



Royal United Services Institute  
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# Coordinating Sanctions After Brexit

Considerations for the Future of  
UK Sanctions Policy

Emil Dall, Isabella Chase and Tom Keatinge



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# Introduction

**A**HEAD OF BREXIT day, the UK government outlined an ambitious vision of the country's future sanctions policy and its ability to design financial measures to target actors abroad. One example is the use of sanctions to address human rights abuses. In September 2019, Foreign Secretary Dominic Raab stated that as part of the UK's role as a 'good global citizen', it would use its sanctions powers against 'those who targeted journalists, whistle-blowers and human rights campaigners'.<sup>1</sup> In January 2020, it was reported that the UK is seeking to work with the US and Canada to designate a list of people involved in human rights violations whose UK assets will be frozen.<sup>2</sup>

The first paper in this series on the future of UK sanctions policy after Brexit set out recommendations for how the UK's unilateral sanctions should be designed and implemented in order to ensure legitimacy and have maximum effect.<sup>3</sup> While the UK appears keen to actively use economic and financial sanctions as part of its foreign policy toolkit, it should be acknowledged that future UK unilateral sanctions regimes will not operate in isolation and will undoubtedly have more impact and legitimacy the more universally they are implemented. If a broad coalition of countries imposes sanctions against the same target, the resulting isolation of the target from those markets and related activities will deliver the greatest possible economic pressure, at least in theory. A united approach will also ensure that the target has fewer opportunities for evasion. The consideration of sanctions coordination should be an important – and urgent – priority for the UK government as it considers its future independent sanctions policy.

During its second meeting held on 8 October in London, RUSI's Task Force on the Future of UK Sanctions Policy (the Task Force) therefore explored the theme of 'sanctions coordination'. The members discussed the benefits and challenges of the UK coordinating new sanctions initiatives

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1. Edward Malnick, 'Britain Will Impose Sanctions on Authoritarian Regimes that Arrest or Intimidate Dissident Journalists, Under Foreign Secretary Plans', *The Telegraph*, 22 September 2019.
  2. George Parker, 'UK to Begin Crackdown on Human Rights Abusers', *Financial Times*, 10 January 2020.
  3. Isabella Chase, Emil Dall and Tom Keatinge, 'Designing Sanctions After Brexit: Recommendations on the Future of UK Sanctions Policy', *RUSI Occasional Papers* (September 2019). The paper recommended that UK unilateral sanctions must have a clearly communicated objective and desired outcome, including a pathway for the eventual lifting of sanctions, so that they are not perceived as merely punitive or 'without purpose'. It also explored how the UK can use sanctions in pursuit of national security goals, including targeting serious and organised crime actors, and how UK independent sanctions must be supported by improved guidance for the private sector, including on humanitarian licensing, in order to take effect as desired and avoid the unintended consequences associated with existing sanctions regimes.



with allies, as well as the impact UK sanctions might carry by themselves, should coordination not be possible or desired by the UK or the partners with which it is seeking coordination.

The Task Force considered coordination where the UK has a leading role in designing the sanctions regime. This includes entirely UK-initiated sanctions initiatives, or where the UK is working closely with others from the outset to jointly put sanctions in place. Therefore, any decision by the UK to join a sanctions regime originally designed and already implemented by others is outside the scope of this paper. In these cases, such decisions are likely to boil down to a question of the foreign policy objectives of the government of the day, alongside considerations of the economic costs to the UK of joining a sanctions action and whether those sanctions comply with UK legal requirements.

It should be noted that the Task Force limited its considerations to the use of economic and financial measures – that is, asset freezes and specific economic and trade restrictions – rather than travel bans and arms embargoes.

# I. The Role of Sanctions Coordination

EFFECTIVENESS SHOULD BE the central objective of any country's sanctions framework, and can be measured according to a range of factors, including their economic impact, whether sanctions achieve a change of behaviour in the sanctioned target, or how widely they are implemented. The most widely implemented sanctions regimes are those agreed by the UN, at least in theory. These are legally binding and must be implemented by all UN member states, leaving no territories in which sanctioned individuals may operate.<sup>4</sup> As one Task Force member observed: 'in an ideal world, sanctions would just be done by the United Nations' and there would be no need to separately discuss the sanctions strategies of the US, the EU and now the UK. Despite this, most sanctions actions today take place outside the UN framework, and their effectiveness can depend on how many and which countries are implementing them. The UK should, therefore, consider the role that sanctions coordination will play in an independent UK sanctions regime, and the avenues that are available to the UK for seeking coordination on sanctions.

## Impact Through Coordination

On several recent occasions, the EU and the US have jointly pursued economic and financial sanctions against targets, often joined by other countries, frequently including Canada, Australia, South Korea, Japan and a host of non-EU European countries.<sup>5</sup> Such broad sanctions 'alliances' will certainly have had greater economic impact on the target as a result of coordination – although this is not axiomatic.<sup>6</sup>

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4. Many member states lack the capacity or political will to implement, monitor and enforce sanctions within their jurisdictions, offering further opportunities for sanctioned targets to evade sanctions. For example, sanctions on North Korea, which are among the most comprehensive sanctions regimes the UN has ever passed, have also seen systematic and large-scale evasion since sanctions were first imposed in 2006. For a comprehensive examination of the impact and effectiveness of UN sanctions, see Thomas Biersteker et al., *Targeted Sanctions: The Impacts and Effectiveness of United Nations Action* (Cambridge: Cambridge University Press, 2016).
  5. For example, work carried out by Viktor Szep to map the alignment of third countries with EU sanctions regimes from May 2010 to July 2017. See Viktor Szep, 'UK Sanctions Policy After Brexit: The Question of Future Coordination', 8 January 2018, <<http://viktorszep.com/uk-sanctions-policy-after-brex-it-the-question-of-future-coordination/>>, accessed 17 March 2020.
  6. There are instances where a coordinated sanctions effort outside the UN framework does not result in a meaningful impact on the target. For example, the 2017 decision by Saudi Arabia, the UAE, Egypt and Bahrain to cut diplomatic ties with Qatar and attempt to isolate the country by closing down all borders and travel routes seems to have had a limited impact. Despite the

The international sanctions supplementary to the UN aimed at Iran in the years prior to the agreement of the Joint Comprehensive Plan of Action (JCPOA) benefited from sanctions coordination. While the US had sanctions in place against Iran in one form or another since 1979, the added impact of EU sanctions (whose markets have historically been closer to Iran) much later on caused an economic effect on Iran which US sanctions could not have achieved on their own. Another example where coordination of sanctions regimes has had a compound impact are the sanctions pursued by both the EU and the US prior to 2012 against Myanmar to encourage the country to pursue democratic reforms.<sup>7</sup>

Coordination is, however, not without its challenges, and while countries might agree on the need for a common sanctions response to a threat to international peace and security, they may take different views on the scope of targets, exemptions to those sanctions, how they are enforced by the private sector, or how they are ultimately lifted. Coordination between the EU and US on Russia sanctions is a case in point. Overall, the EU has designated fewer Russian individuals and entities than the US,<sup>8</sup> and the scope for sanctions is also narrower in the EU. For example, the EU's restrictive measures exclude gas projects due to the reliance of many EU member states on gas supplies from Russia, allowing European companies to continue existing contracts, while their US counterparts are not.

There are also cases where the EU and the US choose not to coordinate their sanctions approaches as the foreign policy goals that underwrite those sanctions simply do not align. For example, US sanctions against Cuba are comprehensive, while the EU currently favours economic engagement over economic pressure to exert influence on Cuba's behaviour. Indeed, in 2019 the EU labelled itself Cuba's 'top commercial partner and investor' at the same time as the Trump administration ramped up sanctions against Cuba and reversed efforts undertaken by President Obama to restore ties.<sup>9</sup> This non-alignment of foreign policy goals has been an issue during the Trump administration. Since 2018, the US has also increased sanctions pressure against Iran in contrast to Europe's ongoing attempts to restart trade relations; and the EU's preference to pursue a highly targeted approach against Venezuela contrasts with the US which has steadily expanded the scope of sanctions on Venezuela in recent years, to a near total embargo on the country.

Choosing when to coordinate sanctions and, crucially, when not to, is therefore about more than just the added economic effect that sanctions coordination might bring. Policymakers also consider a range of other factors, including whether foreign policy objectives align, or if

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inconvenience caused to Qatar, it quickly developed alternative economic connections which allowed it to continue to operate internationally.

7. *BBC News*, 'US Eases Economic Sanctions on Myanmar', 18 May 2016.

8. As of 23 January 2020, the US has sanctioned 561 individuals and entities in relation to their activities in Russia, and the EU has sanctioned 170. See European Council, 'EU Restrictive Measures In Response to the Crisis in Ukraine', <<https://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/>>, accessed 17 March 2020.

9. *Reuters*, 'EU Stresses Support for Cuba Even as U.S. Hikes Sanctions', 9 September 2019.

economic engagement and diplomacy could achieve the same outcome. In some cases, and particularly for the UK in a post-Brexit world, it may also be the case that sanctions coordination becomes a means by which to achieve other (non-sanctions) ends or show solidarity with allies. The UK must therefore consider what avenues it has for sanctions coordination – outside the UN framework – if it wants to increase the reach of unilateral UK sanctions efforts.

## Avenues for Sanctions Coordination

The UK is a permanent member of the UN Security Council, and will no doubt continue to try to gain multilateral support for sanctions regimes through the mechanism provided by the UN. This will be most important at times when international peace and security are threatened.

However, the increasingly multipolar nature of the UN Security Council means that finding a consensus on sanctions is not always possible at the UN level. For example, the annexation of Crimea and the invasion of eastern Ukraine by Russia required a coordinated international response to demonstrate a united front against Russian aggression, yet a consensus was impossible to achieve at the UN. A united sanctions response to the crisis in Syria faced similar stumbling blocks at the UN, causing the US, the EU, members of the Arab League and other countries to pursue unilateral sanctions instead.<sup>10</sup> Thus, in many cases, finding coordination at this optimal level has become nearly impossible and alternatives must be found.

The most obvious partners for sanctions coordination are the EU, with whom the UK has necessarily had a wholly aligned sanctions relationship for decades, or the US, which the EU has most-often coordinated its sanctions policies with and with which the UK has a ‘special relationship’ on defence and security issues. Chapter II of this paper will thus focus on sanctions coordination with the EU and the US specifically.

However, it is also worth briefly mentioning some of the other avenues for coordination available to the UK after Brexit, outside the UN Security Council or cooperation with the EU and the US.

The UK also has an opportunity to look further afield for partnerships and engage with countries that might provide outsized impacts on certain sanctions issues. On sanctions to address gross violations of human rights, Foreign Secretary Dominic Raab has already highlighted Canada as a potential partner, a relationship potentially aided by the Five Eyes intelligence-sharing mechanism of which both are part. In Australia, another Five Eyes member, a parliamentary inquiry recently began to consider the use of human rights-related sanctions,<sup>11</sup> offering another possible partner that shares longstanding cultural and security bonds with the UK.

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10. *BBC News*, ‘Syria Unrest: Arab League Adopts Sanctions in Cairo’, 27 November 2011.

11. On 3 December 2019, Australian Minister for Foreign Affairs Marisa Payne asked the Human Rights Sub-Committee of the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade to open an inquiry into the use of targeted sanctions to address human rights abuses, an inquiry that is still ongoing at the time of writing.

Similarly, in the case of North Korea-related sanctions, seeking buy-in from Japan or South Korea, who maintain their own sanctions regime on North Korea, would not only provide the UK's measures with added legitimacy, it may also strengthen the design of UK sanctions measures, as they would be stress-tested and endorsed by actors who are closer to the threat.

Seeking relevant regional partners would also increase the effect of UK-only sanctions on issues important to the UK but where the UK has limited economic and financial influence over specific targets. One example is a possible sanctions response to the current Rohingya crisis in Myanmar, where countries like Singapore, Thailand or India have wider economic engagement with the country, and therefore also more opportunities to exert leverage via sanctions.

As Richard Nephew and David Mortlock have observed, such 'like-minded collectives existed to deal with Iran, Russia and North Korea, and a scaled up approach could involve annual gatherings of European, British, East Asian and other interested governments to discuss a range of sanctions topics'.<sup>12</sup>

There are existing multinational arrangements which include the UK that can function as such a vehicle for sanctions communications and coordination, and as a starting point for greater coalition building. For example, the UK should consider expanding the use of the G7 as a mechanism by which the UK can put forward sanctions proposals, and coordinate with both the US and the EU as well as Japan and Canada in the same forum. The G7 format has already been used to convene working groups on Russia and North Korea sanctions, which meet regularly to coordinate. Ad hoc working groups could similarly be convened on other sanctions topics.<sup>13</sup>

Finally, the UK should consider how it wants to position its sanctions vis-à-vis those countries who frequently align with EU measures. These are countries who have no role in EU sanctions decision-making but are invited to align with EU sanctions if they wish.<sup>14</sup> For example, Switzerland – a non-EU European country – does not impose its own unilateral sanctions measures but instead follows the sanctions regimes of others. Switzerland's 2002 Embargo Act allows for the implementation of sanctions ordered by the UN, the OSCE or 'by Switzerland's most significant trading partners'.<sup>15</sup> As a result, Switzerland has made a decision to align with most, but not all, EU sanctions designations.

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12. Richard Nephew, 'UK Parliament Testimony of Richard Nephew and David Mortlock on Brexit Sanctions Policy', Center on Global Energy Policy, 8 August 2017, <<https://energypolicy.columbia.edu/research/testimony/uk-parliament-testimony-richard-nephew-and-david-mortlock-brexit-sanctions-policy>>, accessed 19 March 2020.

13. Authors' interview, Brussels, March 2020.

14. Erica Moret and Fabrice Pothier, 'Sanctions After Brexit', *Survival* (Vol. 60, No. 2, 2018), pp. 179–200.

15. Federal Council of the Swiss Government, 'Federal Act on the Implementation of International Sanctions', 22 March 2002, <<https://www.admin.ch/opc/en/classified-compilation/20000358/index.html>>, accessed 19 March 2020.

Other non-EU countries that often align with and implement EU sanctions decisions, without having any input into the design of those sanctions, include EEA countries such as Norway, Liechtenstein and Iceland, certain countries who are vying to become EU members such as Albania, Croatia, Montenegro and Macedonia, and to a lesser extent the Eastern Partnership countries with whom the EU has a close security relationship such as Moldova, Ukraine, Georgia and Armenia.<sup>16</sup> The UK now has an opportunity to develop a similar relationship with these countries, whereby they adopt UK-designed sanctions measures with no need for input into the design process itself.

While there are many opportunities for the UK to seek buy-in for UK unilateral sanctions after Brexit, the remainder of this paper focuses its exploration on the benefits and challenges of coordination with the UK's two most prominent future partners, the EU and the US.

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16. See Szep, 'UK Sanctions Policy After Brexit: The Question of Future Coordination'.



## II. Assessing Coordination Benefits and Challenges

### With the EU

When it was a member of the EU, the UK implemented sanctions measures agreed in Brussels. The EU's approach to sanctions has, over decades, been heavily shaped by UK views, and the resulting relationship has been one of mutual benefit. The UK is often credited with playing an 'important role in bolstering the EU's institutional capacity on sanctions' with UK input making 'EU sanctions credible and effective'.<sup>17</sup> In return, 'EU sanctions give weight to the UK's influence abroad'.<sup>18</sup>

Measured by GDP, the EU as a bloc is the world's second-largest economy,<sup>19</sup> and the second-largest importer of goods (the US is the largest in both instances),<sup>20</sup> and is thus able to exert considerable economic influence over non-EU countries who care about access to EU markets. While the UK is a significant contributor to the size of the EU market (itself being the world's seventh-largest economy),<sup>21</sup> UK sanctions would of course have more economic impact if implemented simultaneously across the EU.

### Mechanisms for EU–UK Sanctions Coordination

The Political Declaration setting out the framework for the future relationship between the EU and the UK contains a statement of clear intention on the future coordination of sanctions. The Declaration notes that 'While pursuing independent sanctions policies driven by their respective foreign policies, the Parties recognise sanctions as a multilateral foreign policy tool and the benefits of close consultation and cooperation'.<sup>22</sup> Yet tensions are already emerging. The Declaration has been supplemented by the negotiation position papers published by both the EU and UK in February. The Council of the European Union's negotiating directives states with regards to sanctions that 'when and where foreign policy objectives are shared, the

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17. Moret and Pothier, 'Sanctions after Brexit', p. 180.

18. *Ibid.*

19. International Monetary Fund (IMF), 'IMF Data Mapper', <<https://www.imf.org/external/datamapper/PPPSH@WEO/OEMDC/ADVEC/WEOWORLD/EU>>, accessed 23 January 2020.

20. European Parliament, 'The EU's Position in World Trade in Figures: Infographic', <<https://www.europarl.europa.eu/news/en/headlines/economy/20180703STO07132/the-eu-s-position-in-world-trade-in-figures-infographic>>, accessed 23 January 2020.

21. IMF, 'IMF Data Mapper'.

22. HM Government, 'Political Declaration Setting out the Framework for the Future Relationship between the European Union and the United Kingdom', Paragraph 97, 19 October 2019.



envisaged partnership should facilitate dialogue and mutual exchange of information between the Union and the United Kingdom at appropriate stages of the policy cycle of their respective sanction regimes'.<sup>23</sup> In contrast, the UK's approach to negotiations is less clear on future sanctions coordination. Indeed, the word 'sanctions' does not appear in the document and there is only one reference to 'foreign policy' which is 'for the UK Government to determine, within a framework of broader friendly dialogue and cooperation between the UK and the EU: they do not require an institutionalised relationship'.<sup>24</sup>

Despite these potential differences, in the near-term, sanctions coordination between the EU and the UK is likely to be straightforward. As set out in the Withdrawal Agreement, during the Implementation Period (the post-EU withdrawal transition phase) the UK will continue to align itself with EU-agreed measures, even though it is no longer formally a member of the EU's institutions. This requirement to wholly align with EU sanctions lasts until the end of the Implementation Period on 31 December 2020 (see Table 1).<sup>25</sup>

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23. Council of the European Union, 'Annex to Council Decision Authorising the Opening of Negotiations with the United Kingdom of Great Britain and Northern Ireland for a New Partnership Agreement', 25 February 2020.

24. HM Government, 'The Future Relationship with the EU: The UK's Approach to Negotiations', February 2020.

25. Note, during the Implementation Period (1 February–31 December 2020), the UK 'will continue to be bound by EU sanctions, including new sanctions regimes and listings, and any decisions to lift existing sanctions'. This means that any independent use of sanctions will necessarily need to be closely coordinated with the EU. See, Foreign Affairs Committee, written evidence from the Foreign and Commonwealth Office (FSP0015) to the Foreign Affairs Committee 'Global Britain: The Future of UK Sanctions Policy Inquiry', 15 January 2019. However, 'if an agreement is reached on the future relationship in foreign, defence and security policy, this can come into effect before the end of the transition period and EU law will no longer apply in this area in the UK'; see, The Institute for Government, 'Brexit Deal: The Withdrawal Agreement', 5 February 2020.

**Table 1:**

	Before Brexit (prior to 31 January 2020)	During Implementation Period (from 1 February–31 December 2020)	After Implementation Period (2021 onwards)
The UK adopts all EU restrictive measures (sanctions)	✓	✓	✗
The UK designs and implements UK sanctions (country-specific or thematic)	✗	✓	✓

Source: The authors have consulted the government's response to the Foreign Affairs Committee's report on sanctions and Brexit, including the letter from Minister of State, Christopher Pincher MP, to the Chair of the Committee. According to this letter, 'the Government's legal position is that regulations ... could be made to impose autonomous UK sanctions before the United Kingdom leaves the EU and during the Implementation Period'. The letter also states, in relation to human rights-related sanctions, that 'these measures can be imposed having had regard to the fact that the adoption of sanctions measures is not an area of exclusive EU competence'. It is, however, also the case that the UK has not designed and implemented UK-only sanctions programmes prior to leaving the EU, nor, at date of publication, during the Implementation Period. See 'Annex: Letter from Minister of State, Foreign and Commonwealth Office, to the Chair of the Committee', in House of Commons Foreign Affairs Committee, 'Fragmented and Incoherent: The UK's Sanctions Policy: Government Response to the Committee's Seventeenth Report', Twenty-Third Special Report of Session 2017–19, HC 2642, 9 September 2019, <<https://publications.parliament.uk/pa/cm201719/cmselect/cmfaff/2642/2642.pdf>>, accessed 11 May 2020.

Even immediately after the Implementation Period, the UK and the EU are likely to remain relatively aligned on sanctions. Across a range of sanctions-related foreign policy issues, including on Russia and Iran, the UK and EU are still united in their approach. To date, the UK has been closely integrated into the EU sanctions decision-making processes, often in a position of leadership with intelligence gathering and legal capacity on which fellow member states rely. As officials in a number of EU member states have told the authors, the existing personal relationships between EU and UK policymakers, and the UK's expertise on sanctions, will inevitably continue to be leveraged to achieve coordination on sanctions in the immediate future after Brexit. Additionally, the similar sanctions policymaking architectures that have been developed in recent decades in EU member states and the UK will make it easier to coordinate future actions.

However, as highlighted by several Task Force members, this is not the same as having an official contributing role to the development of EU sanctions. No mechanism currently exists in the EU by which ‘third countries can have a formal say in the direction of EU sanctions’,<sup>26</sup> and a new institutional arrangement would have to be developed if the UK is to secure a continued and formal channel via which to seek EU buy-in on UK-proposed sanctions measures.

Without such an institutional arrangement, the UK is unlikely to have more input on EU sanctions than the US. The current ‘EU–US coordination effort’ has been described as involving regular meetings and liaising on specific designations.<sup>27</sup> However, this does not amount to the US having a formal channel to influence the EU’s decision-making process on sanctions, nor does it provide the US with a guarantee that the EU will always align with its sanctions wishes, as coordination between the EU and the US on sanctions ‘is only as good as your personal relationships’.<sup>28</sup> It may also be the case that the EU is willing to have such extensive consultation with the US on sanctions issues due to the wide-reaching effect of US sanctions (primarily through the centrality of the US dollar to global financial transactions), whereas the UK does not wield similar financial and economic power, despite its proximity to EU markets.

Erica Moret and Fabrice Pothier have suggested that a formal ‘EU27+1’ mechanism should be developed, modelled on NATO’s 28+2 format whereby Sweden and Finland share intelligence and conduct joint exercises with NATO, despite not being members of the Alliance.<sup>29</sup> Such an arrangement for sanctions would allow the UK to be involved in ‘decision-shaping’ discussions, rather than decision-making, which would continue to be the prerogative of EU member states.

Notwithstanding the future existence of a formal coordination mechanism, the UK has already taken proactive action on sanctions coordination with the EU (as well as the US) and has deployed sanctions envoys at UK embassies in Berlin, Paris and Brussels (and in Washington and New York). These envoys are in place as a point of contact between the UK and the host nation on UK sanctions activities. After Brexit, their role will be defined by whether these coincide or diverge from European policy.

Despite these efforts, and regardless of whether a formal or informal coordination mechanism is created, UK sanctions will inevitably begin to diverge from EU sanctions, simply due to the fact that the UK and the EU will now operate two distinct sanctions frameworks, both in terms of designations under sanctions regimes that both the UK and EU maintain (for example, on Russia), or entirely new country-based or thematic sanctions regimes the UK might pursue.

First, differences in sanctions list designations will be inevitable after the Implementation Period due to varying evidentiary thresholds, different access to intelligence and potentially inconsistent political priorities between the two. It has been suggested to the authors that some individual EU sanctions designations may not be transferred onto the UK sanctions list

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26. Statement made by Task Force member, London, 8 October 2019.

27. Moret and Pothier, ‘Sanctions After Brexit’, p. 189.

28. Authors’ interview, Brussels, March 2020.

29. Moret and Pothier, ‘Sanctions After Brexit’, p. 193.

after the Implementation Period, due to these different standards.<sup>30</sup> Even if the same names continue to feature both on the UK and the EU list, financial institutions are concerned about the potential for the provision of differing identifying information for those entities on the separate lists, which could lead to misidentification and an increased number of false positives.

Furthermore, UK courts will begin to determine challenges against UK sanctions designations following the Implementation Period, meaning that the case law of UK and EU courts on sanctions will gradually begin to diverge, and some designations that were ‘transferred over’ from the EU list may still be challenged on UK lists at a later date.

Second is the issue of entirely new country-based or thematic sanctions regimes the UK and EU might pursue independently of the other. The subtle nuances in the near term are likely to lead to an increasing divergence in the profile of EU and UK sanctions regimes in the long term. One area of almost certain near-term divergence relates to the UK’s keen interest in pursuing so-called Magnitsky-style sanctions immediately after Brexit, targeting, in particular, citizens of Russia, Libya and North Korea involved in human rights abuses.<sup>31</sup> The UK Foreign Secretary has expressed a desire to work with Canada and the US on these designations, where similar human rights sanctions regimes are already in place. The EU is also progressing down a similar path, passing a political declaration on the topic in December 2019, although there is still some way to go until designations can be issued.<sup>32</sup> However, once the EU has a human rights regime in place, it is not certain that individual designations will be agreed rapidly, due to the need to secure consensus from all member states. This, combined with the UK’s clear intention – stated repeatedly by Boris Johnson’s government in parliament<sup>33</sup> – to move ahead swiftly will inevitably lead to an early point of UK–EU divergence.

It is also worth noting that should the UK make a decision to design substantive sanctions initiatives without consulting the EU, the government should carefully consider what impact this might have on cooperation with the EU on areas that still remain of common interest. For example, if the UK designates one individual that the EU does not want to designate, this is unlikely to cause much controversy. But in cases where the UK targets an entire country with

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30. Remarks made to the authors by UK civil servants during the research for this paper, November 2019.

31. Parker, ‘UK to Begin Crackdown on Human Rights Abusers’.

32. See Twitter exchange between Laurence Norman and Bill Browder: Laurence Norman, ‘I’d be very careful. My understanding is it simply inched forward in bureaucratic process with @eu\_eas, at behest of majority of member states, agreeing to produce options for it. Long way for formal approval of detailed proposal’, [Twitter post], 1:55pm, 9 December 2019, <<https://twitter.com/laurnorman/status/1204036737003085826>>, accessed 20 March 2020.

33. See, for example, Hansard, House of Commons, Britain in the World Debate, 13 January 2020, Vol. 669, 4.17PM, Dominic Raab MP, ‘Once we have left the EU and regained control of our sanctions rules, the Government will implement the Magnitsky provisions of the Sanctions and Anti-Money Laundering Act 2018. That will give us a powerful new tool to hold the perpetrators of the worst human rights abuses to account’.

sanctions where the EU feels sanctions are not the right foreign policy option, that would be a more significant split. It was also the view of many Task Force members, as well as individuals from EU member states, that any attempt by the UK to create its own form of secondary sanctions (whereby UK sanctions would be enforced against EU businesses) would be met with condemnation by both the private sector and EU member states.

The EU, too, might also pursue entirely new sanctions regimes independently of UK input. In May 2019, the EU announced a new framework to impose targeted sanctions in response to cyber attacks, and while the UK was part of the development of this initiative, there is scope for the EU to independently develop similar new regimes in future. It will then be up to the UK to decide if it wants to align.

Divergence, no matter how big, brings complexity for the private sector in complying with both regimes, and creates potentially greater scope for evasion. After Brexit, geography will ensure that UK and EU markets will continue to be economically intertwined no matter the shape of the future trading relationship that is ultimately agreed between London and Brussels. Thus, private sector sanctions compliance will need to pay heed to differences between regimes, however subtle they may be.

### **Changes in EU Sanctions Approaches**

Sanctions coordination is not only up to the UK. The EU will not be static on sanctions, and with the UK having left the negotiation table, the consensus and balance of power on sanctions within the EU will inevitably change. Many Task Force members pointed to the slow and consensus-dependant character of the EU's sanctions decision-making process as the primary coordination challenge for the UK.<sup>34</sup> As one private sector Task Force member asserted, while the private sector wants as much alignment as possible, 'the UK should not be waiting for the EU'.

The different views of member states – some more reluctant to use sanctions as a tool of foreign policy than others – can lead to unwillingness and delays in pursuing new designations. Perhaps it was for this reason that the new EU High Representative for Foreign Affairs, Josep Borrell, suggested that the EU could move towards a simple majority vote on areas of policy where it is difficult to achieve consensus – including Russia sanctions. However, the practicalities of introducing this change make it a very remote possibility, even for the six-monthly or annual sanctions renewal process.<sup>35</sup>

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34. Remarks made during the second meeting of the RUSI Task Force on the Future of UK Sanctions Policy, 8 October 2019, London.

35. European Parliament, 'Hearing of Josep Borrell Fontelles, High Representative of the Union for Foreign Policy and Security Policy/Vice-President-Designate of the European Commission', 25 September 2019, <[https://multimedia.europarl.europa.eu/en/hearing-of-josep-borrell-fontelles-high-representative-of-union-for-foreign-policy-and-security-poli\\_13228\\_pk?p\\_p\\_state=pop\\_up](https://multimedia.europarl.europa.eu/en/hearing-of-josep-borrell-fontelles-high-representative-of-union-for-foreign-policy-and-security-poli_13228_pk?p_p_state=pop_up)>, accessed 20 March 2020.

Reflecting the differing philosophy on sanctions between the UK and a number of EU member states, some Task Force members predicted that ‘there may be a lower number of sanctions imposed by the EU in the future’ due to the departure of the UK, which has often been a more proactive proponent for the use of sanctions within the EU. Due to the significant contribution of evidence by the UK, and lawyers in the Foreign and Commonwealth Office often taking a lead in compiling evidence packs to accompany designations, it has been suggested to the authors by both UK and EU officials that the departure of the UK from the EU will reduce the legal rigour of EU sanctions, particularly designations, and lead to more successful legal challenges against EU listings. Perhaps acknowledging these challenges, the authors have spoken to officials from some EU member states who are now taking active steps to increase their own capability and capacity for sanctions decision-making and design in response to the UK’s departure from the EU.

On the other hand, however, Brexit may require member states to take on new roles in the EU’s design of sanctions, with countries with the most vested interest and knowledge taking the lead in each case, rather than looking to the UK, thus reshaping the focus of EU restrictive measures. It was suggested to the authors that although this process would still involve possible delays due to the need for unanimity, it could also result in higher-quality sanctions packages by the EU that reflect this expertise. Officials in member states continue to emphasise that while the EU sanctions design process may be slow moving, this is primarily because new designations must be tested by all member states before they are released, which in theory should make them more robust, and significantly reduce the opportunity for unintended consequences.

## Enforcement

Several Task Force members noted that sanctions are only as strong as the commitment to related enforcement, an area where the EU has struggled to ensure consistency.<sup>36</sup> Enforcement of EU sanctions is the responsibility of individual member states who devote different levels of attention and resource to this activity. For example, in 2019 it was revealed that the Danish authorities had failed to act on several warnings from US authorities from 2016 onwards that a Danish bunker company, Dan-Bunkering, had shipped jet fuel to Syria in violation of EU sanctions. The Danish government only acted on Dan-Bunkering after the case was revealed by Danish state broadcaster DR in 2019.<sup>37</sup>

Therefore, even if the UK successfully coordinates its sanctions design with the EU, the impact of such coordination will be less than its potential if sanctions are not consistently enforced in Europe. The new European Commission has made it a priority to make the enforcement of sanctions stronger and more uniform throughout the EU, most notably by moving key aspects of the EU’s sanctions portfolio from the EU’s External Action Service to its department

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36. Remarks made during the second meeting of the RUSI Task Force on the Future of UK Sanctions Policy, London, 8 October 2019.

37. Marthias Friis et al., ‘Danish State Prosecutor Investigates Dan-Bunkering for Violation of EU Syria Sanctions’, *DR*, 4 September 2019, <<https://www.dr.dk/nyheder/indland/danish-state-prosecutor-investigates-dan-bunkering-violation-eu-syria-sanctions>>, accessed 23 January 2020.

for Financial Stability, Financial Services and Capital Markets Union, a move that could bring stricter monitoring and enforcement against member states who fail to enforce sanctions. It remains to be seen whether this ambition will lead to a more even and muscular enforcement landscape in the EU.<sup>38</sup>

In sum, while coordination with the EU might be easy to pursue in the short term, maintenance of this coordination will become increasingly challenging without the formalisation of sanctions communication channels and a strengthening of the EU's own implementation and enforcement mechanisms. These issues, coupled with the fact that the EU may simply not be interested in following every UK sanctions decision, or have sanctions priorities of its own that the UK does not share, as well as the UK's willingness to diverge – at least on timing – on human rights-related sanctions, will need to be addressed when future UK–EU sanctions coordination is being considered.

## With the US

The UK and the US are traditionally close allies, maintaining a decades-long 'special relationship' on defence and security, which includes extensive intelligence sharing. London has anecdotally been credited for being a bridge between Washington and Brussels when sanctions are considered on either side of the Atlantic. It has been suggested to the authors that an immediate effect of Brexit for the US will be that Washington has lost its 'one-stop shop' for coordinating sanctions efforts with the EU.<sup>39</sup> Opportunities therefore exist for the UK to seek buy-in from the US on its sanctions strategies after Brexit.

### Opportunities for Added Impact

US sanctions decisions are felt across the world. The US dollar is central to global trade (for example, the pricing of commodity contracts, regardless of buyer and seller, is most often in US dollars), foreign exchange trading and international payments. Together with the use of secondary sanctions – which impose obligations on non-US businesses to comply with US sanctions even if there is no commercial nexus with the US market – the ubiquity of US financial influence means financial institutions around the world are acutely aware of and comply with US sanctions obligations. This is also the case even if those obligations are not mirrored in their own government's legislation.

Additionally, the US has long been the most prolific user of sanctions, a trend that has expanded in recent years under Donald Trump's administration. While it may often be the case that the UK will follow US sanctions initiatives, the reverse, a US backing of a UK sanctions designation, has the potential to elevate that designation to achieve global impact.

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38. For more on the shifting sanctions portfolios within the EU Commission, see Emil Dall, 'A New Direction for EU Sanctions: The New Commission and the Use of Sanctions', *RUSI Commentary*, 21 November 2019.

39. Authors' interview, Brussels, March 2020.



For the UK, Brexit will provide the opportunity to increase coordination with the US in areas where the UK may previously have been hamstrung by particular EU member states and the need to build consensus in Brussels. Sanctions on Russia, in particular, is one area that might be ripe for more coordination between the US and the UK, as the US currently has hundreds of sanctions designations against Russians that are not mirrored by the EU.

The UK is far less reliant on Russian energy supplies than many of its European neighbours, which means it does not face the same considerations as its European allies when confronting Russia. A May 2018 report from the House of Commons Foreign Affairs Committee argued that London's status as a global financial hub 'gives the UK considerable leverage over the Kremlin'.<sup>40</sup> The ability to design sanctions independently and the belief that the presence of Russian money in London and the UK's overseas territories tips the scales in favour of the UK might encourage politicians to take a more aggressive approach to Russia sanctions than has previously been possible.<sup>41</sup>

There is, however, a legitimate question as to whether the UK has genuinely been held back by the EU in this area, as there is plenty that could have been done domestically while the UK was still a member of the EU. In 2018, the UK led an international effort to expel Russian diplomats following the poisoning of Sergei and Yulia Skripal. The poisoning also spurred an increased desire by both the National Crime Agency<sup>42</sup> and senior UK politicians<sup>43</sup> for the UK to do more to counter Russian 'dirty money' flowing through the City of London, yet so far little has been done in response to the Skripal poisoning. Whether this rhetoric is more likely to be backed up by action after Brexit remains to be seen, but working more closely with the US offers one avenue for pursuing a tougher sanctions approach to Russia.

### Challenges for Sanctions Coordination

Despite the UK's perceived role as a bridge-builder between the EU and the US on sanctions, the Task Force identified a number of areas which could complicate sanctions coordination between the UK and the US on a bilateral basis. First, any opportunity to extend the special relationship into the sanctions realm must be balanced by considerations of where the UK's foreign policy goals do not (currently) align with those of the US. This is most prominently the case in the approach to sanctions on Iran, where the UK has so far maintained that engagement and the continued implementation of the JCPOA – and therefore providing sanctions relief to Iran – is the best way to limit Iran's nuclear programme. This long-held UK view could however change after Brexit. While on 13 January, after weeks of tension between Iran and the US, Prime Minister Boris Johnson issued a joint statement with his German and French counterparts

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40. Foreign Affairs Committee, 'Fragmented and Incoherent: the UK's Sanctions Policy', July 2019.

41. Statement made by Task Force member, London, 8 October 2019.

42. Caroline Binham and Barney Thompson, 'UK Crime Agency Steps up Assault on Russian Dirty Money', *Financial Times*, 13 September 2018.

43. Lizzy Buchan, 'Senior MPs Set To Probe Flow of "Dirty Money" into UK From Russia Amid Row Over Nerve Agent Attack', *The Independent*, 16 March 2018.



stating that they remain committed to the JCPOA, the following day Johnson argued for the need to replace the JCPOA with a so-called 'Trump deal'.<sup>44</sup> This could be an example of where the UK's future sanctions regime is dictated directly by the foreign policy objectives of the government of the day and where practical issues of coordination, such as issuing guidance and licences to the private sector, are taken less into account.

Second, the UK will also have to decide how it wishes to react to US secondary sanctions – something the EU has long opposed, but largely failed to address in any practical sense. In any discussion between the UK and the US on seeking closer cooperation on sanctions, the applicability of US secondary sanctions to UK companies will be the elephant in the room. The US may be unlikely to give effect to UK-derived sanctions designations, if the UK at the same time is opposed to fully implementing all aspects of US sanctions into its own legal framework.

Some Task Force members noted that the closely connected nature of UK and US financial markets means that US secondary sanctions already have meaningful effect in the UK and Brexit will have little impact on this. It was suggested that additional guidance from the UK government on its interpretation of the reach and validity of US secondary sanctions should be provided to address the confusion that exists around the topic, something that the UK can now do as it is free to design its own policy response to US secondary sanctions.

Third, is the issue of whether the UK should deploy sanctions at the same pace as the US. One Task Force member made it clear that the UK could lose legitimacy, both in the eyes of the public and among EU member states, if 'they begin shooting sanctions [at the same rate] as the Trump administration'.<sup>45</sup> Over the course of the work of the Task Force, it has become clear that many sanctions experts and private sector stakeholders are increasingly wary of the overuse of sanctions by the US, both from the White House and in Congress, which could eventually lead to the diminishing impact of sanctions as a useful tool of foreign policy. In a recent article, *The Economist* warned that if 'the Trump administration continues to use sanctions aggressively, efforts to circumvent them will accelerate'.<sup>46</sup> This sentiment was echoed in comments made by Task Force members on the difficulty of keeping up with both the pace of US sanctions but also their increasing politicisation, which makes it difficult to determine the desired outcome, if any, that the sanctions are supposed to achieve.

As argued in the first paper in this series, UK sanctions should have a clear objective and define 'what sanctions are meant to achieve' prior to their implementation, rather than being reactive and punitive tools of foreign policy, an objective that does not currently lend itself to direct coordination with the US on sanctions.<sup>47</sup>

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44. *BBC News*, 'Boris Johnson: Replace Iran Nuclear Plan with "Trump Deal" Says PM', 14 January 2020.

45. Statement made by Task Force member, London, 12 February 2020.

46. 'America's Aggressive Use of Sanctions Endangers the Dollar's Reign', *The Economist*, 18 January 2020.

47. Chase, Dall and Keatinge, 'Designing Sanctions After Brexit'.

Fourth, the UK will also want to consider the tendency of US sanctions to become increasingly comprehensive over time before any decision is made to coordinate regimes. For example, in 2014, the US put in place sanctions against Venezuela in response to the acts of violence perpetrated against protesters that year. Visa restrictions, travel bans and asset freezes followed for those ‘involved in or responsible for the erosion of human rights guarantees, persecution of political opponents, curtailment of press freedoms, use of violence and human rights violations and abuses in response to anti-government protests, and arbitrary arrest and detention of anti-government protestors, as well as significant public corruption by senior government officials in the country’.<sup>48</sup>

Six years later, the sanctions regime continues to be expanded with seemingly little effect on the political situation inside Venezuela, which is continuing to cause a humanitarian crisis for the Venezuelan people. The UK, which currently implements the EU’s Venezuela regime which came into force in 2017 and is less far-reaching than Washington’s, could have coordinated with the US had it already left the EU. Had it done so, it would face the dilemma of either continuing to implement a regime that fails to achieve its objective, reducing coordination or even pulling out entirely which could damage the diplomatic relationship between the two countries and would certainly undermine the UK’s credibility and the remaining US-only sanctions regime.

For the reasons outlined above – different foreign policy priorities, tension over secondary sanctions, the current perceived overuse of sanctions by the US, as well as the risk of entrenched sanctions regimes – Task Force members questioned whether the special relationship that the UK has pursued for decades with the US is therefore also fit for the sanctions realm.

It was also remarked by Task Force members that the lack of a sanctions coordinator in the US administration has made it increasingly difficult for countries to engage constructively with the US as sanctions propagate, begging the question: how would the UK coordinate with the US even if it wanted to?

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48. See White House of President Barack Obama, Executive Order, ‘Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela’, Order No. 13692, 9 March 2015.



# III. UK Unilateral Action: When and Why?

**I**N MOST CASES, the UK will want to seek coordination on sanctions in order to increase the geographical reach and economic impact of UK sanctions. However, there will be scenarios where sanctions coordination will be challenging or not beneficial to the UK. In these cases, the UK will have to decide whether to proceed with unilateral action regardless of coordination opportunities. Thus, it is important to consider what effect UK sanctions might have on their own, what impact UK-only sanctions will have on targets abroad, and how allies may react.

Key to the economic effectiveness of UK-only sanctions will be the continued centrality of the UK to global finance. A 2015 study by SWIFT<sup>49</sup> notes that while the UK is (currently) the main entry and exit point for financial transactions into the EU (with UK financial institutions processing more than 50% of all European transactions with the Americas and the Asia-Pacific region). Much of this is due to the presence of international banks in the UK which use London in an intermediary capacity for clearing Euro-denominated payments as well as UK sterling.

If key financial institutions maintain their primary EU operations within the UK, then the country will continue to control much of European finance which will bolster the strength of UK unilateral sanctions. If, however, over time following Brexit, the centre of gravity for payments, foreign exchange trading, investments and stock exchange activity shifts away from London, the financial impact of UK unilateral sanctions will decline. Similarly, if UK sanctions begin to diverge significantly from EU sanctions, and compliance becomes more onerous, financial institutions may choose to operate a more significant portion of their business from the EU, in order to ensure that UK sanctions do not impact European operations. Of course, where the UK is using sanctions primarily for messaging purposes these considerations will not apply, but their impact will also be limited accordingly.

Unilateral UK sanctions will be most important where UK interests, security or values are directly threatened. As explored in the first paper in this series,<sup>50</sup> politicians and policymakers no longer view the use of sanctions merely as a tool for advancing foreign policy objectives. For example, national security objectives, such as targeting drug traffickers, could play a growing role, as they have done in the US. In scenarios where national security is immediately at risk, the ability to rapidly signal disapproval regardless of impact could allow the UK to lead on action whilst other partners are fulfilling their procedures for coordination. Amid the Skripal poisonings, for example, without EU consensus on the imposition of financial sanctions, the UK was left with few

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49. SWIFT, 'Worldwide Currency Usage and Trends: Information Paper Prepared by SWIFT in Collaboration With City of London and Paris EUROPLACE', December 2015.

50. Chase, Dall and Keatinge, 'Designing Sanctions after Brexit'.

retaliatory options – beyond diplomatic expulsions and rhetoric – thus making the UK appear to some as weak.<sup>51</sup> Having the ability at times such as these to act quickly and independently will provide the UK with an additional tool to lead action against foreign aggression, particularly where the bad actor benefits from the UK's central position in global finance, whilst rallying support from allies.

In the UK, this expansion of the sanctions horizon goes further than targeting bad actors alone. Politicians and sanctions policymakers talk of 'signalling' and 'sending a message' to those acting in ways that do not reflect the UK's values on issues such as human rights, press freedom and financial integrity.<sup>52</sup> For example, in September 2019, writing in *The Telegraph* prior to attending the UN General Assembly, Dominic Raab emphasised the desire of the UK to use sanctions as part of its effort to '[lead] by example as a force for good in the world', saying, '[w]hen we leave the EU, we will ... reinforce our sanctions legislation to hold those who commit serious abuses of human rights to account – by barring them from entering the UK, and freezing their assets such as bank accounts'.<sup>53</sup> The message was clear and has subsequently been reinforced in parliament.<sup>54</sup> If individuals want to enjoy the living standards and financial and other benefits offered by the UK, then failing to adhere to the UK's values will not only result in passive action (primarily preventing such individuals from visiting the UK), but it will also trigger an active response through the imposition of sanctions which will endeavour to leverage the UK's position as a global financial centre.

Using 'British values' as an anchor for future UK sanctions policy may, however, prove to be problematic for coordination purposes. The UK will want to ensure that it cannot be accused of double standards. If human rights sanctions are applied in one case, then they must be applied uniformly and without prejudice in all similar cases. If not, the legitimacy of the regime will be undermined, and could jeopardise later efforts by the UK to seek buy-in from other countries to follow the UK's sanctions designations.

A particular area where this might be challenging is the use of sanctions to respond to state-sponsored corruption and human rights abuses. The UK maintains historic and economic relations with a number of countries that could be targets for such sanctions although it may not be willing to risk the diplomatic and economic fallout of applying them. This is especially true at a time when the UK is seeking to forge new trading relationships outside the EU; it will have to maintain a balance between a consistent approach to the application of sanctions to maintain legitimacy with the need to forge these new relations.

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51. Neil Buckley and David Bond, 'UK Accused of Falling Short with its Response to Russia', *Financial Times*, 14 March 2018; Kim Sengupta, 'UK's Weak Response on Litvinenko Murder Encouraged Russia to Carry Out Salisbury Attack, New Report Claims', *The Independent*, 30 October 2018.

52. Patrick Wintour, 'Use Threat of Sanctions to Protect Journalists, Clooney Report Urges', *The Guardian*, 13 February 2020.

53. Dominic Raab, 'Global Britain is Leading the World as a Force for Good', *The Telegraph*, 21 September 2019.

54. See Hansard, House of Commons, Britain in the World Debate, 13 January 2020, Vol. 669, 4.17PM.

Values are hard to define and can shift over time as governments change, and might not be the same values that other countries seek to protect through the use of sanctions. The UK will want to avoid the definition of British values being shaped by policy expediency or the political interests of the government of the day to underscore a designation that otherwise may be based on weak strategic foundations. This is particularly true in cases where the UK wishes to coordinate those sanctions designations with other countries.

In sum, while UK sanctions will inevitably have more impact if coordinated with other countries' sanctions regimes, UK unilateral sanctions action does offer the benefit of speed, and signalling based around 'British values'. The UK must, however, be careful to establish such sanctions with clear criteria in mind, in order to avoid accusations of double standards. Currently, any UK unilateral sanctions action benefits from London's status as a global financial centre, and other countries viewing the UK as a credible sanctions actor. This balance is, however, a fragile one.



# Conclusion

**S**ANCTIONS COORDINATION IS unlikely to be controversial in the near term. On one side, the UK sanctions regime will look broadly similar to the EU sanctions regime given the UK's decades-long alignment with EU sanctions. On the other side, the UK may begin to collaborate with other countries, including the US or Canada, on single designations and in particular on human rights-related designations. Neither will shift the balance on sanctions coordination dramatically.

However, it is in the long term that sanctions coordination between the UK and other sanctions regimes could become complex, as UK policymakers begin to establish the framework through which it will work with the EU and the US on sanctions issues. The UK could continue to take a middle road – seeking buy-in from both the EU and the US when and where it makes sense – or it could choose to work more closely with one over the other. It could also pursue new avenues to gain support for its designations through new bilateral strategic partnerships or under-used international forums such as the Five Eyes or G7.

Perhaps the most controversial prospect for UK sanctions is the extent to which the UK is willing to move ahead on its own, without the support of allies. Policymakers will have to assess whether the impact of UK-only sanctions will have a meaningful effect whilst ensuring that the potential economic costs to the UK are acceptable. These decisions will determine whether financial institutions in 20 years from now will think of the UK as a separate and distinct sanctions regime, or simply one that always seeks buy-in from others and therefore overlaps with or is appended to the EU and the US.

Ultimately, many of the decisions to coordinate the UK's future sanctions policy with that of others will be complex and multifaceted. Decisions should be considered in light of global security, regional needs and national values. These will be further affected by the practical requirements of timing, the ability for sanctions to be implemented and enforced in a uniform manner by like-minded countries and their cumulative weight and prospect of achieving their stated objective. Coordination will also depend on the political trajectory of EU and US foreign policies, and the extent to which proposed sanctions align with 'British values'.





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