



# THE GUIDE TO SANCTIONS

THIRD EDITION

## Editors

Rachel Barnes QC, Paul Feldberg, Nicholas Turner,  
Anna Bradshaw, David Mortlock, Anahita Thoms and  
Rachel Alpert

# **The Guide to Sanctions**

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# Publisher's Note

*The Guide to Sanctions* is published by Global Investigations Review – the online home for everyone who specialises in investigating and resolving suspected corporate wrongdoing.

When this guide was launched, I wrote that we were living in a new era for sanctions: more and more countries were using them, with greater creativity and (sometimes) self-centredness. I had no idea how true this statement would prove. Recent events have supercharged their use, to the point where, as our editors write in their introduction, ‘sanctions never sleep’. And then Russia invaded Ukraine . . .

Sanctions have truly become a go-to tool. And little wonder. They are powerful; they reach people who would otherwise be beyond our reach. They are easy – you can impose or change them at a stroke, without legislative scrutiny. And they are cheap (in the simplest sense)! It's up to others once they're in place to do all the heavy lifting.

The heavy lifting part is where this book can help. The pullulation of sanctions regimes, and sanctions, has resulted in more and more day-to-day issues for business and their advisers.

Hitherto, no book has addressed this complicated picture in a structured way. *The Guide to Sanctions* corrects that by breaking down the main sanctions regimes and some of the practical problems they create.

For newcomers, it will provide an accessible introduction to the territory. For experienced practitioners, it will help them stress-test their own approach. And for those charged with running compliance programmes, it should help them to do so even better. Whoever you are, we are confident this book has something for you.

The guide is part of the GIR technical library, which has developed around the fabulous *Practitioner's Guide to Global Investigations* (now in its fifth edition). *The Practitioner's Guide* tracks the life cycle of any internal investigation, from

discovery of a potential problem to its resolution, telling the reader what to think about at every stage. You should have both books in your library, as well as the other volumes in GIR's growing library – particularly our *Guide to Monitorships*.

We supply copies of all our guides to GIR subscribers, gratis, as part of their subscription. Non-subscribers can read an e-version at [www.globalinvestigationsreview.com](http://www.globalinvestigationsreview.com).

I would like to thank the editors of *The Guide to Sanctions* for shaping our vision (in particular Paul Feldberg, who suggested the idea), and the authors and my colleagues for the elan with which it has been brought to life.

We hope you find the book enjoyable and useful. And we welcome all suggestions on how to make it better. Please write to us at [insight@globalinvestigationsreview.com](mailto:insight@globalinvestigationsreview.com).

**David Samuels**

Publisher, GIR

June 2022

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# Foreword

I am delighted to welcome you to this third edition of Global Investigations Review's *The Guide to Sanctions*. The international, geographical, political, criminal, legal and regulatory elements that make up sanctions programmes ensure that this will remain one of the most complex compliance areas facing practitioners. The following chapters contain important information, advice and best practice for sanctions and export controls as a compliance discipline, courtesy of some of the world's leading legal, forensic and compliance specialists. The daily change to the international regimes requires practitioners and businesses to be constantly monitoring and horizon-scanning across all relevant jurisdictions, and the Guide is packed full of resources that will enable readers to do just that.

The current sanctions environment makes this Guide a must read for any practitioner who manages or advises on sanctions compliance. This Guide is the work of leading industry specialists who have all given their time and expertise to produce a resource that should be on every bookshelf. At a time of growing complexity, readers may find the Guide worthy of being constantly consulted as a valuable reference resource, not only in its own right, but also for the treasure trove of links and references to information and guidance provided by the regulators who guide industry in implementing sanctions policy.

Sanctions never sleep, and since the previous version of this Guide, we have seen the UK settle into an autonomous programme and increased international coordination with major countries and blocs looking to align as closely as possible. The US is no longer the only major player.

The sanctions regimes in place for countries such as Iran, Syria, North Korea and Yemen, to name just a few, have continued to evolve, but the focus since August 2021 has been squarely on Russia and Belarus. This Guide will bring you

up to date with the significant changes in those regimes, as at the time of writing, covering both the sanctions and export controls, as well as updating you on the developments in other regimes, including China and Hong Kong.

As with earlier editions, this third edition covers the major sanctions programmes from the United Nations, the United States, the European Union, the United Kingdom and the Asia-Pacific region, including the types of prohibitions imposed by the relevant programmes, the licence procedures and the measures that are available to challenge listings. Each of the major jurisdictions has an enforcement section that details the process and elements of enforcement from the relevant jurisdiction. The Guide also covers the re-emergence of thematic sanctions programmes; no longer limited to terrorism and narcotics, these programmes have seen a significant growth over the past few years. The third edition welcomes new authors who share their experiences representing sanctioned clients, among others.

The section on compliance programmes will enable readers to review their own programmes against best practice and improve and enhance their own controls if required. The final section covers sanctions and export controls in practice, giving good advice on how to navigate international, extraterritorial and often conflicting requirements of global sanctions and export control rules.

It is important to remember that financial crime is not a competition and that we make the biggest impact when we work together across industry and governments. The partnerships and collaboration across the globe play an important part in managing international sanctions. Part of my role at UK Finance is to liaise with industry and governments to help promote public-private partnerships and ensure that we are all fighting financial crime, especially in the sanctions space, as a coordinated and collaborative network of specialists, in the UK and elsewhere.

*The Guide to Sanctions* is intended to enable readers to be a valuable part of the sanctions and export controls community, dedicated to fighting financial crime and helping to protect our wider society from the impacts of those that seek to cause harm on the international stage.

**Neil Whiley**

Director of Sanctions, UK Finance

June 2022

# Part I

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## Sanctions and Export Control Regimes Around the World

## CHAPTER 2

# EU Restrictive Measures

Genevra Forwood, Sara Nordin, Matthias Vangenechten, Tobias Zuber, Julia Marssola and Fabienne Vermeeren<sup>1</sup>

### Introduction

Over the years, the European Union has increased its use of restrictive measures – more commonly referred to as sanctions – to pursue certain foreign policy objectives laid down within the framework of the EU's Common Foreign and Security Policy (CFSP).

EU sanctions either implement binding sanctions resolutions adopted by the United Nations (UN) Security Council or impose autonomous measures adopted by the EU.

As at April 2022, the EU had 11 sanctions regimes in place that implement UN sanctions (for example, against Iraq, Mali and Somalia), of which 10 impose additional restrictions (for example, against Iran, North Korea, and ISIL/Da'esh and Al-Qaida). In addition, the EU had 25 autonomous sanctions regimes against countries that are not subject to UN sanctions (for example, against Russia, Syria and Venezuela) and that target specific themes, including terrorism, chemical weapons and cyberattacks.<sup>2</sup>

This chapter provides a general introduction to the functioning of EU sanctions, starting with a description of the legal framework and procedural aspects. The second section deals with the application of EU sanctions. The next section provides an overview of the main sanctions regimes, and is followed by an outline of the most common types of measures taken under those sanctions regimes. The

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1 Genevra Forwood and Sara Nordin are partners, Matthias Vangenechten, Tobias Zuber and Julia Marssola are associates, and Fabienne Vermeeren is Regional Director Europe, at White & Case LLP.

2 A consolidated overview of all EU sanctions regimes in place is available at [www.sanctionsmap.eu](http://www.sanctionsmap.eu).

discussion then moves on to cover additional concepts relating to legal liability under EU sanctions. Finally, the chapter explores the divergence between EU sanctions and sanctions imposed by the United States, exemplified by the EU's Blocking Regulation.

In addition to sanctions, the EU and individual EU Member States also impose other trade restrictions to pursue foreign policy and national security goals, particularly export controls. This chapter does not discuss these but focuses on EU sanctions.

## **Legal framework of EU sanctions**

### **Sanctions as a tool to achieve foreign policy objectives**

EU sanctions have a pivotal role in the EU's CFSP, the objectives of which are set forth in Article 21(2) of the Treaty on the European Union. Broadly, these include: (1) safeguarding the EU's values, fundamental interests and security; (2) consolidating and supporting democracy, the rule of law, human rights and the principles of international law; and (3) preserving peace, preventing conflicts and strengthening international security.

The contexts in which the EU imposes sanctions can therefore be very diverse, ranging from the protection of human rights (for example, against Iran) to territorial integrity (for example, in relation to the annexation of Crimea by Russia) and non-proliferation of nuclear weapons (for example, against North Korea).

There are two main sources of EU sanctions. First, as members of the UN, EU Member States are obliged to implement the binding resolutions of the UN Security Council imposing sanctions under Chapter VII of the UN Charter. Second, the EU can adopt autonomous measures that build on UN sanctions or pursue EU interests independently of UN Security Council resolutions. These autonomous measures can be adopted when no consensus can be reached within the UN Security Council.

EU Member States can also take sanctions measures at a national level (for example, the Dutch national terrorism list and the Belgian national terrorist list) to pursue national foreign policy goals, but not to pursue the achievement of the CFSP objectives.<sup>3</sup> Autonomous national sanctions of this kind are relatively rare.

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3 Commission Opinion of 8 November 2019 on the compatibility of national asset freezes imposed by Member States with Union law (C(2019) 8007 final).

## Procedure for imposition and renewal of sanctions

The procedures for adopting EU sanctions are complex, reflecting the institutional and legal architecture of the EU, and the allocation of competences between the EU and the EU Member States on matters of foreign policy.

Because sanctions fall within the framework of the EU's CFSP, they require a CFSP Council Decision, which needs unanimous agreement of all EU Member States.<sup>4</sup> They can be proposed by an EU Member State or the European External Action Service led by the High Representative of the Union for Foreign Affairs and Security Policy (potentially with the support of the European Commission).<sup>5</sup>

The proposed measures and targets are further examined and negotiated by representatives of all EU Member States within the relevant Council bodies such as the Political and Security Committee, the competent geographical working groups of the Council and the Foreign Relations Counsellors Working Group. As a final step, the Committee of Permanent Representatives II and the Council need to approve the sanctions. The decision enters into force upon publication in the Official Journal of the European Union (either on the publication date or on another date specified in the published decision).

Sanctions that fall within EU Member States' competence, such as arms embargoes and travel bans, require only a CFSP Council Decision, which is directly binding on all EU Member States. By contrast, sanctions that engage the EU's competences regarding trade and economic freedoms, such as asset freezes, trade restrictions or export bans, require additional implementing legislation at EU level in the form of a Council Regulation.

EU sanctions based on a CFSP Council Decision are, in principle, adopted for a limited period only, usually not longer than a year, and sometimes six or even only three months. Towards the end of that period, the Council reviews the situation (including the measures and targets identified) and decides by unanimity whether to extend or amend the sanctions (or both). In reality, extensions are very common and, once put in place, EU sanctions tend to apply for a long period.

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4 Treaty on the European Union, Article 31.

5 Under the European Commission led by Ursula von der Leyen (2019–2024), the responsibility for the implementation of EU sanctions has been transferred from the High Representative of the Union for Foreign Affairs and Security Policy to the Directorate General for Financial Stability, Financial Services and Capital Markets Union.



Since the adoption and review of EU sanctions require unanimity in the Council, and thus an alignment of the foreign policies of 27 EU Member States, the Commission in 2018 proposed to move to qualified majority voting<sup>6</sup> for the adoption of EU sanctions.<sup>7</sup> According to the Commission, the unanimity requirement in the Council hampers the EU's ability to 'react quickly and firmly to international developments'.<sup>8</sup> Qualified majority voting would allow a swifter and more effective response to (geopolitical) events. However, such a proposal would need unanimous approval from Member States, which makes it inherently difficult to pass. Hence, this has not yet been passed.

### Designations and delistings

Specific sanctions regulations set out broad criteria under which individuals and entities can be designated under that regime. EU Member States or third countries can request the Council for the designation of certain individuals or entities meeting these criteria. The responsible working party within the Council will subsequently examine the respective case and make a recommendation to the Council, which will finally make a decision whether or not to designate the respective person. In the case of a designation, the Council provides a 'statement of reasons', making clear how the criteria for listing have been met.

Delistings can be requested by the listed parties, an EU Member State or a third country that had originally proposed the listing. In addition, any listings can also be challenged before the Court of Justice of the European Union (CJEU) in an 'annulment action' under Article 263 of the Treaty on the Functioning of the European Union. Many of the annulment actions to challenge listings have been successful, resulting in a line of case law on the requirements that need to be satisfied for individual listings, including the specification of designation criteria, statements of reasons and supporting evidence. Although the Council may have

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6 Qualified majority voting requires 55 per cent of EU Member States representing at least 65 per cent of the total EU population to be in favour of a proposal in the Council.

7 Communication from the Commission, 'A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy' of 12 September 2018 (COM(2018) 647 final).

8 In support of this statement, the Commission points at two specific examples: (1) the renewal of the arms embargo against Belarus in February 2017, which was about to be blocked by one EU Member State unless an exemption for a certain category of small arms was included; and (2) the adoption of targeted restrictive measures against Venezuela in response to the domestic political developments, which was initially blocked by an EU Member State in August 2017 before ultimately being adopted in November 2017.

become more attentive to fulfil all legal requirements relating to a designation, uncertainty remains regarding the standard of proof the Council applies to list any individuals or entities.

## Enforcement at EU Member State level

EU sanctions are enforced in the Member States by the competent authorities under national law. The procedures and penalties for violations of EU sanctions are determined by national law. EU sanctions require that penalties be ‘effective, proportionate and dissuasive’ (see Chapter 3 of this Guide).

In recent years, the European Commission has enhanced its monitoring of enforcement by the EU Member States and the provision of guidance on the interpretation of sanctions.<sup>9</sup> In addition, in March 2022, the Commission introduced the EU Sanctions Whistleblower Tool whereby information on sanctions violations or attempts to circumvent these can be shared anonymously.<sup>10</sup>

## EU sanctions jurisdiction

### General application of EU sanctions

EU sanctions only apply when there is EU jurisdiction (i.e., a nexus linking a certain activity to the EU). An EU nexus arises in any of the following situations:

- within EU territory (i.e., the territory of any of the EU Member States, including their airspace);
- to nationals of EU Member States (even if they are outside the EU);
- to entities incorporated or constituted under the law of an EU Member State, whether or not they are in the EU (including branches of EU companies in third countries);
- to entities in respect of any business done in whole or in part within the EU; or
- on board any aircraft or vessel under EU Member State jurisdiction.

This means that EU Member State nationals and companies or other entities incorporated in an EU Member State must comply with EU sanctions. It also means that even non-EU companies and persons may be subject to EU sanctions

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<sup>9</sup> See, for example, the dedicated page on EU sanctions following Russia’s actions in Ukraine, at [www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/](http://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/).

<sup>10</sup> See <https://eusanctions.integrityline.com/setup>.

depending on the particular circumstances under which they perform their business activities in the EU and how they are connected to any activities restricted by these sanctions.

### **Application of EU sanctions in the UK**

The United Kingdom ceased to be an EU Member State on 31 January 2020. Following the end of the transition period under the EU–UK Withdrawal Agreement on 31 December 2020,<sup>11</sup> the UK does not implement EU sanctions. Instead, autonomous UK sanctions regimes are now in force under the Sanctions and Anti-Money Laundering Act 2018 (see Chapter 4).

### **Overview of the EU's main sanctions regimes**

The EU has various sanctions regimes that target third countries, as well as certain organisations and activities, regardless of their location.

### **Country-specific sanctions regimes**

The most commonly known EU sanctions regimes are those that target specific third countries in view of foreign policy objectives. Currently, the EU has sanctions regimes in place against around 30 countries, including Russia, Iran and Venezuela. However, this does not mean that all activities involving those countries are prohibited. Unlike the United States, the EU does not impose comprehensive (i.e., country-wide) sanctions against third countries. Rather, the nature and extent of EU sanctions vary across the targeted countries in line with the policy objectives they intend to achieve.

### **Sanctions imposed on Russia and Belarus following Russia's military aggression against Ukraine**

Recent and relevant examples of the use of country-specific sanctions regimes are sanctions imposed on Russia and Belarus. These were first imposed in 2014, targeting the Crimea region and certain people and entities held responsible for undermining Ukraine's territorial integrity, sovereignty and independence.<sup>12</sup> Since February 2022, following the Russian invasion of Ukraine, EU sanctions on Russia have been significantly expanded. Measures similar to those targeting

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11 Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01), Articles 126 and 127.

12 Council Regulation (EU) No. 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, as amended.

the Crimean region were adopted in relation to Donetsk and Luhansk,<sup>13</sup> followed by further packages of measures. Hundreds of new designations have been made, including influential businesspeople, government officials, major companies and banks, as well as the Russian President and Foreign Minister. In addition, the EU imposed far-reaching financial and trade-related restrictions, as well as some unprecedented measures impacting the energy, media and transport sectors, among others.

At the time of writing, these sanctions include:

- asset freeze and travel restrictions;
- restricting access to EU capital markets to a number of Russian companies, the Russian government and the Central Bank of Russia;
- a ban on transactions related to the management of the Central Bank's reserves and assets;
- a ban on engaging in transactions with a number of Russian state-owned enterprises;
- a ban on a range of financial interactions, financial rating services and transactions with Russia, as well as prohibitions on the provision of bank notes and sale of securities to Russia-related persons;
- removing certain Russian banks from the SWIFT messaging system;
- prohibition on providing high-value crypto services and trust services;
- excluding Russian companies from EU public contracts and EU funding;
- measures targeting the energy sector, including a broad ban on investments in any non-EU company operating in the Russian energy sector;
- trade-related restrictions introducing export or import bans, or both. Sectors targeted include dual-use items, military, high-tech, aviation, maritime navigation, luxury goods, iron and steel and minerals;
- measures restricting transport, including the closure of EU airspace to Russian-owned or registered aircraft, closure of EU ports to Russian vessels and a ban on Russian road transport operators transporting goods in the EU; and
- prohibition on the broadcast of certain Russian state-owned media outlets.

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13 Council Regulation (EU) No. 2022/263 of 23 February 2022 concerning restrictive measures in response to the recognition of the non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine and the ordering of Russian armed forces into those areas, as amended.

In parallel, since February 2022, the EU has expanded its sanctions regime against Belarus in response to the country's involvement in Russia's actions in Ukraine.<sup>14</sup> This includes further financial restrictions, trade-related measures and other ad hoc restrictions, many of which mirror sanctions adopted against Russia.

In the context of the 2022 sanctions on Russia, the European Commission has issued multiple guidance documents in the form of frequently asked questions (FAQs) about the sanctions.<sup>15</sup> Many of these have general application to other EU sanctions regimes and provide clarification on some significant points. For instance, in relation to asset freezes, one FAQ indicates that minority shareholdings of sanctioned persons should be aggregated for the purpose of determining whether they are owned by persons listed on the EU asset freeze list.<sup>16</sup>

### Terrorism sanctions regimes

The EU maintains a list of persons, groups and entities designated under the EU asset freeze on the basis of their involvement in terrorist acts (the EU Terrorist List).<sup>17</sup> This List is not country-specific and includes persons linked to the Basque ETA and organisations such as the Continuity Irish Republican Army and Hamas-Izz al-Din al-Qassam, which is the military wing of the Palestinian Hamas Organisation.

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14 Council Regulation (EC) No. 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine.

15 A complete list of FAQs published and regularly updated by the European Commission in relation to Russia sanctions is available at [https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions/sanctions-adopted-following-russias-military-aggression-against-ukraine\\_en](https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions/sanctions-adopted-following-russias-military-aggression-against-ukraine_en).

16 Question 8 of the FAQs on asset freezes, as of 19 May 2022, explains that: 'For example, if one listed person owns 30% of the entity and another listed person owns 25% of the entity, the entity should be considered as owned by listed persons.' Available at [https://ec.europa.eu/info/sites/default/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/faqs-sanctions-russia-assets-freezes\\_en.pdf](https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/faqs-sanctions-russia-assets-freezes_en.pdf).

17 Council Regulation (EC) No. 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, as amended, and Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism.

Separate from the EU Terrorist List, the EU has implemented the UN Security Council resolutions targeting ISIL/Da'esh and Al-Qaida.<sup>18</sup> Sanctions under this regime also include an asset freeze, a prohibition on exporting military goods and technology to listed individuals and entities and a travel ban.

### Chemical weapons sanctions regime

Since October 2018, the EU has had a sanction regime in place to address the use and proliferation of chemical weapons.<sup>19</sup> This was prompted by the novichok poisoning of Sergei Skripal in March 2018 and the chemical weapons attacks in Syria. These sanctions aim to support the prohibition laid down by the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction against the use of chemical weapons.

Persons designated under the chemical weapons sanctions regime are subject to the EU asset freeze, and for individuals, an EU-wide travel ban.<sup>20</sup> Designations include officials of the Russian military intelligence service, the GRU, who have been deemed linked to the novichok poisoning, and the Scientific Studies and Research Centre (SSRC) and related persons (i.e., the Syrian entity deemed responsible for the development and production of chemical weapons, as well as Syrian officials directly involved in the SSRC's activities).

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18 Council Regulation (EC) No. 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations, as amended; Council Regulation (EU) 2016/1686 of 20 September 2016 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them, as amended; and Council Decision (CFSP) 2016/1693 of 20 September 2016 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them and repealing Common Position 2002/402/CFSP, as amended. In particular, the EU has implemented UN Security Council resolutions 1267 (1999), 1989 (2011) and 2253 (2015).

19 Council Decision (CFSP) 2018/1544 of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons, and Council Regulation (EU) 2018/1542 of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons, as amended.

20 Council Regulation (EU) 2018/1542, Article 2(1) and Council Decision (CFSP) 2018/1544, Articles 2 and 3(1).

## Sanctions regime targeting cyberattacks

Another recent sanctions regime, established in May 2019, targets malicious cyber activities from outside the EU that threaten the Union or its Member States.<sup>21</sup> According to media reports, these sanctions were advocated by the UK and the Netherlands after an investigation uncovered cyberattacks reportedly originating from the GRU that targeted the Organisation for the Prohibition of Chemical Weapons in The Hague.

Similar to the situation under the EU's chemical weapons sanctions regime, the EU sanctions targeting malicious cyber activities are country-neutral and do not mention any specific third country. These sanctions target actual and attempted cyberattacks having a (potentially) 'significant effect', in light of the scope and scale of disruption, the number of persons affected, the number of Member States concerned, the extent of economic loss or economic gain to the perpetrator, the extent of any data breaches and the loss of commercially sensitive data.<sup>22</sup> In addition, cyberattacks must represent an 'external threat' to the EU and the Member States, meaning they must have originated outside the EU or used infrastructure outside the EU, or the persons instrumental to the cyberattack's operations must be established abroad.<sup>23</sup> Importantly, these sanctions also cover malicious cyber activities towards third states and international organisations.<sup>24</sup>

These sanctions also include EU-wide travel restrictions and an asset freeze. In July 2020, the EU carried out a first round of designations relating to six individuals and three entities held responsible for being involved in various cyberattacks, including the attempted cyberattack against the Organisation for the Prohibition of Chemical Weapons and the cyberattacks publicly known as 'WannaCry', 'NotPetya' and 'Operation Cloud Hopper'.<sup>25</sup> In November 2020,

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21 Council Decision (CFSP) 2019/797 of 17 May 2019 concerning restrictive measures against cyber-attacks threatening the Union or its Member States, and Council Regulation (EU) 2019/796 of 17 May 2019 concerning restrictive measures against cyber-attacks threatening the Union or its Member States.

22 Council Regulation (EU) 2019/796, Article 2 and Council Decision (CFSP) 2019/797, Article 3.

23 Council Regulation (EU) 2019/796, Article 1.

24 *id.*

25 Council Implementing Regulation (EU) 2020/1125 of 30 July 2020 implementing Regulation (EU) 2019/796 concerning restrictive measures against cyberattacks threatening the Union or its Member States and Council Decision (CFSP) 2020/1127 of 30 July 2020 amending Decision (CFSP) 2019/797 concerning restrictive measures against cyberattacks threatening the Union or its Member States.

parties involved in cyberattacks against the German federal parliament were added to the list.<sup>26</sup>

## Human rights sanctions regime

Most recently, after long-standing internal discussions, the EU finally established a sanctions regime to address serious human rights violations and abuses worldwide – regardless of where they take place – by targeting individuals, entities and bodies concerned (including state and non-state actors) with asset freezes and travel bans.<sup>27</sup> The EU's global human rights sanctions regime follows the introduction of similar frameworks in the United States, the United Kingdom and Canada.

The EU's regime applies to acts such as genocide, crimes against humanity and other serious human rights violations or abuses (including torture, slavery, extrajudicial killings, arbitrary arrests or detentions, but not corruption). Other human rights violations or abuses can also fall under the scope of the sanctions framework, where those violations or abuses are widespread, systematic or are otherwise of serious concern in respect of the objectives of the EU's CFSP.<sup>28</sup>

Following adoption of the EU's new global human rights sanctions regime in December 2020, the EU acted quickly to establish designations under it. In March 2021, the EU made use for the first time of the framework and adopted coordinated sanctions together with the United States in response to the poisoning and imprisonment of Russian opposition politician, Alexei Navalny. Specifically, the EU imposed an asset freeze and travel ban on four Russian government officials for their involvement in the arrest, prosecution and sentencing of Navalny.<sup>29</sup> Shortly after, the EU also designated 11 individuals and four entities in relation to deemed human rights violations in China, North Korea, Libya, Eritrea, South

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26 Council Implementing Regulation (EU) 2020/1744 of 20 November 2020 implementing Regulation (EU) 2019/796 concerning restrictive measures against cyberattacks threatening the Union or its Member States.

27 Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses, and Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations.

28 Council Regulation (EU) 2020/1998, Article 2.

29 Council Implementing Regulation (EU) 2021/371 of 2 March 2021 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses.



Sudan and Chechnya.<sup>30</sup> Two further rounds followed in December 2021, adding more individuals related to violations in Russia, China, North Korea, Libya, Syria, Chechnya, Ukraine, Central African Republic, Sudan and Mozambique, as well as the Wagner Group.<sup>31</sup>

## Types of sanctions

The EU has absolute discretion in terms of the sanctions it imposes, but applies a targeted approach so that the sanctions have maximum effect on those whose behaviour the EU aims to influence and to reduce any adverse humanitarian effects or unintended consequences for other persons.<sup>32</sup> For this reason, measures such as asset freezes, visa bans and arms embargoes are frequently imposed.

## Asset freeze

The most widely used type of EU sanction is the asset freeze. The EU maintains an asset freeze on hundreds of persons and entities. In general, these are persons directly involved in activity being addressed by the sanctions (for example, Russian companies deemed to have supported the separation of Crimea and Sevastopol from Ukraine, Venezuelan politicians held responsible for undermining the democracy and rule of law in Venezuela, or Iranian officials working in support of deemed human rights violations). There are separate asset freeze regulations for each sanctions programme, but the EU keeps a consolidated list of persons, groups and entities subject to any EU asset freeze.<sup>33</sup>

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30 Council Implementing Regulation (EU) 2021/478 of 22 March 2021 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses.

31 Council Implementing Regulation (EU) 2021/2151 of 6 December 2021 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses, and Council Implementing Regulation (EU) 2021/2195 of 13 December 2021 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses.

32 Council Basic Principles on the Use of Restrictive Measures (Sanctions) of 7 June 2004 (10198/1/04).

33 For the consolidated list, see <https://data.europa.eu/data/datasets/consolidated-list-of-persons-groups-and-%09entities-subject-to-eu-financial-sanctions?locale=en>.

An EU asset freeze has two key elements. First, all funds and economic resources of an EU listed party that belong to, are owned, held or controlled by that party are required to be frozen.<sup>34</sup> Second, it is prohibited to make funds or economic resources available, directly or indirectly, to, or for the benefit of, listed parties.

'Funds' broadly covers financial assets and benefits of every kind (including cash, cheques, securities and debt instruments such as stocks and shares, bonds, dividends and letters of credit).<sup>35</sup> 'Economic resources' is a broad concept that covers essentially any asset that can be used to obtain funds, goods or services, and includes, for example, the supply of goods (regardless of any price charged) if these can in turn be used by the recipient to generate income.<sup>36</sup> 'Indirectly' making economic resources available to a listed party could involve, for example, making payments or offering goods or services to a third party affiliated with the listed party (e.g., to an entity owned or controlled by the entity subject to an asset freeze).<sup>37</sup>

Under EU guidance,<sup>38</sup> 'ownership' is triggered when a party holds more than 50 per cent of proprietary rights of an entity or has a majority interest. In a significant change, in March 2022, the European Commission clarified in guidance that ownership interests should be aggregated, as under US sanctions, meaning that the minority shareholdings by different listed parties are to be considered

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34 Commission Opinion on the application of financial sanctions imposed by means of Council Regulation (EU) No. 269/2014 of 19 June 2020 (C(2020) 4117 final) clarifies that funds and economic resources of a non-listed party controlled by an EU listed party also must be frozen unless it is demonstrated that the relevant assets are in fact not controlled by the EU listed party (e.g., certain safeguards preventing the EU listed party from access).

35 See, for example, Article 1(g) of Council Regulation 269/2014 for a full definition of 'funds'.

36 For example, Article 1(d) of Council Regulation 269/2014 defines 'economic resources' as 'assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services'. Note that Commission Opinion on the application of financial sanctions imposed by means of Council Regulation (EU) No. 269/2014 confirms that labour and services can also be considered as economic resources to the extent that the labour and services can be used, directly or indirectly, by a listed party to obtain funds, goods or services.

37 If a listed party's ownership or control is established, then any funds or economic resources made available to relevant non-listed parties will in principle be considered made available to the listed party – unless it can be established, case by case using certain criteria, that they will not be used by or be for the benefit of the listed party. See Restrictive Measures (Sanctions) – Update of the EU Best Practices for the effective implementation of restrictive measures of 4 May 2018 (8519/18), ¶ 66.

38 Restrictive Measures (Sanctions) – Update of the EU Best Practices for the effective implementation of restrictive measures of 4 May 2018 (8519/18).

together and – if exceeding 50 per cent, would trigger ownership for EU asset freeze purposes.<sup>39</sup> The test to assess whether a legal person or entity is ‘controlled’ by another person or entity refers to factual elements set out in EU guidance,<sup>40</sup> such as voting rights control or power to appoint company leadership, so that determination requires a case-by-case assessment. If any of these criteria are satisfied, it is considered that the legal person or entity is controlled by another person or entity, unless the contrary can be established in a particular case.

There are certain exemptions to the EU asset freeze restrictions. Most EU sanctions regulations provide that the competent authorities of EU Member States may authorise payments in relation to basic needs, legal fees and disbursements or service charges for routine holding or maintenance of frozen funds or economic resources, or humanitarian purposes (e.g., in relation to Syria). These exemptions are often accompanied by strict conditions, which the national competent authorities in charge of assessing the requests need to verify.

For example, under the EU asset freeze relating to the annexation of Crimea,<sup>41</sup> Member States may authorise payments to listed persons that are due under a contract or agreement that was concluded prior to the listing,<sup>42</sup> or to satisfy an arbitral award ‘before’ the listing or a judgment of a court in an EU Member State ‘either before or after’ the listing.<sup>43</sup> Further, any payments owed to listed persons (e.g., under prior contracts or pursuant to judicial, administrative or arbitral decisions) must be paid into a frozen account.<sup>44</sup>

## Travel or visa ban

Individuals who are subject to an asset freeze are typically also subject to a travel or visa ban. Under a travel ban, third-country nationals are banned from admission into the EU. Consequently, EU Member States need to take all the necessary measures to prevent the entry into, or transit through, their territories of listed persons, including by refusing to grant a visa. However, EU Member States are not obliged to refuse their own nationals.

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39 See [https://ec.europa.eu/info/sites/default/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/faqs-sanctions-russia-assets-freezes\\_en.pdf](https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/faqs-sanctions-russia-assets-freezes_en.pdf).

40 *id.*

41 Council Regulation (EU) No. 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, as amended.

42 *id.*, at Article 6.

43 *id.*, at Article 5.

44 *id.*, at Article 7.

In addition, exemptions to the travel or visa ban can apply on humanitarian and other grounds, or to comply with obligations under international law. For example, the visa or travel ban will generally not apply to individuals when making official institutional visits to an international intergovernmental organisation or an international conference under the auspices of the UN.

### Dual-use items restrictions and arms embargo

EU sanctions also often restrict the supply of dual-use and military items. For example, sanctions against Russia prohibit the sale, supply, transfer or export, directly or indirectly, of dual-use goods and technology (as defined in separate EU legislation on dual-use export controls) to parties in Russia or for use in Russia.<sup>45</sup> In addition, any direct or indirect sale, supply, transfer or export of arms and related material of all types, including weapons and ammunition, military vehicles and equipment and paramilitary equipment, to Russia is prohibited.<sup>46</sup>

Typically, restrictions in relation to dual-use items and arms also cover related technical assistance, brokering services, financing and financial assistance. However, certain exceptions can be made, for example, for exports and services involving execution of an obligation arising from a contract or an agreement concluded before the date of imposition of sanctions, or ancillary contracts necessary for the execution of a contract or agreement.

The restrictions must be respected whenever there is EU jurisdiction, as discussed above, including by nationals of EU Member States and any EU person transferring or exporting the equipment from an EU Member State or using a vessel or aircraft with an EU flag.<sup>47</sup>

As discussed above, the EU may also, through a Council decision, impose a general ban on all direct or indirect imports into or exports from a sanctioned country by EU persons of all arms and related material specified on the EU's Common Military List, which will be binding on all EU Member States. The

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45 Council Regulation (EU) No. 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, as amended, at Article 2.

46 Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, as amended, at Article 2.

47 There have been two recent examples of enforcement of arms embargoes against transport companies in the Netherlands, when the military equipment both originated and was destined to countries outside the EU but transited through Dutch ports and airports. One concerned a logistics company (Rechtbank Noord-Holland, No. 15/994176-17, 24 April 2017) and the other an airline (Rechtbank Noord-Holland, No. 15/994178-17, 24 April 2017). In both cases, the defendants were convicted of wilfully transiting goods on the EU Military List without a licence.

related Council regulation will then typically prohibit technical assistance, brokering services, financing and financial assistance related to such arms and related material.

### **EU sanctions-related concepts**

Two other key provisions that are incorporated into all EU sanctions regimes involve an anti-circumvention clause and a diligence defence clause.

#### **Anti-circumvention clause**

Generally, to complement the main prohibitions (such as asset freeze restrictions), EU sanctions also prohibit the participation, ‘knowingly and intentionally, in activities the object or effect of which is to circumvent’ the main sanctions. This non-circumvention rule can extend the scope of application of EU sanctions to conduct that formally lies outside the stated prohibitions, but that undermines the regime’s objectives. For example, an EU company that ‘knowingly and intentionally’ chooses to outsource certain activities to a non-EU subsidiary for the sole reason that the EU company itself could not perform such activities under EU sanctions would be subject to scrutiny under the non-circumvention rule.

#### **Diligence defence clause**

Failure to comply with EU sanctions can expose companies and individuals to high fines and even imprisonment. However, EU sanctions expressly exclude liability if a person ‘did not know, and had no reasonable cause to suspect, that their actions would infringe’ sanctions.

To be able to rely on this ‘diligence defence’, parties to contemplated transactions and activities are expected to conduct reasonable due diligence based on all readily available information to ensure no activities that could violate sanctions might take place. There is no one-size-fits-all model of due diligence or sanctions compliance programmes. This involves an exercise that depends on the risk exposure of specific transactions. In particular, as part of their due diligence, European companies must carefully consider and screen the counterparties and their ultimate beneficial owners against applicable sanctions lists (such as the EU asset freeze list) to establish that they are not, in any way, sanctioned, and assess

the goods or services involved.<sup>48</sup> In addition, parties should include appropriate contractual protection in their agreements with third parties (such as appropriate representations, warranties and indemnities).

Additionally, EU sanctions include a provision whereby no claims brought by certain persons in connection with any contract or transaction whose performance has been affected by EU sanctions (e.g., claims for indemnity or compensation or claims under a guarantee) shall be satisfied.<sup>49</sup>

### **When sanctions regimes collide: EU Blocking Regulation**

Historically, the EU and US have broadly aligned their sanctions regimes, targeting similar third countries, and individuals and entities in third countries, in response to certain geopolitical events. The EU has adopted most of its autonomous sanctions in tandem with similar measures by the US (and other allied countries, such as Canada and Switzerland).

The former Trump administration marked a period of divergence on sanctions policies between the EU and the US, particularly in respect of Iran. In 2018, the US withdrew from the Joint Comprehensive Plan of Action (JCPOA) (i.e., the Iran nuclear deal, under which the US and EU had agreed to roll back their nuclear-related sanctions programmes in exchange for the implementation by Iran of restrictions on its nuclear activity). Subsequently, the US reimposed certain sanctions against Iran, including sanctions targeting activities of non-US persons with no connection to the US. These ‘secondary’ sanctions targeting non-US persons could have a detrimental effect on European businesses that engaged in activities with Iran in compliance with EU sanctions when sanctions were partially lifted pursuant to the JCPOA in 2016.

To protect these European businesses, the EU amended its Blocking Regulation, which was initially put in place in the 1990s in the context of the extraterritorial application of US sanctions against Cuba.<sup>50</sup> Under the revised EU Blocking Regulation, individuals and entities connected to the EU (e.g., Member

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48 Further information and recommendations in terms of due diligence can be found in the European Commission’s FAQs on circumvention and due diligence published in the context of Russia sanctions, as of 19 May 2022, available at [https://ec.europa.eu/info/sites/default/files/business\\_economy\\_euro/banking\\_and\\_finance/documents/faqs-sanctions-russia-circumvention-due-diligence\\_en.pdf](https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/faqs-sanctions-russia-circumvention-due-diligence_en.pdf).

49 For instance, Article 11 of Council Regulation (EU) No. 833/2014 of 31 July 2014.

50 Council Regulation (EC) No. 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country and actions based thereon or resulting therefrom, as amended.

State nationals who are EU residents, entities incorporated within the EU and individuals acting in a professional capacity within the EU) are prohibited from complying, ‘actively or by deliberate omission’, with certain US sanctions targeting Iran. According to the Blocking Regulation, any EU person shall be entitled to recover any damages, including legal costs, in respect of harm caused as a result of compliance with US sanctions, from the person causing the loss.<sup>51</sup> In theory, EU operators can request an authorisation from the European Commission to comply with the listed extraterritorial legislation, if not doing so would cause serious harm to their interests or the interests of the EU.<sup>52</sup> However, these types of authorisations are exceptional and, according to the European Commission, ‘not every nuisance or damage suffered by EU operators will entitle them to obtain an authorisation’.<sup>53</sup>

On 21 December 2021, the CJEU opined for the first time on the Blocking Regulation in the *Bank Melli* case. The case arose from a dispute between the German branch of the Bank Melli Iran and a subsidiary of Deutsche Telekom AG. Deutsche Telekom had terminated all contracts with Bank Melli. The CJEU held that the EU Blocking Regulation did not require EU persons to give reasons for terminating a contract with a US-sanctioned person. However, its actions can be reviewed in civil proceedings, and in that case, the burden of proof to show that the action in question was not taken to comply with US sanctions lies with the EU operator. As to whether forcing the maintenance of the contract could entail disproportionate economic consequences in the circumstances of the case, the CJEU left it to the German higher regional court to assess how proportionality applied in the present case, and weigh the pursuit of the objectives of the EU Blocking Regulation against the probability and extent of potential economic losses for Deutsche Telekom, if their termination of the contract with Bank Melli would be annulled. It noted that one factor that should be taken into consideration is that Deutsche Telekom had not attempted to apply for an exemption from the EU Blocking Regulation before terminating the business relationship with Bank Melli.

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51 *id.*, at Article 6.

52 *id.*, at Article 5(2).

53 See Q&A 16 of Guidance Note – Questions and Answers: adoption of update of the Blocking Statute of 7 August 2018 (C/2018/5344).

In January 2021, the Commission announced its intention to propose an amendment to the Blocking Regulation to further deter and counteract the unlawful extraterritorial application of sanctions to EU operators by countries outside the EU, and to streamline the application of the current EU rules, including by reducing compliance costs for EU citizens and businesses. The proposal was pending at the time of writing.



## **APPENDIX 2**

# About the Authors

### **Genevra Forwood**

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Genevra Forwood, partner at White & Case, advises and litigates on a broad range of areas of EU law, across a variety of industrial sectors, ranging from energy and manufacturing, to pharmaceutical and chemicals. One area of focus is the EU's economic sanctions against third countries. Genevra co-leads the firm's EU and UK sanctions teams, and has handled hundreds of queries on this topic, spanning advisory and transactional work through to investigations and contentious matters. Genevra also advises on other aspects of EU regulatory compliance, including in the areas of public procurement, environmental laws and consumer protection. She assists clients with their own compliance, and has drafted a number of complaints to the European Commission in respect of failures of Member States to comply with their obligations under EU law. Genevra has pleaded a number of high-profile cases before the EU courts, in particular in the area of antitrust and state aid rules. She frequently advises on the rules and procedures governing the grant of state aid, and has acted for both beneficiaries and complainants in proceedings before the European Commission and EU courts. She is currently involved in cutting-edge cases on the interface between EU law and international investment protection treaties.

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Sara Nordin, partner at White & Case, is part of the EU specialist export controls and sanctions team, which regularly advises multinational institutions and corporations on a range of matters relating to relevant EU law and policy and Member State enforcement for trade restrictions towards various third countries. Sara has worked on international trade and customs matters in both the United States and the European Union, and specialises in advising multinational companies,

trade associations and sovereign governments on related issues. From her work in Hong Kong, Sara has developed a focus on the EU's trade and investment relations (including free trade agreements) with various Asian countries. With respect to trade and customs law, Sara has expertise relating to a range of issues concerning anti-dumping and countervailing duty, classification, origin, valuation, marking, entry procedures, preferential trade regimes and security standards. She has advised clients supplying goods and services on the EU and US markets on aspects of environmental regulations, regulatory compliance, product safety standards (including regulation of genetically modified organisms in the EU and its Member States) and intellectual property regimes (including geographical indications). Sara provides regular advice on trade, customs and institutional matters in relation to existing EU and US free trade agreements, and free trade agreements under EU negotiation.

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Matthias Vangenechten is an associate in White & Case's EU law practice in Brussels and advises clients on a broad range of EU trade law matters, with a particular focus on economic sanctions, export controls and other regulatory issues. He provides clients with day-to-day transactional advice and regularly assists them in the development and implementation of effective compliance programmes. His experience covers a wide variety of industries, including aviation, consumer products, infrastructure, financial services, maritime and shipping, and oil and gas. Prior to joining White & Case, Matthias worked for over five years in the Brussels office of another international law firm, where he gained substantial experience in EU trade law. He has also worked as an international consultant for the United Nations Economic Commission for Africa in Ethiopia. Matthias holds a master's of law degree from the Catholic University of Leuven. During his master's degree programme, he was part of an international exchange programme at the National University of Singapore. Matthias also obtained an advanced master's in international relations and diplomacy from Antwerp University.

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Julia Marssola is an associate in the firm's international trade law practice in Brussels and advises clients on a broad range of trade law matters, with a particular focus on trade defence proceedings, economic sanctions and regulatory issues. She represents clients in complex anti-dumping, anti-subsidy and safeguards investigations before the European Commission, having built particular experience in the steel sector. In her career, Julia has represented clients in trade defence proceedings in third countries such as the US, Brazil and Argentina. Her work in economic sanctions and export controls includes providing clients with day-to-day complex cross-border transactional advice and regularly assisting them in the development and implementation of effective compliance programmes. Julia has been involved in clearing multibillion-euro transactions from a sanctions and export controls perspective. Her experience covers a wide variety of industries, including telecommunications, mining, food and energy. Prior to joining White & Case, Julia worked for one of the leading international trade law firms in Brussels, focusing on trade defence proceedings in the EU and the US. Before moving to Brussels, she gained experience in top firms in Paris and Brazil, assisting in World Trade Organization cases and in merger control proceedings before the French and Brazilian competition authorities. With her solid international background, Julia can provide clients with a holistic perspective and innovative approach.

**Fabienne Vermeeren**  
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Fabienne Vermeeren, Regional Director Europe – International Trade Services, specialises in advising multinational corporations, trade associations and sovereign clients on EU trade and customs matters, including with respect to Brexit. Fabienne frequently works on customs law issues including classification, valuation and origin matters, as well as the EU's successive generalised scheme of preferences regimes and free trade agreements. She actively monitors EU customs developments, including with respect to the Union Customs Code and related rules, procedures and guidance. She has been involved in drafting briefing papers for Member States and the European Commission on the classification of various consumer electronic products under discussion in the EU Nomenclature Committee, and on customs valuation and origin matters. Fabienne also works on EU export control matters and sanctions regimes and their enforcement and licence application procedures at Member State level. She is deeply involved in advising and training multinational clients to ensure compliance in these matters. Fabienne has also worked on anti-dumping cases in the European Union, in particular on the 'Community interest' and injury aspects of numerous agrochemicals cases, and the customs aspects of anti-dumping cases in various product sectors (e.g., classification and origin issues).

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We live in a new era for sanctions, more than ever, it seems. More states are using them, in more creative (and often unilateral) ways. They've become many states' first line of response.

This, alas, creates a degree of complication for everyone else. Hitherto no book has addressed those issues and the proliferation of sanctions regimes and investigations in a structured way. GIR's *The Guide to Sanctions* solves that. Written by contributors from the small but expanding field of sanctions enforcement, it dissects the topic in a practical fashion, from every stakeholder's perspective, and is an invaluable resource.

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