EU AND UK SANCTIONS UPDATE: JULY 2016

Date: 22 July 2016

Antitrust, Competition & Trade Regulation Alert

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Below is a summary of developments since our previous update in May, relating to European Union ("EU") sanctions on Russia, Iran and other jurisdictions, the impact of Brexit on EU sanctions and recent changes with respect to the sanctions regime in the United Kingdom.

BRITAIN'S MEMBERSHIP OF THE EUROPEAN UNION AND THE EFFECT ON SANCTIONS POLICY

On 23 June 2016, a referendum was held in the UK in which the electorate voted in favour of leaving the EU. The vote has no immediate legal effect and for now the UK remains subject to EU law, including EU-implemented sanctions regimes and export controls. Despite the uncertainty as to how formal withdrawal from the EU will take place, businesses can already take steps to protect their interests going forward such as by including the UK in contractual definitions relating to sanctions jurisdictions.

In the meantime, the House of Common Foreign Affairs Committee has stated that the UK will have to reassess its sanctions regimes in the future. The Committee suggested that the Foreign and Commonwealth Office, the government department with principal responsibility for foreign policy, may mirror EU sanctions (meaning that the status quo with respect to the UK and EU sanctions policy could remain). Moreover, since the Brexit vote the House of Commons Defence Committee has already proposed widening existing sanctions on Russia by adding more individuals to the list of those subject to a travel ban; a proposal which has yet to be put forward to the Government and then possibly brought to the EU negotiation table. Meanwhile, Germany has supported the gradual lifting of EU sanctions on Russia. Therefore, it is possible that the UK could singlehandedly adopt a more stringent approach if the EU takes a lenient position on any sanctions regimes currently in force, particularly in relation to Russia.

It remains to be seen how the EU and the UK's positions will change with respect to Russia (or other) sanctions regimes when the time to review such sanctions approaches. Any changes are only likely if the UK formally withdraws from the EU. The mechanism for withdrawing is set out in Article 50 of the Lisbon Treaty. Once Article 50 is triggered, there begins a two year period (plus any agreed extensions of time, although since unanimity is required extensions would be very hard to secure) at the end of which the UK would officially no longer be a member of the EU. Until such time as Article 50 has been triggered and the requisite time passed, the UK continues to be an EU member bound to implement and enforce EU law, including its sanctions regimes. It is not clear precisely when the UK Government intends to trigger Article 50, although recent indications are that they will not do so before the end of 2016. It follows therefore that a unilateral UK sanctions regime is unlikely to be developed and enforced for some time.

In addition to the speculation about Brexit, a number of practical changes have taken place since the referendum. Following her appointment as Prime Minister on 13 July 2016, Theresa May has announced a number of changes to the roles and functions of UK Government departments. David Davis MP has been appointed Minister for Exiting the European Union, managing a newly-founded department with responsibility for conducting Brexit negotiations with the EU. Also, a Department for Business, Energy and Industrial Strategy (the "BEIS") has been founded by combining the Departments for Business, Innovation and Skills with Energy and Climate Change. The responsibilities which were previously managed by these two departments will be divided between the BEIS, the Department for Education and another new Department for International Trade. This may result in changes to the procedures by which exporters obtain the licences required, for example, to sell restricted and strategic goods or to export to countries subject to international sanctions regimes.

We will report any developments in future alerts.

RUSSIA

The EU currently imposes three types of sanctions with regard to Russia. 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.

The EU has now renewed its sanctions relating to Crimea and Sevastopol until 23 June 2017; and its sectoral sanctions against Russia until 31 January 2017. The EU's asset freezes and travel bans are currently due to expire on 15 September 2016.

IRAN

Financial and nuclear-related sanctions imposed on Iran by the EU have been lifted since 16 January 2016 (see our January Alert). However, the US has continued its embargo restrictions relating to US persons and US-origin items as well as some potential secondary sanctions against non US person that do business with specified parties in Iran. One continued significant affect of the US restrictions is that as a practical matter any dollar denominated transaction with Iran is prohibited.

As a result of the continued US embargo and the remaining EU restrictions, such as financial restrictions against five Iranian banks, there have been reported concerns that European financial institutions are maintaining risk-averse compliance policies and that banks will not facilitate financial transfers where Iranian parties are involved. However, a few European banks, such as Belgium's KBC, Germany's DZ Bank and Austria's Erste Bank, have declared their intentions to facilitate permissible financial transactions with Iran.

In response to the various concerns raised by banks, businesses, and the Iranian Government, on 2 June 2016, the US, EU, UK, France and Germany jointly published a statement relating to the JCPOA, stating their support for permitted business activity in Iran, and recognising the opportunities for global business to invest there. The statement recognised that the due diligence necessary for sanctions compliance when exploring business opportunities is "by no means unique to Iran" and encouraged the Iranian government to work towards a market which is friendly to international investment.

On 14 July 2016, the High Representative for Foreign Affairs released a declaration marking one-year since the conclusion of the JCPOA. She noted its success and its continued implementation. In particular, she stated, "clarity regarding the lifting of sanctions is key to allow a full reengagement of European banks and businesses in Iran" and that there is "extensive guidance" available describing the scope of the sanctions which have (and have not) been lifted.

ECJ dismisses appeal by Iranian Bank of Industry and Mine

On 13 May 2016, the European Court of Justice ("ECJ") dismissed an appeal by the Iranian Bank of Industry and Mine. The bank, which is owned by the Iranian Government, remains subject to an asset freeze under Council Decision 2010/413/CFSP (as amended). It is listed at Annex 2 of that Decision for being an entity that provides support for the Government of Iran.

NORTH KOREA

EU sanctions regime on North Korea widened

As we reported in our earlier update, in March 2016 the EU implemented further UN sanctions on North Korea. On 27 May 2016, the EU expanded the scope of these sanctions further. The amended sanctions now require authorisations for financial transfers of over EUR 15,000 to or from the country; impose an embargo on luxury goods and petroleum products; prohibit investment in North Korean mining and chemical industries; and restrict the movement of North Korean aircraft and ships.

OTHER EU SANCTIONS

South Sudan

The UN Security Council will continue imposing targeted financial sanctions and an arms embargo until 31 May 2017. The sanctions prohibit actions or policies that threaten the peace of South Sudan. The designation criteria in particular seek to target individuals leading groups which have been socially and politically disruptive.

Syria

On 27 May 2016, the EU Council renewed its sanctions on Syria for another year, until 1 June 2017. The decision is in line with the EU Council's affirmation in December 2014 that the EU would continue imposing sanctions on the regime and its supporters until repression in Syria ceases. Current sanctions include an oil embargo, restrictions on certain exports and investments, and a freeze of the Syrian Central Bank's assets, in addition to a targeted travel ban and asset freeze on over 200 people and 70 entities.

Libya

In our May Alert, we reported that a Libyan vessel known as the Distya Ameya had been subjected to a number of prohibitions relating to the transporting of crude oil from Libya to the EU, and the provision of bunkering or ship supply services. The EU has now removed the Distya Ameya from its list of sanctioned vessels, implementing a UN Security Council to that effect.

Cote d'Ivoire

As a result of the UN's Decision of 28 April 2016, the EU Council lifted the remaining restrictive measures it had maintained against Côte d'Ivoire. The UN lifted the sanctions after recognising the progress achieved in the stabilisation of the Côte d'Ivoire, including the successful conclusion of the presidential elections last October and the progress made in combating the illicit trafficking of natural resources.

Liberia

In May 2016, the UN Security Council lifted the sanctions it had imposed against Liberia. The EU has now implemented this decision and ceased its arms embargo on Liberia, putting an end to the remainder of its Liberian sanctions. The EU had already joined the UN, last October, in lifting the asset freezes and travel bans it had imposed against some prominent Liberians.

Terrorist Organisations

Daniel Martin Schneider, a German national, is no longer subject to an asset freeze following a decision of the EU Commission to remove him from a list of persons associated with ISIL and Al-Qaeda on 8 July 2016. Mr Schneider had been subject to financial restrictions since October 2008, and he was sentenced to twelve years' imprisonment by a German court in 2009 for a number of offences, including attempted murder and membership of a terrorist organisation.

On 12 July 2016, the EU Council updated its list of persons and entities subject to counter-terrorism restrictions by removing one entity, the International Sikh Youth Federation. The list now contains ten individuals and 22 entities, including groups such as the Tamil Tigers and the Hezbollah Military Wing.

UK SANCTIONS

FCA publishes new guidance on financial crime

The Financial Conduct Authority (the "FCA") has published a new guide on financial crime, comprising two parts. The guidance includes a section dedicated to sanctions compliance. Part One offers advice relating to corporate governance, risk assessments and screening. Part Two contains a number 'thematic reviews' of scenarios in which financial crimes can become relevant. In respect of sanctions, the guide offers examples of good and bad practice on topics such as management responsibility, staff training and initial and ongoing client screening.

While the guidance is not legally binding, it does describe the FCA's expectations with regards compliance by businesses in a number of practical situations. The guidance states that firms should have effective, up-to-date screening systems against sanctions lists in place, and should have procedures for identifying name matches with sanctions targets. These expectations are then illustrated with examples of good and bad practice. Businesses which have exposure to sanctions-related risks will benefit from knowing what the FCA will consider adequate in terms of compliance, and will be able to highlight areas in which they might not yet be properly compliant.

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