

# Sanctions Alert

A summary of sanctions news and events



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## United States and EU Respond to Turkey Military Action in Northern Syria

On October 14, 2019, U.S. President Trump issued E.O. 13894, setting out new Syria-related sanctions. Among other measures, E.O. 13894 authorizes the Secretary of the Treasury to identify and designate for blocking sanctions any person determined to threaten the peace, security or territorial integrity of Syria or be a current or former official, or a subdivision, agency or instrumentality, of the Government of Turkey.

Additionally, a non-U.S. financial institution may be prohibited from maintaining a U.S. correspondent account, or face related restrictions, if the Secretary of the Treasury determines the non-U.S. financial institution knowingly facilitated a significant financial transaction on behalf of a person subject to such blocking sanctions. This risk applies to non-U.S. financial institutions even if that financial transaction occurs entirely outside the United States and without involvement by U.S. persons.

Acting under this authority, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") designated the Turkish Ministries of Energy and Natural Resources and National Defense, along with the current Ministers of Turkey's Ministries of Energy and Natural Resources, Defense and Interior.

OFAC's press release explained that these sanctions are in response to the recent military actions carried out by the Government of Turkey in Syria and notes that, while the sanctions are currently focused on Turkey's actions, the new executive order also authorizes broad secondary sanctions that threaten a menu of potential consequences against any person determined by the U.S. Secretary of State to have, among other activities, disrupted the ceasefire in northern Syria or engaged in expropriation of property for personal gain or political purposes in Syria. On October 17, 2019, after meeting with the Turkish President and announcing a "pause" in Turkey's operations in northern Syria, the U.S. Vice President reportedly stated that no further sanctions would be imposed during this pause and that the existing sanctions against Turkey may be lifted once Turkey's current operations in northern Syria are complete.

OFAC issued several related general licenses authorizing the official business of the U.S. government and certain international organizations with the newly designated persons as well as, through November 12, 2019, activities necessary to wind down dealings with the newly designated Turkish ministries.

The EU response was more muted, with reported disagreement between EU member states on how to respond given the EU's closer ties with Turkey. The EU Council ultimately issued a statement on October 14, 2019 condemning Turkey's actions in Northern Syria, while still naming Turkey a "key partner" of the EU and a "critically important actor" in the region. The statement did not impose any direct sanctions on Turkey, but did refer to a need for EU member states to commit to "strong national positions" in relation to military exports to Turkey.

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## Iran Continues to be Center Stage

The United States and European Union continue their divergent approaches to Iran. Following the United States' withdrawal from the Joint Comprehensive Plan of Action ("JCPOA") in May 2018, the United States has

continued to leverage sanctions as its primary response to concerns about Iranian actions. In contrast, the European Union has focused on maintaining engagement and the status quo under the JCPOA.

## The United States Continues to Impose New Sanctions Against Iran

This year, U.S. President Trump has issued two new executive orders targeting Iran. The first expands U.S. secondary sanctions against Iran, which historically have targeted dealings by non-U.S. persons with Iran's energy industry, also to target Iran's mining industry (iron, steel, aluminum and copper). We discussed these sanctions in our [Client Update](#). The second order placed blocking sanctions on the Supreme Leader of Iran, the Supreme Leader's Office and certain other officials and, several months later, provided authority for blocking sanctions against Iran's Foreign Minister.

Frequently, new sanctions have targeted Iran's Islamic Revolutionary Guard Corps ("IRGC"), including new designations of Iran's Central Bank, National Development Fund and the Persian Gulf Petrochemical Industries Company. Other sanctions were announced against Iran's space program under authority targeting proliferators of weapons of mass destruction.

U.S. authorities also have taken multiple actions under U.S. secondary sanctions against Iran. One related to Iran's uranium enrichment nuclear program and

resulted in sanctions against five individuals and seven entities in China, Iran and Belgium. Others related to Iran's energy sector and included sanctions against the Chinese state-owned enterprise Zhuhai Zhenrong

Company Limited for purchasing oil from Iran and two subsidiaries of China's COSCO Shipping Energy Transportation Co., Ltd.

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## The EU Reaffirms the Validity of the Iran De-Nuclearization Deal

The EU continues its commitment to preserving the JCPOA, despite the U.S. withdrawal from the agreement and Iran's subsequent breach of its key terms on the production of enriched uranium.

The governments of France, Germany and the UK (the "E3") reaffirmed their commitment to the JCPOA in a joint statement on July 14, 2019. The E3 expressed concern that Iran had breached key provisions of the agreement and reiterated that, although they are willing to continue to support the JCPOA, *"its continuation is contingent on Iran's full compliance, and we strongly urge Iran to reverse its recent decisions in this regard."*

The EU showed continued support for the JCPOA by setting up an alternative bartering system for companies to use when dealing with Iran (described below) and expanding the EU Blocking Regulation, which now prohibits companies in the EU from acting (or omitting to act) to comply with U.S. sanctions against Iran or Cuba.<sup>1</sup> The tension between EU and U.S. positions on the JCPOA has recently been highlighted in relation to the Iranian oil tanker, Grace 1, as described below.

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## INSTEX Bartering System is Established

This summer, the EU announced that the Instrument in Support of Trade Exchanges ("INSTEX"), a mechanism to facilitate trade with Iran, is operational. INSTEX is one of the EU's primary ways of showing continued support for the JCPOA. It is intended to allow companies to trade with Iran without using financial institutions, many of which refuse to deal with Iran due to the reinstated U.S. sanctions.

INSTEX is available to all EU Member States, and some Member States are currently in the process of joining INSTEX as shareholders. The intention is that INSTEX will eventually be available to economic operators from non-EU countries. INSTEX is based in Paris, and Per Fischer, the former Head of Financial Institutions at Commerzbank, has been appointed as its president. The initial scope of INSTEX is limited to

non-sanctioned essential goods, such as humanitarian, medical and farm products. There is suggestion that the scope of INSTEX will increase over time (and, indeed, comments from Iran suggest that it is unhappy with the current scope).

The effectiveness of INSTEX remains to be seen, and there are questions about the potential U.S. sanctions risks associated with using it. On May 7, 2019, the U.S. Treasury Department's Undersecretary for Terrorism and Financial Intelligence warned INSTEX's president that *"engaging in activities that run afoul of U.S. sanctions can result in severe consequences, including a loss of access to the U.S. financial system."*

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## Release of Seized Iranian Oil Tanker Highlights U.S./EU Tensions over Iran Sanctions

The denial by Gibraltar authorities of a U.S. request regarding a seized Iranian oil tanker illustrates the continuing tension between the U.S. attempts to enforce its sanctions against Iran and the EU's provision of sanctions relief under the JCPOA.

On August 18, 2019, Gibraltar declined to act on a Mutual Legal Assistance Request ("MLAT") issued by the U.S. Department of Justice ("DOJ") seeking to restrain an oil tanker *Grace 1* in anticipation of forfeiture proceedings in the United States. The DOJ alleged that the IRGC used *Grace 1* to effect illicit shipments from Iran to Syria and that millions of U.S. dollars were laundered in support of such shipments.

Two days later, Gibraltar released *Grace 1*, after the UK obtained assurances from Iran that the tanker would not proceed to Syria—on the basis that "*the operation of EU law*" prevented it from fulfilling the U.S. request. Although the IRGC is subject to an asset freeze under the EU's remaining sanctions against Iran, EU asset freezes do not require or allow assets belonging to and in possession of an asset-frozen person to be seized simply by virtue of their being in the EU. In its press release, Gibraltar indicated two grounds for its refusal.

*First*, the conduct would not have been criminal had it occurred in Gibraltar because it did not violate EU sanctions, and therefore did not satisfy the dual criminality requirement necessary to provide international assistance under the MLAT. *Second*, Gibraltar appears to have considered the role of the EU Blocking Regulation as another reason for its decision. The EU Blocking Regulation "*specifically prohibits compliance with certain U.S. legislation, including the Iranian Transactions and Sanctions Regulations ("ITSR")*"—which formed an important part of the U.S. MLAT request. This appears to be one of the first reported instances where the EU Blocking Regulation has been cited as preventing an EU Member State from taking an action requested by the United States.

Despite assurances to the Gibraltar government, the UK government later acknowledged that the vessel appeared to have unloaded 2 million barrels of oil in Syria.

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## Venezuela and Cuba Also a Focus of U.S. Authorities

On August 5, 2019, President Trump sharply escalated U.S. sanctions against Venezuela by blocking all property and property interests of the Government of Venezuela, subject to wind-down licenses. As noted in our [Client Update](#), the “Government of Venezuela” is defined to include the government and its political subdivisions, agencies and instrumentalities, covering state-owned companies as well as any person owned or controlled by, or who has acted or purported to act on behalf of, the foregoing. OFAC subsequently issued General License 34, authorizing transactions with former government employees, among others.

The order followed on the heels of numerous designations by OFAC in June and July 2019, including the designation of two Maduro regime public officials in connection with corruption related to Venezuela’s

electricity infrastructure, Nicolas Maduro’s son for being an official of the Government of Venezuela, Venezuela’s military counterintelligence agency, and a Colombian national for bribery and corruption related to Venezuela’s food subsidy program. OFAC also took multiple actions against shipping and energy companies purported to be operating in Venezuela’s oil sector, including Cubametales, Cuba’s state-run oil import and export company.

OFAC also tightened the U.S. embargo on Cuba, revoking previous authority for U.S. financial institutions to process “U-turn” transactions and restricting certain remittances to Cuba. We discussed these developments in our [Client Update](#).

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## EU Pushes Back Against U.S. Cuba-Related Litigation

On May 2, 2019, the United States announced that, for the first time, private lawsuits may be brought under Title III of the Helms-Burton Act (the “Act”), which provides remedies against persons that traffic in property seized by Cuba.

The EU and other countries reacted strongly to the announcement. The change of U.S. policy puts companies operating on properties confiscated by the Cuban government, including many EU companies, at risk of lawsuits. The EU foreign policy chief Federica Mogherini and European Trade Commissioner Cecilia Malmström warned the U.S. Secretary of State, Mike Pompeo, that the policy change has raised

concerns across the EU. The letter accused the United States of breaching international law and threatened to bring action before the World Trade Organisation if any claims were brought in U.S. courts.

At a meeting of the EU Foreign Affairs Council in Luxembourg on 17 June 2019, foreign ministers of EU Member States discussed adopting measures to protect European businesses affected by the change in U.S. policy, including potential deployment of the EU Blocking Regulation.

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## U.S. Sanctions Policy Regarding China Remains Unclear

Although the United States does not maintain any sanctions directly targeting China, Chinese companies continue to be in the cross-hairs of U.S. sanctions enforcement. Recently, the United States sanctioned two subsidiaries of China's Cosco Shipping Holdings Co., a state-owned shipping company, for transporting Iranian oil exports, causing major disruptions in global energy markets. Earlier, another Chinese state-owned enterprise, Zhuhai Zhenrong Company Limited, was sanctioned for purchasing oil from Iran. OFAC also designated several Chinese nationals as significant foreign narcotics traffickers for their alleged role in manufacturing, selling and distributing synthetic opioids or precursor chemicals.

The United States continues to seek extradition of the CFO of Huawei Technologies Co., Ltd. ("Huawei") on allegations of violating U.S. sanctions against Iran and maintains, through the U.S. Department of Commerce's Bureau of Industry and Security ("BIS"), an export embargo against the company and its subsidiaries. In August, a temporary general license authorizing limited U.S. exports to Huawei was renewed by BIS, but no new exports have been licensed.

On October 7, 2019, BIS prohibited the export or transfer of U.S. products, including software and

technology, to an additional 28 Chinese governmental and commercial organizations. Although the action was taken days before U.S.-China trade talks were set to resume, U.S. officials were reported as saying the two events were unrelated. Announcing the action, U.S. Commerce Secretary Ross connected the export embargo to "*China's campaign targeting Uighurs and other predominantly Muslim ethnic minorities in the Xinjiang Uighur Autonomous Region.*" Three of the new companies on the list were identified in media as leading artificial intelligence startups, with one referred to as "*one of the world's most valuable AI unicorns.*"

The action targeting Chinese AI companies occurs against the backdrop of BIS' implementation of the *Foreign Investment Risk Review Modernization Act* ("FIRRMA"), which requires BIS to identify "emerging technologies" essential to U.S. national security and to subject those technologies to U.S. export controls. As reported in our [Client Update](#), commentators have urged BIS to exclude AI technologies from these and other U.S. export controls for national security reasons, arguing that the technologies are now widely deployed and such controls would create barriers to U.S. technological leadership.

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## United States Adopts Further Sanctions Against Russia

In August 2019, U.S. President Trump issued Executive Order 13883, authorizing a second tranche of sanctions on Russia, mandated by the U.S. State Department's finding under the *Chemical and Biological Weapons Control and Warfare Elimination Act* ("CBW Act") that the Russian Government used chemical weapons against a former Russian spy in the United Kingdom.

Discussed in our [Client Update](#), the new sanctions include:

- Restricting U.S. financial institutions from participating in the primary market for non-ruble denominated bonds issued by the Russian government and lending non-ruble denominated funds to the Russian government;
- Requiring the U.S. Government to oppose the extension of any loan or financial or technical assistance to Russia by international financial institutions; and

- Imposing a "presumption of denial" on applications for licenses for exports to Russia of dual-use chemical and biological items controlled by the Department of Commerce.

On August 2, 2019, OFAC issued a Directive to implement the restrictions on U.S. financial institutions together with related guidance.

On September 30, 2019, OFAC expanded its sanctions against Yevgeniy Prigozhin for his alleged attempts to influence the 2018 U.S. midterm elections. OFAC issued a warning that "[w]hile today's action only targets Russian actors, the U.S. Government is safeguarding our democratic processes from adversaries – primarily Russia, Iran, and China – that may be seeking to influence the upcoming 2020 elections."

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## Key Sanctions Decisions

### U.S.: OFAC Continues to Target Non-U.S. Banks' Correspondent Activities

On September 17, 2019, OFAC announced a settlement with British Arab Commercial Bank plc ("BACB"), a UK financial institution, for U.S. Dollar-denominated "bulk funding" of the bank's dealings with Sudanese banks during the period when Sudan and its financial institutions were subject to a U.S. embargo. OFAC reduced the proposed penalty of \$229 million to \$4 million, citing BACB's "operating capacity" and ability to pay.

This action followed another enforcement matter involving U.S. correspondent banking services, indicating that OFAC remains focused on these activities. In April 2019, UniCredit Bank AG, a German bank, entered a guilty plea resolving charges that it assisted certain Iranian entities. UniCredit also settled with OFAC and other U.S. authorities, paying more than \$1.3 billion in aggregate.

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## U.S.: Enforcement Action Underscores Importance of “Red Flag” Diligence for Exporters

In August 2019, PACCAR Inc., a U.S. company, entered into a civil settlement of violations of the U.S. embargo on Iran, paying \$1.7 million. The company’s wholly-owned Dutch subsidiary, through several dealers, accepted orders despite red flags indicating that the ultimate buyers were in Iran.

Announcing the settlement, OFAC highlighted the importance of ensuring that non-U.S. subsidiaries of

U.S. companies understand their obligations under the U.S. embargo on Iran. OFAC noted the “*benefits U.S. companies can realize in conducting sanctions-related training and in taking appropriate steps to audit and monitor foreign subsidiaries for OFAC compliance.*” We discuss OFAC’s recent guidance regarding effective sanctions compliance programs below.

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## UK: Court Adopts Broad Interpretation of “No Claims” Clauses in EU Sanctions Regulations<sup>2</sup>

A recent English Commercial Court decision has significant repercussions for the interpretation of the so-called “no claims” clauses that are widely included in EU sanctions regimes. “No claims” clauses prevent persons in countries targeted by EU sanctions from bringing claims relating to contracts or transactions affected by EU sanctions.

The decision concerned the enforcement of an arbitral award made in favor of the Ministry of Defence & Support for Armed Forces of the Islamic Republic of Iran (“MODSAF”) for breach of contract by International Military Services Ltd (“IMS”), in relation to sale and supply of military goods.<sup>3</sup> The issue was whether the interest on the arbitral award owed to MODSAF by the IMS under the terms of the arbitral award should be enforced during the period when MODSAF was subject to EU sanctions. The Court held that the “no claims” clause prevented MODSAF from recovering interest during the sanctions period.

The rationale behind “no claims” clauses is that parties should not be punished for their inability to perform contractual obligations as a direct result of the imposition of sanctions. However, the judgment raises questions regarding what should be done with interest that accrues on an award. It neglects to consider that the party liable to pay an award may obtain a direct windfall from its inability to pay the award to the sanctioned party because it will be able to retain the amount in question and earn interest for itself. The decision also took a narrow interpretation of another common provision in EU sanctions legislation, which allows a financial institution to pay interest to the frozen bank account of an asset-frozen person.

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## UK: U.S. Secondary Sanctions Recognized as “Mandatory Provision of Law” in UK Contract<sup>4</sup>

As discussed in our [Client Update](#), the English Commercial Court has interpreted a loan agreement governed by English law with no U.S. nexus as allowing a borrower to withhold payment of interest on the grounds that such payment could give rise to U.S. secondary sanctions risks.

Cynergy Bank Limited, a UK-incorporated retail bank, borrowed £30 million from Lamesa Investments Limited, a Cyprus-incorporated entity ultimately owned by Viktor Vekselberg, under a facility agreement governed by English law.<sup>5</sup> The facility agreement provided that Cynergy would be in default if it did not pay interest instalments within 14 days of each due date, except if such sums were not paid *“in order to comply with any mandatory provision of law, regulation or order of any court of competent jurisdiction.”*

When Vekselberg was sanctioned in the United States, Lamesa also became the subject of U.S. sanctions. Cynergy subsequently ceased paying interest under

the facility agreement. It argued that, under the “mandatory provision of law” clause, it could withhold interest payments because paying them would put it at risk of U.S. secondary sanctions.

The court held that the “mandatory provision of law” clause applied not only to sanctions directly applicable to the contracting parties, but also to the risk of U.S. secondary sanctions, which can be applied at the discretion of the U.S. Government against parties with no jurisdictional nexus to the United States.

The decision may lead other parties to seek to avoid contractual obligations on the grounds of U.S. secondary sanctions, and it could impact companies in jurisdictions including Russia, Iran, North Korea, and Venezuela. The decision also leaves open the question of whether other secondary sanctions regimes could trigger a “mandatory provision of law” clause.

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## UK: Standard Chartered Faces £10 million Fine for Sanctions Breaches

Reports indicate that the UK Office of Financial Sanctions Implementation (“OFSI”) notified Standard Chartered Bank of its intention to impose a £10 million fine, arising from Standard Chartered Bank’s alleged failure to prevent sanctions breaches. No further details have been reported so far.

In April 2019, Standard Chartered was fined £102 million by the UK Financial Conduct Authority (the “FCA”) for anti-money laundering breaches. The breaches were discovered following

an FCA investigation, which found that there were shortcomings in the bank’s counter-terrorism finance controls in the Middle East. This was the second largest financial penalty for anti-money laundering failings ever imposed by the FCA. Remediation steps taken by Standard Chartered and its cooperation with the FCA resulted in a 30% reduction of the fine, which would otherwise have been over £145 million.

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# U.S. Sanctions Policy Developments

## Presidential Powers Under IEEPA

In August 2019, U.S. President Trump wrote on Twitter that “[o]ur great American companies are hereby ordered to immediately start looking for an alternative to China.” He later cited the authority granted to the U.S. President under the *International Emergency Economic Powers Act* (“IEEPA”) as the basis for such an order.

As discussed in our [Client Update](#), the U.S. President could find that China’s actions pose an “*unusual and extraordinary threat*” to the “*national security, foreign policy, or economy of the United States*” and, pursuant to this finding, issue an executive order restricting U.S. companies from conducting various forms of business in or involving China.

Although a legal challenge may be brought against any such order, the President’s powers under IEEPA are broad once a declaration of a national emergency is

made, and U.S. courts are deferential to the Executive Branch in matters of national security and foreign policy. Moreover, U.S. businesses may experience significant and irreparable commercial impact during the pendency of any such legal challenge regardless of its outcome.

To date, no official announcement or declaration of a national emergency pursuant to IEEPA’s mandated procedures has followed President Trump’s Twitter statement, and there is no indication that the U.S. Government will implement an order directing U.S. companies to leave China.

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## OFAC Provides Updated Sanctions Compliance Program Guidance

Earlier this year, OFAC published its most comprehensive guidance to date on the key components of an effective sanctions compliance program (“SCP”). Titled “A Framework for OFAC Compliance Commitments,” it builds on OFAC’s earlier guidance scattered throughout other sources,

and continues to emphasize OFAC’s view that an effective SCP should rest on a risk-based approach. We discussed it in our [Client Update](#).

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## EU/UK Sanctions Policy Developments

### EU Adopts Framework to Impose Sanctions for Cyber-Attacks

On May 17, 2019, the European Council adopted Council Regulation (EU) 2019/796, which establishes a new EU sanctions regime aimed at cyber-attacks that constitute an external threat to the EU or its Member States.

The Regulation defines cyber-attacks as actions involving access to information systems, information system interference, data interference or data interception without authorisation. The regime covers cyber-attacks that constitute an external threat. This includes cyber-attacks that originate or are carried out from outside the EU, use infrastructure outside the EU, are carried out by any person or body established or operating outside the EU or are carried out with support or at the direction of any person, entity or body operating outside the EU.

The framework allows for restrictive measures such as travel bans and asset freezes to apply to persons or entities listed in the Annex to the Regulation. There are currently no persons or entities listed. Any amendment to the list requires a unanimous decision of the European Council, which means that any changes require Member States to align their political interests.

This is a continuation of the EU trend to adopt country-neutral sanctions regime that instead target the behavior of specific malicious actors.

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### EU Considering Removing Member State Unanimity Requirement for Implementing New Sanctions Regimes

In May 2019, the Centre for European Reform published an opinion piece on the possibility of removing the unanimity requirement for imposing EU sanctions. The piece follows comments made by Jean Claude Juncker, the President of the European Commission, that *“it is not right that one member state was able to hold the renewal of our arms embargo on Belarus to ransom, or that sanctions on Venezuela were delayed for months when unanimity could not be reached”*.

It was expected that a decision on whether Qualified Majority Voting could replace unanimity would be discussed at the European Council meeting in May 2019, but there has been no formal comment on the topic yet.

These developments come at a pivotal time for EU sanctions due to Brexit. The UK has a reputation for pushing a more hawkish stance towards international affairs and acting as the driving force for more comprehensive sanctions.

In contrast, some Member States have taken a more conservative approach, only imposing sanctions that have been implemented by the UN Security Council. Tensions between the two approaches have been illustrated by the EU’s approach towards sanctions against Russia, with the lack of unanimity resulting in stasis since 2014.

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## UK Prepares for Brexit

The UK continues to prepare for a transition to ensure that sanctions remain in place in the event of a no-deal Brexit. The UK government updated the relevant guidance in February 2019. As expected, the guidance says that the UK intends to continue all EU sanctions at the time of the Brexit, primarily through the use of the Regulations promulgated under the *Sanctions and Anti-Money Laundering Act 2018*.

Although the UK government has suggested that the Regulations are intended to have the same effect as

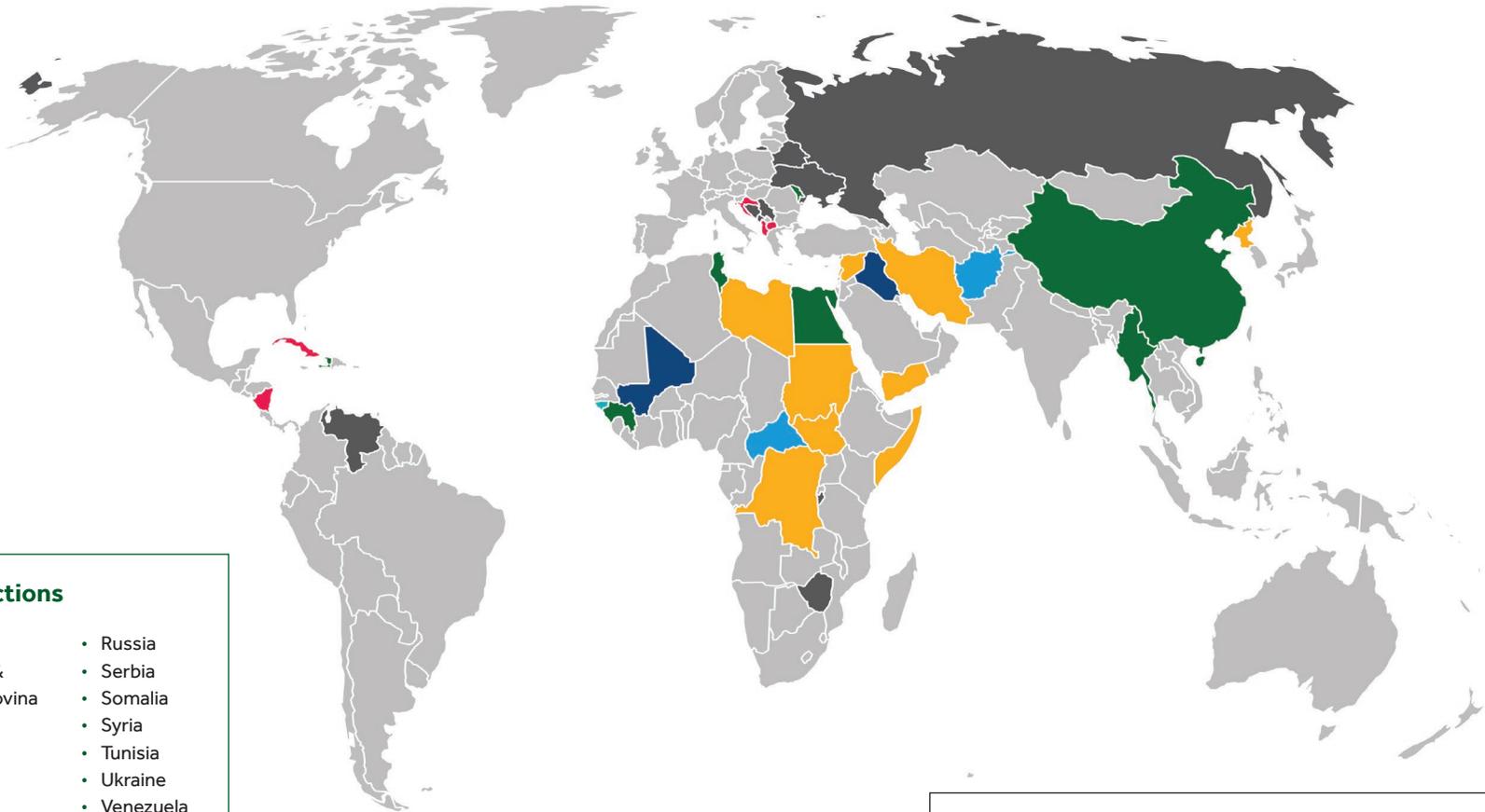
the current EU sanctions, some differences include the definition of “ownership or control” for the purposes of asset freezes, an expansion of the bases for disclosure to third parties and narrower reporting obligations.<sup>6</sup> It remains to be seen whether further Regulations under the *Sanctions and Anti-Money Laundering Act 2018* are published, and how much they will differ from EU sanctions.

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## Endnotes

1. The EU Blocking Regulation: Compliance programmes per U.S. and EU companies. <https://www.debevoise.com/insights/publications/2018/12/compliance-programmes> (14 December 2018).
2. UK Court Adopts Broad Interpretation of “No Claims” Clauses in EU Sanctions Regulations, <https://www.debevoise.com/insights/publications/2019/09/uk-court-adopts-broad-interpretation-of> (6 September 2019).
3. *Ministry of Defence & Support for Armed Forces of the Islamic Republic of Iran v International Military Services Ltd*, [2019] EWHC 1994 (Comm).
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5. *Lamesa Investments LTD v Cynergy Bank LTD* [2019] EWHC 1877 (Comm).
6. UK Treasury Publishes First Post – Brexit UK Sanctions Regulations and Guidance <https://www.debevoise.com/insights/publications/2019/02/uk-treasury-publishes-first-post-brexit> (20 February 2019).

# Sanctions Landscape



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