

EU AND UK SANCTIONS AND EXPORT CONTROLS UPDATE – WINTER 2017/18

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UK Antitrust, Competition & Trade Regulation Alert

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The EU and UK sanctions regimes have seen significant change during the last few months. Discussions are ongoing regarding the UK's plans for its post-Brexit sanctions policy but uncertainty and division dominates the headlines. Outside of the UK, the world of sanctions is ever-changing, with the EU continuously reviewing and/or revising many of the sanctions it imposes on individuals, entities and governments. In addition, the past few months have seen the Trump administration undermine the Iran nuclear deal, the EU and UN expand sanctions imposed on North Korea, Lithuania introduce its own Magnitsky Act and French authorities carry out a dawn raid against LafargeHolcim for alleged terrorist financing. Below is a summary of some of the main updates since our last alert (see here) for sanctions and export controls across the UK and EU.

UK UPDATES

The Sanctions and Anti-Money Laundering Bill

Since our last update, the Government's plans for the UK's post-Brexit sanctions policy have come under significant scrutiny in various sub-committee meetings and reports, including a review of the new Sanctions and Anti-Money Laundering Bill (the "Sanctions Bill"), the text of which was published on the 19 October 2017.

The Sanctions Bill introduces the framework through which the UK will be able to legislate to impose sanctions once it has left the EU. It allows the UK Government to impose sanctions through secondary legislation, without the approval of Parliament, as well as issue licences to permit sanctioned conduct. However, it is worth noting that the UN currently influences a large proportion of the EU's and UK's sanctions policy and, pursuant to the UK's continued membership of the UN, will carry on doing so post-Brexit.

In addition, the current version of the Sanctions Bill extends the obligation to report sanctioned entities (addressed in our last update) to all legal persons, for which a failure to comply is a criminal offence. If this provision remains, it will increase the burden of compliance for businesses, which will need to address their sanctions escalation processes.

Since the text of the Bill was published, the House of Lords Select Committee on the Constitution has criticised the broad powers granted to the ministers to create new sanctions, calling them "constitutionally inappropriate". It also raised concerns about the ability of ministers to create criminal offences under those same powers. Among others, Lord Pannick QC called for reform of the Sanctions Bill, so that ministers are required to consider necessity and proportionality when imposing new sanctions.

Furthermore, the Joint Committee on Human Rights, in its review of the Bill, has raised concerns about the extent of the delegated powers given to the Government to impose sanctions, as well as the level of safeguards required to ensure the Bill complies with human rights requirements, pointing to a lack of parliamentary scrutiny of measures that can result in criminal offences and a loss of liberty. As such, the committee has called for much of the detail that has been left to be defined in the regulations imposed under the Government's delegated powers to instead be included in the Bill itself.

It is expected that the Sanctions Bill will receive royal assent in April 2019.

Future relationship between the UK and EU sanctions policies

On 17 December 2017, the House of Lords EU External Affairs Sub-Committee published a report, setting out its views on the UK's post-Brexit sanctions policy, in which it suggested that the UK should continue to co-ordinate closely on sanctions policy with the EU. The Sub-Committee has recommended that if the UK is unable to continue to participate in a common foreign and security policy with the EU, then the Government ought to propose that a political forum be established between the EU and the UK to coordinate sanctions policy and at the very least, have an informal engagement with the EU on sanctions, similar to the current relationship the EU has with the US. As the UK and EU enter the second stage of negotiations, we will continue to update you on any developments.

Office of Financial Sanctions Implementation guidance for charities and non-government organisations

In reaction to several requests from small charities for clearer information on issues affecting the sector, so that they could ensure compliance, the Office of Financial Sanctions Implementation has provided a factsheet for charities and other non-government organisations that provides guidance on operating in areas where financial sanctions are in force. The guidance addresses issues such as accepting donations from, or giving donations to, individuals and entities in countries subject to sanctions, the licensing regime in relation to financial sanctions and how to deal with financial services organisations.

Export controls update

In late November 2017, the Export Control Organisation announced that it had updated nine UK open general export licences ("OGELs"), which are pre-published licences to export certain goods on specified terms. The OGELs were updated in light of amendments made by the EU to its control list of dual-use items, the majority of which were agreed under a multilateral export control regime also known as the Wassenaar Arrangement. The 41 participating members of the Wassenaar Arrangement introduced a number of technical changes that are reflected in the updates to the OGELs. In addition, the updated OGELs put in place a number of new controls, for instance two new sub-entry controls for plasma torches and electron beam guns were introduced. These changes

came into force on 16 December 2017.

EU JURISDICTIONAL UPDATE

Lithuania & the Magnitsky Act

On 16 November 2017, the Lithuanian Parliament unanimously passed legislation that allows for sanctions to be imposed against individuals suspected of human rights violations. The legislation is a version of the Magnitsky Act, a law originally passed by the United States under the Obama administration to sanction Russian officials responsible for human rights abuses that led to the death of Russian accountant, Sergei Magnitsky. This law was then extended to cover all human rights abuses across the globe, not just in Russia. Lithuania was the fifth state to pass Magnitsky sanctions laws, with Canada, Estonia and the UK also having introduced similar legislation in the past.

Venezuela

In November last year, the EU Council imposed an arms and dual-use goods embargo, as well as a prohibition on the export of equipment, technology or software intended primarily for the use of surveillance of telecommunications or internet-based communications. These sanctions were imposed on the Venezuelan government for alleged corruption of its current leader, President Maduro and are, in part, a reaction to the UN report that states that there are extensive human rights violations and abuses being carried out by the current government.

In addition, the EU has established a framework to impose financial sanctions, such as asset freezes, as well as travel bans on individuals or entities involved in the abuse of human rights, democracy or the rule of law. However, currently there are no persons listed under this restrictive measure regime.

The EU Council has commented that the Venezuelan sanctions are being implemented in a gradual and flexible manner, in the hope that it can reverse these sanctions if the Venezuelan government takes credible steps to promote democracy, such as adopting a full electoral calendar and freeing political prisoners. However, if such steps are not taken, the Council has also stated that sanctions may be expanded.

Iran

The significant update regarding Iranian sanctions over the previous few months has been the Trump administration's refusal to certify Iran's compliance with the Joint Comprehensive Plan of Action ("JCPOA"), also known as the Iran nuclear deal. The EU Council and several Member States have released statements reaffirming their commitment to the JCPOA (more details can be found in our alert "Iran Nuclear Deal "Decertified"

Although Impact Is Uncertain"). The US has since introduced sanctions relating to Iran's ballistic missiles programme.

North Korea

In October 2017, the EU amended the current sanctions imposed on the Democratic People's Republic of Korea ("DPRK") in reaction to the DPRK's continued and accelerated nuclear and ballistics programmes. EU sanctions now include a complete prohibition on investments in any sector within the DPRK (the ban was previously limited to investments in specific sectors) as well as a total ban on the sale of refined petroleum products and crude oil to the DPRK. The amendments also include a reduction of the amount of money an individual can send as a payment or gift from €15,000 to €5,000.

Furthermore, the EU Council froze the assets of and placed travel bans on Kim Jong Sik and Ri Pyong Chol, both senior members of the DPRK Munitions Industry Department as well as Kim Hyok Chan, a representative of Green Pine, a UN listed entity. It also placed asset freezes on six DPRK entities: the Korean People's Army, Ministry of People's Armed Forces, Korea International Exhibition Corporation, North Korea Maritime Administration Bureau, Rungrado Trading Corporation and Wonbang Trading Co. It should also be noted that in November, the EU revised the list of luxury goods subject to import and export bans.

In late December 2017, following the DPRK's ballistic missile tests, the United Nations increased its sanctions on the DPRK. The UN imposed travel bans and asset freezes on an additional 16 individuals and the Ministry of People's Armed Forces (which is already listed by the EU). In January 2018, these sanctions were implemented by the EU. In addition, the UN extended its sanctions to the purchase of agricultural products, food, machinery, electrical equipment, earth, stone, wood and vessels from the DPRK and the sale of industrial machinery, transportation vehicles, iron, steel and other metals to the DPRK. The new sanctions also require all UN member states to repatriate all North Korean nationals earning income with 24 months. The EU has stated that it will implement these additional sanctions in the near future.

Russia and Ukraine

The past two months have seen a number of changes to EU sanctions imposed on Russia. The Governor of Sevastopol, Dmitry Vladimirovich Ovsyannikov, has been added to EU sanctions lists for undermining / threatening Ukraine's territorial integrity, sovereignty and independence. Furthermore, in December the EU extended sanctions on the Russian finance, energy and defence sectors, in response to its role in the current situation in Ukraine, until 31 July 2018.

The EU has also amended its Russian sanctions to allow the provision of technical assistance, financing or financial assistance relating to the trade of hydrazine in concentrations of 70% or more. Such activities are only permitted as long as the hydrazine in question is used in relation to ExoMars 2020, a joint mission between the European Space Agency and Roscosmos State Corporation to deploy a rover on Mars.

Finally, the Russian-owned oil and gas company Rosneft re-launched legal proceedings against EU sanctions affecting it, which were imposed in July 2014. The company will reportedly argue that the EU had not provided significant grounds for imposing sanctions on it as a measure for Russia's actions in undermining the territorial sovereignty and independence of Ukraine.

Other Jurisdictions

Between October and December 2017, the Council extended the restrictive measures (travel bans and assets freezes) applicable in view of the situation in Burundi, the Democratic Republic of Congo, Moldova and the Republic of Guinea until October and December 2018.

In early November 2017, the EU renewed the listing of Lynn S, a vessel listed under its Libya sanction regime and in early December, the EU removed Iraq Re-insurance Company from its Iraq sanctions list.

The EU has also revised information on the following people listed on its ISIL and Al-Qaida sanctions: Yazid Sufaat, Yunos Umpara Moklis, Radulan Sahiron, Hilarion Del Rosario Santos III and Umar Patek. The EU has also amended the financial sanctions listing of Al-Aqsa Martyr's Brigade.

On 13 November 2017, the Council abolished the restrictive measures against the Colombian group "*Fuerzas armadas revolucionarias de Colombia*" and decided that the group should be deleted from its list of individuals and entities that are subject to specific restrictive measures with a view to combating terrorism.

On 1 December 2017, the UK Office of Financial Sanctions Implementation renewed financial sanctions on the Popular Front for the Liberation of Palestine.

ENFORCEMENT

In November 2017, French and Belgian authorities raided the offices of LafargeHolcim, a Swiss-French cement company and GBL, one of its major shareholders, as part of their investigation into allegations that the company helped finance terrorism in Syria.

In early December 2017, French investigators extended the investigation to three individuals. Two of the individuals, Bruno Pescheux and Frédéric Jolibois, are former directors of the Syrian arm of LafargeHolcim. The third individual accused is Jean-Claude Veillard, a former head of security who is still currently employed by the company. Under French law, in placing these individuals under investigation, the French authorities are indicating that they have serious or consistent evidence that could result in a prosecution.

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