

Client Alert

Latham & Watkins
Litigation Department

UN Sanctions Against Libya Adopted by EU and UK

In response to the conflict in Libya, the United Nations Security Council (UN) issued UN Security Council Resolution No. 1970/2011 on February 26, 2011 (UNSC Resolution), which was promptly implemented by the European Union (EU) and the United Kingdom (UK).

Consistent with the UNSC Resolution, both the EU and UK regimes impose sanctions on Libya in the form of an asset freeze, an arms embargo, a ban on the provision of equipment used for internal repression and travel bans. However, because the regimes adopted by the EU and UK are not identically worded, there is some uncertainty regarding their precise scope.

This *Alert* discusses the EU and UK sanctions. The US and the UN sanctions on Libya are discussed in Latham & Watkins' earlier *Client Alert* [Broad US and UN Sanctions Freeze Libyan Assets and Restrict Dealings with the Qadhafi Regime](#) published on February 28, 2011.

The European Union Sanctions Regime

The EU sanctions regime is more expansive than the UN regime. It targets a larger group of persons and includes more embargoed items.

The EU sanctions regime consists of two instruments: (1) [Decision](#)

[No. 2011/137/CFSP](#) adopted by the Council of the EU on February 28, 2011 (EU Council Decision), and (2) [Regulation No. 204/2011](#) adopted by the Council of the EU on March 2, 2011 (EU Council Regulation).

Application of the EU Regime

The EU Council Decision is binding upon the EU Member States.

The EU Council Regulation, which implements aspects of the EU Council Decision, has broad applicability. It is directly applicable to all nationals of EU Member States, regardless if they reside inside or outside of the EU. It is also applicable to any legal person who is incorporated or constituted under the law of a Member State or conducts any business in whole or in part within the EU. Consequently, all EU companies, financial institutions, non-profit organizations and other EU entities and persons must comply with the EU sanctions regime.

The Freeze on Assets and Economic Resources

The EU sanctions regime freezes all funds and economic resources belonging to, owned, held or controlled by:

- Persons designated by the UN Security Council (*i.e.* currently

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Muammar Qadhafi and five members of his family) or by the Sanctions Committee in the UNSC Resolution

- Other natural or legal persons designated by the EU Council as “involved in or complicit in ordering, controlling, or otherwise directing, the commission of serious human rights abuses against persons in Libya” (i.e. currently 20 prominent individuals currently in the Qadhafi regime.)

The EU asset freeze prohibits any EU person or entity from making funds or economic resources available directly or indirectly to or for the benefit of these targeted persons.

“Funds” is broadly defined as including any financial assets and benefits. “Economic resources” is defined as extending to assets of every kind that may be used to obtain funds, goods or services.

The EU sanctions regime presents certain defined exceptions to the asset freeze. For example, Member States may authorize the release of frozen funds or economic resources in specified circumstances. Thus, the targeted persons may make payments from frozen accounts to satisfy contracts entered into prior to the asset freeze. Interest and other payments into frozen accounts are also permitted in certain circumstances.

The scope of the EU sanctions imposed to funds and economic resources “belonging to, owned, held or controlled” by the targeted persons has given rise to some uncertainty. In particular, EU Member States have differed as to whether certain Libyan organizations such as the Libyan Investment Authority (LIA) fall within the scope of the sanctions.

When faced with any such uncertainties, for reputational as well as legal reasons, persons potentially affected by the sanctions are best advised to err on the side of caution.

Bloomberg has subsequently reported that the EU Council has agreed

explicitly to extend the sanctions to certain Libyan organizations and persons, including the LIA, LIA's former Deputy Chief Executive Officer Mustafa Zarti, the Libya Africa Investment Portfolio, the Libyan Foreign Bank, the Libyan Housing and Infrastructure Board and the Libyan Central Bank. Reuters reports that the extended list should be finalized on Wednesday, March 9, 2011 and, should no Member States raise any objections, be “authorized” by Thursday, March 10, 2011 at 11:00 a.m. The details of the extended restrictions are expected to be published in the Official Journal of the European Union on Friday, March 11, 2011, which is when they should also come into force. Bloomberg suggests that more entities may be added to the EU sanctions list beginning March 14, 2011.

The EU Council Regulation expressly provides that the freezing of funds or the failure to make funds available will not give rise to liability if carried out in good faith in accordance with the Regulation. It is accordingly advisable that EU persons complying with the EU sanctions regime make express reference to it in order to benefit from this provision.

We will continue to monitor these developments and issue additional *Client Alerts* as appropriate.

Arms Embargo and Travel Ban

In line with the UNSC Resolution, the EU regime imposes an arms embargo and prohibits EU persons and entities from providing related financial, technical or any other assistance to the targeted persons. Unlike the UNSC Resolution, the EU regime also prohibits equipment which might be used for internal repression, including certain vehicles, explosive substances, razor barbed wire and military and combat knives. The EU Council also directed the Member States to implement a travel ban on senior officials in the Qadhafi regime, as well as Qadhafi's family members.

The United Kingdom Sanctions Regime

The UK and its nationals are obliged to comply with the EU sanctions regime. However, the UK has independently implemented the UN Resolution through its enactment of the Libya (Financial Sanctions) Order 2011 (Freezing Order) on February 27, 2011 and other implementing measures. The Freezing Order provides for a maximum penalty of imprisonment for two years and a fine for its breach.

Application of the UK Regime

The Freezing Order applies to: (1) any person in the UK; or (2) any person elsewhere who is:

- A British citizen, a British overseas territories citizen, a British Overseas citizen, a British subject under the British Nationality Act 1981, a British National (Overseas) or a British protected person
- A body incorporated or constituted under the law of any part of the UK.

Thus, in addition to applying broadly to natural persons, the Freezing Order applies to banks, financial institutions, companies, charitable organizations and non-governmental organizations in the UK or established under the law of any part of the UK. The Freezing Order has extra-territorial effects and applies to both individuals that are not already subject to the EU sanctions regime. It does not apply to subsidiaries of UK companies operating wholly outside the UK that do not have legal personality under the law of any part of the UK.

The Freeze on Assets and Economic Resources

Reflecting the wording of the UNSC Resolution, the Freezing Order currently targets Muammar Qadhafi and five members of his family. The Freezing Order provides that funds, other

financial assets and economic resources owned or controlled by the targeted persons are frozen. The freeze also extends to: (i) persons acting for, on behalf of or at the direction of targeted persons; and (ii) entities owned or controlled by targeted persons. No funds, financial assets or economic resources may be made available by such persons or entities to or for the benefit of the targeted persons. The UK has imposed criminal penalties for violation of the asset-freeze.

The UK Government has specifically advised in its Financial Sanction Notice that Muammar Qadhafi and his family have considerable control over the Libyan State and its enterprises, and that this should be considered "in deciding how to conduct proper due diligence over any transactions involving Libyan state assets." Entities such as the LIA may therefore be caught within the scope of the UK asset freeze, and advice should always be sought in relation to particular transactions with particular entities associated with the Libyan State.

On March 3, 2011, the UK Treasury issued a General License which authorizes the conduct of business with defined "non-Libyan financial institutions." This clarifies that entities such as the British Arab Commercial Bank PLC are not targeted persons under the UK sanction regime.

Arms Embargo and Travel Ban

In addition to the Freezing Order, the UK Government revoked all existing export licenses for goods and technology that could be used for internal repression. New export licenses will only be issued in compliance with the arms embargo set out in the UN Resolution. Further, the UK Foreign Secretary issued a Direction removing the exemption from normal UK immigration of Muammar Qadhafi and the members of his household.

EU and UK Sanctions as of March 9, 2011*

	EU Sanctions	UK Sanctions
Asset Freeze	<p>Funds and economic resources belonging to, owned, held or controlled by:</p> <ul style="list-style-type: none"> • Qadhafi and 13 of his family members • 12 additional designated individuals involved in or complicit in ordering, controlling or otherwise directing the commission of serious human rights abuses against people in Libya 	<p>Funds, other financial assets and economic resources owned or controlled by:</p> <ul style="list-style-type: none"> • Qadhafi, 13 family members and 12 other persons • Persons acting for, on behalf of or at the direction of targeted persons • Entities owned or controlled by targeted persons
Embargo	<ul style="list-style-type: none"> • Arms embargo and related financial, technical or any other assistance prohibited • Ban on equipment which might be used for internal repression 	<ul style="list-style-type: none"> • Export licenses for goods and technology that could be used for internal repression revoked
Travel Ban	<ul style="list-style-type: none"> • Muammar Qadhafi, nine members of his family and several prominent personalities of the Qadhafi regime • Other persons designated by the EU Council itself which currently includes 10 individuals 	<ul style="list-style-type: none"> • Muammar Qadhafi and members of his household • UK must implement broader EU travel ban

* *The people and entities targeted by the EU and UK sanctions regimes are subject to change as the situation develops.*

The EU and UK sanctions regimes are far-reaching, complex and subject to interpretation. The targeted persons in each regime are also liable to change. Given the criminal penalties for non-compliance with these sanctions and the reputational risks associated with doing business with entities linked to the Qadhafi regime, legal advice should be obtained before engaging in any transaction with a Libyan entity that risks falling within the scope of these sanctions.

Latham & Watkins' Expertise

Latham & Watkins has extensive expertise in advising clients on the scope, nature, and impact of international sanctions, and specifically in counselling on compliance programs, policy issues, licensing, internal investigations, voluntary disclosures, and administrative and criminal enforcement. [Latham & Watkins' Export Controls and Economic Sanctions group](#) represents and advises companies in the EU, UK, US and around the world on issues arising under export control laws, trade and economic sanctions, customs and import regulations, anti-terrorism controls, foreign investment, anti-money laundering regimes, corruption issues and anti-boycott laws.

The information contained in this publication should not be construed as legal advice. Should further analysis or explanation regarding the subject matter of this *Client Alert* be required, please contact the Latham attorney with whom you normally consult or one of the professionals listed below:

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