THE INTERNATIONAL ACADEMY
OF FINANCIAL CRIME LITIGATORS

DECEMBER 2025

Working Paper 4

Sanctions and the rule of law[i.]

Stéphane Bonifassi | Paul Convery | Anand Doobay | Andreas Erotocritou
Adam S. Kaufmann | Vassily Rudomino | Leonora Sagan

The International Academy of Financial Crime Litigators
34 Boulevard Haussmann | 75009 Paris, France
contact@financialcrimelitigators.org | www.financialcrimelitigators.org

Foreword

The world of sanctions is complex and increasingly difficult to navigate. This is understandable. It is a constantly developing space that has evolved quickly in the last two decades in response to significant geopolitical events, shifting government priorities, and emerging public pressures.

The concept of "sanctions" no longer just refers to a singular tool that is employed by states against states to counter and hamper acts of traditional warfare. The design of individual sanctions regimes are now so varied in scope and purpose that it would make more sense to compare them to the assorted options contained in a Swiss-army knife. While some sanctions mechanisms are still used in the traditional sense (i.e. against a state in the context of warfare) many other mechanisms are now used against wider target groups and to advance much broader causes. For instance, multiple regimes currently exist throughout the world that target individuals and private entities with the aim of protecting human rights, combating corruption or countering cybercrime.

As sanctions have evolved, the legal framework surrounding the implementation of these regimes has been forced to evolve quickly as well. As a result, private actors are often uncertain on how to operate within the bounds of the rapidly changing legal landscape pertaining to sanctions regimes.

This paper from The Academy provides a clear and useful overview of what is an increasingly multifaceted topic, with a focus on the evolving sanctions regimes in the United Kingdom, European Union, and to some degree, the United States. Moreover, it provides a concise insight into the impact these regimes can have on individuals and entities operating in these jurisdictions, as well as the frictions that often arise between the desire to impose sanctions effectively and the necessity of upholding the rule of law.

Most importantly, this paper is an excellent resource for those looking to grasp the complex, and increasingly difficult to understand, field of sanctions.

Andrew Dornbierer
Head of Policy and Research
International Centre for Asset Recovery
Basel Institute on Governance

About the Authors

Stéphane Bonifassi
Partner
BONIFASSI Avocats

Stéphane Bonifassi specializes in international litigation in the areas of business crime and fraud, economic sanctions, corruption, asset recovery, forfeiture and confiscation, as well as transnational enforcement of judgments and internal investigations. He regularly represents individuals or companies accused of international corruption in multiple jurisdictions and is familiar with the anti-corruption laws of France, the Foreign Corrupt Practices Act of the United States and similar laws of other countries. He also frequently represents sovereign states that are victims of corruption or fraud. Bonifassi is a co-founder of The International Academy of Financial Crime Litigators, a collaboration of litigation professionals working with the Basel Institute on Governance to expand worldwide access to solutions in economic crime cases.

Email: s.bonifassi@bonifassi-avocats.com

Paul Convery
Partner
William Fry

Paul Convery has extensive experience of advising clients where issues arise involving financial litigation, including financial crime litigation, investigations and reputational damage issues. Work as lead advisor has also included ongoing advisory and litigation roles in complex sanctions and derogations applications, advising in respect of a multitude of aviation/transportation insurance disputes, advising high net worth individuals and corporate entities in respect of ongoing shareholder disputes, defamation and conspiracy allegations, representing global banks in misappropriation and fraud proceedings, representing global corporations in technology, data and communications disputes and advising in respect of multi-party competition cartel cases. He is also instructed as an independent expert on behalf of U.S. headquartered global banks.

Email: paul.convery@williamfry.com

Anand Doobay
Partner
Boutique Law LLP

Anand founded Boutique Law in 2017 building upon two decades of investigating and prosecuting many of the most high-profile, complex and politically sensitive cases in over 50 countries. Anand also advises solicitors and law firms on compliance and deals with investigations undertaken by the Solicitors Regulation Authority. He has co-authored the leading textbooks on extradition law (Jones and Doobay on Extradition and Mutual Legal Assistance and the Law of Extradition and Mutual Legal Assistance) and writes the extradition chapter for Blackstone's Criminal Practice. He is consultant editor for extradition in "Halsbury's Laws of England" and was appointed by the UK Government to review the UK's extradition arrangements.

Email: anand@boutique.law

Andreas Erotocritou
Partner
Erotocritou

Andreas' practice focuses on complex, cross borders and high-stakes disputes. He specializes in various fields of commercial and corporate litigation and arbitration, regularly appearing before the district courts, Court of Appeal and Supreme Court in Cyprus representing prominent local and international clients. Andreas has vast experience in corporate fraud and asset recovery, shareholders' disputes, recognition and enforcement proceedings as well as in corporate insolvency and restructuring. He also has significant expertise in obtaining and defending interim injunctive relief in support of proceedings in Cyprus and elsewhere. Andreas is a Barrister of the Middle Temple, and a member of, amongst others, the Cyprus Bar Association, the International Bar Association and the Honourable Society of Middle Temple.

Email: andreas.erotocritou@erotocritou.com

Adam S. Kaufmann
Executive Partner
Lewis Baach Kaufmann Middlemiss, PLLC

Adam S. Kaufmann is an experienced former prosecutor, who practices in the areas of investigations, cross-border asset tracing and judgment enforcement, white-collar crime, sanctions, and complex commercial fraud. He represents U.S. and international clients—both individuals and companies—in criminal, civil and investigative matters throughout the world.

An expert in U.S. sanctions, Adam advises clients on compliance with OFAC regulations, conducts internal investigations into alleged sanctions violations, guides clients through self-reporting situations, and represents them in unblocking funds and delisting petitions. A recognized expert in international criminal law, corruption, and fraud, Adam has lectured on these topics in jurisdictions around the world and has testified twice before the United States Senate.

Email: Adam.Kaufmann@lbkmlaw.com

Vassily Rudomino
Founding Senior Partner, Advocate
ALRUD

Vassily Rudomino is an expert with profound experience in all aspects of the Russian competition legislation including in merger control clearance of complex transactions and cartel investigations. Vassily represents interests of clients in FAS Russia (Federal Antimonopoly Service) and its territorial divisions, during inspections as well as in antimonopoly disputes in courts. He advises clients across a range of industries including healthcare, life science and chemicals, banking and finance, consumer goods and retail, technology, media and telecoms. Vassily has significant experience assisting clients in Russian corporate crime matters, including matters relating to bribery and corruption. He has also supported clients in preventative compliance work in these areas.

Email: vrudomino@alrud.com

Leonora Sagan

Barrister

Fountain Court

Leonora Sagan represents corporations, executives and high-net-worth individuals in complex commercial, criminal, and regulatory disputes and investigations. She is recognized by the legal directories as a leading junior in Business and Regulatory Crime, Civil Fraud, Investigations, Commercial Litigation, Banking, and Financial Services, and has extensive experience in dealing with fraud, bribery, corruption, and other financial misconduct in both civil and criminal contexts. Her cases often concern asset misappropriation, tracing and forfeiture; company frauds; contentious trust matters; banking and financial services; private prosecutions; and allegations of professional misconduct, especially at board and executive levels. She is a contributor to *The Law of Privilege* and *Lissack and Horlick on Bribery* and has specializes in issues of privilege at the intersection of criminal, civil and regulatory fields.

About this Working Paper

This Working Paper was prepared by the International Academy of Financial Crime Litigators. ISSN: 3038-950X.

Suggested citation: Stéphane Bonifassi, Convery, P., Doobay, A., Erotocritou, A., Kaufmann, A., Rudomino, V., Sagan, L., (2025). Sanctions and the Rule of Law. The International Academy of Financial Crime Litigators Working Paper No 4. Available at Publications - Financial Crime Litigators Academy.

This Working Paper is intended for general informational purposes and does not constitute legal or other professional advice. We cannot guarantee the paper's accuracy and completeness even though we have made reasonable efforts to ensure its accuracy and completeness.

For questions or to report any inaccuracies or missing and necessary information, please contact the authors or email contact@financialcrimelitigators.org.

Acknowledgements

The International Academy of Financial Crime Litigators is indebted to each of our authors, who have generously shared their legal expertise through insightful and thought-provoking contributions to this paper. They were aided and supported by Maria Nizzero, Julie Bastien, Theo Pow, Jago Russell, Lincoln Caylor, and Elizabeth Ortega. We appreciate their invaluable content review and recognize that this working paper could not have come to fruition without them.

Table of Contents

1 Introduction 9

2 History and Evolution of Sanctions 10

2.1 A Brief History of Sanctions Since World War I 10

2.2 Purpose and Effectiveness of Sanctions 12

2.2.1 Economic Effectiveness of Sanctions 14

2.2.2 Political Effectiveness of Sanctions 16

2.3 Types of Sanctions 16

2.4 Extraterritoriality 17

2.5 Enforcement 19

2.6 Counter Sanctions 21

3 The Adoption and Impact of Sanctions 23

3.1 Designation Criteria 23

3.2 Associates and Family Members 27

3.3 Selection Process for Designation 28

3.4 Contractual Impacts 30

3.5 Commercial Impacts 32

3.5.1 Financial Institutions 33

3.5.2 Financial Payment Systems and Central Banks 33

3.5.3. Regulators 34

4 Challenges 34

4.1 Legal Challenges and Rule of Law Issues 34

4.2 Avoidance and Evasion of Sanctions 36

4.3 Operation and Resource Issues 37

4.4 Blocking Statutes 37

4.5 Frozen Assets 38

5 Conclusion 39

6 Appendices 41

Appendix 1 Cyprus 41

Appendix 2 Ireland 45

Appendix 3 United Kingdom 47

1 Introduction

> "*The people who can be subject to sanctions are not alleged to have committed any criminal offences or to have otherwise engaged in any wrongdoing either here or overseas. Ministers may target any individuals and businesses falling within broadly defined classes. Those people can then be subject to severe restrictions on their ability to travel, to deal with their own assets, to do business and to engage in many everyday activities. Their friends and colleagues are at risk themselves of committing criminal offences if they engage with the sanctioned person in any of a wide range of different ways. The decisions taken by Ministers in the exercise of those powers can therefore have a prolonged and potentially devastating effect on the individuals and their families.*"[1]

This Working Paper aims to provide an introduction to sanctions and the key questions surrounding their operation, effectiveness and challenges. It considers both the EU sanctions regime to illustrate a multilateral system of imposing sanctions and the regime in the UK to illustrate the way in which sanctions operate at a domestic level. It also considers the countersanctions imposed by the Russian Federation, a specific contractual issue which has arisen in the US and appendices provide comments on the systems that operate in Cyprus, Ireland and the United Kingdom.

The Working Paper will begin by reviewing the history and evolution of sanctions, focusing on developments in the 20th century and recent changes following Russia's further invasion into Ukraine in February 2022. This historical perspective will introduce the extraterritorial application of sanctions and the issues this raises for the rule of law.

Following this brief historical review, the Working Paper will turn to the impact of sanctions. This section will explore the impact on sanctioned individuals, states and legal entities as well as the indirect effect of sanctions. The Working Paper will then consider the commercial and compliance impacts of sanctions before turning to the licence system which is part of many sanctions regimes.

Finally, this paper will turn to the challenges that modern day sanctions present. These include concerns regarding the rule of law, challenges of enforcement and the potential implications of the seizure of sanctioned assets held by foreign states and designated persons.

1 Shvidler (Appellant) v Secretary of State for Foreign, Commonwealth and Development Affairs (Respondent); Dalston Projects Ltd and others (Appellants) v Secretary of State for Transport (Respondent) [2025] UKSC 30 at [1].

2 History and evolution of sanctions

"*The economic weapon is one which is so infernally convenient to use that it naturally commends itself to those who sit in offices. Pens seem so much cleaner instruments than bayonets, and can be handled by the amateur with so much less exertion, so much less realisation of the consequences.*"[2]

There is no single agreed definition of sanctions and so the Working Paper uses the term to refer to a non-forcible policy measure adopted by states or international organisations with the purpose of influencing other states or legal entities or natural persons to change their behaviour or take a particular course of action. Those natural persons, legal entities or states that are subject to sanctions are often referred to as having been '*designated*'. Kofi Annan, the former Secretary General of the United Nations has described sanctions as "*a necessary middle ground between war and words*".[3]

2.1 A brief history of sanctions since World War I

Sanctions are not a modern innovation. Shortly before the outbreak of the Peloponnesian War, in about BCE 432, Athens passed the Megarian Decree barring trade between Athens and Megara and denied the Megarians access to Athenian ports. However, the modern era of the use of sanctions can be seen to have developed in the aftermath of World War I. Sanctions were seen as both potentially more effective than physical warfare and as a way to avoid military conflict. For example, the blockade during World War I against Germany is estimated to have resulted in the deaths of some 424,000 – 763,000 civilians which was 0.5 – 1% of the German population.[4] Given this experience, the League of Nations tried to use sanctions, or the threat of sanctions, in the period after World War I to achieve its goal of creating a stable, peaceful international environment.[5] However, the sanctions brought against Italy in 1935, following its invasion of Ethiopia, had a limited impact and showed that sanctions against states with relative economic independence would not be as effective.[6] Some historians have suggested that the threat of sanctions led to some states, such as Nazi Germany, seeking to obtain, sometimes by force, additional resources

2 W Arnold-Forster, "Democratic Control and the Economic War", Foreign Affairs 9, no 1 (March 1920).

3 Concerned by Unintended Negative Impact of Sanctions, Speakers in Security Council Urge Action to Better Protect Civilians, Ensure Humanitarian Needs Are Met | Meetings Coverage and Press Releases

4 Chapter 10, The Blockade in the First World War, Mary Elisabeth Cox; "Harfleur to Hamburg: Five Centuries of English and British Violence in Europe", DJB Trim (ed.), Brendan Simms (ed.) (2024).

5 "*Should any Member of the League resort to war …. all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not…..The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the covenant-breaking State….*" Article 16 of the Covenant of the League of Nations.

6 Chapter 8, The Economic Weapon- The rise of sanctions as a tool of modern war, Nicholas Mulder, 2022.

and territory in order to protect themselves against the impact of sanctions and in 1936 Germany started a four year plan to achieve "blockade resilience".[7]

Following the conclusion of World War II, the use of multilateral sanctions was again discussed as a means to preserve peace and international stability and the ability to impose sanctions was incorporated into the Charter of the United Nations.[8] The United Nations Charter has been ratified by 193 countries and aims to establish "*conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained*".[9] Measures were introduced under this power against the apartheid regimes of South Africa and Rhodesia in the 1960s and 1970s.

However, in addition to the use of multilateral sanctions, such as those imposed by the United Nations, there was also an increasing use of unilateral sanctions. The US used its growing hegemony to impose sanctions to achieve its foreign policy objectives. For example, the US imposed sanctions on Cuba in 1962 following the deterioration in relations between the countries after Fidel Castro came to power in 1959.[10]

Additionally, the number, sophistication and types of sanctions grew. Targeted or smart sanctions are seen as being a response to the United Nations sanctions imposed on Iraq in 1990 and 1991 after its invasion of Kuwait.[11] The severe consequences of these measures, including food shortages and a significant rise in the infant mortality rate,[12] led to a move to design sanctions that would not have the humanitarian impact of broad trade sanctions and which would also be more effective by putting direct pressure on individuals who could affect national policy. Targeted sanctions could include arms embargoes, financial sanctions on the assets of individuals and companies, travel restrictions on the leaders of a sanctioned state and trade sanctions on particular goods.

However, a recent study published in the Lancet Global Health found "*there is evidence of a significant causal association between sanctions and increased mortality across most age groups, with particularly pronounced effects for infants and young children. Being subjected to sanctions, for example, leads to an estimated 8 per cent increase in the mortality rate of children under five in the affected countries*". It estimated that, over the past decade, sanctions were associated with approximately 564,000 excess deaths annually.[13]

---

7 Scherner, J. (2024). Germany, Blockade and Strategic Raw Materials in the Era of the Two World Wars. *The International History Review*, 46(4), 515–534.

8 "*The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.*" Article 41, Chapter VII — Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Charter of the United Nations.

9 Preamble, United Nations Charter (full text) | United Nations

10 Cuba Sanctions - United States Department of State

11 "*Smart sanctions revisited*", Gordon, Joy, Cambridge University Press, Ethics & International Affairs Volume 25 Issue 3 Pages 315-335 (2011).

12 Joyner, Christopher C. (2003) "United Nations Sanctions after Iraq: Looking Back to See Ahead," Chicago Journal of International Law: Vol. 4: No. 2, Article 7.

13 Sanctions can kill as many people as wars

Sanctions are also being used for ever widening aims. Some countries now impose sanctions on those who they believe are responsible for or involved in the serious violations of human rights and/or corruption.[14] The Global Magnitsky Human Rights Accountability Act authorises the US President to impose economic sanctions and deny entry into the United States to foreign persons identified as engaging in human rights violations or corruption.[15] On 20 December 2017, President Trump issued Executive Order 13818, finding that "*the prevalence and severity of human rights abuse and corruption … have reached such scope and gravity that they threaten the stability of international political and economic systems*" and "*constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States*" invoking the Global Magnitsky Act and other relevant legislation. The UK has introduced sanctions to try and reduce irregular migration.[16] The US recently broadened the scope of sanctions by adopting restrictive measures against certain International Criminal Court judges and prosecutors, which had worked on the situation in Palestine. It has even been reported that UK lawyers who provided advice to the International Criminal Court on Israel's conduct in Gaza are at risk of being subjected to US sanctions.[17] China has imposed sanctions, for example, on those, including lawyers[18], who it considers to have spread "*lies and disinformation*" about alleged human rights abuses.[19] It has also imposed sanctions on US subsidiaries of a South Korean shipbuilder because of their alleged involvement in US investigation into China's maritime, logistics and shipbuilding sectors.[20] The US and the UK have introduced sanctions to try and counter an online fraud network.[21]

Russia's further invasion of Ukraine, in February 2022, has led the EU, US, UK and many other jurisdictions to impose or expand the scope of existing sanctions on Russia. The number of designations has dramatically increased and the scope and types of sanctions have been expanded. A number of countries are considering not just freezing assets but also confiscating them and Canada has already amended its legislation to allow for this to happen.[22]

All of this has reignited the debate about sanctions, their purpose and their conformity with the rule of law.

---

14 Global human rights sanctions

15 Global Magnitsky Act; Title XII, Subtitle F of P.L. 114-328, as amended; 22 U.S.C. §§10101. It was enacted in December 2016 for a six-year period but it was then permanently reauthorised in April 2022 (Section 6 of P.L. 117-110).

16 UK brings forward world's first sanctions regime to smash the gangs responsible for irregular migration - GOV.UK

17 UK warns British lawyers about possible US sanctions over advice to ICC in Israel case ; The ICC strongly rejects new US sanctions against Judges and Deputy Prosecutors | International Criminal Court.

18 Essex Court Chambers statement on sanctions imposed by Chinese Government | Essex Court Chambers

19 China imposes sanctions on UK MPs, lawyers and academic in Xinjiang row | China | The Guardian

20 China slaps sanctions on Korean shipbuilder accused of helping US

21 UK and US take joint action to disrupt major online fraud network - GOV.UK

22 Canada Gazette, Part 2, Volume 159, Number 5: Order Respecting the Seizure of Property Situated in Canada (Aircraft RA-82078). See 4.5 below.

2.2 Purpose and effectiveness of sanctions

The UK Government "*deploys sanctions to deter future or continued malign activity; to disrupt current malign activity; and to demonstrate our readiness to defend international norms. Our sanctions seek to isolate, restrict or change the behaviour of the actors targeted and to send a wider message.*"[23] This allows sanctions to be imposed if they would:

- further the prevention of terrorism, in the United Kingdom or elsewhere,
- be in the interests of national security,
- be in the interests of international peace and security,
- further a foreign policy objective of the government of the United Kingdom,
- promote the resolution of armed conflicts or the protection of civilians in conflict zones,
- provide accountability for or be a deterrent to gross violations of human rights, or otherwise promote (i) compliance with international human rights law, or (ii) respect for human rights,
- promote compliance with international humanitarian law,
- contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction,
- promote respect for democracy, the rule of law and good governance.[24]

The breadth of this list illustrates the ever-expanding purpose of sanctions.

Research on the effectiveness of sanctions produces widely varying conclusions.[25] In part this is explained by the differing definitions used and the differing measures of what constitutes effectiveness. Even considering the economic impact of sanctions is not straightforward given the potential difficulty in obtaining reliable data; the country subject to the sanctions may wish to try and minimise any perceived economic impact. There are also many different economic indicators which can be considered in any analysis. For example, it has been reported that year-on-year average monthly wage growth in Russia has exceeded the monthly inflation rate since August 2022.[26] It has also been suggested that the effectiveness of sanctions may differ depending on their stated aims in addition to the measures which are adopted as part of the sanctions regime.[27]

It is also not easy to determine whether, even if there has been a change in behaviour, this is caused in whole or in part by sanctions. The importance of this issue is, at least in

23 Deter-disrupt-and-demonstrate-UK-sanctions-in-a-contested-world.pdf

24 Section 1(2), Sanctions and Anti-Money Laundering Act 2018 ("SAMLA"). Section 1(1) also allows sanctions to be made which are to comply with a UN obligation or any other international obligation.

25 See, for example, the materials referred to at pages 72-75 of Sanctions against Russia (February 2022 to January 2025) Research Briefing Published Tuesday, 21 January, 2025. See also "*Consequences of Economic Sanctions: The State of the Art and Paths Forward*", Özgür Özdamar and Evgeniia Shahin, Internation Studies Review (2021) 23, 1646-1671.

26 Is the Ukraine war crushing Russia's economy? Quite the opposite

27 The Effects of Economic Sanctions, Simeon Djankov and Meng Su, Discussion Paper 913, September 2024 DP913.pdf.

theory, heightened because challenges to sanctions are often made on the basis of the proportionality of the human rights impact of sanctions to the objective of the sanctions. In the UK the test to assess proportionality in this context has been explained as:

> "*(i) whether [the measure's] objective is sufficiently important to justify the limitation of a fundamental right;*
> *(ii) whether [the measure] is rationally connected to the objective;*
> *(iii) whether a less intrusive measure could have been used; and*
> *(iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community.*
> *These four requirements are logically separate, but in practice they inevitably overlap because the same facts are likely to be relevant to more than one of them.*"[28]

In the UK, the Supreme Court when reviewing the Government's decision to designate under the Russian sanctions regime made it clear that the courts will defer to the Government's "*superior institutional competence to make the relevant assessment whether the sanctions imposed in these cases may serve some useful purpose in responding to and containing Russia's actions*".[29] However, the Court also recognised that: "*it is difficult both for the Government and for the court to understand what factors may or may not exert influence on President Putin and his government as regards the prosecution of the war. It is also difficult to assess whether any particular sanctions measure, or indeed any of the other measures put in place by the UK and its international partners, has had or may in future have an influence or effect.*"[30] Indeed, in a dissenting judgment in this case, Lord Leggatt argued that the Court was better suited than the Government to assess proportionality and suggested that "*judges are abdicating their responsibility if in making these judgments they defer to the executive's own view that it has struck a "fair balance"*".[31]

2.2.1 Economic Effectiveness of Sanctions

> "*First, the impact of sanctions on various economic agents (firms and individuals), sectors, and specific activities in target states has been negative and significant. Second, economic sanctions have had strong negative effects on the overall performance of the sanctioned states— including trade, foreign direct investment, growth, poverty, and political stability. Third, the effects of sanctions on economic*

28 *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39 at [20].

29 *Shvidler (Appellant) v Secretary of State for Foreign, Commonwealth and Development Affairs (Respondent); Dalston Projects Ltd and others (Appellants) v Secretary of State for Transport (Respondent)* [2025] UKSC 30 at [127].

30 *Shvidler (Appellant) v Secretary of State for Foreign, Commonwealth and Development Affairs (Respondent); Dalston Projects Ltd and others (Appellants) v Secretary of State for Transport (Respondent)* [2025] UKSC 30 at [179].

31 *Shvidler (Appellant) v Secretary of State for Foreign, Commonwealth and Development Affairs (Respondent); Dalston Projects Ltd and others (Appellants) v Secretary of State for Transport (Respondent)* [2025] UKSC 30 at [282] to [286].

development, trade flows, foreign direct investment, and growth are long-lasting and often persist even after sanctions are lifted. Fourth, the effects of sanctions can be very heterogeneous depending on their type (for example, trade versus financial sanctions or complete versus partial sanctions), on whether they are imposed unilaterally or multilaterally (for example, UN versus US sanctions), and on the specifics of individual cases."[32]

The economic effectiveness of sanctions is affected, for example, by the relative sizes of the countries which impose the sanctions and those that are subject to sanctions, the natural resources of the sanctioned country and the extent to which these countries trade. Russia, for example, still obtains significant revenues from oil and gas which is imported by EU Member States.[33] Economic effectiveness is also affected by whether there are secondary sanctions or the sanctions are extraterritorial.[34]

The UK estimated in February 2025, that global sanctions have deprived Russia of at least $450 billion since February 2022 when Russia invaded Ukraine. This includes:

- an estimate of direct tax revenue that the state has lost as a result of the widened discount on Russian crude oil compared to global benchmark oil prices ($154 billion); and frozen Russian sovereign assets in EU and other G7 institutions (approximately $285 billion).[35]

The indirect effect of sanctions can include inflationary pressures, decreased liquidity, and bond market volatility.[36] These can arise in both the country (or region where the EU is concerned) imposing the sanctions and the country which is subject to them.

The country subject to sanctions may in fact experience economic growth, for example, due to:

- the departure of foreign competitors and the emergence of domestic companies to replace them;
- the stimulation of industrialisation;
- the need to produce goods or grow food that was previously imported;
- the establishment of new financial, trading and political relationships; and
- an increase in defence spending.[37]

These changes may also serve to make the economy of the sanctioned country more self-sufficient and more able to withstand the potential negative effects of both the continuing sanctions and any further sanctions. The effectiveness of sanctions is also being challenged by developments such as the use of cryptocurrency.[38]

---

32 "*Economic Sanctions: Evolution, Consequences, and Challenges*" T. Clifton Morgan, Constantinos Syropoulos, and Yoto V. Yotov, Journal of Economic Perspectives—Volume 37, Number 1—Winter 2023—Pages 3–30.

33 How much Russian oil and gas is Europe still importing?

34 See 2.4 below.

35 Estimating the impact of sanctions on Russia's war efforts - GOV.UK

36 The Hidden Toll of Sanctions | Foreign Affairs and Stock market responses to economic sanctions: Evaluating the roles of national reserves and financial market access - ScienceDirect

37 Is the Ukraine war crushing Russia's economy? Quite the opposite

38 See, for example, 3.1.4 below.

It is also worth bearing in mind that, as already mentioned, sanctions may also have an economic impact on the countries which are imposing sanctions and it may be difficult to assess whether the cost of this, which may not be purely financial, is outweighed by either the economic harm caused to the country subject to the sanctions and / or the contribution of the sanctions to their aim/s.

2.2.2 Political Effectiveness of Sanctions

The political effectiveness of sanctions has to be assessed against their goal. Governments of countries which are subject to sanctions which weaken their economy and cause the living standards of their population to fall can in fact become more popular.[39] The government may encourage the population to "rally around the flag" and seek to blame any domestic issues on the sanctions which have been imposed. An associated indirect effect of sanctions can be the erosion of the impact of the political opposition. Again, this can lead to the unintended consequence of supporting the existing government, concentrating their power and undermining the purpose of sanctions.

In some instances, it is commonly accepted that sanctions may have contributed in whole or in part to the (current) achievement of the goal. To take an example, sanctions have been imposed against Iran by many bodies and countries including the United Nations, the European Union, the UK and the US. One of the aims of these sanctions is to curtail Iran's uranium enrichment programme. Some commentators have argued that sanctions have contributed to this aim.[40] At the other end of the scale, sanctions were applied against Russia following its incursion into Ukraine in 2014 and these did not cause Russia to withdraw from Ukrainian territory or stop its invasion in 2022[41].

2.3 Types of Sanctions

As has been discussed, sanctions can be imposed multilaterally, through bodies such as the United Nations or the European Union or through coordinated action by states, or unilaterally. Sanctions can apply to countries, individuals and / or legal entities with the purpose of affecting the behaviour of states, individuals or legal entities .

Broadly speaking, sanctions could be categorised as follows but sanctions may often fall into more than one category.

Financial Sanctions: Measures which restrict the ability to access and use financial resources and the provision of financial services. Examples include freezing the assets of designated persons or entities, restrictions on investing in certain economic sectors,

39 *Who Rallies Round the Flag? The Impact of the US Sanctions on Iranians' Attitude toward the Government*, *Foreign Policy Analysis"*, Babak RezaeeDaryakenari, Vahid Ghafouri, Nihat Kasap, Volume 21, Issue 1, January 2025, orae033, https://doi.org/10.1093/fpa/orae033

40 International Sanctions on Iran | Council on Foreign Relations. However, sanctions have now been reimposed on Iran – see UK reimposes UN sanctions on Iran - GOV.UK.

41 See, for example, the measures taken by the European Union at Timeline - EU sanctions against Russia - Consilium.

restrictions on the types of financial arrangements with named entities, restrictions on the transfer of funds to and from a country, restrictions on the provision of certain financial services such as insurance, banking services or access to the SWIFT system.

Trade Sanctions: Measures which restrict the import from and export to a country of goods, non-financial services or technology.

Transport Sanctions: Relating to the transport of goods between countries (for example, inspection of cargoes, providing insurance to ships and allowing docking), aviation, and the designation of vessels.

Immigration Sanctions: Bans on the ability to enter, remain or leave a country (also known as travel sanctions).

The UK's sanctions following the Russian invasion of Ukraine provide an illustration of the way in which sanctions can operate.[42] The UK has imposed financial, director disqualification, trade, aircraft, shipping and immigration sanctions to encourage Russia to cease actions which destabilise Ukraine, or undermine or threaten the territorial integrity, sovereignty or independence of Ukraine.[43] Sanctions apply within the territory of the UK and to the conduct of UK persons (even outside of the UK), including bodies incorporated or constituted under the law of any part of the UK. It is also unlawful for persons subject to the UK legislation to intentionally participate in activities if the object or effect of them is directly or indirectly to circumvent the prohibitions imposed by the sanctions or to enable or facilitate the contravention of those sanctions .

2.4 Extraterritoriality

Sanctions can have an effect outside of the country imposing them if, for example,

- they apply to the actions outside of the country for companies which are registered in that country and / or which operate in that country;
- they apply to nationals or residents of that country wherever their conduct takes place[44];
- they are stated to apply to conduct of other individuals or companies although this may give rise to legal and practical issues about the ability to enforce the sanctions.

The EU has historically "*condemned the extra-territorial application of third country's legislation imposing restrictive measures which purports to regulate the activities of natural and legal persons under the jurisdiction of the Member States of the European Union, as being in violation of international law*".[45]

42 CBP-9481.pdf

43 The Russia (Sanctions) (EU Exit) Regulations 2019 SI 2019/855.

44 See, for example, section 21 of Sanctions and Anti-Money Laundering Act 2018 which applies the UK sanctions regime to conduct outside of the UK by a United Kingdom person meaning UK nationals and UK companies.

45 Paragraph 52, Council of the EU, 'Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy' (4 May 2018).

US sanctions apply to "US Persons" and the expansive definition for this includes:

- US citizens (including persons holding another citizenship) wherever located;
- Lawful permanent resident aliens wherever located;
- Any other person physically in the US;
- Any entities incorporated in the US, as well as their foreign branches; and
- For some sanctions, such as Cuba and Iran, foreign subsidiaries owned or controlled by US companies.[46]

The reach of sanctions can also be extended by, for example, prohibiting the export of goods or services to companies in a third country on the basis that these companies would use them to trade with the target of the sanctions.[47] For example, this happened in 1982 when the US prohibited the export of some goods and technology to European Companies taking part in the Trans-Siberian Pipeline Project in the USSR.

Despite the EU's historical concern about these types of measures, they are now included in sectoral sanctions which have been imposed in relation to Russia.[48] Some trade controls prohibit those bound by EU sanctions from trading with non-EU third parties who trade with Russia or with those who are targeted by EU sanctions. Conversely, these rules are also intended to affect the conduct of these third parties by encouraging third parties to comply with EU sanctions so that they can continue trading with EU companies. In this regard, the Council of the EU adopted an obligation for persons bound by EU restrictive measures to "*undertake their best efforts to ensure that any legal person, entity or body established outside the Union that they own or control does not participate in activities that undermine the restrictive measures*."[49]

Secondary sanctions can also target third parties who engage with the target of the sanctions in conduct which would undermine or evade the effect of the primary sanctions. For example, the EU has the ability, for some sanctions programmes, to impose individual sanctions on third parties who facilitate circumvention or otherwise significantly frustrate EU sanctions.[50] The Countering Americas Adversaries Through Sanctions Act and Executive Order 13810 Imposing Additional Sanctions with Respect to North Korea (EO 13810) and the Iranian Financial Sanctions Regulations allowed OFAC to impose US secondary sanctions against foreign financial institutions if they undertook certain actions for or on behalf of designated persons.[51] The Bank of Kunlun in China, for

46 However, the EU has taken the position that the US "*has no basis in international law to claim the right to regulate in any way transactions taking place outside the US with Cuba undertaken by subsidiaries of US companies incorporated outside the US*." Presidency of the European Union and the European Commission (5 March 1996)' (1996)

35 International Legal Materials 397, 398 (Presidency of the EU and the Commission).

47 See paragraph 2.1, Chapter 5 "*Towards a new extraterritoriality of EU sanctions?*", "*International Sanctions: Monetary and Financial Law Perspectives*" Editors: Chiara Zilioli, Régis Bismuth, and Luc Thévenoz 2024.

48 See paragraph 3.2, Chapter 5 "*Towards a new extraterritoriality of EU sanctions?*", "*International Sanctions: Monetary and Financial Law Perspectives*" Editors: Chiara Zilioli, Régis Bismuth, and Luc Thévenoz 2024.

49 See, for example, Article 8a of Regulation (EU) 833/2014 as amended by Council Regulation (EU) 2024/1745 of 24 June 2024 and Recitals 27 to 30 of Council Regulation (EU) 2024/1745 of 24 June 2024.

50 See paragraph 3.1.3, Chapter 5 "*Towards a new extraterritoriality of EU sanctions?*", "*International Sanctions: Monetary and Financial Law Perspectives*" Editors: Chiara Zilioli, Régis Bismuth, and Luc Thévenoz 2024.

51 31 CFR Part 561.

example, was prohibited from accessing US financial markets for a period of at least 8 years because of its engagement with Iranian banks,.[52]

A further way to extend the reach of sanctions is to prohibit a third party from causing a company or individual that is subject to the sanctions to breach them. The US has controversially used this technique to target third parties not subject to US sanctions who carry out dollar denominated payments which are processed by correspondent banks in the US.[53] PNB Paribas SA reached an $8.9 billion settlement with the US Department of Justice.[54] The French bank pleaded guilty to conspiring from 2004 to 2012 to breach the International Emergency Economic Powers Act and the Trading with the Enemy Act. It had deliberately removed payment information from wire transfers so that they could pass through the US financial system without giving rise to concerns of sanctions infringement.[55]

These are just some examples of the ways in which sanctions can in law and in practice have extra-territorial application or effect. [56]

2.5 Enforcement

Taking the UK as an example, the sanctions legislation introduces criminal offences which aim to ensure that the prohibitions which are imposed are complied with and that there is no circumvention of them. Some of these carry a potential maximum sentence of ten years imprisonment. Historically, criminal prosecutions for offences related to the circumvention of sanctions had been infrequent. However, following the first successful prosecution under the UK's Russian sanctions regime, more prosecutions may follow.[57] This case resulted in one defendant receiving a forty-month custodial sentence and the other defendant receiving a suspended sentence of fifteen months. This case also illustrates the ability to prosecute a person for money laundering if they breach the sanctions regime and obtain a benefit from this breach. It is also possible to take measures to confiscate any benefit after a conviction.

Monetary penalties may also be imposed in the UK as an alternative to criminal prosecution for breaches of sanctions. In the context of financial sanctions, for example, the Treasury may impose a monetary penalty on a person if it is satisfied, on the balance of probabilities, that the person has breached sanctions and, in this context, any requirements relating to the person's state of mind is to be ignored.

52 Treasury Sanctions Kunlun Bank in China and Elaf Bank in Iraq for Business with Designated Iranian Banks | U.S. Department of the Treasury

53 See, for example, #09-023: Lloyds TSB Bank Plc Agrees to Forfeit $350 Million in Connection with Violations of the International Emergency Economic Powers Act (2009-01-09).

54 Office of Public Affairs | BNP Paribas Agrees to Plead Guilty and to Pay $8.9 Billion for Illegally Processing Financial Transactions for Countries Subject to U.S. Economic Sanctions | United States Department of Justice

55 "*Circumventing Sovereignty: Extraterritorial Sanctions Leveraging the Technologies of the Financial System*", Jaeger, M.D. (2021), Swiss Polit Sci Rev, 27: 180-192 at page 187. https://doi.org/10.1111/spsr.12436

56 Further examples are set out in Chapter 5 "*Towards a new extraterritoriality of EU sanctions?*", "*International Sanctions: Monetary and Financial Law Perspectives*" Editors: Chiara Zilioli, Régis Bismuth, and Luc Thévenoz 2024.

57 *R v Ovsiannikov and another*

A licensing regime has been introduced which provides either for general licences to be issued by the UK government to allow activity which would otherwise be prohibited or for specific licences to be issued by the Office for Financial Sanctions Implementation ("OFSI"). Breaches of the licensing regime can also result in criminal and financial penalties. The sanctions regime also includes reporting requirements and criminal and financial penalties can be imposed for non-compliance. Finally, there are requirements within the sanctions regime to provide information, which must be accurate, when requested and to keep information confidential when required.

OFSI has provided guidance as to how it will approach the use of its enforcement powers.[58] It will take into account the obvious factors such as the nature of the breach, the severity of the breach and the conduct of the individuals involved. OFSI considers the following to be aggravating factors:

- High value transactions;
- Repeated breaches of sanctions;
- Circumvention;
- Activity in the regulated sectors;
- Funds made available to a designated person; and
- Failure to provide requested information.

It lists the following amongst mitigating factors: Whether appropriate due diligence was conducted;

- Voluntary disclosure of suspected breaches to OFSI; and
- Cooperation with OFSI's investigation.

In response to the Russian invasion of Ukraine and impact of sanctions, many UK firms decided to exit the Russian market. Herbert Smith Freehills, decided to do so and its Russian subsidiary (Herbet Smith Freehills CIS LLP) made payments to designated persons subject to an asset freeze totalling £3,932,392.10.[59] It made a self-report to OFSI and was issued with a monetary penalty of £465,000.[60]

Since 2017, OFSI has imposed twelve penalties of over £20 million for breaches of sanctions and can also refer a case to the enforcement agencies for potential prosecution.[61]

Within the EU, the implementation and enforcement of EU restrictive measures are primarily the responsibility of Member States.[62]

58 Financial sanctions enforcement and monetary penalties guidance - GOV.UK

59 HSF Moscow Penalty: Key Lessons for Industry – Office of Financial Sanctions Implementation

60 HSF Moscow Penalty: Key Lessons for Industry – Office of Financial Sanctions Implementation ; A financial concierge service company has also received a financial penalty of £300,000 for breaching the sanctions regime- Penalty_Publication_Notice_-_MML.pdf.

61 See OFSI_s_enforcement_processes.pdf. See also the most recent sanction imposed by OFSI Colorcon_Penalty_Notice.pdf

62 See, for instance, 'Communication from the Commission to the European Parliament and the Council Towards a Directive on criminal penalties for the violation of Union restrictive measures', COM(2022) 249 final, 25 May 2022, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0249.

Member States apply restrictive measures and grant derogations to the freezing of assets, trade-related prohibitions or other restrictive measures through their national competent authorities which are listed in the annex to the relevant Council regulation.

Member States are also responsible for investigating and penalising breaches of EU restrictive measures within their jurisdiction. In order to do this Member States may need to adopt domestic legislation. Council regulations providing for restrictive measures include an obligation that Member States should '*lay down the rules on sanctions applicable to the infringements of the provisions of the* [Regulation] *and shall take all measures necessary to ensure that they are implemented'. Sanctions laid down by Member States must be 'effective, proportionate and dissuasive'*.[63]

There is a significant disparity among Member States on the type and severity of penalties that they impose. In order to address this disparity, on 28 November 2022, the Council adopted Decision (EU) 2022/2332, which added the violation of EU restrictive measures to the crimes included in Article 83(1) of the TFEU.[64]

Following the adoption of this decision, on 24 April 2024, the European Parliament and the Council adopted Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of EU restrictive measures. The Directive provides an obligation for Member States to criminalise the conduct identified by the Directive under their national law.

2.6 Counter sanctions [65]

Countries which are subject to sanctions may introduce counter sanctions. This section, by way of example, considers some of the measures which have been adopted in Russia since 2022.

Sanctions have prompted some foreign companies, including those with a long-standing presence in Russia, to restructure their operations and withdraw. Over the past three years, in response to sanctions imposed by the US, the UK, the EU, and other countries, the Russian Federation has significantly strengthened its countersanctions regime. This regime comprises a set of measures designed to protect the interests of the Russian economy, prevent capital outflow and encourage import substitution.

The sale of shares of Russian subsidiaries and even restructuring within a group may require preliminary clearance with the Sub-Commission of the Government Commission for Control over Foreign Investments ("the Sub-Commission").[66] These decrees introduced

63 See footnote 62; at Article 15, paragraph 1.

64 Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the European Union.

65 Vassily Rudomino and German Zakharov, Alrud, contributed to this section of the Working Paper.

66 Russian Presidential Decree No. 81 dated March 01, 2022 "On Additional Temporary Economic Measures to Ensure the Financial Stability of the Russian Federation", Russian Presidential Decree No. 618 dated September 08, 2022 "On the Special Procedure for the Implementation (Execution) of Certain Types of Transactions (Operations) between Certain Persons" and Russian Presidential Decree No. 737 dated October 15, 2022 "On Certain Issues Related to the Implementation (Execution) of Certain Types of Transactions (Operations)".

a special regime for the implementation of a wide range of transactions that would affect Russian companies. Some transactions may even require permission from the Russian President, if, for example, they affect strategic companies in Russia, credit organizations, entities participating in production sharing agreements for the Sakhalin-1 project and manufacturers that produce equipment for the fuel and energy industry.[67] Since the beginning of 2024, the Russian President has issued 26 decisions; for example he has approved transactions involving HSBC Bank (RR), Ozon Holdings Plc and Hailand Gold.

Countersanctions clearance is not currently required for asset transactions unless they concern the sale of real estate and IP rights.[68] These restrictions on the transfer of IP rights apply where the assignees are Russian residents and the assignors are Foreign Persons of "Unfriendly" States.

There are no time limits for decisions by the Sub-Commission and its approval is entirely discretionary meaning the decision-making process is unpredictable both in terms of timing and outcome. If permission is granted, then an "exit tax" of up to 35% of the asset's estimated value is required to be paid to the Russian federal budget.

Furthermore, foreign investors selling Russian businesses face significant hurdles and this may make it more difficult to find a buyer for these businesses. If businesses are put into liquidation, it can become a lengthy process and any proceeds may not be permitted to leave Russia. This can lead to businesses being wound down so that they are effectively dormant. However, the Russian Prosecutor General's Office has conducted inspections of "strategic companies" and it has alleged that the owners of some of these companies have harmed the country's interests by, for example, reducing potential production and other activities and selling equipment, circumventing the countersanctions legislation. In practice, the Russian Prosecutor General's Office has broad powers to investigate and it can impose measures such as depriving foreign companies of voting rights, confiscating shares or imposing an interim administration[69].

However, the Russian Government is also considering how foreign investors might return if there are positive developments in the geopolitical situation. For example, the President instructed the Government of the Russian Federation in March 2025 to develop a procedure for this and it is being taken forward by working groups of business associations and organizations such as the American Chamber of Commerce, the Association of European Businesses and the Russian Union of Industrialists and Entrepreneurs. The Ministry of Finance of the Russian Federation has already developed draft legislation which contemplates this.

67 Decree No. 520 dated August 05, 2022 "On the Application of Special Economic Measures in the Financial, Fuel and Energy Sectors due to the "Unfriendly" Actions of Certain Foreign States and International Organizations"

68 On 20 May 2024, Russian Presidential Decree No. 430 "On the Temporary Acquisition of the Exclusive Rights of Certain Rightsholders and the Fulfilment of Monetary Obligations to Individual Foreign Creditors and Persons under Their Control" ("Decree No. 430") was adopted, which restricts the transfer of IP rights.

69 President Decree No. 302 dated April 25, 2023 "On Interim Administration of Certain Property" allows for interim administration in relation to the Russian assets owned by Foreign Person of "Unfriendly" State.

Article 248 of the Russian Arbitrazh Procedural Code allows those affected by sanctions to apply to Russian courts for them to exercise their jurisdiction over disputes between Russian and foreign parties. In response to this provision, the Council of the EU has adopted Article 11c of Regulation (EU) 833/2014 which provides: "*No injunction, order, relief, judgement or other court decision pursuant to or derived from Article 248.1 or Article 248.2 of the Arbitration Procedure Code of the Russian Federation or equivalent Russian legislation shall be recognised, given effect or enforced in a Member State*".

3 The adoption and impact of sanctions

3.1 Designation Criteria[70]

The EU can impose sanctions, which are referred to as restrictive measures.[71] Such measures can be adopted based on a Decision and a Regulation by the Council of the EU ("the Council"). The Decisions adopted by the Council contain a list of designation criteria which define the categories of persons and entities who can be designated by the Council. The Council has a broad discretion in defining these criteria and they vary markedly between the different sanctions regimes.

For example, the sanctions regime which addresses actions destabilising the Republic of Moldova includes the following designation criteria:

> "*(a) natural or legal persons, entities or bodies responsible for, supporting or implementing actions or policies which undermine or threaten the sovereignty and independence of the Republic of Moldova, or democracy, the rule of law, stability or security in the Republic of Moldova, through any of the following actions:*
>
> *(i) obstructing or undermining the democratic political process, including by obstructing or seriously undermining the holding of elections or attempting to destabilise or overthrow the constitutional order;*
>
> *(ii) planning, directing, engaging in, directly or indirectly, supporting or otherwise facilitating violent demonstrations or other acts of violence; or*
>
> *(iii) serious financial misconduct concerning public funds and the unauthorised export of capital;*
>
> *(b) natural or legal persons, entities or bodies, who are associated with the natural or legal persons, entities or bodies designated under point (a).*"

By contrast, the designation criteria adopted by the Council as part of the sanctions regime against Russia is much wider and has been added to since February 2022.

70 Stéphane Bonifassi and Julie Bastien, Bonifassi Advocats, contributed to this section of the Working Paper.

71 See Decision adopted by the Council of the EU under Article 29 of the Treaty on the European Union ("TEU") and Regulation adopted by the Council of the EU under Article 215 of the Treaty on the Functioning of the European Union ("TFEU").

On 17 March 2014, when the sanctions regime against Russia was introduced in response to the annexation of Crimea, only "*natural persons responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine and natural or legal persons, entities or bodies associated with them*" could be designated[72].

Before the beginning of the war in Ukraine in February 2022, the list of designation criteria was:

> "*(a) natural persons responsible for, actively supporting or implementing, actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine, or which obstruct the work of international organisations in Ukraine, and natural or legal persons, entities or bodies associated with them;*
> *(b) legal persons, entities or bodies supporting, materially or financially, actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine;*
> *(c) legal persons, entities or bodies in Crimea or Sevastopol whose ownership has been transferred contrary to Ukrainian law, or legal persons, entities or bodies which have benefitted from such a transfer;*
> *(d) natural or legal persons, entities or bodies actively supporting, materially or financially, or benefitting from, Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Eastern Ukraine; or*
> *(e) natural or legal persons, entities or bodies conducting transactions with the separatist groups in the Donbass region of Ukraine,*"

At the time of writing, the list of designation criteria is :

> "*(a) natural persons responsible for, supporting or implementing actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine, or which obstruct the work of international organisations in Ukraine;*
> *(b) legal persons, entities or bodies supporting, materially or financially, actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine;*
> *(c) legal persons, entities or bodies in Crimea or Sevastopol whose ownership has been transferred contrary to Ukrainian law, or legal persons, entities or bodies which have benefitted from such a transfer;*
> *(d) natural or legal persons, entities or bodies supporting, materially or financially, or benefitting from Russian decision-makers responsible for the annexation of Crimea or the destabilisation of Ukraine;*
> *(e) natural or legal persons, entities or bodies conducting transactions with the separatist groups in the Donbas region of Ukraine;*
> *(f) natural or legal persons, entities or bodies supporting, materially or financially, or benefitting from the Government of the Russian Federation, which is responsible for the annexation of Crimea and the destabilisation of Ukraine; or*

72 Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, Article 1(1).

(g) leading businesspersons operating in Russia and their immediate family members, or other natural persons, benefitting from them, or businesspersons, legal persons, entities or bodies involved in economic sectors providing a substantial source of revenue to the Government of the Russian Federation, which is responsible for the annexation of Crimea and the destabilisation of Ukraine; or

(h) natural or legal persons, entities or bodies:

(i) facilitating infringements of the prohibition against circumvention of the provisions of this Decision, or of Decisions 2014/386/CFSP, 2014/512/CFSP or (CFSP) 2022/266, or of Regulations (EU) No 269/2014, (EU) No 692/2014, (EU) No 833/2014 or (EU) 2022/263; or

(ii) otherwise significantly frustrating those provisions; or

(i) legal persons, entities or bodies operating in the Russian IT-sector with a license administered by the Federal Security Service of the Russian Federation (FSB) Center for Licensing, Certification, and Protection of State Secrets or a 'weapons and military equipment' license administered by the Russian Ministry of Industry and Trade; or

(j) entities established in Russia, previously owned or controlled by entities established in the Union, ownership or control of which has been compulsorily transferred by the Government of the Russian Federation through laws, regulations, other legislative instruments or other action of a Russian public authority, or natural or legal persons, entities or bodies that have benefitted from such a transfer, and natural persons who have been appointed to the governing bodies of such entities in Russia without the consent of the Union entities which previously owned or controlled them;

(k) natural or legal persons, entities or bodies that own, control, manage or operate vessels that transport crude oil or petroleum products, originating in Russia or exported from Russia, while practicing irregular and high-risk shipping practices as set out in the International Maritime Organisation General Assembly resolution A.1192(33), or that otherwise provide material, technical or financial support to the operations of such vessels; or

(l) natural or legal persons, entities or bodies forming part of, supporting, materially or financially, or benefitting from Russia's military and industrial complex, including by being involved in the development, production or supply of military technology and equipment; or

(m) natural or legal persons, entities or bodies that have participated in or enabled transfers of ownership, control or economic benefit of the business interests of leading businesspersons who are subject to Union restrictive measures pursuant to the criterion set out in point (g) of this paragraph and listed in the Annex to this Decision, with the exception of transfers expressly permitted pursuant to derogations and exemptions laid down in this Decision, Decision 2014/512/CFSP, or Regulation (EU) No 269/2014 or (EU) No 833/2014, and natural or legal persons, entities or bodies associated with them"[73]

In addition to extending the list of grounds for designation, the Council has made the criteria wider.

73 Council Decision 2014/245/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, as amended by Council Decision (CFSP) 2025/1895 .

One of the best illustrations of this is the evolution of the designation criterion provided under Article 2(1)(g) of Decision 2014/145/CFSP ("criterion (g)").

This criterion was first introduced by Decision (CFSP) 2022/329 of 25 February 2022: "*leading businesspersons or legal persons, entities or bodies involved in economic sectors providing a substantial source of revenue to the Government of the Russian Federation, which is responsible for the annexation of Crimea and the destabilisation of Ukraine*".

It was then amended by Decision (CFSP) 2023/1094 of 5 June 2023: "*leading businesspersons operating in Russia and their immediate family members, or other natural persons, benefitting from them, or businesspersons, legal persons, entities or bodies involved in economic sectors providing a substantial source of revenue to the Government of the Russian Federation, which is responsible for the annexation of Crimea and the destabilisation of Ukraine*".[74]

Finally, it was further widened by Decision (CFSP) 2025/904 of 13 May 2025. This decision added Article 2b to Decision 2014/145/CFSP:

> "*Leading businesspersons operating in Russia listed in the Annex pursuant to Article 1(1), point (e), and Article 2(1), point (g), who claim to have transferred ownership, control or economic benefit of their business interests on or after 24 February 2022 shall continue to be considered as leading businesspersons and maintained in the list set out in the Annex, unless sufficient, recent and reliable information demonstrates that they no longer meet the criteria set out in Article 1(1), point (e), and Article 2(1), point (g).*"

The legality of criterion (g) has been challenged before the General Court of the EU in annulment actions filed by persons designated under this criterion. The applicants have, for example, argued that criterion (g) is based on incorrect and unsubstantiated assumptions, is disproportionate and violates the principle of legal certainty.

However, since the Council has a large margin of appreciation when adopting and defining designation criteria, the EU courts' judicial review of a designation criterion is limited and the pleas of illegality concerning criterion (g) have so far consistently been dismissed by the General Court of the EU.[75]

It remains to be seen whether these decisions will be upheld on appeal before the ECJ. Several appeals concerning criterion (g), in its form prior to the amendment of 5 June 2023, have been joined at the stage of the oral hearing before the ECJ. The opinions of the Advocate General Medina were delivered in these cases on 5 June 2025.[76] Although the

74 The justification for this amendment can be found in Recitals 4 and 5 of the Decision.

75 For example, see *Pumpyanskiy v Council* C-696/23 P, *Khudaverdyan v Council* C-704/23 P, *Rashnikov v Council* C-711/23 P, *Mazepin v Council* C-35/24 P and *Khan v Council* C-111/24 P. See 2.2 above for the UK Supreme Court's approach to review.

76 https://curia.europa.eu/jcms/upload/docs/application/pdf/2025-06/cp250065en.pdf

Advocate General argues that the ECJ should rule that criterion (g) is legal, she appears to suggest a limited interpretation for some parts of it.

3.2 Associates and family members

> "*The Council has also assessed that leading Russian businesspersons have engaged in a systematic practice of distributing their funds and assets amongst their immediate family members and other persons, often in order to hide their assets, to circumvent the restrictive measures and to maintain control over the resources available to them. Therefore, the Council considers that immediate family members or other natural persons, who benefit in such a way from leading businesspersons operating in Russia, should also be designated as appropriate, in order to both increase pressure on the Government of the Russian Federation to bring an end to its war of aggression against Ukraine as well as to avoid the risk of circumvention of the restrictive measures.*"[77]

The designation criteria sometimes target categories of persons and entities that are not necessarily considered to be responsible for or who do not have a direct connection to the reason for the sanctions as can be seen from criterion (g) discussed above. This link is even more stretched if persons and entities are designated on the ground that they are associated with a person who is designated. Most EU sanctions regimes providing for individual sanctions provide a designation criterion which targets persons and entities associated with persons who are the primary targets of sanctions (the "association criterion").

For example, the sanctions regime for actions destabilising the Republic of Moldova allows for the designation of "*natural or legal persons, entities or bodies, who are associated with the natural or legal persons, entities or bodies designated under [one of the other designation criteria]*"[78].

The reasoning given to justify this extended designation criterion is often to prevent the risk of circumvention of the restrictive measures adopted against a designated person by also listing persons and entities associated to them. However, it appears that the Council is not required to establish that a such risk in fact exists in a specific case when using the association criterion.

Although this criterion is often used to designate family members of a designated person, the application of restrictive measures to individuals, irrespective of their personal conduct and solely on the basis of their family ties with designated persons is contrary to the case-law of EU courts. Therefore, the Council needs to identify common interests between the designated person and its associate going beyond the interests normally shared as part of the family relationship.[79]

---

77 Recital 5 of Decision (CFSP) 2023/1094 of 5 June 2023.

78 Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, Article 1(1), under b).

79 *Prigozhina v Council*, T-212/22, judgment of 8 March 2023 at [93] and [103].

However, some US executive orders allow the designation of a person on the sole ground that they are the family member of a designated person. For example, under Executive Order 14014 of 10 February 2021, with respect to the situation in Burma, any person who is determined by the authorities "*to be a spouse or adult child of any person whose property and interests are blocked pursuant to this order*" can be subject to sanctions.

The UK is also able to designate persons who are associated to the primary targets of the sanctions regime. For example, under the Russian sanctions regime, the designation criteria include a person who is associated with a person who is involved in destabilising Ukraine or who is obtaining a benefit from supporting the Government of Russia.[80] The legislation defines "*association*" with an involved person as including "*an immediate family member of that person*".[81] Sanctions against family members have been incrementally introduced by the UK, with the intention of sending "*a strong signal that those benefiting from association of those responsible for Russian aggression are in scope of our sanctions*".[82]

The CJEU recently ruled, with respect to the sanctions regime against Russia, that the association criterion should be given a broad interpretation:

> "*Having regard to the fact that the word 'associated' that appears, for example, in Article 1(1) in fine of Decision 2014/145 is used generically without any further clarification or contextualisation and that, as is also apparent, in essence, from recitals 6 and 7 of each of the initial acts at issue, the purpose of imposing restrictive measures on persons associated with other persons who are themselves subject to restrictive measures is to prevent the risk of those measures being circumvented […], the concept of association must be given a broad interpretation which therefore cannot be limited to persons associated by business links or economic or shareholding links […].*"[83]

Therefore, in order to be "*associated*", there is no need for an identified common interest to take the form of economic activity or to be formalised in a legal structure. For example, having a role in a charitable association together with a designated person has been deemed sufficient by the CJEU to establish an association.[84] Moreover, EU courts have ruled that, as far as the sanctions regime against Russia is concerned, there is no need for the associated person to have any link with the situation that the Council is seeking to address with the sanctions regime.

3.3 Selection Process for Designation

The Council has the power to consider whether to designate a person meeting the conditions of a designation criterion. Although the Council "*cannot include on the*

80 SI 2019/855 Russia (Sanctions) (EU Exit) Regulations 2019 (SI 2019/855), para 6(2)(d).

81 SI 2019/855 Russia (Sanctions) (EU Exit) Regulations 2019 (SI 2019/855), para 6(6).

82 Foreign Secretary announces 65 new Russian sanctions to cut off vital industries fuelling Putin's war machine - GOV.UK

83 *Timchenko v Council*, Case C-703/23 P, judgment of 1 August 2025 at [32].

84 *Pumpyanskaya v Council*, Case T-272/2.

lists people who do not satisfy the criteria for designation laid down by the applicable measures, it is not required to include on those lists all the persons who do satisfy those criteria. The Council has a broad discretion enabling it, when appropriate, not to impose restrictive measures on such a person or entity, where the Council considers that, in the light of the objectives of those measures, it would not be appropriate to do so."[85]

The CJEU has consistently ruled that "*even if the Council had in fact failed to adopt measures freezing the funds of certain persons meeting the criterion at issue [...] the applicant cannot successfully rely on that fact, because the principle of equal treatment and non-discrimination and the principle of sound administration must be reconciled with the principle of legality, according to which no one may rely, to his own benefit, on an unlawful act committed in favour of another.*"[86]

Therefore, the process of designation raises serious questions about the potential arbitrariness of sanctions.

The Supreme Court in the United Kingdom considered a case in which there has been a selective process of designation. While the majority of the Court found that there was nothing unlawful about this, in a dissenting decision one of the judges commented:

> "*None of the other directors of Evraz plc was designated along with Mr Shvidler. (The two individuals who control the company in concert with Mr Abramovich, neither of whom is British, were subsequently designated in November 2022.) Nor, for example, according to Mr Shvidler's uncontested evidence, has the government designated any current or former director of BP, another UK company which had interests in the Russian extractives sector when Russia invaded Ukraine. At that time, unlike Evraz plc, BP was heavily and profitably engaged in a joint venture with the Russian state-owned Rosneft Oil company, with two members on the board of Rosneft. If sanctioning an individual for working as a director of a company which had invested in the Russian extractives sector was thought likely to contribute to achieving the purposes set out in regulation 4, then it was irrational to single out Mr Shvidler. It was irrational both because to do so was arbitrary and because it undermined any contribution that sanctioning individuals who had worked as directors of such companies could conceivably make. If the designation of Mr Shvidler sent any signal to others in his position, it was that he alone had been targeted – presumably for other reasons – and that the performance of their roles did not expose them to sanctions.*" [87]

This process of selection suggests that sanctions designations may involve a balance in terms of trying to achieve the aim of the sanctions regime and commercial, political and other sometimes unknown factors.

---

85 *Positive Group PAO v Council*, Case T-573/23, judgment of 10 September 2025 at [51].

86 *Iran Insurance Company v Council*, Case T-63/14, judgment of 3 May 2016 at [136].

87 Paragraph 318, *Shvidler (Appellant) v Secretary of State for Foreign, Commonwealth and Development Affairs (Respondent); Dalston Projects Ltd and others (Appellants) v Secretary of State for Transport (Respondent)* [2025] UKSC 30.

3.4 Contractual impacts

Sanctions can have severe impacts on existing contracts between private parties. It may not be possible to perform certain contractual obligations without breaching sanctions. To take an obvious example, in the case of a financial sanction imposing an asset freeze on a person, no payment can be made to them even if this is contractually required (in such circumstances, the sanctions regimes may include some derogations allowing payments pursuant to contracts concluded before the adoption of sanctions, often requiring an authorisation from the national regulator). If the sanctions regime restricts the provision of a service altogether, such as the provision of insurance, then this could frustrate a contract which required insurance or render it void.

In the UK[88], provided a party is acting in accordance with the sanctions regime, they cannot be found to be in breach of contractual obligations owed to another party.[89] In *Celestial Aviation Services LTD v UniCredit Bank AG*, the UK Court found that the party must prove that (i) they believed that their act or omission was in compliance with sanctions, and (ii) this belief was reasonable.[90] Similarly, EU restrictive measures provide for no claims clauses in the different sanctions regimes.[91]

In addition to this protection, sanctions can also lead to contracts becoming frustrated or void for illegality. In the UK, the courts have generally taken the position that, where the performance of the contract is rendered unlawful by sanctions imposed after the formation of the agreement, the contract should be treated as frustrated.[92] Importantly, the contract is not *void ab initio*. Therefore, parties are only discharged from performing future obligations and will remain liable for historic liabilities.[93] In considering whether to treat the contract as having been frustrated, the English courts will take into consideration the effect, if any, of any licences provided by the UK Government in order to mitigate the impact of the relevant sanctions regime. [94]

Contractual Issues in the US[95]

On November 26, 2024, the U.S. Court of Appeals for the Fifth Circuit issued a significant

88 See Appendix 3 for more information about the law in the UK.

89 Section 44 of SAMLA.

90 *Celestial Aviation Services LTD v UniCredit Bank AG, London Branch* [2023] EWHC 1071 (Comm) (05 May 2023).

91 See, for example, Article 22 of Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran or Article 7 of Council Decision 2014/512/CFSP of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

92 *Islamic Republic of Iran Shipping Lines v Steamship Mutual Underwriting Association (Bermuda) Ltd* [2010] EWHC 2661 (Comm) at [100].

93 *Krell v Henry* [1903] 2 KB 740.

94 *Islamic Republic of Iran Shipping Lines v Steamship Mutual Underwriting Association (Bermuda) Ltd* [2010] EWHC 2661 (Comm).

95 Adam Kaufmann: Lewis Baach Kaufmann Middlemiss PLLC contributed this section of the Working Paper.

decision in *Van Loon v. Department of the Treasury*,[96] challenging OFAC's[97] authority under the International Emergency Economic Powers Act (IEEPA) to sanction immutable smart contracts associated with Tornado Cash, a cryptocurrency mixing service. This decision is notable both because it marks one of the few opinions scaling back OFAC's authority and because it was one of the early decisions following the Supreme Court's landmark 2024 decision scaling back judicial deference to administrative agency decision-making.[98]

Tornado Cash is an open-source, decentralized protocol that facilitates anonymous cryptocurrency transactions by obfuscating the origins and destinations of digital asset transfers. When a user deposits cryptocurrency into the Tornado Cash smart contract, the funds are pooled with others, and a cryptographic note is generated as a receipt. Later, the user can withdraw the same amount of cryptocurrency to a different address without revealing the source of the funds, thereby enhancing privacy.

However, Tornado Cash's anonymizing capabilities have also allegedly made it attractive to various illicit actors, most notably state-sponsored hacking groups and cybercriminals seeking to launder stolen cryptocurrency. The most prominent case involves the Lazarus Group, a North Korean state-sponsored hacking organization, which reportedly used Tornado Cash to launder hundreds of millions of dollars in cryptocurrency from high-profile attacks. According to OFAC, Tornado Cash was used to obfuscate the origins of more than $1 billion in illicit funds. These activities prompted OFAC to sanction Tornado Cash in August 2022, citing its role in facilitating money laundering and the evasion of international sanctions. OFAC's designation included Tornado Cash's smart contracts, which are self-executing code deployed on the Ethereum blockchain.

Six users of Tornado Cash filed suit, arguing that OFAC exceeded its statutory authority by sanctioning immutable smart contracts, which, by design, cannot be altered or controlled by any party, including their creators. The U.S. District Court for the Western District of Texas granted summary judgment in favour of the Treasury Department, finding that the smart contracts constituted "property" under IEEPA and that Tornado Cash had an interest in them.

The Fifth Circuit reversed the district court's decision, ruling that immutable smart contracts could not be considered "property" under IEEPA. Notably, the Fifth Circuit's decision came on the heels of the U.S. Supreme Court decision in *Loper Bright Enterprises v. Raimondo*,[99] wherein the Supreme Court set aside decades of jurisprudence by abandoning the so-called "Chevron Deference", the legal doctrine requiring courts to defer to an administrative agency's reasonable interpretation of the law. Chevron

96 *Van Loon v. Department of the Treasury*, 122 F.4th 549 (5th Cir. 2024).

97 "*The Office of Foreign Assets Control of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.*"

98 *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

99 *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

deference was a foundational administrative law doctrine stemming from the 1984 Supreme Court decision *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*.[100] Under this framework, when a statute administered by a federal agency is ambiguous, courts were required to defer to the agency's reasonable interpretation of the law, so long as Congress had not directly addressed the precise issue. Under the Supreme Court's decision in *Loper Bright Enterprises*, courts are no longer obligated to accept agency interpretations solely because a statute is ambiguous; instead, they must determine the best reading of the law themselves.

Applying this post-*Chevron* analytic framework, the Fifth Circuit concluded that the smart contracts provided by Tornado Cash are not "property" because they are not capable of being owned, controlled, or altered by anyone, including their creators. The court emphasized that property, by definition, must be ownable, and the immutable smart contracts do not meet this criterion. The court also addressed OFAC's regulatory definitions, which include "contracts of any nature" and "services of any nature" as property. However, the court found that the immutable smart contracts are not contracts, as they lack mutual agreement between parties; nor are they services, as they do not involve human effort or labor. The court drew an ontological distinction between a service (which could be regulated under OFAC's authority) and a tool that *provides* a service, which is how it defined the smart contracts at issue. Consequently, the court held that OFAC exceeded its statutory authority by sanctioning Tornado Cash's immutable smart contracts.

This decision limits OFAC's authority to regulate certain decentralized software and technologies. It underscores the challenges of applying existing legal frameworks to emerging technologies like blockchain and decentralized finance. The ruling expressly notes that legislative updates may be necessary to address the regulation of immutable, autonomous digital tools that exist in today's digital world.

Typically, one would have expected the government to appeal this decision to the Supreme Court. However, in March of this year, the Trump administration removed Tornado Cash from the OFAC list, citing the administration's philosophical disagreement with regulations it views as hostile to the development of cryptocurrencies and digital platforms. While the delisting of Tornado Cash is consistent with President Trump's general embrace of crypto technology, the Treasury Department also maintained its commitment to disrupting the ability of malicious cyber actors to exploit digital assets. How these seemingly contradictory positions within the administration will play out is anyone's guess. There is an ongoing philosophical tension between the liberty and privacy interests cited by crypto advocates and the extent to which the U.S. government is willing to tolerate access to such systems by illicit actors, including hostile state actors. There are currently a number of crypto regulatory measures pending before Congress which may bring clarity to this question.

100 *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

3.5 Commercial impacts

Financial institutions, financial payment systems and central banks and regulators each face specific and complex challenges arising from sanctions. This section will discuss some of the key considerations for each.

3.5.1 Financial Institutions

By their nature, financial sanctions have a significant impact on financial institutions and there is an increasing use of financial sanctions to prevent sanctioned parties from accessing capital markets and funds. This means that financial institutions must put in place compliance procedures to ensure that they do not breach sanctions. These include a know-your-customer due diligence process which is first undertaken at the start of the client relationship to establish the true identity of the client, the source of their funds and any ultimate beneficial owner.

The penalties for breaches of sanctions can be severe. On 18 February 2020, Standard Chartered Bank received a fine of £20.47m in the UK from OFSI for making funds available to a designated person without a licence.[101] In the US, if OFAC considers that a foreign financial institution has knowingly facilitated a 'significant transaction' or provided 'significant financial services' to a designated party, the bank could become subject to secondary sanctions.[102] These secondary sanctions could include being denied access to the US correspondent and payable-through systems, and being designated as a specially designated national[103] which leads to further prohibitions.

Financial institutions have also been given significant monitoring activities and reporting requirements to try and ensure that sanctions regimes are upheld and any violations detected. At the most basic level, financial institutions and other specified types of entities will have to report known or suspected sanctions breaches to their relevant supervisory authority. For example, in the UK, banks (and other "relevant firms") are required to report to OFSI as soon as reasonably practicable if they have reasonable cause to suspect that a person has breached the sanctions regime or that they hold frozen funds.[104]

3.5.2 Financial Payment Systems and Central Banks

A relatively recent development has been the restriction of designated persons' access to international financial payment systems.[105] Domestic payments are normally settled by the bank carrying out the transaction, if both parties are customers of the same bank, or by

101 Enforcement of financial sanctions - GOV.UK

102 See 2.4 above which consider secondary sanctions.

103 "*As part of its enforcement efforts, OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries..... such individuals and companies are called "Specially Designated Nationals" or "SDNs." Their assets are blocked and U.S. persons are generally prohibited from dealing with them.*" | Office of Foreign Assets Control

104 For example, SI 2019/855 Russia (Sanctions) (EU Exit) Regulations 2019 (SI 2019/855), para 70(1) and (1ZA)

105 "*Financial Sanctions, SWIFT, and the Architecture of the International Payment System*", Marco Cipriani, Linda S. Goldberg, Gabriele La Spada, Journal of Economic Perspectives, vol. 37, no. 1, Winter 2023, (pp. 31–52).

the country's central bank. International payments have up to now mainly been processed by the Society for Worldwide International Financial Telecommunication ("SWIFT").[106] SWIFT allows financial institutions to communicate in real time and removing access to it can cause severe commercial consequences for a financial institution.[107] Countries which are subject to these sanctions, or which are concerned to ensure that they guard against them, are seeking to build their own separate and independent clearing houses for cross-border payments.[108]

Central banks have customarily enjoyed both jurisdictional immunity and immunity from attachment and execution.[109] This historically insulated central banks from many of the direct effects of sanctions. However, this is, for example, not the case for the sanctions against Russia.[110]

3.5.3. Regulators

In the UK, regulators have also been working to ensure that those they regulate are complying with sanctions regimes. For example, in 2022/2023 the Financial Conduct Authority ("**FCA**") reviewed the actions of over 90 regulated firms to assess their sanctions systems and controls.[111] Stemming from this review, the FCA launched a new sanctions reporting tool, which allows firms to report sanctions breaches as well as suspected weaknesses in the systems and processes of other organisations.[112] Another example is provided by the approach of the Solicitors Regulation Authority which has provided guidance and carried out widespread inspections in particular focussing on firms acting for designated entities and people.

4 Challenges

4.1 Legal challenges and rule of law issues

Multi-lateral sanctions issued by the United Nations are created by the UN Security Council, for example, under Chapter VII of the Charter to confront "*threats to peace, breaches of the peace, and acts of aggression*". Article 41 allows the Security Council to require UN Member States to adopt sanctions regimes.

The European Union also has a clear legal basis to impose sanctions which have to be applied by all Member States under Article 29 of the Treaty of the European Union and Article 215

106 See 2.3 above.

107 "*Financial Sanctions, SWIFT, and the Architecture of the International Payment System*", Marco Cipriani, Linda S. Goldberg, Gabriele La Spada, Journal of Economic Perspectives, vol. 37, no. 1, Winter 2023, (pp. 31–52) at page 32.

108 https://www.csis.org/analysis/sanctions-swift-and-chinas-cross-border-interbank-payments-system

109 https://www.newyorkfed.org/medialibrary/media/newsevents/speeches/2023/ostrander-paper-economic-sanctions-law-central-bank-immunity.pdf

110 Sanctions on Russia's central bank

111 The FCA's supervisory approach to sanctions | Deloitte UK

112 The FCA's supervisory approach to sanctions | Deloitte UK

of the Treaty on the Functioning of the European Union. This has led to an argument that multi-lateral sanctions are a legitimate tool under international customary law.[113]

The status under international law of unilateral sanctions is not clear. Some argue that given the 1970 Declaration of Friendly Relations Among States and the 1973 Charter of Economic Rights and Duties of States, unilateral sanctions that violate the economic and political sovereignty of another state are prohibited. The UN General Assembly periodically passes resolutions concerning the use of unilateral sanctions and the concerns about the use of these measures.[114]

The legal basis for unilateral sanctions is further complicated if they include secondary and / or extraterritorial sanctions. As has already been referred to, the US' sanctions against Iran removed Iranian access to US trade and financial institutions and also led to secondary sanctions on foreign financial institutions which breached these sanctions.[115]

It has not always been possible for those who have been designated to challenge this designation. The ability to challenge a designation by the United Nations was considered by the European Court of Justice (as it then was) and it found that it involved violations of the designated person's right to be heard, right to effective judicial review and right to property.[116] Since this, the UN has introduced quasi-judicial mechanisms for challenging designations including setting up the Office of the Ombudsman. However, any decisions in this review process are non-binding and the Office of the Ombudsman lacks enforcement powers. The UK Supreme Court expressed its concerns in *Ahmed v HM Treasury*, where it held that, "*even after the reforms…there is little that individuals can do to launch an effective challenge to their listing after it has occurred*".[117]

When designated by the Council of the EU, it is possible to file a request for reconsideration (an administrative challenge) before the Council. In addition, it is possible to bring a judicial challenge before the General Court of the European Union in first instance and then, on appeal, before the Court of Justice of the European Union. However, the grounds for any challenge are restricted and as EU sanctions are renewed periodically, any successful judicial challenge is likely to take some time to be decided and so will be dealing with historic sanctions and will not affect any current designation.

In many countries it is also possible to challenge sanctions which the country has imposed. For example, in the UK, designated persons can challenge their designation.[118] The ability to bring such a challenge was introduced after the UK left the EU. In *LLC*

113 Legality of Economic Sanctions Under International Law – Denver Journal of International Law & Policy

114 Resolution adopted by the General Assembly on 17 December 2024 [on the report of the Third Committee (A/79/458/Add.2, para. 99)] 79/167. Human rights and unilateral coercive measures

115 See 2.4 above.

116 Judgment of the Court (Grand Chamber) of 3 September 2008. Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities. Common foreign and security policy (CFSP) Joined cases C-402/05 P and C-415/05 P., ECLI:EU:C:2008:461.

117 Ahmed and others v HM Treasury (Justice intervening); sub nom A and others v HM Treasury [2010] UKSC 2 at [181].

118 Section 38 SAMLA.

Synesis v Secretary of State for Foreign Commonwealth and Development Affairs[119], the first challenge was heard and in dismissing the appeal, the Court noted that the traditional principles of a public law review were to be used. Accordingly, the court could not '*stand in the shoes*' of the Government and could only overturn the decision if the designation was unlawful, based on no evidence or was irrational. The relevant Minister will be given significant leeway when making their decision and can draw on a wide range of information including "*hearsay*" and "*intelligence*". This, combined with the widely-defined criteria for designation, leads to a high bar for any designated person to successfully challenge their designation.[120]

4.2 Avoidance and evasion of sanctions

A natural consequence of the implementation of sanctions are attempts to avoid and evade these restrictions. Sanctions avoidance is generally considered to be acting in order to not fall within the scope of sanctions.[121] This can include restructuring or the divestment of subsidiaries that would otherwise be caught by sanctions. By contrast, sanctions evasion is when a person or entity acts to circumvent the effect of sanctions and most sanctions regime prohibit this. However, it can be difficult to identify the line between avoidance and evasion.

Sanctions evasion can involve the use of:

(i) family members and close associates to ensure continued access to and control of assets;
(ii) complex ownership structures to avoid identification;
(iii) enablers to avoid involvement and / or use their expertise; and
(iv) third-party jurisdictions and false trade information.[122]

In the UK, OFSI in its April 2025 report on the Property and Related Services: Threat Assessment, reached the following conclusions:

- It is almost certain that UK property and related services firms have underreported suspected breaches of financial sanctions to OFSI.
- It is almost certain that designated persons have breached UK financial sanctions by making or facilitating transactions for the benefit of their UK properties without or outside the scope of an OFSI licence or applicable exception.
- It is highly likely that property-related suspected breach activity by or on behalf of Russia designated persons has been facilitated by small-scale property or related services firms or sole practitioners with high-risk appetites and longstanding relationships with designated persons.
- It is highly likely that designated persons, particularly Russian designated persons, have used intricate layers of ownership to distribute their wealth by placing property and related assets under the ownership and control of their family members.

119 *LLC Synesis v Secretary of State for Foreign Commonwealth and Development Affairs* [2023] EWHC 541 (Admin)

120 See also 2.2.

121 Sanctions evasion: the art of hiding and not getting caught | LSEG.

122 See, for example, Global Advisory on Russian Sanction Evasion.

- It is almost certain that UK property and related services firms have acted as professional enables for designated persons, thus facilitating sanctions breaches.

The UK Government has carried out a review of sanctions implementation and enforcement, which suggested improvements to the system.[123] These include publishing information about sanctions enforcement actions and ensuring that breaches are publicised and any lessons to be learned from these are disseminated.[124]

4.3 Operation and resource issues

The growth in the number of sanctions regimes and the exponential growth in the number of designations since the Russian invasion has placed significant strains on the systems which are in place to operate the sanctions regime and enforce the application of the regimes. In the UK, for example, since 2022 OFSI has seen an enormous increase in applications for licences to permit activities that would otherwise be prohibited.[125] In response it has, for example, issued an increasing number of General Licences including a general licence allowing funds to be used to meet the basic needs of designated persons for a short period following designation.[126] Before this, a designated person who wanted to pay for their basic needs in the UK (or outside of the UK if they are UK nationals) was prohibited from doing so without a specific licence.

4.4 Blocking Statutes

In 1996, the US introduced the ability to impose secondary sanctions as part of the unilateral sanctions regimes it imposed against Cuba, Iran and Libya. The EU had not imposed similar sanctions and was concerned to avoid any impact on EU nationals or companies and their trade with these countries.

Therefore, the EU passed the EU Blocking Regulation (Council Regulation (EC) No 2271/96)[127]. The effect of the blocking regulation was to prohibit persons in the EU from complying with these US Sanctions. The CJEU in Case C-124/20 explained how the Blocking Statute works in practice: if a person operating within the EU has terminated a contractual obligation with a person subject to these US Sanctions, then they are entitled to bring a claim for damages or compensation under the Blocking Statute and this can include the right to nullify any termination.[128] This is an example of how unilateral sanctions can lead to a conflict between countries which have different political and commercial considerations. It can also place individuals and companies in a difficult position as on

123 Cross-government review of sanctions implementation and enforcement - GOV.UK

124 Cross-government review of sanctions implementation and enforcement - GOV.UK

125 OFSI Annual Review 2023-24: Engage, Enhance, Enforce - GOV.UK

126 Interim Basic Necessities for Designated Persons, INT/2025/5632740

127 This was amended in amended in 2018 following the US's withdrawal from the Joint Comprehensive Plan of Action.

128 *Bank Melli*

the one hand they risk adverse consequences under a blocking statute and on the other they may face action by the country imposing the sanctions.[129]

4.5 Frozen assets

Significant sums can be frozen by sanctions. These sums may continue to generate income while they are frozen. In the case of the Russian sanctions regime, some specific generated income is already being collected and used to help fund the Ukrainian war effort.[130] Indeed, Euroclear, Europe's biggest central securities depository, holds €183 billion in frozen funds.[131] The interest generated by the assets has been playing a significant role in Europe's financial support for Ukraine. Euroclear has established a dedicated Ukraine facility, allocating €1.55 billion in interest earnings in 2024 and approximately €2 billion in March 2025. However, there are complexities that arise even from this measure.[132]

There is also an ongoing discussion about whether frozen assets could be confiscated but it is clear that this would be a significant development and is legally controversial.[133] Article 1 of Protocol 1 of the European Convention on Human Rights states "*[e]very natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by law and by the general principles of international law*."[134] Sanctions have historically been seen as temporary measures but confiscation would be a permanent measure. In addition, confiscation constitutes, in many legal systems, a criminal penalty requiring a criminal conviction, while sanctions are supposed to be administrative measures. In the EU, the recent adoption of Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of EU restrictive measures seems to open the way for criminal convictions for sanctions violation and consequently for confiscations of the assets concerned.

Canada has, however, already introduced legislation which would allow for frozen assets to be confiscated. This allows the Government to apply to a court to forfeit assets that have been seized or frozen to the Canadian Government. Before the legislation came into force, Canada's Deputy Prime Minister stated "*Bill C-19 would also make Canada the first G7 country to allow the government to cause the forfeiture and disposal of assets held by sanctioned people and entities, and this is particularly important given the war in Ukraine, and the very high costs of rebuilding we can already foresee.*"[135]

129 See discussion in Chapter 5 "*Towards a new extraterritoriality of EU sanctions?*", paragraph 2.1 "International Sanctions: Monetary and Financial Law Perspectives" Editors: Chiara Zilioli, Régis Bismuth, and Luc Thévenoz 2024.

130 https://ec.europa.eu/commission/presscorner/detail/en/statement_22_7307

131 European Union divided over frozen Russian assets, as Belgium resists calls to seize funds

132 UK wants more say over fate of €200B in frozen Russian assets – POLITICO and https://researchbriefings.files.parliament.uk/documents/CBP-10034/CBP-10034.pdf

133 https://researchbriefings.files.parliament.uk/documents/CBP-10034/CBP-10034.pdf (p.70-71).

134 European Convention on Human Rights

135 Remarks by the Deputy Prime Minister and Minister of Finance from Appearance at the Standing Senate Committee on National Finance to Discuss Bills C-8 and C-19 - Canada.ca

In the UK, OFSI confirmed in its 2023-2024 annual review that it holds £25.03 billion in frozen Russian assets.[136] Some have called for the UK and other countries to confiscate Russian assets to be used to provide reparations to Ukraine and to contribute to its defence spending. However, these suggestions raise significant legal issues, for example, concerning the unlawful expropriation of assets and the potential violation of the principle of sovereign immunity.[137] Expropriating sanctioned assets without the standard protections and fair compensation normally provided to the owners would arguably violate key pillars of international investment law.[138] This could lead to public and private claims for unlawful expropriation under trade treaties held between Russia and other countries. States are required, under customary international law, to provide legal protections to property held by foreign states.[139]

Some have argued that, rather than extending the sanctions in this unprecedented way to allow for the forfeiting of assets which have been lawfully obtained and are lawfully held, traditional legal measures should be used based on criminal conduct.[140] This criminal conduct could include the evasion or attempted evasion of sanctions.[141] This would include confiscation following conviction, non-conviction based confiscation (forfeiture) provisions and unexplained wealth legislation. Using these established mechanisms which comply with established legal rights may also reduce the likelihood of successful legal challenges. Leaving aside the legal issues which arise there is also the issue of undermining the confidence of investors who may not feel that they wish to invest in countries where this risk arises.

A new proposal has recently been put forward by the Chancellor of Germany:
"*In my view a viable solution should now be developed whereby — without intervening in property rights — we can make available to Ukraine an interest-free loan of almost €140 billion in total. That loan would only be repaid once Russia has compensated Ukraine for the damage it has caused during this war. Until then, the Russian assets will remain frozen, as decided by the European Council. Such extensive assistance will require budgetary guarantees from member states. Those bilateral guarantees should, as soon as the next Multiannual Financial Framework is in place in 2028, be replaced by collateralisation under the EU's long-term budget.*"[142]

5 Conclusion

> "*Woodrow Wilson once described sanctions as "more tremendous than war", a "silent, deadly remedy" that no nation would be able to withstand. He believed their sheer destructiveness would lead them to be used sparingly. A century later, the opposite*

136 OFSI Annual Review 2023-24: Engage, Enhance, Enforce - GOV.UK

137 The Legal Challenges Presented by Seizing Frozen Russian Assets | Lawfare

138 The Legal Challenges Presented by Seizing Frozen Russian Assets | Lawfare

139 The Legal Challenges Presented by Seizing Frozen Russian Assets | Lawfare

140 Dornbierer, Andrew. 2023. 'From sanctions to confiscation while upholding the rule of law.' Working Paper 42, Basel Institute on Governance. Available at: baselgovernance.org/publications/wp-42

141 See 4.2 above.

142 A new financial impetus for peace in Ukraine, Financial Times, 25 September 2025.

has happened: sanctions have become a default weapon of statecraft, wielded routinely."[143]

Sanctions have a clear legal foundation and greater perceived legitimacy when they are adopted by the United Nations. The implementation of them by UN Member States also makes them more likely to be effective in achieving their aims as they are harder to circumvent. If sanctions are not adopted by a sufficient number of countries or if they are unilaterally imposed, it can heighten the need for them to include provisions which seek to apply them extraterritorially in order to increase their effectiveness. However, this expansion of the reach of sanctions strains the historical concepts of jurisdiction and sovereignty. The imposition of sanctions can also lead to counter-sanctions and if there is a divergence of views between countries as to the appropriateness of imposing sanctions then blocking statutes can be put in place. These legal conflicts cause uncertainty and risk for those individuals and companies seeking to understand and comply with their legal obligations.

"*[S]anctions often have to be severe and open-ended if they are to be effective. If sanctions are to be effective, a serious price has to be paid by those who are within the definition of people to be designated…*"[144]

This places a huge amount of power in the hands of those who are deciding when to impose sanctions and who to apply them to. It is therefore critically important that this power is exercised responsibly, transparently and proportionately. Otherwise, this can lead to concerns about the arbitrariness of the process of selecting those who are designated. This power also extends to the licensing process which allows those who grant licences to control every aspect of a person's life who is designated.

"*It is difficult to know whether in fact any particular measure has "worked" or is "working". That might only become clear at some point in the future if support for the regime collapses or if the regime suddenly changes its position in order to avoid such a collapse.*" [145]

The ability to challenge the imposition of sanctions is constrained both by the limited type of review adopted by the courts and also by the difficulty in assessing whether sanctions are effective and therefore proportionate to the harm they may cause to an individual and their family. It is difficult to weigh the aim of forcing Russia to withdraw from Ukraine against "*the individual, concrete and real misery and suffering of an identified small family*".[146]

---

143 Sanctions can kill as many people as wars

144 *Dalston Projects Ltd and others v Secretary of State for Transport* [2023] EWHC 1106 (Admin), [2023] 1 WLR 3995 at [210].

145 *Shvidler (Appellant) v Secretary of State for Foreign, Commonwealth and Development Affairs (Respondent); Dalston Projects Ltd and others (Appellants) v Secretary of State for Transport (Respondent)* [2025] UKSC 30 at [192].

146 *Khan v The Secretary of State for Foreign* Commonwealth and Development Affairs, [2024] EWHC 361 (Admin) at [149].

> *"As a matter of common experience, an individual may more readily act when it is at the request, or in the interests, of his friends and colleagues than when it is only in his own interests... if an individual may more readily act in the interests of friends and colleagues, how much more readily will he act in the interests of sparing trouble to his own young children?"*[147]

There has also been an expansion of the grounds on which designations can be made enormously widening the potential pool of those who can be designated. The targeting of associates or family members raises issues about the appropriateness of extending the impact to those who are not being sanctioned to affect their own behaviour but to put pressure on others who are connected to them.

As this Working Paper has outlined, sanctions raise significant legal issues and it is clear that the legal controversy concerning sanctions will continue to grow as is amply demonstrated by the recent moves to fundamentally change the nature of sanctions by confiscating assets. Countries are confronting many challenges and they are increasingly seeking to use sanctions as a convenient tool - they provide an eye catching and immediate way for politicians to react but they are routinely left in place for considerable periods of time.[148] Often those who are designated will attract little public sympathy and there has been a great deal of political, media and public pressure on lawyers not to act for designated persons.[149] This makes it even more important that the right balance is struck between the harm to those affected by sanctions and the aim of the sanctions. Commenting on the decision of the UK Supreme Court, Mr Shvidler said:

> *"This Supreme Court judgment brings me back to the USSR, which I left as a stateless refugee 36 years ago, seeking sanctuary in the US. Back then, individuals could be stripped of their rights with little or no protections and that is how I feel about this judgment."*[150]

6 Appendices

Appendix 1 Cyprus

Andreas Erotocritou- Erotocritou LLP

Any person who violates any provisions of any national, UN or EU resolutions, decisions, orders or regulations on sanctions in Cyprus is guilty of a criminal offence. In addition, violations of EU resolutions, decisions, orders or regulations on sanctions are punishable as criminal offences under Cyprus law where they have been committed outside Cyprus

147 *Shvidler v Secretary of State for Foreign Commonwealth and Development Affairs* [2023] EWHC 2121 (Admin)at [115]

148 Easier In Than Out: The Protracted Process of Ending Sanctions

149 See, for example, Taskforce on Business Ethics and the Legal Profession | Institute of Business Ethics - IBE; Tory MP names 'amoral' lawyers working for Russian clients to muzzle critics | News | Law Gazette.

150 Abramovich business associate Eugene Shvidler fails to overturn UK sanctions | Business | The Guardian

but the offender is a Cyprus citizen or a Cyprus registered entity or has its habitual residence in Cyprus or the offence is committed for the benefit of a legal entity based in Cyprus or for the benefit of the business of a legal entity in Cyprus[151].

Cyprus has recently enacted legislation for imposing sanctions at a national level, independently of the EU or the UN, including but not limited to economic sanctions, travel bans and measures restricting the movement of goods[152]; however, no such sanctions have been imposed to date.

In accordance with this law, the Council of Ministers may order any individual, legal entity or body to be included in list(s) of national sanctions if they:

(a) threaten or disrupt international peace and security;
(b) violate human rights in the Republic Cyprus;
(c) threaten the safeguarding of the interests of the Republic of Cyprus and/or the safeguarding of the national security and/or the public order of the Republic of Cyprus;
(d) are involved in crimes of international terrorism;
(e) are involved in acts of production, storage, circulation, use or proliferation of weapons of mass destruction;
(f) threaten or violate the sovereignty and/or the sovereign rights and/or territorial integrity and/or independency of the Republic of Cyprus;
(g) violate the sovereign rights of the Republic of Cyprus on underground waters, mines and antiquities.

There is currently a single government institution in Cyprus which deals with sanctions: the National Sanctions Implementation Unit (NSIU) which has been established under the Cyprus Ministry of Finance .

The core competences of the NSIU are:

- implementing and supervising the restrictive measures imposed by the EU and the UN with regards to economic sanctions;
- coordinating all authorities and governmental bodies in implementing EU, UN and national sanctions in Cyprus;
- ensuring common priorities in connection with EU sanctions among law enforcement authorities and authorities competent with the implementation of EU sanctions and understanding of the relationship between criminal and administrative enforcement;
- gathering information, cooperating with other governmental authorities and bodies in Cyprus, competent authorities outside Cyprus and other organisations and exchanging evidence and information, including for strategic purposes, with them;
- consulting during investigations;
- assuming and executing requests for licenses or derogations provided for in UN and EU legislative acts for economic or other sanctions falling within its competence and informing the Cyprus Ministry of Foreign Affairs of each decision;
- receiving and submitting reports as required by the EU or UN legislative acts on sanctions;

151 Section 4 of the Law on the Criminalization of Violation of Union Restrictive Measures of 2025 (149(I)/2025).

152 Sections 35 and 36 of the Law on the Establishment of the National Sanctions Implementation Unit and the Implementation of Restrictive Measures and National Sanctions in the Republic Law of 2025 (150(I)/2025)

- imposing administrative fines as provided by the Law[153] or any other law which provides NSIU with authority and competence to impose administrative fines;
- representing Cyprus in domestic, EU and international bodies;
- assessing cases of potential violations of UN, EU and national sanctions;
- drafting reports in connection with its work and reports presenting statistical data;
- coordinating actions for identifying and locating funds and economic resources owned by designated individuals, entities or bodies;
- formulating and submitting opinions, suggestions, proposals and policies to the Minister of Finance, the Parliament and other competent governmental authorities or bodies on matters relevant to implementation of UN, EU and national sanctions in Cyprus;
- issuing directions, circulars, guidelines and clarifications on issues relevant to the implementation of UN, EU and national sanctions in Cyprus;
- submitting proposals for regulations and bills for the regulation of any matters concerning UN, EU and national sanctions;
- proposing and promoting the conclusion of memoranda of understanding or other agreements with other competent authorities and organisations abroad concerning the exchange of information;
- organising educational or training seminars or conferences and publishing and distributing training materials on issues relevant to the implementation of UN, EU or national sanctions in Cyprus;
- reports from various sources regarding potential violations of UN, EU or national sanctions requiring prior or subsequent notice of law enforcement or other competent authorities

The NSIU, which was recently established in July 2025, has subsumed the work of the government bodies which previously dealt with sanctions-related matters in Cyprus and has been granted increased powers for supervising and implementing UN, EU and national sanctions in Cyprus.

Any person in Cyprus who violates any provisions of any national or UN[154]resolutions, decisions, orders or regulations on sanctions is guilty of a criminal offence and, subject to any other provision of law providing for a greater penalty, on conviction is liable to:

- a term of imprisonment not exceeding two years or a fine not exceeding €100,000 or both for an individual, and
- a fine not exceeding €300,000 for a legal entity.

As regards the criminalisation of violations of EU resolutions, decisions, orders or regulations on sanctions, the provisions of the *Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673,* which aims to harmonise the definitions and penalties of criminal offences for violating EU sanctions, have recently been implemented in Cyprus by domestic

153 Law on the Establishment of the National Sanctions Implementation Unit and the Implementation of Restrictive Measures and National Sanctions in the Republic Law of 2025 (150(I)/2025)

154 Section 33 of the Law of the Law on the Establishment of the National Sanctions Implementation Unit and the Implementation of Restrictive Measures and National Sanctions in the Republic Law of 2025 (150(I)/2025).

legislation[155]. This provides for maximum penalties for individuals, depending on the nature of the criminal offence and the value of the funds or economic resources involved in the offence, up to €100,000 fines and/or 5 years of imprisonment [156]. It also provides for the criminal liability of legal persons and maximum penalties for legal persons, expressed as percentages of their turnover (if possible), up to 5% of their global turnover or €40 million, alongside potential revocation of licences, exclusion from public funding or bans on business activities[157].

This law also provides that the means and products of EU sanctions related offences may be frozen and seized/ confiscated by analogy to the provisions of the Law on the Prevention and Suppression of Money Laundering Activities (80(I)/2012)[158]. In addition, funds and economic resources which are subject to EU sanctions may be frozen and seized/ confiscated where the designated person, entity or body or their representative commits or participates in the commission of any of the following criminal offences with regards to such funds or economic resources and even if such funds or economic resources may not constitute the proceeds of or means to commit criminal offences[159]:

- using, transferring to a third party, or otherwise disposing of, funds or economic resources directly or indirectly owned, held, or controlled by a designated person, entity or body, which should be frozen pursuant to an EU restrictive measure, in order to conceal those funds or economic resources; or
- providing false or misleading information to conceal the fact that a designated person, entity or body is the ultimate owner or beneficiary of funds or economic resources which should be frozen pursuant to an EU restrictive measure.

The prosecution of sanctions related criminal offences rests with Cyprus Police Service, which is the main law enforcement agency in Cyprus and has extensive investigative powers to investigate any potential criminal offences, including sanctions related offences[160]. Having said that, the NSIU is now primarily responsible for the investigation of sanctions violations and potential sanctions violations[161] and for this purpose, it has been granted with extensive investigative powers, including powers to request for and collect information by any person[162], access any registers and obtain banking information[163].

To the same end, individuals, entities and competent authorities are legally obligated to report to NSIU on sanctions' violations/ potential sanctions' violations.[164]

155 Law on the Criminalization of Violation of Union Restrictive Measures of 2025 (149(I)/2025).

156 Section 7 of the Law on the Criminalization of Violation of Union Restrictive Measures of 2025 (149(I)/2025).

157 Section 8 of the Law on the Criminalization of Violation of Union Restrictive Measures of 2025 (149(I)/2025).

158 Section 11(1) of the Law on the Criminalization of Violation of Union Restrictive Measures of 2025 (149(I)/2025).

159 Section 11(2) of the Law on the Criminalization of Violation of Union Restrictive Measures of 2025 (149(I)/2025).

160 Section 6 of the Cyprus Police Law 2004 (L. 73(I)/2004) and Section 12 of the Law on the Criminalization of Violation of Union Restrictive Measures of 2025 (149(I)/2025).

161 Section 20 of the Law on the Criminalization of Violation of Union Restrictive Measures of 2025 (149(I)/2025).

162 Section 13 of the Law on the Criminalization of Violation of Union Restrictive Measures of 2025 (149(I)/2025).

163 Section 18 of the Law on the Criminalization of Violation of Union Restrictive Measures of 2025 (149(I)/2025).

164 Section 19 of the Law on the Criminalization of Violation of Union Restrictive Measures of 2025 (149(I)/2025).

For this purpose, the protection, support and anonymity provided for persons who report violations of certain EU laws has been recently expressly extended to persons who report violations of EU restrictive measures/ sanctions.[165]

Appendix 2 Ireland

Paul Convery- William Fry LLP

Ireland implements sanctions primarily through European Union ("EU") and United Nations ("UN") measures as sanctions that are adopted by the UN are binding on all of the UN Member States.

The Criminal Justice (Violation of EU Restrictive Measures) Bill 2025 will implement European Council Directive (EU) 2024/1226. This directive outlines the minimum range of criminal offences related to sanctions breaches and the penalties for those offences. Member States will be required to provide a criminal response to violations of EU restrictive measures. This can be against both natural and legal persons. Member states have until 20 May 2025 to incorporate this directive into their national legislation.

The EU requires Member States to designate National Competent Authorities for the EU sanctions regime. In Ireland, the three competent authorities are: The Department of Foreign Affairs, the Department of Enterprise, Trade and Employment; and the Central Bank of Ireland.

The Department of Enterprise, Trade and Employment ("D/ETE") is tasked with implementing Statutory Instruments to fully enforce sanctions related to specific countries. The responsibility for implementing these country-specific Statutory Instruments is shared between D/ETE and the Department of Finance. Additionally, D/ETE is in charge of enforcing trade (non-financial) sanctions and collaborates closely with the Office of the Revenue Commissioners to achieve this.

The Department of Foreign Affairs ("DFA") is responsible for liaising with the EU, the UN, and other states regarding the implementation of sanctions in Ireland. The DFA disseminates relevant information from these partners to the appropriate Government Departments and Agencies in Ireland. DFA officials represent Ireland at EU Working Groups of the Council of the EU, where sanctions measures are developed and negotiated, as well as at other EU forums on restrictive measures. Additionally, the DFA communicates with individuals and entities in Ireland who may be subject to restrictive measures, including handling applications for exemptions or authorisations when necessary.

The Central Bank of Ireland ("Central Bank") is responsible for the administration of financial sanctions as they relate to financial institutions. The Central Bank is the competent authority under Article 5 of EU Regulation 269/2014 (the "Regulation").

165 Section 4(1)(d) of the Law on the Protection of Persons Reporting Violations of Union and National Law of 2022, L.6(I)/2022.

The Regulation specifies that the competent authorities of Member States can authorise the release of certain frozen funds or economic resources. These exceptions enable the enforcement of judicial decisions made within Member States. Article 5 was established to acknowledge the property rights of uninvolved third parties while preventing the disruption of regular commercial activities. Individuals may be permitted to make payments to a sanctioned person, entity, or body, provided the competent authority is informed under Article 5.

Article 5 of the Regulation states that the Central Bank, as the notice party, may authorise a derogation from Article 2 to enforce judicial decisions within Member States. The Central Bank will allow the release of frozen funds or economic resources under Article 5 if specific conditions are met:

- The funds or economic resources are subject to an arbitral decision made before the sanctioned body was listed in Annex I, or to a judicial or administrative decision made within the Union.
- These funds or economic resources will be used solely to satisfy claims secured by such a decision, within the limits set by applicable laws and regulations governing the rights of claimants.
- The decision does not benefit an individual or entity listed in Annex I of Regulation 269/2014.
- Recognition of this decision does not conflict with public policy in the concerned Member State.

Ireland designates specific authorities to oversee the enforcement of sanctions. The Department of Foreign Affairs plays a crucial role as a competent authority. This department plays a key role in the overall coordination and enforcement of sanctions, ensuring that Ireland's actions align with EU regulations.

The Central Bank is responsible for monitoring compliance with financial sanctions. It requires all persons to report any suspected breaches. The Central Bank states that "Where an individual or entity suspects that a breach of the sanctions has or will occur it must report this to An Garda Síochána". An Garda Síochána (Irish Police Force) is then responsible for investigating suspected breaches of sanctions. They conduct investigations and gather evidence, which can then be referred to the Director of Public Prosecutions for potential prosecution.

However, the EU have introduced EU Council Directive (EU) 2024/1226 to harmonise the enforcement of EU sanctions across all member states. In Ireland the Criminal Justice (Violation of EU Restrictive Measures) Bill 2025 will implement the directive, which will provide for updated guidance on dealing with the evasion of sanctions and make it an offense. This includes actions such as hiding or moving funds that are supposed to be frozen, concealing the actual ownership of assets, and failing to report required information. It also clarifies that providing humanitarian aid or meeting basic human needs does not count as a violation of sanctions.

Sanctions have and may continue to have consequences for ongoing contractual relationships. The below cases are examples of scenarios which have arisen whereby

non-sanctioned parties have been subject to adverse effects of sanctions in respect of their contractual relationships with sanctioned entities.

In *Pola Logistics Limited v GTLK Europe DAC & Ors.*, the Court granted the Plaintiff an order for specific performance, as there did not appear to be any reality to an award of damages against entities which are the subject of international sanctions. In this case the Plaintiff and the Defendant had entered into a Bareboat Charterparty Agreement for the commissioning of shipping vessels. Due to the imposition of sanctions against the Defendants, which were providing finance and facilitating the construction of the vessel, the Plaintiff was unable to make the contracted payments and was therefore in default of the agreement. There was no evidence or situation presented to the Court indicating that the relief was pursued for collusive reasons or in violation of Article 9 of the sanction's regulation which states: "it shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2".

A further case in which Irish Courts addressed the issue of a contractual relationship with sanctioned entities is the case of *GTLK Europe DAC v Companies Act 2014*. The Court ruled that the presumption of control by the Ultimate Parent, as outlined in Article 2 of the EU Asset Freeze Regulation, is overturned when Joint Liquidators are appointed to the Companies. This ultimately allowed the Joint Liquidators to step into the shoes of the company and therefore any previous requirements to seek licences or derogations for payments of monies to the company (previously controlled by sanctioned individuals) were no longer necessary. This court ruling is expected to significantly aid winding up for companies which are still subject to US and UK sanctions, and in securing a return for creditors.

The Irish Courts recently heard several aviation lessor and insurance cases involving the world's largest aircraft lessors taking action against a number of insurance companies for failure to make payment on policies for loss of aircraft following the Russian invasion of Ukraine. A series of sanction related arguments arose throughout the duration of the trials, to include whether or not the insurance policies were valid following the imposition of sanctions, due to the assets in question being held in Russia. The majority of claims in this case have now settled for undisclosed sums. However, this is another example of how sanctions have been litigated in Ireland.

Under the Proceeds of Crime Act (1996 to 2016), the Criminal Assets Bureau has the authority to freeze and seize assets that it demonstrates to the High Court are derived from criminal activities which could include sanctions related offences. This process is based on the civil standard of proof, known as non-Conviction Based Forfeiture. The Minister then has the authority to sell or otherwise dispose of any property transferred under this section. The proceeds from such sales, along with any other funds transferred, shall be paid into or used for the benefit of the Exchequer.

Appendix 3 United Kingdom

Leonora Sagan - Barrister - Fountain Court Chambers

For United Kingdom persons (both natural and legal, as defined in the Sanctions and Anti Money Laundering Act 2018 ("**SAMLA**")) sanctions have extra-territorial effect.

SAMLA provides (emphasis added):[166]
"*Prohibitions or requirements may be imposed by or under regulations under section 1 in relation to –*
(a) conduct in the United Kingdom or in the territorial sea by any person;
(b) conduct elsewhere, but only if the conduct is by a United Kingdom person."

"United Kingdom person" is defined in s.21(2) as (a) a United Kingdom national, or (b) a body incorporated or constituted under the law of any part of the United Kingdom.[167]

Under SAMLA 2018 there has not yet been any successful judicial challenge to the imposition of domestic sanctions (although the relevant Minister has revoked certain designations at a preliminary stage).

There is a two-stage process for challenging sanctions under SAMLA.

First, a designated person may challenge their designation (or the extent of it) with the Minister who made such a designation (an "**administrative challenge**" under s.23(1) SAMLA, alternatively, in respect of UN sanctions, s.25(2) gives a designated person the power to request that the Secretary of State "*use [their] best endeavours to secure that the person's name is removed from the relevant list*").[168] The Minister or Secretary of State are required to decide whether to comply with such a request (ss. 23(2) and 25(4) respectively). If an administrative challenge fails, then s.38(2) gives the designated person the power to apply to the High Court for the decision to be set aside. No challenges pursuant to s.38 SAMLA appear to have been successful, although challenges have been brought.[169]

The government departments responsible for each type of sanction (e.g. the Office of Financial Sanctions Implementation ("**OFSI**") for financial sanctions, the Department of Transport for transport sanctions) publish guidance on the different sanctions regimes that operate in the UK, and in respect of licensing, enforcement, and reporting, and provide specialist guidance to specific high-risk sectors (e.g. art dealers or estate agents).[170]

Different governmental departments are involved in investigating and prosecuting sanctions evasion,[171] depending upon the type of sanction and the enforcement measures

166 SAMLA s.21(1) and, for judicial confirmation of the same, see Phillips v Foreign Secretary [2024] 1 WLR 2227 at [83] per Johnson J (in the context of the 2019 Regulations, enacted pursuant to the powers afforded by SAMLA s.1).

167 s.21(4) provides a mechanism for an expansion to the list of those defined as a "United Kingdom person" to the Channel Islands (or any of them), the Isle of Man, and any British Overseas Territories. This step has not been taken.

168 Ship specifications can also be challenged under ss.27(3) and 28(2) SAMLA.

169 See e.g. Khan v Secretary of State [2025] 1 WLR 2009; Naasani v Secretary of State [2025] 4 WLR 2; Phillips v Secretary of State [2024] 1 WLR 2227.

170 https://www.gov.uk/government/collections/uk-sanctions

171 A list of the various roles can be found here at Annex 1: https://www.gov.uk/government/publications/sanctions-implementation-and-enforcement-cross-government-review-may-2025/cross-government-review-of-sanctions-implementation-and-enforcement.

sought. OFSI (part of HM Treasury) is responsible for the civil enforcement of financial sanctions (through investigations and the imposition of civil monetary penalties). Criminal enforcement is dealt with by the National Crime Agency, the Police, and the Serious Fraud Office.

In terms of the investigation of sanctions evasion, Regulation 72 of the of the Russia (Sanctions (EU Exit) Regulations 2019 (the "**2019 Regulations**") empowers the Treasury to request certain information from designated persons (Regs 72(1) and (2)), such as the funds or economic resources owned, held or controlled by that designated person. This power is exercisable "*only where the Treasury believe that it is necessary for… monitoring compliance with or detecting evasion of any provision of Part 3*". The Treasury also has the power to request information from those acting under a Treasury licence (Reg 72(5)), similarly for the purpose of monitoring compliance or detecting evasion of sanctions or the conditions of any Treasury licence granted (Reg 72(7)).

A failure to respond to such a request for information is a criminal offence under Reg 74(1)(a), but s.146 Policing and Crime Act 2017 ("**PACA**") also empowers the Treasury to issue monetary penalties to those who fail to comply with requests for information under Reg 72 (or indeed any obligation of financial sanctions legislation). OFSI issued its first monetary penalty for a failure to comply with a Reg 72 request for information in March 2025 against Svarog Shipping & Trading Company.[172] OFSI has also reported that three charities (Sahara Hands, Peculiar Peoples' Palace Ministries, and Impact Planet) failed to respond to requests for information, but the nature and the circumstances of the breach were not considered sufficiently serious to warrant the imposition of a monetary penalty.[173] s.56 of the Economic Crime (Transparency and Enforcement) Act 2022 gives OFSI the power to 'name and shame' even where no financial penalty is imposed.

PACA empowers the Treasury to issue monetary penalties where a "*person has breached a prohibition, or failed to comply with an obligation, that is imposed by or under sanctions legislation*". Previously, under the old s.146(1)(b) PACA, OFSI was required to demonstrate that a person had knowledge or reasonable cause to suspect that they were in breach of financial sanctions before a monetary penalty could be imposed. However, this provision was repealed by the Economic Crime (Transparency and Enforcement) Act 2022, and substituted with s.146(1A), which expressly provides that, for the purposes of monetary penalties, OFSI can ignore any requirement for a person to have known, suspected or believed any matter. This has, undoubtedly, made it easier for OFSI to impose financial penalties for sanctions evasion. To date, OFSI has imposed monetary penalties on 12 legal persons.

OFSI publishes guidance on its approach to enforcement and the imposition of monetary penalties.[174]

172 https://www.gov.uk/government/collections/enforcement-of-financial-sanctions.

173 https://assets.publishing.service.gov.uk/media/67d3ebee1078db33c5dab274/Disclosure_Notice_Report__14.03.25_Publication_.pdf.

174 https://www.gov.uk/government/publications/financial-sanctions-enforcement-and-monetary-penalties-guidance/financial-sanctions-enforcement-and-monetary-penalties-guidance#our-compliance-and-enforcement-approach.

There is less publicly available information regarding the approach to the criminal enforcement of sanctions, save for guidance given by the CPS in respect of its approach to prosecuting crime generally. Neither the CPS nor the NCA have, to date, published any specific guidance in respect of sanctions offences (although both provide various other specialist guides in respect of financial crime, such as money laundering, which may, and often do, overlap with criminal breaches of sanctions).

On 9 April 2025 the NCA reported that it secured its first prosecution for sanctions evasion against Dmitrii Ovsiannikov (former Russian governor of Sevastopol in Crimea and, later, of Sevastopol in the illegally annexed Ukraine) after he received £76,000 from his wife and a new Mercedes from his brother.[175]

SAMLA attempts to shield non-sanctioned entities from the commercial consequences of the sanctions regime. It provides:

"*(1) This section applies to an act done in the reasonable belief that the act is in compliance with –*

(a) regulations under section 1, or

(b) directions given by virtue of section 6 or 7.

(2) A person is not liable to any civil proceedings to which that person would, in the absence of this section, have been liable in respect of the act.

(3) In this section "act" includes an omission."

This aims to ensure that non-sanctioned commercial entities do not repeatedly face (the risk of) civil litigation for breach of contract in circumstances where, in navigating a complex and ever-changing array of sanctions, a commercial entity chooses not to comply with its contractual obligations in the honest belief that to do so would constitute a breach of sanctions (even where that belief is mistaken).

Assessing whether a "*reasonable belief*" is held is a two-stage test: (i) first, there must be an assessment of the subjectively held belief of the non-sanctioned person, and (ii) second, it must be determined that the belief was reasonable, an objective question (see *Celestial Aviation v UniCredit* at [72] per Falk LJ). In *Celestial*, Falk J held UniCredit's belief to be reasonable on account of the facts that (i) the bank had to form a view about new legislation at short notice; (ii) the words of the relevant regulation did appear to capture the conduct in question; and (iii) that it was important not to make that assessment with the benefit of hindsight ([73]).

Case law provides guidance as to how the courts may interpret sanctions clauses (i.e. clauses which relieve a non-sanctioned party from performance if to do so would be a breach of sanctions legislation). The Court of Appeal in *Lamesa Investments v Cynergy Bank* [2021] 2 All ER (Comm) 573 considered a clause in a loan agreement which provided that the borrower would not be in default[176] if it did not make interest payments where "*such sums were not paid in order to comply with any mandatory provision of law*".

175 https://www.nationalcrimeagency.gov.uk/news/nca-secures-first-convictions-for-breach-of-uk-sanctions.

176 It was common ground that the clause didn't extinguish any entitlement to be paid interest and repaid capital under the facility agreement ([27]).

Just over three months into the facility agreement, the US imposed sanctions on the sole owner of Lamesa's parent company, which made Lamesa a blocked person. Cynergy refused to pay Lamesa pursuant to the facility agreement on the basis that, in summary, the US could impose secondary sanctions[177] upon it if it made such a payment. The dispute centred around whether Cynergy's refusal to pay was done to comply with a mandatory provision of law, or whether there was merely a *risk* that Cynergy would be sanctioned but no law that mandated non-payment.

The ordinary rules of contractual interpretation were held to apply to the construction of this sanctions clause ([18]-[19]). However, the Cout's reasoning demonstrates that the international sanctions context can be relevant to that exercise: here, the similarity between the clause and the EU Blocking Regulation ([16]) was held to be an important contextual factor. In particular, it was relevant that this clause was intended to be used by international banks which faced the problem of dealing with US secondary sanctions: if the clause only referred to provisions of law that directly bound the borrower not to pay, it would almost never take effect ([43]). The drafters of the facility agreement (with both parties being EU financial institutions) were aware of the Blocking Regulation *and* that it regarded US secondary sanctions legislation as imposing a "*requirement or prohibition*" with which EU parties were required to comply: this was viewed as a compelling argument in favour of Cynergy's interpretation of the clause ([44]).

Force majeure provisions contained in the underlying contract are often triggered where performance becomes impossible by virtue of sanctions legislation. While every force majeure clause needs to be read and interpreted on its own terms, in *MUR Shipping v RTI Ltd* [2025] AC 675 the Supreme Court gave some important guidance. The force majeure clause in that case stated that an event will not amount to a force majeure event unless "*it cannot be overcome by reasonable endeavours from the Party affected*". The contractual performance at issue was payment in USD, which had been rendered impossible as a result of RTI's parent company being sanctioned in the US. RTI offered to make payment in Euros, but this offer of performance was rejected.

The Supreme Court held that the force majeure clause did not require MUR Shipping to accept a non-contractual tender of performance and was therefore entitled to reject the offer:

- The 'reasonable endeavours' proviso was included to illustrate the causal element required for a force majeure event to be established: a force majeure event will only have taken place if contractual performance cannot be tendered with the use of reasonable endeavours. This clause did not alter the performance that could be tendered in compliance with the contract ([36]-[40]).
- Freedom of contract itself necessitates a party being free to reject any non-contractual performance ([41]-[42]).
- Clear words would be needed if a party were to be required to forego its contractual rights, and no such words were present here ([43-46]).

177 Unlike UK sanctions, the US sanctions regime does have a broad extra-territorial effect. Secondary sanctions can be imposed which affect property subject to US jurisdiction belonging to non-US persons, even if they do not themselves operate in the US. Cynergy was such a non-US person ([4]).

- Certainty and predictability are important facets of English commercial law, which would be undermined if parties were required to accept non-contractual performance ([48]-[49]).

This case therefore provides important clarification that a non-sanctioned entity does not have to accept a non-contractual tender of performance, even where the offer might be considered one of an 'equivalent' contractual performance.

i. This paper has benefitted greatly from the contributions of a number of fellows from The International Academy of Financial Crime Litigators: Stéphane Bonifassi, Bonifassi Advocats; Elizabeth C. Ortega, ECO Strategic Communications; Lincoln Caylor | Commercial Litigation and Fraud Lawyer at Bennett Jones Toronto; Maria Nizzero, Sanctions Principal, UK Finance; Andreas Erotocritou- Erotocritou LLP; Adam Kaufmann: Lewis Baach Kaufmann Middlemiss PLLC; Paul Convery - WILLIAM FRY; Vassily Rudomino, Alrud; Leonora Sagan - Barrister - Fountain Court Chambers. Anand Doobay would also like to thank Theo Pow (Boutique Law LLP) for his contribution to the initial draft of many of the sections of the Working Paper.