

Soundings

Sanctions and Brexit

The UK has now left the EU and we are in a “transition period” (also known as the “implementation period”) during which the future relationship between the parties is under negotiation. UK sanctions regimes are currently very closely aligned with those of the EU. This is expected to be the case after the transition period, although there may be important distinctions of which Members should be aware.


UK sanctions generally

UK policy on international sanctions is directed by the Foreign and Commonwealth Office. The Department for International Trade is responsible for trade restrictions, i.e. controls on the import, export and movements of goods and technology and the provision and supply of services. HM Treasury (more specifically the Office of Financial Sanctions Implementation) is responsible for financial sanctions, which

includes listing designated persons and entities, whilst immigration restrictions are implemented and enforced by the Home Office.

Sanctions and Brexit

EU sanctions will apply generally in the UK during the transition period, which is due to end at 11pm on 31st December, 2020, although there is the possibility of



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extending the transition period for a further two years. During the transition period the UK can, in exceptional cases, opt out of new EU sanctions or diverge from EU sanctions regimes (although not those imposed in accordance with UN resolutions).

At the end of the transition period, UK sanctions regimes will come into force. These are being implemented under the Sanctions and Anti-Money Laundering Act 2018 (the "Sanctions Act") which provides the legal basis for the UK to impose, update and lift sanctions. At present, UK sanctions regimes have been drafted to cover a range of areas (such as chemical weapons and counter-terrorism) and countries (including Iran, Russia and Venezuela). The intention is for a fully-fledged and independent UK sanctions regime to take effect at the end of the transition period.

For the most part, it is expected that UK sanctions regulations will replace, with substantially the same effect, the corresponding existing EU legislation, much of which derives from UN resolutions which the UK is obliged to implement. Some EU sanctions regimes may not be addressed through regulations under the Sanctions Act by the end of the transition period in which case they may, in some circumstances, continue as "retained EU law", although possibly with modifications.

Application

EU sanctions generally apply to any EU person (i.e. a national of a Member State or entity incorporated or constituted under the law of a Member State). They apply in respect of any business done within the Union and on board any ship under the jurisdiction of a Member State (flying the flag of a Member State or owned and under the operational control of an EU entity).

UK sanctions, on the other hand, apply to anyone in the UK (including territorial waters), UK nationals outside the UK and companies incorporated in the UK. They may also be relevant where contracts apply English law, or that of another UK jurisdiction. As a result of the UK leaving the EU, UK sanctions regimes will have a significantly narrower jurisdictional applicability.

The position at the end of the transition period is under discussion between the UK and EU. Subject to the terms of the agreement, there could be a significant difference in the effect and application of some sanctions. For example, Article 5 of Council Regulation 833/2014 imposes sanctions on certain designated Russian entities and any entity established outside the EU that is more than 50% owned by one of those designated entities. As things stand, after the end of the transition period that would include UK subsidiaries of the designated entities (the UK being outside the EU). The corollary is that a subsidiary of a designated entity established outside the UK but within the EU could be targeted by UK sanctions.

Conclusion

The UK is implementing regulations to take over from EU sanctions at the end of the transition period (currently 31st December, 2020). Whilst the UK regime will substantially mirror EU sanctions, UK sanctions may no longer exactly match those of the EU. Any person affected by UK sanctions, which could include companies contracting under English law, should ensure sanctions clauses provide appropriate protection, effective immediately. Sanctions checks should also be adapted. In case of any doubt, Members should seek support from the Association or competent sanctions lawyers.

Please contact the Managers for further advice in relation to any of the issues discussed above.

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