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The future of sanctions

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Contents:

1. UK sanctions after Brexit
2. EU sanctions after Brexit
3. International context



Contents

Summary	3
1. UK sanctions after Brexit	4
1.1 New UK framework	4
Appeals	4
1.2 UK alignment with EU?	5
Less UK influence?	6
1.3 Switzerland and Norway	6
1.4 Heading across the Atlantic?	7
2. EU sanctions after Brexit	8
2.1 British sanctions leadership	8
3. International context	9
3.1 Declining coordination?	9
Transatlantic tensions	9
3.2 Sanctions will live on	9
Diminishing returns?	10

Summary

UK sanctions after Brexit

With a new legal basis on the statute books in the form of the [Sanctions and Anti-Money Laundering Act 2018](#), the UK enters a new era in sanctions policy, or at least it will when the powers to create sanctions regulations come into force, something that will happen when the Government decides.

As an EU member, sanctions were imposed using the powers in the [European Communities Act 1972](#). After the Brexit referendum and the decision to repeal the 1972 Act, it was clear that new powers would be needed; the 2018 Act provides for creating sanctions regimes independently of the European Union, although the sanctions powers are not yet in force, something that will happen by EU exit day.

It has been a given of UK foreign policy, however, that sanctions are far more effective for a middle-ranking power like the UK if they are imposed in conjunction with allies. They gain legitimacy, too, if agreed multilaterally, and most sanctions regimes implemented by the UK are agreed by the UN Security Council.

Given that sanctions are largely multilateral, how independent will the UK sanctions regime really be? The legislative framework looks a lot like the US system but the UK's interests may remain closer to those of neighbours in the EU than those of the US.

UK courts likely to be crucial in shaping policy; it is possible that there will be a big increase in litigation under the new system.

EU sanctions after Brexit

The UK has had an outsized influence on shaping EU sanctions policy. Britain has been possibly the most important supplier of intelligence to EU and the UK's important financial sector has also given it extra weight. The UK has often pushed for a robust sanctions policy within the EU; after Brexit there is a strong possibility that the EU will become less enthusiastic about sanctions in general.

Diminishing returns?

Transatlantic tensions have increased notably with the election of Donald Trump although the gap may have been widening anyway. Transatlantic cooperation, the backbone of international sanctions regimes, is likely to become more difficult.

They are likely to remain popular as a tool of foreign policy, because they offer an alternative to military action and because new types are being devised.

There is a danger that sanctions could become entangled with increasingly competitive and nationalist trade policies and, being less coordinated, could lose legitimacy. That could detract from their positive effects and exacerbate their unintended consequences.

1. UK sanctions after Brexit

1.1 New UK framework

On 23 May, the [Sanctions and Anti-Money Laundering Bill](#) received Royal Assent. Some of the provisions came into force straight away. The powers to make sanctions regulations (the ability to create secondary legislation imposing restrictive measures such as asset freezes, for example) did not; they will be brought into force by the Secretary of State by regulation. At present, the UK is continuing to use the powers in the [European Communities Act 1972](#). The [EU Withdrawal Act 2018](#) sets out that the European Communities Act will be repealed on exit day, March 2019, and the sanctions-making powers in the 2018 Act will presumably be brought into force at the same time.¹

The UK will also have to take over the technical work previously done in Brussels to ensure the good design of sanctions regimes. The UK supplied a disproportionate amount of this expertise to the EU, however, so this problem should not be insurmountable.

Appeals

The new Sanctions Act sets up appeal or review processes for sanctions targets unless those targets were chosen by the United Nations. The UK Government's position is that decisions of the UN Security Council are binding on the UK, so there would be no sense in allowing appeals about UN designations in the UK courts.

Logical though that position might be, the problem with it is that only in one of the UN's sanctions regimes is an appeal process available: through the [Ombudsperson to the ISIL \(Da'esh\) and Al-Qaida Sanctions Committee](#), set up by UN Security Council [Resolution 1904 \(2009\)](#). In all other UN regimes, there is no redress at all for someone who is wrongly designated and the UK courts can do nothing about it.

Former Ombudsperson for the UN ISIL and Al-Qaeda Sanctions Committee, Kimberly Prost, argued at the Brick Court Chambers event that, in view of the present lack of redress in the courts, the UK Government should push hard for the existing ombudsperson process to be extended to the UN's 13 other sanctions regimes.²

Despite the lack of appeals procedure for internationally-binding designations, there is likely to be a big increase in litigation in the UK courts, once an independent sanctions regime is up and running. That increase in demand will require extra capacity in the UK court system.

The UK courts' decisions will end up having a significant influence on UK sanctions policy, and may also be a way in which UK influence is

¹ There are other sanctions-making powers on the Statute Book, notably the [Anti-terrorism, Crime and Security Act 2001](#) and the [Terrorist Asset-Freezing Etc. Act 2010](#). See the House of Commons Insight [Does the UK have an independent sanctions policy?](#) September 2018

² Kimberly Prost, [Sanctions after Brexit](#), Brick Court Chambers, 21 Jun2 2018

maintained international, as other courts will take account of the UK courts' decisions.

1.2 UK alignment with EU?

The Government says that UK support for European defence and security is [unconditional](#), and there is a clear desire to collaborate with European neighbours on it.

The House of Lords EU Committee recommended in December 2017 a dedicated EU/UK sanctions forum:

If participation in the Common Foreign and Security Policy after Brexit is not possible—or not sought by the UK—then the Government should propose that a political forum be established between the UK and the EU, for regular discussion and co-ordination of sanctions policy.³

The March 2018 [Draft Withdrawal Agreement](#) raised the possibility of an agreement governing the UK and the EU's future relationship in the area of the Common Foreign and Security Policy and the Common Security and Defence Policy that could be implemented before the end of the transition period. The Government's July 2018 White Paper [Legislating for the Withdrawal Agreement between the United Kingdom and the European Union](#) said:

The UK and the EU will maintain regular dialogue and consultation on foreign, security and defence policy, and the consultation mechanisms agreed for CFSP during the implementation period will be an important part of maintaining our ongoing effective cooperation, including on sanctions policy.⁴

That is still the aspiration of both sides, but the terms of any such early agreement on the CFSP remain unclear. The UK Government argues that sanctions policy will be closely coordinated with the EU rather than aligned, so a formal agreement to implement sanctions as created by the EU it seems unlikely. Even if sanctions targets were in practice the same, methods of enforcement could differ.

Analysts point out that on two of the big foreign policy questions of the day, the UK has so far remained fully aligned with the EU. On the question of Iran, the UK is strongly opposed to the [US decision to leave the Joint Comprehensive Plan of Action](#) nuclear deal with Iran.⁵ The UK has also argued against the US leaving the [Paris Climate Agreement](#).

Any consultation mechanisms set up to coordinate UK/EU sanctions and other foreign policy after Brexit will help determine any continuing influence the UK has over EU sanctions policy, but the British Government has stated that it wants an independent national sanctions policy and the [EU has stated](#) that it wants "decision-making autonomy".

³ House of Lords European Union Committee 8th Report of Session 2017–19, HL Paper 50, [Brexit: sanctions policy](#), 17 December 2017, Para. 151

⁴ [Paragraph 102](#)

⁵ ['Joint statement on the re-imposition of US sanctions on Iran.'](#) Foreign and Commonwealth Office press release, 6 August /2018

Less UK influence?

Tom Keatinge of the Royal United Services Institute argues that the UK's hitherto influential role will be diminished:

...while Brexit may provide a sense of independence, the UK's ability to design sanctions that vary to any significant degree from those imposed by the EU will be limited. True, the significant role played by the UK as one of the leading global financial centres means that financial sanctions imposed unilaterally by the UK will still carry weight. However, this approach will certainly add complication for financial institutions seeking to comply with what may be divergent sanctions policies of the EU and the UK (as is already the case with discrepancies between the EU and the US over Iran).⁶

Weak UK influence over the design of EU sanctions regimes may lead to EU sanctions being designed that are more damaging to UK economic interests.

The economic basis of British pre-eminence in sanctions policy has also been questioned: if finance companies drift towards Paris or Frankfurt after Brexit, the effectiveness of any autonomous UK would inevitably become weaker. The UK's influence over the design of other jurisdictions' financial sanctions would also diminish.

1.3 Switzerland and Norway

What is the situation in other European countries that are close to the EU but not members?

Non-EU members Switzerland and Norway have dedicated legislation that allows them to impose many EU sanctions that have not been agreed by the UN Security Council (EU 'autonomous sanctions').

Norway

Norway passed a law in 2001 allowing it to impose EU restrictive measures "with which the Norway has aligned itself".⁷ When the EU imposed sweeping economic measures against Russia over Ukraine, they were not endorsed by the UN Security Council because of Russia's veto. There was a lively debate in Norway as to whether it was right to impose these measures, over which Norwegians had had no influence.⁸ The sanctions were implemented, after consulting the Norwegian Parliament, in August 2014. The then Norwegian foreign minister said:

The Government will align itself with the EU's new restrictive measures against Russia. Since the start of the crisis in Ukraine, Norway has stood united with the EU and other like-minded countries in responding to Russia's violations of international law. We will do so this time as well.⁹

⁶ Tom Keatinge, Brexit and the UK's Sanctions Policy: From Leader to Follower, *RUSI Newsbrief*, April 2017

⁷ Government of Norway, [Sanctions and restrictive measures](#)

⁸ Tom Keatinge, Brexit and the UK's Sanctions Policy: From Leader to Follower, *RUSI Newsbrief*, April 2017

⁹ '[Norway to implement new restrictive measures against Russia](#)', Norwegian Ministry of Foreign Affairs press release, 11 August 2014

Switzerland

Switzerland, too, has legislation that allows it to impose sanctions regimes initiated by the EU or by the OSCE to further compliance with international law or respect for human rights: the [*Federal Act on the Implementation of International Sanctions*](#), 2003.

Swiss alignment with EU sanctions is on a case-by-case basis. The European Council discussed Switzerland's alignment with EU sanctions in 2017:

The Council encourages Switzerland to remain close and consistent in the application of the restrictive measures including preventing their circumvention. The Council invites Switzerland to maintain and further improve its alignment with the EU's restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, and in view of Russia's actions destabilising the situation in Ukraine.¹⁰

1.4 Heading across the Atlantic?

According to one analyst, the UK's new sanctions set up is likely to lean either towards the EU model or towards the US model,¹¹ seen as more aggressive and punitive.

The new legislative framework owes a lot to the US legislation. In recent decades, the UK has often sided with the US in urging tougher sanctions and the US and the UK may continue to link up in calling for aggressive measures, depending on future US and UK political trajectories.

The UK Government downplays any need for the UK to pick sides between the US and the EU. After the Kremlin was blamed for the poisoning of the Skripals in Salisbury in March 2018, however, the US Administration imposed a new round of sanctions, which came into force in August 2018. There was pressure for the UK to follow suit with more economic sanctions, but observers did not predict EU agreement on tougher measures; the gap between the US and the EU appeared to widen.

Secondary sanctions

One of the more punitive elements of US sanctions policy is the use of secondary or extraterritorial sanctions, that sanction non-US entities that transact with sanctions targets outside US jurisdiction. A Foreign and Commonwealth Office spokesperson at the Brick Court Chambers event said that the new legislation would not enable secondary sanctions.¹²

¹⁰ [Council conclusions on EU relations with the Swiss Confederation](#), European Council, 28 February 2017

¹¹ [Sanctions after Brexit](#), Brick Court Chambers, 21 June 2018

¹² *Ibid.*

2. EU sanctions after Brexit

2.1 British sanctions leadership

The UK has played a leading role in formulating EU sanctions policy in recent years. As witnesses to a House of Lords committee inquiry said:

The United Kingdom was (and, for the time being, is) a major contributor of information and capability to the EU sanctions machine." [...] There is no mistaking the amount of time, effort, and energy that the UK applied in the sanctions field for the EU. In the design of sanctions, their defense, and their implementation, the UK brought knowledge and ideas that helped to create the system as it stands.¹³

There are several reasons for this, including:

- Robust line against Iran and Russia. The UK has echoed the US over the last decade or so in encouraging a hard line against the Iranian nuclear programme and Russia's destabilising activities in its neighbourhood.
- Strong intelligence services. If a company has been acting as a front for illicit activities, or an individual has been channelling finance to a terrorist organisation, it is often the intelligence services that provide the initial information. The UK has very effective intelligence services compared with most EU states and is also connected to the "Five Eyes" network.
- City of London. UK financial services do a lot of international business, so their compliance in implementing sanctions is crucial; the UK's input into designing financial sanctions has been commensurate.
- The UK is one of the 'big four' in the EU, wielding significant influence, particularly in foreign policy.

With the UK out of the bloc, the EU's sanctions policy could become less effective. Sir John Sawers, former head of MI6, has argued: "Will the UK's departure from the EU reduce the salience and force of EU sanctions? The answer is almost certainly yes."¹⁴

While the UK's strong secret intelligence capacity is likely to persist after Brexit, it may prove more difficult to continue sharing intelligence supporting sanctions designations. That could be the case particularly where the UK Government is not enthusiastic about the sanctions policy in question. Remaining EU member states are likely to strengthen their secret intelligence gathering capacity to replace lost UK capabilities.

¹³ David Mortlock and Richard Nephew, [written evidence](#), House of Lords European Union Committee, 8th Report of Session 2017–19, HL Paper 50, [Brexit: sanctions policy](#), 17 December 2017

¹⁴ John Sawers, [Sanctions after Brexit](#), Brick Court Chambers, 21 June 2018

3. International context

3.1 Declining coordination?

In 2012, the US and the EU agreed on a tough new round of sanctions against Iran over its nuclear programme,¹⁵ including an oil embargo. The move was the last in a series of coordinated moves against Iran, ramped up every couple of years, while concurrent negotiations with Iran had seen both the EU and the US in leading roles.

In 2014, the US, the EU and other Western allies such as Australia imposed sweeping sanctions against Russia in response to the annexation of Crimea and the destabilisation of eastern Ukraine.

Transatlantic tensions

Is such successful transatlantic coordination imaginable now? As trade disputes continue to brew across the world, is sanctions policy in danger of becoming entangled with them?

The Trump Administration has called the EU a “foe” as he promotes his “America first” agenda. Present transatlantic stress over trade is not just due to the incumbent president, however. More protectionism and insularity was on offer from other candidates during the 2016 presidential campaign.

EU/US arguments over secondary or extraterritorial sanctions are likely to break out over future US Iran policy. The Administration has said that it wasn't the toughest sanctions ever against Iran, and that would inevitably include secondary sanctions. EU-based companies are some of the most important foreign participants in the Iranian economy.

With a post-Brexit UK looking for new trade deals, could that priority undermine the arguments for a tough sanctions policy?

Europe, too, may not manage such enthusiasm for sanctions in the future, particularly those aimed at Russia. With the rise of nationalist and populist parties in countries such as Italy and Hungary, European leaders seem increasingly likely to pursue nationalist economic policies rather than make sacrifices to impose sanctions in defence of human rights or international law.

3.2 Sanctions will live on

Unilateral sanctions would, for all but the most powerful states, be all but ineffective, so there remains a very clear incentive for coordinating sanctions as much as possible. Even if Western coordination of sanctions has, nevertheless, passed its peak, there seems no indication that sanctions themselves are going out of fashion.

¹⁵ For more information see the Commons Briefing papers [Iran's nuclear programme and sanctions](#), October 2010; [In Brief: The Financial Restrictions \(Iran\) Order 2011](#), December 2011.; [Oil embargo on Iran and the threat to the Straits of Hormuz](#), January 2012

President Trump has left no doubt that sanctions are the tool of choice in his Iran policy,¹⁶ and National Security Adviser John Bolton said that President Trump had “taken command” of the election interference issue when in September 2018 he signed an executive order mandating automatic sanctions when the US concludes that a foreign person or power has tried to manipulate US elections.¹⁷

Financial sanctions have proved effective at inflicting economic damage, and asset freezes and travel bans are a logical way of targeting sanctions so they don't have an undue impact on ordinary civilians.

New types of sanction are also likely to be devised, providing for further expansion of their use.

Magnitsky legislation

There is a growing collection of ‘Magnitsky’ legislation in various countries, named after the Russian lawyer who discovered a large fraud by officials and was killed in prison. Magnitsky legislation provides specifically for sanctions to be imposed on public officials responsible for gross human rights violations. In the UK that has resulted in amendments to two important pieces of legislation.¹⁸

There are drawbacks to Magnitsky legislation, however. Except where they are imposed by the UN, sanctions against individual officials from other countries would be under the control of national governments. It would be nigh on impossible to produce an impartial list of corrupt or rights-abusing officials from around the world and it would be far too long to be practical. Any application of Magnitsky legislation will be selective. It could also lead to more litigation against governments.¹⁹

Diminishing returns?

Legitimacy challenges

Increasing distance between the permanent members of the UN Security Council would make UN-mandated sanctions less common. If that does happen, and sanctions are not coordinated among a clear majority of leading nations, they will appear less legitimate. They may indeed become less a means of ensuring respect for international law and more a tool for unregulated inter-state competition. Indiscriminate and uncoordinated sanctions use could therefore undermine their beneficial effects while exacerbating their unwelcome effects.

Unintended consequences

Financial sanctions against individuals may have unintended consequences. Freezing the Western assets of oligarchs close to the Kremlin, for example, may result in rich Russians re-patriating their wealth – something that the Kremlin would welcome.

¹⁶ For more discussion of sanctions, see the Commons Briefing Paper [Do sanctions work?](#), June 2015

¹⁷ [‘Trump promises sanctions on foreigners over US election meddling’](#), *Financial Times*, 12 September 2018

¹⁸ For more discussion of see the Commons Briefing Paper [Magnitsky legislation](#), July 2018

¹⁹ Anton Moiseienko, [‘A UK Magnitsky Act: would it work?’](#), RUSI Commentary, April 2018

Studies have shown that sanctions may politically strengthen target regimes,²⁰ and can institutionalise sanctions-busting criminality.²¹ Trade sanctions also tend to hurt the economies and citizens of both the target country and the countries that impose them, as has been shown in the case of sanctions over the annexation of Crimea.²²

Even if sanctions coordination remains strong, countries that are repeatedly the target of sanctions will take action to protect themselves against them. Suggestions that Russian firms could be excluded from the Swift payments system led to warnings that Russia could develop its own alternative.²³

Perhaps more significantly, German foreign minister Heiko Maas called in August 2018 for a payment channels “independent of the United States, a European Monetary Fund and an independent Swift System”. European firms had been pulling out of Iran because of the re-imposition of US sanctions in 2018. In September the UK, France Germany, China and Russia issued a joint statement agreeing to “assist and reassure economic operators pursuing legitimate business with Iran”. Federic Mogherini said:

In practical terms, this will mean that EU member states will set up a legal entity to facilitate legitimate financial transactions with Iran and this will allow European companies to continue to trade with Iran in accordance with European Union law and could be open to other partners in the world.²⁴

This move also illustrates the danger of strategic re-alignment. The bigger picture is that of Trump Administration policies diverging from those of allies such as EU member states. In the case of the Iran nuclear deal it has been the use of sanctions that has crystallised that divergence in the form of the new payments system.

Commentators suggest that the Trump Administration’s trade war against China may combine with sanctions against Russia to push the two former enemies together, although there are many obstacles to such a new alliance.²⁵

²⁰ Margaret P. Doxey, ‘[Sanctions through the Looking Glass: the Spectrum of Goals and Achievements.](#)’ *International Journal*, Vol. 55, No. 2 (Spring, 2000), pp. 207-223

²¹ Peter Andreas [Criminalizing Consequences of Sanctions Embargo Busting and Its Legacy](#) *International Studies Quarterly*, Vol. 49, No. 2 June 2005, pp. 335-360

²² Konstantin A. Kholodilin and Aleksei Netšunajev, ‘[Crimea and Punishment: The Impact of Sanctions on Russian and European Economies](#)’, DIW Berlin, 2016

²³ For mre discussion of this see the Commons Briefing Peper [Do sanctions work?](#), June 2015

²⁴ ‘[EU announces legal entity to maintain business with Iran](#)’, *Agence France Presse*, 25 September 2018

²⁵ See for example, [Will Trump Cement the China-Russia Alliance? The emerging U.S.-China trade war will make a China-Russia axis even more likely.](#), *The Diplomat*, 6 June 2018; [What will keep China and Russia from building a new world order?](#), *Deutsche Welle*, 14 September 2018

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