Overview
On October 21, 2020, the UK Foreign, Commonwealth and Development Office’s Sanctions Unit hosted a webinar to explain how UK sanctions policy and compliance will operate when the Brexit transition period ends.

EU sanctions will no longer apply in the United Kingdom after 11pm GMT on December 31, 2020. The UK’s new sanctions regime will come into force under the Sanctions and Anti-Money Laundering Act 2018 (SAMLA) from that time. Existing sanctions regimes will either be addressed under SAMLA or, in the case of some EU sanctions, continue as retained EU law under the EU (Withdrawal) Act 2018. UN sanctions also will be implemented in UK domestic law.

Whilst the new UK sanctions regime will broadly replicate existing EU sanctions measures, there will be divergence in certain areas.

- **No direct transposition of existing EU sanctions regimes into the new UK sanctions regulations:** The drafting of the new UK sanctions regulations is more detailed and clearer cut on its face than the comparable EU legislation. Individuals who or businesses that undertake activity relating to a sanctioned country or entity should read and understand the new UK regulations and related guidance to ensure that they remain compliant.

- **Changes to the geographical validity of licenses:** Whilst financial sanctions licenses only apply to actions subject to UK jurisdiction, some trade licenses currently granted by the United Kingdom are valid for activity in EU Member States (e.g., trade licenses allowing export from another EU Member State). Under the post-transition period UK sanctions regime only licenses granted by the United Kingdom will be valid in the United Kingdom and UK-granted licenses will not be valid for activity within the jurisdiction of EU Member States. In certain circumstances licenses will be required from the United Kingdom and either an EU Member State or another country to complete a contemplated activity, for example, if a UK person exported controlled goods from another country to a sanctioned destination.

- **Differing thresholds for designations:** The new threshold for the imposition of sanctions under SAMLA is lower than the “necessity test” under European law. SAMLA allows the “appropriate minister” to make UK designations when he/she has “reasonable grounds to suspect” that a person is or has been involved in a specified activity, is owned/controlled/acting on behalf of/acting at the direction of such person or is a member of/associated with such person and the appropriate minister considers the designation “appropriate” given the purpose of the particular sanctions regime and having regard to the “likely significant effects” of the designation on the designated person. This difference in threshold may result in the United Kingdom making designations that may not meet the threshold under European law, leading to a divergence in designations.

- **Introduction of designation by description:** Under SAMLA persons or entities can be designated by description, which is not a feature of the current EU sanctions regime. The description must be “such that a reasonable person would know whether that person fell within it” and can only be made when “it is not practicable for the Minister to identify and designate by name all the persons falling within that description at that time.” No such designations have yet been made and it is unclear whether financial sanctions will extend to persons owned or controlled by individuals
who or entities that have been designated by description, integrating the concept of designation by description into compliance and sanctions screening programmes for UK persons likely will pose teething problems, including determining whether a person falls within a designation by description and accessing information that is reliable and sufficient to allow such assessments to be made.

- **Changes to the process for challenging designations:** Persons designated under EU sanctions currently can challenge their designation through the European courts whether the original designation was made under a United Nations sanctions regime or an EU sanctions regime. After the transition period ends, a distinction will be drawn between designations made under the new UK sanctions regime, which will be subject to judicial review by the UK courts, and those made under UN sanctions regimes. The ability of persons designated under UN sanctions regimes to challenge their designation will be limited under SAMLA to requesting that the Secretary of State uses his/her “best endeavours” to secure the removal of their name from the relevant UN list.

- **Introduction of “general licenses”:** A general license permits a person to undertake an otherwise prohibited activity without the need to apply for a specific license, provided that the person meets certain conditions. Whilst general licenses have been available for some time under various US sanctions programmes, current EU and UK sanctions regimes do not include a comparable concept. Under SAMLA, the Office of Financial Sanctions Implementation (OFSI) can issue general licenses when other licensing derogations or exceptions are not available. For persons subject to both UK and EU jurisdiction, however, a UK general license will not provide an exemption from the need to apply for a specific license in the relevant EU Member State(s), which will add an additional layer of complexity to sanctions compliance.

- **Emerging divergence in EU and UK Russian sectoral sanctions programs:** In addition to list-based sanctions, the European Union also maintains categories of prohibited activities in specific countries or with specific persons. After the transition period ends, the United Kingdom will replace existing EU Russia-related sectoral sanctions with a single Russian sanctions regulation that is designed to deliver “substantially the same effect” as existing EU sanctions. The UK's new Russian sanctions regime incorporates several notable points of divergence from the current EU regime that will add new complexity to sanctions compliance, including:
  - **Persons exempt from sectoral sanctions:** Under the EU’s Russian sectoral sanctions, EU subsidiaries of listed entities are exempt from the prohibition on providing “investment services” for, issuing credit for, or dealing with new bonds, equity and similar instruments issued by certain Russian banks, defence and energy companies. The UK’s new Russian sanctions regime exempts only UK-based subsidiaries. The UK’s new Russian sanctions regime also exempts loans making funds available for a non-restricted trade only when the trade in question has a UK nexus whereas an EU nexus is required under the comparable EU regime. Companies operating in the United Kingdom and European Union will need to carefully consider the exemptions on which they can rely and whether authorisation is required from both the United Kingdom and the European Union.
  - **Expanded definition of “financial assistance”:** EU sectoral sanctions also prohibit, amongst other things, financial assistance related to certain goods with military purposes or certain uses in oil exploration. The Court of Justice of the European Union recently held that financial assistance under the EU regime does not include payment processing, despite contrary guidance from the European Commission. The UK’s new Russian sanctions regime, by contrast, uses the broader term “financial services.” Guidance issued by OFSI in June 2020 confirms that financial services includes payment and money transmission services.

- **Changes to the structure of UK sanctions lists:** At 11:00 p.m. GMT on December 31, 2020 the UK sanctions list will be updated to include all designations made under SAMLA and will include those designated under all types of sanctions. The OFSI Consolidated List will no longer include EU designations. Additionally, the Consolidated List will only include those designations on the UK sanctions list that are financial in nature. Companies that currently need to check customers/clients against sanctions lists should ensure that they are using the correct lists for their activities.

**Viewed from Brussels,** the fact that the United Kingdom will regain its legal autonomy in the enactment and enforcement of its own sanctions regime is not as such disconcerting. UK and EU officials will still have solid reasons to believe that, for now, their respective legal frameworks largely remain anchored to each other. A good example is the United Kingdom’s continued reliance on the Blocking Statute to protect UK persons and entities trading in countries affected by extraterritorial rules, which for now concerns Iran and Cuba. The sole changing element is the Secretary of State and the Department of Trade and Industry replacing the European Commission in the management and enforcement of the Blocking Statute.

It is still premature to predict a shift in the sanctions policy objectives that the United Kingdom has helped to design and implement whilst being an EU Member State. In fact, whilst the BREXIT negotiations were underway, the European Union and the United Kingdom stated that they intend to coordinate as much as possible on sanctions policy after the end of the transition period.
Some commentators have observed that the current EU sanctions process has often been both politically driven by the United Kingdom and dependent on UK intelligence information for its choice of targets. There have been suggestions that the departure of the United Kingdom from the EU sanctions system may either result in less use of sanctions (the value of which is often questioned by both politicians and economic operators) or the EU experiencing greater difficulty in compiling the data necessary to identify sanctions targets.

Sanctions policy aside, the degree of divergence of approach in the architecture of the UK's new legal framework for sanctions brings with it the potential to create sanctions compliance difficulties for companies operating in both the United Kingdom and European Union that will be required to comply with both regimes. Affected businesses should carefully analyse the requirements of the UK and EU sanctions regimes to ensure that they remain compliant when the Brexit transition period ends.

Practices
Economic Sanctions
EU Trade