

ClientAlert

International Trade

20 January 2012

New EU Regulation for sanctions against Syria, now covering software & telecoms, power plants, and (more) oil & gas



I. Introduction

On 18 January 2012, the Council of the European Union (EU) adopted the EU's new sanctions regime against Syria in **Council Regulation 36/2012** ("the New Syria Sanctions Regulation" or "New Regulation") which provides for new sanctions on the participation in the **construction of electric power plants**, new export and import restrictions for **software and telecom equipment and technology**, and broadens existing sanctions related to the **oil and gas industry**, as well as the existing restrictions related to the **transfer of funds and the provision of financial services**.ⁱ The original Syria Sanctions Regulation (i.e. Regulation 442/2011) is repealed as from 19 January 2012 and replaced by the New Regulation, which is binding and has direct application in all Member States, and implements and clarifies Council Decision 2011/782/CFSP of 1 December 2011.ⁱⁱ

As before, the new Syria Sanctions Regulation applies to the **EU territory** (including its airspace), to **nationals of EU Member States** (including those located outside the EU), and on board any **vessel or aircraft under Member State jurisdiction**. The Regulation also applies to **companies incorporated or doing business in whole or in part in a Member State**. This means that non-EU companies could be covered, depending on the particular circumstances under which they perform business activities in the EU and how they are connected to any activities restricted by the Regulation.

II. Council Regulation 36/2012 - new implementing measures in the EU's Syria sanctions regime

New restrictions related to the construction of electric power plants

The New Syria Sanctions Regulation enacts a **prohibition to sell, supply, transfer or export equipment or technology to be used in, and provide related financial or technical assistance in relation to, the construction of new power plants for the production of electricity** in Syria. The equipment or technology covered by this ban is listed in **Annex VII**.

It is also **forbidden to grant any financial loan, acquire or extend shareholdings in, create any joint venture with**, any Syrian person, entity or body engaged in the construction or installation of new power plants for electricity generation (reflecting the parallel provisions already applicable to loans, joint ventures, shareholdings in Syrian parties in exploration, and refining or production of crude oil).

Obligations arising from power plant contracts concluded before 19 January 2012 are exempt, subject to the requirement that the competent Member State authorities are notified at least 21 calendar days in advance of performing

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those obligations.

Export and import restrictions – oil and gas

While a ban on the purchase, import or transport of Syrian crude oil and petroleum products (and related financing and financial assistance) was already in place, the New Regulation imposes a further broad **ban on the sale, supply, transfer or export** (and on related technical assistance, brokering services, financing, financial assistance or circumvention) of **specified key equipment and technology related to four key sectors of the oil and gas industry in Syria** (i.e. crude oil and gas exploration and production, refining, and liquefaction of natural gas). The equipment and technology covered by this ban is listed in **Annex VI** to the New Regulation.

With respect to these new restrictions for four key sectors in the oil and gas industry, the New Regulation allows for the execution of pre-existing contract obligations, provided that these contracts were awarded or concluded before the date of entry into force of the New Regulation on 19 January 2012 and provided that the Member State authorities are notified at least 21 calendar days in advance of performing those obligations. In addition, there must be express written confirmation of the award of such contract before that date.

Export and import restrictions – software and telecoms equipment and technology

The New Syria Sanctions Regulation enacts a new **ban on the sale, supply, transfer or export without a license, of equipment, technology or software which may be used for monitoring or interception of internet or telephone traffic**, and lists the types of equipment, technology and software falling under this ban in **Annex V**. The ban is very broad: listed equipment, technology and software, whether or not originating in the Union, may not be supplied by EU parties **directly or indirectly** to any person, entity or body in Syria or for use in Syria. Similar to the existing supply restrictions on other listed goods, the restrictions also include a ban on **technical assistance, brokering services, financing or financial assistance, and circumvention activities** related to Annex V equipment, technology or software. The New Regulation furthermore prohibits the **provision of any telecommunication or internet monitoring or interception services** of any kind to the State of Syria, its Government, its public bodies, corporations and agencies or any person or entity acting on their behalf or at their direction.

Member States can grant a prior authorization to sell, supply, transfer or export these goods or related technical assistance, brokering, financing or financial assistance, unless they have reasonable grounds to believe that the equipment, technology or software would be used for monitoring or interception of internet or telecommunications by the Syrian regime.

The New Regulation does not have a clause allowing the execution of pre-existing contract obligations for transactions involving this kind of equipment, technology or software.

Freezing of funds and economic resources

As explained in a [previous alert](#), **Annexes II and IIa** list the parties to which the provisions on the freezing of funds and making available of economic resources apply. (We note that the EU is considering a further expansion of these Annexes, perhaps as soon as next week.)

The old list of circumstances in which the Member State authorities can authorize the release or the provision of certain frozen funds or economic resources is still in place.

In addition, however, Member State authorities may now **authorize** (subject to conditions) the release of frozen **funds or economic resources**, or the provision of certain funds or economic resources when they consider it **necessary for the essential energy requirements of the civilian population** in Syria.

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Restrictions on transfers of funds and on financial services

New restrictions are imposed on the **direct or indirect sale or purchase of Syrian public or public-guaranteed bonds** to or from the Syrian government or Syria-related banks (or persons or entities acting on their behalf or at their direction) issued after 19 January 2012. Related **brokering services** or **assistance** are also prohibited.

The New Regulation furthermore **prohibits EU banks from opening new offices in Syria, and from opening banking accounts, establishing a joint venture or a banking relationship with Syrian credit or financial institutions.**

Syrian banks are prohibited from opening a representative office, branch, or subsidiary in the EU, and from acquiring or extending participation in a credit or financial institution. They cannot obtain authorization for taking up and **pursuing the business of credit institution in the Union.**

Further, EU parties may not provide **insurance or re-insurance** to the Syrian government, or associated entities, or to any person, entity or body acting on behalf of or at the direction of the Syrian government. The New Regulation however foresees certain exceptions for this broad restriction, and allows, among others, the (re)insurance of all individuals, including the persons listed in Annexes II and IIa of the New Regulation, acting in their private capacity. Furthermore, compliance with pre-existing insurance contracts (i.e. before 19 January 2012) is allowed, but such contracts may not be extended or renewed (except where there was a prior contractual obligation to extend or renew a policy).

Recap of current rules

These new restrictions complement the existing sanctions, which remain in place – see our previous alerts.ⁱⁱⁱ The existing sanctions include an import/export ban of equipment used for **internal repression and military goods** (along with related technical and financial assistance); a ban on the purchase, import or transport of **crude oil and certain petroleum products** (as well as restrictions on financing and investment in enterprises in this sector); a prohibition on transactions with respect to new Syrian denominated **banknotes**; restrictions imposed on the **European Investment Bank**; and the **freezing of funds and economic resources** for listed parties.

General provisions

The **exclusion of liability** in the original Syria Sanctions Regulation, for those persons, entities or bodies that have **no reasonable cause to suspect that their actions would result in a violation** of the prohibition related to the provision of funds and economic resources, is now applicable to all the prohibitions set out in the New Regulation. Therefore, none of the prohibitions in the New Regulation will give rise to liability when the natural or legal person, entity or body concerned had no reason to suspect that its actions would infringe one of the prohibitions.

ⁱ [Council Regulation 36/2012](#) of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011 [2012] OJ L 16/1.

ⁱⁱ [Council Decision 2011/725/CFSP](#) of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273/CFSP. [2011]OJ L 319/56. See also our previous [alert of 6 December 2011](#).

ⁱⁱⁱ See our previous alerts from [5 September 2011](#) and [27 September 2011](#), [14 October 2011](#), [18 November 2011](#) and [6 December 2011](#).