Client**Alert**

International Trade

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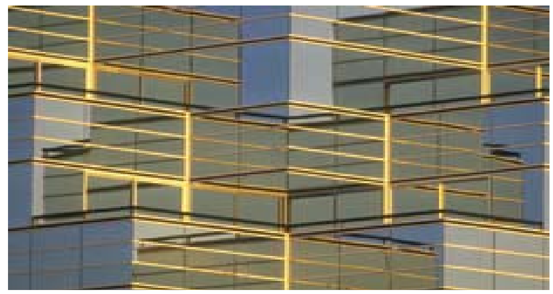
EU imposes further sanctions against Syria (with more likely to come)



I. Introduction

On 1 December 2011, the Council of the European Union (EU) considerably expanded its existing regime for economic sanctions against Syria when it adopted **Council Decision 2011/782/CFSP**[1] **which introduces or strengthens sanctions applicable to telecoms, oil & gas, electric power plants and the financial sector,** and **Council Implementing Regulation 1244/2010**[2] to add parties to the EU's existing asset freeze list (both published in the EU's Official Journal on 2 December 2011).

In accordance with the scope of EU jurisdiction established in the EU's original Syria Sanctions Regulation (i.e. Regulation 442/2011),[3] the expanded sanctions regime will apply to **EU territory**, **nationals of EU Member States** (regardless of whether they are inside or outside the EU) and **vessels and aircraft under Member State jurisdiction**. It will also apply to **companies incorporated or doing business in a Member State**.

The Council is expected to adopt an EU Regulation which would amend or replace Regulation 442/2011 in the near future to implement the new sanctions restrictions introduced by Council Decision 2011/782/CFSP.

Further sanctions measures may be forthcoming as the Council has promised to impose additional and more comprehensive sanctions against the Syrian regime as long as the repression continues.[4]

Below is a summary of the important elements of the EU's new sanctions measures against Syria.

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[1] Council Decision 2011/728/CFSP of 1 December 2011 concerning restrictive measures against Syria and repealing Decision 2011/273/CFSP, [2011] OJ L 319/56.
[2] Council Implementing Regulation (EU) No 1244/2011 of 1 December 2011 implementing Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria, [2011] OJ L 319/8.
[3] Council Regulation (EU) No 442/2011 of 9 May 2011 concerning restrictive measures in view of the situation in Syria, [2011] OJ L 121/1, as amended. For a description of the main features of this Regulation and amendments to it, see our previous alerts from 5 September 2011, 27 September 2011, 14 October 2011 and 18 November 2011.
[4] See Council conclusions on Syria from the 3130th Foreign Affairs Council meeting, 1 December 2011.

II. Council Implementing Regulation 1244/2011 – additions to the EU's existing asset freeze list

Council Implementing Regulation 1244/2011, which entered into effect on the date of its publication (i.e. 2 December 2011), adds **12 new Syrian government and military officials** to the EU's existing list of parties whose assets are frozen (i.e. Annex II to Regulation 442/2011). It also adds **11 Syrian entities in the media, surveillance equipment and oil sectors** (including Syria Trading Oil Company (Sytrol), the state-owned company responsible for the entire export of oil from Syria) considered associated with violent domestic repression or to support or benefit from the existing Syrian regime to the same list. As a result, no funds or economic resources may be directly or indirectly made available to or for the benefit of those parties.[5]

III. Council Decision 2011/782/CFSP – new EU sanctions measures against Syria

New Council Decision – impact on EU parties and next steps

Council Decision 2011/782/CFSP (the "Syria Sanctions Decision"), which entered into effect immediately when it was adopted by the Foreign Affairs Council on 1 December 2011, is a policy instrument which commits the 27 Member States to joint actions within the EU's Common Foreign and Security Policy (CFSP). As such, it must subsequently be implemented into law at either EU or national level in order to have legal effect on companies and individuals. EU law does not prevent the Member States from adopting national legal provisions implementing sanctions elements of a Council Decision as long as they do not contravene the purpose of such a Decision. However, in the interests of establishing a harmonized EU sanctions regime and a cohesive EU voice in international relations, legal implementation of Council Decisions on sanctions principally occurs through an EU Regulation which is binding and has direct application on the Member States.

The Syria Sanctions Decision introduces new features into the EU's regime for sanctions against Syria, but as a policy instrument it lacks certain legal detail and enforcement mechanisms for these new features. At the same time, existing Regulation 442/2011 – which lays down the main existing framework for the EU's Syria sanctions regime but does not yet incorporate the new features (except newly designated parties; see Section II above) – remains the EU's legislative instrument in this context with direct application to the Member States.

In light of the above, the Syria Sanctions Decision is expected to be followed by yet another EU Regulation which will either replace or add to existing Regulation 442/2011. This pending EU Regulation, which the Council is currently working on and aiming to adopt in the near future, will feature the new sanctions measures outlined in the Syria Sanctions Decision with binding effect on and direct application to the Member States. To the extent important details relating to compliance and enforcement are not provided in the Syria Sanctions Decision, Member State enforcement authorities are expected to take the position that EU companies must use "common sense" in ensuring compliance with the relevant new provisions (in combination with the provisions of existing Regulation 442/2011) until the pending EU Regulation is adopted to provide details. Also, such a future EU Regulation may to some extent alter or expand the important new features of the EU's Syria sanctions regime introduced by the Syria Sanctions Decision, which are summarized below.

New telecom and oil & gas related supply restrictions

In addition to the existing EU ban on supply of specified internal repression equipment and military goods, the Syria Sanctions Decision imposes a new ban on the **sale, supply, transfer or export of equipment or software** intended primarily for use by the Syrian regime in **monitoring or interception of the Internet and of mobile or fixed telephone communications** in Syria. The provision of **assistance to install, operate or update** such equipment or software is also prohibited. The pending EU Regulation is expected to contain more details about relevant equipment and software and other elements covered by this provision.[6]

While a ban on EU purchase, import or transport of Syrian crude oil and petroleum products was already in place, the Syria Sanctions Decision imposes a new ban on the **sale, supply or transfer of key equipment and technology to four key sectors of Syria's oil and natural gas industry** or to Syrian or Syrian-owned companies engaged in those sectors outside Syria.[7] Just like in the EU's Iran sanctions regime, those key sectors are:

- **refining;**
- **liquefied natural gas;**
- **exploration;** and
- **production**

The oil and natural gas industry supply restrictions also include a ban on related **technical assistance, training and services or financing and financial assistance**. The pending EU Regulation is expected to include a list of items considered "key equipment and technology" for purposes of this new ban.

An important exemption is made to the new supply ban for key oil and gas equipment (but currently <u>not</u> for telecom equipment and software) when **obligations arise from contracts pre-dating 1 December 2011**.

New electric power plant related restrictions

In addition to existing restrictions on financing and investment in certain Syrian oil companies, the Syria Sanctions Decision imposes a new ban on **financing** (i.e. financial loans and credit) and **investment** (i.e. acquisition or extension of participation or creation of joint ventures, including with subsidiaries or affiliates) **in Syrian companies engaged in the construction of**

[5] See Article 4 of Regulation 442/2011.

[6] See Article 3.

[7] See Article 6.

new power plants for production of electricity in Syria. A special exception to this new ban allows execution of pre-existing (i.e. those concluded before 1 December 2011) contract obligations in relation to financing, acquisition or extension of participation.[8]

Participation in the construction of new power plants for production of electricity in Syria is also prohibited, along with **related technical assistance and financing or financial assistance**. Again, a special exception to this new ban allows execution of contract obligations pre-dating 1 December 2011.[9]

New sovereign and trade financing restrictions

New restrictions are imposed on Member State activities involving **new commitments for public and private provided financial support for trade with Syria** (including export credits, guarantees or insurance), involving exercising restraint in entering into new short or medium term commitments and forbidding new long-term commitments. Exemptions are made for commitments established before 1 December 2011 and trade for food, agricultural, medical or other humanitarian purposes.[10]

Also, on top of existing restrictions on European Investment Bank (EIB) disbursements, payments or sovereign technical assistance service contracts, the Syria Sanctions Decision prohibits Member States from entering into **new commitments for grants, financial assistance or concessional loans to the Syrian government** (including through participation in international financial institutions). A special exemption allows such activities for humanitarian and developmental purposes.[11]

New financial sector restrictions

The new financial sector restrictions imposed by the Syria Sanctions Decision are not quite as broad as those currently imposed on Iran, but they are still likely to have an impact on the EU banking industry.

While the Commercial Bank of Syria continues to be subject to an asset freeze, the Syria Sanctions Decision prohibits **EU banks from opening new offices, subsidiaries or banking accounts in Syria**. Also, **Syrian banks are prohibited from establishing new branches, subsidiaries, offices, joint ventures, correspondent banking relationships or ownership interest in the EU**.[12]

Further, EU banks may not provide certain **insurance or re-insurance** or engage in activities relating to **new public or public-guaranteed bonds** issued after 1 December 2011 to the benefit of the Syrian government and associated entities (or to persons or entities acting on their behalf or at their direction, or to entities owned or controlled by them).[13]

Continued restrictions on EU admission of listed natural persons and related asset freezes

As before, the Syria Sanctions Decision prohibits entry or transit of certain listed natural persons through EU Member State territories. It also continues to freeze the assets of natural persons and legal entities designated by the EU, with the result that no funds or economic resources may be made directly or indirectly available to, or for the benefit of, these parties. The designated parties listed in the Syria Sanctions Decision are identical to those listed in the amended version of Regulation 442/2011 (see Section II above concerning the most recent amendments), which is directly applicable to the EU Member States. As before, exemptions are made to these admission and asset freeze restrictions under certain circumstances.

[8] See Articles 9 and 10.
[9] See Article 11.
[10] See Article 12.
[11] See Article 13.
[12] See Article 16.
[13] See Articles 15 and 17.