

MMTA TRADE AND LOBBY COMMITTEE'S NEWSLETTER

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COUNTRIES AND ENTITIES ADDED TO THE LIST OF EU ECONOMIC AND FINANCIAL SANCTIONS

The EU has recently adopted financial sanctions, export restriction regimes and other restrictive measures against Libya, Tunisia and Ivory Coast. These have enlarged the list of existing sanctions against Belarus, Bosnia and Herzegovina, Burma, China, DRC, Croatia, Eritrea, Republic of Guinea, Haiti, Iran, Iraq, North Korea, Lebanon, Liberia, Moldova, Serbia and Montenegro, Somalia, Sudan, Syria and Zimbabwe, and against certain terrorist groups or individuals linked to terrorist organizations, ([view details of EU sanctions for each country](#)).

1. Types of economic and financial sanctions

MMTA members should be mindful of these sanctions when concluding business transactions. Indeed, there are different types of sanctions that may affect the minor metals industry and trade, including: a complete trade ban (export/import), financial restrictions (payments of bills) and freezing of funds of certain targeted entities. There may also be restrictions on sales of military items and dual use products.

The most common sanctions are financial, e.g. the freezing of funds. Both direct and indirect making available of funds may be caught by the definition. This means that even if someone does not directly transfer funds to a targeted entity, it can still be caught under the scope of application of sanctions if as a result of another transaction funds are made available to a targeted entity. For example, if an EU company purchases aluminium from another EU company that sources its bauxite ores from an entity subject to sanctions, the transaction will in general be caught under the EU's sanctions regime.

2. Scope of sanctions

The imposition of sanctions usually binds all EU nationals, EU companies, and non-EU companies with respect to business in the EU. In practice however, certain economic sanctions may have an extraterritorial application. The Ivory coast sanctions, for example, also apply to companies conducting business with the EU. This means that foreign companies that usually conduct business with the EU are also bound by the imposed sanctions, even if that specific transaction has no link with the EU.

Additionally, in some cases, the scope of the sanctions can be so wide that they effectively hinder any business with the targeted country. A good example is the current sanctions imposed against the Ivory Coast. Indeed, the sanctions prohibit the making available of funds or economic resources to the two only ports in the country. As a result, all shipments of goods to and from the country by sea are effectively stalled. This has had severe repercussions on the amount of trade between the EU and the Ivory Coast.

3. Exceptions and exemptions to the sanctions

Transactions caught under the EU sanctions regimes may nevertheless benefit from certain exceptions and exemptions in certain circumstances. For example, most EU sanctions regulations contain an exception for contracts that had been concluded prior to the entry into force of the sanctions. Similarly, certain exemptions may be granted for humanitarian activities with the targeted country. However, these exceptions and exemptions are subject to strict conditions, and must be approved on an individual basis (per contract/activity, not per company) by the authorities of the competent Member State.

4. Penalties

Penalties for lack of compliance with sanctions are set at Member State level. The EU provides only that penalties must be effective, proportionate and dissuasive. For example, in the United Kingdom, the maximum penalty is imprisonment for seven years and/or an unlimited fine. Similarly, Germany provides for a sentence of up to five years. In serious cases there is a minimum prison sentence of two years, and a maximum sentence of 15 years. Even for cases of negligent actions, German authorities may impose a prison sentence of up to three years, or a punitive fine of up to €1.8 million.

5. Recommendations

MMTA members should be mindful of the EU's economic and financial sanctions regimes when concluding international transactions. Members would be well advised to establish an export compliance programme to ensure that all parties involved in their transactions are screened against the relevant EU sanctions. Export compliance programmes are the most effective way of ensuring that a particular transaction does not violate the EU's far-reaching and often extraterritorial sanctions.

Please contact the [MMTA](#) or [Arnoud Willems](#) at Sidley Austin for more information.

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