



Guidance Note regarding hits on National sanctions issued by Other States (issued in accordance with article 7 (5) of the National Interest (Enabling Laws) Act – Chapter 365 of the Laws of Malta)

The Sanctions Monitoring Board refers to its guidance notes

- Guidance Note on Libya Sanctions March 2018
- Guidance Note on Libya Sanctions August 2020

issued in the wake of the designation of Maltese nationals, entities and vessels under OFAC sanctions whereby the Sanctions Monitoring Board recommends that all economic operators and financial institutions exercise enhanced due diligence when dealing with the persons, entities and bodies listed by the OFAC and their assets. The SMB also advises that economic operators and financial institutions are to closely monitor and record the activities and transactions carried out by such persons, entities and to keep an up to date record of all their assets, funds and economic resources.

Reference is also made to the judgements delivered by the First Hall Civil Court in case reference number 409/2019 delivered on 29 September 2020 and case reference number 110/2019 delivered on 10 May 2021 whereby the Civil Courts observed that national sanctions issued by another state do not have effect in Malta due to the Sovereignty of the Maltese State.

In addition to the above, reference is also made to the EU Blocking Statute set out in Council Regulation (EC) No 2271/96 which prohibits compliance with OFAC sanctions unless an express authorization has been granted in accordance with such regulations. This Regulation intends to protect EU operators from the extra-territorial application of third country laws specified in its Annex. This annex currently consists of US measures concerning Cuba and Iran. The Sanctions Monitoring Board appreciates the fact that the National Interest (Enabling Powers) Act enables the direct applicability of all UN and EU sanctions under Maltese law to the exclusion of national sanctions issued by other states.

Nevertheless, in the best interests and safety of Malta's jurisdiction, the Sanctions Monitoring Board highly recommends that national sanctions issued by other States ought not to be dismissed and an assessment be conducted every time as to the reasons why such sanctions have been imposed. Whenever a situation is encountered whereby a person, entity or vessel is sanctioned under the sanctions regime of another state, Maltese economic operators and financial institutions ought to view the reasons as to why such sanctions have been imposed in the first place and to consider the transaction or dealings at hand in light of the reasons for which sanctions have been imposed by another State, any connection there may be to Malta and of any obligations they may be subject to, including AML/CFT ones where applicable.



BORD TA' SORVELJANZA DWAR IS-SANZJONIJIET
SANCTIONS MONITORING BOARD
MALTA

Invariably, sanctions are not imposed capriciously and are often tied to serious concerns or wrongdoing by the listed person or entity. For example, instances where persons are listed under the Terrorism List of another country, albeit not listed under EU or UN sanctions, ought to raise concerns on the part of Maltese economic operators and financial institutions. Operators with AML/CFT obligations should consider whether any such listing affects their risk understanding of the customer, including in situations where the person listed is the customer's beneficial owner, and take any mitigating measure that may be necessary to address any additional ML/FT risks that they may identify. In particular, they should scrutinize and assess whether such listings give rise to suspicion of ML/FT or proceeds of crime, in which case they are to remember their obligation to submit a Suspicious Transaction Report (STR) to the relevant competent authority in Malta.¹

The SMB construes that it would be in the interest of Maltese economic operators and financial institutions, in particular the banking sector, if clients of the same were formally advised of their obligations and possible consequences, in case of listings on a national sanctions list.

The SMB takes this opportunity to remind operators that any instances encountered by Maltese economic operators and financial institutions of hits involving individuals or entities listed under national sanctions regimes of another state ought to be immediately reported to the Board.

May 2021

¹ In terms of Regulation 15 of the Prevention of Money Laundering and Funding of Terrorism Regulations (S.L. 373.01)