

Sanctions Alert

A bi-monthly summary of sanctions news and events

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Russia News

OFAC Clarifies the Definition of “Shale Project” in Respect of Sectoral Sanctions on Russia’s Energy Industry

On 18 November, the US Treasury Department’s Office of Foreign Assets Control (“OFAC”) published frequently asked question (“FAQ”) No. 418 on its website. The FAQ clarifies the definition of “shale project” for purposes of Directive 4 of the Sectoral Sanctions Identifications (“SSI”) List, which prohibits the provision of most goods, services (except financial services) and technology to listed Russian energy companies in support of exploration or production for deepwater, Arctic offshore or shale projects in Russia that have the potential to produce oil. The FAQ clarifies that the term “shale projects” applies only to projects

that have the potential to produce oil from shale formations. The term does not apply to exploration or production through layers of shale to locate or extract crude oil or gas from reservoirs.

The EU also has restrictions on goods and technology related to shale projects, but has not provided any definitions.

[OFAC FAQ No. 418](#)

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EU Announces Intention to Sanction Ukrainian Separatists

On 17 November, the Council of the European Union announced its intention to “adopt additional listings targeting separatists” in response to the ongoing crisis in Eastern Ukraine. Persons listed will become subject to the current regime of asset freezes and travel bans. The Council plans to agree on the additional persons to be designated by the end of November.

While the Council “once again underline[d] the Russian Federation’s responsibility in this context”, it

did not resolve to impose additional sanctions on Russia. Federica Mogherini, the new High Representative of the European Union for Foreign Affairs and Security Policy, stated that “Russia is part of the problem but it is also for sure part of the solution”.

[EU Council Press release](#)

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Switzerland Expands Measures to Prevent Circumvention of Russian Sanctions

On 12 November, Switzerland expanded its regime of measures aimed at preventing the circumvention of international sanctions imposed in response to the ongoing situation in Ukraine. The [Federal Council's Ordinance of 27 August 2014](#) was amended to take account of the EU's September round of Russia related sanctions (see our [Client Update of 15 September 2014](#)) and expand restrictions in financial activities with Russian entities and individuals.

In the field of finance, trade in new financial instruments with a maturity exceeding 30 days (previously: exceeding 90 days) issued by five Russian banks and six companies, and the granting of loans with a maturity exceeding 30 days to those five banks and six companies, have become subject to authorisation by the State Secretariat for Economic Affairs (SECO). Secondary trading in newly issued financial instruments from outside Switzerland and the EU with a maturity exceeding 30 days has become

subject to a duty to notify SECO. In addition, existing business dealings with 24 individuals and entities became subject to a duty to notify and new business relationships with those persons have been prohibited. A complete list of individuals and entities subject to the Swiss anti-circumvention measures can be found on [SECO's website](#).

The Amendment imposed additional export controls on military and dual use goods and increased reporting obligations on the provision of financial and technical services in connection with these goods, as well as regarding deep water oil exploration and shale oil projects.

[Overview of the Amendment \(in French\)](#)

[SECO Press Release](#)

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Iran News

E3+3 Extend Iran Negotiations

On 24 November, the five permanent members of the UN Security Council and Germany acknowledged that negotiations with Iran over its nuclear programme would have to be extended by seven months to 30 June 2015, as gaps "are still significant". International sanctions proved to be a particular sticking point. Iran's economy has been affected by the sanctions and Iran would like to see them lifted immediately and permanently. The E3+3, however, called for sanctions

to be phased out gradually in order to maintain pressure on Iran to provide credible assurances that it will dismantle its nuclear capacity.

The negotiations are expected to resume next month.

[OFAC Recent Actions](#)

[The New York Times Article](#)

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EU News

General Court Awards Damages for First Time in Sanctions Case

On 25 November, the General Court of the European Union (First Chamber) departed from previous practice and ordered the Council to pay the applicant, an Iranian limited company, EUR 50,000.00 as compensation for non-material damage sustained by being mistakenly included on the EU sanctions list for Iran. This amount reflected solely the damage caused to the applicant's reputation by becoming associated with "activities regarded as reprehensible by the international community" through an official statement by an EU institution with binding legal consequences.

The Court rejected as unfounded the applicant's claim for compensation in respect of material damage caused by the closure of some of the applicant's bank accounts and the suspension of its payment in euros by European banks, as well as the discontinuance of business relations by the applicant's European suppliers.

[Case T-384/11 *Safa Nicu Sepahan Co. v Council of the European Union* \[2014\]](#)

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General Court Annuls Inclusion of Three Individuals on EU's Syria Sanctions List

On 13 November, the General Court of the European Union (Seventh Chamber) annulled the inclusion of Aiman Jaber, Khaled Kaddour, and Mohamad Hamcho in the EU's sanctions list on Syria. All three applicants were implicated as associates of General Maher Al Assad, President Bashar Al Assad's brother, and as active supporters of the Syrian regime.

The General Court criticised the Council for relying only on press reports to substantiate its case and held that the Council had failed to establish that the reasons relied on against the applicants were well founded. In reaching its decision, the General Court relied on the European Court of Justice's (the "ECJ") interpretation of Article 47 of the EU Charter of Fundamental Rights (in respect of a fair trial and effective remedy) in *Kadi II*.

The ECJ in that case held that applicants challenging a listing are not required to disprove the reasons advanced by the Council in favour of that listing. The burden of proof lies instead with the European Union authority responsible for the listing.

[Case T-653/11 *Aiman Jaber v Council of the European Union* \[2014\]](#)

[Case T-654/11 *Khaled Kaddour v Council of the European Union \(Kadi II\)* \[2014\]](#)

[Case T-43/12 *Mohamad Hamcho, Hamcho International v Council of the European Union* \[2014\]](#)

[Joined Cases C-584/10 P, C-593/10 P and C-595/10 P *European Commission v Yassin Abdullah Kadi* \[2013\]](#)

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AG Recommends Rejection of Appeal by EIH Bank

On 12 November, Advocate General Mengozzi (the “AG”) of the European Court of Justice issued his Opinion in respect of Case C-585/13 P *Europäisch-Iranische Handelsbank AG v Council of the European Union*, an appeal from the decision of the General Court of the European Union in Case T-434/11. The AG agreed with the General Court that an authorisation of a release of frozen funds by the Bundesbank, Germany’s competent authority in respect of financial sanctions, did not suffice to prove that EIH had not breached or circumvented sanctions.

The AG noted with approval that national authorities did not have the power to “give general approval to a certain category of transactions”. By providing only for very specific situations where frozen funds can be released, the EU legislature intended to render case-by-case assessment as “obviously essential”. Crucially, even national authorisation on an individual basis and “in full accordance” with the relevant EU legislation “does not provide an absolute guarantee, for the decision of

a national authority does not automatically confer a stamp of lawfulness”. The AG expressed his concern that national authorities might have insufficient information at their disposal and that, in any event, authorisations must be consistent with the purpose of the EU sanctions regulations. He also said that reliance could not be placed on the minutes of meetings of preparatory bodies, such as Relex, to infer the official EU position.

The Opinion of the AG is persuasive, but not binding on the ECJ. The next step in the case will be a hearing by the ECJ.

[Opinion of Advocate General Mengozzi in Case C-585/13 P *Europäisch-Iranische Handelsbank AG v Council of the European Union* \[2014\]](#)

[Case T-434/11 *Europäisch-Iranische Handelsbank AG v Council of the European Union* \[2013\]](#)

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UK News

Treasury Renews Terrorist Designation of Bilal Abdullah and Revokes Terrorist Designation of Sultan Muhammad

On 21 November, HM Treasury renewed the final designation in respect of Bilal Talal Abdul Samad Abdullah under the [Terrorist Asset-Freezing etc. Act 2010](#) (the “2010 Act”). Abdullah was arrested and convicted in connection with a terrorist bomb plot against Glasgow airport on 30 June 2007.

On 19 November, HM Treasury revoked the final designation in respect of Sultan Muhammad under the 2010 Act.

The 2010 Act freezes the accounts, funds and economic resources of designated persons, requires the suspension of any financial services provided to such persons, and imposes reporting obligations.

[Financial Sanctions: Consolidated List of Targets](#)

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US News

US Expands Narcotics Sanctions on La Oficina and the Sinaloa Cartel

On 19 November, the US Treasury Department announced the designations of 10 Colombian nationals and 14 entities, including the Colombian professional soccer team Envigado Futbol Club S.A. (“Envigado F.C.”) and its majority owners, for their roles in supporting the narcotics trafficking, money laundering and other illicit activities of La Oficina de Envigado (“La Oficina”), a Specially Designated Narcotics Trafficker. Among the individuals designated were an alleged underboss of the organisation, an individual described as a violent drug trafficker, a high-ranking officer in the Transit Police of Envigado, Colombia and a former police officer who allegedly conducts extortion and debt collection for La Oficina. Also designated was Envigado F.C. and its owner, Juan Pablo Upegui Gallego. According to the Treasury Department, Mr. Gallego has used his ownership of the team to finance La Oficina for many years. Other designated entities include an event promotion company, a biofuels company and a beauty salon.

In a separate action, on 6 November, the US Treasury Department announced the designation of German

Alberto Perez Ocampo of Medellín, Colombia, and his brother, Santiago Perez Ocampo, as well as Compra Venta Gerpez, an import company for which German Perez Ocampo is the sole administrator and chief executive. According to the Treasury Department, German Perez Ocampo is a major cocaine supplier to the Sinaloa Cartel in Mexico and has also partnered with the Beltran Leyva Organisation and La Familia Michoacana in Mexico, Los Cachiros in Honduras and Los Urabeños in Colombia, each of which has been designated by the United States as a significant foreign narcotics trafficker. Santiago Perez Ocampo is allegedly his brother’s “enforcer” and responsible for helping to manage his brother’s business operations.

[Treasury Department Press Release \(La Oficina\)](#)

[Treasury Department Press Release \(Sinaloa Cartel\)](#)

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US Mining Equipment Manufacturer Pays \$2 Million to Settle Potential Civil Liability for Purchasing Cuban-Origin Nickel

On 13 November, OFAC announced that ESCO Corporation (“ESCO”), based in Portland, Oregon, has agreed to pay \$2,057,540 to settle potential civil liability for purchasing nickel briquettes in November 2007

and June 2011 that were made or derived from Cuban-origin nickel. OFAC determined that ESCO voluntarily disclosed the apparent violations and that they constitute a non-egregious case.

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As aggravating factors in the determination of the settlement amount, OFAC considered that ESCO acted with reckless disregard of the sanctions requirements, when it failed to identify that the briquettes were made or derived from Cuban-origin nickel despite contemporaneous “red flags” in the public domain, that the large volume and high value of the transactions caused harm to the Cuba sanctions program and its policy objectives, and that ESCO is a commercially sophisticated company with international operations.

As mitigating factors, OFAC considered that ESCO has not received a penalty notice of Finding of Violation in the five years preceding the first transaction of the apparent violations, that ESCO has enhanced its OFAC compliance plan and conducted a thorough “look-back”, and that ESCO cooperated with OFAC’s investigation (including by agreeing to toll the statute of limitations).

[OFAC Enforcement Announcement](#)

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UN News

UN Security Council Adds Two Entities to Al-Qaida Sanctions List

On 19 November, the UN Security Council’s Al-Qaida Sanctions Committee added Ansar Al Charia Derna and Ansar Al Charia Benghazi to its sanctions list. Both entities have been involved in financing, supplying arms, assisting, planning and otherwise facilitating Al-Qaida and its activities. In particular, both entities were implicated in the attack against the Consulate of the United States in Benghazi, causing the death of four American citizens, including the Ambassador of the United States to Libya.

Listed entities and individuals become subject to the Al-Qaida Sanctions Regime pursuant to UN Security Council Resolution 2161 (2014), which includes

asset freezes, travel bans and an arms embargo. Any individual or entity that provides financial or material support to the two entities, including the provision of arms or recruits, is eligible to be added to the Al-Qaida Sanctions List and subject to the sanctions measures.

[Security Council Press Release](#)

[Narrative Summaries of Reasons for Listing of Entities Associated with Al-Qaida](#)

[UNSC Resolution 2161 \(2014\)](#)

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