

SYRIA: EUROPEAN UNION AND UNITED KINGDOM SANCTIONS

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Overview

The EU and UK have adopted similar sanctions regimes with regard to Syria.

The relevant EU regulation is Council Regulation (EU) 36/2012. The UK regulations relating to Syria are the Syria (Sanctions) (EU Exit) Regulations 2019 and the UK's Global Human Rights Sanctions Regulation 2020. The former was introduced following the UK's exit from the EU and largely replicates the terms of Council Regulation (EU) 36/2012.

Who do the EU and UK Sanctions apply to?

The scope of the EU and UK sanctions regimes are very similar in how they apply in their respective jurisdictions. Specifically, both apply:

- (a) within the territory of the EU / UK respectively, including their airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of an EU Member State / the UK;
- (c) to any person inside or outside the territory of the EU / UK, who is a national of an EU Member State / the UK;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of an EU Member State / the UK; and
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the EU / UK.

This will include Owners, Managers, Operators, Charterers and even vessels which are registered, incorporated, constituted or do business in whole or in part within the EU / UK.

The sanctions do not apply to non-EU / non-UK companies. However, if those companies take any action that is in breach of sanctions, associated EU / UK companies and employees who are EU / UK citizens may face penalties under the EU and UK regimes.

In addition, non-EU / non-UK companies may face sanctions in respect of any business they conduct that is done in whole or in part within the EU / UK. The sanctions would be limited to that particular business, and would not extend to exclusively non-EU / non-UK business carried out by those companies.

Prohibitions: Overview

The EU and UK prohibitions of most significance to the shipping sector relating to Syria are:

A. Asset freezes

Under the EU and UK sanctions regimes, all funds and economic resources belonging to, owned, held or controlled by listed parties are to be frozen. In addition, no funds or economic resources may be made available, directly or indirectly, to or for the benefit of listed parties. The prohibition on making available funds and economic resources goes beyond prohibiting direct payments to listed parties. Indirect payments, such as payments to a non-listed party who then in turn pays the money to a listed party, are prohibited.

B. Export and Import Restrictions

Prohibitions are in place in respect of certain goods. Generally, prohibitions will relate either to the “sale, supply, transfer or export, directly or indirectly” of listed goods to or for use in Syria, or the import into the EU and the UK and/or purchase of goods from Syria. The latter often includes prohibitions on transporting listed goods, both inside and outside the EU and the UK.

There are also restrictions on providing services associated with the import/export of listed goods. The most common prohibitions are on the provision of technical assistance, financing and financial assistance.

The UK and EU also both implement sanctions that specifically target military and internal repression goods, equipment and technology, including goods of the Common Military List.

C. Restrictions on Financial Transfers

Although there are no general restrictions on financial transfers in respect of Syria under the EU and UK sanctions regimes, several Syrian banks are designated under the asset freeze provisions. This means that transfers cannot be made to or through those banks unless an exception applies.

Further guidance on these restrictions can be found at pages 3-9 below.

Due diligence as a defence to liability

The EU and UK sanctions regulations implementing these prohibitions include a defence to liability where the person or entity concerned “*did not know, and had no reasonable cause to suspect*”, that their actions would infringe the relevant prohibitions.

Conducting thorough investigations into any particular trade or transaction involving sanctioned jurisdictions is, therefore, critical; well-documented investigations and screenings may serve as a defence to unintentional sanctions violations.

Anti-circumvention

The EU and UK sanctions regulations contain anti-circumvention wording that provides that it “*shall be prohibited to participate, knowingly and intentionally, including indirectly, in activities the object or effect of which is to circumvent the prohibitions...*”. Therefore, even if a transaction is not in direct breach of sanctions, if it intended to circumvent sanctions, a violation and liability may still arise.

A. Dealing with Designated Parties: Asset Freezes

What is prohibited?

1. Funds and economic resources belonging to, owned, held or controlled by designated parties are to be frozen.

→ *What does this mean?*

This provision is largely aimed at banks and financial institutions, who must freeze all accounts belonging to, owned, held or controlled by designated parties.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of designated parties.

→ *What does this mean?*

No payments can be made to any party designated by the EU and UK regimes, either directly or indirectly (e.g., making the payment to a non-designated party knowing that they will pay it on to the designated party).

No payments can be made “for the benefit of” a designated party. This includes, for example, making payments to a non-designated company which is owned or controlled by a designated party.

The prohibition extends beyond the payment of monies to “economic resources”. These are defined by the EU and UK regimes as “assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but which may be used to obtain funds, goods or services”. This can include letters of credit, bills of lading and bills of sale.

The wide scope of this provision emphasises the importance of thoroughly investigating all parties involved in a particular transaction or trade.

How can I avoid a breach?

Thorough investigations must be carried out in order to determine whether any party involved in a transaction is designated. If so, there is a risk that involvement in the transaction will amount to sanctionable conduct, even if the listed party is not a direct contractual counterpart.

The following investigations should be carried out:

- (a) Identify all parties involved in the transaction, for example shippers, receivers, agents and any intermediaries.
- (b) Investigations must go further than simply identifying the names of the parties and checking them against the asset freeze lists. The prohibitions will extend to parties owned and controlled by designated persons. Where possible the corporate structure, ownership and control of all companies involved in the transaction must be investigated.
- (c) Where a cargo is to be loaded or discharged in Syria, the relevant ports and terminals must be identified. Involvement in a trade, which would require payment of port dues and other similar

charges to a designated entity, either directly or indirectly, is likely to amount to a breach of sanctions.

It is also necessary to consider whether a non-designated party is owned or controlled by a designated party.

Under the UK sanctions regime, a party is considered to be “owned or controlled” by another party if:

- (a) that person holds directly or indirectly more than 50% of the shares or voting rights in the company or the rights to appoint or remove a majority of the board of directors of that company; and
- (b) it is reasonable, having regard to all the circumstances, to expect that that person would (if such person chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the company are conducted in accordance with that person’s wishes.

Under EU regulations, a party is considered to be “owned” by another party which is in possession of more than 50% of its proprietary rights, or which has a majority in it. There is no definitive meaning of “control” for the purposes of the EU sanctions regime – however, it is likely to follow similar principles to the UK position.

Are there any situations in which payments can be made to a designated party?

Under EU and UK sanctions regulations, payments to designated parties may be authorised in certain specified circumstances. The majority of these are not relevant to a commercial situation and reflect circumstances such as satisfying the basic needs of designated parties, or the payment of fees or service charges for the maintenance of frozen funds.

Funds may be added to frozen accounts where they reflect payments due under contracts, agreements or obligations that were concluded or arose before the date on which the designated party in question was listed. Those funds must then be immediately frozen.

Under EU Regulations, these payments must be authorised by the relevant authority in the Member State of the party making the payment. Those authorities are listed in Annex III to Council Regulation (EU) 36/2012. The payment must also be notified to the EU Sanctions Committee, who must not object to the payment. Under the UK regulations, a licence to carry out any such payments must be obtained by the UK’s HM Treasury.

Even if it appears that a particular payment may be permitted, it should never be assumed that authorisation will be given.

Funds may be added to frozen accounts of interest or other earnings on those accounts or where they reflect payments due under contracts, agreements or obligations that were concluded or arose before the date on which the designated party in question was listed. Those funds must then be immediately frozen. As above, the relevant EU competent authorities must be notified without delay regarding any such transactions. There is no express notification requirement in this context under the UK sanctions regulations.

Are there any situations in which funds may be released from a frozen account?

In the EU, the competent Member State authorities may authorise the release of frozen funds or economic resources where:

- (a) the funds or economic resources are:
 - (i) the subject of an arbitral decision rendered prior to the date on which the designated party was put on the asset freeze list, or of a judicial or administrative decision rendered in the EU, or a judicial decision enforceable in the Member State concerned, prior to or after that date; and
 - (ii) will be used exclusively to satisfy claims secured by such a decision or recognised as valid in such a decision, within the limits set by applicable laws and regulations governing the rights of persons having such claims; and
 - (iii) the decision is not for the benefit of a party on the asset freeze list and is not contrary to public policy in the Member State concerned.
- (b) if a payment is due under a contract or agreement concluded, or an obligation that arose, before the party was designated provided that the payment will not be directly or indirectly received by a designated party.

EU Member States may also authorise, under conditions as they deem appropriate:

- (a) a transfer by or through the Central Bank of Syria of funds or economic resources received and frozen after the date of its designation, where the transfer is related to a specific trade contract; or
- (b) a transfer of funds or economic resources to or through the Central Bank of Syria where the transfer is related to a payment due in connection with a specific trade contract.

Under EU regulations, authorisation may be given provided that the competent authority of the relevant Member State has determined that the payment will not directly or indirectly be received by any person or entity on the asset freeze list and provided that the transfer is not otherwise prohibited.

The competent authorities of the EU Member States may authorise, under such conditions as they deem appropriate, a transfer made by or through the Central Bank of Syria of frozen funds or economic resources in order to provide financial institutions within the jurisdiction of the Member States with liquidity for the financing of trade.

Under UK regulations, similar exceptions those of the EU listed above apply save that a HM Treasury licence is required to authorise any such release of frozen funds or economic resources that fall under the above exceptions.

How can I find out which parties are designated?

A full up to date list of all parties designated by the EU regime can be found [here](#).

A full up to date list of all parties designated by the UK regime can be found [here](#).

B. Cargo: Import and Export Restrictions

Carrying cargo to Syria – what cargos are prohibited?

Under EU and UK regulations, it is prohibited to sell, supply, transfer or export, directly or indirectly, to any Syrian party or for use in Syria, the following goods:

1. Equipment which might be used for internal repression, whether or not originating in the EU or the UK. For the full list see Annex I of Council Regulation (EU) 36/2012 and Schedule 5 of The Syria (Sanctions) (EU Exit) Regulations 2019. Certain exceptions exist and the competent authority of the relevant EU Member State may grant authorisation, or in the UK's case, a licence from the Secretary of State may be granted (e.g. if equipment is intended for humanitarian purposes).
2. Goods and technology that may be used by the military and/or for the purposes of internal repression, and goods listed in the Common Military List. For full list, see Annex I of Council Regulation (EU) 36/2012 and the Common Military List as well as Schedule 5 of The Syria (Sanctions) (EU Exit) Regulations 2019 as well as Schedule 2 to the Export Control Order 2008, Certain exceptions exist as above at 1.
3. Certain equipment, technology and software, including that which may be used for the monitoring or interception of internet or telephone communications. For the full list, see Annex V of Council Regulation (EU) 36/2012 and Schedule 5 of The Syria (Sanctions) (EU Exit) Regulations 2019. Certain exceptions exist and the competent authority of the relevant EU Member State may grant authorisation, or in the UK's case, a licence from the Secretary of State, in respect of such a transaction.
4. Certain equipment and technology, including key equipment and technology for the following sectors of the oil and gas industry in Syria:
 - (a) exploration of crude oil and natural gas;
 - (b) production of crude oil and natural gas;
 - (c) refining;
 - (d) liquefaction of natural gas.

Under EU regulations, these prohibitions do not apply to the performance of an obligation required by a contract which was awarded or concluded prior to 19 January 2012, provided that the person or entity seeking to rely on this exception has notified, at least 21 calendar days in advance, the competent authority of the Member State in which they are established. A contract shall have been "awarded" to a party if express written confirmation of the award of the contract has been sent by the other contracting party, following the conclusion of a formal tender process.

Under UK regulations, a licence issued by the Secretary of State is required instead.

5. Gold, precious metals, diamonds and luxury goods, whether or not originating in the EU or the UK. For the full list, see Annexes VIII and X of Council Regulation (EU) 36/2012 (as amended) and Schedule 2 Part 2 of and The Syria (Sanctions) (EU Exit) Regulations 2019. It is prohibited to sell, supply, transfer or export these goods to the Government of Syria, its public bodies, corporations and agencies, the Central Bank of Syria and any person, entity or body acting on their behalf or at their direction, or any entity or body owned or controlled by them.

There are no exceptions to this prohibition under EU regulations. Under UK regulations, a licence issued by the Secretary of State is required to engage in such activity.

6. Equipment or technology to be used in the construction or installation in Syria of new power plants for electricity production. For the full list, see Annex VII to Council Regulation (EU) 36/2012 (as amended) and Schedule 2 Part 2 of and The Syria (Sanctions) (EU Exit) Regulations 2019. Under the UK regulations, a licence issued by the Secretary of State is required to engage in such activity.
7. Jet fuel and fuel additives including related insurance, reinsurance and related financial services. For full list, see Annex Va of Council Regulation (EU) 36/2012 (as amended) and Schedule 2 Part 2 of The Syria (Sanctions) (EU Exit) Regulations 2019.

There are no exceptions to this prohibition under EU regulations. Under the UK regulations, limited exceptions apply, and a licence issued by the Secretary of State is required to engage in such activity.

Carrying cargo from Syria – what cargos are prohibited?

1. It is prohibited to import crude oil or petroleum products into the EU and the UK if they originate in Syria or have been exported from Syria. It is also prohibited to purchase or transport crude oil or petroleum products which are located in or which originated in Syria.

There are no exceptions to this prohibition under EU regulations. Under the UK regulations, limited exceptions apply and a licence issued by the Secretary of State is required to engage in such activities.

2. It is prohibited to transport, purchase or import, directly or indirectly, gold, precious metals, diamonds and luxury goods, whether or not the item concerned originates in Syria. For the full list, see and X of Council Regulation (EU) 36/2012 (as amended) and Schedule 2 Part 2 of and The Syria (Sanctions) (EU Exit) Regulations 2019. It is prohibited to transport, purchase or import these goods from the Government of Syria, its public bodies, corporations and agencies, the Central Bank of Syria and any person, entity or body acting on their behalf or at their direction, or any entity or body owned or controlled by them.

There are no exceptions to this prohibition under EU regulations. Under the UK regulations, limited exceptions apply, and a licence issued by the Secretary of State is required to engage in such activities.

How can I avoid a breach?

In order to avoid falling foul of the cargo prohibitions, the following questions should be asked:

- (a) What is the cargo? It should be identified as precisely as possible.
- (b) What is the origin of the cargo?
- (c) What is the location of the cargo? This may be different to the cargo's origin.
- (d) What is the destination of the cargo? This should include the cargo's final destination and any intermediate destinations.

- (e) Who will be the ultimate receiver of the cargo? Will the cargo pass through the custody of any intermediaries before reaching the ultimate receiver and if so, who are they?
- (f) What will the cargo be used for?

These questions should also be asked in respect of bunkers, if it is suspected that a vessel is taking on bunkers of Syrian origin.

Prohibited Services related to the Import and Export of Cargo

Under EU and UK regulations, it is prohibited to provide the following services, both directly and indirectly, in respect of all prohibited cargo:

- (a) technical assistance;
- (b) brokering services;
- (c) financing; and
- (d) financial assistance.

In addition, it is prohibited to provide insurance and reinsurance in respect of crude oil, petroleum and petrochemical products.

C. Financial Transfers

What is prohibited?

Several Syrian banks appear on the EU and UK asset freeze lists. It is prohibited to transfer funds to or through those banks, even if the account in question is held by a non-listed party, unless an exception applies.

→ *Are there any exceptions?*

- (a) The exceptions to the asset freeze provisions apply. These include payments which are:
 - (i) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services; and
 - (ii) necessary for extraordinary expenses of a designated person or entity.

Many exceptions require authorisation to be obtained from the relevant Member State authority in the EU and a licence from HM Treasury in the UK.

- (b) The asset freeze provisions do not apply to the addition to frozen accounts of payments due under contracts, agreements or obligations that were concluded or arose before the date on which the account became subject to the EU and UK regulations, provided such payments are

then frozen. Under EU regulations, prior authorisation is not required for this exception to apply but under UK regulations, a licence from HM Treasury is required.

- (c) Under EU regulations, Member State authorities may authorise transfers of funds or economic resources by or through a designated financial entity, where the transfer is related to a payment by a party not on the asset freeze list in connection with the provision of financial support to Syrian nationals pursuing an education, professional training or engaged in academic research in the EU, provided that the payment will not directly or indirectly be received by a designated party. The same applies to the UK but a HM Treasury licence is required.
- (d) Exceptions regarding the Central Bank of Syria similar to those listed in the final part of Section A above also apply under the EU and UK regimes.

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