

ClientAlert

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The EU's New Sanctions Against Iran – Summary of Restrictions Adopted on 26 July 2010



Introduction

On 26 July 2010, the Council of the European Union ("EU") introduced a new regime for economic sanctions against Iran when it adopted **Council Decision 2010/413/CFSP** and **Council Implementing Regulation 668/2010**. The new regime implements United Nations (UN) Security Council Resolution 1929 (2010), but it also features accompanying measures which are specific to the EU and go beyond the UN sanctions regime.

The new Iran sanctions regime will apply at least to **nationals of EU Member States**, the **territories of Member States** and **vessels and aircraft under Member State jurisdiction**. While it is not specified in the new Council Decision, the new sanctions measures are also likely to apply to **companies registered and/or doing business in a Member State** in accordance with the scope of EU jurisdiction established in existing Council Regulation 423/2007 (i.e. the current EU Regulation on Iran sanctions).

More details on the precise scope of EU jurisdiction, and other sanctions elements, will be established in a future EU Regulation to amend or replace Regulation 423/2007 which the Council is expected to adopt towards the **end of September 2010**.

Below is a summary of the important new elements of the EU's new sanctions against Iran.

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Council Implementing Regulation 668/2010 – expansion of the EU list of parties whose funds and economic resources are frozen

Council Implementing Regulation 668/2010, which entered into effect on **27 July 2010**, adds certain persons, entities and bodies to the list in Annex V (referenced in Article 7(2)) of Regulation 423/2007. Thereby, it **expands the EU's list of parties whose funds and economic resources are frozen and to whom no funds or economic resources may be made directly or indirectly available** because of their identified involvement in nuclear-related activities. The new Regulation adds **40 legal entities** (and, in certain specified cases, also their subsidiaries and branches) and **10 natural persons** relating to the Islamic Revolutionary Guard Corps (IRGC), the Islamic Republic of Iran Shipping Lines (IRISL) and nuclear or ballistic missiles activities to the EU list of designated parties; these new designated parties are added to the existing list of 18 legal entities and 21 natural persons. For example, the new Regulation adds 15 named subsidiaries of Bank Melli to the EU's list of designated parties which to date has included only two specified subsidiaries of the same bank – with the result that the additional entries clarify and expand the existing EU list of designated parties.

It is important to note that the EU's list of parties whose funds and economic resources are frozen pursuant to Annex V is **in addition to the list of parties designated at UN level** (which is featured in Annex IV of Regulation 423/2007, already amended in June 2010 to reflect the amendments introduced through UN Security Resolution 1929). Accordingly, persons and entities subject to EU jurisdiction under Regulation 423/2007 (see above) should specifically check whether the parties with which they directly or indirectly do business are included in the expanded EU list, as they may not be featured in the lists provided by other jurisdictions or the UN.

Council Decision 2010/413/CFSP – new measures in the EU's Iran sanctions regime

Council Decision 2010/413/CFSP (the "EU Iran Sanctions Decision" or "EU ISD"), which entered directly into effect when it was adopted by the Foreign Affairs Council on **26 July 2010**, is a policy instrument which commits the 27 Member States to joint actions within the EU's Common Foreign and Security Policy (CFSP). As such, it must subsequently be implemented into law at either EU or national level to have legal effect on companies and persons. EU law does not prevent the Member States from adopting national legal provisions implementing sanctions elements of a Council Decision as long as they do not contravene the purpose of such a Decision. However, in the interests of establishing a harmonized sanctions regime within the EU and the effectiveness of the EU as a cohesive voice in international relations, legal implementation of Council Decisions on sanctions principally occurs through an EU Regulation which is binding and has direct application on the Member States.

While the EU ISD introduces new features of the EU's sanctions against Iran, as a policy instrument it lacks certain legal detail and enforcement mechanisms relating to the described sanctions measures. At the same time, existing Regulation 423/2007 – which lays down the main framework for the EU's Iran sanctions regime but does not yet incorporate the new features (with the exception of updated lists of designated parties; see above summary of Council Implementing Regulation 668/2010) – still remains the EU's legislative instrument in this context which is directly applicable to the Member States.

In light of the above, **the EU ISD is likely to be followed by yet another EU Regulation** (which will either replace or add to existing Regulation 423/2007) featuring a combination of the new sanctions features and detailed implementation and enforcement measures with binding effect on and direct application to the EU Member States. **In fact, work has reportedly already commenced on a detailed Regulation, with the aim of Council adoption towards the end of September 2010.** To the extent important details relating to compliance and enforcement are not provided in the EU ISD, Member State enforcement authorities are expected to take the position that EU companies must use "**common sense**" in ensuring compliance with the EU ISD provisions until the future EU Regulation is adopted to provide such details. Also, such a future EU Regulation may to some extent alter or expand the important new features of the EU sanctions regime introduced by the EU ISD, which are summarized below.

Export and import restrictions

The main feature relating to export and import restrictions introduced through the EU ISD involves a **new ban on sale, supply or transfer of key equipment and technology to four key sectors of Iran's oil and natural gas industry** or to Iranian or Iranian-owned companies engaged in those sectors outside Iran. Those key sectors are:

- **refining;**
- **liquefied natural gas;**
- **exploration;** and
- **production**

The EU ISD indicates that future measures may describe more precisely which items are covered as "**key equipment and technology**" for the oil and natural gas industry for purposes of the new ban, as the EU ISD provides no further guidance on this issue. Currently, such prohibited supply may not be provided by nationals of the EU Member States, from Member State territories or by using vessels or aircraft under Member State jurisdiction (regardless of the origin of the supply). The oil and natural gas industry supply restrictions also includes a ban on **technical assistance and financing or financial assistance** – as well as knowing and intentional participation in activities which circumvent the prohibition – related to such Iranian or Iranian-owned sectors and companies.

One crucial exemption to the new oil and natural gas industry supply ban is made for **obligations arising from contracts and investments established before the date of adoption** of the EU ISD (i.e. 26 July 2010).

Another important element of the EU's Iran sanctions regime relating to import and export restrictions is also the **new ban on direct or indirect supply, sale or transfer of all items and technology featured on the EU's list of restricted dual-use goods** (with the exception of listed telecommunications and information security items and technology). However, the EU Member States may under certain circumstances decide to not apply the dual-use item ban, as well as certain restrictions related to technical assistance and financing of nuclear-related activities, in advance and on a case-by-case basis.

Restrictions on financing of certain enterprises

The EU ISD introduces a **ban on EU investment by Iranian entities** (or by persons or entities acting on their behalf or at their direction, or by entities owned or controlled by them) in any commercial activity involving uranium mining, nuclear materials and technology production or use, heavy water related activities or ballistic missiles technologies. It indicates that future measures may describe the scope of the ban more precisely.

Furthermore, the EU ISD **prohibits granting of financial loans or credit** to Iranian enterprises engaged in the four key sectors of the oil and natural gas industry outlined above or Iranian or Iranian-owned companies engaged in those sectors outside Iran. Also, the ban on financial support to the Iranian oil and natural gas industry includes **acquisition or extension of participation in such companies**, including full acquisition and participating acquisition of shares and securities. Creation of **joint ventures** with such companies or any subsidiary or affiliate under their control is also prohibited.

Once again, a crucial exemption to this new oil and natural gas industry financing prohibition is made for **obligations arising from contracts and investments established before the date of adoption** of the EU ISD (i.e. 26 July 2010).

New **exemptions** are also provided for increased restrictions on Member State measures involving public and private provided **financial support for trade activities** (including export credits, guarantees or insurance), namely for certain commitments established before 26 July 2010 and trade for food, agricultural, medical or other humanitarian purposes.

Financial sector restrictions

The EU ISD introduces a **strict new sanctions regime for financial institutions and banks**. While existing measures obliging Member States to exercise enhanced monitoring over all relevant Iranian bank activities remain, other related measures are no longer limited to certain listed financial institutions as was the case under the old regime. Instead, they apply to **all Iranian banks** (particularly the Central Bank of Iran), branches and subsidiaries of Iranian banks (whether inside or outside the EU Member State jurisdiction) and non-Iranian financial entities owned or controlled by Iranian persons and entities.

One new feature is that all **transfers of funds to and from Iran** are now subject to a **strict notification and authorization regime**, depending on the amount (i.e. whether it exceeds EUR 10,000 or EUR 40,000) and subject matter (foodstuffs, healthcare, medical equipment or humanitarian purpose transactions are exempt from authorization requirements) involved.

As before, **Iranian bank branches and subsidiaries** established within the jurisdiction of the EU Member States are subject to **strict notification requirements** within five working days for all fund transfers carried out or received by them.

A new prohibition likely to have an impact on the banking sector is that **EU banks may not open new offices, subsidiaries or banking accounts in Iran**, and **Iranian banks are prohibited from establishing new branches, subsidiaries, offices, joint ventures or ownership interest** in the EU Member States. Also, EU banks may not provide **insurance and re-insurance** (except health and travel insurance) or activities relating to public or public-guaranteed bonds to the benefit of the Iranian government and Iranian entities (or to persons or entities acting on their behalf or at their direction, or to entities owned or controlled by them).

The restrictions relating to monitoring and establishment for Iranian banks will be reviewed by **26 January 2011**, so there may be future changes to these provisions.

Transport sector restrictions

The EU ISD introduces a strict new regime on certain activities relating to Iranian cargo which will now apply to **all cargo to and from Iran**, rather than just cargo carried by certain Iranian shipping or air cargo companies. First and foremost, the EU Member States are obliged to take necessary measures to **prevent access to their airports of all cargo flights operated by Iranian carriers or originating from Iran** (unless they are mixed passenger and cargo flights), and **engineering and maintenance services** may not be provided to such aircraft if there are reasonable grounds to believe that the cargo contains items for which the supply, sale, transfer or export is prohibited. Also, Member States must **inspect** – and potentially **seize and dispose of** prohibited goods – all cargo to and from Iran which enters their territory provided that there are reasonable grounds to believe that the cargo contains prohibited items. Such inspection obligations now also include cargo found on the **high seas** in addition to Member State seaports and airports.

Aircrafts and vessels carrying all cargo to and from Iran – once again, not just belonging to certain specified Iranian shipping or air cargo companies as before – will also have to provide **pre-arrival and pre-departure information** to the Member State ports at transit. The provision of **bunkering services, ship supply services, or other servicing of vessels** is now prohibited when it is reasonable to conclude that the vessels may carry prohibited items.

To avoid circumvention of the sanctions relating to the transport sector, the EU Member States will have to **report certain transfers or activities**, such as renaming or re-registering of aircraft, vessels or ships, that may be undertaken.

Restrictions on EU admission of certain natural persons

As before, the EU ISD continues to prohibit **entry or transit of certain listed natural persons** through EU Member State territories. The designated parties listed in the EU ISD are identical to those listed in the amended version of EU Regulation 423/2007 (see above summary of Council Implementing Regulation 668/2010 concerning amendments to the EU list), which is directly applicable to the EU Member States. The EU ISD also continues to include certain **exemptions** to the admission restrictions which apply to persons with EU Member State nationality or who are travelling to the EU for specific purposes.

Freezing of funds and economic resources

The EU's Iran sanctions regime continues to **freeze the funds** of certain designated natural persons and legal entities pursuant to UN Security Resolutions, but also under the EU's additional list. The designated parties listed in the EU ISD are identical to those listed in the amended version of EU Regulation 423/2007 (see above summary of Council Implementing Regulation 668/2010 concerning amendments to the EU list), which is directly applicable to the EU Member States. As noted above, one important change here is that 15 named subsidiaries of Bank Melli are added (a list which to date has included only two specified subsidiaries of the same bank) along with many other additional entries that clarify and expand the EU list of designated parties.

As before, the EU ISD also provides that **no funds or economic resources may be made directly or indirectly available** to designated parties. It continues to provide for certain **exemptions** to the freezing of funds involving when they are used to pay specific fees and to satisfy basic needs.

Vigilance

Finally, the EU ISD obliges the EU Member States to require their nationals, persons subject to their jurisdiction and firms incorporated in their territories or otherwise subject to their jurisdiction to **exercise vigilance** when doing business with Iranian entities in order to ensure that such business does not contribute to Iran's proliferation-sensitive nuclear activities, development of nuclear weapon delivery systems or violation of the relevant UN Security Council Resolutions.

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