EU AND UK SANCTIONS UPDATE: NOVEMBER 2016

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Antitrust, Competition & Trade Regulation Alert

There have been a number of key developments in the European Union ("EU") and United Kingdom ("UK") sanctions regimes in relation to Russia, Syria, Iraq and numerous other jurisdictions, since our last update in July 2016.

RUSSIA AND THE EU

The EU has announced that the asset freezing measures previously due to expire on 15 September 2016 will be extended for six months so as to be reviewed again on 15 March 2017 (Implementing Regulation 2016/1661 implementing Regulation 269/2014, and Decision 2016/1671 amending Decision 2014/145/CFSP).

The EU currently imposes three types of sanctions with regard to Russia in relation to Ukraine's territorial integrity, sovereignty and independence. Measures regarding Crimea and Sevastopol restrict trade and limit investment in certain economic sectors and infrastructure projects in these regions, including the tourism, technology, transport and energy sectors. A separate set of "sectoral sanctions" impose restrictions on certain companies in Russia's energy industry and financial sector, as well as an arms embargo, and limit links to EU capital markets. Finally, the EU has imposed asset freezes and travel bans on specified individuals and entities in Russia and Ukraine.

In addition, Montenegro, Albania, Liechtenstein, Norway, and Ukraine have followed the EU's decision and renewed their Russian sanctions until 15 March 2017.

SYRIA

The EU Council has added more than 25 top ranking military officials, politicians and individuals linked to the President, including the Governor of the Central Bank of Syria, to its sanctions on Syria. This brings the total number of persons targeted by a travel ban and asset freeze in relation to Syria, to 303 (Implementing Regulation 2016/1984 implementing Regulation 36/2012 and Implementing Decision 2016/1985 implementing Decision 2013/255/CFSP).

The EU has de-listed Tri-Ocean Energy and its subsidiary Tri-Ocean Trading from its sanctions on Syria following their successful annulment applications in the General Court of the EU in September 2016.

IRAQ

The EU has de-listed more than 25 entities from its sanctions list in relation to Iraq. The EU de-listings follow two UN de-listing decisions (12 August 2016 and 16 September 2016). The current sanctions against Iraq freeze the assets of the previous Government of Iraq, and related people and entities, if those assets were located outside Iraq on 22 May 2003 (Regulation 1210/2003).

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CONGO

The EU is to increase pressure on the Congolese government by imposing sanctions against those responsible for inciting violence and causing the Congo's political crisis. A Foreign Affairs Council meeting, a gathering of EU Member State Ministers responsible for Foreign Affairs, Defence and Development, was held on 17 October 2016. At the meeting Ministers reiterated their support for EU restrictive measures in relation to Congo and subsequently the EU Council invited the High Representative of the Common Foreign and Security Policy within the EU, "to initiate work" to tackle "those responsible for serious human rights violations, those who promote violence and those who would try to obstruct a consensual and peaceful solution to the crisis, one that respects the aspiration of the people of the DRC to elect their representatives." (Outcome of the Council Meeting, 17 October 2016, 13309/16).

BURUNDI

The EU extended sanctions relating to Burundi until 31 October 2017. In 2015 the EU Council adopted sanctions which consist of a travel ban and asset freeze against four individuals "whose activities were deemed to be undermining democracy or obstructing the search for a political solution to the crisis in Burundi." (Decision 2016/1745 amending Decision 2015/1763).

NORTH KOREA

The EU has updated its sanctions on North Korea (implementing UN sanctions changes). These updates, among other things, tighten the existing restrictions on North Korean vessels and add new items to the list of sensitive goods that are subject to prohibitions on transfer, procurement, and provision of related technical assistance. The Sensitive Goods List is split into both (1) Nuclear- and/or Missile-usable Items and (2) Chemical/Biological Weapons-usable Items. The Nuclear- and/or Missile-usable Items list includes items (provided they meet certain specifications) such as magnet materials, maraging steel and flow-forming machines. The Chemical/Biological Weapons-usable Items list includes items (provided they meet certain specifications) such as: valves, pumps heat exchangers and condensers.

Since these updated sanctions, a failed North Korean ballistic missile test on 17 October 2016 has led to further condemnation by the UN and statements that it will explore tougher sanctions.

COLOMBIA

The EU has suspended sanctions against the 'Revolutionary Armed Forces of Colombia' ('FARC') following the Colombian government's signing of a peace agreement with FARC (which bought to an end more than 50 years' of armed conflict). FARC has also been removed from the EU's terrorist list.

TERRORIST ORGANISATIONS

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On 20 September 2016, the EU Council adopted a legal framework which will allow the EU to apply sanctions autonomously to ISIL/Da'esh and Al-Qaida and persons and entities associated or supporting them. Until this adoption, sanctions could only be applied to persons and entities listed by the UN or by EU Member States acting individually. The EU will be able to impose a travel ban on individuals and an asset freeze on individuals and entities that are identified as being associated with ISIL/Da'esh and Al-Qaida. Currently, the EU Council decision is awaiting agreement on listing proposals from Member States. After Member States have reached agreement, persons and entities will be listed through a Council decision, and a Council regulation will be adopted unanimously.

Since the EU Council adopted this legal framework, the House of Commons European Scrutiny Committee has stated that the decision introduces a 'new sanctions regime' and is therefore politically important. The Committee has requested that the Minister for Europe and the Americas, Sir Alan Duncan, provide it with an assessment of the difficulties caused by Brexit in light of this 'new sanctions regime'. We will keep you updated with any developments in our next update.

UK FINANCIAL SANCTIONS: CHALLENGE OF THE LEGALITY OF EU SANCTIONS LISTINGS

On 11 October 2016 the House of Lords EU Justice Sub-Committee heard evidence on the legality of the EU listings process. The Council of the EU has been criticised (and the General Court of the EU has annulled a number of Council sanction decisions) over the past few years for implementing sanctions despite there being no or insufficient evidence to prove the allegations made against the relevant person or entity. We will report any outcome of this Sub-Committee hearing in our next update.

UK SANCTIONS: RUSSIA AND SYRIA

The UK has recently threatened Russia with further sanctions because of Russia's conduct in Syria. In her first address to the EU Council, Britain's Prime Minister Theresa May, demanded the EU send a "robust united message" to Russian President Vladimir Putin over his alliance with Syrian head of state Bashar Assad and the ongoing operation in Aleppo. Further, on 17 October 2016, Boris Johnson, the UK foreign secretary stated: "I think the most powerful weapon we have at the moment is our ability to make President Putin and the Russians feel the consequences of what they are doing".

Other EU Member States, including France and Germany, are considering further sanctions against Russia in relation to Syria.

CAMBRIDGE SYMPOSIUM: SANCTIONS AND DENIED PARTIES PANEL

In September, University of Cambridge hosted the 34th International Symposium on Economic Crime. The event included a discussion, titled 'Economic Sanctions: Continuing and Expanded Risks for Corporate, Financial Institutions and their Advisors'. Raminta Dereskeviciute, Special Counsel at K&L Gates, chaired a discussion which involved a panel of experts.

The convergence of US and UK/EU sanctions regimes:

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The panel discussed the differences of enforcement between the US and UK/EU sanctions regimes and how the UK sanctions regime is moving closer to the US model. Following a review of the UK sanctions regime, there is an aim to provide the Office of Financial Sanctions Implementation ("OFSI"), working under the UK Treasury, with greater enforcement powers. Proposed legislation, which includes giving OFSI the power to administer fines, is expected to come into force by April 2017 (see our alert from March 'From Strength to Strength: Financial Sanctions').

The risks to corporates posed by Brexit:

The panellists also discussed that the recent UK's vote to leave the EU is unlikely to dramatically affect the way the UK applies sanctions because as a foreign policy tool, sanctions are most effective when applied on a multilateral front (see out alert from July 'EU and UK Sanctions Update: July 2016').

Other issues the Panel discussed included: the scope of EU financial sanctions; sanctions due diligence requirements; the extent to which Cuba is 'open for business'; and next steps for sanctions policies given the political climate.

The panel consisted of: Pete Maydon (Head of OFSI and Head of Compliance and Operations, HM Treasury, UK) ; Greg Gatjanis (Associate Director, Office of Global Targeting, Office of Foreign Assets Control, US Department of Treasury, USA); Daniel Gerkin (Counsel, Vinson & Elkins LLP, Washington DC, USA); Dan Squires (QC, Matrix Chambers, London, UK); Dan Squires (QC, Matrix Chambers, London, UK); and Neal Dawson (Director, UK Head of AML and Sanctions, KPMG LLP, UK).

Feedback given to the Panel was extremely positive and the opportunity to hear from both representatives of UK and US authorities and legal representatives of corporations/firms was very useful.

The EU and UK sanctions regimes, as demonstrated by our Sanctions Alerts, are always subject to change. Our European Regulatory/UK Regulatory teams are always on top of these changes and have extensive experience advising clients on a wide range of sanctions issues.

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