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March 22, 2022

Russia Sanctions: Implications for Italy and Europe

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Russia Sanctions: Implications for Italy and Europe



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ICC Italy – March 22, 2022

Personal Introduction

- ▣ > 25 years as international lawyer, mainly international trade and investment
- ▣ Started career at US Treasury, long experience at top global firms
- ▣ Former law professor
- ▣ Current focus mainly sanctions (OFAC) and investment reviews (CFIUS)
- ▣ Boutique firm with international focus



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Introduction to US Sanctions

Part 1



Two Main Types of Sanctions

Primary Sanctions

- ▣ Violations punished by criminal prosecution and civil penalties
- ▣ Mainly restrict activities by US persons, but with important applications to non-US persons
- ▣ BIS can cut off US suppliers
- ▣ OFAC / some BIS

Secondary Sanctions

- ▣ Economic “sticks” to encourage 3d-country companies to avoid business with sanctioned countries and persons
 - ▣ Often “menu-based”
- ▣ Biggest “stick”: Asset freeze and near-total bar on doing business with US
 - ▣ **SDN List**
- ▣ OFAC or State Dept



OFAC Overview

- ▣ Office of Foreign Assets Control
- ▣ Main statute – IEEPA
 - ▣ International Emergency Economic Powers Act
- ▣ Main targets today
 - ▣ Cuba, Iran, North Korea, Russia/3 regions of Ukraine, Syria, Venezuela
 - ▣ SDN List and 50% Rule
- ▣ Details vary widely and can change without notice



Key Term – US Person

- ▣ US citizens and permanent residents
 - ▣ Includes employees, officers & directors of non-US entities
- ▣ Entities organized under US law
 - ▣ Includes US subsidiaries of foreign companies
 - ▣ Includes foreign branches of US companies
 - ▣ Cuba and Iran sanctions reach foreign subsidiaries too
- ▣ Persons located in the US
 - ▣ Includes temporary travelers
 - ▣ Includes US branches of foreign companies

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Russia Sanctions

Part 2



Overview

- ▣ Ukraine-Related sanctions, 2014
- ▣ CAATSA, 2017
 - ▣ **Countering America's Adversaries Through Sanctions Act**
- ▣ Chemical Weapons sanctions
- ▣ Pipeline sanctions
- ▣ SDN designations – oligarchs, election interference, human rights (Magnitsky), cyber sanctions, Syria, Venezuela



Sectoral Sanctions

- ▣ Innovative
- ▣ Easy to add new sanctions targets
- ▣ Can be SDN or non-SDN "menu based"
 - ▣ SSI List
- ▣ Followed in **Venezuela**, Iran, Belarus
- ▣ Restrict dealings in new debt and new equity
 - ▣ Includes payment terms
 - ▣ Listed entities in defense, energy, financial sectors
- ▣ Energy sector – prohibiting goods and services to certain projects in deepwater, offshore, and shale oil production



Crimea

- ▣ Regional sanctions
- ▣ Broad prohibitions on trade in goods and services, and investments
 - ▣ BIS role
- ▣ Compliance challenges - Not a separate country
 - ▣ Difficult to screen
 - ▣ Questions about border
 - ▣ Risks of diversion



CAATSA

- ▣ Prevented repeal of Obama-era sanctions
- ▣ Tightened sectoral sanctions
- ▣ Added numerous triggers for secondary sanctions
- ▣ Oligarch sanctions



Invasion of Ukraine, Feb. 2022

- ▣ Regional sanctions
- ▣ Financial sanctions
- ▣ Energy sanctions
- ▣ Trade sanctions
- ▣ SDN designations
- ▣ Belarus sanctions



New Regional Sanctions

- ▣ Donetsk and Luhansk separatist regions
 - ▣ Not well defined
 - ▣ More regions may be added

- ▣ Like Crimea sanctions

- ▣ License to winddown pre-existing contracts and operations by March 22



New Financial Sanctions # 1

- ▣ SDN Designations for some banks
 - ▣ VTB, VEB, Sovcombank, Promsvyazbank, Otkritie, Novicombank
- ▣ Prohibits US persons from “any transaction **involving** the Central Bank ..., the National Wealth Fund ..., or the Ministry of Finance ..., including any transfer of assets to such entities or any foreign exchange transaction for or on behalf of such entities”
- ▣ No correspondent banking relations for Sberbank
- ▣ EU excludes from SWIFT the 6 banks above + Rossiya



New Financial Sanctions #2

- ▣ Restrictions on dealings in new debt and equity of some banks to begin March 26
- ▣ No investment in sectors to be identified
- ▣ Restrictions on sending USD banknotes to Russia or GOR



New Energy Sanctions

- ▣ Nord Stream 2 – SDN designation
- ▣ Restrictions on dealings in new debt and equity of some companies to begin March 26
- ▣ New energy restrictions:
 - ▣ Ban imports of oil, LNG, coal, coal products
 - ▣ No new investment in Russian energy sector
 - ▣ Approval or facilitation
 - ▣ Performance of pre 3/8 contracts allowed through 4/21 unless involve SDNs



Export Sanctions

- ▣ Arms embargo
- ▣ Ban on luxury good exports
- ▣ EAR99 items restricted for Entity List and military end-uses/military end-users
- ▣ New requirements for various non-EAR99 items
- ▣ New foreign direct product rules, similar to Huawei rules



Import Sanctions

- ▣ Fish and seafood, alcohol, non-industrial diamonds
- ▣ Winddown by 3/24

More sanctions coming

- ▣ Raise tariffs (no MFN rate)
- ▣ **Many bills in Congress**

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Belarus Sanctions

Part 3



Overview

- 2006 – Undermining Democratic Processes and Institutions
- 2021 – Many more categories of people eligible for SDN designation
- Sectoral sanctions - defense and related materiel, security sector, energy sector, potash sector, tobacco products sector, construction sector, transportation sector
 - Potash SDN designations
 - Other sectors may be named later
- Restrictions on dealings in certain debt issued by Finance Ministry or Development Bank



Wartime Escalation

- SDN designations for supporting Russia's invasion of Ukraine
- Target defense and finance sector
 - Belinvestbank & Bank Dabrabyt

More coming?

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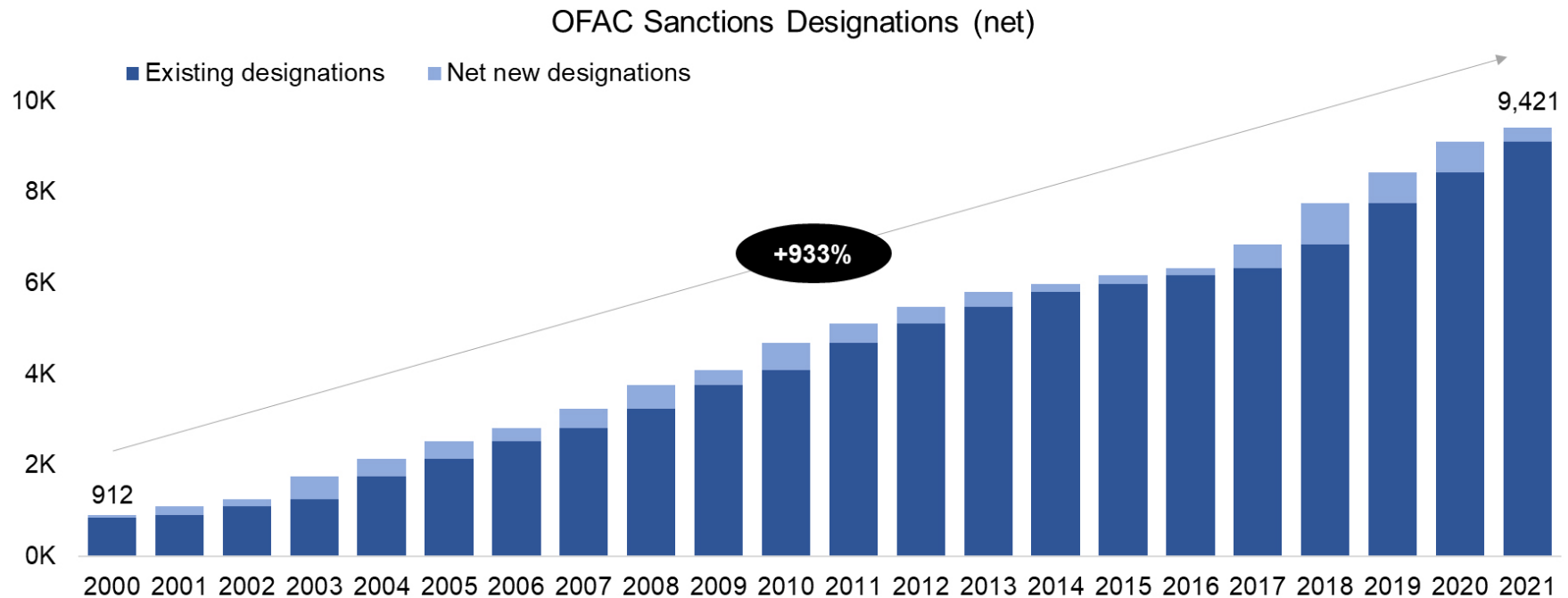
Implications for Italy

Part 4



More SDN Designations

Sanctions use has increased over the last 20 years



Source: Treasury Sanctions Review, Oct 2021



Proliferating Secondary Triggers

- ▣ Iran: Over 20 triggers now
- ▣ **Russia: Facilitating significant transaction for sanctioned person or close relative**
- ▣ North Korea: Materially assisting an SDN or engaging “in at least one significant importation from or exportation to North Korea”
- ▣ Venezuela: Materially assisting, supporting, or providing goods or services to or in support of, an SDN or acting on behalf of GOV
- ▣ SDN and Entity List designations resembling secondary sanctions, including sectoral sanctions
- ▣ **Examples only. Expect more.**



Significant Transaction

Totality of the facts and circumstances, which **may** include:

- ▣ size, number, and frequency of the transaction
- ▣ nature of the transactions
- ▣ level of awareness of management / pattern of conduct
- ▣ nexus between the transactions and a blocked person
- ▣ impact on statutory objectives
- ▣ involve deceptive practices?
- ▣ **such other factors deemed relevant on a case-by-case basis**



Focus on China

National Security Adviser Jake Sullivan

“We are communicating directly, privately to Beijing that there will absolutely be consequences for large-scale sanctions evasion efforts or support to Russia”

Commerce Secretary Gina Raimondo

[I]f the US were to find that a company like [SMIC] was selling its chips to Russia, “we could essentially shut SMIC down because we prevent them from using our equipment and our software”

Sources: NY Times



Extraterritorial Effects

- ▣ Re-export controls
 - ▣ Includes controls on certain non-US goods with US inputs
- ▣ Causing violations by US persons
 - ▣ Especially banks
 - ▣ Can include customers, suppliers, employees, etc
 - ▣ Can include own US subsidiary
- ▣ Increasing criminal prosecution of willful violations by non-US persons
- ▣ Contractual commitments / securities disclosure



Thank you!

Please do not hesitate to contact me:



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