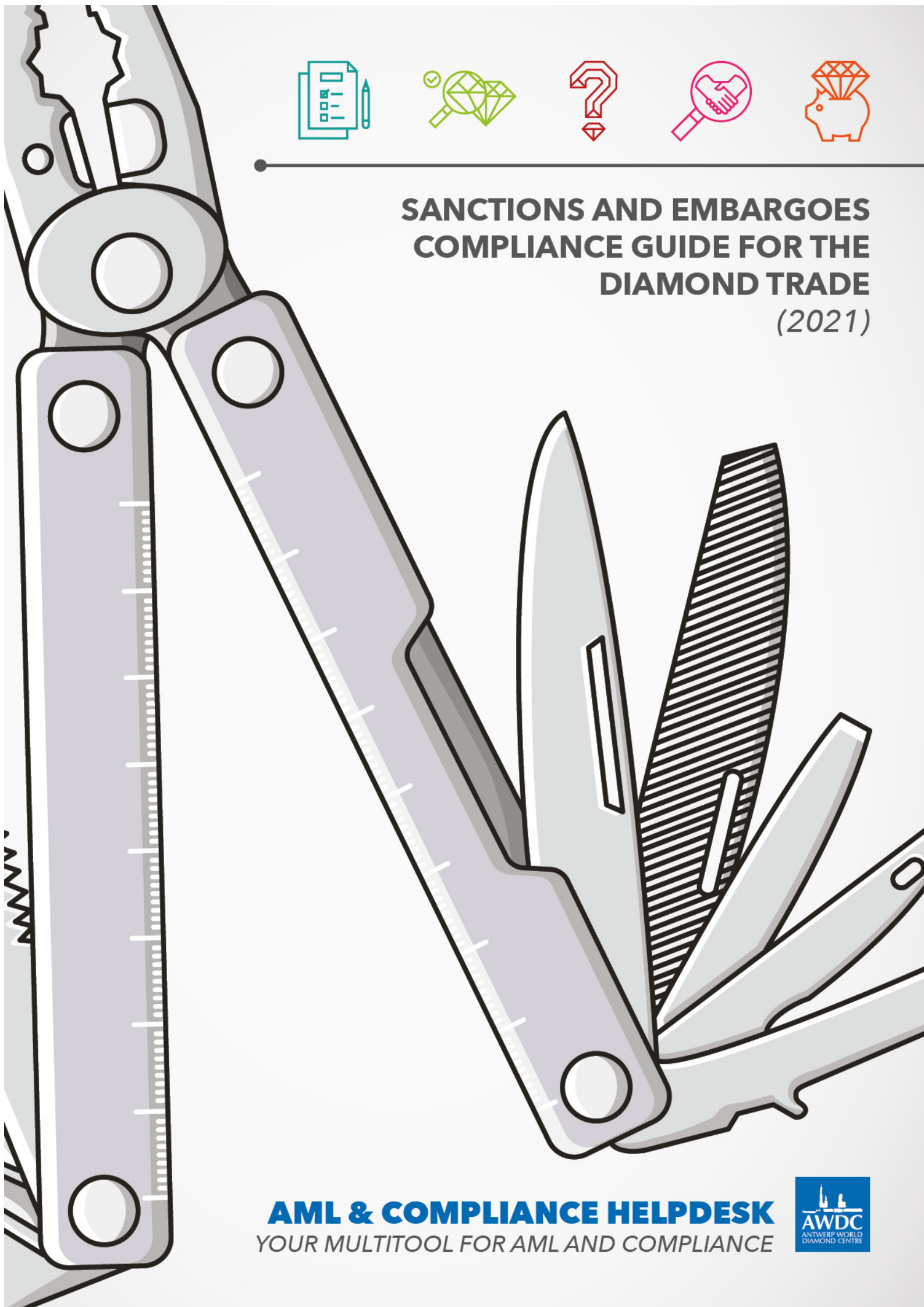




SANCTIONS AND EMBARGOES COMPLIANCE GUIDE FOR THE DIAMOND TRADE (2021)



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Part 1. Introduction

The purpose of this document is to provide an overview of how the diamond trade can be impacted by trade sanctions.¹ This first part of the document can be considered as an introduction or executive summary. The following parts bring more detail and elaborate more on the topic.

Due to the evolving nature of trade sanctions, it is recommended to take into account the date of this document. Examples are based on the applicable sanctions on that date.

1.1. Scope of this document

One of the key challenges for the diamond industry is that it operates in a sensitive and highly regulated environment. Traders continuously have to consider potential vulnerabilities and risks and comply with a wide array of legal obligations specific to the sector. Well-known legal frameworks are the Kimberley Process Regulations to prevent conflict diamonds as well as Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) measures that are imposed on the sector.

The complex international supply chain and global markets typical for the diamond sector, bring the attention to another important trade compliance requirement - **trade sanctions**. This set of regulations is equally applicable to diamond trade and should be seen and treated in parallel with the rest of the legal requirements mentioned above with specific attention for overlaps and differences.

Example: If a Belgian diamond company does business in Tunisia, the destination is considered as a high-risk country from a money laundering point of view (since Tunisia is mentioned on the European Commission list of high-risk third countries with strategic deficiencies) but not from a trade sanctions perspective.

The opposite is applicable for Russia: various trade sanctions would be applicable, yet the country is not considered as a high-risk country from a money-laundering point of view.

If a diamond company deals with a sanctioned entity which also involves a potential money laundering scheme, the diamond company potentially commits two violations: firstly, for violating trade sanctions for dealing with a sanctioned entity and secondly, for violating anti-money laundering legislation.

More information about the difference and interactions between AML and trade sanctions requirements can be found in section 6 of the current document.

1.2. What are trade sanctions and how they impact diamond trade

Trade sanctions are restrictions imposed by national governments and international organizations as a diplomatic and economic tool to influence behavior of targeted organisations and countries and to

¹ The document provides multiple simplified examples for illustration purposes only.

impose certain universal values. Well-known trade sanctions are the so-called OFAC sanctions (US), but also the UN and the EU impose trade sanctions, and on a national level, Belgium could impose similar sanctions² (member states can impose additional sanctions to the ones on EU level). Reasons for imposing sanctions include national security, human rights violations, internal repression, regional instability concerns or other foreign policy considerations. **As diamond trade can be considered as an important trade pillar for multiple countries, the diamond trade can be subject to trade sanction restrictions.**

The scope of trade sanctions can vary from a “*total ban on dealing with an entire country*” to targeted restrictions for using “*specific financial instruments in connection to a particular bank*”. A principal distinction is made between trade restrictions imposed on a country level (regardless of the entities involved), trade restrictions on particular entities (regardless of where they are located) and restrictions on certain products (depending on their technical characteristics and end-use which could differ based on country and entities involved). In practice, the exact measures in place are a combination of the three elements: country, entity and product.

- **Country-related controls** prohibit either all business with a given country or specific targeted activities with particular countries. Targeted country trade restrictions may include prohibitions to deal in high value commodities or luxury goods or to finance or service certain sectors in particular countries.

Example: If a Belgian company exports diamonds directly or indirectly to a country to which trade in luxury goods is sanctioned (e.g. North Korea), the transaction would be restricted. In the case of North Korea this restriction would be applied by most countries, where specifically EU and US restrictions could impact the Belgian company.

Targeted country trade restrictions relevant to the diamond industry can also relate to ‘non-ethical business practices’ in certain sensitive regions (with peace and security concerns). Liability is based on the presumption that a company, e.g. a Belgian diamond trading company, “knows” or “has reasons to know” of the potential risks of non-ethical business practices in those countries. In such cases “dangerous neglect” can be considered as a sanction violation itself.

Example: A diamond trader can be held liable for violating trade sanctions related to non-ethical business practices when his business activities contribute to the reinforcement of armed conflict in sensitive countries such as Zimbabwe, CAR or DRC (as is in EU and US regulations)

- **Entity-related controls** impose sanctions on particular persons, companies or organisations. Depending on the scope of the sanction, the restrictions can vary from a full prohibition on doing business to partial limitations for particular activities with that entity. All parties

² For example, a consolidated overview of the Belgian sanctions can be found here: https://financien.belgium.be/nl/over_de_fod/structuur_en_diensten/algemene_administraties/thesaurie/controle-financi%C3%ABle-2/financi%C3%ABle

involved in a business transaction with a Belgian diamond trader should be screened against Sanctioned Party Lists. When considering the parties that should be screened, we can think of the buyer, (direct and ultimate) owners of the buying company, payer, ship-to party, (ultimate) consignee, ultimate beneficiaries, bank, freight forwarder, intermediaries, and any other party involved.

Example: A Belgian diamond trader sells rough diamonds to a company in India for polishing. The Indian company is sanctioned for having business connections with North Korea. Even if the diamonds do not go to any sanctioned destination, the Belgian trader violates entity-related trade sanctions by engaging in business with a sanctioned company.

- **Product controls:** The export of diamonds may be subject to **specific export licensing requirements** related to the product itself. These are different from the FPS Economy licensing requirements in Belgium. These product controls can be applicable when the diamonds or related equipment *could be used for industrial purposes*. The export control authorities may in such cases require a license for the export of certain diamond products which could have a “dual use”, meaning which could be used both for civil and military purposes. If the industrial diamond products are subject to control, a specific export authorisation should be requested from the export control authorities. This includes all cases where diamond products are intended to be used in the military industry.

Example: Export controlled products relevant to the diamond industry are:

- Machinery for cutting and polishing of diamonds,
- Industrial equipment incorporating diamonds, such as rock drilling equipment
- Diamond anti-reflective coating for military optics
- Certain synthetic diamond material and the technology* for its production
(*In short, this relates to information on “how to make” the controlled product: blueprints, chemical formulas or production process,...)

The export of these items might require an authorization. More information under chapter 4.

Further information about the scope and impact of trade sanctions can be found in the next sections of this document.

1.3. US trade controls and their impact on business outside of the US

Trade sanctions are imposed by multiple jurisdictions: on an international, level the United Nations impose several sanctions regimes, on a regional level, the European Union imposes common trade sanctions for all its member states and on a national level, every country can stipulate and impose its own trade sanctions. Most countries incorporate the international trade restrictions in their national sanction regulations and sometimes extend their scope depending on the national interests.

Any business, including in the diamond sector, should comply with the broader international legal sanction regulations – such as UN sanctions – and with the regional/national sanction regulations specific to their location (e.g. sanctions on EU and Belgian level). The **US trade sanctions** are an important exception to this principle: **they are nationally (US) imposed requirements that have an expansive international impact**. The US Treasury Department’s Office of Foreign Assets Control (OFAC) administers US national sanctions against countries, governments, entities and individuals **with an extraterritorial scope**, meaning those sanctions do not only apply to US entities/citizens, but to all entities/citizens worldwide in case the transaction has a US nexus.³ OFAC collaborates with other US authorities where appropriate. For instance, product controls are administered by the US Department of Commerce, Bureau of Industry and Security (BIS).

In order to evaluate if US sanctions would be applicable to their business, diamond trading companies should evaluate the presence of *any US nexus* in their own organisation (e.g. owned by US entities/persons) and/or in any of their transactions (e.g. use of US dollars or use of a bank owned by US entities).

The following elements are considered as a direct (point 1 and 2) and indirect (point 3 and 4) US nexus and will trigger the obligation to comply with US sanction regulations:

1. **All OFAC sanctions programmes impose compliance obligations on ‘US persons’** or all entities organised under US law including:

- Persons located in the US, US citizens or US green card holders globally.

*Example: If a US diamond trader, located anywhere in the world, is involved in business with US “Specially Designated Nationals- SDN” (entities with whom any business is restricted) or with US sanctioned countries, he/she can be held **individually liable** in the US for violating trade sanctions.*

- US established companies including their foreign branches.

2. **All transactions that involve the US financial system and all US origin goods or services are subject to OFAC sanctions compliance obligations.**

- Payments and other transactions denominated in US dollars, even if those begin and/or end outside of the US, entail a US dollar clearing payment through the United States and therefore are subject to OFAC’s regulations. This is the case for both incoming and outgoing payments. As the majority of diamond transactions are done in US dollars, almost every diamond transaction has a US nexus and thus US sanctions are relevant.

³ US nexus refers to the fact that a transaction has sufficient links to the US to make US sanctions regulations applicable as detailed further in the document. Note that although OFAC is one of the main sources of the US extraterritorial application of sanctions, not all regulation and restriction of OFAC apply globally. Of specific importance is the *US Kimberley process trade restrictions*. This rough diamonds regulation (KPC-Executive Order 13312) imposes certain trade controls relevant for the US customs requirements at the moment of importation in the US. They are not designed to have the same extraterritorial impact towards non-US entities as the US trade sanctions programmes administered by OFAC.

Example: A Belgian diamond trader sends diamonds to a company sanctioned only by the US. If the payment is done in US dollars or involves conversion from US dollar to another currency or vice versa, the transaction is in violation of the US regulations and the trader can be held liable for violating US sanctions.

- Transactions that pass US soil, including virtually through US servers.
If the goods or the money flows pass through the US, the transaction will be seen as relevant for US trade sanctions and the entities involved would be subject to the US regulations.
- Transactions that include US origin product or the use of US technology.

Example: If a US specific technology is used for the production of a synthetic diamond, the finished product may be seen as relevant for US sanction (and product) controls. All persons dealing with this material should consider the US sanctions regulations.

3. Certain US sanction regimes have an **additional extraterritorial impact:**

- Some OFAC sanction programmes (against countries and/or entities) also impose compliance obligations on entities that are owned or controlled by US persons. These sanctions are also applicable to foreign subsidiaries of US companies, or even to companies that have US persons (see point 1) in their board of directors. It is not always very clear when these additional controls apply. Therefore, it is recommended to be very vigilant in case there are elements at stake that indicate that US ownership or control could be applicable.

Example: A Belgian diamond trading company has as a person with US citizenship in its board of directors and deals with a US sanctioned entity. In this case:

1. *The US person is at risk of individual charges against him for violating trade sanctions*
2. *The Belgian company as a legal entity can be held liable for putting US persons in a position violating US sanctions.*

4. **Secondary sanctions on activities wholly outside of US jurisdiction**

- Even when a person or an activity is not directly impact by US sanctions (i.e. no US nexus), some US sanction programmes (e.g. Iran, Russia) impose "secondary sanctions" designed to deter non-US persons from engaging in certain activities. These specific secondary sanctions come into play when there are no direct compliance requirements under the authority of US law. Instead, these secondary sanctions apply as a “catch-all” provision to achieve the objective of the sanction. As such, involvement in US sanctioned activities exposes a non-US diamond trader to a risk of US retaliation through a range of measures intended to restrict access to US markets.

Example: A European diamond trader has a continuous business relationship with a company sanctioned by the US as Specially Designated National for violating human rights. OFAC can decide to designate the European diamond trader as a “supporter of human right violations” and place him under the same sanction regime as his business partner. Becoming a sanctioned entity can disrupt the business significantly and is often seen as companies’ “death penalty”.

Example: A similar situation may be the case for trade with Iran, where the sanctions of the US and EU can lead to conflicting situations. From an EU point of view, trade with Iran is possible (to a certain extent), whereas from an US point of view this is strongly restricted. This could lead to transactions that are allowed under the EU sanctions, but restricted from a US point of view. To protect European companies from adverse effect on their Iran business (when there is no US nexus), the EU has created a “blocking statute” (see Part 5), “forbidding” compliance with these US sanctions and giving limited possibilities for these European companies to recover damages due to secondary sanctions. Note that these transactions should be handled with extreme care and all adverse effects should be taken into account.

The above criteria relating to a (direct or indirect) US nexus are **considered by banks** as well. Banks can, just like any other legal entities, be impacted by US trade sanctions. As the majority of the banks are directly connected to the US financial system (often because their mother is based in the US), they will have to comply with the sanctions the US impose even if there does not seem to be a direct US involvement or nexus in the transaction.

US sanctions are more extensive than the majority or other national and international sanction regimes. Since the majority of the diamond transactions are done in US dollars (US nexus), it can occur that business with certain entities is restricted by the US sanction regime, even if one can be entirely compliant with the local legal framework and sanction regimes. It is essential to carefully evaluate the possible applicability of US restrictions for each business transaction separately.

1.4. Risks of noncompliance

Trade sanction violations can have a significant impact on companies and the individuals involved. The financial penalties do not necessarily depend on the value of the illegal transactions and can go up to billions, depending on the national legislation. Especially in the US, people involved in sanctioned activities can face criminal charges and risk prison sentences up to 30 years. As explained above (see 1.3), being listed as a sanctioned entity is a considerable risk for entities as well, as such designation could lead to significant loss of business, disruption of the supply chain (i.e. others are restricted from doing business with you) and incapacity to use the conventional banking system. The potential reputational damage is also an important consideration, including losing trust from business partners, investors as well as from the government agencies and authorities involved.

Part 2. Country-related sanctions and diamond trade

As mentioned before, a principal distinction is made between trade restrictions imposed on a country level, on a particular entity or on a product. Under this chapter, we discuss country-related sanctions more in depth.

The diamond trade is global in its nature. The worldwide operations from production to the retail consumer can include business in certain sensitive regions, to which trade sanctions may impose certain limitations. Even when the reasons for imposing a sanction are not directly related to diamond trade, the restrictions can nonetheless affect the diamond sector. The scope of country-related sanctions may be **comprehensive** (affect the country as a whole) or **targeted** (affect a certain activity in that country), which determines the impact of these sanctions to a large extent.

Annex A contains an indicative list of sanctions that apply for a number of countries that are relevant for diamond trade. Although the list is only intended as indicative, it can be used as a guidance on what specific attention points might be for a specific country.

2.1. Comprehensive country trade restrictions (embargoes)

Comprehensive country trade restrictions, also called embargoes, have an overarching scope. Most trade activities, including trade in diamonds, are forbidden in these territories as well as trade with any entities located in them. It is also forbidden to provide “**economic resources**” to entities in such sanctioned destinations. This restriction may be directly applicable to the diamond trade, as **diamonds can be considered to fall under the definition of an economic resource.**

Currently⁴, comprehensive trade sanctions with an international impact are imposed on the following countries (examples for illustrative purposes):

- **North Korea:** Full international ban on any trade activities, with specific attention from both US and EU on luxury goods. It is thus forbidden to provide diamonds or any other high value goods to North Korean nationals.
- **Syria:** International trade restrictions covering almost all trade activities, including trade in diamonds and providing economic resources. Both EU and US impose trade sanctions.
- **Russia, Crimea region:** International trade restrictions covering almost all trade activities including providing economic resources to entities in Crimea. Both EU and US impose trade sanctions. Diamond trade activities related to the Crimea region cannot be done without prior authorisation from the US/EU authorities.
- **Iran:** The US imposes comprehensive sanctions on Iran, including diamond trade and providing any economic resources. The US officially enforces secondary sanctions on non-US entities for dealing with Iran. From an EU perspective, only limited restrictions are applicable for trade with Iran. Diamond trade used to be restricted by the EU until 2016,

⁴ As per date of last update of this document

but currently it is not subject to particular restrictions. Yet, any trade with Iran or Iranian entities remains sensitive.

The EU has introduced the “blocking statute” that “prohibits” EU companies to comply with US sanctions on Iran to protect European companies from the secondary (i.e. in case there is no direct US nexus) effect of the US sanctions (see Part 5). A sanctions impact analysis should be performed prior to doing any business in Iran or with Iranian entities. When a direct nexus is present, such as use of US dollars, then the applicability of the US sanctions is primary and not secondary.

- **Cuba:** The US imposes comprehensive sanctions on Cuba, including diamond trade and providing any economic resources. The US officially enforces sanctions on entities owned and controlled by US persons for dealing with Cuba. The EU does not impose trade sanctions on Cuba.

Certain comprehensive trade sanctions are put in place unilaterally only on a national level. For example, the **Arab League⁵ boycott against Israel** targets trade relations with companies/products with Israeli nexus. These national specific sanctions normally have limited effect on international trade outside of the particular countries imposing them.

Example: Because of unilaterally imposed trade restrictions of certain countries against Israel, the Belgian diamond trader can receive a request by companies from these countries, including for example UAE banks, to provide guarantees that the transaction does not relate to Israeli products.

On the other hand, *anti-boycott* legal requirements can be also be applicable to diamond traders, which stipulate obligations not to agree with boycott clauses. More information about anti-boycott can found in Part 5 of the current document.

2.2. Targeted country trade restrictions

Most commonly, trade restrictions have a specific scope instead of targeting a country as a whole. Targeted country trade sanctions may include restrictions on clearly defined business activities such as exporting diamonds, providing economic resources or services for the use by or benefit of sensitive sectors.

2.2.1. Sectoral sanctions

Trade sanctions can be drafted to target only specific sectors considered as strategic sectors. Most often, the military sector is targeted and is subject to restrictions with “arms embargoes”, yet other sectors can be impacted too. For example, the oil and gas sector in Russia is subject to sectoral sanctions (imposed by both US and EU), monitoring telecommunications in Venezuela and Myanmar, petroleum and cultural goods in Iraq, charcoal in Somalia (imposed by EU) and others. Such sectorial sanctions can specifically target the diamond industry too: between 2005 and 2014, Ivory Coast was sanctioned with specific restrictions on the military sector and the diamond sector. These sanctions

⁵ Algeria, Bahrain, Comoros, Djibouti, Iraq, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, UAE and Yemen + Lebanon and Iran. Not all of the countries are actively enforcing the boycott.

have been lifted and do currently no longer apply. **Currently there are no specific sectoral sanctions targeting the diamond sector.**⁶

Even though the abovementioned sectorial sanctions do not directly target the diamond sector, it is important to note that any goods, services or economic resources provided in connection with the sanctioned sectors are also prohibited.

Example: A Belgian trader receives diamonds from a company in Russia. The payment has to be sent to a third company which is active in the Russian oil and gas sector. This should be seen as a red flag as the deal may be subject to trade sanctions of both the EU and US.

2.2.2 Sanctions against foreign governments and regimes

Some trade restrictions are imposed on foreign governments to pursue certain geo-political goals or to influence the foreign government's behavior. It is important to distinguish comprehensive trade sanctions from sanctions targeting only the government. *While the first affects all entities in the country, the second affects only the country's governmental bodies and state-owned or -controlled enterprises.* The government sanctions can also be limited to specific sectors. Currently⁷, sanctioned governments are, for instance, the Government of Russia and the Government of Venezuela (both imposed by the US).

Example: The Russian government is sanctioned with restrictions that affect only certain sectors such as weapon trade, exports of national security-sensitive goods, natural resource exploration and others. In case a Belgian diamond trader buys diamonds from a Russian government-owned entity, the transaction would not be restricted as long as it is not related to these restricted activities.

This means that when a diamond trader is dealing with state-controlled companies, it is not sufficient to check only whether the entity itself is listed on a sanction list (entity-related sanctions), but also whether the transaction is compliant in view of restrictions imposed on the government in the country (targeted country-related sanctions).

2.2.3. Ethical business responsibilities and related trade restrictions

Several targeted country-related sanctions are related to non-ethical business practices. Sanctions can be imposed for certain non-ethical business practices, which often relate to peace and security concerns in sensitive regions. This includes restrictions on doing any business, including diamond trade, if the trader "knows or has reasons to know" that the transaction could reinforce internal repressions or violations of human rights. Such provisions are rather typically EU sanctions.

⁶ As per the date of last update of this document

⁷ As per the date of last update of this document

Example: A Belgian diamond trader is negotiating a new contract for the procurement of rough diamonds in Zimbabwe. One of the people who participates in the negotiations is a military official active in a local conflict. This is a red flag and a “reason to know” that the transaction may contribute to local instability. An additional investigation is required to check whether sanctions may apply.

Example: A diamond trader can be held liable for violating trade sanctions related to non-ethical business practice when his business activities contribute to the reinforcement of armed conflicts in sensitive countries such as Zimbabwe, CAR or DRC.

The direct or indirect financing of certain activities is an important concern in a number of countries. It is a business’ legal obligation to apply appropriate due diligence procedures and investigate the ultimate purpose of the transaction for trade in such countries.

Human rights violations and regional instability are currently officially recognized as a concern for countries such as Zimbabwe, the Central African Republic and the Democratic Republic of Congo (see Annex A for further guidance).

2.3. Financial restrictions and diamonds as “economic resources”

As a high value commodity that can easily be exchanged, diamonds are considered not only as a commercial product but also as an “economic resource”, a financial asset or even a payment method similar to a currency. This is the reason why diamond traders should also consider any applicable financial restrictions that might impact a transaction. Often country trade restrictions include asset freeze, prohibition to make funds available to the government of a country or state-owned entities. Even if the diamonds are provided as a commercial product against payment, they can still be used as financial asset or currency. As a consequence, diamonds could be impacted by purely “financial” restrictions (e.g. part of an asset freeze).

Example: A Belgian diamond trader sells diamonds to a company owned by an official of the Belarus government. EU sanctions restrict to make funds available to the owners of the company. Even though the customer is paying for the diamonds, the transaction will be restricted.

2.4. Examples of country sanctions’ applicability to diamond trade

As explained above, different elements can apply simultaneously when determining what the exact impact of the applicable sanctions is. Moreover, different jurisdictions (such as EU, US and local) could have an impact and should be considered at the same time. The cases below illustrate how to consider trade sanctions where the primary focus is on the **destination or country**.

2.4.1 Case 1- Iran

Scenario A: Belgian trader A is selling diamonds to Company B in Iran. Company B is not a sanctioned entity. The diamonds are going to be used for jewelry. The transaction is done in US dollars.



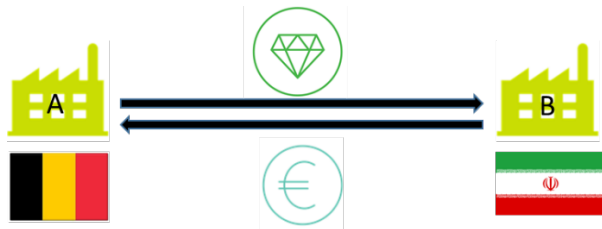
Attention points:

- There is a direct US nexus in the transaction because of the use of US dollars (*point 1.3-2*)
- US comprehensive country sanctions apply against Iran.
- EU and Belgium impose targeted sanctions on Iran, but these do not include the diamond sector.

Conclusion:

The transaction is not allowed as the US sanctions against Iran are **directly** applicable due to the use of US dollars (direct US nexus).

Scenario B: Belgian trader A is selling diamonds to Company B in Iran. Company B is not a sanctioned entity. The diamonds are going to be used for jewelry. The transaction is done in Euros.



Attention points:

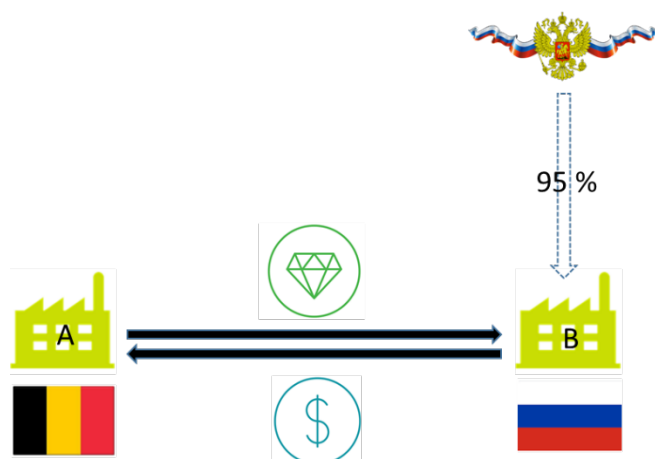
- US comprehensive country sanctions apply against Iran.
- EU and Belgium impose targeted sanctions on Iran, but these do not include the diamond sector.
- The transaction is done in Euros.

Conclusion:

1. The transaction does not seem to have direct US nexus. If we consider *the EU sanctions regime only*, the prohibition on trade in diamonds with Iran has been lifted in 2016 and the transaction can be considered compliant.
2. However, the US imposes 'secondary' sanctions for trade with Iran, which can be applicable even when there is no direct US nexus in the transaction. All potential indirect nexus (US owners, US persons in the board of directors, etc.) should be investigated, to assess whether US sanctions could still apply through that indirect nexus. For continuous or significant transactions without any US nexus, the risk of retaliation from the US authorities should also be considered.
3. The banks should evaluate their US exposure separately (maybe the bank is part of a US group) and may refuse to support the transaction because of their own US nexus.
4. The EU blocking statute may protect the EU companies, yet an additional risk analysis is necessary and it remains to be seen how this can be applied in practice.

2.4.2. Case 2 - Russian Federation

Scenario A: Belgian diamond trading company A is selling rough diamonds to Company B, which is a 95% Russian state-owned company. Company B is not listed in a sanction list. The diamonds are going to be used for the production of anti-reflective coating for military binoculars. The invoice is issued in US dollars.



Attention points:

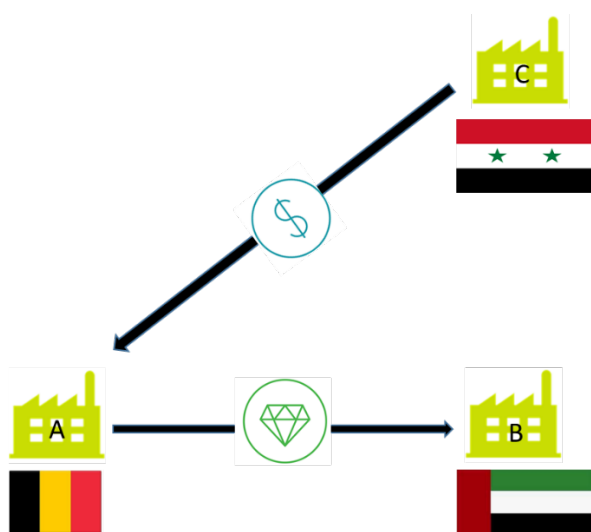
- There is a direct US nexus in the transaction because of the use of US dollars (point 1.3-2).
- The government of Russia is sanctioned by the US, but these sanctions are targeted to particular activities including oil and gas, dual-use products and military products/services.
- The transaction is related to the Russian military sector (related to production of military products).
- EU and Belgium impose sectorial sanctions on Russia targeting, amongst others, the military sector.

Conclusion:

1. US sanctions are **directly** applicable (the use of US dollars is direct US nexus). The transaction is not allowed because of the US sanctions against the government of Russia and government-owned entities and because the military sector is a targeted sector.
2. EU and Belgian trade restrictions are applicable too. The transaction would not be allowed without prior authorisation from the Belgian export control authorities, as it is related to the Russian military sector and sectorial sanctions are imposed on it.

2.4.3. Case 3 - Dubai

Scenario: Belgian Company A is sending polished diamonds to Company B in Dubai. The diamonds are officially intended to be tendered locally. The invoice in US dollars will be paid by a Company C in Syria. Company B and Company C do not appear on a sanction list.



Attention points:

- No country sanctions are applicable for trade with the UAE from a US/EU/Belgian perspective.
- Comprehensive country sanctions are applicable to Syria, both by the US and the EU.
- There is a direct US nexus in the transaction because of the use of US dollars (point 1.3-2)

Conclusion:

1. The shipment of the goods would in principle be allowed to Dubai as no sanctions are applicable from either the EU or the US towards the UAE.
2. But the fact that the payer is located in a sanctioned destination is an important red flag. It raises concerns that the diamond sale is done for the benefit of Syrian entities. Both direct and indirect business transactions with all entities in Syria are forbidden. It is therefore very likely that banks would block such payments.

Annex A of this document provides an overview of the current sanctions imposed on the diamond trade and producer countries.

Part 3. Entity-related sanctions

Aside of country-related sanctions, the number of *sanctioned entities* around the world is ever increasing. A sanctioned entity can be a person, a company, an organization, a group or even a vessel. Entities can be “listed” for a variety of reasons, such as non-proliferation, counter-terrorism, human rights violations, transnational crime and others. The lists of sanctioned entities are often national and published by countries’ authorities, or sometimes international (e.g. list by the UN). They can have a different coverage and scope. In some cases, an entity can be designated in more than one jurisdiction (e.g. in EU and US). The lists are regularly updated to cover ownership changes, aliases, new entries, removals etc.

Transactions with companies directly or indirectly owned by sanctioned entities (even if the company itself does not specifically appear on a sanction list) can be seen as an indirect transaction for the benefit of the listed entity and can thus be prohibited. The threshold for this ownership rule is in most sanctions regimes, like the EU and US, set at 50%.

For example, if a diamond trader deals with a company 70% owned by a sanctioned individual, the business activities could be in violation of trade sanctions. In this respect, the due diligence process on partner screening will be important to demonstrate that the trader did everything reasonable in his power to avoid dealings with sanctioned entities.

Diamond trading companies need to ensure that they are not involved in restricted or forbidden activities with listed entities. All parties involved in a transaction are relevant for a sanctions check: supplier, customer, ultimate beneficial owner, directors of customer/supplier, payer, even freight forwarder and bank.

Diamond traders should implement appropriate measures to keep track of the sanctions relevant to them. Different screening tools and solutions exist to consolidate all sanction lists and update them periodically. The traders can make use of the Bureau Van Dijk screening tool provided through AWDC⁸ or any other screening solution combining all relevant lists.

Annex B contains a list of sanctioned entities that are active in the diamond industries. Note that this list is not an official list, but a consolidation of entities that were encountered in the process of preparing this document. The list is of indicative nature and should only be considered as such.

3.1. Sanctioned party lists applicable to diamond trade

The sanction party lists are **rarely sector specific**. There is, for instance, no international consolidated list exists that combines all sanctioned entities relevant for the diamond sector. Sanction lists would normally be grouped by:

- *Country/organisation imposing the sanctions*
(e.g. UN consolidated list, EU consolidated list, Australian consolidated list, ..)

⁸ Access for Belgian registered diamond traders through www.registereddiamondcompanies.be. If the Belgian diamond trader does not have access to this tool yet, contact the AWDC AML & Compliance Helpdesk to get access.

- The sanction lists published by US, UN, EU, or countries such as Japan and Australia include sanctioned entities located anywhere in the world.

Example: A Canadian company is listed on an EU sanction list because it has “provided support to armed groups in unstable countries, through the illicit exploitation and trade of natural resources, including diamonds”. Companies (including diamond trading companies) are restricted to do any business with this sanctioned company, irrespective of whether the transaction is related to a sensitive destination or activity or not.

- *Entities targeted because of specific country sanction programmes* (e.g. US programme: Specially Designated Nationals- Zimbabwe)
 - Even though the reason for the sanction is related to a particular country, the restrictions on entities are not limited to entities located in this country. The location of the company is not relevant for entity-targeted sanctions. A company located in Belgium can be sanctioned under the sanction programme for Zimbabwe because it has a link with Zimbabwe.
For example, a Belgian diamond trader is owned or controlled by a sanctioned organisation in Zimbabwe. The diamond trader in Belgium will also be listed under Zimbabwe sanction list.
- *Reason of imposition of the sanction*
 - Even when the reason for the sanction is not directly related to the diamond trade, the sanction provisions can affect the sector. For example, if an entity is sanctioned for “chemical weapons concerns” all trade may be forbidden, including with diamonds, and not only business in chemicals.

Example: A person is listed on a sanction list because he/she “illicitly derives large profits from diamond mining”. Any business activities with this person would be forbidden, even if they are not related to the diamond sector. Diamond traders cannot enter in any business relationship with connection to this entity, including if the person would be only indirectly involved.

A person is sanctioned for reasons of “undermining the democracy” in a country and any trade for the benefit of this person is forbidden. This includes trade with all companies that this person owns or controls, including if he has any companies active in the diamond sector.

Targeted entity sanctions also affect banks.

All companies in the business relationship related to the sanctioned entity (even indirectly), can be sanctioned. This means that also banks can be sanctioned for the same reasons as any other company could be and the same restrictions apply to them as apply to, for example, a diamond trading company.

- Certain sanctions on banks impose full restrictions on all activities. In such cases, it is recommended to refrain of using this bank for any activities. Example of such sanctions are the US “Specially Designated Nationals” (SDN) banks.
- Other sanctions impose restrictions for certain financial activities with the bank, like dealing in “debt” or “equity”. For example, a credit/credit line cannot be requested from such a sanctioned bank as it is as dealing in debt with the bank and can be seen as violation of the sanctions provisions.

However, a wire transfers through the bank would be possible. It is important to note that certain instruments used in commercial transactions, e.g. opening a letter of credit, can be interpreted as “making funds available” to the bank. Such sanctions on banks with limited restrictions are, for example, the US Sectorial sanctions imposed on Russian banks.

Example: A Belgian diamond trading company opens a branch in Russia. For the activities of the branch, the company considers taking a credit from a local bank sanctioned by both EU and the US. The company should refrain from this, as taking the credit would be a violation of the US and EU sanctions.

Example: A Belgian diamond trading company considers receiving a credit line from a Russian bank sanctioned by the US as part of sectorial sanctions. The loans will be in USD (US nexus). The company would be subject to US sanctions regulations as dealing in debt with the sanctioned bank.

Annex B provides an indicative list of several banks in Russia subject to different sanctions restrictions.

Every company should check its business partners against the lists relevant for its business, even when this would not seem relevant at first glance. An example might be a European list of narcotics dealers, which will have an impact on a jewelry importer, while a local list of a country not involved in the transaction might be less relevant. An analysis is required in order to determine the sanction lists to screen against, depending on the company’s sanction risk exposure.⁹ Diamond traders may consider screening against additional lists, even if not directly applicable for their business, in order to get more complete information for due diligence purposes (e.g. AML lists, PEP lists).

⁹ Example of potential relevant lists would be: UN Security Council Sanctions; EU Consolidated Sanctions List, German Proliferation Concerns, Swiss Restricted List, UK “Proliferation Concerns” and “Bank of England-Financial Sanctions”. US sanctions lists: OFAC Specially Designated Nationals, Department of State sanctions, US Sectorial Sanctions list.

3.2. Evaluation of the scope and applicability of the sanctioned entity restrictions

In case the diamond trader finds a “real match” when screening against sanction lists, it is recommended to evaluate the scope and applicability of the restrictions:

➤ **What is the validity of the sanction?**

Some sanctions are valid only for a specific period. The name of the entity may appear on a sanction list only to record a previous listing of the entity or to highlight that specific attention should be paid to this entity. In this case, future transactions would not be restricted. For example, certain content providers would keep old entries in their lists to support companies in case they need to investigate if they had business with sanctioned entities in the past 5 years.

➤ **Is the jurisdiction of the sanction applicable to the case?**

Some sanctions only have a local applicability. For example, the entity is listed on a Singapore sanction list, while the transaction is from Belgium to Canada without any Singapore involvement. In such a case, it could be possible to continue with the transaction, but due care needs to be exercised. When the sanction is not directly applicable to the case, the reasons why the entity is subject to sanctions should be considered as not only legal, but also reputational risks and should be assessed before engaging in business with this entity.

Note, however, that this is not the case for US sanctions, as explained in point 1.3 of the current document. Due to their far-reaching scope, one should take these sanctions into account as well in case there is a potential (direct or indirect) US nexus. For example, if the entity is designated as OFAC Specially Designated National (SDN), one of the strictest sanction programmes, the diamond trader would, in most cases, need to comply with the sanction, and especially if the transactions is in US dollars.

➤ **What is the purpose of the sanction and is the type of business activities restricted?**

Similar to country sanctions, entity sanctions can also have a different scope: they can be general, prohibiting all types of business activities, or limited to only certain financial activities, trade in specific products or provision of certain services.

A full prohibition of involving directly or indirectly in any business activity with this entity, is applicable for the majority of the sanctioned entities. This includes transferring, paying or exporting to or otherwise dealing in the property or interests in property with the sanctioned entity. Companies owned for more than 50% or controlled by this entity should also be treated as sanctioned. Such a full prohibition list is for example the OFAC Specially Designated National list.

For certain limited scope sanctions, it is possible to trade with the entities as long as the transaction does not fall under the scope of the targeted activities. For example, an investor active in the diamond sector can be sanctioned for trade in military or dual use technology, yet business with polished diamonds can be allowed.

Annex B of the current document provides an indicative list of several entities active in the diamond sector which are subject to entity sanctions.

Part 4. Product controls in the diamond sector

Often, trade restrictions imposed on a country target a specific group of products such as dual-use items (used for both civil and military purposes). The companies have to assess whether the diamond products could be considered dual use and if so, if specific licenses are required to export.

A distinction should be made between “dual use items” and “military items”. Dual use items mainly serve a civil purpose, but could be used for military or similar activities such as the creation of weapons of mass destruction. An example might be a chemical that is normally intended for industrial use, but could also be manipulated to create a nerve gas chemical. Military items are specifically designed for military use. Often the differences with “civil use” items is small and the difference will mainly exist in build quality or specifications. GPS, is by nature a military application which has been opened for civil use, yet the accuracy of the civil application will be far less than the military application.

Although natural diamonds as such are not considered a dual-use product, they can have dual-use applications. This is mostly relevant when the diamonds are used for industrial purposes.

Examples of a dual-use products relevant for the diamond industry are (listed in the EU Dual Use Regulation 428 of 2009):

- Synthetic diamond material, classifiable under 6C004.f: Synthetically produced diamond material with an absorption of less than 10^{-5} cm^{-1} for wavelengths exceeding 200 nm but not exceeding 14.000 nm.
- Technology for the production of the substrates of films of diamond for electronic components classifiable under ECCN 3E003.d of EU dual use Regulation 428/2009.
- Single point diamond cutting tool inserts classifiable under ECCN 2B998.b of the US Commerce Control List.
- Aside to the “dual use” concerns of the diamonds, it is important to evaluate any use of the diamond related to military production (e.g. to be used for military glass coating).
- Diamonds may also have applications in certain sanctioned sectors such as the oil and gas sector, for example incorporated in rock-drilling equipment. More information on sanctioned sectors in different countries relevant to the diamond sector can be found in Annex A of the current document.

In case the product is considered as controlled (see the list above) for dual-use or military purposes, diamond traders should verify whether they need obtain an export license from the competent authorities in the country of export. For example, in Belgium the competent authorities are Strategic Goods Control Unit in the Flemish Region, Licensing Office in Brussels-Capital region and Direction de la Gestion des Licences d’Armes in the Walloon region.

A specific procedure has to be followed in Belgium for the export of synthetic diamonds. When using a customs representative to draw up customs declarations for the export of synthetic diamonds in Belgium, it is required to provide a signed declaration to the customs representative, indicating whether or not the synthetic diamonds fall under the EU Dual Use Regulation (classifiable under

6C004.f).¹⁰ If applicable, the relevant export license issued by the component authorities has to be provided to the customs representative as well.

Product controls are not necessarily the same as sanctions, but help in monitoring the trade in sensitive items. As such, a shipment between non-sanctioned entities in the EU and the US could be subject to an export control authorisation for the products. Nonetheless, it is clear that trade sanctions will often refer to controlled items as one of the first elements that are restricted.

Part 5. Anti-boycott requirements

Several countries around the world implemented anti-boycott measures in their national legislation, preventing companies to agree to and include boycott language in their commercial documentation. This is a general countermeasure against any discriminatory business behavior such as the boycott of the Arab league against Israel.

Anti-boycott requirements restrict diamond traders to accept specific contract language in relation to:

- Refusing or agreeing to refuse to do business with or in a boycotted country or with a national of a boycotted country, or a boycotted person. This includes, among other things, agreeing to comply with a country's boycott laws;
- Refusing to employ or otherwise discriminating against a person, in deference to a boycott request, on the basis of race, religion, sex, or national origin;
- Furnishing information, in response to a boycott request, about the race, religion, sex, or national origin of an owner, officer, director, or employee;
- Furnishing information about any person's past, ongoing, or proposed future relationships (or the absence of relationships) with other parties, if that information is sought for boycott-related reasons;
- Furnishing information about any person's association with or support for any charitable or fraternal organization supporting a boycotted country;
- Paying, honoring, confirming, or otherwise implementing a letter of credit that contains any prohibited boycott requirement or request.

Agreeing to include boycott clauses in trade contracts can be considered as a punishable activity under certain trade sanction regimes (for instance as administrated by the US or Germany). Diamond traders may need to consider revising the contractual language of their business relations in order to avoid having any direct or indirect boycott language in them. In general, anti-boycott legislation is not intended to harm the own industry, but to protect the industry from adverse effects of the countries imposing the boycott.

The anti-boycott regulation can lead to conflicting situations, such as European companies might face when trading with Iran. From an EU point of view, the transactions can be allowed (under certain conditions), but the US could sanction companies for this, even when there is no US nexus. The so-

¹⁰ Such declaration (' Declaration Dual Use ENG – 12102020') is available in Dutch and English on the website of the AWDC: <https://www.awdc.be/en/procedures-do>

called “blocking statute” that the EU Commission has established, provides the following rules: *“allowing EU operators to recover damages arising from the extra-territorial sanctions within its scope from the persons causing them and nullifies the effect in the EU of any foreign court rulings based on them. It also forbids EU persons from complying with those sanctions, unless exceptionally authorized to do so by the Commission in case non-compliance seriously damages their interests or the interests of the Union.”*¹¹. The blocking statute can be imposed against other sanctions as for example the US sanctions against Cuba.

As mentioned above, it is important to understand that this type of regulations are mainly intended to protect local businesses from adverse effects of the sanctions, rather than sanctioning them for compliance with these extraterritorial requirements. Nonetheless, a minimum of compliance will be required as, for instance, contract clauses agreeing with the boycott might be challenged.

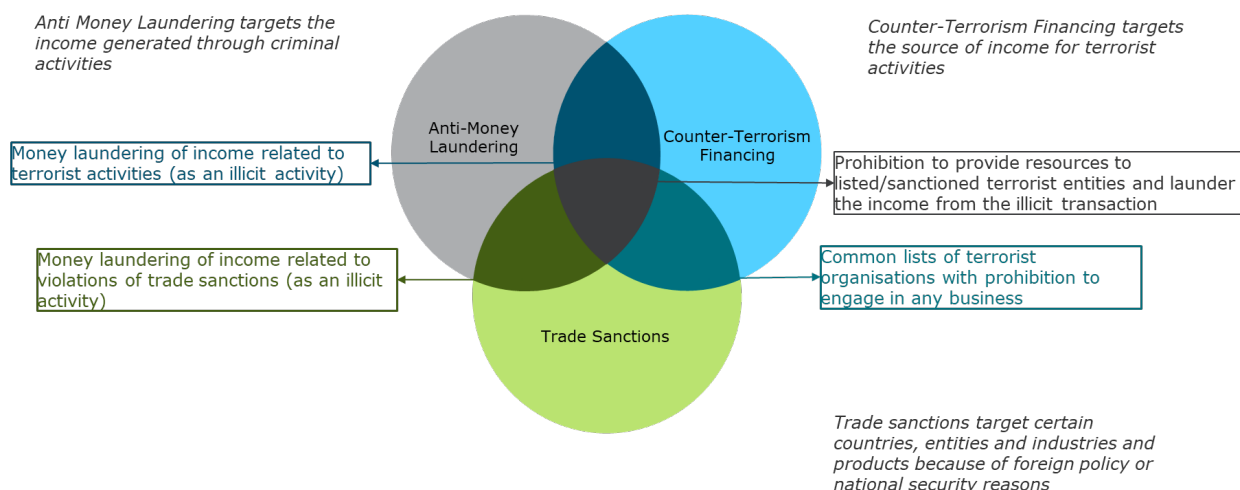
¹¹ https://ec.europa.eu/fpi/what-we-do/updated-blocking-statute-support-iran-nuclear-deal_en

Part 6. Related/following AML/CFT requirements and risks

6.1. Differences and overlap with AML/CFT regulation

Diamond trade is a heavily regulated activity and many layers of regulation should be considered, besides the trade sanctions restrictions explained in this document. One regulation that has a certain overlap with trade sanctions is Anti-Money Laundering and Counter Financing of Terrorism Regulation (AML/CFT). However, it needs to be emphasized that trade sanctions and AML/CFT regulation are two separate regulatory frameworks and should be considered in conjunction to ensure compliant operations.

For example, one of the touch points of the trade sanctions regulation and AML/CFT regulation is the restrictions of activities related to terrorism. Terrorists, terrorist groups and organisations, entities deemed to engage in or facilitate terrorist activities are placed on sanction lists. These lists are thus important for both regulatory frameworks: for trade sanctions checks and for AML/CFT checks. See below an overview of the overlaps between the different legislations:



The scope and target of the legal frameworks is different. For example, countries that are considered “sensitive” or “high-risk” from an AML perspective, are not always considered sensitive from a trade sanction perspective (while other countries might be considered as sensitive by both). For example, today Serbia and Tunisia are monitored jurisdictions for AML purposes, but are not sanctioned/embargoed countries from trade sanctions perspective.

In case there is an overlap in a country from an AML/CFT perspective and from a sanctions perspective, still there might be some differences in the compliance legal requirements and both set of rules should be considered. For example, certain elements, such as the amount of a financial transaction, may be essential to take into account for an AML risk assessment, but are not relevant from a trade sanctions perspective and vice versa.

For example, Iran is placed on an FATF list with strategic AML deficiencies which means enhanced due diligence measures proportionate to the risks arising from Iran should be taken (e.g. the diamond trader should be extra vigilant and take appropriate measures to mitigate the risk of money laundering for their trade with a party located in Iran).

At the same time, as explained above, Iran is as well subject to strict restrictions from trade sanctions perspective (which means that a Belgian company should take into account that it might be sanctioned by the EU if it trades in particular sanctioned activities or by the US for any activities with Iran. Both the AML and Trade sanctions requirements should be kept in mind for this transaction. Where synergies exist, they should be used, but awareness on differences in scope, should remain.

For a detailed overview of the AML/CFT requirements applicable to dealers in diamonds, please refer to [AWDC's AML policy template](#).

6.2. AML/CFT related financial sanctions

AML/CFT requirements and trade sanctions are often confused and can lead to a false sense of compliance when the full scope is not considered. Described below are the financial embargoes imposed by the AML/CFT regulations. Although they can be supplementary of nature, they should be considered in parallel to the financial sanctions that can be imposed by the various trade sanction programmes.

The Belgian AML/CFT regulation of 18th of September 2017¹² has binding provisions on financial embargoes. Dealers in diamonds have obligations relating to asset freezing or other restrictive measures and specific due diligence requirements in the context of the fight against terrorism, terrorist financing or the financing of the proliferation of weapons of mass destruction.

As a member state of European Union and the United Nations, Belgium applies all EU and UN financial sanctions. Based on the UN Resolution 1373 of 2001, EU Directive 2580/2001 and 881/2002, Belgium has established a national sanction list for persons/entities who have committed, attempted to or facilitated acts of terrorism. All three lists are available via the site of the FPS Finance – General Administration of Treasury.¹³

6.3. AML/CFT compliance policy and obligations

Both AML/CFT and trade sanctions compliance require the establishment of a robust internal compliance policy.

Based on the AML/CFT legislation, dealers in diamonds have the obligation to check their customer database and new potential customers, to check whether they are listed as a sanctioned person or entity on the financial sanctions lists (AML concerns specific lists published by UN, EU and Belgian list). As part of the Customer Due Diligence and Know Your Customer procedure, this check also applies to the customer's agent(s) and beneficial owner(s).

¹² Law of 18 September 2017 on the prevention of money laundering and terrorist financing and on the restriction of the use of cash.

¹³ By the Decree Law of 6 October 1944 on the control of transfers of goods or assets between Belgium and foreign countries, by the Law of 11 May 1995 on the implementation of decisions of the United Nations Security Council, by the Law of 13 May 2003 on the implementation of restrictive measures adopted by the European Union Council against States and against certain persons and entities and

by the Royal Decree of 28 December 2006 on specific restrictive specific measures against certain persons and entities in the context of the fight against terrorist financing,

For trade sanctions as well, entities should be screened against the applicable lists. The lists for AML and trade sanctions purposes may defer:

Example: the US Sectorial Sanctions list (applicable to entities in particular sectors) has restrictions only from a trade sanctions perspective. There would be no AML reporting requirements when dealing with an entity listed only on this list and no other. On the other hand, the Politically Exposed Persons (PEP) list would have significance only from an AML perspective as it presents a higher risk for potential involvement in bribery and corruption.

When a (potential) customer is listed as a sanctioned entity for AML purposes, the General Administration of Treasury of the FPS Finance should be notified immediately and asset freezing needs to be done if applicable.

In order to comply with the AML/CFT requirements diamond traders shall:

- Develop, implement and execute adequate policies, procedures and internal control measures. These should include risk management models, customer acceptance, customer due diligence, monitoring of transactions and customers, notification of suspicions to the CTIF-CFI and recordkeeping.
- Appoint, among the members of the management body, a responsible for ensuring the execution and enforcement of the obligations on financial sanctions.

Non-compliance with the AML/CFT requirements can result in administrative and/or criminal penalties on international, European and national level (AML only enforced national for the reporting entities).

A strong internal compliance policy supported by a proper process, use of adequate screening tools and regular training and awareness raising of staff are important to be compliant with both AML/CFT regulations and trade sanction requirements.

Part 7. Preventive measures and attention points

7.1. Attention points checklist

Several elements should be checked in order to evaluate if transactions are compliant with trade sanctions or if there are “red flags”. In case the answer of any of the below questions is “yes”, further analysis is required to assess the risk of committing a trade sanction violation.

1. *Destination concerns*

- Are you involved in trade with countries subject to trade sanctions?
 - If yes, are the sanctions comprehensive or targeted?
 - Comprehensive
 - If targeted, is your business impacted? ¹⁴
- Are there reasons to believe that the diamond-related transaction can contribute to human rights violations or reinforce internal repressions in the region?
- Are there reasons to believe that the transaction can relate to illicit diamond mining?
- Is the transaction linked to companies or persons active in sensitive sectors such as the military, oil and gas or chemical sector?
- Do you provide “economic resources” (including through diamonds) to a government of a country where financial restrictions are applied?

2. *Entity concerns*

- Is your business partner a state-owned company from a sanctioned foreign government?
- Did the screening of all parties involved in the transaction against sanctioned party lists give a match? (note: consider all parties on all potentially relevant sanction lists)
 - After reviewing the match, are any of your business partners a sanctioned entity?
 - Is the transaction indirectly related to a sanctioned entity? ¹⁵
- Are any of your business partners located in a destination with applicable comprehensive sanctions or hold a citizenship in such countries?
- Are any of the parties involved owned or controlled by a sanctioned entity?
- Would a person under asset freeze get access to the diamonds or other economic resources through your transaction?
- Is the transaction going through sanctioned banks?
- Are financial restrictions applicable to the entities involved?

¹⁴ For EU country sanctions check: <https://www.sanctionsmap.eu/>

For US country sanctions check: <https://www.treasury.gov/resource-center/sanctions/programs/pages/programs.aspx>

¹⁵ Bureau Van Dijk screening tool provided by the AWDC platform can be used for screening against sanction party lists

3. *Product concerns*

- Are the diamonds for industrial use?
 - If so, are they going to be used for the creation of dual use or military products?

4. *US sanctions applicability (in case potential business in US sanctioned regions or with US sanctioned entities is being assessed)*

- Is the transaction denominated in US dollars?
- Is your company established in the US or is it a foreign branch of US established company?
- Is your company owned or controlled by US persons? Is a US person in your company board of Directors?
- Are US citizens or US green card holders involved in the transaction?
- Are US origin products involved or is the transaction passing US soil?
- In case the above questions are answered negatively and the US sanction is the only sanction applicable against this entity/country:
 - Did you consider the reasons of the sanction as a factor in your due diligence process and assess whether there are any concerns relating to non-ethical business practices? Are there any concerns following this process?
 - Can you consider the business with the US sanctioned entity as “continuous” or “substantial”?
 - Is boycott language included in your commercial documents?

7.2. Preventive measures

In order for companies in the diamond sector to be able to follow up the trade sanction compliance requirements in a consistent manner, an appropriate Internal Compliance Policy should be integrated into the company’s trade sanction compliance processes.

An effective trade sanction compliance policy includes designating responsible people, stating an official compliance company commitment, integrating trade compliance checks in the business process and establishing the appropriate tools to support the company’s activities such as a sanctioned entity screening solution.

The main elements of the internal compliance policy include:

- A trade sanctions compliance commitment
- Clear definition the scope of regulatory obligations covered by the policy
- Sanctions compliance attention points
- Organisational structure and responsibilities
- Transaction screening processes and procedures
- Integration of tools to support sanctioned party list screening and perform automated checks

- Training and awareness
- Monitoring and reporting
- Evaluation and audit
- Handling noncompliance issues and taking corrective actions

Considering that companies active in the diamond sector already have structures in place to comply with multiple other legal requirements such as Kimberly Process and AML legislation, the trade sanctions compliance programme can potentially be integrated in already existing structures.

Annex A. Country Chart: Sanctions applicable for countries most relevant for the diamond sector

Annex B. List of sanctioned entities active in the diamond sector