

Panel 2: EU sanctions against Russia – implementation challenges

Milan Godin, LL.M.

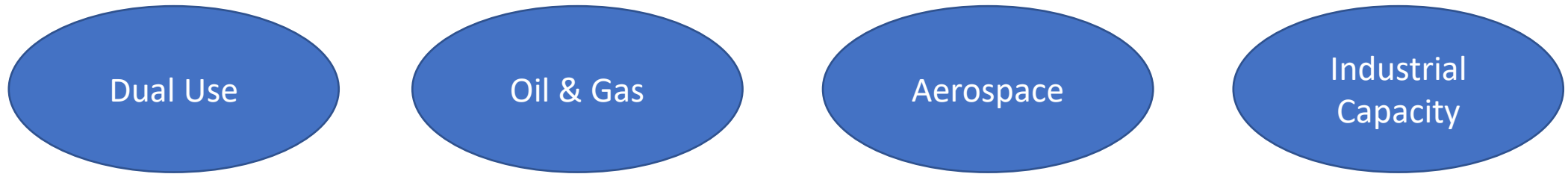
Senior Legal Advisor – Strategic Goods Control



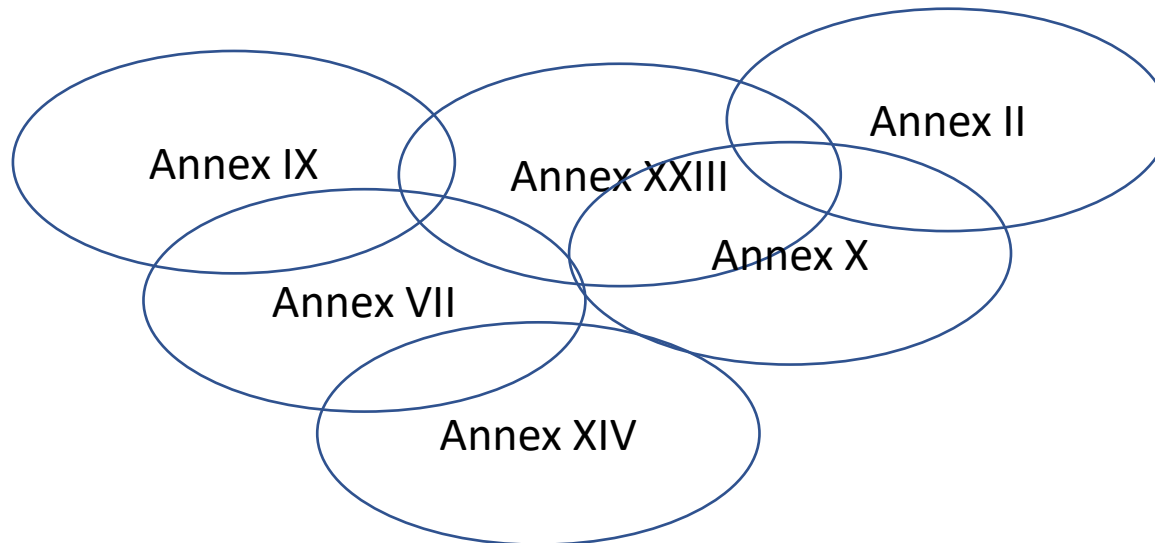
Government
of Flanders

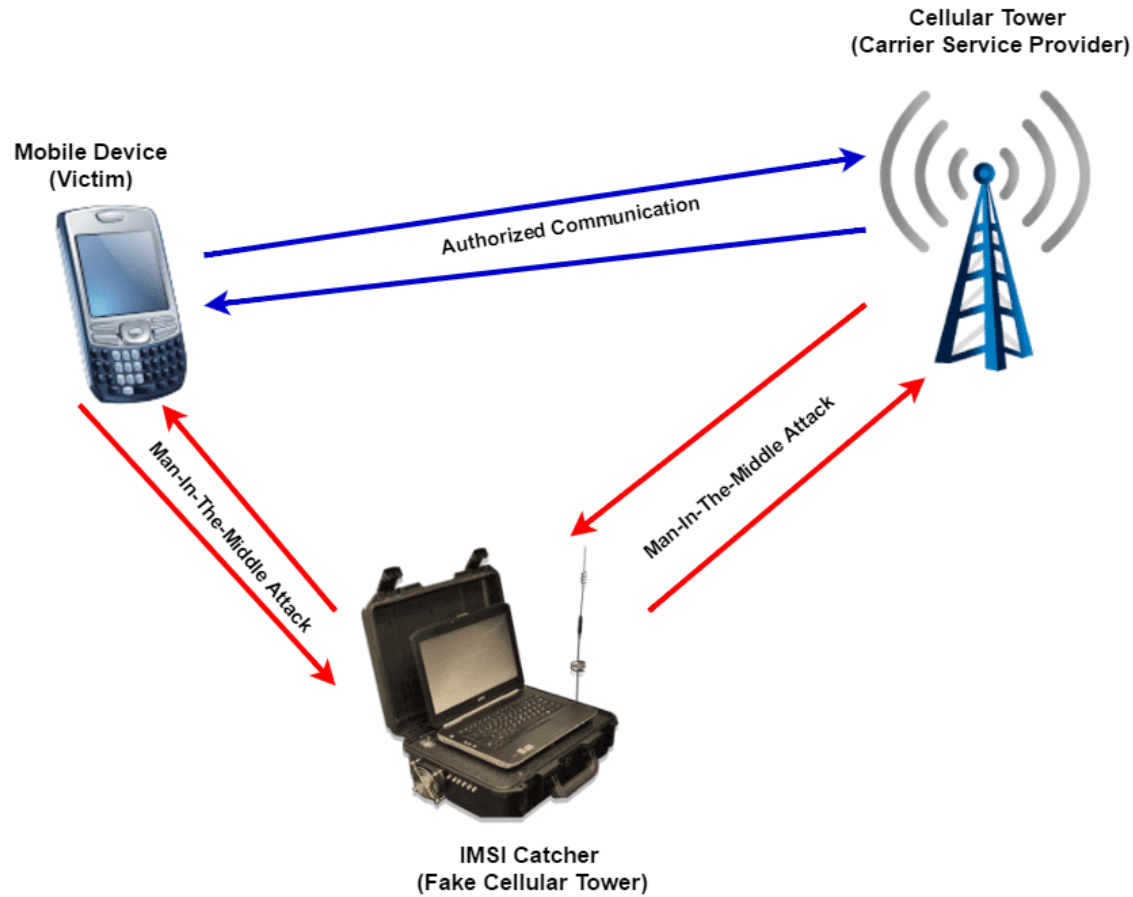
Sanctions are complex

- Concept



- Reality





- Annex I – Regulation 2021/821 (dual use) – 5A001.f.2.
(Mobile telecommunications interception equipment)
- Prohibition under art. 2 of Regulation 833/2014
- Exceptions:
Art. 2(4), (g) intended for the diplomatic representations of the Union, Member States and partner countries, including delegations, embassies and missions;



- Annex VII, X.C.IX.001.b.1.
- Prohibition under art. 2a of Regulation 833/2014

- Annex XXIII, part A, CN: 2914 11
- Prohibition under art. 3k

- **Exceptions:**
Art. 2a(4), (g) intended for the diplomatic representations of the Union, Member States and partner countries, including delegations, embassies and missions;

Art. 3k(4): goods which are necessary for the official purposes of diplomatic or consular missions of Member States...
[...], or to the personal effects of their staff

Circumvention

- Political priority

→ Annex IV **EUs plans to slap sanctions on Chinese firms aiding Russia's war machine - FT**

Reuters

- Legal value?

→ Annex IV is tied to art. 2/2a(7) and 2b

→ Requires an application for an intended export to RU

→ Not a basis for control or prohibitions of transactions to third countries

Circumvention

- Legal inconsistency
 - RU sanctions Annex VII (Reg. 833/2014)
 - Was added to multiple times since February 2022
 - BY sanctions Annex Va (Reg. 765/2006)
 - Only the initial list → Regulation 2022/355 d.d. 2 March 2022
- Practical impact?
 - Fair enough, not the greatest diversion route
 - Political signal?

Circumvention

- Annex VII (and other) products
 - Controlled dual use items (Reg. 2021/821) are less of a concern due to stringent licensing obligations to all destinations
- High increase of EU export to KZ, KG, AR, ...
 - And ~ equivalent increase of KZ, KG, AR, ... export to RU(!)
- Semiconductors and electronics via HK and CN
- “Iran-tactics” and circumvention via front offices in AE, SG, MY, ...
- ...

Circumvention

- Suspicious transaction to a third country?
- Legal basis to stop?
 - Article 12e Reg. 833/2014
 - But only in the context of “import into the EU when there are reasonable grounds to suspect circumvention and re-export to Russia”.
 - General Customs Legislation → verification of the export declaration
- Burden of proof
 - Prohibition / sanctions violation only when you know the transaction is an indirect export RU



'Barendrechts bedrijf onderdeel van netwerk om drones in Rusland te krijgen'

Russische veteranenclubs en pro-oorlogsorganisaties importeren drones om de pro-Russische inlichtingendiensten in Oekraïne te steunen. Een deel van die drones is binnengekomen via een onderneming in Kazachstan die samenwerkte met een bedrijf uit Barendrecht. Dat blijkt uit een [onderzoek](#) van journalisten van het Duitse Der Spiegel, het Russische IStories en het internationale OCCRP.

Het Barendrechtse bedrijf heet **DJI Europe BV**, een dochterbedrijf van de Chinese dronebouwer DJI. Uit Kazachse overheidsdocumenten zou blijken dat het **Kazachse bedrijf Aspan Arba** een licentie heeft om voor 45 miljoen dollar 18.000 drones te importeren van het Nederlandse bedrijf.

Circumvention

- Controlled?
 - 9A012.a.
 - Not for all drones
- Catch-all art. 4(1)(b) Regulation 2021/821?
 - May be intended for 'military end use' in an embargo country
- 'Military End Use'
 - Incorporation into ML items
 - Use for development, production, testing, analytics, maintenance of ML items
 - Use of unfinished products for production of ML items





- Normal transactions are via known distributors
- Sudden unknown new client
- Public activities don't align with the need for this product

Circumvention

- Controlled item / transaction
 - Legal basis to control / place under control
 - Can be prohibited on the basis of risk
 - Threshold can be as low
- Non-controlled item / transaction
 - No legal basis to control / place under control
 - Cannot be prohibited on the basis of risk
 - Prosecution for indirect sanction violation requires proof

Milan Godin, LL.M.
milan.godin@vlaanderen.be