

E-ALERT | International Trade Controls

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EU IMPOSES ADDITIONAL ECONOMIC SANCTIONS AGAINST SYRIA ADDITIONAL DESIGNATIONS AND CLARIFICATIONS OF US SANCTIONS

On September 2, 2011, the Council of the European Union (“EU Council”) adopted [Council Regulation \(EU\) No 878/2011](#), imposing additional restrictive measures against Syria in view of the Syrian government’s ongoing repression of protestors. Regulation 878/2011 prohibits the purchase, import and transportation of crude oil and petroleum products from Syria. Importantly, these prohibitions are subject to grandfathering clauses, outlined below. In addition, Regulation 878/2011 expands the criteria used to determine which parties shall be subject to an asset freeze and/or other sanctions, and adds four individuals and three entities to the designated parties list.

Separately, since our client alert dated [August 19](#), the US Treasury Department’s Office of Foreign Assets Control (“OFAC”) has supplemented the list of Syrian parties that are subject to the comprehensive sanctions directed against the Syrian government. In addition, we have received informal indications from the staff at OFAC and the State Department that the US authorities take a broad view of the prohibition on direct and indirect exports of services to Syria on the part of US persons. In effect, the staff appears to regard the prohibition on exports of services as the functional equivalent of a prohibition against engaging in or facilitating *any* trade with Syria (including with private sector parties in that market).

EU BAN ON IMPORTS OF SYRIAN OIL AND OTHER PETROLEUM PRODUCTS

Regulation 878/2011 prohibits:

- the importation into the EU of crude oil or petroleum products which (i) originate in Syria, or (ii) have been exported from Syria;
- the purchase of crude oil or petroleum products located in or originating from Syria;
- the transport of crude oil or petroleum products which originate from Syria or are exported from Syria to any other country; and
- the provision, directly or indirectly, of financing or financial assistance, including financial derivatives, as well as insurance and re-insurance, related to the above activities.

Regulation 878/2011 also prohibits participation, knowingly and intentionally, in activities which aim at or result in the circumvention of the prohibitions listed above.

Importantly, Regulation 878/2011 includes two grandfathering clauses related to the above prohibitions, allowing:

- (a) the completion, on or prior to [November 15, 2011](#), of an obligation arising from a contract concluded before [September 2, 2011](#), provided that this activity or transaction is notified to the competent Member State authority at least seven working days in advance; and

- (b) the purchase of crude oil or petroleum products (i) which had been exported from Syria prior to September 2, 2011, or (ii) where the export was made pursuant to point (a), on or prior to November 15, 2011.

EU DESIGNATED PARTIES – EXPANSION OF LISTING CRITERIA AND ADDITIONAL LISTINGS

Regulation 878/2011 expands the criteria for imposing asset freezes and/or other sanctions. Under the original sanctions regulations against Syria (Regulation 442/2011), the EU Council could only impose sanctions on those individuals and entities identified by the Council as being responsible for the violent repression against the civilian population (in principle, members of the Syrian government and military). Under the new rules, the EU Council may also subject to sanctions individuals and entities benefiting from or supporting the regime of President Bashar al-Assad.

Based on these expanded designation criteria, Regulation 878/2011 has already added four individuals and three entities to the list of designated parties. Newly designated entities include Mada Transport, Cham Investment Group, and Real Estate Bank. It is anticipated that the Council will designate additional entities in the coming weeks.

Regulation 878/2011 freezes all funds and economic resources that belong to or are owned, held or controlled by these designated parties. In parallel, the Regulation prohibits making available any funds or economic resources, directly or indirectly, to or for the benefit of the designated persons. The prohibition on making funds or economic resources available effectively bars any business dealings with the designated persons.

Significantly, the ban extends to entities owned or controlled by the designated persons. There is no uniform threshold for “control” that Member State authorities apply when interpreting the above provision. In case of doubt, we advise clients to consult Member State authorities prior to any transaction with entities in which a designated person owns a stake of 25 percent or more.

Under the EU sanctions regimes, Member States are authorized to (i) release frozen assets or (ii) make assets available to or for the benefit of designated parties in certain, limited circumstances. Regulation 878/2011 expanded these circumstances with respect to Syria, to include *inter alia* the release of funds for:

- humanitarian purposes, such as the delivery and facilitation of delivery of humanitarian aid and the delivery of materials and supplies necessary for essential civilian needs, including food and agricultural materials for its production, and medical products, or
- evacuations from Syria.

Importantly, these exceptions allow the release or making available of assets only if a competent Member State authority authorizes this transaction and only within the limits of this authorization. In case of transactions involving several Member States, several licenses may be required. For instance, a UK company wishing to ship humanitarian supplies from the UK and other Member States to Syria will at a minimum require a license from the competent authority in the UK (HM Treasury). In addition, depending on the terms of the UK license and the approach of the other Member States involved, the exporting company may be required to obtain separate licenses from these Member States.

SCOPE OF THE EU SANCTIONS AGAINST SYRIA

As noted in our earlier alerts, the EU sanctions against Syria apply:

- within the territory of the EU, including its airspace;
- on board any aircraft or vessel under the jurisdiction of the EU;

- to all EU Member State nationals whether within or outside the territory of the EU;
- to any legal person, entity or body incorporated under the law of an EU Member State; and
- to any legal person, entity or body in respect of business done in whole or in part within the EU.

US SANCTIONS – DESIGNATIONS AND CLARIFICATIONS

Since our client alert dated August 19, OFAC has taken action to supplement the list of Syrian parties that are subject to the comprehensive sanctions directed against the Syrian government. Specifically, on August 30, OFAC added three individuals to the list of Syrian parties that are the target of sanctions.

In addition, we have received informal indications from the staff at OFAC and the State Department that the US authorities take a broad view of the prohibition in Executive Order 13582 on direct and indirect exports of services to Syria on the part of US persons. The Order explicitly prohibits US persons from dealings with the government of Syria, making new investments in Syria, transactions related to Syrian-origin petroleum products, or any export or supply of services to Syria. (In addition, the export or reexport to Syria of US-origin items or items with more than 10 percent US-origin content continues to be prohibited under separate regulations.)

In recent consultations, the OFAC staff has suggested that the prohibition in the Order on providing services, directly or indirectly, to Syria includes ancillary services in connection with the sale of items by any person. According to this construction, which appears to be in tension with the plain language of the prohibitions, the Order prohibits US persons from engaging in ancillary services related to exports of goods or technology to Syria, or supporting or facilitating exports by non-US parties of goods or technology to Syria, including for example by insuring the goods, acting as a carrier, or providing financial services related to payments. Moreover, depending on the range of support provided, the OFAC staff has suggested that the use of IT servers and other network resources in the United States to support such sales/exports of goods and technology to even non-blocked parties in Syria could also constitute a prohibited export of services to Syria.

In effect, the staff appears to regard the prohibition on exports of services as the functional equivalent of a prohibition against engaging in or facilitating *any* trade with Syria (including with private sector parties in that market).

We have urged the OFAC staff to clarify the scope and impact of the recent Order insofar as it might be viewed as prohibiting all US support for offshore trade with non-blocked Syrian parties.

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Our EU and US offices are deeply involved in advising clients concerning the application of the EU and US sanctions and would be pleased to help clients navigate the requirements affecting trade and investment in Syria.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our international trade controls practice group:

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