



INSIGHT

THE UK AS A THIRD COUNTRY: THE CURRENT MODEL OF COOPERATION WITH THE EUROPEAN UNION IN THE ADOPTION OF RESTRICTIVE MEASURES

SARA POLI*

ABSTRACT: This *Insight* examines how the UK has shaped its sanctions policy from the start of the transition period until the first three months following the UK's withdrawal from the EU. The objective of the *Insight* is to assess whether the UK has aligned with the EU restrictive measures based on art. 215 TFEU or has made political choices that significantly depart from those of the EU in the adoption of sanctions regimes. The following trends may be highlighted. On the one hand, the UK has shaped its sanctions policy independently of the EU. In particular, the UK enacted a global human rights sanctions regime that presents differences from that of the EU and has on several occasions been applied independently of the EU in the practice. On the other hand, the UK has incorporated most of the EU sanctions *acquis* and has also aligned with the restrictive measures adopted by the EU in specific cases. Despite the presence of differences in the sanctions regimes of the EU and the UK, at the moment the policy choices of the two subjects of international law are similar. However, in the future, the divergence between the sanctions regimes applicable in the EU and UK legal orders may grow, for instance with respect to the designations of the addressees of restrictive measures.

KEYWORDS: restrictive measures – Common Foreign and Security Policy – Brexit – convergence – regained sovereignty – UK Global Human Rights Sanctions Regulations.

I. INTRODUCTION

The withdrawal agreement of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community¹ provided that a separate Treaty on cooperation in the area of Common Foreign and Security Policy (CFSP) between the EU and the UK could be concluded before the end of the transition

* Professor of European law, University of Pisa, sara.poli@unipi.it.

¹ Agreement of 19 October 2019 on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.



period.² Yet, the receding country turned this option down probably on account of the greater strategic importance that the conclusion of the Trade and Cooperation Agreement (TCA)³ would have for the country.

The new legal instrument, regulating UK-EU relations, does not cover the field of restrictive measures,⁴ adopted through CFSP Decisions based on art. 29 TEU alone⁵ or on those acts and Regulations under art. 215 TFEU.⁶ As a result, at the moment cooperation on this important aspect of the CFSP takes place “when mutual interests are at play”,⁷ as suggested by the High Representative of the Union for Foreign Affairs and Security Policy (HR). The lack of a specific legal framework is regrettable since it implies that, unlike other security-related areas,⁸ there will be no institutional mechanism enabling the Parties to discuss this matter and to coordinate their activities within the EU or other relevant international organizations, *in primis*, the UN. However, there is scope for the development of informal collaboration, if both Parties are willing to do so.

Restrictive measures are in quantitative terms the most important subset of CFSP acts.⁹ The EU strengthens respect of international law and promotes its values through these instruments, in line with art. 21 TEU. The cooperation with the UK in the adoption of sanctions is strategic for the EU given that this country has made an important con-

² This possibility was provided for in art. 127(2) of the Agreement on withdrawal of the United Kingdom of Great Britain and Northern Ireland cit.

³ Trade and Cooperation Agreement of 30 December 2020 between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part.

⁴ The term is used interchangeably with “sanctions” for the sake of simplicity.

⁵ Restrictions on the entry of third country nationals to the territories of Member States are decided at EU level on the basis of art. 29 TEU and are implemented at national level by Member States given that the latter retain the competence to enact restrictions on admission, under international law.

⁶ Art. 215(1) TFEU is the legal basis of restrictive measures providing for the interruption of economic and financial relations with third countries. Art. 215(2) TFEU is also used for freezing the funds and other economic resources of non-state-subjects. Restrictive measures of economic nature are often accompanied by restrictions on the admission.

⁷ J Borrell Fontelles, ‘After Brexit, how can the EU and UK best cooperate on foreign policy?’ (29 January 2021) European External Action Service blog eeas.europa.eu.

⁸ It should be noted that the TCA has not completely neglected to cover security issues. In this Treaty, there are a number of provisions concerning cooperation on common threats such as terrorism, proliferation of weapons of mass destruction, illicit trade in small weapons and light arms, and cybercrimes. These topics are the subject of regular dialogue between the Parties; furthermore, efforts to coordinate the respective actions within international organizations are envisaged. For example, regular dialogue is envisaged between the Parties and the possibility for the UK to be invited to participate in the management board of the EU cybersecurity agency (ENISA) and in other bodies. See arts CBY.1-5.

⁹ Due to space concerns, references to the legal aspects of restrictive measures are limited in this context. Useful references can be found in G Butler, *Constitutional Law of the EU's Common Foreign and Security Policy* (Hart 2019); S Poli, *Le misure restrittive autonome dell'Unione europea* (Editoriale Scientifica 2019); M Eriksson, *Targeting Peace: Understanding UN and EU Smart Sanctions* (Routledge 2016), C Beaucillon, *Les mesures restrictives de l'Union européenne* (Bruylant 2014).

tribution in the definition of various sanction regimes as long as it was part of the Union.¹⁰ Both the UK and the EU have shared common values and both actors seek to promote them in the external action.

This *Insight* discusses about the shape of the UK sanctions policy between 20 February 2020, which is the date of the entry into force of the withdrawal agreement, and the early days of the UK's regained sovereignty, following the expiry of the transition period on 31 December 2020. The aim is to identify the model of cooperation in the area of restrictive measures that the UK envisages in its relations with the EU. Section II identifies *in abstracto* two possible patterns of behaviour that the UK could follow. Section III turns to the decisions that were actually taken by this country on restrictive measures in the practice during the transition period. Instances of an independent sanctions policy and examples of alignment with the EU are indications of a "mixed mode of cooperation". Section IV highlights how the UK has incorporated the EU sanctions *acquis* after the elapse of the transition period while, at the same time, diverging from the EU as far as a number of designations of non-state entities is concerned. Section V is dedicated to an assessment of the model of cooperation with the EU that best describes the UK's strategy so far in the area of sanctions. The concluding remarks briefly speculate on the changes that may characterize EU-UK cooperation in the area of sanctions in the future.

II. POSSIBLE MODELS OF COOPERATION WITH THE EU AND THEIR IMPLICATIONS

After the UK re-acquired its status of sovereign country, there were expectations of close cooperation with the EU in the area of sanctions. Indeed, as it was mentioned earlier, the UK has worked in many ways as a facilitator of the adoption of restrictive measures while being a Member of the Union. It was difficult to identify situations in which the UK would refrain from imposing autonomous sanctions if EU Member States were willing to do so.

Yet, it was not clear whether or not the UK would follow the EU's sanctions decisions during and after the expiry of the transition period. The mentioned country was faced with two options in abstract terms: on the one hand, it could adopt parallel sanctions with respect to those of the EU by default along the lines of Norway, which is the leading non-member country in its rate of alignment with EU sanctions.¹¹ On the other hand, the UK could exercise its powers in a similar fashion to Switzerland, which is more

¹⁰ For examples see E Moret and F Pothier, 'Sanctions after Brexit' (2018) *Global Politics and Strategy* 179, 183-185.

¹¹ For comments on the position taken by third European countries and acceding countries to the EU, see V Szép and P Van Elsuwege, 'EU sanctions policy and the alignment of third countries' in J Santos Vara, RA Wessel and PR Polak (eds), *The Routledge Handbook on the international dimension of Brexit* (Routledge 2021) 226, 230-232.

selective than Norway in adopting parallel sanctions with respect to the EU.¹² The Political Declaration which was endorsed by the European Council together with the withdrawal agreement in October 2019 did not envisage the alignment of UK sanctions with those of the EU. The general rule seemed to be that the two subjects of international law would pursue independent sanctions policies.¹³

The fundamental advantage for the UK to align with the EU restrictive measures is linked to the greater effectiveness of sanctions imposed by 28 countries (instead of a single one). This is also the essential reason for the adoption of these types of measures in a multilateral context rather than within regional organizations or by the unilateral acts of single countries. However, having to wait for the EU Council to gather the unanimous vote of all Member States has inconveniences: the reaction to possible serious breaches of international law is slowed down. Indeed, this intergovernmental institution may not immediately attain unanimity when voting on a CFSP Decision instituting a restrictive measure, as a reaction to the emergence of a crisis in a given third country, leading to breaches of international law or EU values.¹⁴ There may be national governments that for their own policy reasons obstruct the prompt adoption of these measures. For example, Cyprus has recently delayed the adoption of sanctions against Belarus for the repression of protests in the aftermath of the presidential elections of August 2020 in order to put pressure on the Council to adopt restrictive measures *vis-à-vis* Turkey for the continuation of illegal seismic activities, carried out by the company Turkish Petroleum Corporation, within Cyprus' exclusive economic zone. The veto was finally lifted on 1 October 2020 when sanctions against Belarusian high-level civil servants were adopted.¹⁵ This was not the only case: in the past, a similar situation occurred with respect to the sanctions authorized against Venezuela, which were delayed by Italy. In order to counter the practice of holding up the adoption of CFSP decisions setting up restrictive measures, the introduction of qualified majority voting was proposed by the Commission in 2018¹⁶ through the *passerelle clause* for the CFSP¹⁷ and has gained the

¹² See chart published by V Szép and P Van Elsuwege, 'EU sanctions policy and the alignment of third countries' cit. 229 and other interesting data concerning Norway, *ibid.* 231.

¹³ Political Declaration of 17 October 2019 setting out the framework for the future relationship between the European Union and the United Kingdom para. 98.

¹⁴ See in particular EU principles and values referred to in art. 21(1) and (2)(b) TUE.

¹⁵ Decision 2012/642/CFSP of the Council of 15 October 2012 concerning restrictive measures against Belarus, as implemented by Implementing Decision (CFSP) 2020/1388 of the Council of 2 October 2020 implementing Decision 2012/642/CFSP concerning restrictive measures against Belarus and Regulation (EC) 765/2006 of the Council of 18 May 2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus, as implemented by Implementing Regulation (EU) 2020/1387 of the Council of 2 October 2020 implementing art. 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus.

¹⁶ Communication COM(2018) 647 final from the Commission of 12 September 2018 on A stronger global actor: a more efficient decision-making for EU Common Foreign and Security Policy.

¹⁷ Art. 31(3) TEU.

Parliament's support.¹⁸ Yet, at the moment, this proposal is stalling since no agreement has been reached by the Member States in the European Council.

It is certainly true that the promptness of response by the international community in a situation of crisis is crucial to put pressure on a given third country that breaches international law or acts against EU values. In this context, the UK could choose to take the lead in adopting restrictive measures without waiting for the EU.

It is now necessary to briefly refer to the UK's applicable legal framework in the area of sanctions. The main piece of legislation is the Sanctions and Anti-Money Laundering Act (SAML),¹⁹ in force since 2018. Under UK law, Ministers were empowered to adopt sanctions after exit day (29 March 2019) so as to prepare the country for withdrawal from the EU. On the basis of this piece of legislation, the UK could not only roll over restrictive measures enacted at Union level during the transition period, but also adopt new autonomous measures. Under the SAML, "appropriate ministers" were empowered to approve sanctions Regulations on the basis of a broad range of foreign affairs concerns.²⁰ In the next two sections, the UK sanctions policy during the transition period will be described and discussed.

III. THE MIXED MODE OF COOPERATION: THE ADOPTION OF THE GLOBAL HUMAN RIGHTS SANCTIONS REGULATIONS AS THE FIRST INSTANCE OF THE UK INDEPENDENT SANCTION POLICY AND EXAMPLES OF UK ALIGNMENT TO THE EU

The adoption of the Global Human Rights Sanctions Regulations (GHRSR)²¹ is the most remarkable instance of the UK's emerging sanctions policy independent of the EU. The new regime was enacted ahead of the expiry of the transition period and is different in scope from that set up by the EU. The mentioned Regulation entered into force on 6 July 2020. The question arises whether the UK could adopt new sanctions under the withdrawal agreement.²² There may be some doubts since under the principle of loyal cooperation, enshrined in the mentioned Treaty, the UK had a positive obligation to con-

¹⁸ See T Latici, 'Qualified majority voting in foreign and security policy – Pros and Cons' (19 January 2020) European Parliament Think Thank www.europarl.europa.eu.

¹⁹ See UK Public General Act, Sanctions and Anti-Money Laundering Act (SAML) of 23 May 2018 www.legislation.gov.uk. For comments on this piece of legislation see S Poli, 'UK sanction policy after Brexit from Dependence to autonomy?' in J Santos Vara, RA Wessel and PR Polak (eds), *The Routledge Handbook on the international dimension of Brexit*, cit. 213-225.

²⁰ Sanctions and Anti-Money Laundering Act (SAML) (2018) cit. clause 1(1) and (2).

²¹ UK House of Parliament, The Global Human Rights Sanctions Regulations 2020 of 5 July 2020, 2020 No. 680, www.legislation.gov.uk.

²² Under SAML clause 1(2)(f)(ii), a UK Minister is empowered to adopt a Regulation instituting sanctions for a number of purposes, including providing accountability for gross violations of human rights and other related purposes.

tinue aligning with the EU *acquis* and a negative obligation to abstain from taking action that diverged from the EU legal framework. The UK could have waited until 31 December 2020 to set up new sanctions with respect to those of the EU. Yet, the adoption of this regime was considered a priority for the UK and this led to the enactment of the mentioned Regulation before this country regained its full sovereignty.

Turning to the EU, the Global Human Rights Sanctions Regime was approved on 7 December 2020,²³ one year after the High Representative of the Union had launched a discussion on the adoption of this regime.²⁴ The EU initiative, enabling the enactment of financial sanctions and restrictions of movement on those who commit human rights abuses, is a welcome development since it avoids EU Member States act on their own in this area.²⁵ However, it remains an open question whether the new instrument really makes it possible for the EU to do something new and different from what the EU Member States could do in the context of the existing EU framework on restrictive measures.²⁶

Coming back to the GHRSR, this is inspired by US “Global Magnitsky Act”,²⁷ but, unlike that piece of legislation, corruption is not a triggering factor for sanctions. However, it is noteworthy that in 2021 an announcement was made that a new sanctions regime in this field will be introduced.²⁸ Actually, the UK has recently introduced a Global anti-corruption regime²⁹ to prevent and fight serious corruption. In contrast, the EU has two

²³ Decision 2020/1999/CFSP of the Council of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses; Regulation (EU) 2020/1998 of the Council of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses.

²⁴ See also the Joint Communication JOIN(2020) 5 final from the Commission to the European Parliament and the Council of 25 March 2020, EU Action Plan on Human Rights and Democracy (2020-2024). The EU Global Human Right sanctions regime was inspired by an initiative of The Netherlands. The European Parliament provided strong political support to the new sanction regime. See European Parliament, Resolution 2019/2580(RSP) on a European human rights violations sanctions regime of 14 March 2019 eur-lex.europa.eu. See F Finelli, ‘A New EU Sanction Regime Against Human Rights Violations’ European Papers (European Forum Highlight of 1 December 2020) www.europeanpapers.eu 1569.

²⁵ In fact, a number of countries such as Estonia, Latvia and Lithuania have enacted national legislation providing for the right to impose sanctions for human right abuses. See M Russel, ‘EU human rights sanctions: Towards a European Magnitsky Act’ (10 December 2020) European Parliament Think Thank www.europarl.europa.eu 5.

²⁶ For example, human rights abuses were sanctioned when committed in the aftermath of the elections (Belarus) or in connection with the repression of the political opposition by a military junta (Myanmar). By contrast, human rights abuses are self-standing justifications in the case of Iranian sanctions enacted in 2011. See S Poli, ‘Protecting Human Rights in the European Union’s External Relations: Setting the Scene’ (Centre for Law of European External Relations (CLEER) Papers 5-2016) 7, 12.

²⁷ See US President Executive Order of 20 December 2017 n. 13818 *Blocking the Property of Persons Involved in Serious Human Rights Abuses or Corruption*.

²⁸ ‘Global Britain in a competitive age: The Integrated Review of Security, Defence, Development and Foreign Policy’ (16 March 2021) GOV.UK assets.publishing.service.gov.uk 48.

²⁹ The Global Anti-Corruption Sanctions Regulation (SI 2021/488).

specific regimes directed against certain persons, entities and bodies in view of the situation in Ukraine³⁰ and Tunisia.³¹

Under the GHRSR, sanctions are imposed when an activity carried out by a State (or by non-state actors who are under the control of the State) cause serious violations of certain human rights.³² The UK will designate persons in order to fulfil a number of “human right priorities”, which are listed in a guidance note of the UK government.³³ The rights in question are media freedom and freedom of religion or belief, the right to be free from modern slavery and the right not be tortured. In addition, the UK gives priority to the prevention of sexual violence in or related to conflict and to the protection of human rights defenders.³⁴ The abuses of human rights must be perpetrated against individuals who seek to obtain, exercise, defend or promote human rights, such as journalists, civil society activists, human rights defenders and whistle-blowers. The policy guidelines available on the website of the UK government state that whether the victim of the human rights violation or abuse has any particular links to the UK is a relevant factor to impose restrictive measures. Furthermore, the seriousness of the conduct, the position of the person to be sanctioned, as well as his or her links to the UK are other relevant factors to make designations. In particular, the impact in terms of accountability is important. This may lead the UK to favour the designation of state organs at the highest level for the abuse of human rights. Finally, “The Minister is likely to give particular consideration to cases where international partners have adopted, or propose to adopt, sanctions and where action by the UK is likely to increase the effect of the designation in addressing the issue in question”.³⁵ The latter criterion may be interpreted as implying that the UK is open to follow the designations made by the EU since this would maximize the effect of the restrictive measure. Yet, this provision could also be interpreted as favouring alignment with the US or Canada.

³⁰ For the most recent amendment see Council Decision (CFSP) 2020/373 of 5 March 2020 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.

³¹ For the most recent amendment see Council Decision (CFSP) 2021/55 of 22 January 2021 amending Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia.

³² These human rights are the “individual's right to life; an individual's right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment; and an individual's right to be free from slavery[...]”. See Explanatory Memorandum to the Global Human Rights Sanctions Regulations cit. para 7.2, www.legislation.gov.uk.

³³ Policy paper. Global Human Rights Sanctions: consideration of designations' (6 July 2020) GOV.UK www.gov.uk.

³⁴ *Ibid.*

³⁵ *Ibid.* para. 4.

Turning to the EU Global Human Rights Regime, this is intended to produce effects in third countries through pressure on those who are listed;³⁶ the scope *ratione personae* includes the leaders of the ruling class as well as non-state parties, in a similar fashion to that of the UK. Yet, a major difference is that EU sanctions are triggered by serious breaches of human rights, such as genocide, crimes against humanity, extrajudicial killings, enforced disappearance of persons, arbitrary arrests or detentions. Acts of corruption are not included in the scope of the EU restrictive measures. Broadly speaking, most of the listed breaches qualify as *erga omnes* violations of international law, unlike those falling within the scope of the UK regime, which, as a general rule, qualify as ordinary breaches of international law.

So far, the UK has applied its regime independently of the EU. For the first time, sanctions were imposed in July 2020 against 25 Russian nationals involved in the mistreatment and death of Sergei Magnitsky. Further measures were adopted against 20 Saudi nationals implicated in the death of the journalist Jamal Khashoggi, two high-ranking Myanmar military generals taking part in the repression of the Rohingya people, and two organisations involved in forced labour, torture and murder in North Korea's gulags. In February 2021, the UK listed officials involved in the *coup d'état* in Myanmar. As of March 2021, there are 72 individuals and four organisations on the UK consolidated lists.³⁷ The most recent decision concerns the listing of four Chinese officials in connection with the repression of the Uyghurs.³⁸

In March 2021 the EU has made designations under its own human rights regime; however, the listing decisions only partially overlap with those of the UK. In total 15 persons and 4 entities appear on the EU list of persons subject to asset freezes. For the first time, restrictive measures were adopted by the EU Council against four Russian officials involved in Navalny's arrest and breaches of the freedom of peaceful assembly and of association, and freedom of opinion and expression in Russia.³⁹ Subsequently, the EU has listed individuals or non-state entities for large-scale arbitrary detentions of, in particular, Uyghurs in Xinjiang in China,⁴⁰ members of military forces involved in the seizure of the

³⁶ Guidelines note from the Commission on the transition of certain provisions of Council Regulation (EU) 2020/1998, C(2020) 9432, 2.

³⁷ 'Consolidated List of Financial Sanctions Targets in the UK. Asset Freeze Targets' (30 April 2021) GOV.UK ofstorage.blob.core.windows.net.

³⁸ Office of Financial Sanctions Implementation HM Treasury, Financial Sanctions Notice of 25 March 2021 *Global Human Rights* assets.publishing.service.gov.uk. Oral statement to Parliament given by Foreign Secretary Dominic Raab. See UK Government Press Release, 'Treatment of Uyghur Muslims in Xinjiang: Foreign Secretary's statement, 22 March 2021' (22 March 2021) GOV.UK www.gov.uk.

³⁹ Eurogroup Press Release, 'Global Human Rights Sanctions Regime: EU sanctions four people responsible for serious human rights violations in Russia' (2 March 2021) Eurogroup www.consilium.europa.eu.

⁴⁰ It was the first time the EU imposed sanctions on Chinese persons after those connected to the Tiananmen Square's massacre in 1989.

government power in Myanmar, repression in the Democratic People's Republic of Korea, extrajudicial killings and enforced disappearances in Libya, torture and repression against LGBTI persons and political opponents in Chechnya in Russia, and torture, extrajudicial, summary or arbitrary executions and killings in South Sudan and Eritrea.⁴¹

A second relevant example that marked some degree of divergence between the UK and EU sanctions policies is that of restrictive measures concerning the situation of Belarus in the aftermath of the presidential elections. The UK imposed sanctions aligning with those of Canada on 29 September 2020 against eight high-level officials of Belarus, including the president and his son. These persons were the object of travel bans and the freezing of assets, under the newly established GHRSR.⁴² The UK's response to the situation of crisis in Belarus was only one day faster than that of the EU whose first round of sanctions was adopted on 1 October 2020.⁴³ Although the timing in imposing these measures is almost simultaneous with that of the EU, the names on the EU lists were different from those designated by the UK. The EU position on Belarus was more gradual than that of the UK;⁴⁴ Lukashenko was not listed until the second round of sanctions which was enacted on 6 November 2020. One month later, a third wave of restrictive measures was approved.⁴⁵ The targets were high-level officials responsible for the ongoing violent repression and intimidation of peaceful demonstrators, opposition members and journalists, but those included on the list did not feature in the Belarus sanctions Regulation on 31 December 2020 (the end of the transition period). The differences in the designations show that the UK acted independently of the EU and chose not to align with it. On the contrary, the UK Foreign Secretary made it clear that the initiative was coordinated with Canada.⁴⁶ The UK could have certainly waited one day for the EU before enacting its sanctions. It would have been a symbolic but important sign of cohesion of like-minded partners in a situation in which common values such as respect of human rights are breached.

⁴¹ Council (CFSP) 2021/481 of 22 March 2021 amending Decision (CFSP) 2020/1999 concerning restrictive measures against serious human rights violations and abuses; Implementing Regulation (EU) 2021/478 of the Council of 22 March 2021 implementing Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses.

⁴² UK Government Press Release, 'Belarus: UK sanctions 8 members of regime, including Alexander Lukashenko' (29 September 2020) GOV.UK www.gov.uk.

⁴³ Eurogroup Press Release, 'Belarus: EU adopts conclusions' (12 October 2020) Eurogroup www.consilium.europa.eu.

⁴⁴ "Responsible for the fraudulent nature of the presidential elections and the violent crackdown on peaceful protests", European Council Conclusion 11661/20 of 12 October 2020 on Belarus para. 7.

⁴⁵ Eurogroup Press Release, 'Belarus: Eu imposes third round of sanctions over ongoing repression' (17 December 2020) Eurogroup www.consilium.europa.eu.

⁴⁶ UK Government Press Release, 'Belarus: UK sanctions 8 members of regime, including Alexander Lukashenko' cit.

However, all in all, it is noteworthy that the divergence between the sanctions regimes related to the situation of Belarus in the EU and the UK has decreased over time. Indeed, in February 2021 the UK added 27 Belarusian officials to its Regulation of 2019 and these persons were all listed by the EU Council in the third wave of restrictive measures dating from mid-December 2020.

Turning to examples of full alignment to EU sanctions, at least two cases may be identified. On the one hand, this country has copied the listing decisions of the EU as far as restrictive measures concerning cyber activities are concerned.⁴⁷ The EU adopted sanctions in July and October 2020 and in both cases the UK included the names of EU-listed persons and entities in its consolidated list of financial sanctions. On the other hand, the UK has enacted sanctions on 15 October 2020 against six Russian high-level officials⁴⁸ for the lethal toxin attack on Navalny while one day earlier⁴⁹ the EU had approved the same measures,⁵⁰ under its sanction regime on the prohibition of chemical weapons.⁵¹

The short overview provided above has shown that, during the implementation period, the UK has adopted a mixed mode of cooperation with the EU in the area of sanctions. On the one hand, this country made independent choices of foreign policy and on the other hand, it has followed the EU decisions.

IV. THE INCORPORATION OF THE EU *ACQUIS* IN THE FIELD OF SANCTIONS IN THE UK LEGAL ORDER AT THE END OF THE TRANSITION PERIOD: TOWARD BROAD BUT NOT FULL CONVERGENCE WITH EU SANCTIONS

In order to define the model of cooperation with the EU which inspired the UK sanctions policy after the end of the transition period, it is necessary to examine what the UK did on 31 December 2020. The era of regained sovereignty was inaugurated on that

⁴⁷ While being an EU member, the UK had favoured the adoption of this type of restrictive measures, following the poisoning of Russian citizens in Salisbury.

⁴⁸ UK Government Press Release, 'UK sanctions Alexey Navalny's poisoners' (15 October 2020) GOV.UK www.gov.uk. The UK also designated persons and entities responsible for Syria's chemical weapons programme and those involved in the Salisbury attack on 31 December 2020. Yet, this cannot be considered a substantive departure from the EU sanction regime but simply a reallocation of names from a third-country regime (that of Syria) to a horizontal one (chemical weapons regime).

⁴⁹ It is important to note that the US on this occasion followed the EU and UK's initiatives: a decision to sanction seven Russian officials in connection with the poisoning of Navalny was taken only in March 2021. This is the first sanction decision under the new US administration. See US Department of the Treasury Press Release, 'Treasury Sanctions Russian Officials in Response to the Novichok Poisoning of Aleksey Navalny' (2 March 2021) U.S. Department of the Treasury home.treasury.gov.

⁵⁰ The EU has imposed sanctions not only on six Russian officials but also on the institute responsible for not having destroyed the toxic agent used to poison Navalny.

⁵¹ Decision 2018/1544/CFSP of the Council of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons; Regulation (EU) 2018/1542 of the Council of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons.

day with the incorporation of about 30 EU/UN sanctions regimes, including both country specific⁵² and horizontal ones,⁵³ in the domestic legal order. Thus, the process of importing EU restrictive regimes, which had started in 2018, was completed at the end of 2020.⁵⁴ While the UK was obliged to implement the CFSP decisions enacted at EU level, under the withdrawal agreement, in contrast, after 31 December 2020 it was no longer subject to that obligation. It is not surprising that the UK turned the EU “*sanction acquis*” into domestic law. Yet, it is worth noting that the UK’s incorporation of these categories of CFSP acts was not unqualified: a number of changes were introduced to the financial sanctions.⁵⁵ More importantly, about 113 names of persons or entities, included in the so-called “EU black lists”, were not inserted in those of the UK Regulation. The non-state entities that were excluded featured in the EU sanctions regimes concerning the situations of Tunisia, Belarus, Egypt, Guinea-Bissau and Syria. The names of a small group of persons appearing on the UN sanctions lists were also deleted.⁵⁶ The delisting of these persons is in principle problematic given the UK’s obligations to com-

⁵² See footnote n. 53 for references to the UK Regulations on country specific sanctions regimes.

⁵³ These are sanctions concerning misappropriation of funds, chemical weapons, cyber attacks, counter-terrorism, terrorist activities such as those of ISIL (Da’esh) and Al-Qaida and the Global Human Rights Sanctions regime. See the misappropriation (Sanction) (Exit) legislation Regulations 2020 (S.I. 2020/1468), the Chemical Weapons (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/618), the Cyber (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/597), the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/577), linked to the UN Security Council resolution 1373 (2001) and The ISIL (Da’esh) and Al-Qaida (United Nations Sanctions) (EU Exit) Regulations 2019 (S.I. 2020/466). See also the GHRSR described and commented in Section III. A “*sui generis*” sanction regime is the one on the regulated by The unauthorised drilling activities in the eastern Mediterranean (sanctions) (EU exit,) Regulations 2020 (S.I. 2020/1474) which target managers of the Turkish company that carried out illegal activities in waters under the jurisdiction of Cyprus since 2019.

⁵⁴ The Regulations that incorporate the EU restrictive measures are the following: Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019 (S.I. 2019/134), the Venezuela (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/135), the Burma (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/136), the Republic of Guinea-Bissau (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/554), the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/600), the Zimbabwe (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/604), the Syria (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/792), the Russia (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/855), the Burundi (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/1142), the Guinea (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/1145), the Bosnia and Herzegovina (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/608) and the Nicaragua (Sanctions) (EU Exit) Regulations 2020 (S.I. 2020/610).

⁵⁵ For example, the Ukrainian and Russian sanctions regimes were unified in a single UK sanctions regime on Russia. The regimes against Tunisia, Egypt and Ukraine were merged into a single regime named “the misappropriation of funds”. In addition, a number of UK sanctions regimes were changed with respect to the licence requirements to which certain prohibited activities are subject. The reason for these modifications is to avoid British nationals being subject to double licences requirements in the Overseas Territories. See the Sanctions (EU Exit) (Miscellaneous Amendments) (No. 4) Regulations 2020 and the explanatory note www.legislation.gov.uk.

⁵⁶ Office of Financial Sanctions Implementation HM Treasury, Financial Sanctions Notice of 31 December 2020 Consolidated List – Change Notice assets.publishing.service.gov.uk.

ply with the UN Charter. It is not clear the reason why these changes were made. The UK Foreign Office probably took the position that there was not sufficient evidence to list the addressees of the restrictive measures in question. Other names were moved from one sanctions regime to another.

As a result of these exclusions, we can say that the convergence of the UK sanctions policy with that of the EU was accompanied by a certain degree of divergence which makes the UK sanction policy to some extent unpredictable.

V. AN ASSESSMENT OF THE UK MODEL OF COOPERATION WITH THE EU IN THE AREA OF RESTRICTIVE MEASURES: BROAD CONVERGENCE

It is now time to assess the model of cooperation with the EU that inspires the UK sanctions policy. It is submitted that so far there is neither evidence of parallelism by default with respect to the EU sanctions choices, nor of substantial divergence from the EU policy in terms of situations triggering the use of restrictive measures. Certainly, there are differences in the designations of natural and legal persons in both regimes. This does not mean that at the moment the exercise of UK sovereignty in the area of the CFSP has turned the UK sanctions policy into a genuinely different policy from that adopted in the context of the EU. In many cases, the UK Sanctions Regulation incorporated in UK law provide that: "This instrument is intended to deliver substantially the same policy effects as the existing EU regime". This implies that the UK sanctions policy broadly converges with that of the EU since the foreign policies of the EU and the UK are inspired by similar common values such as respect of democratic principles, human rights and human dignity, as well as of observance of international law.⁵⁷ The adherence to common principles results from other aspects of EU-UK relations in the field of the CFSP:⁵⁸ for example, the UK has confirmed its interest in preserving the Joint Comprehensive Plan of Action⁵⁹ with Iran and adopted a joint position with France and Germany when Iran started the enrichment of uranium.⁶⁰ In addition, the UK aligned itself with the protests

⁵⁷ See arts 2 and 21 TEU.

⁵⁸ RA Wessel, 'Friends with Benefits? Possibilities for the UK's Continued Participation in the EU's Foreign and Security Policy' (2019) *European Papers* www.europeanpapers.eu 427, 432-434.

⁵⁹ The UK, China, Russia, France and Germany and the High Representative of the Union at the ministerial meeting of 21 December 2020 with Iran and expressed their interest in continuing the dialogue to ensure full JCPOA transition by all sides. Ministers acknowledged the prospect of a return of the US to the JCPOA after Biden won the elections, see 'Joint Ministerial Statement on the Joint Comprehensive Plan of Action' (21 December 2020) *European External Action Service* blog.eeas.europa.eu.

⁶⁰ 'Iran - JCPOA - Joint Ministerial Statement by France, Germany and United Kingdom' (6 January 2021) *France Diplomatie - Ministère de l'Europe et des Affaires étrangères* www.diplomatie.gouv.fr.

of Germany, Poland and Sweden when their diplomats were expelled from Russia on the ground that they had joined the protests against Navalny's arrest.⁶¹

However, the UK Integrated Review of Security, Defence, Development and Foreign Policy makes clear that the departure from the EU provides a unique opportunity to reconsider many aspects of the UK's domestic and foreign policies "building on existing friendships but also looking ahead".⁶² The expression within brackets may be interpreted as implying that in future the EU will not be an elective partner for the UK in the field of the CFSP.

One area in which the UK has not yet taken a position is that of the US sanctions, under the Protecting Europe's Energy Security Act of 2019, against persons who facilitate the provisions of vessels for the purpose of subsea pipe-laying activities related to the construction of North Stream II,⁶³ adopted by the US under the Trump administration.

It is to be hoped that the UK will not align with the US in this area since such a move would imply that the UK has turned from a close partner to the EU in the area of sanctions to a more distant one.

VI. CONCLUDING REMARKS

The UK and EU sanctions policies have so far broadly converged, despite the differences between the EU and UK Global Human Rights Sanctions regimes and the variations with respect to the designations of persons in selected sanctions regimes compared to the EU lists. Yet, a certain degree of divergence between the UK sanction policy and that of the EU bloc may be noted. This may imply that as a result of the UK's regained sovereignty and in the absence of an institutional setup embedding the bilateral cooperation with the EU, the UK sanction policy will become as unpredictable as that of other European countries that do not have a past history of membership. In future there will be certainly situations in which the EU and the UK adopt the same restrictive measures. However, if the current pattern of the UK's cooperation with the EU is confirmed, the Union is not likely to be an elective sanction partner for the former EU member, which may prefer to align with the sanction decisions of Canada or the US. We may expect that the UK will feel free to react with autonomous coercive measures when there are situations that affect peace and international security and/or its own security without consulting with the EU. This is regrettable considering that the UK is a European country

⁶¹ It is worth noting that the UK, the US, Canada, Germany, France and Italy issued a statement against the arrest and detention of Navalny in the context of the G7, presided over by the UK, see 'G7 Foreign Minister's statement on arrest and detention of Alexey Navalny' (26 January 2021) GOV.UK www.gov.uk.

⁶² See the paper 'Global Britain in a competitive age: The Integrated Review of Security, Defence, Development and Foreign Policy' cit. 11.

⁶³ P Belkin, M Ratner and C Welt 'Russia's Nord Stream 2 Pipeline: Continued Uncertainty' (February 2021) Congressional Research Service [crsreports.congress.gov](https://www.crsreports.congress.gov).

who has the same interests and values of the other Union members as far as the consolidation of democracy and support for human rights, the rule of law and the principles of international law are concerned.