

# INTERNATIONAL FINANCE - SPRING 2019

## SANCTIONS 2: VENEZUELA

Caroline Bradley<sup>1</sup>

On February 28, 2019 Russia and China opposed a US proposed resolution on Venezuela in the UN Security Council.<sup>2</sup>

Since 2006 the US Secretary of State has determined each year that Venezuela is not co-operating with US anti-terrorism efforts and has prohibited commercial arms sales to Venezuela under the Arms Export Control Act.<sup>3</sup> The US has sanctioned individual Venezuelans for involvement in supporting Hezbollah, and for being involved in narcotics trafficking and trafficking in persons.<sup>4</sup>

In 2014 the US began reacting to increasing repression in Venezuela. Congress enacted the **Venezuela Defense of Human Rights and Civil Society Act of 2014** noting high levels of inflation in Venezuela, currency controls which exacerbated economic problems, an increase in violent crime, and an erosion of Human Rights, identified by Human Rights Watch and the US State Department (lack of respect for judicial independence and use of the judiciary to “intimidate and selectively prosecute political, union, business, and civil society leaders who were critical of government policies or actions”). The Government of Venezuela had detained foreign journalists and expelled media outlets, had responded to protests with violence and arrests, including the arrest of Leopoldo Lopez.<sup>5</sup> Section 4 of the statute provides that:

It is the policy of the United States— (1) to support the people of Venezuela in their aspiration to live under conditions of peace and representative democracy as defined by the Inter-American Democratic Charter of the Organization of American States; (2) to work in concert with the other member states within the Organization of American States, as well as the countries of the European Union, to ensure the peaceful resolution of the current situation in Venezuela and the immediate cessation of violence against antigovernment protestors; (3) to hold

---

<sup>1</sup> Professor of Law, University of Miami School of Law, PO Box 248087, Coral Gables, FL, 33124, [cbradley@law.miami.edu](mailto:cbradley@law.miami.edu) ; <http://blenderlaw.com/> . © Caroline Bradley 2019. All rights reserved.

<sup>2</sup> See, e.g., Michael Schwartz, Russia Blocks Venezuela Measure at U.N., Calling It a U.S. Ploy for Regime Change, New York Times (Feb. 28, 2019).

<sup>3</sup> Arms Export Control Act (22 U.S.C. 2781). See Congressional Research Service, Venezuela: Overview of US Sanctions (Updated feb. 1, 2019).

<sup>4</sup> Id.

<sup>5</sup> Public Law 113–278 (113th Congress).

accountable government and security officials in Venezuela responsible for or complicit in the use of force in relation to antigovernment protests and similar future acts of violence; and (4) to continue to support the development of democratic political processes and independent civil society in Venezuela.

The statute mandated the imposition of sanctions until December 31, 2016, including the blocking and prohibition of transactions in property (that is in the US or within the possession or control of a US person) of persons “the President determines... has“perpetrated, or is responsible for ordering or otherwise directing, significant acts of violence or serious human rights abuses in Venezuela against persons associated with the antigovernment protests...has ordered or otherwise directed the arrest or prosecution of a person in Venezuela primarily because of the person’s legitimate exercise of freedom of expression or assembly; or ... has knowingly materially assisted, sponsored, or provided significant financial, material, or technological support for, or goods or services in support of, the commission of [such] acts.”

The statute defines a US person as a US citizen or lawfully permanent resident alien or “an entity organized under the laws of the United States or of any jurisdiction within the United States, including a foreign branch of such an entity.”

**Executive Order 13692** was issued to implement the statute in March 2015,<sup>6</sup> and the Treasury issued regulations in July 2015.<sup>7</sup> Executive Order 13692 blocks assets of a number of named persons, and states that no prior notice of the block need be made to the identified persons because the ability to transfer assets instantaneously would render the measures ineffectual. The Secretaries of State and Treasury have the power to determine that other persons should have their assets blocked, including persons who have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of a person whose property and interests in property are blocked. The regulations contain provisions relating to blocked property and interest in property, including provisions for nullity of transfers in violation of the regulations, for the holding of blocked funds in interest bearing accounts. And the regulations contain a number of expansive definitions:

**financial, material, or technological support** means: “any property, tangible or intangible, including but not limited to currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of

---

<sup>6</sup> See <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/13692.pdf>.

<sup>7</sup> 31 C.F.R. Part 591.

transportation; or goods. "Technologies" as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions."

**property and property interest** : "include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent."

**transfer** "means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, or filing of, or levy of or under, any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security."

The regulations provide authorizations for some transactions including payments between blocked accounts with US financial institutions, the provision of and payment for some legal services, and the provision of emergency medical services.

Since 2017 a number of other Executive Orders have been issued with respect to Venezuela:<sup>8</sup>

### **EO 13808 - Imposing Additional Sanctions with Respect to the Situation in Venezuela (August 24, 2017)<sup>9</sup>**

**Section 1.** (a) All transactions related to, provision of financing for, and other dealings in the following by a United States person or within the United States are prohibited:

- (i) new debt with a maturity of greater than 90 days of Petroleos de Venezuela, S.A. (PdVSA);
- (ii) new debt with a maturity of greater than 30 days, or new equity, of the Government of Venezuela, other than debt of PdVSA covered by subsection (a)(i) of this section;
- (iii) bonds issued by the Government of Venezuela prior to the effective date of this order; or
- (iv) dividend payments or other distributions of profits to the Government of Venezuela from any entity owned or controlled, directly or indirectly, by the Government of Venezuela.

(b) The purchase, directly or indirectly, by a United States person or within the United States, of securities from the Government of Venezuela, other than securities qualifying as new debt with a maturity of less than or equal to 90 or 30 days as covered by subsections (a)(i) or (a)(ii) of this section, respectively, is prohibited.

(c) The prohibitions in subsections (a) and (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the effective date of this order.

**Sec. 2.** (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.<sup>10</sup>

**Sec. 3.** For the purposes of this order:

- (a) the term “person” means an individual or entity;
- (b) the term “entity” means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;
- (c) the term “United States person” means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and
- (d) the term “Government of Venezuela” means the Government of Venezuela, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and PdVSA, and any person owned or controlled by, or acting for or on behalf of, the Government

---

<sup>8</sup> The US Treasury’s Venezuela-related sanctions page is at <https://www.treasury.gov/resource-center/sanctions/Programs/pages/venezuela.aspx> .

<sup>9</sup> 82 Fed. Reg. 41155 (Aug, 29, 2017).

<sup>10</sup> Subsequent Executive orders contain similar anti-evasion provisions.

of Venezuela.<sup>11</sup>

**EO 13827 - Taking Additional Steps to Deal with the Situation in Venezuela (March 19, 2018)**<sup>12</sup>

**Section 1.** (a) All transactions related to, provision of financing for, and other dealings in, by a United States person or within the United States, any digital currency, digital coin, or digital token, that was issued by, for, or on behalf of the Government of Venezuela on or after January 9, 2018, are prohibited as of the effective date of this order. (b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the effective date of this order.

**EO 13835 - Prohibiting Certain Additional Transactions with Respect to Venezuela (May 21, 2018)**<sup>13</sup>

**Section 1.** (a) All transactions related to, provision of financing for, and other dealings in the following by a United States person or within the United States are prohibited: (i) the purchase of any debt owed to the Government of Venezuela, including accounts receivable; (ii) any debt owed to the Government of Venezuela that is pledged as collateral after the effective date of this order, including accounts receivable; and (iii) the sale, transfer, assignment, or pledging as collateral by the Government of Venezuela of any equity interest in any entity in which the Government of Venezuela has a 50 percent or greater ownership interest. (b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the effective date of this order.

**EO 13850 - Blocking Property of Additional Persons Contributing to the Situation in Venezuela (November 1, 2018)**<sup>14</sup>

**Section 1.** (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) to operate in the gold sector of the Venezuelan economy or in any other sector of the

---

<sup>11</sup> Subsequent Executive orders include these definitions. And see EO 13857 amending this definition in this and other Executive Orders.

<sup>12</sup> 83 Fed. Reg. 12469 (Mar. 21, 2018)

<sup>13</sup> 83 Fed. Reg. 24001 (May 24, 2018).

<sup>14</sup> 83 Fed. Reg. 55243 (Nov. 2, 2018).

Venezuelan economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State;

(ii) to be responsible for or complicit in, or to have directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices or corruption and the Government of Venezuela or projects or programs administered by the Government of Venezuela, or to be an immediate adult family member of such a person;

(iii) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activity or transaction described in subsection (a)(ii) of this section, or any person whose property and interests in property are blocked pursuant to this order; or

(iv) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order.

### **EO 13857 - Taking Additional Steps to Address the National Emergency With Respect to Venezuela (January 28, 2019)<sup>15</sup>**

**Section 1.** (a) Subsection (d) of section 6 of Executive Order 13692, subsection (d) of section 3 of Executive Order 13808, subsection (d) of section 3 of Executive Order 13827, subsection (d) of section 3 of Executive Order 13835, and subsection (d) of section 6 of Executive Order 13850, are hereby amended to read as follows:

“(d) the term “Government of Venezuela” includes the state and Government of Venezuela, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and Petroleos de Venezuela, S.A. (PDVSA), any person owned or controlled, directly or indirectly, by the foregoing, and any person who has acted or purported to act directly or indirectly for or on behalf of, any of the foregoing, including as a member of the Maduro regime.”

The Executive Orders provide that the Secretaries of State and Treasury can designate persons to be subject to the various restrictions, and they publish announcements of such designations.<sup>16</sup> The Office of Foreign Assets Control publishes lists of specially

---

<sup>15</sup> 84 Fed. Reg. 509 (Jan. 30, 2019).

<sup>16</sup> See, e.g., US Department of the Treasury, Press Release: Treasury Sanctions Officials Aligned with Former President Nicolas Maduro and Involved in Repression and Corruption (Feb. 15, 2019) (“Today, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) designated five officials aligned with illegitimate former President Nicolas Maduro, who continue to repress democracy and democratic actors in Venezuela and engage in significant corruption and fraud against the people of Venezuela. This action, pursuant to Executive Order (E.O.) 13692, targets the head of the Venezuelan National Intelligence Service (SEBIN), Manuel Ricardo Christopher Figuera, and SEBIN’s First

designated nationals and blocked persons.<sup>17</sup> The February 25, 2019 version of this list is 1263 pages long.

In addition there are a number of General Licenses which permit activities that would otherwise be prohibited. For example, **General License 12**, issued on January 28, 2019, provides:

(a) Except as provided in paragraphs (c) and (d) of this general license, all transactions and activities prohibited by Executive Order 13850 that are ordinarily incident and necessary to the purchase and importation into the United States of petroleum and petroleum products from PdVSA or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest are authorized through 12:01 a.m. eastern daylight time, April 28, 2019.

(b) Except as provided in paragraphs (c) and (d) of this general license, all transactions and activities prohibited by Executive Order 13850 that are ordinarily incident and necessary to the wind down of operations, contracts, or other agreements, including the importation into the United States of goods, services, or technology not authorized in paragraph (a) of this general license, involving PdVSA or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest and that were in effect prior to January 28, 2019 are authorized through 12:01 a.m. eastern standard time, February 27, 2019.

(c) Except as authorized by Venezuela General Licenses 7, 8, 11, or 13, any payment to or for the direct or indirect benefit of a blocked person that is ordinarily incident and necessary to give effect to a transaction authorized in paragraph (a) of this general license must be made into a blocked, interest-bearing account located in the United States in accordance with 31 C.F.R. part 591.

(d) This general license does not authorize:

(1) The divestiture or transfer of any debt, equity, or other holdings in, to, or for the benefit of the blocked persons identified above;

(2) The exportation or reexportation of any diluents from the United States to Venezuela, PdVSA, or any entity in which PdVSA owns, directly or indirectly, a 50 percent or greater interest;

(3) Any transactions or dealings with ALBA de Nicaragua (ALBANISA) or any entity in which ALBANISA owns, directly or indirectly, a 50 percent or greater interest; or (4) Any transactions or dealings otherwise prohibited by Executive Order 13850 of November 1, 2018, Executive Order 13835 of May 21, 2018, Executive Order 13827 of March 19, 2018, Executive Order 13808 of August 24, 2017, Executive Order 13692 of March 8, 2015, or any part of 31 C.F.R.

---

Commissioner, Hildemaro Jose Rodriguez Mucura; the Commander of Venezuela's Directorate General of Military Counter-Intelligence, Ivan Rafael Hernandez Dala; and the Director of the Venezuelan National Police's Special Actions Force (FAES), Rafael Enrique Bastardo Mendoza. Additionally OFAC designated the illegitimate President of Venezuela's state-owned oil company, Petroleos de Venezuela, S.A. (PdVSA), Manuel Salvador Quevedo Fernandez."); US Department of the Treasury, Press Release: Treasury Sanctions Governors of Venezuelan States Aligned with Maduro (Feb. 25, 2019).

<sup>17</sup> <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

chapter V, or any transactions or dealings with any blocked person other than the blocked persons identified in paragraph (a) of this general license.

Alexander Campbell has argued that US sanctions impede Venezuela's ability to address its economic problems by means of normal measures like debt restructuring, and also that the US recognition of Juan Guaidó as president of Venezuela<sup>18</sup> was a de facto oil embargo.<sup>19</sup>

The extension of sanctions to PDVSA and entities in which PDVSA has a 50% or greater interest is significant. Trading in PDVSA's debt has stopped.<sup>20</sup> CITGO, which is owned by PDVSA has a significant presence in the US. News reports have suggested CITGO is cutting ties with PDVSA,<sup>21</sup> in the hopes of obtaining a General License from OFAC.<sup>22</sup> CITGO had been spared the effects of US Venezuela sanctions in 2017.<sup>23</sup>

At the same time as OFAC extended sanctions to PDVSA and entities it controls, OFAC issued a number of General Licenses:

---

<sup>18</sup> US Department of State, Press release: Recognition of Juan Guaido as Venezuela's Interim President (Jan. 23, 2019).

<sup>19</sup> Alexander Campbell, What's the Deal with Sanctions in Venezuela, and Why's It So Hard for Media to Understand? (Feb. 4, 2019) at <http://cepr.net/blogs/the-americas-blog/what-s-the-deal-with-sanctions-in-venezuela-and-why-s-it-so-hard-for-media-to-understand>.

<sup>20</sup> Kenneth Rapoza, Washington Essentially Kills The Venezuela PDVSA Bond Market, Forbes (Feb. 11, 2019).

<sup>21</sup> <https://finance.yahoo.com/news/citgo-loans-price-potential-regime-211837373.html> (“The link has been broken, personnel ties are not there anymore since the new board is in and commercial ties are not there,” said an investor holding PDVSA debt. “Maduro’s appointees were asked to leave so the company can more easily abide by sanctions.”); <https://www.reuters.com/article/us-venezuela-politics-citgo-idUSKCN1QF2IG> (“Citgo has halted payments to its parent, subscriptions to corporate services, email communications and minimized mentions to PDVSA on marketing materials and its website. Expatriate Venezuelan employees this month returned to Venezuela and a procurement subsidiary operating from Citgo’s headquarters, PDVSA Services, was shut, the people familiar with the matter said.”)

<sup>22</sup> Citgo Severing Ties with PDVSA to Avoid Us Sanctions: Sources (Feb. 27, 2019) at <https://www.spglobal.com/platts/en/market-insights/latest-news/oil/022719-citgo-severing-ties-with-pdvsa-to-avoid-us-sanctions-sources>.

<sup>23</sup> Lachlan Markay, Trump Saves Citgo, Repped by His Ex-Aides, From New Sanctions, Daily Beast (Aug 25, 2017) (“The White House on Friday announced a new round of sanctions against Venezuela that explicitly exempt the U.S. arm of the country’s state-owned oil company. That company, Citgo, donated six-figure sums to Trump’s inauguration and recently hired former Trump officials to lobby for that exemption.”)



OFAC published eight new general licenses (GLs 7-14) related to the PdVSA designation. While some of the GLs facilitate the divestment or wind down of transactions or dealings with PdVSA and its subsidiaries, others create authorizations that are likely intended to be more indefinite and possibly the subject of ongoing negotiations between certain parties and OFAC. Among other things, the GLs authorize (subject to certain conditions) the importation of Venezuelan oil by US persons and the operation of CITGO – so long as payments for oil and any other funds that would normally go to PdVSA are placed into a blocked account. It is unclear whether PdVSA will continue to export oil under such conditions. In a White House press briefing, Secretary Mnuchin indicated that blocked funds may eventually be provided to the National Assembly President Juan Guaidó, who the US recognizes as the current president of Venezuela.<sup>24</sup>

Making sure to comply with the rules is complicated.<sup>25</sup> If lists of designated persons and details of the rules change, then compliance needs to respond to the changes, which can be complicated. A PWC publication states:

The process of complying with watch list filtering requirements would seem to be straightforward :financial institutions have to screen the names of individuals and entities on various lists and, depending on the list and the entity, decline business with potential customers or conduct enhanced due diligence. But the reality is far more complicated. Even institutions with relatively mature screening programs can find themselves struggling to align their programs quickly enough with a highly mutable and ever-more-complex policy and regulatory environment.<sup>26</sup>

And the information in this section relates to sanctions involving one country and imposed by the US and the EU. Imagine a financial institution faced with a proposed transaction involving multiple different jurisdictions trying to make sure to comply with all of the relevant sanctions regimes. A number of businesses offer technological assistance for compliance with these requirements.<sup>27</sup>

---

<sup>24</sup> Brian Egan, Edward J. Krauland, Meredith Rathbone, Tom Best, Jack R. Hayes, Peter Jeydel, Evan T. Abrams, Jillian Norton, PdVSA Sanctions Designation Has Significant Implications for US Business (Feb. 14, 2019) at <https://www.stepto.com/en/news-publications/pdvsa-sanctions-designation-has-significant-implications-for-us-business.html>

<sup>25</sup> See, e.g., Mengqi Sun, Evolving Venezuela Sanctions Pose Problems for Banks, WSJ (Feb 25, 2019).

<sup>26</sup> PWC, Name, Set, Match Enhancing Watch List Screening Through Analytics (Apr. 2016).

<sup>27</sup> See, e.g., Deloitte, RegTech Universe at <https://www2.deloitte.com/lu/en/pages/technology/articles/regtech-companies-compliance.html>; SWIFT Sanctions Screening Factsheet, Transaction Screening Made Easy: a Quick and Secure Route to Sanctions Compliance at <https://www.swift.com/resource/sanctions-screening-factsheet> .

**In a Joint Fact Sheet on Foreign Correspondent Banking**, US federal banking agencies (FBAs) have described their expectations of US financial institutions in their relationships with foreign financial institutions (FFIs) as follows:

The FBAs expect U.S. depository institutions to have robust BSA and OFAC compliance programs that include appropriate customer due diligence so that the institutions have a clear understanding of FFI risk profiles and expected account activity. This information helps U.S. depository institutions make informed decisions regarding the risks associated with their FFI relationships and the level and nature of suspicious activity monitoring needed to manage those risks effectively. In order for U.S. depository institutions to develop a clear understanding of FFI risk profiles and determine how best to manage the risks associated with these relationships, they are expected to obtain and review sufficient information about their FFI relationships, including the types of customers the FFI serves and the markets in which the FFI is active. This approach allows the U.S. depository institution to conduct an adequate assessment of the risks present in: (i) the FFI's business and markets, (ii) the type, purpose and anticipated activity, (iii) the nature and duration of the relationship with the FFI, and (iv) the supervisory regime of the jurisdiction in which the FFI is licensed, and to design and implement controls to manage these risks effectively. Under existing U.S. regulations, there is no general requirement for U.S. depository institutions to conduct due diligence on an FFI's customers. In determining the appropriate level of due diligence necessary for an FFI relationship, U.S. depository institutions should consider the extent to which information related to the FFI's markets and types of customers is necessary to assess the risks posed by the relationship, satisfy the institution's obligations to detect and report suspicious activity, and comply with U.S. economic sanctions. This may require U.S. depository institutions to request additional information concerning the activity underlying the FFI's transactions in accordance with the suspicious activity reporting rules and sanctions compliance obligations....

Enforcement actions by the FBAs are an extension of the supervisory process and are used to address more serious deficiencies, or situations where deficiencies have not been corrected in the course of the supervisory process. Enforcement actions reinforce awareness of senior management and boards of directors of the deficiencies identified during the supervisory process and ensure they take prompt remedial actions to correct the identified deficiencies. Enforcement tools may vary and can include informal memoranda of understanding, or formal, public, written agreements, and cease-and-desist orders. The FBAs are required by statute to use their cease-and-desist authority when an institution fails to establish or maintain a BSA compliance program or fails to correct any problem with the program previously reported to the institution. In very limited instances, when corrective action has not been achieved within a reasonable amount of time or serious violations or unsafe or unsound practices or breaches of fiduciary duty have been identified, the FBAs also have the authority to assess civil money penalties (CMPs). CMPs are designed by statute to serve as a deterrent to future violations, practices or breaches of fiduciary duty, to encourage correction of violations, practices or breaches of fiduciary duty, and in the case of individual actions, to emphasize the accountability of individuals...

OFAC administers and enforces the U.S. economic and trade sanctions programs based on U.S. foreign policy and national security threats. In cases where institutions are supervised by

the FBAs, the FBAs examine for BSA/AML and OFAC compliance, and in situations involving apparent BSA/AML or sanctions violations resulting from deficiencies, FinCEN and OFAC coordinate with the FBAs. In determining whether an enforcement action is appropriate, FinCEN considers whether the institution responded adequately to the FBA's previous corrective actions or if the institution engaged in significant violations. Similarly, in certain circumstances, OFAC will consult with relevant FBAs regarding the quality and effectiveness of an institution's compliance program when determining the appropriate enforcement response. OFAC investigates cases of sanctions violations, many of which (over 95 percent) are closed with administrative measures such as cautionary or no action letters. This means that less than five percent of all cases of sanctions-related violations investigated by OFAC have resulted in a civil monetary penalty or other public enforcement response.<sup>28</sup>

In November 2018 OFAC announced a settlement with Société Générale for \$53,966,916.05 with respect to apparent sanctions violations under the Cuban Assets Control Regulations, the Iranian Transactions and Sanctions Regulations, and the Sudanese Sanctions Regulations.<sup>29</sup> In addition the bank entered into deferred prosecution agreements with the U.S Attorney's Office of the Southern District of New York and the New York County District Attorney's Office, and a separate agreement with agreement with the New York State Department of Financial Services. In total Société Générale agreed to pay \$1.3 billion.<sup>30</sup> Société Générale used similar mechanisms for disguising payments to those used by Standard Chartered, and the transactions which gave rise to the investigations occurred in the same time period. These cases are among the cases which have led financial institutions to be more concerned about compliance issues.

In February 2019 OFAC announced that it was identifying an individual based in Turkey as a foreign sanctions evader, the first time it had taken such action against an individual:

"Treasury is sanctioning Kayakiran not just for his willful violation of U.S. sanctions on Iran, but also for directing staff to commit and cover up these illegal acts. This is the first time that OFAC has designated an individual as a Foreign Sanctions Evader while resolving an enforcement matter, and is a marked change to how we will counter these acts of deception," said Sigal

---

<sup>28</sup> U.S. Department of the Treasury and Federal Banking Agencies, Joint Fact Sheet on Foreign Correspondent Banking: Approach to BSA/AML and OFAC Sanctions Supervision and Enforcement (Aug. 30, 2016)

<sup>29</sup> See US Department of the Treasury, Settlement Agreement between the U.S. Department of the Treasury's Office of Foreign Assets Control and Société Générale S.A. (Nov. 19, 2018).

<sup>30</sup> Société Générale Press Release, Société Générale Reaches Agreements with U.S. Authorities to Resolve U.S. Economic Sanctions and AML Investigations (Nov. 19, 2018).

Mandelker, Treasury Under Secretary for Terrorism and Financial Intelligence. "This action is a clear warning that anyone in supervisory or managerial positions who directs staff to provide services, falsify records, commit fraud, or obstruct an investigation into sanctions violations exposes themselves to serious personal risk." <sup>31</sup>

### **The EU has also adopted sanctions relating to the situation in Venezuela:**

In view of the continuing deterioration of the situation in Venezuela, the Council decided today to renew the targeted restrictive measures currently in place until 14 November 2019.

The Council put in place targeted restrictive measures on Venezuela on 13 November 2017.

These included an embargo on arms and on equipment for internal repression as well as a travel ban and an asset freeze on 18 individuals (7 since 22 January and 11 since 25 June 2018) holding official positions and responsible for human rights violations as well as for undermining democracy and the rule of law in Venezuela.

These measures are intended to help encourage democratic shared solutions in order to bring political stability to the country and allow it to address the pressing needs of the population.

These targeted measures are flexible and reversible and designed not to harm the Venezuelan population.

The EU has reiterated on numerous occasions its readiness to help find a democratic way out of the current multidimensional crisis through a meaningful and results-oriented negotiation, conducted in good faith, that includes all relevant Venezuelan political actors. EU foreign ministers discussed the situation in Venezuela and its impact in the region at their last meeting on 15 October and reaffirmed this position. Since the crisis can only be addressed through a political process, they agreed to explore the possibility of establishing a contact group which could, if conditions are met, help facilitate such a process.<sup>32</sup>

### **Here Is part of Council Decision 2017/2074 Concerning Restrictive Measures in View of the Situation in Venezuela**

Whereas:

(1) The Union remains deeply concerned at the continuing deterioration of democracy, the rule of law and human rights in Venezuela.

(2) On 15 May 2017, the Council adopted conclusions calling on all Venezuelan political actors and institutions to work in a constructive manner towards a solution to the crisis in the country while fully respecting the rule of law and human rights, democratic institutions and the separation of powers. It also stated that the release of jailed political opponents and respect for

---

<sup>31</sup> US Department of the Treasury, Treasury Sanctions Turkish National as Foreign Sanctions Evader Due To Repeated Violations of U.S. Sanctions Against Iran (Feb. 7, 2019).

<sup>32</sup> Council of the EU Press Release, Venezuela: EU Renews Sanctions for One Year (Nov. 6, 2018).

constitutional rights are crucial steps in building trust and helping the country to regain political stability.

(3) The Union has repeatedly expressed its full support for the efforts in Venezuela to facilitate an urgent, constructive and effective dialogue between the Government and the parliamentary majority in order to create the conditions for peaceful solutions to the multidimensional challenges the country faces.

(4) The Union has strongly encouraged the facilitation of external cooperation to address the most urgent needs of the population and has fully committed to helping Venezuela find peaceful and democratic solutions, including through support for regional and international efforts to that end.

(5) On 26 July 2017, the Union expressed concern at the numerous reports of human rights violations and excessive use of force, and called on the Venezuelan authorities to respect the Constitution of Venezuela ('the Constitution') and the rule of law and to ensure that fundamental rights and freedoms, including the right to peaceful demonstration, are guaranteed.

(6) On 2 August 2017, the Union expressed its deep regret at the decision of the Venezuelan authorities to continue with the election of a Constituent Assembly, a decision that durably worsened the crisis in Venezuela and risked undermining other legitimate institutions foreseen by the Constitution, such as the National Assembly. While calling on all parties to refrain from violence and on the authorities to ensure full respect for all human rights, and while expressing readiness to assist on all issues which could alleviate the everyday situation of the Venezuelan people, the Union also indicated its readiness to gradually step up its response in case democratic principles were further undermined and the Constitution was not respected.

(7) In this context and in line with the Declaration by the Union of 2 August 2017, targeted restrictive measures should be imposed against certain natural and legal persons responsible for serious human rights violations or abuses or the repression of civil society and democratic opposition and persons, entities and bodies whose actions, policies or activities undermine democracy or the rule of law in Venezuela, as well as persons, entities and bodies associated with them.

(8) Furthermore, in view of the risk of further violence, excessive use of force and violations or abuses of human rights, it is appropriate to impose restrictive measures in the form of an arms embargo as well as specific measures to place restrictions on equipment that might be used for internal repression and to prevent the misuse of communication equipment.

(9) The restrictive measures should be gradual, targeted, flexible and reversible, without affecting the general population and should aim at fostering a credible and meaningful process that can lead to a peaceful negotiated solution.

(10) Further action by the Union is needed in order to implement certain measures...

## EXPORT RESTRICTIONS

### Article 1

1. The sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned to Venezuela by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft shall be prohibited whether originating or not in their territories.

2. It shall be prohibited:

(a) to provide technical assistance, brokering services and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned directly or indirectly to any natural or legal person, entity or body in, or for use in, Venezuela;

(b) to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance, for any sale, supply, transfer or export of arms and related materiel or for the provision of related technical assistance, brokering services and other services directly or indirectly to any person, entity or body in, or for use in, Venezuela.

#### Article 2

The prohibition in Article 1 shall not apply to the execution of contracts concluded before 13 November 2017 or to ancillary contracts necessary for the execution of such contracts, provided that they comply with Council Common Position 2008/944/CFSP (1), in particular with the criteria set out in Article 2 thereof, and that the natural or legal persons, entities or bodies seeking to perform the contract have notified the contract to the competent authority of the Member State in which they are established within 5 working days of the entry into force of this Decision.

#### Article 3

1. The sale, supply, transfer or export of equipment which might be used for internal repression to Venezuela by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft shall be prohibited whether originating or not in their territories.

2. It shall be prohibited:

(a) to provide technical assistance, brokering services and other services related to equipment which might be used for internal repression and to the provision, manufacture, maintenance and use of such equipment directly or indirectly to any natural or legal person, entity or body in, or for use in, Venezuela;

(b) to provide financing or financial assistance related to equipment which might be used for internal repression, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance, for any sale, supply, transfer or export of such equipment or for the provision of related technical assistance, brokering services and other services directly or indirectly to any person, entity or body in, or for use in, Venezuela.

3. The Union shall take the necessary measures in order to determine the relevant items to be covered by this Article.

#### Article 4

1. Articles 1 and 3 shall not apply to:

(a) the sale, supply, transfer or export of non-lethal military equipment, or of equipment which might be used for internal repression, intended solely for humanitarian or protective use, or for institution-building programmes of the United Nations (UN) and the Union and its Member States or of regional and subregional organisations, or of materiel intended for

crisis-management operations of the UN and the Union or of regional and subregional organisations;

(b) the sale, supply, transfer or export of demining equipment and materiel for use in demining operations;

(c) the maintenance of non-lethal equipment which might be used by the navy and coastguard of Venezuela intended solely for border protection, regional stability and the interception of narcotics;

(d) the provision of financing and financial assistance related to the equipment or materiel referred to in points (a), (b) and (c);

(e) the provision of technical assistance related to the equipment or materiel referred to in points (a), (b) and (c), on condition that such exports have been approved in advance by the relevant competent authority.

2. Articles 1 and 3 shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Venezuela by UN personnel, personnel of the Union or its Member States, representatives of the media, and humanitarian and development workers and associated personnel for their personal use only.

#### Article 5

1. The sale, supply, transfer or export of equipment, technology or software intended primarily for use in the monitoring or interception by, or on behalf of, the Venezuelan regime of the internet and of telephone communications on mobile or fixed networks in Venezuela, including the provision of any telecommunication or internet monitoring or interception services of any kind, as well as the provision of financial and technical assistance to install, operate or update such equipment, technology or software, by nationals of Member States or from the territories of Member States shall be prohibited.

2. By derogation from paragraph 1, Member States may authorise the sale, supply, transfer or export of the equipment, technology or software, including the provision of any telecommunication or internet monitoring or interception services of any kind, as well as the related provision of financial and technical assistance, referred to in paragraph 1 if they have reasonable grounds to determine that the equipment, technology or software would not be used for internal repression by Venezuela's government, public bodies, corporations or agencies, or any person or entity acting on their behalf or at their direction.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this paragraph, within four weeks of the authorisation.

3. The Union shall take the necessary measures in order to determine the relevant elements to be covered by this Article.

#### Article 7

1. All funds and economic resources belonging to or owned, held or controlled by:

(a) natural or legal persons, entities or bodies responsible for serious human rights violations or abuses or the repression of civil society and democratic opposition in Venezuela;

(b) natural or legal persons, entities or bodies whose actions, policies or activities otherwise undermine democracy or the rule of law in Venezuela,

as listed in Annex I, shall be frozen.

2. All funds and economic resources belonging to or owned, held or controlled by natural or legal persons, entities and bodies associated with the persons entities or bodies referred to in paragraph 1, as listed in Annex II, shall be frozen.

3. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex I or II.

4. The competent authority of a Member State may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as it deems appropriate, after having determined that the funds or economic resources concerned are:

(a) necessary to satisfy the basic needs of the natural or legal persons, entities or bodies listed in Annex I or II and dependent family members of such natural persons, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and public utility charges;

(b) intended exclusively for the payment of reasonable professional fees and the reimbursement of incurred expenses associated with the provision of legal services;

(c) intended exclusively for the payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources;

(d) necessary for extraordinary expenses, provided that the relevant competent authority has notified the competent authorities of the other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted, at least two weeks prior to the authorisation; or

(e) to be paid into or from an account of a diplomatic or consular mission or an international organisation enjoying immunities in accordance with international law, insofar as such payments are intended to be used for official purposes of the diplomatic or consular mission or international organisation.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this paragraph.

5. By way of derogation from paragraphs 1 and 2, the competent authorities of a Member State may authorise the release of certain frozen funds or economic resources if the following conditions are met:

(a) the funds or economic resources are the subject of an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in paragraph 1 or 2 was listed in Annex I or II, or of a judicial or administrative decision rendered in the Union, or a judicial decision enforceable in the Member State concerned, prior to or after that date;

(b) the funds or economic resources will be used exclusively to satisfy claims secured by such a decision or recognised as valid in such a decision, within the limits set by applicable laws and regulations governing the rights of persons having such claims;

(c) the decision is not for the benefit of a natural or legal person, entity or body listed in Annex I or II; and

(d) recognising the decision is not contrary to public policy in the Member State concerned.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this paragraph.



6. Paragraphs 1 and 2 shall not prevent a natural or legal person, entity or body listed in Annex I or II from making a payment due under a contract or agreement that was concluded by, or an obligation that arose for, a natural or legal person, an entity or body listed in Annex I or II prior to the date on which such natural or legal person, entity or body was listed therein, provided that the Member State concerned has determined that the payment is not in breach of paragraph 3.

7. Paragraph 3 shall not apply to the addition to frozen accounts of:

(a) interest or other earnings on those accounts;

(b) payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to the measures provided for in paragraphs 1, 2 and 3; or

(c) payments due under judicial, administrative or arbitral decisions rendered in the Union or enforceable in the Member State concerned,

provided that any such interest, other earnings and payments remain subject to the measures provided for in paragraph 1 or 2.

The EU has not adopted sanctions relating to the Venezuelan oil industry.

The UK has adopted measures to implement the EU's Venezuela sanctions in the UK,<sup>33</sup> and has also adopted measures to provide for the sanctions if the UK leaves the EU without a deal.<sup>34</sup>

The UK's Office of Financial Sanctions Implementation, established in 2016 and modeled on OFAC to improve enforcement of sanctions in the UK,<sup>35</sup> announced in February 2019 that it had imposed a monetary penalty of £5000 on Raphaels Bank for contravening the UK's Egypt (Asset-Freezing) Regulations 2011 with respect to a transaction for £200.00. The fine was reduced from £10,000 on the basis of Raphaels Banks' disclosure and cooperation.<sup>36</sup>

---

<sup>33</sup> The Venezuela (European Union Financial Sanctions) Regulations 2017, SI 2017 No. 1094.

<sup>34</sup> The Venezuela (Sanctions) (EU Exit) Regulations 2019, SI 2019 No. 135.

<sup>35</sup> See Ashurst, UK Sanctions (Apr. 1, 2016) at <https://www.ashurst.com/en/news-and-insights/legal-updates/uk-sanctions-a-new-enforcement-body-and-proposed-enforcement-tools/>.

<sup>36</sup> Office of Financial Sanctions Implementation, HM Treasury, Imposition of Monetary Penalty –Raphaels Bank.