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Tom Tugendhat, MP
Chair, Foreign Affairs Committee
House of Commons

Re: Follow up responses to questions posed at 8 March hearing on 'The situation in Ukraine and the UK's response'

Dear Tom,

At the Committee hearing on 8 March 2022, two items were raised on which I agreed to follow up, both of which related to the sluggish pace (at that time) of the operationalisation of the Russia sanctions regime by the UK.

Chris Bryant MP (Q90) queried what might be making the sanctions process more cumbersome than it might be, suggesting that this might be related to Section 38 of the Sanctions and Anti-Money Laundering Act (SAMLA) 2018, a section that relates to 'court review of decisions'.

In responding to this question, it is worth reflecting on the two main sanctions-related amendments that the Government had tabled, the day before, during the debate on the Economic Crime (Transparency and Enforcement) Act (ECA), specifically:

1. The omission from SAMLA of section 2 (additional requirements for regulations for a purpose within section 1(2)); and
2. The addition of two sections facilitating 'Urgent designation of persons by name or description'

The first of these amendments also addresses the second point, on 'gold-plating', on which I was asked to follow up in writing by Bob Seeley MP (Q83).

Amendment 1: During the debates related to the original incarnation of SAMLA, section 2 was proposed as an amendment (9) by Lords Ahmad of Wimbledon, Pannick and Judge. This has become known as 'the appropriateness test' which, in short, requires an appropriate minister to determine that it is appropriate to issue sanctions having 'considered whether there are good reasons to pursue that purpose and has determined that there are, and…has considered whether the imposition of sanctions is a reasonable course of action for that purpose and has determined that it is.'

As frustrations at the top of the Foreign Office with the slow pace of sanctions issuance by the UK, in contrast to Western allies, boiled over into public view, this amendment was blamed for the UK's 'cumbersome and slower' response.

In response, as part of a blog post on Joshua Rozenberg's Substack, Lord Pannick wrote:

> 'On the substance of the sanctions issue, I can see that the 2018 Sanctions and Anti-Money Laundering Act needs amendment in the light of Putin's appalling behaviour, though I think

> the government are exaggerating the extent to which that act has prevented them imposing sanctions speedily. EU law contains a proportionality test which has not stopped the EU imposing sanctions on far more associates of Putin. The real cause of the delay in imposing sanctions in this country has been the limited number of people in government departments focused on this issue.'

By striking 'the appropriateness' section from SAMLA via an amendment to the ECA the government has made the job of its Foreign Office lawyers easier, in part by reducing the related workload that had been exacerbated, in Lord Pannick's view, by the limited number of government staff focused on the issue.

Amendment 2: The government has made the job of its lawyers even easier via the introduction of the second amendment (the so-called 'mirroring' provision). Put simply, this 'urgent procedure' allows the UK to sanction persons that have been previously sanctioned by allied nations (specifically the US, the EU, Canada, Australia, and any other country specified by an appropriate Minister). This 'cut and paste' provision allows sanctions to be imposed for a time-limited period of 56 days (subject to extension), during which, one assumes, the necessary evidence will be gathered to an appropriate standard for the sanctions to be imposed according to the 'standard procedure', a standard that has been weakened by the omission facilitated by Amendment 1.

It should be noted that this cut and paste provision has itself not been exercised with full attention to detail as it appears that one of the first tranches of sanctions copied from the US failed to reverse the month/day format that is used for birthdays in the US. As a result, HMT's Office of Financial Sanctions Implementation (OFSI) had to issue a correction to the initial listings, rectifying this oversight. These details are important because information provided by the government – particularly as relates to less high-profile individuals – forms the basis on which the private sector implements sanctions decisions.

Conclusion

Whilst the Committee questioning was focused on further amendments that could be proposed in any future Economic Crime Bill, this author would suggest that it should focus its enquiries on the preparations that the FCDO made in anticipation of needing to use its sanctions powers.

For several months, the Foreign Secretary had been threatening President Putin with massive economic consequences should he undermine the stability and independence of Ukraine. However, when the time came, the FCDO appears not to have been prepared for what was needed to be done to match this rhetoric.

As Lord Pannick notes, it is hard not to conclude that a lack of resources and, importantly, requisite skills and experience, contributed primarily to the sluggish government response.

I hope this response satisfactorily addresses the points raised with me

Kind regards.