

ClientAlert

International Trade

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The EU's new sanctions against Libya – a summary of the sanctions measures to date



I. Introduction

On 28 February 2011, the Council of the European Union (EU) introduced a new EU regime for economic sanctions against Libya when it adopted **Council Decision 2011/137/CFSP**.¹ This Decision was accompanied by **Council Regulation 204/2011**,² featuring the main framework of implementing EU rules, which entered into effect on 3 March 2011. Since then, the EU's Libya sanctions regime has been amended on several occasions to ensure broad implementation of United Nations (UN) Security Council Resolutions 1970³ and 1973,⁴ including through EU-specific measures which go beyond the UN sanctions regime.

The latest important set of amendments was made through **Council Regulation 572/2011**⁵ which added six port authorities (in Tripoli, Al Khoms, Brega, Ras Lanuf, Zawia and Zuwara) to the Libya sanctions' lists of designated parties with effect as of 17 June 2011.

That update was preceded by **Council Implementing Regulation 360/2011**,⁶ which updated the Libya sanctions' designated parties lists by replacing them in full with new versions as of 14 April 2011 – and has since been tweaked by two Council Implementing Regulations adding two names (Colonel Taher Juwadi and Afriqiyah Airways)⁷ and subtracting one name (Mustafa Zarti)⁸. In light of EU High Representative Ashton's earlier statements promising a readiness to take additional measures,⁹ and recent Council conclusions explaining that the list of targeted persons and entities remains under constant review,¹⁰ more amendments could probably be expected in the future.

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¹ [Council Decision 2011/137/CFSP](#) of 28 February 2011 concerning restrictive measures in view of the situation in Libya, [2011] OJ L 58/53.

² [Council Regulation \(EU\) No 204/2011](#) of 2 March 2011 concerning restrictive measures in view of the situation in Libya, [2011] OJ L 58/1.

³ United Nations Security Council Resolution 1970 on Peace and security in Africa, 26 February 2011.

⁴ United Nations Security Council Resolution 1973 on the Situation in Libya, 17 March 2011.

⁵ Council Implementing Regulation (EU) No 572/2011 of 16 June 2011 amending Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya.

⁶ Council Implementing Regulation (EU) No 360/2011 of 12 April 2011 implementing Article 16(1) and (2) of Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya.

⁷ See Council Implementing Regulation (EU) No 502/2011 of 23 May 2011 implementing Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya.

⁸ See Council Implementing Regulation (EU) No 573/2011 of 16 June 2011 implementing Article 16(2) of Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya.

⁹ See Remarks by EU High Representative Catherine Ashton at the Cairo conference on Libya of 14 April 2011.

¹⁰ See Press Release from 3101st Council meeting (Foreign Affairs) of 20 June 2011, Doc. No. 11824/11, p. 22.

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Consistent with principles of other EU sanctions regimes (including against Iran), the new Libya sanctions framework applies to **EU territory** (including its airspace), **nationals of EU Member States** (regardless of whether they are inside or outside the EU) and **vessels and aircraft under Member State jurisdiction**. It also applies to **companies incorporated or doing business in a Member State**, which means that even 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 restricted Libya-related activities.

Below is a summary of the important features of the EU's new sanctions against Libya as they currently stand.

II. Designated parties – UN and EU lists of parties whose funds and economic resources are frozen

Listed parties

Perhaps most important in the EU's new Libya sanctions regime are the lists in Annexes II and III of Regulation 204/2011 which feature the persons, entities and bodies designated at UN level and EU level, respectively. These are the Libyan or Libya-related parties **whose funds and economic resources are frozen and to whom no funds or economic resources may be made directly or indirectly available**. Accordingly, EU companies and nationals (and other entities that must comply with the Libya sanctions regime, described above) cannot do business with these parties. They must also ensure that their dealings with other, non-listed parties will not bring indirect economic benefit to the designated parties.

As noted above, the names of Libya-related parties currently considered designated by the EU are featured in Council Implementing Regulation 360/2011, showing the full text of Annexes II and III, plus the eight names recently added to Annex III through Council Implementing Regulation 502/2011 and Council Regulation 572/2011 and minus one name deleted through Council Implementing Regulation 573/2011. To cut off potential EU sources of funding to persons tied to the Muammar Gaddafi regime, the **EU has gradually expanded these lists** to include various key financial entities such as the Libyan Economic and Social Development Fund and the Libyan National Commercial Bank along with holding companies and oil corporations, including the Libyan National Oil Company (NOC) subsidiaries and joint ventures Sirte, Waha, Brega, Mabruk, Zuietina, Harouge and RASCO.

The Libyan Arab Airlines, Afriqiyah Airways and various Libya-related companies incorporated in Germany, the UK, British Virgin Islands and Isle of Man are also considered designated parties by the EU to which no funds or economic resources may be directly or indirectly made available.

The latest set of amendments adding the names of six Libyan port authorities considered controlled by the Gaddafi regime to Annex III as entities whose assets are frozen is particularly noteworthy to EU parties involved in the export of goods (including non-restricted products) to Libya. This is because it effectively prevents docking and unloading of any goods – unless they involve humanitarian shipments authorized by an EU Member State – when port or other fees are charged by these ports. A grace period is given until 15 July 2011 during which payments may be made – again, subject to prior authorization by an EU Member State – to the designated ports to execute contracts which existed before the related Council Decision was made (i.e. those concluded before 7 June 2011).¹¹ However, this grace period does not apply to contracts relating to oil, gas and refined products.

It is important to note that the EU list of parties (Annex III) whose funds and economic resources are frozen is **in addition to the list of parties designated at UN level** (Annex II). Accordingly, persons and entities subject to EU jurisdiction should check whether the parties with which they directly or indirectly do business are included in the current EU list, as they may not be featured in the designated parties lists established by other jurisdictions. In addition, these lists are subject to change so it is important to check regularly for updates.

Special exemption for entities in which the designated parties own a stake

An important exemption principle relating to designated parties was introduced into the Libya sanctions regime when **Article 6a** entered into effect on 26 March 2011.¹² This provision confirms that in the event a designated party holds a stake in a non-designated entity, such non-designated entity may continue to conduct "legitimate business" **provided that it does not make available funds or economic resources to a designated party**.¹³

¹¹ See Council Decision 2011/332/CFSP of 7 June 2011 amending Decision 2011/137/CFSP concerning restrictive measures in view of the situation in Libya, [2011] OJ L 149/10.

¹² See Council Regulation (EU) No 296/2011 of 25 March 2011 amending Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya, [2011] OJ L 80/2.

¹³ Article 6a of Regulation 204/2011 provides in full:

With regard to persons, entities and bodies not designated in Annexes II or III, in which a person, entity or body designated in those Annexes has a stake, the obligation to freeze the funds and economic resources of the designated person, entity or body shall not prevent such non-designated persons, entities or bodies from continuing to conduct

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Article 6a was added to ensure that the mere presence of a designated Libya-related party as an investor in a company does not prevent that company from conducting business as long as no funds or economic resources are made available to the investing designated party as a result. It has been widely reported that several EU Member States considered this exception crucial to prevent an adverse effect on European business as certain designated entities such as the Libyan Investment Authority own important stakes in European banks and companies. At the same time, the exception is not limited to Libyan assets overseas as it applies to all non-designated entities in which designated parties are stakeholders.

This unique provision clarifies that doing business with companies in which a designated party is a shareholder or otherwise holds a stake is not necessarily prohibited under the EU's Libya sanctions regime (i.e. as involving indirectly making funds or economic resources available to a designated party under Article 5(2)). In other EU sanctions regimes (such as that against Iran), no such exemption exists. This can sometimes make it difficult to determine whether, for instance, business with a non-designated entity in which a designated party is a shareholder could be considered prohibited – especially if the designated party is not a controlling shareholder.

Under Article 6a, it is generally understood that EU companies and nationals (and other entities which must comply with the Libya sanctions regime) may conduct business (including making funds or economic resources available) with a non-designated party in which a designated party holds a stake as long as relevant checks are in place to ensure that no economic resources stemming from that business will somehow be made available to the designated party. This may include ensuring that the non-designated party freezes all assets relating to the designated party's stakeholding to ensure it cannot receive any pecuniary or similar gain from the non-designated party's business dealings. This provision thereby improves legal certainty to companies as they can continue doing business with non-designated entities in which Muammar Gaddafi or his associates may own a stake (including European companies) as long as they receive proper guarantees that any funds or economic resources involved will not be transferred on to these Libyan designated parties.

Potential derogations to freezing of funds

To ensure that certain pre-existing contractual obligations or other important personal needs are met, there are numerous exceptions to the provisions freezing funds of designated parties.

By way of example, the relevant Member State authority can, subject to a request, authorize the making available

of funds or economic resources to designated parties in cases involving payments to satisfy basic needs (food, housing, medical treatment, etc.), settlement of reasonable legal fees and payment of bank fees relating to holding of frozen funds. It can also authorize payments relating to extraordinary expenses upon request, provided that it makes required notifications to the UN Sanctions Committee (for UN designated parties) or to the other Member States and the Commission (for EU designated parties) first. Furthermore, the Member State authority can authorize release of funds for payments by designated parties under a contract that was concluded before their designation, provided that certain conditions are met.

In addition, payments may be made to frozen accounts if they are due under contracts pre-dating the account holder's designation, provided that such funds are frozen (and, if the bank holding the account is an EU bank, that the Member State authority is notified of the deposit).

III. Other restrictive measures in the EU's Libya sanctions regime

EU Member State obligations under Council Decision 2011/137/CFSP

Council Decision 2011/137/CFSP (including related amendments) is the underlying policy instrument which commits the 27 Member States to joint actions relating to the EU's Libya sanctions regime within the EU's Common Foreign and Security Policy (CFSP). As such, it features certain provisions which do not have a legal effect on companies and persons but can nonetheless have an impact on their business activities.

For example, in line with requirements imposed by the UN Security Council Resolutions, a Member State must inspect all **cargo** destined to or from Libya upon entering its territory (including on the high seas) if it has reasonable cause to suspect that the cargo may contain restricted items (see below). To enable such a determination, the Member State must require additional **pre-departure or pre-arrival information** (about whether the goods are restricted goods, and, if so, information about any required export license) from all aircraft and vessels en route to or from Libya.

To enforce the **no-fly zone** introduced by UN Security Council Resolution 1973, Member States are also bound to ensure that aircraft under their jurisdiction do not fly into the airspace of Libya (unless special circumstances apply). Member States must also in most cases deny permission for **Libyan aircraft** to enter their territory.

Finally, and perhaps most importantly, the Member States must require that persons and entities within their jurisdiction exercise **vigilance** when doing business with Libyan entities or persons and entities acting on their behalf.

legitimate business in so far as this business does not involve making available any funds or economic resources to a designated person, entity or body.

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Export and import restrictions

Last but not least, Regulation 204/2011 (including related amendments) imposes restrictions on the supply of a limited group of products – mainly related to military activities or internal repression – to Libya. Specified products which may be used for internal repression include specially designed vehicles, explosives and certain protective equipment; they may not be sold, supplied, transferred or exported to Libya, or imported into the EU from Libya. Supplementing the prohibition on direct or indirect supply of arms and related military material which was agreed between the EU Member States in Council Decision 2011/137/CFSP, Regulation 204/2011 also prohibits direct or indirect provision of technical or financial assistance related to military goods to a Libyan party or for use in Libya.

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