

EU Council Reinforces Sanctions against Syria

On February 27, 2012, the EU Council of Ministers adopted Council Decision 2012/122/CFSP freezing the assets of the Central Bank of Syria and prohibiting trading in precious metals and diamonds with the Government of Syria and related persons.¹ This decision is the latest of a series of recent measures tightening the EU's economic sanctions against Syria. Other recent measures include Council Decision 2011/782/CFSP² and Council Implementing Decision 2012/37/CFSP³, which consolidated prior measures and introduced new restrictions on trade in oil, petroleum equipment and certain telecommunications equipment, participation in electricity infrastructure projects and the provision of financial services.

These Council Decisions bind EU institutions and the Member States. To become binding on companies, private entities or persons they must be implemented by means of a Regulation. The above mentioned Decisions have therefore, in the meantime, been implemented through Regulations (EU) No 36/2012⁴, 55/2012,⁵ and 168/2012.⁶ Compliance with these measures is therefore mandatory “(a) *within the territory of the Community*, (b) *on board any aircraft or any vessel under the jurisdiction of a Member*

¹ Council Decision 2012/122/CFSP of February 27, 2012 amending Decision 2011/782/CFSP concerning restrictive measures against Syria, OJ 2012 L 54/14, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:054:0014:0017:EN:PDF>.

² Council Decision 2011/782/CFSP of December 1, 2011 concerning restrictive measures against Syria and repealing Decision 2011/273/CFSP, OJ 2011 L 319/56, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:319:0056:0070:EN:PDF>.

³ Council Implementing Decision 2012/37/CFSP of January 23, 2012 implementing Decision 2011/782/CFSP concerning restrictive measures against Syria, OJ 2012 L 19/33, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:019:0033:0036:EN:PDF>.

⁴ Council Regulation (EU) No 36/2012 of January 18, 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011, OJ 2012 L 16/1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:016:0001:0032:EN:PDF> (entry into force, January 19, 2012).

⁵ Council Implementing Regulation (EU) No 55/2012 of January 23, 2012, OJ 2012 L 19/6, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:019:0006:0009:EN:PDF> (entry into force, January 24, 2012).

⁶ Council Regulation 168/2012 amending Regulation 36/2012 concerning restrictive measures in view of the situation in Syria, OJ 2012 L 54/1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:054:0001:0005:EN:PDF>.

*State, (c) to any person inside or outside the territory of the Community who is a national of a Member State, (d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State, (e) to any legal person, entity or body in respect of any business done in whole or in part within the Community.”*⁷ Therefore, EU nationals no matter where they may be living or working, all EU incorporated companies, and anyone doing business within the territory of the EU must comply with the terms of the Regulation. However, the Regulation would not apply to subsidiaries of EU companies if those subsidiaries are legally established or incorporated in a country outside the EU.⁸

This memorandum provides an overview of the EU’s most recent expansion of its Syrian sanctions program.

1. *Freezing of assets of Syrian Central Bank:* The Central Bank of Syria has been added to the list of persons and companies whose assets and financial means have been frozen. Asset freezes are imposed on persons and entities deemed responsible for the internal repression in Syria. An asset freeze prohibits the counterparties of a sanctioned person or entity from allowing such person access to or use of any commercially valuable assets, funds, receivables etc. including the selling, hiring or mortgaging of them. Therefore, commercial transactions with sanctioned persons and entities are essentially rendered impossible.

In the case of the Central Bank of Syria, certain exceptions are provided for, namely as regards the flow of funds for certain underlying transactions that are specifically authorized or not prohibited by the sanctions regime.

The measures adopted on February 28 and January 23, 2012 also froze the funds and economic resources of 27 additional natural persons, five commercial banks and three petroleum companies. This brings the total number of sanctioned persons to 114 persons and 39 entities.

2. *Precious metals:* The latest Council decision prohibits, as from February 28, 2012 (a) the sale, transfer or export and (b) the purchase, import or transport of gold, other precious metals and diamonds to and from the Government of Syria, any person, entity or body acting on their behalf or

⁷ Article 35 of Council Regulation (EU) No 36/2012 of January 18, 2012.

⁸ As long as the acting officers of such companies are not EU nationals, since the sanctions rules continue to apply to EU nationals *ad personam*.

at their direction, or any entity or body owned or controlled by them. It is also prohibited to provide banknotes or coins to the Syrian Central Bank.

3. *Financial services:* A number of Syrian banks are subject to an asset freeze. In addition, measures prohibit the provision of financial services in Syria by EU financial institutions, including a prohibition since January 19, 2012 of (i) the opening of new EU offices by Syrian financial institutions, and (ii) the creation of joint ventures and the establishment of new correspondent banking relationships with Syrian financial institutions. In addition, the selling or purchasing of Syrian public or public-guaranteed bonds issued after January 19, 2012, to or from the Syrian government or Syrian banks or providing related brokering services, is prohibited. Finally, the measures prohibit as of January 19, 2012 the conclusion or renewal of insurance or re-insurance agreements with the Government of Syria and related persons.
4. *Oil and gas sector:* In addition to prohibiting the purchase, import or transport of crude oil and petroleum products from Syria as well as related finance and insurance services (in effect since September 2011), the recent EU measures prohibit the supply of key equipment and technology to the Syrian oil and gas sector or related technical assistance or financing, as from January 19, 2012. Such transactions are prohibited with “*any Syrian person, entity or body, or for use in Syria,*” and importantly cover Syrian-controlled companies outside Syria.⁹ The extension of the prohibition to non-Syrian entities is an unusual feature for EU economic sanctions and is likely to pose practical difficulties for European undertakings, who may find it difficult to identify all (potential) trading partners under Syrian control. Also prohibited is the provision of financial loans, the acquisition or extension of a participation, and the creation of joint-ventures to or with Syrian companies active in the exploration, production or refining of crude oil. The prohibitions generally allow for the performance of contracts concluded before the sanctions were imposed.
5. *Electricity infrastructure:* The recent EU sanctions prohibit, as from January 19, 2012, (a) the sale, supply, transfer or export of equipment or

⁹ Article 1(o) of Regulation 36/2012 defines ‘*Syrian person, entity or body*’ as: (i) *the State of Syria or any public authority thereof;* (ii) *any natural person in, or resident in, Syria;* (iii) *any legal person, entity or body having its registered office in Syria;* (iv) *any legal person, entity or body, inside or outside Syria, owned or controlled directly or indirectly by one or more of the above-mentioned persons or bodies.*” (emphasis added).

technology to be used in the construction or installation in Syria of new power plants for electricity production or (b) to provide, directly or indirectly, financial or technical assistance in relation to any such project. The relevant technology is listed in Annex VIII to Regulation 36/2012. Contracts entered into prior to January 19, 2012 can be performed, provided that the company seeking to rely on this exception notifies the competent authority in the Member State at least 21 days in advance. Finally, in the same way as for Syrian oil companies, recent measures prohibit the provision of financial loans, the acquisition or extension of a participation, and the creation of joint-ventures with Syrian companies active in the construction or installation of new power plants. This measure does not affect the execution of agreements concluded prior to January 19, 2012.

6. *Telecommunications*: Finally, as from January 19, 2012, the supply of key equipment and software capable of monitoring or intercepting Internet and telephone communications to any person in Syria or for use in Syria, as well as assistance in installing, operating or updating such equipment or software, is contingent upon the approval of the competent authority of the Member State, even if the underlying contract was concluded before such date. The relevant equipment is described in Annex V to Regulation 36/2012.

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