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Navigating Sanctions: An International Guide

Since 2020, governments have lurched from pandemic-induced economic and health crises to new and protracted conflicts across the globe. In these times of upheaval and uncertainty, the use of sanctions has increased to an unprecedented level.

Keeping abreast of a constantly changing sanctions environment and ensuring compliance can impose burdensome restrictions on businesses and individuals, and violations may lead to severe consequences.

We have gathered together four experts to give their views – from US, EU, and UK perspectives – on the current sanctions regimes and their predictions for the future. With an international breadth of experience advising individuals, businesses, and financial institutions, our seasoned practitioners can help clients navigate sanctions risk now and plan for what may be coming next.

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What are sanctions and how are they imposed?

Nick Brocklesby: Sanctions are economic and trade restrictions which governments impose on certain transactions involving targeted states, individuals, organisations, goods, or equipment. They are tools that seek to fulfil political objectives and achieve foreign policy or national security goals without resorting to military action.

Brian Frey: The conflict in Ukraine has prompted the recent, and highly publicised, sanctions against Russia that we hear a lot about – but there are other catalysts and long-running regimes, for example against North Korea, Cuba, Syria, Iran, and others. The recent rekindling of tensions between the US and Venezuela is a great example of the periodic ebbs and flows in severity of sanctions.

NB: The vast majority of US, EU, and UK sanctions are collaborative and are normally a consequence of United Nations Security Council (UNSC) resolutions, which require members to implement local legislation to give them effect. UK sanctions are implemented by Acts of Parliament and secondary legislation.[1]

BF: US sanctions are typically imposed by the President by Executive Order, but in some cases, Congress may enact legislation imposing sanctions.[2]

Christos Konstantinou: In the EU, sanctions are normally implemented by the European Council, giving effect to UNSC resolutions, or unilaterally within the framework of the European Common Foreign and Security Policy.[3]

Marcos Dracos KC: While all three regimes typically act in concert and follow UNSC resolutions, each of them may, and indeed often do, decide to impose sanctions on their own initiative. It is important not to forget about sanctions imposed by other jurisdictions, including Australia, Canada, China, Japan, and New Zealand.

NB: And while it is international organisations and national governments that bring sanctions into being, it is important to bear in mind that it is not just a question of what the legislation says and what the courts decide; counterparties often take a more restrictive view.

What do sanctions restrict?

NB: Sanctions take many forms and can be targeted against states, individuals, business entities, organisations, vessels, aircraft, and even specific goods. Here are some of the most common:

Financial sanctions may:

- Prohibit the provision of specific financial services (such as brokering or technical assistance) to targeted states or persons.
- Prohibit the provision of financing to targeted states or persons.
- Restrict the raising of capital by targeted states or persons.
- Prohibit engaging in transactions or dealings with targeted states or persons.
- Freeze funds and economic resources of targeted persons.
- Prohibit making funds available (directly or indirectly) to or for the benefit of targeted persons.

Trade sanctions may:

- Prohibit the export and/or import of certain goods to/from targeted states (typically applicable to products such as oil, precious metals, timber, and diamonds).
- Ban air travel to/from states and/or for targeted persons.
- Ban international travel for targeted persons altogether.

MD: US, EU, and UK sanctions regimes all generally prohibit circumvention of sanctions, which is when designated persons seek to evade the relevant restrictive measures with the help of others.

1 For example, the Sanctions and Anti-Money Laundering Act 2018, with secondary legislation such as the Russia (Sanctions) (EU Exit) Regulations 2019. It is worth noting that sanctions legislation, across all regimes, is being continually reviewed and updated. See, for example, the Sanctions (EU Exit) (Miscellaneous Amendments) (No.2) Regulations 2024. The new Regulations include several changes, the majority of which came into force on 5 December 2024.

2 For example, Countering America's Adversaries Through Sanctions Act, which targets Russia with sanctions due to Russian attempts to influence the 2016 presidential election, passed Congress with a veto-proof majority in 2017. President Trump therefore signed it into law despite reports that he opposed the measures.

3 For example, sanctions were introduced aiming to curtail Iran's nuclear program under UNSC Resolution 1737 (2006), Council Common Position 2007/140/CFSP, Council Regulation (EC) No 423/2007, and others. In response to Russia's actions in Ukraine, the EU has imposed extensive sanctions, including Council Regulation (EU) No 269/2014, Council Decision 2014/145/CFSP, Council Regulation (EU) No 833/2014, and Council Decision 2014/512/CFSP.

Who must comply, and what are the penalties if they do not?

BF: The restrictions of all three regimes have a wide-ranging effect. US sanctions apply to all US citizens and permanent residents, regardless of where they are located, as well as all persons and entities within the US and all US-incorporated entities and their foreign branches. In some cases, foreign subsidiaries owned or controlled by US companies also must comply, as well as foreign persons in possession of US-origin goods.

CK: EU sanctions apply within the territory of the EU and to EU nationals in any location. They also apply to companies and organisations incorporated under the law of an EU Member State, including branches of EU companies in countries outside the EU, and to any business done in whole or in part within the EU by any companies and organisations (regardless of their place of incorporation).

NB: UK sanctions apply to anyone within the UK and to all UK persons, wherever they are in the world. This means that all individuals and legal entities that are within, or undertake activities within, the UK must comply, and all UK nationals and legal entities established under UK law, including their branches, must also comply with UK sanctions, wherever their activities take place.

MD: Violations of US, EU, and UK sanctions may attract civil and criminal penalties, and they can be severe, including significant fines and even custodial sentences. Breaching the restrictions, directly or indirectly, or helping someone get around the effects of sanctions can be a criminal offence for both individuals and entities and, importantly, the directors and officers of those entities.

How are sanctions affecting your clients' day-to-day transactions?

NB: The speed of governments across the world imposing financial sanctions following Russia's invasion of Ukraine in February 2022 caused widespread uncertainty for anyone involved in transactions with an international element. Contracting parties immediately began asking questions about the impact of the restrictions on their, and their counterparties', obligations. Would the imposition of sanctions make performing the contract impossible, or could the parties continue? Did the contact have anything to say about what would happen in such a scenario? Could a fund make distributions to certain investors? If a party took the view that a distribution was prohibited, would they face litigation from the sanctioned investor? In many cases parties were forced, reluctantly but legitimately, to terminate agreements or pause distributions and payments indefinitely.

BF: Clients also began to make changes to their internal systems and processes to address this new and uncertain reality. Many have sought, at significant cost, to bolster their 'know your customer' and due diligence checks on new and existing counterparties and develop enhanced compliance systems in an effort to identify any current red flags and avoid future breaches. Understandably, businesses – particularly banks – became risk-averse, taking cautious and sometimes arguably overly cautious approaches. This has resulted in many instances of banks blocking funds transfers that should not have been blocked, forcing innocent parties to endure the expense and delay of petitioning the US Office of Foreign Assets Control (OFAC) to unblock the funds.

CK: As far as over-compliance is concerned, in one of our cases, a major US bank placed 'restrictions' on the accounts of our client (a European and Canadian citizen with Russian roots) without explanation of their reasoning or the nature of the restrictions imposed. This situation has been going on for over a year, and the client's instructions are carried out by the bank only after the client's US attorney contacts the bank about each specific instruction.

NB: An inevitable consequence of hastily implemented sanctions, and increasing caution from compliance teams, is the generation of false positives. We are receiving enquiries from some clients which are not sanctioned but are encountering difficulties when seeking to do legitimate business, perhaps because they have a similar name to a sanctioned individual, have family ties to a designated person, or have links to a sanctioned country. These false positives can cause unnecessary, frustrating, and costly delays to perfectly lawful transactions. Those affected may need to seek legal opinions in an effort to prove to counterparties that they are, in fact, not subject to sanctions at all.

MD: But what if counterparties are still reluctant? We are increasingly seeing instances of counterparties seeking to terminate contracts, or refusing to enter into them at all, because of perceived sanctions risk, despite assurances and legal opinions that the relevant party is not a designated person. And you have to factor in the banks. Recently, I had a case where a client and its counterparty, after extensive inquiries, satisfied themselves and their advisors that the agreement did not violate sanctions, but the bank would not accept the money, and finding another bank was unrealistic. These are genuine problems, but of course good old-fashioned opportunism may also be at play: while many agreements have been legitimately frustrated by sanctions, it is possible that counterparties have used, or will use, concerns about sanctions as a means to avoid contractual obligations to which they would otherwise be bound. And sometimes the two are strategically combined: for example, a counterparty designating under the contract a bank account for payment, knowing that the specific bank will almost certainly refuse to accept payment.

NB: So what other options does someone have when faced with such a situation? Can you march them to court? If a counterparty is seeking to avoid its contractual obligations on the basis of sanctions risk, and when there is clearly no basis for such concerns, it may be possible to seek interim relief to force the counterparty's performance. For example, when a counterparty has effectively terminated a contract disingenuously, using sanctions as a fig leaf, it may be possible to bring an action against that party for damages.

BF: While litigation is certainly an option, given the time and cost it should generally be one of last resort. What other options are there? Is it ever advisable to, for example, seek authorisation or assurances from a relevant authority? The answer to this question ultimately depends on the circumstances in play; sometimes, making an approach to an authority will make sense, other times it will not. Significant delays in obtaining responses to licence applications from relevant sanctions authorities can often undermine the practical usefulness of that approach.

Who are the regulators, and how should they be dealt with?

BF: In the US, the Department of the Treasury's OFAC plays a primary role in enforcing US sanctions. Within the EU, the national competent authorities of each Member State are responsible for enforcement of EU sanctions. The implementation and enforcement of UK sanctions is the responsibility of HM Treasury's Office of Financial Sanctions Implementation (OFSI) and Office of Trade Sanctions Implementation. In the last five years, we've seen regulators' appetites for enforcement, and issuing significant fines, increase across the board. In the US, the Department of the Treasury's Financial Crimes Enforcement Network announced the largest financial penalty in history against a virtual currency exchange after it turned a blind eye to anti-money laundering and sanctions laws: the company was fined $3.4 billion, placed under a five-year monitoring program, and was required to exit the US. This was in addition to a penalty from OFAC of $968 million.

CK: Many of the national competent authorities of EU Member States likewise appear to be increasing their enforcement activities. The Dutch Public Prosecution Service recently reached a settlement with a company and its director of €195,000 and €20,000 respectively, for paying dividends to a shareholder that was owned by a designated person and for repaying a loan to a designated Russian company. In Lithuania, the prosecutor general confirmed in August 2024 that enforcement authorities were currently undertaking 'more than 50 pre-trial investigations into sanction violations.' In Germany, it has been reported that prosecutors have conducted more than 1,400 investigations into alleged sanctions violations since the beginning of the conflict in Ukraine in February 2022.

NB: In the UK, OFSI has also become more aggressive in its approach, and has, over the past two years, developed an 'enhanced partnership' with OFAC. Since June 2022, OFSI has had the power to impose civil fines on a strict liability basis, meaning that OFSI is no longer required to prove that the alleged offender 'knew or had reasonable cause to suspect' that their activity constituted a breach. Since August 2023, OFSI has taken advantage of its 'name and shame' powers to publish details of sanctions breaches, with obvious reputational consequences. This shift in approach is reflected by other UK regulators, such as the Financial Conduct Authority, which recently issued a £29 million fine to a digital challenger bank for systems and control failings specifically related, in part, to financial sanctions screening. Faced with criticism about delays in providing guidance and licences, OFSI has significantly increased its resources since 2022, increasing resources in the enforcement team by 175%, licensing team by 160%, and guidance and engagement team by 120%. The message from regulators is clear: we are taking this seriously, and so should you.

When should a report be made to the regulators?

CK: With widespread uncertainty over the scope and impact of the various fast-changing sanctions regimes, it is not uncommon for clients to make reports to regulators about their counterparties, and about themselves, with a view to allaying concerns about sanctions risk, or obtaining a specific licence or authorisation. In the UK, many businesses are required by law to self-report to OFSI in a wide range of circumstances, and a failure to make a report may be a criminal offence. But what if you make a report to a regulator, and are prevented from dealing with the counterparty as a result, but you subsequently discover that all is well, and the counterparty is not subject to sanctions after all?

BF: Generally speaking, across all regimes, once a report has been made to a regulator about a person, it will be inadvisable to then deal with that person without a subsequent licence or authorisation from the regulator giving you the go-ahead. This can take time. In the US, getting authorisation from OFAC can take months or even years. One of our clients had a licence application pending at OFAC for four years before it was finally granted.

CK: In the EU, each Member State appoints a competent authority for the implementation of sanctions. The consolidated list of competent authorities is published on the website of the European Commission. To apply for an exemption, you must contact the competent authority of the relevant Member State. The timeframe for responses depends both on the competent authority involved and on the substance of the application. For example, the Belgian competent authority has faced an influx of applications from companies and individuals whose assets have been frozen in Euroclear since January 2023. Some of those applications are still being considered.

NB: Licences from the UK regulator, OFSI, can be similarly time-consuming, and there is no guarantee that you will get the authorisation you are asking for. OFSI offers no timeframe for dealing with licence applications; some can be dealt with overnight, and some can take several months.

MD: In short, it is possible to seek authorisation from a regulator, but there is no guarantee you will get the answer you are looking for, or that you will receive it in time. In circumstances where there is no time to seek authorisation from a regulator once a transaction has been blocked, the concerned party could, in some circumstances, seek advice from counsel to the effect that the proposed transaction may proceed with the counterparty given that they are not subject to sanctions, and reliance on that advice may mitigate any enforcement risk if a breach of sanctions ultimately occurs. That said, this approach is not risk-free; the only way to truly absolve the risk is to get the blessing of the relevant regulator.

What if I am sanctioned?

NB: What if you are designated, but you should not be? When moving at speed in response to ever-changing geopolitical realities, governments are inevitably reactive in their approach to sanctions and sometimes get it wrong. It is possible to appeal against sanctions, but the process is complex and time-consuming.

BF: For US sanctions, a designated person will sometimes first learn about their designation from the press release announcing the decision on the OFAC website, though OFAC often approaches potential sanctions targets in more friendly countries to convince them to cease problematic activity to avoid imposition of sanctions. In most cases, however, to learn more about the reasons for designation, the sanctioned person can request the administrative record underlying the designation from OFAC. It can take months or even years to get a response in some instances, and any information that OFAC provides is likely to be heavily redacted (and so probably not very helpful). The designated person then has two options. First, they can seek an administrative delisting. This is a written request for removal, often called a 'petition', to OFAC, in which new evidence and arguments against the listing may be presented. Again, the process is opaque, and often lengthy. Second, they can seek judicial review of the designation decision in the courts. The court will perform a legal review of the basis for the designation only and will not consider new evidence: it will simply look at whether the decision to designate was reasonable. The US courts have, historically, shown extreme deference to designation decisions made by US agencies, and the process is lengthy and expensive. Litigation is therefore rarely a desirable option and is better viewed as a last resort.

CK: In the EU, designated persons must act quickly. When first listed, they will see the published reasons on the consolidated list, and from that point they have just two months to take their judicial annulment action to the General Court. However, this two-month period starts running again every time the sanctions restrictions are prolonged by the European Council, which happens every six months. In the meantime, they may write to the Council of Ministers to ask for the working papers and to request an administrative review of the designation decision. Both the judicial and administrative options may be time-consuming, but they can be successful. The Court of Justice of the European Union (CJEU) recently annulled EU sanctions imposed on two high-profile businessmen, agreeing that the European Council had not presented enough evidence when implementing the sanctions against them. It is noteworthy, however, that both of them remain sanctioned on other grounds, which were not challenged as part of these proceedings before the CJEU. This follows an earlier decision by the CJEU in March 2024 to annul sanctions against a Russian oligarch's son who is a former F1 driver.

MD: In the UK, a designated person will appear on an online list with a brief statement of reasons for their designation. Designated persons may request the decision-making documents relied on by the UK Foreign, Commonwealth & Development Office (FCDO) when making the designation; these are normally received from the FCDO a month or so after the designation is made. All designated persons have the right to request a revocation or variation of their designation in the UK. But the designated person cannot race off to court on discovering a designation. They must first make an application for ministerial review to the FCDO, using a prescribed form. The FCDO offers no guidance on how long the process may take. While the process is time-consuming, it can result in de-listing, as it did for Igor Makarov, who was de-listed in March 2024. Only when the FCDO refuses to revoke a designation may the designated person take the matter to the courts. However, in respect of the most recent Russian sanctions, the UK judiciary appear to be reluctant to intervene in designation decisions made by the British government.[4]

4 For example, in the case of Eugene Shvidler, both the High Court (*Eugene Shvidler v Foreign Secretary* [2023] EWHC 2121 (Admin)) and the Court of Appeal ([2024] EWCA Civ 172) refused to overturn sanctions imposed by the British government. Permission was granted in May 2024 for Shvidler to appeal to the UK Supreme Court.

How are sanctions impacting disputes?

BF: Sanctions make some agreements impossible to perform, and the parties are forced to walk away. The consequences can be staggering; payments due under contracts worth billions of dollars can be abandoned. It's unsurprising that there are now many disputes between contracting parties that disagree whether the imposition of sanctions does in fact make their agreement inoperable.

NB: Russia is now the most sanctioned country in the world. One response of the Russian government has been to enact legislation to ensure that the Russian courts have exclusive jurisdiction over disputes arising from foreign sanctions, or involving sanctioned persons, and making agreements providing for dispute resolution outside Russia inoperable. Importantly, Russian persons affected by foreign sanctions may now apply to the Russian courts for an injunction preventing a counterparty from initiating or continuing proceedings before a foreign court, for example in London.

MD: In the ongoing UniCredit litigation,[5] the bonds at the centre of the dispute contained an agreement to ICC arbitration in Paris. When the underlying construction project was halted due to the imposition of sanctions, parallel litigation followed in London and St Petersburg, with the UK Supreme Court agreeing with a High Court anti-suit injunction against the Russian party in April 2024 to prevent the Russian litigation from continuing and the St Petersburg court nevertheless seizing hundreds of millions of euros of UniCredit's assets in May 2024. More recently, the courts in Hong Kong have dealt with a similar issue,[6] as well as several other European courts. Moreover, an English court recently refused to enforce a jurisdiction clause in favour of Russia, noting that there was a real risk that a fair trial would not be obtained.[7]

CK: Clients contracting with Russian counterparties can

5 *Unicredit Bank GmbH v RusChemAlliance LLC* [2024] UKSC 30.

6 *Bank A v Bank B* [2024] HKCFI 2529. Also relying on Article 248 of the Arbitration Procedural Code of the Russian Federation, a Russian bank brought proceedings in Russia over a payment owed by a German bank, despite a Hong Kong International Arbitration Center arbitration agreement between the parties. The German bank said EU sanctions prevented payment, and they brought proceedings in Hong Kong to prevent the Russian court proceedings being enforced or interfering with an arbitration.

7 *Zephyrus Capital Aviation Partners 1D Ltd v Fedelis Underwriting Ltd* [2024] EWHC 734 (Comm).

no longer be certain of the effect of dispute resolution agreements. The imposition of sanctions by governments, coupled with retaliatory measures taken by targeted countries, is eroding commercial certainty, particularly in terms of how and where any dispute will be resolved.

Can a designated person even pursue litigation in jurisdictions where they have been sanctioned?

BF: Generally speaking, across all regimes, sanctions do not prohibit a designated person from seeking legal advice, although lawyers acting for designated persons will typically need to ensure they are covered by a general or specific licence from the relevant regulator before they can accept payment of their fees from their client.

NB: In the UK, the Court of Appeal has held that UK sanctions do not prohibit designated persons from accessing the courts or prevent the courts from entering judgments in their favour.[8] The same court also determined that OFSI could grant a licence to permit payments of litigation costs to or from a designated person. The judiciary in the UK appear to be reluctant to restrict the fundamental right of access to justice, despite the imposition of sanctions, which may mean that London is increasingly seen as the forum of choice for designated persons to conduct litigation – subject, of course, to such retaliatory measures taken by sanctioned countries to prevent UK litigation, as discussed above.

MD: OFSI has granted a general licence for legal fees and expenses and has consistently renewed it.

CK: European sanctions do not deny designated persons access to justice. The competent authorities of the Member States may authorise the release of funds of a designated person for payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services. That being said, EU-sanctioned persons may still face significant difficulties while pursuing litigation in the Member States, such as inability to pay court fees or engage experts.

8 *Boris Mints and others v PJSC National Bank Trust and another* [2023] EWHC 118 (Comm) and *Boris Mints and others v PJSC National Bank Trust and another* [2023] EWCA Civ 1132.

Are the new sanctions working as planned?

NB: Since the UK left the EU, the UK government has been responsible for developing and implementing its own sanctions regime. Recent litigation in the Court of Appeal has demonstrated how, despite the UK government intending to continue the EU sanctions regime post-Brexit without any substantive change, it has, in fact, implemented legislation which differs in key respects to the previous European restrictions, notably in its definition of 'owned or controlled'.

BF: Many of the UK's restrictions, and indeed those of other sanctions regimes, such as the EU, apply not only to activities with 'designated persons' but also to activities with any entities owned or controlled by a designated person. This differs from the US approach, which has long had a fairly straightforward '50% rule' that focuses solely on ownership: if one or more sanctioned persons own, directly or indirectly in the aggregate, 50% or more of a legal entity, that entity will be considered sanctioned. There is no 'control' test in the US.

CK: In the EU, the control test is whether a designated person can and does assert a decisive influence over the conduct of the entity in question. This is determined by the national competent authorities of individual Member States by looking at a series of factors, but those authorities often reach different conclusions.

MD: While not binding, persuasive comments from the second-most senior court in the UK in *Mints v PJSC National Bank Trust* indicated that a claimant Russian bank could be considered designated under the UK legislation because of the control which Vladimir Putin would be able to exert over the bank.[9] The court suggested that Putin may 'in a very real sense… be deemed to control everything in Russia.' The consequence of the UK legislation, coupled with the subsequent designation by the UK of Putin, could be that 'every company in Russia was "controlled" by Mr Putin and hence subject to sanctions'.

NB: Can it really be the intention of the UK government to say that 'everything in Russia' is controlled by Putin and so subject to UK sanctions, and therefore dealings with any and all Russian entities are prohibited? Surely not. But the test for whether a designated person controls an entity remains unchanged in the UK legislation.[10] A more recent decision of the UK's High Court has tempered the matter somewhat,[11] and UK government guidance has offered some comfort, confirming that '[t]here is no presumption on the part of the UK government that a private entity is subject to the control of a designated public official simply because that entity is based or incorporated in a jurisdiction in which that official has a leading role in economic policy or decision-making. Further evidence is required to demonstrate that the relevant official exercises control over that entity under UK sanctions regulations.'

MD: But how far does this guidance take us? What 'further evidence' is needed? How can parties satisfy themselves, and OFSI, that a counterparty is not controlled by a designated person? How can you tell if you are controlled by a designated person? OFSI has made it clear that they expect firms to conduct their own research and seek legal advice – but what does this mean in practice? Can you rely on publicly available information? Or should you be commissioning reports from investigative bodies? In circumstances where there is strict liability for a breach of sanctions, how much reliance are clients willing to place on their own research leading to the 'correct' conclusion? The analysis of Foxton J in *Litasco SA v Der Mond Oil & Gas* at [65] to [71] is in this respect very useful and provides some guidance, but it is much harder to apply it in a non-contentious setting.

NB: It seems to us that clients should be taking a proportionate, risk-based, and common-sense approach, making sanctions risk controls a part of their routine and ongoing due diligence. If you're concerned about whether a counterparty is owned or controlled by a designated person, ask them the question, request documents to demonstrate what they say, and perform some searches of publicly available information. Keep a record of your decisions and keep them under review. If you're not able to come to a firm conclusion, seek legal advice. If necessary, contact the regulator to explain your concerns. When clients have made a commitment to sanctions compliance, included sanctions risk as a part of their everyday due diligence, ensured staff are trained and made aware of the risks, and sought external help when required, one would normally assume that the regulator, in the UK at least, would take these actions into account should a breach occur.[12] That said, every situation is unique and fact-specific, and there is unfortunately no foolproof way to be sure that you won't get things wrong.

9 *Boris Mints and others v PJSC National Bank Trust and another* [2023] EWCA Civ 1132.

10 '[I]t is reasonable, having regard to all the circumstances, to expect that [the designated person] would (if [the designated person] chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that the affairs of [the entity] are conducted in accordance with [the designated person's] wishes', Regulation 7(4) of the Russia (Sanctions) (EU Exit) (Amendment) Regulations 2019.

11 *Litasco SA v Der Mond Oil & Gas and another* [2023] EWHC 2866 (Comm) at [70].

How are future events likely to shape US, EU, and UK sanctions?

NB: In recent history, the US, EU, and UK have enjoyed, to a great extent, overlapping foreign policy goals. As a result, their respective sanctions regimes have followed a broadly similar pattern. That said, changes in government often result in new, and diverging, foreign policies; think of the US withdrawal from the Iran nuclear deal in 2018. Sanctions are inherently political.

BF: All eyes will therefore be on the White House in January. An administration change in Washington, D.C. could have significant consequences for the US sanctions regimes. It is entirely possible that a new US administration could take a different foreign policy approach on significant global issues, such as the conflict in Ukraine, the trade relationship with China, and countries in the Middle East.

MD: If US support for Ukraine decreases or ends, it will be up to Europe to plug the gap. In that scenario, we may see an increase in sanctions from the EU, UK, and other non-US jurisdictions like Canada, Australia, and Japan, and increased appetite from non-US leaders to use frozen Russian assets to fund support to Ukraine. However, it is very difficult to predict how the EU and the UK will react if US support for Ukraine becomes more lukewarm and support for Russia continues to increase from jurisdictions like China, Iran, and North Korea.

12 OFSI, for example, says that 'OFSI does not prescribe the level or type of due diligence to be undertaken to ensure compliance with financial sanctions.' OFSI recognises that there is no one-size-fits-all approach. In the circumstances of a breach, OFSI continues to consider every case individually on its merits based on the evidence, with a range of mitigating and aggravating factors considered, including a company's approach to their due diligence. In further guidance on the point, OFSI says they 'will consider appropriate due diligence conducted on the ownership and control of an entity to be a mitigating factor where the ownership and control determination reached was made in good faith and was a reasonable conclusion to draw from such due diligence. OFSI may also consider a failure to carry out appropriate due diligence on the ownership and control of an entity, or the carrying out of any such due diligence in bad faith, as an aggravating factor.'

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