



The Impact of Foreign Sanctions Listings under US, UK, and EU Law

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About

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Introduction

On October 19, 2021, Israel designated six Palestinian civil society groups as terrorist organizations: Addameer, Al-Haq, Bisan Center for Research and Development, Defence for Children International—Palestine, the Union of Agricultural Work Committees, and the Union of Palestinian Women’s Committees (collectively, “the six organizations”).¹ This action created uncertainty among US-, UK-, and EU-based partners of these organizations as to their own legal risk exposure. This memorandum therefore sets out to summarize the legal consequences under US, UK, and EU law of foreign sanctions applied to the partners of nonprofit organizations registered in those same jurisdictions. While motivated by the case of the six organizations, the analysis would be equally applicable to other similarly situated entities.

Among the activities considered in this memorandum in which US, UK, and EU nonprofits might engage with foreign-listed partners are:

- a) funding, donations, and other financial transactions, whether as a donor or recipient,
- b) business relations, including the provision of goods and services,
- c) coordinated programming or activities (e.g., jointly conducting research, producing reports, hosting events and trainings, engaging in advocacy, etc.),
- d) public statements of support,
- e) direct communications with staff, and
- f) hosting content produced by the organizations and their staff (e.g., on social media platforms).

As explained in more detail below, foreign sanctions listings in and of themselves have no effect under US, UK, or EU law. US, UK, and EU nonprofits may therefore engage in financial transactions, business relations, coordinated programming, communications, content-sharing, and other activities with the six organizations without incurring liability in their home jurisdictions. However, nonprofits should be aware that their operations outside of their home jurisdiction—including in Israel—may be subject to other applicable laws, such as Israeli sanctions. It should also be noted generally that the United Nations Security Council imposes sanctions which member states are obliged to implement domestically.²

It must further be cautioned that sanctions programs are subject to rapid change based on geopolitical circumstances. Additionally, sanctions enforcement authorities often coordinate their efforts; designation by one authority may indicate that other authorities soon will announce a corresponding designation, though this has not yet occurred in the case of the six organizations. Because they are

¹ Rami Ayyub, *Israel Designates Palestinian Civil Society Groups as Terrorists*, *U.N. ‘Alarmed’*, Reuters (Oct. 22, 2021), <https://www.reuters.com/business/aerospace-defense/israel-designates-six-palestinian-civil-society-groups-terrorists-2021-10-22/>.

² UN Charter Art. 41, <https://legal.un.org/repertory/art41.shtml>. UN member states “agree to accept and carry out the decisions of the Security Council” and therefore implement those sanctions domestically. UN Charter Art. 25, <https://legal.un.org/repertory/art25.shtml>.

tailored to address particular foreign policy and national security interests, sanctions programs directed toward particular actors vary in substance and scope. Thus, while there are similarities between and among the different regimes, the analysis under each sanctions program is fact-specific, and each particular transaction must be reviewed on a case-by-case basis.

I. Overview of US Sanctions

The United States maintains comprehensive economic sanctions programs as well as more limited sanctions regimes, both of which are administered by the US Treasury Department's Office of Foreign Assets Control ("OFAC"). The US Government currently maintains comprehensive economic sanctions and/or export bans against the Crimea region of Ukraine, the so-called Donetsk and Luhansk People's Republics, Cuba, Iran, North Korea, and Syria.³ More targeted economic sanctions are currently in effect with respect to certain other countries.⁴ These latter sanctions programs are not territorial in nature and instead target only designated persons and entities in their individual capacities.

US comprehensive and targeted economic sanctions programs primarily restrict the activities of "US persons," which generally include⁵:

- US-incorporated entities and their employees;
- all US citizens and US lawful permanent residents (also known as "green card" holders) wherever they are located;
- all people and organizations physically present in the United States, regardless of citizenship; and
- all non-US branches of US businesses and other US organizations.

With respect to US comprehensive sanctions programs, US persons generally are prohibited from engaging in transactions with individual nationals of sanctioned countries, entities resident in sanctioned countries, governments of sanctioned countries, and individuals and entities owned or controlled by, or acting on behalf of, any of the foregoing, regardless of whether such individuals or entities are physically located in the sanctioned country.

Absent a general or specific license from OFAC, US persons are likewise not permitted to engage in any dealings with organizations designated by the US for targeted sanctions. Therefore, all donations and other financial transactions, as well as business relations that involve the provision of goods and services, would be prohibited. In addition, coordinated programming or activities and hosting content produced by the partner would likely be prohibited as providing services to the sanctioned partner. Providing public statements of support and engaging in direct communications with staff, however, would not be prohibited, as long as those communications or statements do not involve providing or receiving goods or services to or from the entities.

³ See Sanctions Programs and Country Information, OFAC, <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>.

⁴ *Id.*

⁵ The definition of US person should be reviewed in connection with each sanctions program. Under sanctions with respect to Iran and Cuba, non-US subsidiaries of US persons are also treated as US persons.

The US Government also maintains so-called “secondary sanctions” that authorize penalties to be imposed against non-US persons engaging in certain specified activities involving entities and individuals in certain jurisdictions (presently including Russia and Iran), even if such activities have no US nexus.

US sanctions programs also prohibit US persons from any dealings involving certain persons and entities who are designated by the US Government on the List of Specially Designated Nationals (“SDN List”).⁶ In addition to the SDN List, OFAC maintains several lists with different levels of restrictions. These include the Foreign Sanctions Evaders List, the Palestinian Legislative Council list (targeting elected legislators with terrorist affiliations), and the Non-SDN Chinese Military-Industrial Complex Companies List. For example, in 2014, OFAC created the Sectoral Sanctions Identifications List (“SSI List”), which subjects certain Russian and Ukrainian entities to varying restrictions on a sector-specific basis. Unlike the SDN List, SSI List restrictions do not prohibit US persons from *all* dealings. With respect to affiliates of SDN and SSI List entities, under the so-called “50% rule,” OFAC extends sanctions to companies that are majority-owned by listed entities, whether individually or in the aggregate, even if the affiliates are not specifically listed.⁷

Violations of economic sanctions can result in civil, criminal and reputational exposure for individuals and companies.

II. Overview of UK and EU Sanctions

The United Kingdom and European Union also maintain various sanctions programs, including list-based sanctions regarding certain persons or entities. The UK’s sanctions, which include list-based sanctions, require compliance by UK persons. UK persons are defined as UK nationals and legal entities established under UK law, including their overseas branches. UK sanctions also apply to conduct by any individual or entity occurring within the UK’s territory.⁸ In addition to financial sanctions such as asset freezes and investment restrictions, the UK maintains trade sanctions, including arms embargoes and other trade restrictions, immigration sanctions, and aircraft and shipping sanctions.⁹

The European Union also maintains list-based sanctions, among others. These apply to EU persons, which are defined as EU Member State nationals and legal entities incorporated under the laws of an EU Member State. EU sanctions also apply to conduct by any individual or entity occurring within EU territory. The EU maintains asset freeze sanctions as well as other types of sanctions, including arms embargoes, restriction of admission to the EU, and restrictions concerning specific sectors of economic activity.¹⁰

⁶ Specially Designated Nationals And Blocked Persons List (SDN) Human Readable Lists, OFAC, <https://home.treasury.gov/policy-issues/financial-sanctions/specially-designated-nationals-and-blocked-persons-list-sdn-human-readable-lists>.

⁷ Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property Are Blocked, OFAC (April 13, 2014), https://home.treasury.gov/system/files/126/licensing_guidance.pdf.

⁸ The UK guidance on sanctions states: “*UK financial sanctions apply to all persons within the territory and territorial sea of the UK and to all UK persons, wherever they are in the world. This means that: - All individuals and legal entities who are within or undertake activities within the UK’s territory must comply with UK financial sanctions that are in force. - All UK nationals and legal entities established under UK law, including their branches, must also comply with UK financial sanctions that are in force, irrespective of where their activities take place.*” (See para 1.4: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1062452/General_Guidance_-_UK_Financial_Sanctions.pdf).

⁹ Guidance: UK sanctions, Gov.uk, <https://www.gov.uk/guidance/uk-sanctions>.

¹⁰ Different types of sanctions, European Council, <https://www.consilium.europa.eu/en/policies/sanctions/different-types/>.

If a partner becomes subject to UK or EU asset freeze sanctions, UK or EU nonprofits are prohibited from making “funds and economic resources”—to include providing services—available to them.¹¹ This would preclude all donations and other financial transactions, as well as business relations that involve the provision of goods and services. In addition, coordinated programming or activities and hosting content produced by the partner would likely be prohibited as providing services to the sanctioned partner. In contrast to the US case, providing public statements of support and engaging in direct communications with staff could also be prohibited, to the extent that these could be considered to be enabling the designated partner to obtain funds, goods, or services.

Notably, both the UK and EU have “blocking statutes,” which serve to protect UK and EU operators from the extra-territorial application of certain third country laws. In practice, they serve to prevent UK and EU persons from complying with certain US sanctions laws, including those against Cuba and Iran. They do so by nullifying the effect in the UK or the EU of any foreign court ruling based on specified foreign laws, and by allowing UK or EU operators to recover in court damages caused by the extra-territorial application of the specified foreign laws.¹²

As under US sanctions, violations of UK and EU economic sanctions can result in civil and/or criminal penalties as well as reputational exposure for individuals and companies.

III. Effect of Foreign Sanctions on US, UK, and EU Nonprofits

As a general matter, if there is no nexus between a non-US sanctions measure and the activities of a US nonprofit, then those non-US sanctions measures would not restrict a US nonprofit with respect to an individual or entity subject to non-US sanctions. A US nonprofit would therefore not be restricted from engaging in any of the contemplated activities with respect to the foreign partners. The same may be said of UK and EU nonprofits with regard to their respective obligations under UK and EU law deriving from non-UK or -EU sanctions.

Nonetheless, nonprofits should screen and assess exposure to jurisdictions, individuals, and entities subject to foreign economic sanctions-related restrictions. Specifically, a nonprofit must consider whether its operations have a nexus to a foreign jurisdiction in which applicable sanctions would restrict its activity. For example, whether or not US sanctions apply, the UK subsidiary of a US nonprofit or a UK national employed by a US nonprofit may be required to comply with UK sanctions measures. This may serve to practically limit the operations of a nonprofit within the sanctioning jurisdiction.

¹¹ A European Commission Opinion states that “*providing services to or working for the Entity can be considered as making economic resources indirectly available to the designated person exerting control over the Entity, insofar as it enables the latter to obtain funds, goods, or services.*” Commission Opinion of 19.6.2020 on Article 2 of Council Regulation (EU) No 269/2014, Question 2.4, https://ec.europa.eu/info/sites/default/files/200619-opinion-financial-sanctions_en.pdf. UK guidance provides that economic resources “*generally means assets of every kind – tangible or intangible, movable or immovable – which are not funds, but may be used to obtain funds, goods or services.*” OFSI, UK Financial Sanctions General Guidance, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1062452/General_Guidance_-_UK_Financial_Sanctions.pdf.

¹² What is the blocking statute?, European Commission, https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/blocking-statute_en.

Conclusion

The US, UK, and EU each enforce their own comprehensive and list-based sanctions regimes, which apply, at minimum, to US, UK, and EU persons, respectively. Nonprofits registered in these jurisdictions are therefore forbidden from engaging in a range of activities with actors listed by the relevant US, UK, and EU designating authorities. **However, neither US, UK, nor EU law would restrain a US, UK, or EU nonprofit from activities in partnership with an actor designated only by a foreign sovereign, such as Israel.** Still, nonprofits with operations within the jurisdiction of the designating authority should assess their local legal risk exposure.