



BRITISH MARITIME LAW ASSOCIATION

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Consultation on UK FCO's Proposed Contract Sanctions

1. Sanctions as the current policy tool of choice

- 1.1. A key theory underpinning current sanction regimes is that collectively felt 'pain' in the target country will lead its regime to change its policies and behaviour.
- 1.2. However, increasingly differing foreign-policy and a divergence between existing sanctions regimes creates confusion and opportunities for avoidance or evasion.

2. Contract Sanctions – what is being proposed by the FCO?

- 2.1. The proposal is for Contract Sanctions which restrict the enforcement by the UK courts of contracts involving a sanctioned party/product even if, for example, no citizen or company subject to the EU sanctions is party to the contract.
- 2.2. Details about the Contract Sanctions and the process for implementation are unclear at this stage but, from a UK perspective, the implementation would affect both:
 - 2.2.1. Contracts where the forum for dispute resolution is England and Wales; and
 - 2.2.2. Foreign proceedings where a party is seeking enforcement against assets in the UK and/or where ancillary relief is sought from the UK Courts.
- 2.3. By striving for a broad consensus and common strategy among allied countries over sanctions policy and laws, the proposal submits that *“if countries with other major legal jurisdictions imposed similar measures, this could provide a disincentive for those still prepared to supply goods to sanctioned regimes by casting doubt on the ability to enforce the contract in those jurisdictions with the regime or its successors”*.
- 2.4. The BMLA has some general observations on the proposals.

3. BMLA observations/comments:

- 3.1. Implementation: The consultation paper identifies three options by which Contract Sanctions could be implemented in the UK, i.e. primary UK legislation, EU or UN

restrictive measures. If such sanctions were implemented domestically there is a risk that other countries would choose not to do so, alternatively introduce similar measures with different outcomes. Unilateral action by the UK would objectively seem unjustified and could have unintended consequences. A UK response to an international response through the UN would be more likely to coincide with policy in other states.

- 3.2. Circumventing the Contract Sanctions: the proposed measures may not prevent the contract parties from drafting the contract to be governed by English law, with jurisdiction in a state where there are no comparable sanction regimes.
- 3.3. The Courts of that state would determine the position under English law as a matter of fact. So far as EU sanctions are concerned these apply:
 - 3.3.1. within the territory of the Union, including its airspace;
 - 3.3.2. on board any aircraft or vessel under the jurisdiction of a Member State;
 - 3.3.3. to any person or outside the territory of the Union who is a national of a Member State;
 - 3.3.4. to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State;
 - 3.3.5. to any legal person, entity or body in respect of any business done in whole or in part within the Union.¹
- 3.4. None of these criteria would apply to a non-EU person or in respect of business not done in whole or in part in the EU. There would then be no issue of illegality stemming from EU sanctions. Contract Sanctions in the form which seem to be envisaged may lack effectiveness.

4. The Economic impact: Negative effects on the UK Legal Services Market

- 4.1. A concern to the BMLA is the possible negative impact that Contract Sanctions would have on the UK legal services market. Contract Sanctions imposed by the UK,

¹ The British Maritime Law Association was founded in 1908. Its purpose is and always has been to promote the study and the advancement of British maritime and mercantile law: to promote and consider with foreign and other maritime law associations proposals for the unification of maritime and mercantile law in the practice of different nations. Membership consists of representatives from the following groups: shipowners, shippers, merchants, manufactures, insurers, insurance brokers, tug owners, shipbuilders, port and harbour authorities, bankers, classifications societies or other societies or bodies such as solicitors and barristers.

The Association has two principal functions. Firstly it acts as an adviser to U.K. Government bodies responsible for maritime legislation or regulation and secondly, it co-operates with its international parent body, the CMI, in research and drafting of international instruments for the harmonisation of maritime and mercantile law.

without corresponding measures being adopted by all overseas legal centres, would put the UK at a competitive disadvantage. The international commercial community might review its current preference for English law and/or jurisdiction, as a means for determining disputes.

- 4.2. CityUK's Legal Services Report 2014 reported that the value of the legal services sector to the UK economy doubled in the last decade to £20.4 billion, accounting for 1.5 per cent of GDP in 2012.
- 4.3. The potential negative impact on the UK economy should also be measured against the likely effectiveness and benefits of the proposed measures in which the BMLA has commented in paragraphs 3.2 – 3.4 above.