

BREXIT & SANCTIONS

Economic Sanctions since the United Kingdom's Withdrawal from the European Union

Since the 2020 split, Britain's and the EU's sanctions regimes share a philosophy and overlap heavily on Russia, yet diverge in implementation — over who is caught, and over what “control” of a sanctioned entity means. The deeper fault line is public-law drafting that never worked through its private-law effects, leaving national courts to coordinate the two regimes case by case.

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Executive Summary

The United Kingdom's withdrawal took effect for sanctions on 31 December 2020, and from 1 January 2021 the two regimes became independent for the first time since 1973. Britain built its autonomous framework on the Sanctions and Anti-Money Laundering Act 2018, which allows faster, unilateral action than the EU's unanimity-bound process, including a 56-day emergency procedure. Yet a shared philosophy persists, reaffirmed in the May 2025 EU-UK Security and Defence Partnership, and material scope overlaps heavily on Russia. The real divergences are procedural and personal, notably the broad UK person test against an EU scope narrower in principle but increasingly extraterritorial in fact through anti-circumvention measures.

Because private international law treats sanctions as overriding mandatory provisions (*lois de police*), a single transaction can be caught by several contradictory ones. In *Bank Melli Iran v Telekom Deutschland* (CJEU, 21 December 2021, C-124/20), the Court held that pre-emptively complying with US secondary sanctions breaches the EU Blocking Regulation even absent any US order, reversed the burden of proof onto the operator, and reduced freedom of contract to a proportionality factor, leaving good-faith operators in structural legal insecurity. The deepest split concerns control of a sanctioned entity: both regimes use a 50% threshold, but the EU presumption is rebuttable (*EM System*, C-84/24; *T Trust*, C-483/23) whereas the British text is effectively irrebuttable. *PJSC/Mints* ([2023] EWCA Civ 1132) briefly read “control” widely enough to capture nearly every Russian company through President Putin, before *Litasco* ([2023] EWHC 2866 (Comm)) required actual rather than hypothetical influence.

None of this reflects a deliberate policy split; it is the by-product of public-law instruments drafted without working through their private-law effects, leaving national courts as the *de facto* coordinators between the two regimes, a partial and unpredictable fix. Sanctions rarely specify what a freeze does to ongoing contracts, security interests or defences such as *force majeure* and frustration (Article 11 of Regulation (EU) No 833/2014 being an isolated exception). The 2025 Partnership opens a formal route to coordinated reform that would make private international law an instrument of sanctions design rather than a judicial afterthought.

Introduction

In order to compare the legal consequences of sanctions adopted by different countries or groups of countries, one must first determine precisely what the notion of an economic sanction covers. Economic sanctions are coercive public-law instruments adopted by States (for example, the United Kingdom) or regional organisations (for example, the EU) unilaterally; or by international organisations (such as the UN) multilaterally. These measures seek to disrupt the normal functioning of international trade by rendering trade with the targeted party impossible, or at least more difficult, so as to make it cease a given course of conduct.

To this end, private international law characterises them as overriding mandatory provisions (*lois de police*), irrespective of their legal nature in public international law (acts of retorsion, countermeasures) or in domestic law. Such provisions thus derogate from the ordinary operation of conflict-of-laws rules, because of the State interest at stake in their application: this is why they are applied prior to any determination of the law that would normally govern the contract or obligation in question, including the law chosen by the parties. But a single transaction may be caught by several, potentially contradictory, overriding mandatory provisions: for example, a contract governed by Swiss law, performed in part in Dubai, financed by a London bank, involving a German company and a counterparty owned by a designated Russian person. A situation of this kind may fall simultaneously within EU law (through the German company), English law (because of the bank's involvement), and even Russian or Emirati law (if the connecting factors are sufficient for the court seised).

Thus, where the court finds connecting factors with several legal orders, conflicts may arise between the sanctions themselves. If EU or English law requires a sanction to be applied while Russian law prohibits compliance with that sanction, the international trade operator is caught between a rock and a hard place. Ultimately, this situation partly short-circuits the pacifying effect of the choice-of-law clause agreed by the parties, as against the application of the conflicts method: the law chosen by the parties nonetheless continues to govern everything unrelated to the sanctions (interpretation, non-performance, non-contractual liability, termination of the contract, and so on).

The principal consequence of the Anglo-European divorce is therefore the fragmentation of legal regimes that were previously common and are now potentially competing. Accordingly, to carry out this private international law stocktaking on economic sanctions, we shall consider how the EU and the United Kingdom have managed, for better or worse, and despite fundamental methodological divergences, to preserve the coherence of their sanctions regimes, particularly through the economic sanctions adopted against Russia. To this end, we shall first analyse the philosophy and scope common to British and European sanctions, the better to identify the differences in their implementation.

1. A Similar Philosophy and Scope between European and British Sanctions

Formally, the United Kingdom's withdrawal from the European Union (EU) entered into force on 30 January 2020. In legal terms, it was implemented gradually: it first took the form of a transition period running from that date for eleven months, in order to allow economic actors as well as the European and British governments to anticipate the new legal reality of Brexit. In the field of sanctions, then, the relevant date is the end of the transition period, set by the agreement at 31 December 2020.

From 1 January 2021, the European and British sanctions regimes thus became independent once more, as they had been before the United Kingdom joined the European Communities in 1973. In anticipation of its withdrawal from the EU, the United Kingdom adopted the Sanctions and Anti-Money Laundering Act 2018 (SAMLA). That Act allows the British government to adopt sanctions autonomous from those adopted by the EU, while retaining the European framework as a point of reference. It also provides for an urgent sanctions procedure, which the minister may trigger where one of the United Kingdom's allies has already sanctioned a person. There is therefore a strong likelihood that a person sanctioned by the European Union, Canada, Australia or even the United States will also be sanctioned by the British government. This procedure, which derogates from the ordinary law, may not exceed 56 days.

The EU–United Kingdom Trade and Cooperation Agreement signed at the conclusion of Brexit does not, moreover, provide for recreating a common foreign-policy space. That said, these economic sanctions retain a common philosophy, owing to the political aims and geopolitical interests shared by the European Union and the United Kingdom. This closeness was, indeed, highlighted on the signing of the enhanced Security and Defence Partnership in 2025 between the United Kingdom and the European Union. Sanctions are, moreover, cited among the areas for priority cooperation, and that agreement takes as its model what is already being done within the measures adopted against Russia following its invasion of Ukraine.

The differences between European and British sanctions do not necessarily stem from political divergences in the strict sense: since decisions relating to the European Common Foreign and Security Policy must be adopted by unanimity, such differences may instead result from the time needed to reach that unanimity within the Council of the European Union. Conversely, the framework laid down by SAMLA allows the United Kingdom to adopt measures far more rapidly, and independently of the EU, thereby enabling the British government to assert its own interests and its own vision of geopolitics, having regard in particular to its history with the Commonwealth countries.

In practice, there are two main types of economic sanctions: on the one hand, prohibitions on exporting or importing certain types of goods or services; and on the other, asset freezes.

First, as regards trade and financial prohibitions, mention may be made of Regulation (EU) No 833/2014 and its many subsequent addenda. These instruments establish prohibitions on importing, purchasing or transferring certain goods to or from Russia from within the European Union. It was in the same vein that the Russia (Sanctions) (EU Exit) Regulations 2019 were adopted in the United Kingdom, to prevent withdrawal from the European Union from calling into question the trade and financial sanctions imposed on Russia. By way of a non-exhaustive list: exports of luxury goods, of enterprise and design software, of quantum computers, of advanced semiconductors, of dual-use goods, of lasers and batteries, or of steel and construction materials; disconnection from the SWIFT system; or the prohibition on supplying legal services. Most of these prohibitions are well known in both EU and English law.

However, while they may share a common material scope (the sector targeted by the measure, which is specific and limited), it is their personal scope that differs slightly. European Union sanctions have, as their territorial scope, the Union's jurisdiction (the territory of all the Member States). Their personal scope covers the nationals of an EU territory wherever they may be (including, therefore, outside EU territory); persons and entities present on EU territory or incorporated under the law of a Member State; and aircraft and vessels falling within the jurisdiction of a Member State.

British sanctions operate, broadly speaking, in a manner fairly similar to the European ones, with a few differences: the personal scope of English sanctions provides that not only British subjects or entities are

affected by them, but, more generally, UK persons. That notion, defined in SAMLA, differs from the similar notion of US person used to secure the extraterritorial application of US sanctions to companies or persons of third States. More precisely, US primary sanctions apply to US persons in situations where a connecting factor exists (involvement of a US person, goods of US origin, a transaction carried out on US territory). And secondary sanctions allow OFAC or the State Department to threaten with sanctions any person, including a non-US person, for activities carried out in a third State, even where the transaction has no connection with the United States. By contrast, while the notion of UK person includes both British citizens, even when located abroad, and those of the British Overseas Territories, including, for instance, residents of Hong Kong, its extraterritorial reach nonetheless remains limited to the presence of UK persons abroad. In other words, it is far less extensive than that of the notion of US person.

The EU, too, claims that its sanctions are not extraterritorial, in conformity with international law. In principle, they do not bind non-European persons acting outside the territory of the Union. The personal and territorial criteria thus appear narrower for European sanctions than for British ones. However, that claim withstands analysis poorly, especially in the light of the sanctions adopted in connection with the war in Ukraine. The measures adopted by the EU to combat non-compliance with, or circumvention of, sanctions extend their reach *de facto*, contradicting its own claim to non-extraterritoriality.

Secondly, asset freezes: these are temporary and targeted restrictions on the right of property, intended to paralyse any action taken in respect of the monetary or financial assets concerned, whether they belong to a person or to an entity (a private or public company, a trust, an association, a foundation), for as long as the measure is in force. A freeze has a purely prohibitive logic, without any property-depriving effect, unlike, for example, judicial confiscation or expropriation. This means that the owner recovers full ownership of the assets as soon as the measure is lifted. Yet, even in the absence of confiscatory effects, freezing measures create a legal unavailability of the frozen assets, preventing any payment, transfer or set-off, neutralising security interests and suspending enforcement measures. While the sanctions do not prevent frozen assets from generating interest, that interest must likewise be frozen. All these prohibited operations may be subject to derogations granted by the competent national authorities.

The target of these sanctions is not only the owner of the frozen asset: the notions of ownership, control or indirect making-available may differ from the definitions usually known in domestic law and may also extend to non-legal forms of control over companies. These measures are administrative in that they are adopted not by a court but by a national (or European) authority. The grounds that led to the addition of a person to the list may, however, be challenged through an administrative appeal before the Council of the European Union, or through judicial review before the General Court of the European Union.

2. Divergences in the Implementation of Economic Sanctions: Conflicts of Overriding Mandatory Provisions and the Control Criterion

To illustrate the divergences in the implementation of European and British economic sanctions, two examples are particularly instructive. First, the question of conflicts of overriding mandatory provisions and of interference between sanctions. Secondly, the question of the divergent definition of the control of an entity by a sanctioned person, as between the EU and the United Kingdom.

Conflicts of Overriding Mandatory Provisions: Interference between Sanctions

Because of their particular mandatory force, their characterisation as overriding mandatory provisions makes compliance with them crucial for States and for the EU. This poses little difficulty where the court must apply its own prohibitive legislation or draw the consequences of the effects of a freezing measure ordered within its own legal order (for example, the impossibility for the debtor of an obligation to meet a payment deadline). Nor does it pose any greater difficulty where the two overriding mandatory provisions require the same thing (for example, where a prohibition on transferring money to a country X is the object of converging European and British sanctions). It is therefore unlikely, as matters currently stand, that their economic-sanctions regimes will diverge to the point of contradicting one another.

The position is less straightforward where the sanction-as-overriding-mandatory-provision of a third State comes to affect the obligation. Consider the case of a contract entered into by an Iranian and a German company, governed by German law, brought before the French court as the court of the place of performance, and affected by a US sanction. On that hypothesis, US law prohibits the German company from contracting with the Iranian one. But the purpose of that US overriding mandatory provision is not shared in Europe, so much so that it has been listed in the Blocking Regulation, which is itself an overriding mandatory provision. Can US law prevent EU law from applying? The European court seised thus finds itself having to resolve a conflict of sanctions, between the US sanctioning law, an overriding mandatory provision, and the EU law blocking the US law, also an overriding mandatory provision. It will therefore give precedence to its own overriding mandatory provision over the third-country one.

This example is drawn from the *Bank Melli v. Telekom Deutschland* case. There, Telekom Deutschland, which generated nearly half of its turnover in the United States, had unilaterally terminated all of the telecommunications contracts binding it to the Iranian bank Bank Melli Iran (BMI), whose listing among the persons designated by US secondary sanctions resulted from the US withdrawal from the Iran nuclear agreement in 2018. That termination had been carried out without express reasons and without seeking the prior authorisation of the European Commission. BMI challenged the validity of the contractual termination by invoking Article 5(1) of Regulation (EC) No 2271/96, which prohibits any operator falling within the jurisdiction of a Member State from complying with the requirements arising from the foreign legislation listed in the annex. It should indeed be noted that here the US legislation on the Iran sanctions programme had been incorporated into the annex by Delegated Regulation (EU) 2018/1100.

The operator is thus caught in a vice from the moment it anticipates the sanction, without waiting for it to be formally notified. The Court holds that the prohibition laid down by Article 5 of the Blocking Regulation applies even in the absence of any demand or individualised instruction emanating from a US administrative or judicial authority. The operator therefore cannot argue that it merely anticipated future pressure in order to justify its termination: the mere fact of pre-emptively complying with the requirements of the US overriding mandatory provision entails a breach of the European overriding mandatory provision. This is what Advocate General Hogan expressed, in his Opinion, through the formula that European undertakings face “impossible and highly unfair dilemmas caused by the application of two different and directly opposing legal regimes”. The operator is thus caught in a vice not at the moment when the conflict crystallises formally, but from the instant it attempts to anticipate it.

Moreover, the reversal of the burden of proof aggravates the operator’s procedural position. To ensure the effectiveness (*effet utile*) of the Blocking Regulation, the Court holds that the burden of proof cannot rest entirely on the party invoking the breach of Article 5. Where the body of evidence tends to indicate that a

termination was carried out in compliance with US sanctions, it falls to the terminating operator to establish that its conduct was not intended to comply with them. That solution, which neutralises contrary national procedural rules, here, Paragraph 4 of the German BGB, reveals a second effect of the collision of overriding mandatory provisions: it reconfigures the rules of the civil trial itself, in that the national law of evidence yields to the requirements of effectiveness of the European overriding mandatory provision. For the operator, this situation is all the more formidable in that the evidence attesting to the absence of any influence of US sanctions on its decision to terminate is, by its very nature, difficult to access.

Lastly, contractual freedom becomes a parameter of the proportionality test, not an enforceable right. The Court accepts that the annulment of the termination constitutes a limitation on the freedom to conduct a business guaranteed by Article 16 of the Charter of Fundamental Rights. But it considers that limitation justified and proportionate to the objective of neutralising the extraterritorial effects of the US legislation. The national court must therefore carry out a balancing exercise between the objectives of the Blocking Regulation and the risk of disproportionate economic losses to which the operator would expose itself by maintaining the contractual relationship, that is to say, precisely, the US sanctions themselves.

Thus, the Bank Melli judgment shows that the conflict between the US secondary-sanction law and the European Blocking Regulation, both characterised as overriding mandatory provisions, is not resolved by the mere primacy of the *lex fori*. On the contractual plane, it generates a structural instability: the termination is at once potentially required by one overriding mandatory provision and potentially voidable under another.

Ultimately, sanctions regimes still only rarely specify their effects in private law. The substantive compatibility of economic sanctions with pre-existing contractual obligations must therefore be slotted into the law of the Member States, the European Union having no competence in matters of private law. The effectiveness of sanctions thus depends both on the obligation in question and on the national doctrines governing obstacles to performance: for example, force majeure, the foreign act of state (*fait du prince étranger*), supervening illegality, or frustration and hardship. This is particularly so within the decentralised application of European restrictive measures by the Member States.

These divergences therefore concern not only trade or financial prohibitions; they are found in relation to asset freezes as well. The insufficient anticipation, by the European and British legislatures, of notions as important as control is thus a source of contradictions.

Conflicts of Definition: Divergences over the Notion of Control of an Entity

As regards asset freezes, one of the main points of divergence relates to how the EU and the United Kingdom approach the notion of ownership and control of a sanctioned entity. The EU applies the 50%-shareholding rule: where a designated person holds more than 50% of a company's shares, or otherwise controls it, the company is presumed to be subject to sanctions. That presumption may, however, be rebutted: if the company proves that its assets are wholly insulated from the influence of the sanctioned shareholder, the freeze can be avoided. All of this was recently clarified by the Court of Justice of the European Union: seised of a preliminary reference concerning a Lithuanian company held as to 50% by a sanctioned Belarusian citizen, the Court held, in *EM System UAB*, that a half-share holding suffices to ground a presumption of control, in so far as that proportion makes it possible to block strategic decisions. The Court nonetheless recalls that the presumption remains rebuttable, with a view to protecting the rights of the defence: that solution, together with that of the *T Trust* judgment, supports this idea of flexibility in the assessment of the control criterion. A defendant might, for instance, argue that the majority shareholder's political rights have been restricted within the company.

The United Kingdom also applies this 50% rule. However, in a notable departure from the EU, the wording of the text leaves no room for rebuttal of the presumption, which is therefore, in fact, irrebuttable. Indeed, Regulation 7(2) of the Russia Regulations 2019 provides that: “A person who is not an individual (‘C’) is ‘owned or controlled directly or indirectly’ by another person (‘P’) if [...] P holds, directly or indirectly, more than 50% of the shares or voting rights in C.”

The application of the freezing measure is automatic as soon as the entity satisfies this objective condition of control. English law has, however, gone even further, with the notion of hypothetical control and the test that followed. This was first confirmed by the Guidelines issued by the British government, but was then tempered by several court cases that warrant closer attention.

The PJSC National Bank Trust v. Mints judgment greatly alarmed economic actors. There, the Court of Appeal of England and Wales had to interpret the wording of the aforementioned Russia Regulations, which provides that an entity is controlled by a sanctioned person if that person can ensure that the entity’s affairs are conducted “in accordance with his wishes”. On that reading, the regulation would cover both control in law, such as shareholding, and control in fact, including that exercised by political figures. Yet, according to the English court, the effect of the constitutional powers and supreme position occupied by President Vladimir Putin could theoretically subject any Russian company or administration to his will, which therefore implies that virtually every Russian company (public or private) could be regarded as “controlled”, hypothetically, by Vladimir Putin and, consequently, automatically frozen in the United Kingdom.

Hence the judgment of the High Court of England and Wales in Litasco SA v. Der Mond Oil and Gas Africa, which restored order to all this. In view of the concern that had gripped economic actors when PJSC was handed down, Foxton J firmly reframed the debate by drawing an essential distinction: there, the judge held that a political leader’s theoretical ability to confiscate, requisition or bring pressure to bear on a company by using the prerogatives of State public power does not amount to “control” within the meaning of sanctions law. Indeed, under what may be termed a factual test, for there to be control it must be shown that the sanctioned person actually exercises influence (or is manifestly prepared to do so) over the current or strategic affairs of the entity at the material time. The mere hypothetical power to do so in the future does not suffice.

Thus, while the hypothetical-control test has been partly neutralised for companies close to certain political leaders, in the absence of manifest proof of direct interference in the sanctioned company, it nonetheless remains useful in combating opaque structures such as certain trusts may be: if an oligarch holds the hypothetical power to revoke a nominee or to alter the beneficiaries of a trust at any time, the courts consider control to be established, even where that right has not yet been activated.

Conclusion

In conclusion, as Ramona Bloj very learnedly observed: “the value of sanctions lies not only in their effectiveness. A sanction is often a means of clearly signalling disapproval, a foreign-policy stance: more moderate than an embargo, less dangerous than military retaliatory measures. It thus stands midway between inaction and violent overreaction.” This persistent tension between effectiveness and usefulness can be resolved by private international law. The tools that this discipline offers to resolve the questions attached to it, namely, resolving conflicts of laws and of jurisdictions, as well as matters relating to the recognition of foreign decisions and acts, could therefore form part of the solution. The Litasco case clearly shows that the national court, for want of a harmonised legislative framework, becomes *de facto* the vehicle of coherence between the two regimes. This is a partial answer and, because partial, an unsatisfactory one; but, for want of better, it nonetheless indicates the course to follow for economic operators.

Ultimately, the foregoing stocktaking reveals less an incompatibility between the British and European regimes than a shared shortcoming: that of legislatures which designed public-law instruments without systematically anticipating their private-law effects. The shared philosophy of the two regimes, to which the Security and Defence Partnership of May 2025 again bears witness, has not sufficed to forestall divergences of implementation that undermine precisely what sanctions are supposed to reinforce: the legal predictability and certainty of good-faith economic operators.

This gap is particularly salient in the field of asset freezes: that the presumption of control based on the 50% rule is rebuttable under European law and irrebuttable under English law is not the product of a deliberate political divergence; it is the result of legislative drafting that did not exhaust the private-law consequences of the mechanism it was establishing. It fell to the courts, in *EM System*, *T Trust* and *Litasco*, to fill that silence by judge-made law, with the uncertainties this generates for practitioners until each judgment is handed down. Convergence by judge-made law is not without value, but it cannot stand in for legislative policy, particularly in a field as political as sanctions.

Yet the tools of private international law, conflict of laws, characterisation, and overriding mandatory provisions, among others, offer precisely the technical framework for articulating economic sanctions with pre-existing contractual obligations. It would still be necessary, however, for legislatures to take hold of them upstream, by specifying, in the European regulations on the one hand, and in the statutory instruments on the other, the effects of a freeze on ongoing contracts, the fate of security interests, the conditions for force majeure or frustration, and the criteria for determining which national authority is competent where a single transaction falls simultaneously within several sanctions regimes. Article 11 of Regulation (EU) No 833/2014 is an attempt in this direction, but it remains isolated and insufficiently systematic.

The tension between the effectiveness and the usefulness of sanctions that the literature identifies is therefore not an inherent inevitability of the instrument. It is, to a significant extent, the product of a deficit in private-law legislative technique and in the anticipation of the private-law consequences of sanctions. In this respect, Brexit has made that shortcoming visible by splitting in two regimes that had hitherto been unified. It is in that splitting, paradoxically, that the opportunity may lie: that of a coordinated reform, to which the 2025 partnership formally opens the way, and which would make private international law no longer a judicial corrective to sanctions, but one of the instruments of their very design.

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