



LIBYA: SANCTIONS

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LIBYA: UNITED STATES SANCTIONS

Who do the U.S. sanctions on Libya apply to?

The U.S. sanctions regime with respect to Libya applies to the following “U.S. persons”:

- (1) U.S. citizens;
- (2) Permanent residents of the U.S. (e.g., green-card holders);
- (3) Entities organized under the laws of the U.S. or any jurisdiction within the U.S., and any foreign branches thereof;
- (4) All individuals physically located in the U.S.;
- (5) All persons physically located in the United States.

What do the U.S. sanctions on Libya prohibit?

The U.S. sanctions on Libya are limited to a prohibition on dealings with persons placed on the Specially Designated Nationals and Blocked Persons (the “SDN List”) pursuant to Executive Order 13566 of February 25, 2011, and Executive Order 13726 of April 19, 2016. U.S. persons are prohibited from engaging in virtually all transactions with persons and entities on the SDN List as well as entities they own 50 percent or more.

Activities that can result in a person being designated under the Libyan sanctions program include but are not limited to the illicit production, refining, brokering, sale, purchase, or export of Libyan oil or other natural resources, or the provision of logistical or technological support to the Libyan Navy.

Notwithstanding the limited scope of these sanctions, the United States maintains strict export controls and an arms embargo against Libya and therefore, all exports to Libya of U.S. origin goods should be reviewed for compliance with applicable U.S. regulations.

LIBYA: EUROPEAN UNION AND UNITED KINGDOM SANCTIONS

Overview

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

The relevant EU regulation is Council Regulation (EU) 2016/44. The UK regulations relating to Libya are the Libya (Sanctions) (EU Exit) Regulations 2020 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) 2016/44.

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 Libya 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 shall be made available, directly or indirectly, to or for the benefit of 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. Import and Export 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” to or for use in Libya or the import into the EU and the UK and/or purchase of goods from Libya. The latter often includes prohibitions on transporting listed goods, both inside and outside the EU and the UK.

Broadly speaking, the restrictions cover items used for internal repression, items which could be used for the smuggling of migrants and human trafficking and Common Military List items.

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. Petroleum Restrictions

It is prohibited to load, transport or discharge petroleum, including crude oil and refined petroleum products, from Libya on designated vessels flying the flag of a Member State or the UK unless authorised by the competent authority of that Member State after consultation with the Government of Libya focal point in the EU or where a licence is granted by the Secretary of State in the UK. Related financial transactions, including the provision of credit or insurance, are also prohibited.

There are also explicit prohibitions in place relating to the provision of access to EU ports (save for in the case of an emergency, inspection or where the vessel is returning to Libya) and to bunkering and supply services to designated vessels (save for humanitarian or safety purposes or where the vessel is returning to Libya, where approval must be sought by the competent authority of the relevant Member State). Related financial transactions, including the provision of credit or insurance, are also prohibited.

Under UK regulations, similar prohibitions apply and a licence by the Secretary of State is required to perform the activities listed above.

Further guidance on these restrictions can be found at pages 4-8 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. Under EU and UK regulations, funds and economic resources belonging to, owned, held or controlled by designated parties are to be frozen.

→ *What does this mean?*

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

3. Under EU regulations, all funds and economic resources belonging to, owned, held or controlled on 16 September 2011 by the Libyan Investment Authority (LIA) and the Libyan Africa Investment Portfolio (LAIP) and located outside Libya on that date must be frozen.

UK regulations impose a partial asset freeze on LIA and LAIP, which prohibits dealing with relevant funds or economic resources owned, held or controlled by LAIP and LIA, which include those located outside of Libya immediately before 17 September 2011 (including interest or other earnings on such funds) and funds credited on or after that date in discharge (or partial discharge) of an obligation which arose prior to the date on which these entities were designated.

How can I find out which parties are designated?

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

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

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 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.

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.

NB Under the UK regulations, both LIA and LAIP are subject to the partial asset freeze (including any subsidiaries owned or controlled by LIA and LAIP). However, some subsidiaries of LIA and LAIP are listed independently, and thus will be subject to the full asset freeze and the restrictions listed above.

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

Under the 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.

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 IV to Council Regulation (EU) 2016/44. 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 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 also 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 and the EU Sanctions Committee must be notified without delay regarding any such transactions. In the UK, a licence by the HM Treasury is required instead.

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

In the EU, the competent Member State authorities may authorise 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.

Under UK regulations, similar exceptions to 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.

B. Export and Import Restrictions

Carrying cargo to Libya – what cargos are prohibited?

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

1. items which might be used for internal repression as listed in Annex I of Council Regulation (EU) 2016/44 (including certain items on the Common Military List and military goods) and Schedule 2 of the Libya (Sanctions) (EU Exit) Regulations 2020. Certain exceptions apply and the competent Member State or the UK's Secretary of State may grant authorisation or, respectively, a licence regarding these goods; and
2. items which could be used for the smuggling of migrants and human trafficking, as specified in Annex VII of Council Regulation (EU) 2016/44 and Schedule 3 of the Libya (Sanctions) (EU Exit) Regulations 2020.

Carrying cargo from Libya – what cargos are prohibited?

Under EU and UK sanctions regulations, it is prohibited to purchase, import or transport from Libya military goods and equipment which might be used for internal repression, as listed in Annex I of Council Regulation (EU) 2016/44 and the Common Military list and Schedule 2 of the Libya (Sanctions) (EU Exit) Regulations 2020, whether or not the goods concerned originate in Libya. Related financial transactions, including the provision of credit, brokering services and technical assistance are also prohibited. There are narrow exceptions that apply to these prohibitions for example, where goods are related to the provision of

humanitarian assistance. In the EU, approval by the competent authority of the relevant Member State is required. In the UK, a licence must be issued by the Secretary of State.

Operation IRINI

EUNAVFOR MED IRINI (“Operation Irini”) was launched on 31 March 2020 and has been extended until 31 March 2023, with the aim of contributing to the implementation of the UN’s arms embargo to Libya, established by the UN Security Council Resolution 1970 (2011), through the use of aerial, satellite and maritime assets.

Operation Irini is mandated with carrying out inspections of vessels on the high seas off the Libyan coast, suspected to be carrying arms or related material to and from Libya in violation of the UN arms embargo on Libya. It does this in accordance with UN Security Council Resolution 2292 (2016) and subsequent UNSC resolutions. Further, Operation Irini also monitors and gathers information on illicit exports from Libya of petroleum, crude oil and refined petroleum products and shares such information with the UN.

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?

Services related to the Import and Export of Cargo

Under EU and UK sanctions 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.

C. Petroleum Restrictions

What is prohibited?

Under EU and UK regulations it is prohibited to:

1. load, transport or discharge petroleum, including crude oil and refined petroleum products, from Libya on designated vessels flying the flag of a Member State or the UK unless authorised by the competent authority of that Member State after consultation with the Government of Libya focal point in the EU, or a licence has been granted by the Secretary of State in the UK;
2. accept or provide access to ports in the EU/UK to designated vessels, unless entry to a port in the EU/UK is necessary for an inspection, in the case of an emergency and/or where the vessel is returning to Libya under EU regulations, or a licence has been granted by the Secretary of State in the UK;
3. provide bunkering, ship supply and other services to designated vessels, including the provision of fuel or supplies unless authorised by the competent authority of the relevant Member State or a licence has been granted by the Secretary of State in the UK;
4. engage in financial transactions including the purchase or sale, its use as credit and the taking out of transport insurance, with respect to petroleum, including crude oil and refined petroleum products, onboard designated vessels. This prohibition will not apply to the acceptance of port fees where entry to a port in the EU/UK is necessary for an inspection, in the case of an emergency, and/or where the vessel is returning to Libya. Under UK regulations, a licence may also be granted by the Secretary of State to perform such activities.

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