2024: Global Sanctions Outlook for Financial Institutions

By Carol M. Beaumier, Senior Managing Director

KYC took on added significance in the sanctions world in 2023. No, not Know Your Customer, though that certainly remains important. Know Your Cargo became a new mantra for sanctions practitioners and there is every indication it will continue to be heard throughout 2024. But growing geopolitical tensions and national security concerns mean that trade-related sanctions will not be the only area of focus in 2024.

2023 in Review

Before we provide our thoughts on the 2024 sanctions landscape, it's important to level set by reviewing 2023 developments — the areas of focus, the maturing of sanction regimes in the European Union (EU) and the United Kingdom (UK) and global coordination efforts, and of course, evasion and enforcement.

Areas of Focus

For global financial institutions, sanctions compliance in 2023 was focused on Russia, China and terrorist organizations, specifically Hamas and Hezbollah. Each of these sanctions programs differs in size, reach, complexity and participation.

With nearly 4x more sanctions than the next highly sanctioned jurisdiction (Iran), Russian sanctions are the most globally coordinated, the most complex, and the most far-reaching. While the pace of new sanctions against Russia slowed compared to 2022, nearly 5,000 new sanctions were issued in 2023, bringing the total number of sanctions against Russia to nearly 19,000.[1] No segment of the economy has been spared. Still, the war between Russia and Ukraine continues, fueling debate over the efficacy of the sanctions (a topic we discussed in our white paper, *One Year of Russian Sanctions*) and concerns about sanction evasion (more on that below).

U.S. national security concerns have led technology-related restrictions on China that are aimed both at stopping the import by China of advanced technologies and preventing China from investing in U.S. technologies. But there are also sanctions against China for supporting the Russian war machine and for human rights violations; these have been issued by the U.S., Canada, the UK and the EU, among other jurisdictions.

Global geopolitics is at a pivotal moment, facing the highest number of military conflicts since the Cold War. This escalation is felt worldwide, with significant hotspots affecting international relations on every continent. Two major conflicts will further dominate the landscape: the ongoing war in Ukraine, initiated by Russia, and the Israel-Hamas clash in the Middle East.

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The October 7, 2023, Hamas attack on Israel led to a number of new sanctions against leaders and members of Hamas and Hezbollah by the U.S., the UK, Japan, Australia, and other countries. The EU is, somewhat surprisingly, missing from the list of participating jurisdictions, although several member countries have called on the EU parliament to act. Canada is also missing from the list and is facing similar calls for action from members of the government, human rights groups and family members of those killed or taken hostage on October 7.[2] Escalation of conflict in the region will inevitably lead to additional sanction targets.

The three areas of focus described above are, of course, not all inclusive. New sanctions were also issued against a number of other jurisdictions, including sectoral sanctions by the U.S. on Sudan, sanctions against Burma by both the U.S. and Canada, and sanctions against North Korea by the U.S., South Korea, Canada and the EU.

1 "Russia Sanctions Dashboard," Castellum.ai, December 15, 2023: www.castellum.ai/russia-sanctions-dashboard

2 "Victims' families, human rights groups call for Canada to sanction individuals close to Hamas," Ryan Tumilty, National Post, December 12, 2023: https://nationalpost.com/news/politics/human-rights-groups-call-sanction-hamas

Not to be forgotten in 2023 was a partial rollback by the U.S. of its sanctions on Venezuela. Among other considerations, the rollback included a new general license issued by the U.S. Treasury Department in October 2023 authorizing OPEC member Venezuela to produce and export oil to its chosen markets for six months without limitation, with the possibility of extension. This relief followed concessions by Venezuela's President Nicolas Maduro to make election reforms and start releasing political prisoners and detained Americans. By early December, U.S. officials were suggesting that the U.S. would consider pausing the relief over concern that Maduro was not making enough progress on his commitments.

Maturing of the EU and UK Sanctions and Coordination of Sanctions Efforts

One of the lessons learned in the first year of Russian sanctions was that EU and UK authorities were not as prepared to deal with and enforce the Russian sanctions as their U.S. counterparts. The EU and UK have in the intervening time taken steps to strengthen both their internal capabilities and authorities, and their global coordination efforts.

In October 2023, the UK and the U.S. noted the one-year anniversary of the OFSI-OFAC enhanced partnership, an ongoing collaboration agreement between the two sanction authorities aimed at harmonizing operational capabilities, increasing understanding and use of systems, and bolstering cross-border information, intelligence sharing and resource allocation. Similarly, the EU and U.S. have taken steps to strengthen further their collaboration, viewing partnership as essential to the success of dealing with the current global challenges.

Interestingly, stepped up coordination efforts have not just been inter-jurisdiction, but also intra-jurisdiction. Within the U.S., there has been a notable increase in collaboration and coordination among OFAC, the Department of Commerce, and the Department of Treasury, all of which have roles to play in ensuring the effectiveness of sanctions.

Evasion and Enforcement

Entering 2023, the authorities in the U.S., UK and EU made it clear that combatting evasion and enforcing existing sanctions would be priorities. While the efforts of these jurisdictions to fight evasion were evident, enforcement activity was overwhelmingly dominated by the U.S.

Authorities across the globe issued advisories on sanctions evasion, such as the May 2023 joint release by the U.S.'s Financial Crimes Enforcement Network (FinCEN) and the Bureau of Industry and Security (BIS) on Russian export control evasion, the European Commission's September 2023 guidance on implementing enhanced due diligence to shield against Russian sanction evasion, FinCEN's October 2023 alert on countering financing to Hamas and its terrorist activities, the UK's National Crime Agency's (NCA) November 2023 warning on the use of gold to evade Russian sanctions, and the December 2023 joint compliance note issued by the U.S. Departments of Treasury, Justice, State and Homeland Security on best practices for ensuring the safe and compliant transport of goods. It is this last advisory that coined the term Know Your Cargo and while this particular advisory was specifically directed to the maritime and other transportation industries, it highlights the prominent role of export controls in current sanction regimes and provides useful guidance not only for the maritime and other transport industries but also for financial institutions active in trade finance.

While many of the actions taken in 2023 targeted the sanctions evaders, financial institutions in the U.S. also found themselves on the receiving end of government actions. For example:

- Wells Fargo Bank, N.A. received an OFAC enforcement action and paid a $30 million penalty related to its predecessor Wachovia Bank's decision to provide software to a foreign bank that used the software to process trade-finance transactions with sanctioned nations and entities.
- Swedbank Latvia AS received an OFAC enforcement action and paid a $3.4 million penalty related to the use of its e-banking platform by a customer with a Crimean IP address to send payments to persons in Crimea through U.S. correspondent banks.
- A $4 million civil settlement between OFAC and Nasdaq, Inc. for a former subsidiary's violations of Iran sanctions.
- The U.S. Department of the Treasury's OFAC entered into a $968,618,825 settlement with Binance Holdings, Ltd., a Cayman Islands company and the world's largest virtual currency exchange. Binance also agreed to retain an independent compliance monitor for five years, whose mandate will include review and assessment of Binance's sanctions compliance program. The settlement resolved Binance's potential civil liability for 1,667,153 apparent violations of multiple sanctions programs between 2017 and 2022.
- Emigrant Bank agreed with OFAC to pay $31,867.90 to settle its potential civil liability for apparent violations of sanctions against Iran. For approximately 26 years, Emigrant maintained a Certificate of Deposit account on behalf of two individuals ordinarily residing and located in Iran, for which it processed 30 transactions between June 2017 and March 2021 totaling $91,051.13.

The UK's OFSI, in its 2022/23 annual review published in December 2023, indicated that it had issued seven non-public warning letters in the reporting period, and closed 51 cases with no further action, 44 of them relating to Russia.[3] No financial penalties were imposed by OFSI.

[3] "OFSI report reveals lack of Russia sanctions enforcement action," James Bolton-Jones, Susan Hawley, Spotlight on Corruption, December 15, 2023: www.spotlightcorruption.org/ofsi-russia-sanctions-enforcement/

Subsequent to the period covered by the review, OFSI did issue a single public notice about a sanctions breach. This related to a £250 transaction allowed by payment company Wise for a sanctioned Russian individual. Given prior OFSI statements and the ramp up of its staff, some observers were surprised by what is perceived to be weak enforcement.

EU

In the EU, enforcement is the responsibility of the member states. Activity has been reported[4] across the region related to fines for sanction violations to raids and confiscation of Russian assets, some of which appear to stem from the increased multinational coordination noted above.

Canada

Unlike the U.S., UK and EU, Canada has an autonomous sanctions regime (comprised of multiple laws administered by different areas of the government) that is compliance-based. The regime depends on individuals and entities being aware of and complying with their obligations. The onus is on them to disclose to the authorities that they are in possession of property of a sanctioned party. The private sector has invested heavily in efforts to comply despite the fact that only two parties have been charged with violations over the last 30 years. Canada has, however, pursued the forfeiture of assets belonging to sanctioned parties, including assets of Russian oligarchs.

2024 Outlook

Areas to Watch

The Council on Foreign Relations' Center for Preventive Action evaluates ongoing and potential conflicts based on their likelihood of occurring in the coming year. While the Center's focus is on considering the impact of conflicts on the U.S., its views are nonetheless instructive in helping to identify geopolitical stresses that may lead to additional sanctions. The Center identifies the following among areas of concern for 2024:[5]

- A protracted war between Hamas and Israel in Gaza ignites a wider regional conflict involving other Palestinian territories and further clashes between Israel and Islamist militant groups in Lebanon and Syria.

[4] "Germany – prosecutors seek confiscation of €720 million," Mark Handley, European Sanctions Enforcement, Duane Morris, December 20, 2023: https://blogs.duanemorris.com/europeansanctionsenforcement/2023/12/20/germany-prosecutors-seek-confiscation-of-e720-million/

[5] "Preventive Priorities Survey 2024," Paul B. Stares, Center for Preventive Action, Council on Foreign Relations: https://cdn.cfr.org/sites/default/files/report_pdf/CFR_CPA_PPS24.pdf

- An escalation of the war in Ukraine resulting from intensified military operations in Crimea, the Black Sea, and/or neighboring states, including Russia, potentially leading to direct NATO involvement.
- Intensified economic and military pressure by China toward Taiwan, especially around the 2024 Taiwanese presidential election, precipitates a severe cross-strait crisis involving the U.S. and other countries in the region.
- Direct military confrontation between Iran and Israel, triggered by Iran's support for militant groups in the region and continued nuclear weapons development.
- An acute security crisis in Northeast Asia, triggered by North Korea's further development and testing of nuclear weapons and long-range ballistic missiles.

In addition to the specific geographic regions noted above, the Center also warns of the possibility of highly disruptive cyber attacks on critical infrastructure, including electoral systems, by a state or nonstate entity.

Any of these occurrences — or fruition of any of the less likely scenarios being tracked by the Center — could lead to additional sanctions.

Export controls, as noted above, are another area to watch. In the U.S., there is a heightened degree of cooperation and coordination between OFAC and the U.S. Department of Commerce and a focus on sharing of data that may indicate export controls or sanction violations. Government task forces or strike forces, such as the Disruptive Technology Strike Force, and a steady stream of advisories such as the December 2023 OFAC advisory entitled "Guidance for Foreign Financial Institutions on OFAC Sanctions Authorities Targeting Support to Russia's Military-Industrial Base" evidence the commitment to disrupting export control evasion. The UK has unveiled plans to form a new unit aimed at prohibiting companies from evading export controls against Russia. The Office of Trade Sanctions Implementation (OTSI) which will include, among other things, controls related to acquisition of goods, technology and import and export activities, will have authority to issue civil monetary penalties. OTSI will provide guidance to businesses on trade sanctions, monitoring breaches, and investigating suspected violations. Establishment of this new unit, which is expected to launch this year, is a strong nod to the U.S. Department of Commerce's BIS, which is responsible for civil penalties against companies that violate export controls related to commercial and military use.

The U.S. has also signaled that it will aggressively deal with parties that aid Russia. As 2023 was ending, the Biden administration issued an Executive Order (EO 14114) which, among other things, authorized OFAC to impose secondary sanctions on foreign financial institutions that facilitate transactions that support Russia's military-industrial base.[6] The EO applies to transactions that occur outside of the U.S. and in any currency. This EO, which may be the forerunner of other secondary sanctions, will create additional compliance challenges for financial institutions, particularly those involved in trade finance-related activities.

Regulatory Developments to Watch

In addition to monitoring additions and changes to existing sanctions, global financial institutions need to pay close attention to other related regulatory developments that may have significant impact on their sanction compliance programs. Two important requirements to watch in 2024 are the evolution of Canada's new rule on ownership/control and the European Banking Authority's (EBA) launch of a public consultation on two sets of Guidelines on internal policies, procedures and controls to ensure the implementation of EU and national restrictive measures.

- Canada recently amended its sanctions laws giving the government powers to seize and seek forfeiture of property owned or controlled (directly or indirectly) by sanctioned parties. At the same time, a new 'deemed ownership' rule whereby a sanctioned party that directly or indirectly controls an entity, any property that is held, owned or controlled by that entity is deemed to be owned by the sanctioned party. Control goes beyond the 50% ownership or voting rights and includes the ability (directly or indirectly) to change the composition or powers of the entity's board of directors and ability to, through any means, direct the entity's activities. Finally, the government has powers to sanction a person outside Canada who is not Canadian (i.e., secondary sanctions). In the absence of guidance, implementing the expanded definition of control is challenging. Industry associations and others will seek guidance and clarity throughout 2024.
- EBA Public Consultation: One set of draft guidelines is addressed to financial institutions and prudential supervisors and sets regulatory expectations for the role of senior management, internal governance, and risk management of sanction obligations. The second set of draft guidelines sets out expectations for compliance by payment service providers (PSPs) and crypto asset service providers (CASPs) when performing transfers of funds and crypto assets with a particular focus on Know Your Customer (KYC), screening and due diligence. The consultation period for these guidelines runs until March 25, 2024.

[6] Ten Things Foreign Financial Institutions Should Know About Executive Order 14114," Protiviti Sanctions Series, January 23, 2024: www.protiviti.com/us-en/whitepaper/ten-things-foreign-financial-institutions-should-know-about-executive-order-14114

Sanctions in a World of Crypto and Instant Payments

The use of crypto currencies and the global proliferation of payment providers has heightened concerns around sanctions compliance and evasion for several reasons, including the speed at which these transactions occur (making interdiction more challenging, the potential for anonymity in the case of crypto currency, the less regulated/supervised nature of these entities in some jurisdictions, and the possibility that these entities may not be as compliance-minded as traditional financial institutions that have long-established compliance track records). As a result, there is a high probability that these entities will be subject to heightened scrutiny of their sanctions compliance and that we will see other regulatory bodies move to clarify their expectations for these entities, similar to the actions taken by the EBA noted above.

Call to Action

We are living in unsettled and unsettling times. For sanctions practitioners, this means that 2024 will be another challenging year. In addition to the recommendations we have included in earlier articles in our Sanctions Series, we offer the following:

- **Continually update the organization's risk assessment.** Review your customer base, products and services, and geographic exposure on an ongoing basis to identify sanctions-related risks and ensure the organization's risk assessment reflects export control risks and the controls in place to manage these risks.
- **Understand and proactively address geopolitical developments.** Since general knowledge of world events is likely not sufficient to predict the consequences of geopolitical developments, consider enlisting the assistance of experts who can offer advice based on experience, research, and deep market intelligence and use this advice to make proactive changes to your sanctions compliance program.
- **Practice effective challenge.** Just because the regulators have not criticized your sanctions compliance program in the past doesn't mean you don't have issues or that regulators won't criticize it in the future. Your focus should be on developing and implementing metrics to help you evaluate program effectiveness on a continuing basis. Keep asking "How do we know we are complying?"
- **Recognize that the tools you have traditionally used may no longer suffice.** As geo-masking tools and artificial intelligence make it more difficult to detect sanctions violations, consider how you can use innovative technologies to help level the playing field with the bad guys.

- **Reevaluate team credentials.** Just as traditional tools may no longer be sufficient, the training and experience of your team may need to be upgraded, especially given the increased focus on export controls.
- **Ensure coordination across the organization.** Effective sanctions compliance, including the detection of sanctions evasion, requires collaboration and information sharing among all parties with insights: sanctions, Know Your Customer, transaction monitoring, and trade finance.
- **Closely monitor regulatory developments:** Whether it's an enforcement action or a regulatory advisory on evasion techniques, there are lessons to be learned from all regulatory issuances simply by asking, "Could this apply to my institution and if so, what am I doing about it?"

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Note: This paper is intended to provide a high-level overview of the current sanctions landscape and the developments we might expect to see in 2024. Given the complexities of sanctions compliance and the differences in national and regional regimes, financial institutions should consult with counsel to determine if and how the issues discussed herein may apply to them.

About the Author

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About Protiviti's Financial Crime Practice

Protiviti's Financial Crime practice specializes in helping financial institutions satisfy their regulatory obligations and reduce their financial crime exposure using a combination of anti-money laundering/combating the financing of terrorism and sanctions risk assessment, control enhancements, and change capability to deliver effective operational risk and compliance frameworks. Our team of specialists assists organizations with protecting their brand and reputation by proactively advising on their vulnerability to financial crime, fraud and corruption, professional misconduct, and other financial business risk issues.