



ONPOINT / A legal update from Dechert's International Trade and EU Law Practice

May 2018

UK Sanctions After Brexit: Licensing and Exceptions

After Brexit, while the UK is widely expected to remain closely aligned with EU sanctions, one area where the UK could offer a more business-friendly approach is the grant of licences authorising businesses to conduct activities that would otherwise be prohibited. A [Policy Note](#) published last week¹ indicates that the UK Government's plans in this respect are relatively limited, although with some tentative proposals towards a more purposive and flexible approach.

Under the current EU framework, Member States' sanctions authorities (in the UK, that is OFSI² and ECJU³), do not have a full discretion to licence (ie authorise) an otherwise prohibited act; they may only do so in the circumstances anticipated by the EU and set out in the relevant sanctions Regulation. Often these circumstances are quite tightly framed such that OFSI or ECJU can find itself having to refuse to issue a licence to a business even in circumstances where it may otherwise have been minded to authorise the proposed act. Additionally, individual EU Member States cannot currently issue general licences in relation to sanctions prohibitions. By contrast, OFAC⁴ in the US has a much wider power to issue licences (general or individual) at its discretion.

Brexit offers the opportunity for the UK to take a broader, more business-friendly approach to licences. The Sanctions and AML Bill, currently going through UK Parliament, leaves licensing powers to be defined in each of the individual sanctions laws which Ministers will make. The paper issued by the Foreign & Commonwealth Office on 1 May gives some insights into how these licensing powers will be framed:

- the UK intends to use **general licences** (ie licences from which anyone can benefit in connection with activities that meet specified criteria) in a sanctions context. Currently the UK and EU only use general licences in connection with exports of military and dual-use goods. But after Brexit they may also be used in a sanctions context, for example in relation to humanitarian aid, and for urgent or unforeseen issues;
- in the context of dealings with **designated persons and entities**, the UK will empower OFSI to issue licences in all the areas currently recognised by the EU (basic needs, legal fees, routine holdings/maintenance, extraordinary expenses, prior court orders, prior contracts, humanitarian activities and diplomatic activities) although with some tweaking as to the precise scope in some cases. However the government recognises that these categories of licence should not be exhaustive; if there is a need for a further specific ground in response to a situation that arises that had not been anticipated when a sanctions regime was first established, the government will legislate for it on a case-by-case basis;
- in the context of **wider prohibitions on investment and financial activities**, the UK intends to maintain the EU's current licensing grounds (such as prior contracts and civilian projects);
- similarly, in the context of **restrictions on the export or movement of goods and the provision of services**, the government proposes to employ the same licensing grounds that the EU currently uses, while noting that the specific exceptions and licensing grounds will depend on the scope and the context of each sanctions regime;

- the government foresees the use after Brexit of **transport licences**, recognising, for example, the possibility of designated vessels needing to seek repairs in UK ports or for humanitarian reasons.

The proposed departures from the current EU licensing framework are quite limited, suggesting that the importance of close alignment with EU sanctions is prevailing. However greater use of general licences has the potential to reduce the bureaucracy of individual licence applications where possible, while the need for transport licences may reflect a recognition that designations of vessels is likely to become a regular feature of certain sanctions regimes.

Perhaps surprisingly, the government does not appear to envisage giving OFSI or ECJU the power to issue individual licences in unforeseen circumstances, providing merely that it will legislate on a case-by-case basis. This suggests that they expect this situation to arise only relatively rarely and that the obstacle of OFSI being unable to issue licences due to the narrow formulations of the licence categories is likely to continue even after Brexit.

How Dechert can help

Dechert advises business in a range of sectors in preparing for their post-Brexit trade arrangements involving UK, and in relation to current and future trade and sanctions issues generally. This could include engaging with the government on its sanctions framework post-Brexit, and assessing your compliance with applicable sanctions and trade rules once the UK is outside the EU. Dechert's team includes former EU and UK sanctions and export control senior officials and complements this regulatory and government understanding with a strong commercial and strategic awareness.

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Footnotes

- 1) Sanctions and Anti-Money Laundering Bill – Policy note: Exceptions and Licences, issued on 1 May 2018.
- 2) Office of Financial Sanctions Implementation
- 3) Export Control Joint Unit
- 4) Office of Foreign Assets Control

