EXECUTIVE SUMMARY

SANCTIONS AND ORGANIZED CRIME INITIATIVE: 2023 SERIES

GLOBAL INITIATIVE AGAINST TRANSNATIONAL ORGANIZED CRIME

CONVERGENCE ZONE

THE EVOLUTION OF TARGETED SANCTIONS USAGE AGAINST ORGANIZED CRIME

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GLOBAL INITIATIVE
AGAINST TRANSNATIONAL ORGANIZED CRIME

FROM VISION TO ACTION: A DECADE OF ANALYSIS, DISRUPTION AND RESILIENCE

The Global Initiative Against Transnational Organized Crime was founded in 2013. Its vision was to mobilize a global strategic approach to tackling organized crime by strengthening political commitment to address the challenge, building the analytical evidence base on organized crime, disrupting criminal economies and developing networks of resilience in affected communities. Ten years on, the threat of organized crime is greater than ever before and it is critical that we continue to take action by building a coordinated global response to meet the challenge.

INTRODUCTION

Historically, sanctions have been used against countries whose activities were interpreted as threats to peace and security, or individuals who had breached international laws or norms. However, over the last three decades, targeted sanctions have become an increasingly important tool to address organized crime. This shift began in 1995 in the US, with the designation of Colombian drug traffickers, and began to accelerate the following decade as states – most prominently, the US – and multilateral entities, including the UN and the EU, sought to mitigate specific risks related to organized crime. Collectively, they have imposed financial or mobility sanctions on thousands of individuals and businesses.

Rather than expressing a new normative approach, however, the growing use of sanctions in this area is linked to the convergence of often separate concerns and assessments of organized crime.

First, the framing of serious organized crime has seen a change in some states that view it not only as a criminal justice issue, but also a threat to national security. This view has a long precedent in the US but is more recent in other jurisdictions, such as the UK. It can also be seen, to a degree, in the UN's Haiti regime, where the criminal threat is framed as the central threat to peace and security in the country.

Secondly, there has been increasing awareness of the destabilizing impacts of illicit economies. In particular, this issue is seen as an acute challenge to countries in conflict, due to criminal financing of conflict actors or 'spoilers'. As one UN investigator on Libya noted, '[Human trafficking is] destabilizing to community stability due to disputes over routes and it empowers actors which threaten the government.'[1] Because of this, involvement in certain illicit economies has increasingly been included in designation criteria under broader country-based regimes issued by the UN, the EU, the US and others, whose overall goals address conflict and political instability (including unconstitutional transitions of power).

Thirdly, there has been a reassessment of the challenges that organized crime presents to evolving global norms of human rights, the rule of law and anti-corruption. The focus on criminal actors as prominent contraveners of human rights in particular represents a conceptual innovation, as well as an accurate reflection in many cases, of their negative impact on populations and societies. Paired with the growing body of sanctions regimes globally targeting human rights violators (often including corrupt actors), this innovation in approach has led actors such as the EU, the US and the UK to

Close-up of a diamond in Sierra Leone. The rising profitability of organized crime has had a substantial impact in the states in which networks operate. *© José Nicolas/Sygma via Getty Images*

designate criminal actors for allegedly contravening human rights norms rather than involvement in organized criminality per se.

These dynamics have, collectively, driven the growing deployment of sanctions to counter criminal actors. It is nonetheless important to recognize them as distinct, precisely because it has a bearing on the goals of the sanctioning approaches and the form of impact sought. In practice, however, they are interrelated. These dynamics reflect, ultimately, a growing awareness in the international community of the challenges posed by the expansion of organized crime since the 1990s and a willingness to creatively look for tools outside of traditional criminal justice approaches to address challenges and mitigate risk.

Nonetheless, despite growing use of sanctions, there has been limited tracing of why and how different international actors have converged in their use of targeted sanctions, or how they have developed processes to issue and implement sanctions regimes.

This executive brief addresses high level-points on these issues. It is extracted from a more comprehensive report, which covers them in greater detail.[2] The brief begins by detailing key points on the evolution of sanctions regimes targeting organized crime in the US, UN, EU and UK. It then traces the process of sanctioning used by these jurisdictions. The brief closes with the identification of challenges and gaps that should be addressed to improve impact, and a set of recommendations to do so.

This brief – and the broader report on which it is based – draws on more than 60 interviews with current and former government officials, UN investigators, lawyers, NGO personnel and actors from a number of countries. The work also draws on broader background research and analysis conducted by the GI-TOC on transnational organized crime and the use of sanctions to address the phenomenon over the last decade. Finally, it makes use of testimony and assessments issued by governments as well as reports, articles and books on targeted sanctions published by think tanks, academics and former practitioners.

EVOLUTION OF REGIMES

The growth of US programmes

The US was the earliest adopter of sanctions as a tool for addressing organized crime and remains its most prolific user. From a narrow focus on Colombian drug traffickers in the 1990s, laws and executive orders have slowly but continually expanded.

This proved to be the start of a diversification of targeted sanction tools designed to counter organized crime during the 2010s. It reflected the Obama administration's sense that targeted sanctions were an 'effective tool for imposing costs on irresponsible actors' that could help to 'dismantle criminal and terrorist networks'.[3] In practice, this involved the promulgation of executive orders and laws that reflected changes both in organized crime dynamics and in US political and policy focus, involving issues such as corruption, cybercriminality and trafficking of fentanyl.

Crucially, as the US developed new laws and executive orders authorizing sanctions, it also expanded types of actors who could be designated to include those supporting designated traffickers and businesses linked to them regardless of their location or country of operation (these are termed 'derivative' or 'Tier II' designations). Through this pressure, the US Treasury was able to substantially extend the reach of targeted economic sanctions designed against organized crime actors, with the designations of Tier II individuals in particular viewed as key to constraining criminal networks.[4]

As of 2023, various laws – the Kingpin, Fentanyl and two Magnitsky Acts – and executive orders (see Figure 1) now enable targeted sanctions against criminals, including asset blocking and denial of entry to the US. Nearly all these are predicated on the national security threat posed by different forms of criminal activity. Because of this, the aim of sanctions is seen as marginalizing criminal actors and mitigating the most serious ramifications of crime on the global economy, political stability and corruption in vulnerable countries, and on peace and security, rather than to eliminate illicit markets per se.

The expansion of sanctions regimes and authorities has been aided by the relative unanimity within the US government about the utility of sanctions approaches. 'Not a lot of political capital needs to be expended for a new sanctions programme,' explained one former US official. '[They are a] low risk–high reward action the government can take in trying to affect foreign actors in a way they may not be touched otherwise.'[5]

FIGURE 1 Select US laws and executive orders salient to sanctions and organized crime.

The emergence of UN approaches

The UN has also substantially increased sanctions designations of criminal actors over the last 20 years. However, unlike many of the US programmes described above, with thematic programmes premised on national security goals, UN programmes are country-based regimes in response to conflict and political instability (including unconstitutional transitions of power). This approach addresses the destabilizing impacts of illicit economies, often through criminal financing of conflict actors, or 'spoilers'.

The growing use of targeted sanctions by the UN against criminal actors has been driven by shifts in how the international community – particularly the five permanent members of the Security Council – conceptualize the role of criminal actors in driving or sustaining conflict or human rights violations.

Initially, in the 2000s the focus on criminality in regimes hinged on the role of illicitly exported natural resources in funding conflicts.[6] The conceptualization expanded in the 2010s, to encompass the role of illicit economies in undermining peace processes, including the disruption of constitutional processes and democratic transitions. More types of criminal activities were also specifically named in this period, including trafficking in wildlife and piracy. In the mid-2010s, UN sanctions regimes, such as those for Libya and the Democratic Republic of Congo, began to change, sanctioning criminal actors in their own right, without the need for a direct connection to conflict actors.

With the establishment of the Haiti sanctions regime in October 2022, the UN went further. The criteria in that regime recognized that criminal gangs and networks were the primary threats to peace and allowed for the designation of those involved in or supporting criminal activities, including human

UN peacekeepers arrive in Kachele, DRC, October 2003. *© Simon Maina/AFP via Getty Images*

FIGURE 2 Select UN Security Council resolutions salient to sanctions and organized crime.

trafficking, migrant smuggling, arms trafficking and drug trafficking.[7] In these criteria, and the resolution creating the regime, the UN first acknowledged that criminal actors and activities could themselves be direct threats to peace and security.

The development of EU and UK approaches

Since 2001, the EU and its 27 member states, and, since 2020, the UK as a unilateral actor have shown increased willingness to use targeted economic and mobility sanctions against criminal actors.[8] Termed 'restrictive measures' by the EU, their use has not been comparable in volume and reach to the US's sanctioning programmes and is only moderately greater than the UN's. However, the bloc is a potentially important actor, with the size and financial importance to make a substantial impact on criminal networks and actors globally, should it more strongly exert the restrictive-measure authorities it currently has.[9]

Broadly, the adoption by the EU of restrictive measures targeting criminal actors has occurred in three waves. The first involved the implementation of UN sanctions regimes, including designations issued by the various sanctions committees.[10]

The second wave of EU activity to designate criminal actors comes from 'gold-plating' of existing UN country-based sanction regimes. 'Gold-plating', or 'supplementary sanctions' is the application of autonomous designations, often when political disagreements within the Security Council preclude the designation of an individual or entity that the EU member states believe should be sanctioned or limit the inclusion of specific sanctioning tools within a regime.

The final wave involves fully autonomous sanctions regimes developed by the EU. Here there have been moves over the last 10 years to use existent criteria in country regimes to target criminal activity, or to incorporate organized crime and corruption criteria directly into new regimes.[11]

The EU has also increasingly adopted horizontal sanctions regimes that target discrete thematic issues with global applicability. Two of these, against cyberattacks and human rights breaches, have salience for organized crime, with the latter explicitly allowing for the designation of those involved in the 'trafficking in human beings, as well as abuses of human rights by migrant smugglers'.[12]

FIGURE 3 Select EU sanctions regimes targeting organized crime.

Up until Brexit, the UK took part in the development of EU restrictive measures. Britain's exit from the bloc forced the UK to review, and to a degree rethink, its use of sanctions as a policy instrument. Within this broader push for sanctions policy development, organized crime was an emerging pole of focus, pushed both by parliamentarians and civil society actors.[13]

The initial steps in the UK's development of unilateral criminal-focused sanctions involved the development of underlying legislation for the broader sanctions programme. Enacted in 2018, the Sanctions and Anti-Money Laundering Act (SAMLA) enabled the UK to effectively port existing EU sanctions regimes into domestic legislation and established the legal parameters for the UK to develop and implement its own sanctions regimes.

Under SAMLA, the UK developed two new regimes salient to organized crime. The first, the Global Human Rights Sanctions Regulations, known colloquially as the UK's Magnitsky Act, allowed for sanctioning based on serious violations of human rights, including the rights to be free from slavery, servitude, and forced and compulsory labour.[14] The second was the Global Anti-Corruption Sanctions Regulations, which allowed for the designation of individuals accused of serious corruption, defined as either bribery or misappropriation of property, and also those who facilitate and profit from serious corruption, as well as any actors impeding investigations into corruption or failing in their duties to investigate such activity.[15]

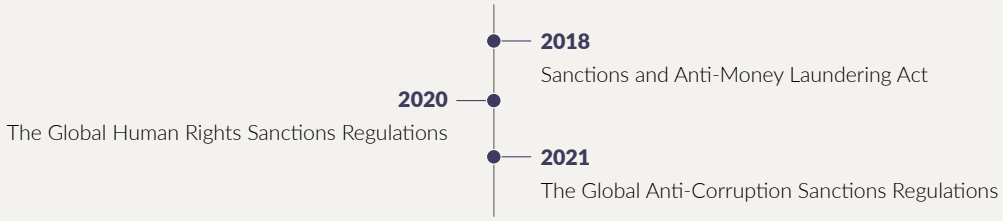


FIGURE 4 Select UK legislation and programmes salient to sanctions and organized crime.

ADVANCEMENT IN PROCESS

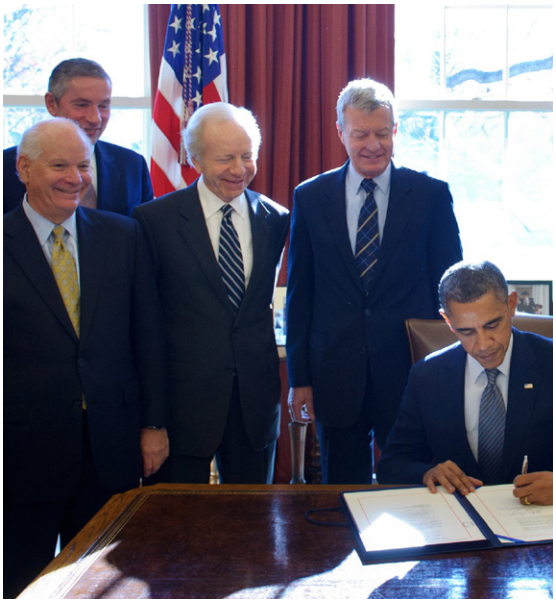
The US process for sanctioning

As the number of laws and executive orders enabling the designation of organized crime actors has increased in the US, the federal government has gradually developed a well-established system for sanctioning.[16] A former US Treasury official stated that, 'Over the last two decades, a wide group of experienced civil servants have emerged who understand sanctions.'[17]

The Treasury Department remains the lead entity for the US, largely through its Office of Foreign Asset Control. The Department of State is the second key actor, providing foreign policy guidance on any designations, as well as assessing signalling and impact.[18] The Department of State also issues mobility sanctions under its own authorities, such as visa bans linked to various executive orders or laws, such as the United States–Northern Triangle Enhanced Engagement Act.[19]

A number of other agencies are involved in or consulted on sanctions processes, including the Departments of Justice, Defence, Homeland Security and Commerce, USAID, the Central Intelligence Agency and the Office of the Directorate of National Intelligence. Their involvement varies in both degree and their place in the processes.

The broad expansion of US sanctions programmes – both those targeting organized crime as well as broader themes, such as counter-proliferation and terrorism – have led to a growing number of actors becoming involved in consultations on designation decisions. A former US official explained, as an example, that, 'at the beginning, USAID would not be an active player, then USAID realized the entities they worked with became increasingly exposed to the impact of sanctions. So, they became more focused on why State or Treasury



Barack Obama signs the Russia and Moldova Jackson–Vanik Repeal and the Sergei Magnitsky Rule of Law Accountability Act into law, December 2012. The US was the earliest adopter of sanctions to address organized crime and is its most prolific user. © *Alex Wong via Getty Images*

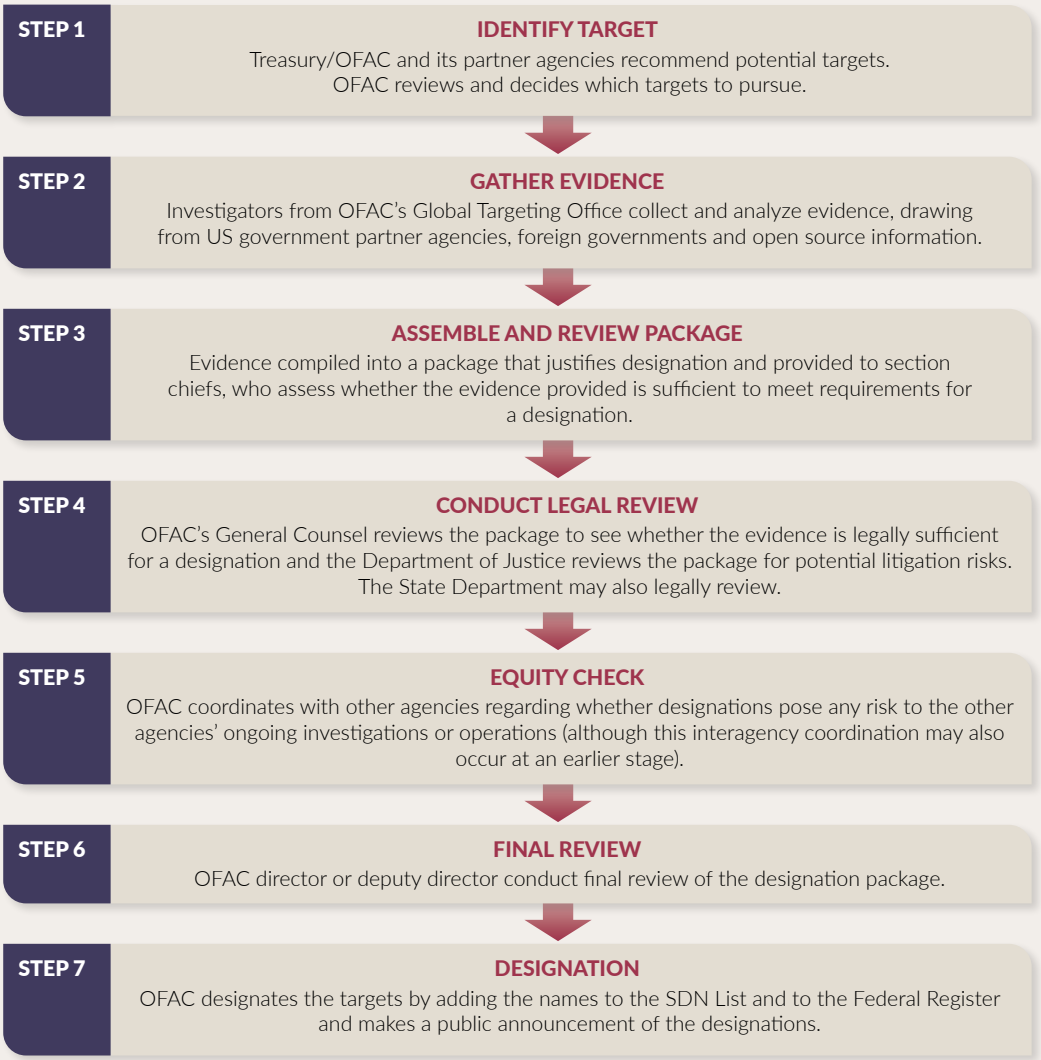


FIGURE 5 Process of US designation development.

was pursuing designations.'[20] The involvement of additional actors reportedly added time to the decision-making process but is also seen by former officials as contributing to better-designed and more comprehensive targeted sanctions.[21]

Finally, the US has developed an effective approach to evidentiary development in some regimes: notably drug trafficking, through close engagement between Treasury and DEA officials. While this arrangement has downsides, such as the risk that domestic prosecutorial interests will influence designations, it nonetheless brings information collection closer to the sanctions development process and arguably quickens the overall timeline. Newer regimes, such as the Global Magnitsky Act, do not benefit from this engagement, and thus place more responsibilities on actors such as State Department officers, who may or may not have previous experience with sanctions designation development. It also has led to novel engagement with global civil society to effectively crowdsource information collection, an implicit recognition by the State Department, as a British lawyer flagged, that 'they didn't have the capacity to chase it all'.[22]

The process of UN sanctions

Over the last 20 years, the UN has demonstrated an increased willingness to consider and employ targeted sanctions to counter organized crime actors and broader illicit economies that pose threats to peace and security. Despite a growing interest by the UN in sanctioning criminal actors, and the Security Council's crafting of regimes that enable this, actual designations remain limited in comparison to the US and, to a lesser degree, EU regimes. This gap reflects the UN's complex and consensus-dependent processes.

The Sanctions Committee is the primary implementor of UN sanctions regimes. The committee comprises expert representatives from the 15 members of the Security Council.[23] The committee oversees all aspects of the regime in question, including the designation of actors, assessment of compliance with sanctions and the removal of individuals from sanctions lists.

The UN has developed a generally effective, centralized process for autonomous information collection on sanction-regime violators through its panel-of-experts system. There are deficiencies in this approach, however, due in particular to the short term of mandates and the myriad tasks that panels are often given in addition to investigations, but the approach has largely allowed the UN to avoid depending on member states for designation information.

Designations, however, only occur if there is unanimity among committee members. Sanctions decisions are often held up or opposed not just on the basis of evidentiary concerns, but also on ideological or national interests by states on the committee. Because of the opaque nature of sanctions committees, and the Security Council more broadly, support for and opposition to specific designations

FIGURE 6 Process of UN designation development.

are often obscured, giving the impression of a legalistic, merits-based process for designations rather than the highly political and often transactional reality of the process.[24] While the non-proliferation and terrorism regimes often gain relatively easy consensus, the country regimes – which encompass all criminal designations levied by the UN – are often complicated by the domestic and foreign policy interests of member states.[25] Frequently, even a comprehensive designation package that details a potential designee's involvement in sanctionable activity does not lead to the imposition of the sanction.[26]

The process of EU sanctions

The EU process for the development of restrictive measures sits in a middle ground between the bureaucracy-heavy US approach and the highly politicized, negotiation dependent process of the UN system. For the EU, the issuance of restrictive measures requires unanimity among the 27 member states, mirroring the UN system to a degree.[27] However, this unanimity is often easier to gain within the EU, given the closer alignment of member-state interests and the existence of a Common Foreign and Security Policy, in which the restrictive-measure process is embedded.[28]

Nonetheless, sanctions can be, and often are, delayed due to capacity gaps among member-state delegations, wrangling over evidentiary issues or purposeful delays in review by a member state.[29] Pushback by member states on proposed designations is common, especially if particular foreign policy or commercial interests are impacted by the proposed listing.[30] In turn, the negotiations inherent in the process and the ability of member states to hold up proposals they object to shape the nature of designations and restrain the speed with which they can be developed.[31]

A migrant rescue operation off the Libyan coast, 2016. In 2020, the EU sanctioned a reported human smuggler in Libya. © *Andreas Solaro/ AFP via Getty Images*

Furthermore, the centralized processes for evidentiary collections employed by the US and UN do not exist in the EU system. While the European External Action Service can submit designations, in practice these are developed and submitted by member states. This atomized system both limits the volume of designations that can be made and allows large, well-resourced states to influence the bloc's approaches to designation. Such states are often averse to exposing sensitive intelligence or law enforcement information, fearing that it could be revealed during litigation or otherwise leaked. This, in turn, influences the nature and focus of EU designations, and even the feasibility of developing information on sensitive issues or well-shielded targets, or where member-state diplomatic or intelligence presence is limited.

The EU process for developing restrictive measures has arguably advanced over the last 20 years, with deepened processes and approaches to crafting regimes and designations and, equally, the development of a staff cadre within both the EU and member states experienced in the development of restrictive measures. Nonetheless, a number of existing process challenges exist, including access to and sharing of information among member states and between member states and the EU, litigation by designees and the need for unanimous agreements on designations.

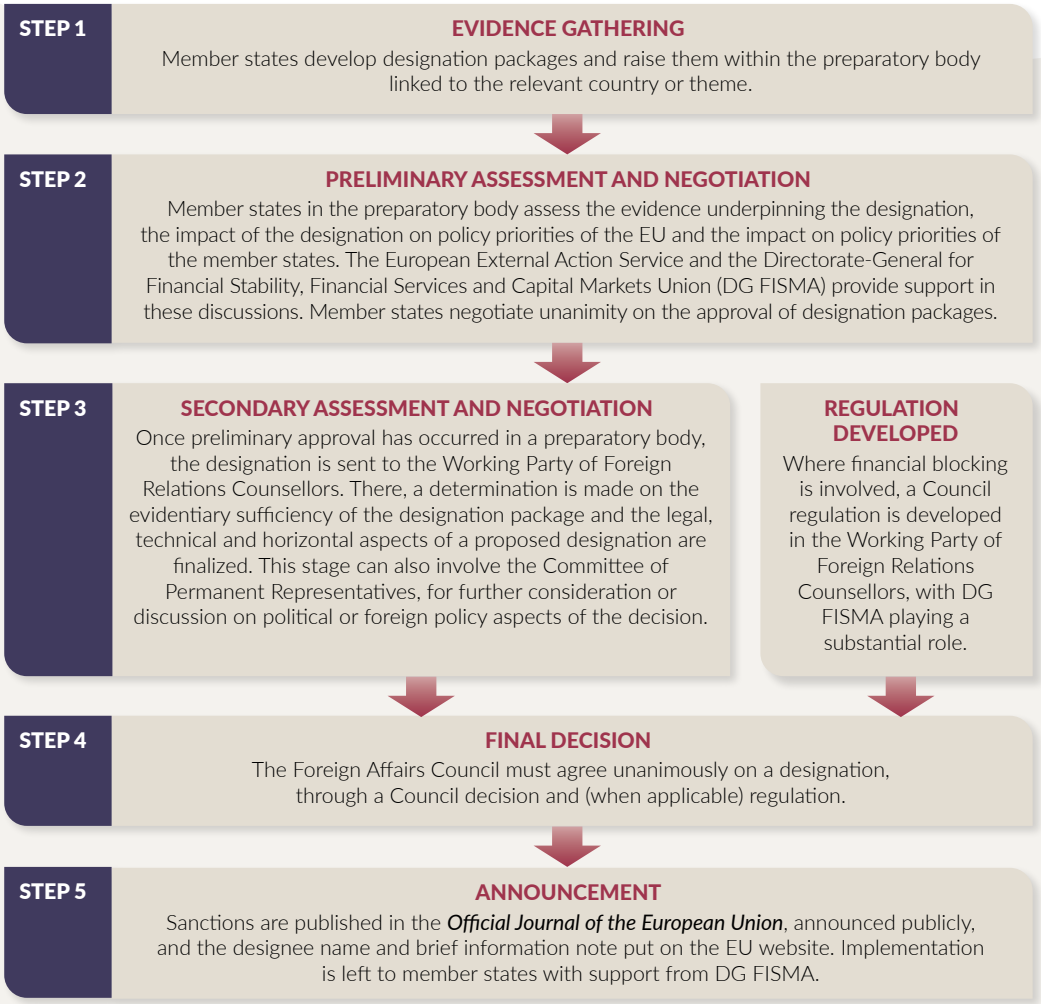


FIGURE 7 Process of EU designation development.

The UK previously was a key part of the broader EU restrictive measure process, often providing key information and legal support. Since Brexit, the UK has established a new set of processes for sanctions development and implementation. Responsibility for sanctions within the UK system is not unified, with several ministries directly involved. The Foreign, Commonwealth and Development Office is responsible for the development of designations and broader sanctions policy. Implementation of sanctions involves a range of ministries. The two most important for targeted measures against organized crime are the Home Office and the Treasury. The Home Office is responsible for visa sanctions, with powers afforded to it by the 1971 Immigration Act.[32] The Treasury's sanctions unit is the Office of Financial Sanctions Implementation (OFSI), which is tasked with implementing targeted financial sanctions, overseeing adherence to them and ensuring that private sector financial institutions are aware of their roles and responsibilities.[33]

FIGURE 8 Process of UK designation development.

CHALLENGES AND RECOMMENDATIONS

Since 1995, when the first crime-focused sanctions regime was established by the US, there has been an increase in the use of sanctions as a tool for addressing organized crime actors involved in illicit economies, including drug trafficking, human smuggling and trafficking, and illicit natural-resource extraction. The growing deployment of sanctions is most pronounced in the US, which has sanctioned by far the greatest number of criminal actors. However, the trend has also been seen in other states and multilateral forums, mainly the UN, EU and UK. This trend, however, is effectively a convergence of often disparate interests, assessments and objectives on the challenges posed by organized crime and what aspects need to be countered.

Nonetheless, the US, UN, EU and UK approaches often intersect in practice. This is most obvious with UN regimes, which all member states are obligated to implement. US and EU willingness to 'gold-plate' UN sanctions regimes can also allow the implementation of designations that are politically watered down, blocked or otherwise infeasible at the Security Council.

There has also been a growing convergence in thematic sanctions regimes across different jurisdictions. The most widespread examples are human rights and anti-corruption initiatives, where the passage of the US Global Magnitsky Act influenced other jurisdictions, including the EU and the UK, in their development of similar regimes.

However, an assessment of current approaches also underscores challenges and gaps that should be addressed to improve the impact of sanctions. Perhaps most important is the frequent confusion about the nature of sanctions in public statements that frequently conflate them with law enforcement and present them as linked to international law. This mis-states their reality. Sanctions regimes, and the designations emanating from them, are foreign policy tools that depend as much on political interest and an assessment of the underlying risk of a designee's conduct as on evidence.[34]

This misconstrual has practical importance. It has fuelled public perceptions that sanctions are criminal justice tools or proxy tools, with aims akin to those embedded within criminal justice systems. It has simultaneously obfuscated the utility of targeted sanctions against criminal actors as a foreign policy tool, and impeded efforts to identify and publicly make the case for what markers of sanctioning success look like.

As foreign policy tools, sanctions work best when they are employed alongside other diplomatic, law enforcement and development approaches, guided by a centralized strategy against organized crime. This should entail buy-in and involvement from a broad range of different government actors in strategy development, ideally coordinated by a focal point tasked with addressing organized crime. Such a broad-tent approach necessarily extends beyond strategy, however, with sanctions designation decisions involving a range of actors, including those – such as development agencies – less frequently engaged on counter-crime issues.

The second challenge involves the scope of regimes. Extant regimes are generally either country focused or thematic, with the former predominant in most jurisdictions save for the US. The use of country regimes to target organized crime, however, is out of step with the transnational, highly fluid nature of modern illicit markets. A focus on traffickers and smugglers in a given country in many cases has a displacement effect, often driving them into contiguous countries or areas where they may fall outside the parameters of a sanctions regime. The existence of thematic regimes – to the extent appropriately and flexibly defined – can offer a means of more realistically responding to modern organized crime. To date, there are only a limited number of thematic regimes used by jurisdictions outside of the US, nearly all focused on corruption, cybercrime, human rights violations or terrorism.

Typology-focused regimes, like the drugs-focused regimes, are open to criticism, in that they fail to capture the often multi-commodity nature of today's criminal markets and flows. However, they nonetheless allow for a more balanced mix of specificity, global applicability and strategic embedding than either country regimes or those that attempt to encompass all forms of organized crime within a single definition. Thus, creating regimes focused on discrete organized crime typologies – such as human smuggling and trafficking, drug trafficking and natural resource exploitation – offers a potentially important avenue for the development of sanctions approaches.

A third challenge is evidentiary development. It can be extremely difficult to develop evidence about criminal actors and, more broadly, those designated due to behaviour rather than affiliation (e.g. with a nation state or terrorist group) that is sufficient to satisfy bureaucratic criteria (in the US), political obstacles (in the UN) or judicial review (in the EU). Such evidentiary challenges are likely only to mount, given the proliferation of regimes across jurisdictions that are focused on corruption and other normative violations.[35]

More broadly, there are information sharing gaps between jurisdictions, impeding efforts to coordinate on the designation of criminal actors and networks. In part, such gaps hinge on the sensitivity of sharing law enforcement or intelligence derived information. This underscores a need for expanding the pool of non-sensitive data used in designations, in particular by engaging more proactively with civil society and private sector actors.

A fourth challenge is in decision-making processes. While the US has a number of different departments and agencies with a role in the designation development process, ultimately all of them sit within one branch of one government. Different government bodies have divergent interests, but there is a productive process for appealing to higher officials within departments or National Security Council level to break such impasses. Although still evolving, the UK system shows a similar, and in some ways even more focused, decision-making process.

In contrast, the UN is innately multilateral, which necessitates consensus among member states that have sometimes disparate interests and views. Designations, even when passed, are often a lengthy process. This has influenced a turn towards a coordinated unilateral sanctions approach by the US, the UK and the EU, among others.[36]

The EU decision-making on sanctions falls between that of the US and UK, on one side, and the UN, on the other. The bloc's approach to sanctions is also inherently multilateral and there is substantial political bargaining during negotiations. However, as mentioned, the bloc's states are more closely aligned in interest than those in the UN, which substantially lessens the degree of obstruction and delay.

Finally, there is a need for heightened focus on exiting sanctions. For those sanctioned, having the designation removed due to errors in targeting or changes in behaviour can often be a highly complex and frequently unsuccessful affair. This weakens de-listing as an incentive to actors to change the activities or conduct that led to their designation in the first place. The focus by jurisdictions on the de-listing component of sanctioning varies widely, though none do it well. Gaps in de-listing capacity seem to be rooted, in part, in resource constraints and political lack of interest.

Winding down sanctions regimes is also problematic, as programmes are far easier to initiate than to end. While the EU reviews its thematic regimes and the designations linked to them on an annual basis, such routine assessments for fit and effect appear to be rarer and less frequently undertaken in the US, UK and UN systems. In the US in particular, sanctions on criminal actors are viewed as non-controversial programmes that see steady use.[37] 'There are always bureaucratic incentives for expanding programmes, no incentives for reducing or restricting them; that's political as well,' explained a former US official. '[There is] no upside for taking these off the books.'[38]

From regimes focused on countries to those that target criminal actors, sanctions have advanced substantially in concept and in process over the last two decades. It seems likely that the international community will increasingly turn to sanctions as a tool for addressing organized crime activity, given the growing recognition that, more than simply a criminal justice issue, organized crime is now also a national security and economic threat. They may also go further, as recent international discussion of seizing funds frozen by sanctions has underscored.

Identifying good practices and options for improving the effectiveness of sanctions processes is crucial. The following are recommendations targeted primarily at jurisdictions using sanctions, or considering their use, to improve overall process approaches.

Recommendations

On sanctions regime design and strategic embedding

Deepen the conceptual and strategic definition of organized crime as a standalone threat to international peace and security. A concerted effort should be made to develop further international consensus on the challenges posed by organized crime, particularly in multilateral forums like the UN. The central focus on crime in the 2022 Security Council resolution on sanctions in Haiti is a positive step, but it should be a spur for the UN to think more comprehensively on the issue, with an eye towards expanding such framing to other applicable contexts.

Develop thematic regimes on specific organized crime typologies. While laws and executive orders used by the US to target organized crime as a broad category have worked well for them, such an approach may not be the best fit for other countries or sanctioning jurisdictions. In multilateral situations, the definition of organized crime or the politics around it can be a sticking point to the development of comprehensive regimes. For this reason, focus should be placed on developing thematic regimes focused on specific organized crime typologies – such as human trafficking, environmental crime or drug trafficking. The UN in particular could be a central entity through which to develop and implement typology-based sanctions initiatives.

Develop multi-country-focused regimes targeting organized crime. In addition to country programmes and thematic programmes, consideration should be given to developing regimes on organized crime that cover multiple countries.[39] Modern organized crime often has a transnational dimension, with organizations present in and dependent on operations in a number of different countries, which are frequently, though not always, contiguous. Furthermore, heightened enforcement in a single country can have a displacement effect, driving criminal organizations to grow operations in neighbouring jurisdictions. Multi-country sanctions regimes would reflect this, allowing for greater geographic applicability than country programmes, and with more contextually specific designation criteria and strategic embedding than global thematic programmes.

Provide confiscated assets to countries impacted by transnational organized crime. Asset confiscation has increasingly come to the fore in the context of the Russia–Ukraine conflict, with proposals to seize sanctioned assets and provide the funds to Ukraine for the purposes of rebuilding. It seems likely that, if implemented, such initiatives could ultimately be extended to other types of foreign policy challenges, including transnational organized crime. The GI-TOC takes no position on the broader merits of such proposals. However, if undertaken, assets confiscated from criminal actors, whether through post-conviction confiscation, non-conviction-based confiscation or voluntary forfeiture, should not stay with the confiscating government, as is the current norm. Rather, confiscated assets should be channelled into supportive programmes in the countries where such actors primarily operate and where the harms of their criminal operations are concentrated, assessed in line with harm-based criteria. Programmes could include support for law enforcement, anti-corruption, regulatory and other development initiatives. This would provide tangible benefits both for governments impacted

The EU Commissioner for Justice Didier Reynders speaks on new EU rules on freezing and confiscating assets of oligarchs violating restrictive measures and of criminals at the EU headquarters in Brussels, May 2022. © *John Thys/AFP via Getty Images*

by transnational organized crime and for their populations, potentially blunting claims that sanctions and confiscations are a foreign imposition. Such approaches – and seized asset programmes more broadly – would need to be carefully constructed and regulated, as poorly set up or non-transparent systems could cause substantial problems for the seizing jurisdictions' interests.

Ensure that sanctions regimes are designed to contribute to broader strategies against criminal actors. Sanctions tools work best as part of a multi-toolkit approach – including prosecutorial approaches, criminal justice capacity building and development aid to communities at risk of criminal infiltration – guided by a well-developed centralized strategy. The embedding of sanctions approaches within a broader strategy is crucial for limiting unintended consequences on other policy initiatives or programmes and to ensure that bureaucratic rivalries or strategic disagreements are confronted head-on. In some cases, there may be a need to balance equities or decide between competing priorities. Such a strategy would, at a minimum, need to identify sanction objectives, detail potential consequences and develop a deconfliction process for outcomes when tools clash.

Establish an organized crime focal point to coordinate strategy and policy. To better manage anti-crime initiatives, jurisdictions should establish a single focal point, such as a senior official, vested with authority over the funding and coordination of counter-transnational organized crime programming.[40] Such a focal point could help ensure that the policy responses to organized crime, including sanctions, operate in a mutually reinforcing way. The 'drug czar' or 'anti-slavery czar' positions, such as exist in the US or the UK, offer a potential model. An organized crime focal point should be designed to align with and possibly replace such thematic leads, with the role necessarily expanding to involve authorities encompassing a range of organized crime typologies.

Expand and retain institutional knowledge on sanctions and organized crime within sanctions units. Sanctions regimes require reliable and sustained staffing, support from investigative agencies and units (e.g. law enforcement, intelligence or panel-of-experts bodies) and risk assessments from a range of agencies. States imposing sanctions should commit to allocating personnel to support a regime for its anticipated duration and incentivize the development of staff capacity with specific training on the use of sanctions to target organized crime. Within the UN system, expanding the one-year mandate of most current panels of experts to a multi-year service should be considered.

Build broader institutional knowledge on sanctions and organized crime within government agencies. Given the importance of both embedding sanctions in interagency processes and involving atypical players in designations, broader government or institutional knowledge on sanctions issues should be developed. Accordingly, stakeholders in the foreign policy and law enforcement apparatuses should be more systematically trained in sanctions policy and practice, including their utility and limitations, designation processes, their potential impact on their operations and the options available to mitigate identified risks.

On the process of designation development

Promote and formalize information sharing between different jurisdictions. Information sharing is a key challenge to building multinational coordination and support on the designation of specific criminal actors and networks. The use of sensitive information from law enforcement or intelligence sources can limit the feasibility of sharing it between jurisdictions or, in the case of the EU, within them. Even when sharing occurs, such as between UN panels of experts and various national sanctioning authorities, the process is often ad hoc and relationship-driven. To address this challenge,

several avenues exist. First, promote the use of shareable open-source information – including the development of research capacity tailored to understand and develop information on the political economy of various organized crime typologies. The EU in particular would benefit from developing consolidated collection and analysis capacity, as well as coordinating with and building the capacity of civil society to aid in data collection to support internal frameworks. Secondly, standardize the information necessary for designations across jurisdictions to the greatest degree possible. Thirdly, formalize processes for information sharing between jurisdictions, including between nation states and multilateral institutions. Finally, normalize and devolve information-sharing practices between jurisdictions to the lowest administrative level feasible.

Expand and simplify processes for civil society actors to provide designation information. Over the last decade, the jurisdictions profiled in this report have expanded their engagement with civil society actors in order to receive information salient to designations, particularly within human rights or anti-corruption regimes. However, there is substantial variation across jurisdictions in the official prioritization of such engagements and the ease with which information can be submitted. While the currently uni-directional flow of information into governments is unlikely to materially change, official efforts should be heightened to enable civil society to play a stronger and more effective role in sanctions issues over time. This should include expanding the types of regimes where such engagement is used, simplifying processes for information submission, engaging in post-designation consultations and, crucially, providing feedback on how approaches to data collection can be better suited to government needs.

Build engagement with the private sector to incentivize voluntary information sharing salient to criminal designations. Although the private sector has historically been involved with the implementation of financial sanctions, it could become a potent source of information on corrupt and criminal activities. Multilateral and state convergence towards sanctioning such activities is occurring alongside a growing concern among investors, asset managers and companies about their exposure to and ability to mitigate these risks. Support to sanctions authorities, particularly on designation development, could be an avenue for the private sector to shape the overall risk of organized crime or corruption in a given environment. Information sharing would likely relate predominantly to actors outside companies' client bases (within which client confidentiality requirements may pose obstacles to information sharing). Processes developed for receiving information from civil society could be adapted for the private sector. Jurisdictions should seek to build private sector interest in and willingness to use such processes and engage more broadly. To put such mechanisms into practice would require support in navigating the applicable regulatory frameworks, joint analysis of how additional information sharing could sit alongside companies' existing 'suspicious activity' reports, and targeted engagement with compliance focal points in governments' regulatory bodies.

Include a broad range of government stakeholders in sanctions designation decisions.[41] This should explicitly focus on and draw input from diplomatic missions and other field-deployed staff. Such a 'big tent' approach will require more robust planning on process, longer timelines for the designation process and heightened resourcing and training of staff from ministries that have previously been less consulted. A deliberative, inclusive and coordinated policy process can help to assess the broader implications of a sanctions designation in a given context. Such assessments could include the impact of the sanctions decisions on other foreign policy priorities, the buy-in on sanctions as part of a coordinated strategy, space for analysis of whether and how other foreign policy tools should

be adjusted to complement or increase the impact of sanctions, and strategic assessments around enforcement issues.

Increase transparency on designation processes. All the jurisdictions studied in this report had designation development processes that were highly opaque, with limited public information on how decisions are made, the criteria used, and to what ends. While some degree of secrecy is understandable, unnecessary opacity of the broad contours can influence public perceptions of sanctions, particularly in the home countries of designees, risking accusations of arbitrariness, inconstancy and politicization.[42] Such negative perceptions can impact the feasibility of local sanctions enforcement and, moreover, broader foreign policy interests. As many aspects of the designation decision-making process as possible should be clearly outlined and explained to the global public on a routine basis. Periodic public oversight of the regimes would advance transparency.

On post-designation activities

Proactively develop plans for engaging private sector entities, especially major banks, and foreign government agencies that oversee their operations. Private sector engagement and outreach are key to the successful implementation of financial sanctions on organized crime actors. Forging such partnerships, especially with private sector actors in remote or fragile states, can be difficult even where there is host country buy-in. It is harder when the companies or governments involved are sceptical of the strategy or believe that compliance or participation is against their interests. For these reasons, such engagement should not wait until the post-designation phase but should begin well in advance. Sanctioning jurisdictions should strategically map out and build engagement with pertinent private sector actors in countries where transnational organized crime actors are likely to be designated. A similar strategy should occur with government actors salient to enforcement, with proactive assessments and plans developed around law enforcement and regulatory capacity development, ideally as part of a broader counter-transnational organized crime strategy.

Invest in the de-listing process. The prioritization of de-listing varies widely across the jurisdictions covered in this report, which is problematic in terms of both public perception and due process. Further, it operates as an obstacle to sanctions that aim for the behavioural change of sanctioned entities. The issue assumes heightened relevance given the growing use of targeted sanctions broadly and the specific rise in the designation of transnational organized crime actors. States that use sanctions to counter transnational organized crime should prioritize the strengthening of their de-designation systems, staff and fund them adequately, and make the de-listing criteria and processes transparent. The UN should explore expanding the de-listing ombudsperson's mandate to cover sanctions regimes other than the ISIL (Da'esh) and al-Qaeda regime. Where de-listings do occur, these should be publicized in the same way as designations.

NOTES

1 Interview with former UN Panel of Experts member 1, May 2021.
2 See Matt Herbert and Lucia Bird Ruiz-Benitez de Lugo, Convergence zone: The evolution of targeted sanctions usage against organized crime, Global Initiative Against Transnational Organized Crime, July 2023.
3 The White House, National Security Strategy, February 2015.
4 US Department of State, Presidential determination under Foreign Narcotics Kingpin Designation Act, diplomatic cable issued 3 June 2008, declassified 13 July 2017.
5 Interview with former US official 6, November 2022.
6 See UN Security Council Resolution (UNSCR) 1343, March 2001 and UNSCR 1643, 15 December 2005.
7 UNSCR 2653, 21 October 2022.
8 United Kingdom House of Lords, European Union Committee, Brexit: Sanctions policy, 8th Report of Session 2017–19, HL Paper 50, 17 December 2017.
9 Paul James Cardwell and Erica Moret, The EU, sanctions and regional leadership, European Security, 32, 1 (2023), 1–21, https://doi.org/10.1080/09662839.2022.2085997.
10 Genevra Forwood et al, EU restrictive measures, in Rachel Barnes et al. (eds), Global Investigations Review: The Guide to Sanctions. London: Law Business Research, 2020.
11 Iana Dreyer and José Luengo-Cabrera, Introduction, in Iana Dreyer and José Luengo-Cabrera (eds), On target? EU sanctions as security policy tools, EU Institute for Security Studies, 2015, https://www.iss.europa.eu/content/target-eusanctions-security-policy-tools.
12 EU Council, Council Decision (CFSP) 2020/1999 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses.
13 House of Commons, Foreign Affairs Committee, Fragmented and incoherent: The UK's sanctions policy, HC 1703, 12 June 2019; Isabella Chase, Emil Dall and Tom Keatinge, Designing sanctions after Brexit: Recommendations on the future of UK sanctions policy, Royal United Services Institute for Defence and Security Studies, September 2019.
14 Alexandre Prezanti, Sanctions: A new UK tool against organized crime? GI-TOC, 10 August 2020, https://globalinitiative.net/analysis/sanctions-uk-oc/.
15 Global Anti-Corruption Sanctions Regulations 2021, No. 488.
16 Interview with former US official 4, January 2023.
17 Interview with former US official 5, January 2023.
18 Interview with US official 3, June 2021; interview with former US official 4, January 2023.
19 Daniel F Runde, Linnea Sandin and Amy Doring, Navigating the United States–Northern Triangle Enhanced Engagement Act, Center for Strategic and International Studies, 10 March 2021, https://www.csis.org/analysis/navigating-united-statesnorthern-triangle-enhanced-engagement-act.
20 Interview with former US official 4, January 2023.
21 Interview with former US official 5, January 2023; interview with former US official 4, January 2023.
22 Interview with UK lawyers, May 2021.
23 Enrico Carish and Loraine Rickard-Martin, Best practices guide for chairs and members of United Nations Sanctions Committees, Compliance and Capacity Skills International, December 2020.
24 Interview with former US official 1, May 2021.
25 Interview with European official 3, October 2022.
26 Interview with European official 1, October 2022.
27 EU Council, Sanctions guidelines: Update 5664/18, 14 May 2018.
28 Ibid.
29 Richard M Nephew, US engagement with the EU, in Sascha Lohmann and Judith Vorrath (eds.), International sanctions: Improving implementation through better interface management, Stiftung Wissenschaft und Politik,

August 2021, https://www.swp-berlin.org/en/publication/internationalsanctions-improving-implementation-through-better-interfacemanagement.

30 Iana Dreyer and José Luengo-Cabrera, Introduction, in Iana Dreyer and José Luengo-Cabrera (eds), On target? EU sanctions as security policy tools, EU Institute for Security Studies, 2015, https://www.iss.europa.eu/content/target-eusanctions-security-policy-tools.

31 Tom Keatinge et al, Transatlantic (mis)alignment: Challenges to US–EU sanctions design and implementation, Royal United Services Institute for Defence and Security Studies, Occasional Paper, July 2017, https://www.rusi.org/explore-our-research/publications/occasional-papers/transatlantic-misalignmentchallenges-us-eu-sanctions-design-and-implementation.

32 Foreign, Commonwealth and Development Office, Sanctions regulations: Report on annual reviews 2021, 11 January 2022; Office of Financial Sanctions Implementation, UK financial sanctions: General guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018, HM Treasury, August 2022.

33 Office of Financial Sanctions Implementation, UK financial sanctions: General guidance for financial sanctions under the Sanctions and Anti-Money Laundering Act 2018, HM Treasury, August 2022; Annual review: April 2021–August 2022, HM Treasury.

34 Interview with European official 1, October 2022; interview with former US official 9, August 2023.

35 Interview with US official 3, July 2021.

36 Interview with US official 4, July 2021.

37 Ibid.

38 Interview with former US official 6, November 2022.

39 Interview with former US official 3, January 2023.

40 Interview with former US ambassador 3, February 2023.

41 Interview with former US official 4, January 2023.

42 Interview with Latin America expert 2, December 2022.

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