business with Qatar generally



Other states also implemented certain measures against Qatar, but with very limited impact on trade

Lifting of Restrictions with Qatar



Al-Ula Declaration signed on 5 January 2021 to end the 3 year boycott and re-establish political and economic ties with Qatar

- Re-opening of borders and resumption of air and sea travel
- Some restrictions on customs clearances applied by Qatar without published directives or guidance
- Qatar position is fluid and needs to be re-assessed periodically to understand current practice

Arab League Boycott of Israel – UAE

UAE Federal Decree Law No. 15 of 1972 (UAE Israeli Boycott Law)

- Adopted the language of the Arab League's Unified Law on the Boycott of Israel (3-tier approach: primary, secondary and tertiary boycott)
- UAE amended various other laws and regulations imposing travel restrictions, prohibitions on communications and registration of Israeli-related intellectual property rights

UAE Cabinet Resolution No. 462/17M (1995)

- Followed announcement in 1994 by the Gulf Cooperation Council (GCC) to enforce only the "primary" elements of the Israeli Boycott
- Remained a criminal offence to deal: (a) in goods or services from Israel or of Israeli origin; and/or (b) with the State of Israel, its citizens and companies

Abraham Accords Peace Treaty with Israel

Abraham Accords Peace Treaty (announced 13 August 2020, but officially signed on 15 September 2020)

- Establishes full diplomatic relations between UAE and Israel
- Outlines a number of areas of intended cooperation
- In exchange for Israel's suspension of further annexation of Palestinian territories
- Subject to ratification
- Immediately followed by announcements of multiple MOUs (banking and financial services, education, maritime, aviation, space, healthcare, and telecommunications sectors/industries)

UAE Federal Decree Law No. 4 of 2020 (published 27 August 2020, released publicly on 15 September, but effective as of August 16, 2020)

- Wholesale repeal of the UAE Israeli Boycott Law (Federal Decree Law No. 1)
- Revokes any provisions of any UAE laws that contradict or conflict with the provisions of the Law
- No prohibition on doing business with Israeli companies or persons
- Imports and exports of products manufactured in Israel are now allowed
- Telecommunications links established
- Travel between the countries permitted
- Financial transactions (opening bank accounts, bank transfers, lending activities) initiated

Risk to employees who are nationals of countries that still enforce the Israeli Embargo

- Saudi Arabia, Lebanon
- Criminal penalties, revocation of professional licenses, etc.
- The following countries maintain a form of boycott against Israel: Algeria, Bangladesh, Brunei, Djibouti, Iran, Iraq, Kuwait, Lebanon, Libya, Pakistan, Qatar, Saudi Arabia, Syria and Yemen

US Response to UAE's End to Boycott



UAE was removed from US Treasury Department's "List of Countries Requiring Cooperation with an International Boycott" in April 2021

Current List of Countries Requiring Cooperation with an International Boycott	
Iraq	Qatar
Kuwait	Saudi Arabia
Lebanon	Syria
Libya	Yemen



In June 2021, US Commerce Department amended its anti-boycott regulations so that certain requests for information, action or agreement from the UAE are no longer presumed to be boycott-related



Under Commerce anti-boycott regulations, US persons are still required to adhere to the prohibitions and reporting requirements with respect to requests from the UAE that are overtly boycott-related

Local Sanctions – UAE (1)

Federal Law No. 7 of 2014 on Combating Terrorism Offences



Cabinet Resolution No. (35) of 2014 on Terrorist Watch Lists Regulations
Cabinet Resolution No. (2) of 2015 Concerning the procedure of grievance from the decisions of inclusion on terrorist lists



UAE Cabinet Decision No. 20 of 2019 regarding Terrorism Lists Regulation and Implementation of UN Security Council Resolutions on the Suppression and Combating of Terrorism, Terrorist Financing and Proliferation of Weapons of Mass Destruction, and Related Resolutions



Cabinet Resolution No. (74) of 2020 On the Regulations of the Terrorist Lists and implementing the Security Council's Resolutions concerning the Prevention and Suppression of Terrorism and its Financing and Proliferation of Armaments and the Related Resolutions

Local Sanctions – UAE (2)

Federal Law No. 20 of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organizations as amended by Federal Law No. 26 of 2021 (UAE AML Law)

UAE Cabinet Decision No. 10 of 2019 concerning the Implementing Regulation of the UAE AML Law

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Afghanistan

Afghanistan



US approach

- Taliban and associated parties designated under US sanctions targeting terrorism
- Government of Afghanistan not sanctioned/blocked (yet?)
- US Government has issued General License Nos. 14 (for humanitarian relief efforts in Afghanistan) and 15 (for exports/reexports of agricultural commodities, medicine, medical devices, replacement parts and components, and software updates)



UK and EU approach

- UK and EU follows UN sanctions: designated individuals/groups associated with Taliban
- Number of individuals designated under UN sanctions now in Government of Afghanistan
- UK/EU have not recognised Government, although EU will keep diplomatic presence
- 40% of Afghanistan economy from aid – potential issues for UK/EU charities

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Other Developments

Other US Sanctions Developments

- Venezuela - US Government issued General License Nos. 39 (COVID-19 relief efforts) and 40 (supply of liquefied petroleum gas)
- Turkey – NDAA requires sanctions on those that assisted Turkey in acquiring defence system from Russia
- Cuba – Biden Administration has not relaxed US embargo, including lifting designation as State Sponsor of Terror; additional designations for human rights abuses related to political unrest
- China – Revamp of China Military-Industrial Complex investment sanctions (50% Rules does not apply) and Entity List designations continue
- Ethiopia – New US sanctions regime under Executive Order 14046 (50% Rule does not apply)

Other EU Sanctions Developments



Theme Based

- Chemical weapons
- Cyber-attacks
- Human rights
- Terrorism



Lebanon

- Creates framework for sanctions regime targeting Lebanese individuals and entities



China

- EU Listings under the Human Right regulation
- China retaliation listings on EU officials



Venezuela

- Added 19 additional persons to sanctions list for undermining democracy and the rule of law in the country

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Practical Takeaways

Practical Considerations for Sanctions Compliance

- Risk assessment (jurisdiction, where, who, what, why)
- Due diligence / screening (counterparties/third parties, end-uses)
- Overlap to related compliance areas (e.g., ABC, AML, CCO, CTF)
- Importance of risk mitigation through contract clauses
- Importance of monitoring developments and responding quickly
- Classification (incl. overlap to customs, export controls)
- Licensing and compliance
- Local implementation of group-wide policies and procedures
- Training and communication

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Questions



Tomorrow's session

Wednesday 6 October,

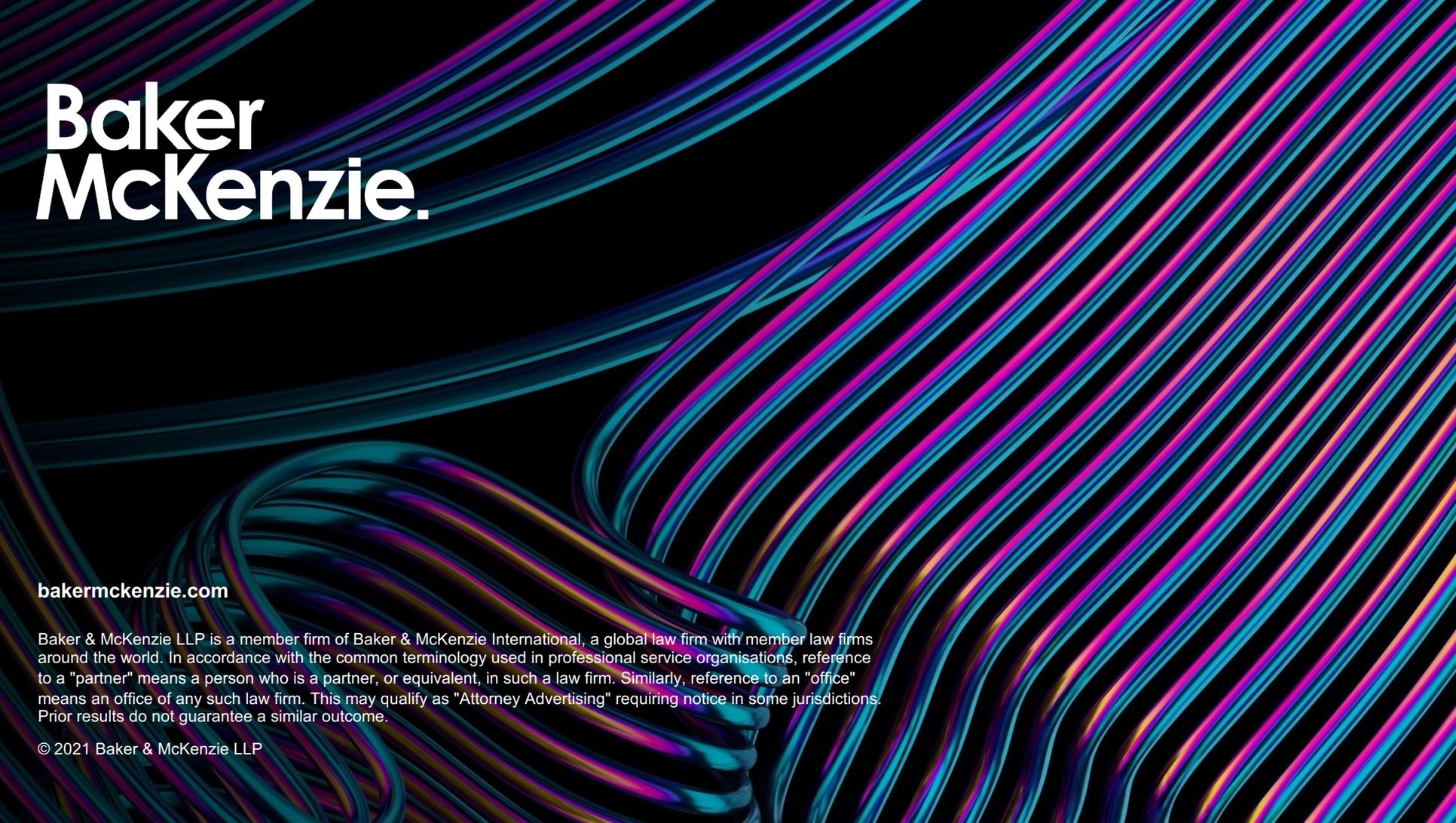
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