

This is a translation of "["Zwischen Worten und Waffen"](#)", first published in Handelsblatt's Weekend of March 1/2/3, 2019 edition (page 13).

## The long-term Director of the U.S. sanctioning body calls for a joint approach between the EU and the U.S. on sanctions against Iran, and decries the *naïveté* of many companies

### Interview with John Smith

For eleven years, John Smith, 55, worked for the exceedingly powerful US authority OFAC, and thereof most recently from 2015 to April 2018 as Director. He was thereby responsible for the political sanctions. Meanwhile, on behalf of the large international law firm Morrison & Foerster, the former top official advises corporate clients on dealing with sanctions policy.

**Hans-Jürgen Jakobs (HB): Mr. Smith, you were in charge of U.S. sanctions against foreign countries, companies and individuals. Do you miss the power that came with it?**

Of course; in this role I was in the center of American foreign policy and international affairs. But everybody has only limited power, everybody has a boss. We evaluated all possible options and, of course, we also made suggestions ourselves.

**HB: What fascinated you about your job?**

The fact that OFAC dealt with critical crises around the world, and that the director of the agency played a certain role due to the sanctions. Those were fascinating discussions about which nations or heads of state belonged on the sanctions list. After Russia annexed the Crimean peninsula, the U.S. worked closely with the EU on a quick answer. I was involved then. For days we did not get any sleep.

**HB: Although OFAC is widely unknown, it is nevertheless considered to be one of the most powerful departments of the U.S. government.**

Sanctions are the alternative between words and weapons, between diplomacy and war. An instrument that a lot of people value more and more. Diplomacy is often regarded as not being enough; military actions, on the other hand, are expensive and cost lives.

**HB: But U.S. sanction policies are causing conflicts more and more often, look at Iran. In that case, Europeans, in contrast to the U.S., want to conduct trade.**

**The new special purpose vehicle Instex is supposed to be an exchange platform. A circumvention of U.S. sanctions?**

It is too early to make a judgment in that regard. I understand that the EU is looking for a way that works for the continent's companies. At its start, this special purpose vehicle is evidently intended for supplying the population with food and medicine. This should be acceptable for the U.S., because it is compatible with U.S. sanctions. Should the EU want to obtain mineral oil in this way, though, it would be a violation. Most likely every company will be very careful not to become the target of countermeasures.

**HB: The question remains, to which extent new sanctions against Iran are justified at all. After all, the U.S. withdrew unilaterally from a nuclear deal with Iran, the EU, China and Russia.**

You are asking a political question. I was an unpolitical office director. There are reasonable arguments in favor of, and against, the old Iran deal. It is certainly not perfect. The crucial question is, whether the U.S. should just walk away from such an agreement without respecting the rights of the other parties to the agreement.

**HB: How did sanctions policy evolve under U.S. Presidents Bill Clinton, George W. Bush, Barack Obama, and Donald Trump?**

Across all administrations there was a constant increase of sanctions. The Trump administration is now making the most aggressive use of it. The difference is that it [the current administration] is much more willing to enforce sanctions against the concerns and resistance of allies such as Germany and France. In former times as well, the U.S. did not wait overly long for partners, but one also looked for a consensus.

**HB: A manifestation of “America First”?**

No. Admittedly, the Treasury has increased the resources for OFAC, but I've never heard that this had to do with “America First.” Sanctions are generally best if as many as possible participate, if they are thus “multilateral.” The former Iran sanctions program was very effective, because it brought the country to the negotiation table together with China and Russia.

**HB: Is North Korea an example of the success of sanctions? At least, Trump has now again met with dictator Kim Jon Un in Hanoi.**

Actions taken by many governments have helped in North Korea. But even today we do not see precisely what is actually changing in Pyongyang – i.e., whether sanction objectives are really met and nuclear weapons are disappearing.

**HB: You would hardly regard Russia, when you consider it as a whole, as a role model for sanctions policy.**

No. Malicious activities have not ceased there. On the other hand, we have not failed, either. Sanctions are only one tool. In the Moscow case they had an impact as well. Russia might otherwise have gone further in Eastern Ukraine. The Russians were surprised at how aligned the U.S. and the EU were.

**HB: Harmony is long gone. The question of sanctions is a highly divisive issue.**

Unlike the U.S., the EU is apparently not ready for tougher sanctions. It's a deadlock. And yet Mr. Putin is obviously trying to influence democratic elections in the West. This should make the West speak with one voice.

**HB: There is the suspicion that, with respect to the Nord Stream 2 Pipeline, the U.S. also threatened with sanctions for German companies because they want to sell their own liquid gas.**

Of course business interests are also affected by sanctions. Governments adopt laws and regulations, firms have to comply with them. German firms have closer relationships to Russia than American companies do – there is thus more to lose. Many American officials ask themselves, with regard to Russian sanctions, whether the EU and the U.S. are finding the right balance between economic interests and the preserving of mutual values.

**HB: In any case, the German companies involved in Nord Stream 2 feel threatened by the U.S.**

This is one of the most complicated matters. There has been enough controversy about it in the EU itself. And, sorry: The companies have every reason to be worried. There is no crystal ball telling you that at the end of the day you are guaranteed to get out of it undamaged. That depends on the President, the Congress, and the state of relations between the U.S. and Russia.

**HB: Is it presumptuous to believe that sanctions against the state-owned oil company will lead to a swift change of power in Venezuela?**

The world sees that the people are suffering in one of the greatest humanitarian crises. A democracy has turned into a dictatorship. When does the world say: it is enough. What the sanctions will achieve, one cannot say at this time.

**HB: Are the much discussed measures against the People's Republic of China part of the U.S. trade war?**

There are no sanctions against China – only against Chinese companies if they violate norms and laws. There the U.S. is proceeding in the same way as it is with the EU. It is indeed unfortunate when the distinction between trade policy and sanctions policy blurs. Then it is easy to assume that there is no real legitimacy for sanctions anymore, but that it is a matter of enforcing "America first." That is a danger.

**HB. How secure and important is the legal basis for sanctions anyway? Or is it actually just about power politics?**

Today, as already in my day, there has to be clear evidence for sanctions – everything, just as in a prosecution. This evidence is reviewed by the lawyers in the American Department of the Treasury and then sent to the Department of Justice.

**HB: Which, of course, is not public.**

For the most part, not at the time of the sanction measure. However, when affected individuals and companies defend themselves in court, the evidence has always played a role. OFAC has won nearly all of these cases.

**HB: Now you work for a big law firm. What mistakes do firms frequently make when it comes to sanctions?**

The mistake of not being prepared for such questions, and of not having a team of experts for early internal risk assessment. This happens again and again, even in the largest companies in the world.

**HB: What must someone who runs a company in Germany know about sanctions?**

That agencies in the U.S. or in the EU can impose and enforce sanctions. One must pay close attention to transactions of subsidiaries in Turkey, India, or in Southeast Asia. Or think of a German firm that has a joint venture with a Russian firm, the shareholders of which, in turn, include an oligarchy that is affected by U.S. sanctions. For such cases, one must invest a lot of time to get the right information and conclusions.

**HB: Otherwise?**

There is trouble. Such examinations and screenings of new partners have become vital in the case of takeovers and mergers.

**HB: Mr. Smith, thank you for the interview.**

*The questions were asked by Hans-Jürgen Jakobs.*

## Vita

John Smith

### The Person

The ex-official from Missouri was motivated by how South Africa's apartheid regime collapsed through sanctions. From the Justice Department, he switched in 2004 to the U.S. sanctions agency, the Office of Foreign Assets Control (OFAC). In July 2018, he joined Morrison & Foerster.

### The Agency

With 170 employees, OFAC is a large power factor.

### Pipeline construction:

Nord Stream 2 – “one of the most complicated matters,” warns Smith.