

Compliance; OFAC, UN and EU
rules



Agenda and purpose of the training

In this hour we are going to talk about OFAC, UN and EU embargo rules, we are going to talk about the overlaps , the difference and potential impact these rules might have; direct and indirect

- Types of sanctions
- OFAC
- UN Embargo
- EU Embargo



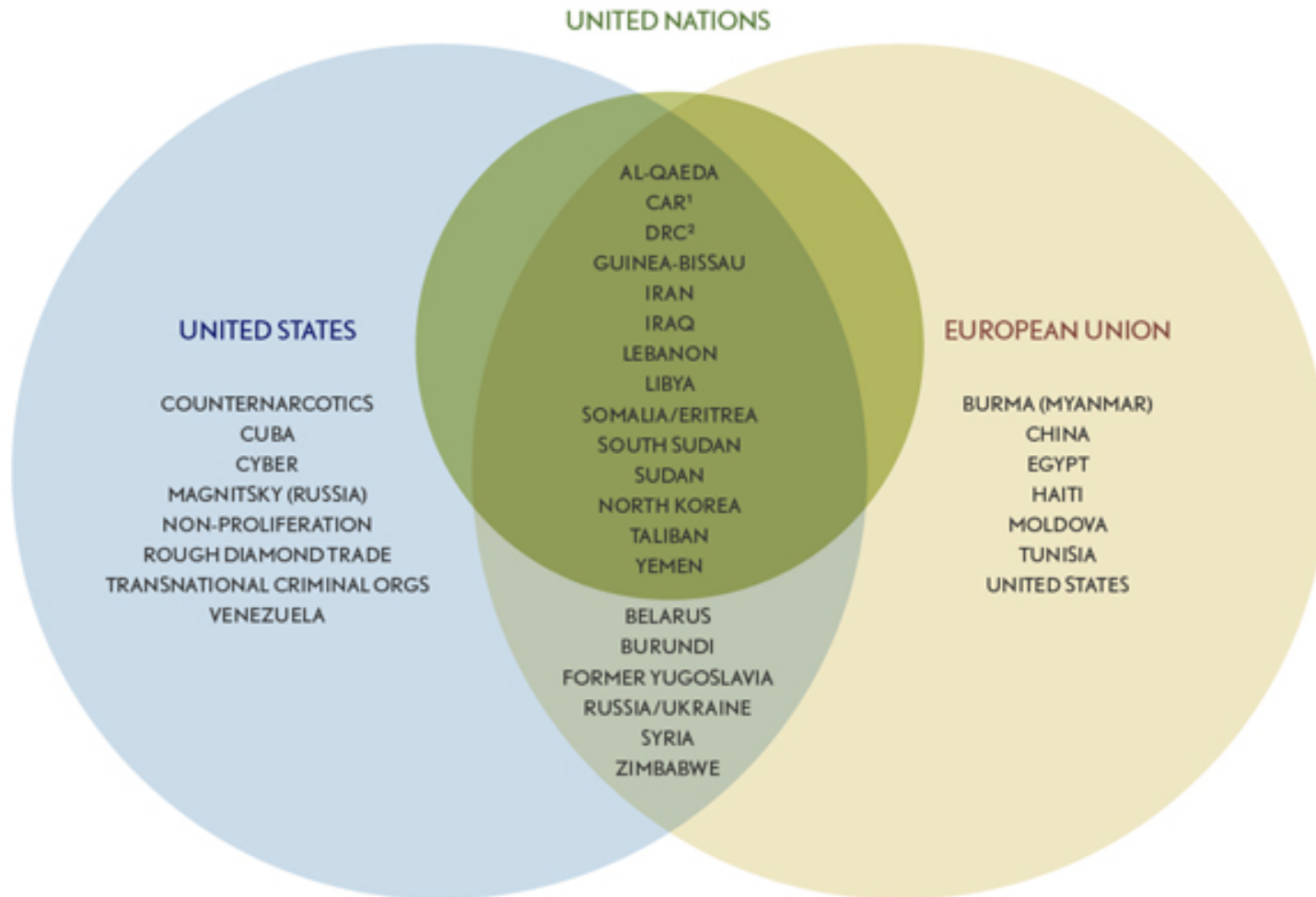
The types of sanctions

- Weapons (and weapons related)
- Certain technologies and dual use goods
- Financial sanctions
- Travel restrictions against certain individuals
- Sport

The “order” of global sanctions

- The main body to decided on sanctions is the Security Council of the UN (majority vote and without a veto of one of the 5 permanent members; US, China, France, Russia and the UK)
- The sanction is binding for all its members.
- Due to the veto right of the permanent members it is quite difficult to get any sanction approved
- Next to the UN sanctions both the US and EU have issued sanctions against Individuals/countries of which some overlap and other are diametrically opposed

GLOBAL SANCTIONS REGIMES 2016



1. Central African Republic 2. Democratic Republic of Congo



- **The first set of rules we are going to talk about is not the most encompassing (that would be UN) however in practice it is the rules monitored and enforced by the OFAC which have the most impact and therefore we will spend a bit more time on these rules**
- **From the official OFAC website**
- The Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under US jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.
- The Treasury Department has a long history of dealing with sanctions. Dating back prior to the War of 1812, Secretary of the Treasury Gallatin administered sanctions imposed against Great Britain for the harassment of American sailors. During the Civil War, Congress approved a law which prohibited transactions with the Confederacy, called for the forfeiture of goods involved in such transactions, and provided a licensing regime under rules and regulations administered by Treasury.



- OFAC is the successor to the Office of Foreign Funds Control (the ``FFC''), which was established at the advent of World War II following the German invasion of Norway in 1940. The FFC program was administered by the Secretary of the Treasury throughout the war. The FFC's initial purpose was to prevent Nazi use of the occupied countries' holdings of foreign exchange and securities and to prevent forced repatriation of funds belonging to nationals of those countries. These controls were later extended to protect assets of other invaded countries. After the United States formally entered World War II, the FFC played a leading role in economic warfare against the Axis powers by blocking enemy assets and prohibiting foreign trade and financial transactions.
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- OFAC itself was formally created in December 1950, following the entry of China into the Korean War, when President Truman declared a national emergency and blocked all Chinese and North Korean assets subject to U.S. jurisdiction.
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- <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/consolidated.aspx>



- **1. What is OFAC and what does it do?**
- The Office of Foreign Assets Control administers and enforces economic sanctions programs primarily against countries and groups of individuals, such as terrorists and narcotics traffickers. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals. [09-10-02]
- **Who must comply with OFAC regulations?**
- **U.S. persons** must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all U.S. incorporated entities and their foreign branches. In the cases of certain programs, foreign subsidiaries owned or controlled by U.S. companies also must comply. Certain programs also require foreign persons in possession of U.S.-origin goods to comply. [01-15-15]
- **Can OFAC change its previously stated, non-published interpretation or opinion without first giving public notice?**
- Yes. OFAC, therefore, strongly encourages parties to exercise due diligence when their business activities may touch on an OFAC-administered program and to contact OFAC if they have any questions about their transactions. [09-10-02]
- OFAC's regulations are broader than the specific laws that deal with the terrorists and persons who support them. **All individuals and entities that fall under U.S. jurisdiction** should use OFAC's list of Specially Designated Nationals and Blocked Persons ("SDN List"). This list includes designated terrorists and is available on [OFAC's website](#). It is important to note that some OFAC sanctions, such as those pertaining to Iran, Sudan, and Cuba, apply to persons acting on behalf of those targeted governments even if those persons do not appear on the SDN list. It is also important to note that OFAC's Cuba sanctions prohibit most transactions with Cuban nationals, wherever located. U.S. persons are expected to exercise due diligence in determining whether any such persons are involved in a proposed transaction. [01-15-15]
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OFAC



- As you have noticed on the previous page I highlighted 2 parts
- **U.S. persons**
- **All individuals and entities that fall under U.S. jurisdiction**
- This would suggest that these rules might only apply to US citizens and the like and this is clearly not the case (!)
- The reach of OFAC is much wider than the literal text suggests in reality it touches all transactions which have (remote) link to the US and is extraterritorial
- As rules can change overnight, transactions which were allowed at the start of the transaction might become in breach of OFAC during its lifetime (UN and EU usually have a little bit more leeway)
- As company or private individual you might be asked to declare that you will not breach any OFAC rules when dealing with a US Subsidiary in Europe

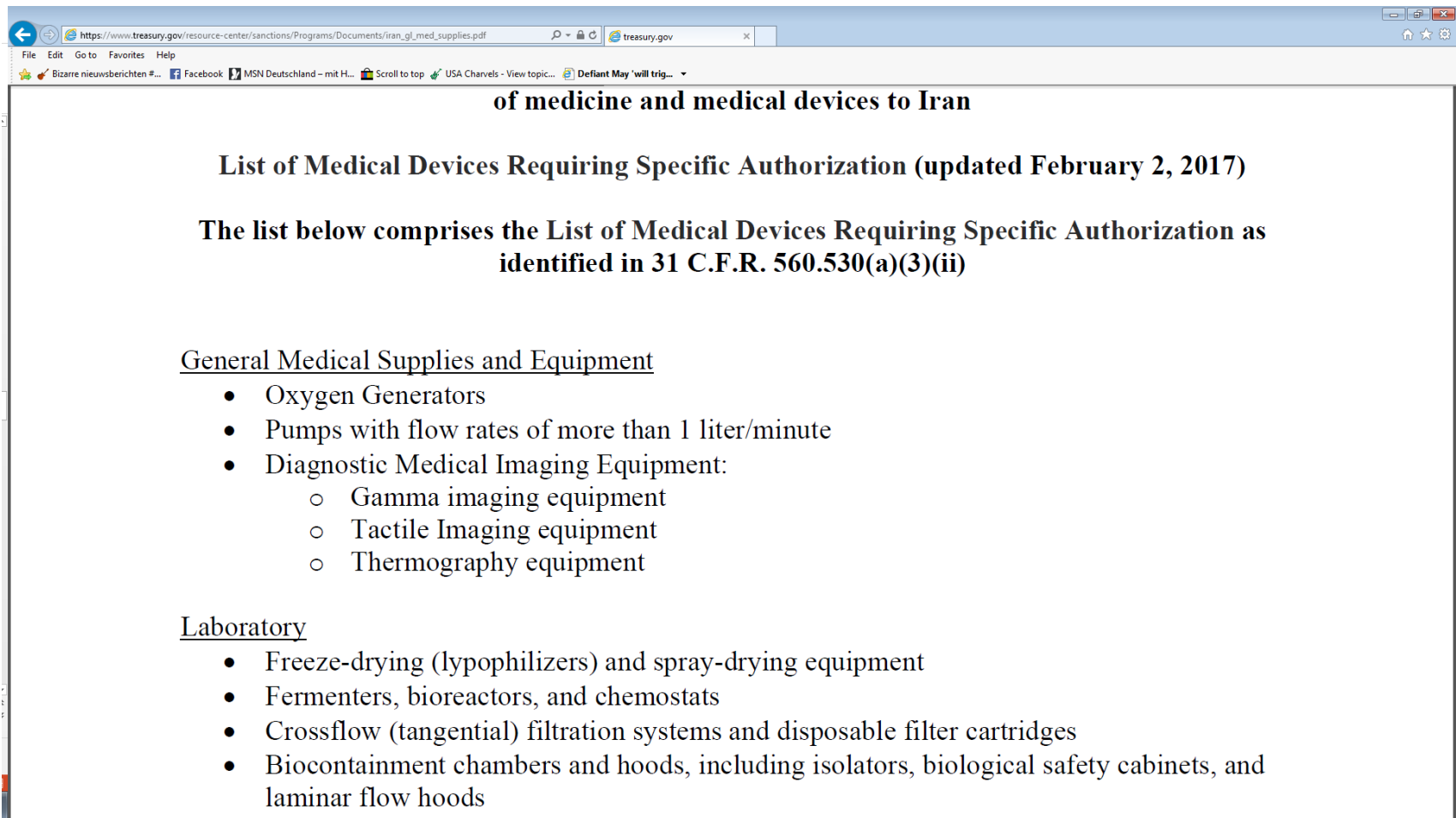


- it boils down to the following; if and when the transaction has any relation with the US, such as being in US dollars, or being handled by a US bank or if the transaction passes US soil or involves the sale or use of US technology OFAC can apply
- This explains why European bank even after having lifted the European sanctions for Iran are still quite hesitant to engage in doing business with Iran, as the US has still sanctions in place and it for a bank (or any other party for that matter) is quite difficult to establish that there is no breach of OFAC rules even when engaging in a seemingly purely European transaction
- Example: a letter of credit issued by Bank A (Located in UAE), currency EURO, shipment from Hamburg to Bandar Abbas (Iran) , advised by Bank B who happens to have their computers servers in the US. As a result this transaction could result in a OFAC breach .In this particular case the fact that the transaction virtually runs over US soil already makes it subject to OFAC , as beneficiary of such an l/c you may not even be aware that the transaction is in breach however as a result the funds could be seized and the involved bank may be fined
- Another example, shipment from Brazil to South Korea, transaction in USD, shipment took place (accidentally) on a Iranian vessel, as US Dollars were (and are) being paid through a US correspondent bank, a condition for payment was to mention the name of the vessel. This triggered a hit on the vessel and payment was stopped

Example of what is allowed

- **362. Is the exportation or re-exportation of non-U.S.-origin agricultural commodities, medicine, or medical devices by a U.S. person to Iran authorized?**
- Yes. The definitions of the terms “agricultural commodities,” “medicine,” and “medical device” used in the relevant general licenses in the ITSR include, in the case of items subject to the Export Administration Regulations (EAR), items that are designated as EAR99 and, in the case of items not subject to the EAR, items that would be designated as EAR99 if they were located in the United States. For example, under the agricultural commodities general license, a company located in the United States would be authorized to arrange for the exportation from a third country to Iran of agricultural commodities produced in the third country if those commodities would be designated as EAR99 if they were located in the United States, provided that all conditions of the general license are otherwise satisfied. [12-22-16]

Example of what is **not** allowed without a specific license



of medicine and medical devices to Iran

List of Medical Devices Requiring Specific Authorization (updated February 2, 2017)

The list below comprises the List of Medical Devices Requiring Specific Authorization as identified in 31 C.F.R. 560.530(a)(3)(ii)

General Medical Supplies and Equipment

- Oxygen Generators
- Pumps with flow rates of more than 1 liter/minute
- Diagnostic Medical Imaging Equipment:
 - Gamma imaging equipment
 - Tactile Imaging equipment
 - Thermography equipment

Laboratory

- Freeze-drying (lyophilizers) and spray-drying equipment
- Fermenters, bioreactors, and chemostats
- Crossflow (tangential) filtration systems and disposable filter cartridges
- Biocontainment chambers and hoods, including isolators, biological safety cabinets, and laminar flow hoods

- Consumer Policy
- Economic Policy
- Financial Markets, Financial Institutions, and Fiscal Service
- Financial Sanctions
 - Specially Designated Nationals List (SDN List)
 - Consolidated Sanctions List
 - Search OFAC's Sanctions Lists
 - Additional Sanctions Lists
 - OFAC Recent Actions
 - Complete List of Sanctions Programs and Country Information**
 - Frequently Asked Questions
 - OFAC Civil Penalties and Enforcement
 - Contact OFAC
- International
- Small Business Programs
- Tax Policy
- Terrorism and Illicit Finance
- Data and Charts Center
- FAQs

Resource Center



Home » Resource Center » Financial Sanctions » Programs

Sanctions Programs and Country Information

OFAC administers a number of different sanctions programs. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.

Where is OFAC's country list?

Active Sanctions Programs:	Program Last Updated:
Balkans-Related Sanctions	02/03/2017
Belarus Sanctions	04/28/2017
Burundi Sanctions	06/02/2016
Central African Republic Sanctions	04/12/2017
Counter Narcotics Trafficking Sanctions	08/22/2017
Counter Terrorism Sanctions	08/29/2017
Cuba Sanctions	08/22/2017
Cyber-related Sanctions	02/08/2017
Democratic Republic of the Congo-Related Sanctions	06/01/2017
Iran Sanctions	05/17/2017
Iraq-Related Sanctions	04/04/2016
Lebanon-Related Sanctions	07/30/2010
Libya Sanctions	04/13/2017
Magnitsky Sanctions	01/09/2017

OFAC fines, just some of the “highlights”

- Paypal USD 7.7 mio
- BNP USD 8.9 Billion *
- RBS USD 33 mio
- DB USD 258 mio

- * please note that the fine for BNP was a combination of OFAC and fines given by the Southern District of New York, as they argue that the “crimes” were committed in their district (the banking district) N.b the NY fines are a multitude of the OFAC fine

Unwillingly not complying with OFAC

- March 16, 2016, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) issued a [Finding of Violation](#) to MasterCard International Incorporated (MasterCard) for violations of the Reporting, Procedures, and Penalties Regulations (RPPR), 31 C.F.R. Part 501. Specifically, OFAC determined that MasterCard failed to report accounts in which Bank Melli or Bank Saderat had an interest after OFAC added the two banks to the List of Specially Designated Nationals and Blocked Persons (SDN List).
- Following the May 1995 issuance of Executive Order 12959, which prohibited the export of goods, services (including financial services), and technology from the United States to Iran, MasterCard took steps to restrict accounts in which either Bank Melli or Bank Saderat had an interest. While it is not clear how MasterCard restricted the accounts, it seems non-controversial that it did not formally "block" the accounts and file a blocked property report with OFAC since that was not required by the law at the time. These accounts became dormant, though the assets in the accounts remained with MasterCard.

US 2017 Russia Sanctions

- **Countering Russian Influence in Europe and Eurasia Act – August 2017**
- Extraterritorial
- For the listed banks, new debt, new equity with a maturity of longer than 14 days prohibited (used to be 90 days)
- For listed companies, new debt, with a maturity of 60 days (used to be 90 days)
- For company Rostec – no new debt with a maturity longer than 30 days
- Making significant investments in Special Russian crude oil project
- Investments into New Pipeline projects (expansion, construction or modernization of pipelines which originate in the Russian Federation)

UN Embargo

- From the United Nations website:
- The Security Council takes the lead in determining the existence of a threat to the peace or act of aggression. It calls upon the parties to a dispute to settle it by peaceful means and recommends methods of adjustment or terms of settlement. In some cases, the Security Council can resort to imposing sanctions or even authorize the use of force to maintain or restore international peace and security.

UN

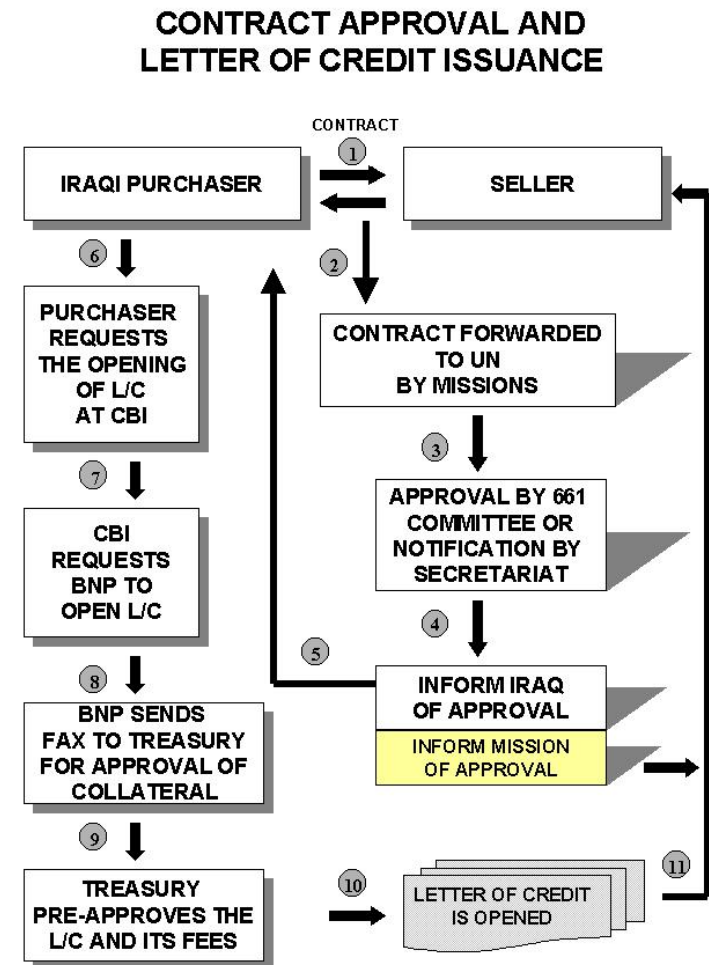
- The UN rules are all encompassing and in practice are taken over by “all” countries however as some members have a veto right in the UN it is difficult to come to an agreement as these rules need to be built on consensus, with some member having a veto right
- “local” rules such as OFAC or EU sanctions Embargo can therefore differ and be more strict (for instance sanctions against Russia, EU is more strict than US with their Ukraine Freedom Support Act, both being more strict than UN as the members of the UN could not reach consensus)

- Example of a UN sanction is the ban on Arms sales with Iran, this sanction is ofcourse much more limited when compared to the OFAC sanctions on Iran which have been in place much longer and are much more wide and basically prohibits all transactions with Iran (save for healthcare and food related transactions if and when licensed)
- In general you can state that UN sanctions follow major conflicts whereas US (and more or less EU) sanctions are more of a “bilateral” nature

Oil-for-Food

Office of the Iraq Programme

- A more or less “infamous” UN sanction was the Oil for food programme, which tried to ensure that Iraq was only able to secure food, medicine and other humanitarains needs for the Iraqi population without Iraq allowing to grow its military capabilities, this sanction followed the Iraqi invasion of Kuwait and was instigated on an initiative by the US in 1996



EU sanctions

- From the EU website
- In general terms, the EU imposes its restrictive measures to bring about a change in policy or activity by the target country, part of a country, government, entities or individuals. They are a preventive, non-punitive, instrument which should allow the EU to respond swiftly to political challenges and developments
- These sanctions can be autonomous or in addition to UN sanctions and as stated earlier can be more strict more strict than UN sanctions,
- In case of the EU sanctions against Russia for instance EU maximizes finance to sanctioned parties to max 30 days, whereas the US used to have a 90 days cap
- Currently the EU is in conflict with the US on their new sanctions for Russia

EU Sanctions



- EU sanctions typically apply to transactions where EU persons are involved. These are individuals of any nationality acting within the EU (including vessels and aircrafts under a members State's jurisdiction), nationals of a member state acting inside or outside the EU, legal persons, entities or bodies incorporated or constituted under the law of a member state, and any other legal, if the business is done in whole or part within the EU (please note this includes the special territories such British, France and Dutch overseas territories like the Dutch Antilles) However the Channel Islands are not part of the EU (yet they do adhere to the EU sanctions)

In summary

- OFAC rules have a big impact on Global business as most international trade is conducted in US dollars, however even when a transaction is not in USD it could be subject to OFAC rules due to the involvement of US individuals or content involved somewhere along the supply chain (outside your initial scope!!)
- EU and UN rules are more consensus based which lessens their effect a bit and tend to be a bit more “relaxed” on roll-off of existing business

I encourage you to visit the following websites

- <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>
- <https://sanctionssearch.ofac.treas.gov/>
- <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/OFAC-Recent-Actions.aspx>
- <http://www.bscn.nl/sanctions-consulting/sanctions-list-countries>
- http://eeas.europa.eu/cfsp/sanctions/index_en.htm