

EU SANCTIONS AND BREXIT

LOSING THE HARD EDGE OF EUROPEAN FOREIGN POLICY?

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- The EU needs to assume more responsibility in defending its interests and security.
- Brexit will constitute an additional challenge for the EU in this respect, and has led to calls to strengthen the efficiency of the the Common Foreign and Security Policy, including EU sanctions, which currently form one of the toughest and most increasingly used tools in the EU’s foreign policy toolbox.
- The UK has been the most active and influential member state in formulating the EU’s sanctions policy. The EU could largely replace the technical expertise provided by the UK, yet the level of ambition of the EU’s sanctions policy is likely to decrease.
- Even though the UK has taken measures to maintain the sanctions regimes it agreed to as an EU member state, an independent UK sanctions policy could result in divergence.
- The envisaged coordination mechanisms between EU and UK sanctions policies can mitigate some of the negative implications of Brexit, but they cannot replace the UK’s EU membership.



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INTRODUCTION

In an increasingly competitive global and regional milieu, also characterised by significant security challenges, the calls for a robust EU foreign and security have intensified. The need to take more responsibility for defending European interests and resolving local, regional and international conflicts has been magnified by uncertainties related to the transatlantic relations under the current US administration. As the new political leadership of the EU is currently re-calibrating the Union's economic and regulatory power resources under the rubric of a geopolitical European Commission, the member states have tasked the new High Representative for Foreign and Security Policy with strengthening the EU's foreign and security policy. In order to make the EU's voice heard and diplomatic efforts count in a world characterised by great-power relations, the need for political cohesion and the readiness to resort to tougher foreign policy tools (such as sanctions) has been underlined by policymakers and experts alike.

The withdrawal of the UK from the EU constitutes a setback for the EU's foreign and security policy. The EU is about to lose one of its largest member states, which represents around 16 per cent of the EU-28's GDP, manages one of the largest diplomatic networks in the world, holds a permanent seat on the UN Security Council (UNSC), and possesses substantial intelligence capabilities as well as military assets including nuclear deterrence.

Importantly, the UK has played a significant role in advocating, designing and targeting EU sanctions. It is often described as the most active and influential EU member state in this policy field – a key source of political steering and leadership in the EU's decision-making on sanctions, as well as technical expertise in the establishment of EU sanctions regimes.

Sanctions – namely restrictive measures under the Common Foreign and Security Policy (CFSP) – constitute one of the toughest foreign policy tools at the EU's disposal. During the past decade, the EU has increasingly imposed sanctions in order to respond to adverse security developments in its neighbourhood and beyond. The restrictive measures applied have

been aimed at positioning the EU in the wider security environment, and in duly influencing the behaviour of targeted regimes and actors. They have been designed to signal disapproval as well as to contain further adverse actions detrimental to international and EU security.

This Briefing Paper focuses on the implications of Brexit for the EU's sanctions policy. It will firstly discuss the role of the UK in the formulation of EU sanctions and the EU's preparedness for replacing the UK's political and technical input. It will then focus on the emergent independent sanctions policy of the UK, and its potential alignment with that of the EU. Finally, the paper concludes with an assessment of the challenges posed by Brexit for the EU.

BREXIT AND EU SANCTIONS POLICY

The role of the three biggest EU member states – Germany, France and the UK (EU3) – cannot be overlooked in the EU's foreign and security policy. The part played by these countries in the dispute concerning Iran's nuclear programme or Russia's unlawful actions in Ukraine has been vital in formulating the EU's diplomatic action and in establishing the most prominent EU sanctions regimes in recent years.

In the case of Iran, the EU3 played a key role in the negotiations between Iran and the permanent members of the UN Security Council and Germany (P5+1), which led to the Joint Comprehensive Plan of Action (JCPOA) agreement and temporarily resolved the dispute over Iran's nuclear programme. While the EU's High Representative (HR/VP) led the diplomatic efforts and the negotiation process, the EU and the US increased the pressure on Iran by implementing unilateral sanctions against Iran on top of the sanctions imposed by the UN Security Council. The UK's role in forging tougher EU sanctions and the transatlantic coordination over the Iran sanctions has been seen as imperative.¹ Yet in terms of the latter, the US withdrawal from the JCPOA and re-imposition of sanctions have

1 Tabrizi, Aniseh Bassiri and Ruth Hanau Santini (2012). 'EU Sanctions against Iran: new wine in old bottles?', ISPI Analysis 97. Available at: https://www.ispionline.it/it/documents/Analysis_97_2012.pdf (accessed 10 December 2019).

cast a shadow over the close US–EU coordination on sanctions under the current US administration.²

The EU’s sanctions against Russia resulted from Russia’s illegal annexation of Crimea and violation of the territorial integrity of Ukraine in its eastern regions. In terms of the latter, the EU also issued targeted economic sanctions (financial sanctions and export bans) in addition to the more widely used blacklisting of persons and entities (asset freezes and travel bans). These measures were adopted in conjunction with the Minsk agreement, and lifting them was tied to the successful implementation of this agreement negotiated in the Normandy format (including Germany, France, Ukraine and Russia). Even though the UK was not a part of the Normandy format, it had a key role in the consensus-building among EU member states on Russia sanctions.

Against this background, the fact that the UK is about to leave the EU’s institutional structures represents a major change in terms of the political dynamics at the highest levels of EU decision-making on sanctions, namely the European Council and the Foreign Affairs Council, as well as in their preparatory consensus-seeking bodies (e.g. Coreper and the Council Working Groups).

This is an important development, as the EU has to continuously push for consensus in its sanctions policy. Restrictive measures agreed under the CFSP predominantly include a so-called sunset clause, meaning they cease to apply unless they are renewed, or amended as appropriate after twelve months (or six months in the case of Russia sanctions). This means that the EU has to work, firstly, to establish and then often to retain the consensus on sanctions decisions. The UK’s role in this respect has been widely recognised. Indeed, while the UK is often seen to have marginalised itself in EU decision-making in general due to Brexit, it has continued to play a notable role in the EU sanctions policy. Furthermore, a development in which one of the most developed and largest economies in the world is no longer present at the EU decision-making table(s) can, over time, potentially weaken the possibilities to aim for equal European burden-sharing with regard to the costs of sanctions within the EU decision-making process.³

These potential developments related to Brexit have highlighted the role of Franco–German cooperation in the CFSP and towards the EU’s sanctions policy. Given the differences between these two key member states’ foreign policy postures and strategic cultures, it remains to be seen to what extent this relationship will be able to replace the role of the UK and the EU3 in sanctions policy. Importantly, the UK’s departure also represents a change in the dynamics of the ‘Franco–German couple’ as they have to arrive at a consensus without the balancing factor of a ‘third wheel’, namely the UK. Thus far, no other EU member state seems to be able to match the role played by the UK in the EU3. Relatedly, the UK’s exit is likely to result in some concerns pertaining to the future of the transatlantic cooperation in general and the coordination of the sanctions policy.

The EU’s dependence on UK expertise in sanctions

Reflecting its robust posture in the field of sanctions, the UK is an internationally recognised source of expertise in setting up sanctions regimes. To this end, it has also contributed extensively to the EU’s capacity to act as a sanctions sender.⁴ First, the UK has provided expertise in the form of highly qualified seconded officials to the EU institutions (most notably the European External Action Service and the Commission). Second, UK representatives in the EU have assumed a key role in framing and identifying the targets of EU measures, including the substantiation of individual listings. This has been based on the unparalleled personnel resources dedicated to sanctions at the UK’s Foreign and Commonwealth Office (FCO) in comparison to the other EU member states, as well as the UK’s strong intelligence assets, including its national services and international cooperation such as participation in the ‘Five Eyes’ alliance.⁵ Third, the UK’s input in terms of expertise and the implementation of financial sanctions has been seen as important for the EU.

As the UK is leaving the EU structures on its departure date, its contribution to the provision of technical expertise in sanctions policymaking will largely be lost. Importantly, this will be before any potential

2 Sinkkonen, Ville (2019) Sanctions and US foreign policy in the Trump era: A perfect storm, FIIA Briefing Paper 269. Available at <https://www.fia.fi/en/publication/sanctions-and-us-foreign-policy-in-the-trump-era-a-perfect-storm> (accessed 28 January 2020)

3 For more on the UK’s role, see Moret, Erica and Fabrice Pothier (2019). ‘Sanctions after Brexit’ in *Survival*, 60(2), p. 184.

4 UK House of Lords European Union Committee (2017). Brexit: Sanctions policy, 8th Report of Session 2017–19; see also, Moret, Erica and Fabrice Pothier (2019): ‘Sanctions after Brexit’ in *Survival*, 60(2), p. 185.

5 The Five Eyes (FVEY) is an intelligence alliance comprising Australia, Canada, New Zealand, the United Kingdom and the United States based on the multilateral UK–USA agreement for cooperation in signals intelligence.

new coordination mechanisms between the EU and the UK in the field of the CFSP have been negotiated or implemented. Should the EU approach these mechanisms as an integral part of the overall future relations negotiations, including economic relations and internal security matters, then setting up formal and institutionalised arrangements allowing a deeper UK involvement in EU sanctions policymaking might turn out to be both a lengthy and an uncertain process.

The EU side has approached the potential future consultation on sanctions within the overall framework for the future EU-UK relationship, and with the assumption that the UK will become a third state in its relations with the EU. Against this backdrop, the EU's Task Force for Article 50 has drafted a consultation mechanism based on three features.⁶ First, it should be reciprocal in terms of advanced information sharing on envisaged new sanctions or a review of imposed ones. Second, the mechanism should be scalable, enabling (i) regular EU-UK sanctions dialogue about the overall policy and practice in the EU and UK sanctions regimes; (ii) regimes already in place and their effectiveness; and (iii) the exchange of good practices. Third, it could be formalised. The scalability of the mechanism would allow the intensification of dialogue and in-depth interaction at all appropriate stages of the policy cycle of sanctions regimes (old and new). Yet this would require a UK commitment to align itself with the EU foreign policy objectives that underpin the sanctions preparation in question.

A potentially significant difference from the current state of affairs relates to the early stages of the formulation of the EU's and the UK's foreign policy objectives, including initial discussion on the application of sanctions. After Brexit, the UK will be outside the EU's foreign policymaking structures, which could lead to more variation in terms of the objectives and approaches of these two actors. Importantly, the envisaged consultation mechanism is planned to kick in at a later stage of the policy cycle, that is, when the EU has formulated its objectives and the UK has arrived at more or less similar ones, and has decided to align with the EU.

Should the UK and the EU fail to strike an agreement on their future relations, coordination could continue through normal diplomatic channels available to a

third state. A 'no future deal Brexit' could significantly diminish the trust between the EU and the UK, however, and negatively affect the overall relations with implications for foreign and security policy coordination.

Against this backdrop, any form of Brexit is likely to prove a notable hindrance to the UK's participation in the design of the EU sanctions and its political and technical input into the formation of such sanctions. The possibility of mitigating this challenge by establishing novel coordination mechanisms in the context of the future EU-UK relations remains an open question.

TOWARDS AN INDEPENDENT UK SANCTIONS POLICY

In May 2018, Britain established a legal framework for its autonomous sanctions policy through the Sanctions and Anti-Money Laundering Act. Civil servants have also prepared several statutory instruments to replicate a vast majority of the existing EU sanctions under the new legal framework. These efforts are aimed at giving the government tools to continue implementing existing sanctions, and at providing a legal backbone for London to impose its own sanctions independent of Brussels. As part of its foreign policy, Britain will gain the autonomy to impose stricter, milder or completely different kinds of sanctions compared to the Union. The extent to which the autonomous UK sanctions policy will be aligned with that of the EU also remains an open question.

Demands for a clearer vision regarding the UK's future sanctions have become more vocal as Brexit negotiations have proceeded.⁷ In June 2019, the Foreign Affairs Select Committee of the House of Commons suggested that the government's approach to sanctions was 'fragmented and incoherent', thus posing a risk to national security. Among its concerns were resources assigned for transition, the viability of an independent human rights sanctions regime (the so-called Magnitsky Act), and cross-departmental coordination. The UK government's response acknowledged that the workload to ensure that the UK is legally able to maintain existing sanctions after Brexit has been 'enormous and unprecedented'.⁸

6 European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU, Foreign, Security and Defence Policy (slides). Available at: https://ec.europa.eu/commission/sites/beta-political/files/slides_on_foreign_security_defence_policy.pdf (accessed 18 December 2019).

7 Chase, Isabella, Emil Dall and Tom Keatinge (2019). Designing Sanctions After Brexit. Occasional Paper. RUSI.

8 House of Commons Foreign Affairs Committee (2019). Fragmented and incoherent: the UK's sanctions policy; House of Commons Foreign Affairs Committee (2019). Fragmented and incoherent: the UK's sanctions policy: Government Response to the Committee's Seventeenth Report, pp. 1-2.



London is likely to remain a major business centre, in which entities drawing the attention of both US and EU sanctions regulators engage in significant activities.
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Moreover, no domestic agreement on the future sanctions policy has emerged. Discrepancies between the EU and UK sanctions regimes could create a costly bureaucratic obstacle for firms, as they would have to adhere to the requirements of both. This would not be conducive to the British government's aim of maintaining the ease of doing business with the UK. However, taking distance from the EU sanctions could signal UK sovereignty, and turn out to be an asset for 'global Britain'. Relatedly, competitive developments are possible, such as 'sanctions dumping' in which the UK reaps commercial advantages by continuing trade with entities against which Europe maintains stricter sanctions.

Keeping the EU framework at arm's length would not render the UK toothless. Brexit has already led the UK to build up its own capacities, as legal measures taken against sanctions policies shift from the European Court of Justice in Luxembourg to British courts, for example. Targeting sanctions effectively, as well as designing asset freezes and other forms of financial measures requires significant expertise. On these fronts, the UK possessed better capacities than most EU member states even before the Brexit referendum, after which it started building its own sanctions policymaking, implementation and enforcement. In 2017, the UK created the Office of Financial Sanctions Implementation, a dedicated agency for implementing and enforcing sanctions. By building new measures, the

UK is arguably aiming to compensate for the weaker influence it will wield by providing greater flexibility.

Significant leverage that the UK will retain post-Brexit entails access to the City of London, a global financial and business hub, which is a key asset for many global companies and wealthy individuals. Even if Brexit may tempt some companies to transfer their operations to Amsterdam, Dublin, Frankfurt or Paris, London is likely to remain a major business centre, in which entities drawing the attention of both US and EU sanctions regulators engage in significant activities. Exerting this leverage has its limitations, however. UK sanctions will be somewhat constrained by the need to maintain European business access to London.

CONCLUSIONS

While the future trajectory of the UK's wider sanctions strategy is still unclear, it is inevitable that Brexit will diminish the role that the UK can play in EU sanctions policy. The UK will leave EU institutions and decision-making structures in which it has amplified its influence in the field of sanctions. Equally, it will not participate in formulating the range of EU foreign and security policy means, such as mediation, peacekeeping, dialogue and crisis management, which accompany the use of sanctions. Restrictive measures are never

the only tool used in realising policy goals, as illustrated in relation to the Iran nuclear agreement, in which sanctions and dialogue were applied simultaneously.

It is likely that the UK sanctions policy after Brexit will remain aligned with that of the EU, at least in the short run. True, the UK government is likely to describe the forthcoming UK–EU partnership as ‘unprecedented’ to highlight its difference from the relatively unidirectional relationship between the EU regulation and many other non–EU European countries, such as Switzerland and Norway. However, many EU measures, such as those against secondary sanctions, will remain in place. The UK has incorporated into domestic law the EU’s Blocking Statute aimed at countering US extraterritorial influence, and has indicated that it will maintain the Instrument in Support of Trade Exchanges (INSTEX) to facilitate trade between European businesses and Iran.⁹ Convergence with the EU is also likely to prevail on the grounds that such an arrangement will help avoid overt administrative burdens for businesses in the UK, and increase the efficacy of sanctions that the UK imposes.

Brexit will pose some notable challenges for the EU from day one. These are related to the design of targeted sanctions and the substantiation of sanctions listings related to any new EU sanctions decision or review of existing ones. The ability of the EU and its member states to enhance their resources and expertise is therefore an urgent issue for the Union.

A mid- and longer-term perspective may reveal alternative trajectories. One scenario is that the UK policy will side more with the US approach in a manoeuvre to establish a ‘global UK’ distinct from the EU. Prior to the Trump administration adopting a more unilateral position in its use of sanctions, the UK was instrumental in steering the EU approach closer to the US position, when it saw useful. Now Britain has indicated that it might impose stricter sanctions on Russia, for instance, by using its Magnitsky clause on gross violations of human rights, which would align its approach more closely with that of the US.

Yet alignment with the European sanctions still seems a more likely scenario also in the longer run, although it is less clear how this would unfold in practice. The UK and the EU will surely strive to establish a collaborative link between the regimes to retain some influence over each other’s policies. Coordinating

sanctions may also take place among smaller groups of countries than the Union as a whole; the EU3 might be reformulated as the EU2+1. The UK will be free to impose its own sanctions, but the choices it makes will have to accommodate the policies of other power blocs, especially those of the EU and the US.

The unfolding EU–UK relationship post–Brexit will be shaped by the UK underlining its sovereignty and the EU the autonomy of its decision-making. The current UK government’s pledge to conclude negotiations on future relations by the end of 2020 provides little time to introduce and agree upon any novel arrangements for a third state to plug into the CFSP. From these premises, collaboration on sanctions, including the potential institutional formats and mechanisms, might turn out to be ‘lighter’ than anticipated. This will call for close assessment on the part of policy-makers. Sanctions have constituted an integral and increasingly employed part of the EU’s foreign and security policy, signalling unity among the EU member states and fortifying the Union’s foreign policy toolbox. The way in which the EU–UK arrangement on sanctions unfolds will affect the EU’s global and regional influence and power as a whole.

⁹ The Instrument in Support of Trade Exchanges (INSTEX) was established after the US withdrew from the JPCOA and reinstated Iran sanctions with extra-territorial implications, yet it has had little impact thus far.