



SYRIA: EUROPEAN UNION SANCTIONS

by The Swedish Club and Reed Smith LLP
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Who do the EU Sanctions apply to?

The EU sanctions regime applies:

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

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.

The sanctions do not apply to non-EU companies. However, if those companies take any action that is in breach of sanctions, associated EU companies and employees who are EU citizens may face penalties under the EU regime. In particular, EU parent companies may be sanctioned for the actions of their non-EU subsidiaries, although this will depend on the facts of any particular situation.

In addition, under point (e) above, non-EU companies may face sanctions in respect of any business they do which is carried out in whole or in part within the EU. Note that the sanctions would be limited to that particular business, and would not extend to exclusively non-EU business carried out by those companies.

Prohibitions: Overview

The prohibitions of greatest significance to the shipping sector relating to Syria are:

A. Asset freezes

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 shall be made available, directly or indirectly to, or for the benefit of listed parties. These provisions have a very wide scope, and are intended to go beyond affecting only the funds and economic resources of listed parties. The prohibition on making available funds and economic resources goes beyond prohibiting direct payments to listed parties. Indirect payments, such as payment 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/or purchase of goods from Syria. The latter often includes prohibitions on transporting listed goods, both inside and outside the EU.

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.

C. Restrictions on Financial Transfers

Although there are no general restrictions on financial transfers in respect of Syria, 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 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 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 is 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 regime, either directly or indirectly (e.g. making the payment to a non-designated party in the knowledge 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 regime 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”. They 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.

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 regimes. Factors to take into account when determining whether a designated party controls a company will include:

- (i) the size of that party's shareholding;
- (ii) the nature of the shares held (some may carry voting rights, whilst others may not);
- (iii) the composition of the board of directors;
- (iv) the provisions of the company's Articles of Association; and
- (v) the designated party's ability to exercise power over matters affecting the running of the company.

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

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.

NB: 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 Regulation 36/2012. The payment must also be notified to the EU Sanctions Committee, who must not object to the payment.

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

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

→ *Exceptions regarding arbitral, judicial and administrative decisions*

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. For the full list see Annex I of Regulation 36/2012 .

→ *Are there any exceptions?*

This prohibition does not apply to protective clothing, including flak jackets and helmets, temporarily exported to Syria by United Nations personnel, personnel of the EU or its Member States, representatives of the media or humanitarian and development workers and associated persons exclusively for their personal use.

Member States may authorise a transaction in respect of certain goods which might be used for internal repression, under such conditions as they deem appropriate, if they determine that:

- (a) such equipment is intended solely for humanitarian or protective use or for institution building programmes of the United Nations and of the EU, or for EU and UN crisis management operations; or
- (b) in the case of the Syrian National Coalition for Opposition and Revolutionary Forces, such equipment is non-lethal and is intended for the protection of civilians.

2. 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 Regulation 36/2012.

→ *Are there any exceptions?*

The competent Member State authorities may grant authorisation in respect of any of these goods. Such authorisation shall not be granted if the authority has reasonable grounds to determine that the equipment, technology or software in question would be used for monitoring or interception by the Syrian regime or on its behalf, of internet or telephone communication in Syria.

3. 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.

For the full list, see Annex VI of Regulation 36/2012.

→ *Are there any exceptions?*

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.

4. Gold, precious metals and diamonds, whether or not originating in the EU. For the full list, see Annex VIII of Regulation 36/2012 (as amended). 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.

→ *Are there any exceptions?*

There are no exceptions to this prohibition.

5. 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 Regulation 36/2012 (as amended).
6. Jet fuel and fuel additives including related insurance, reinsurance and related financial services. For full list, see Annex I of Regulation 1323/2014.

Carrying cargo from Syria – what cargos are prohibited?

1. It is prohibited to import crude oil or petroleum products into the EU 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.

→ *Are there any exceptions?*

These prohibitions do not apply to the purchase of crude oil or petroleum products which had been exported from Syria prior to 2 September 2011.

2. It is prohibited to transport, purchase or import, directly or indirectly, gold, precious metals and diamonds, whether or not the item concerned originates in Syria. For the full list, see Annex VIII of Regulation 36/2012 (as amended). 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.

→ *Are there any exceptions?*

There are no exceptions to this prohibition.

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 Iranian origin.

Prohibited Services related to the Import and Export of Cargo

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 asset freeze list. 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.

Many exceptions require authorisation to be obtained from the relevant Member State authority.

- (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 Regulations, provided such payments are then frozen. Prior authorisation is not required for this exception to apply.
- (c) 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.
- (d) Exceptions regarding the Central Bank of Syria:

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

- (i) 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
- (ii) 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.

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 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.

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