

Syrian and Sudanese sanctions



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Syria

US sanctions

On 18 August 2011, President Barack Obama issued an **Executive Order** implementing wide sanctions against Syria.

The Executive Order prohibits US individuals or entities from the following:

- directly or indirectly exporting services to Syria or engaging in any transaction relating to Syria-origin petroleum or petroleum products
- assisting a non-US entity/individual to take action that would have been prohibited if they were US citizens
- undertaking new financial investments in Syria
- dealing in any capacity with the Syrian Government and/or any party designated by the US Treasury Department.

The most restrictive provision of the new order prohibits the export of services to Syria. 'Exportation of services' as defined by the US Office of Foreign Assets Control, is understood to include any service rendered by a US person, the benefits of which are received in the sanctioned country.

Exports (direct and indirect) to Syria of US-made goods and technology remain prohibited. There are limited exceptions for food, certain medicines and humanitarian items. The import into the US of Syrian goods or services not related to the petroleum industry is not prohibited.

On 1 May 2012, President Obama signed **Executive Order 13608**, which effectively paves the way for measures to be taken against non-US citizens and companies involved in efforts to evade US sanctions in respect of Syria and Iran.

The Executive order provides the US Government with additional means to impose serious penalties on foreign individuals or entities who are found to have evaded US or international sanctions against the Syrian regime.

Offenders will be subject to restrictive measures, including but not limited to exclusion from US financial and commercial systems and denial of entry into the US.



EU sanctions

On 9 May 2011, the EU Council adopted restrictive measures on certain persons, entities and bodies identified as being responsible for the violent attacks on the civilian population in Syria. This has been amended a number of times by separate Council regulations adding additional names to the list and imposing further asset freezes.

As in the case of certain Iranian sanctions, the application of these sanctions can be said to apply to all EU citizens and entities. It is important to remember that the restrictive measures apply not just in relation to the named parties but also to companies owned or controlled by them.

Below is a summary of the main restrictions:

1. The sale, supply, transfer or export of equipment that can be used to suppress protests in Syria.
2. The provision of technical assistance related to goods and technology for the military in Syria.
3. The import of crude oil or petroleum products into the EU if they originated in Syria or have been exported from Syria.
4. The purchase of crude oil or petroleum products if they are located in or originated in Syria.
5. The transport of crude oil or petroleum products if they originate in Syria, or are being exported from Syria to any other country (including countries outside the EU).
6. The sale, supply or transfer of key equipment and technology for key sectors of the oil and natural gas industry.
7. The provision of any financing or financial assistance, as well as insurance and reinsurance for the prohibited activities set out at 3, 4, 5 and 6 above.
8. The sale, supply, transfer or export of new Syrian currency in the EU to the Central Bank of Syria.
9. The granting of any financial loan or credit to, the acquisition or extension of a participation in, and the creation of any joint venture with any Syrian person, entity or body engaged in the exploration, production or refining of crude oil.
10. The participation, knowingly and intentionally, in activities the object or effect of which is to circumvent the above-listed prohibitions.

The above are subject to certain exemptions relating to contracts signed before certain dates. Further details should be sought in respect of contracts signed before the regulation came into force. Criminal liabilities may flow if a person or entity breaches these sanctions. The criminal penalties will be determined by each EU state. Under English law, a person committing such an offence may face up to two years imprisonment and/or a fine. Where the offence is committed by a corporate body with the consent or connivance of any director, manager, secretary or similar officer, that person is additionally guilty of such an offence.

On 24 April 2012, the Council of the EU published Council Decision 2012/206/CFSP, which imposes further restrictive measures against Syria.

The Decision imposed a prohibition on the sale, supply, transfer and export of technology, equipment and goods that can or might be used for internal repression. The provision of technical assistance, brokering services, financing and financial assistance in respect of these items is also prohibited. In addition, the sale, supply, transfer and export of luxury goods is now prohibited.

At this stage, the decision is only effective against EU member states and does not affect companies or individuals residing in these countries. In order for the provisions to have effect on these parties, an implementing Regulation must be published. This Regulation will also provide further details as to exactly what goods will fall within the prohibitions set out above.

Recent EU Regulations have extended the list of sanctioned entities to include the Syrian Ministry of Defence, Ministry of Interior, Syrian International Islamic Bank (SIIB) and Syria Company for Oil Transport (SCOT).

Sanctions – The impact on club cover

Sudan

US sanctions

The Office of Foreign Assets Control maintains a list of Specially Designated Nationals (SDNs) targeting the Sudanese Government, government officials and entities associated with them. Under Executive Order 13067, dated 7 November 1997 all property and interests of the Government of Sudan located in the US or within the control of a US person are blocked. This blocking includes individuals and entities that are owned or controlled by, or act on behalf of, the Government of Sudan anywhere in the world, as well as individuals and entities determined by the US Treasury Department to be included in the term "Government of Sudan".

These individuals and entities are incorporated into OFAC's list of SDNs. The SDN list, however, is not exclusive. Any US individual or organisation engaging in transactions with foreign nationals must take reasonable care to make certain that such foreign nationals are not owned or controlled by or acting on behalf of a SDN, regardless of whether or not they appear on the SDN list.

Additional action was taken with Executive Order 13400 of 26 April 2006 when the US imposed strict sanctions against persons responsible for the violence in Darfur. Four individuals were identified in the Annex of EO 13400 which gave the Secretary of the Treasury authority to further block the property and interests of property of persons determined to meet certain criteria. Furthermore US persons are prohibited from engaging in any transactions or activities related to the petroleum or petrochemical industries in Sudan without authorisation from OFAC. This prohibition extends to the entire territory of Sudan, including Southern Sudan. The prohibition also includes facilitation by US persons of such transactions or activities undertaken by non-US persons.

EU sanctions

The European Union adopted Council Regulation (EC) No 131/2004 on 26 January 2004. This regulation prohibits the supply of technical or financial assistance aimed at facilitating military operations in Sudan and included restrictions on the supply of military equipment.

UN sanctions

By the adoption of UNSCR 1591 (2005) on 29 March 2005, the UN imposed certain travel restrictions and asset freezes on a list of designated individuals.

The targets of these freezes and bans have been chosen by the Security Council Committee established pursuant to the resolution. The same targets were deemed to be hampering the peace process constituting a threat to stability in Darfur and the region, committing human rights violations and violating measures set out in previous Resolutions (related primarily to an arms embargo).



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As the articles in this *Standard Bulletin* have made clear, EU Council Regulation 267/2012 prohibits the export and transport of Iranian crude oil and petroleum products with effect from 1 July 2012. Some members based and operating outside of the EU may believe that these EU regulations have no bearing on what they do, so long as they export and/or transport the products to countries outside the EU. In a sense that is true, as such a member may not be in breach of EU sanctions.

However, pursuant to the provisions of Articles 11 1(d) and 12(2) of the Regulation, the club is, as from 1 July 2012, prohibited from providing insurance cover to any member(s) in respect of voyages transporting crude oil or petroleum products if they originate in Iran, regardless of whether the final destination of the cargo is within or outside of the EU. This is because the club itself is based and operates within the EU. The position is the same for all insurance providers based or operating within the EU. It also impacts on the reinsurance facilities available to insurers based outside the EU, if their reinsurance for example is placed with the London market (as is the International Group's general excess of loss reinsurance contract). Furthermore, the carriage of such crude oil or petroleum products will trigger the club's cover provisions relating to sanctions.

Extracts from the relevant exclusion provisions under the club's rules are as follows:

- a. Rule 4.8: "No claim is recoverable if it arises out of [the ship] ... being employed in an unlawful, prohibited or sanctionable carriage, trade, voyage or operation, or if the provision of insurance ... is unlawful, prohibited or sanctionable..."
- b. Rule 6.22: "The member shall in no circumstances be entitled to recover from the club that part of any liabilities which is not recovered by the club from [pooling agreement partners or reinsurers] ... by reason of any sanction, prohibition or adverse action against them by a state or international organisation..."