



**Sanctions in the era
of Brexit & Biden:**
what the past six
months tell us about
the future

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Agenda

- **US sanctions:** to what extent has the Biden administration's sanctions policy differed from the policy of the Trump administration? Will we see significant changes in relation to Iran and other sanctions programs?
- **EU sanctions:** how is the von der Leyen European Commission looking to develop EU sanctions policy? What are the practical effects of this for business?
- **UK sanctions:** after high profile sanctions measures involving human rights and serious corruption, how will UK sanctions policy evolve? Will it align itself with EU or US policy, or take a different course? How will the UK government balance its aspirations for "Global Britain", with the need for effective enforcement of sanctions?

US sanctions overview

- **China:**
 - Restrictions on U.S. investments in securities of certain Chinese companies
 - Further identification of Chinese companies with military affiliations
 - Continuation of sanctions and export control restrictions on Chinese companies alleged in human rights violations, but with a more thorough review of the issues and designations
 - Crackdown on Chinese telecommunications equipment providers, supply chain concerns, and mobile applications
 - Pushback from China in response to sanctions and export control restrictions impacting Chinese entities
- **Russia:**
 - Increased sanctions and export control restrictions in response to Russia's use of chemical weapons against Aleksey Navalny
 - Implementation of sanctions in response to Russia's alleged election interference, the SolarWinds cyberattack, and Russia's ongoing occupation of the Crimea region
 - Expansion of Nord Stream 2 sanctions authority with action from Biden Administration against Russian entities

US sanctions overview (*cont.*)

- Iran:
 - Joint Comprehensive Plan of Action (“JCPOA”)
- Cuba:
 - As of now, Cuba has not been a policy priority for the Biden Administration
 - Potential changes to watch out for:
 - Removal of Cuba’s designation as a State Sponsor of Terrorism
 - Changes in policy for travel and remittances
 - Helms Burton Act
 - It remains to be seen whether the new president of Cuba, Miguel Diaz-Canel, will change policies in Cuba that would trigger a shift in U.S. policy towards Cuba

UK sanctions overview

- The UK was a key and active participant in EU sanctions regime
- Passed Sanctions and Anti-Money Laundering Act in 2018
- Developed parallel UK sanctions regime in case of “no deal” Brexit – largely EU regime, but much more detailed
- Some substantive differences – e.g. “owned or controlled” test
- Since 1st January 2021 UK has diverged from EU regime
- UK has not necessarily “synced up” with the US, and no obvious drift towards US – but note Belarus
- UK has developed “new” regimes, including human rights and global corruption, based on “old” template techniques

EU sanctions overview

- On January 19, 2021, the European Commission issued a **landmark communication** on “**European economic and financial system: fostering openness, strength and resilience**”.
- This communication aims at reinforcing the EU’s open strategic autonomy by notably (i) improving the **implementation and enforcement of EU’s sanctions’ regimes** and (ii) **increasing the EU’s resilience** to the effects of the **extra-territorial application of unilateral sanctions**. It notably sets out several practical objectives for 2021 and 2022:
 - Commission to engage with financial-market infrastructure companies to carry out a thorough **analysis of their vulnerabilities** as regards the unlawful extra-territorial of unilateral sanctions by third countries;
 - Commission to develop a database (the Sanctions Information Exchange Repository) for the prompt reporting and exchange of information between Member States and the Commission on the implementation of sanctions;
 - Commission to establish a **single contact point for enforcement and implementation** issues which have cross-border dimensions;
 - Commission to set a dedicated system to allow for the **anonymous reporting** of sanctions’ evasion; and
 - Commission to device additional policy options to further deter and counteract the unlawful extra-territorial application of unilateral sanctions by third countries to EU operators (including amendments of **EU blocking statute**).

EU sanctions overview (*cont.*)

- On May 12, 2021, **EU Advocate General Hogan** delivered an Opinion in the preliminary ruling requested by a German court from the European Court of Justice (**CJEU**) in a case between **Bank Melli** and **Deutsche Telekom**.
- The case concerns the interpretation of **EU Regulation 2271/96 (EU Blocking Regulation)** and Deutsche Telekom's termination of a services contract with Bank Melli following the U.S. withdrawal from the JCPOA and the subsequent reimposition of U.S. secondary sanctions.
- Attorney General Hogan concluded that Deutsche Telekom must provide reasons underlying the termination of the contract with Bank Melli, and, to the extent that it does not or that these **reasons solely refer to compliance with U.S. sanctions**, Deutsche Telekom's termination was **ineffective** and the **contract remained in force**.
- If the CJEU follows the opinion, the effect of the EU Blocking Regulation will be to place EU companies in a position where they may be caught between either **complying with U.S. sanctions while breaching EU law or complying with the EU Blocking Regulation at the risk of breaching U.S. sanctions**.

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