

ClientAlert

International Trade

29 March 2012

EU further tightens Iran sanctions: implements additional January sanctions, prohibits supply of telecommunications monitoring equipment and adds more persons to the asset freeze list



Introduction

On 23 March 2012, the Council of the European Union (EU) adopted **Regulation 267/2012ⁱ** which implements the additional restrictions agreed by the Council on 23 January 2012, clarifies certain existing implementing provisions and consolidates all implementing provisions by replacing the previous Iran Sanctions Implementing Regulation 961/2010. The Council further amended **Regulation 359/2011** specifically targeting internal repression by introducing new restrictions on the **sale, supply, transport or export of telecommunications monitoring equipment** for use by the Iranian regime, to add more persons to the **asset freeze list**, and now including measures preventing the supply of equipment that might be used for **internal repression** (previously included in the Iran Sanctions Implementing Regulation but no longer included in the new Regulation 267/2012). The list of competent authorities of the Member States has also been updated.ⁱⁱ

The restrictions imposed by the Council on 23 January 2012 included an oil and petrochemicals embargo, additional sanctions imposed on precious metals, diamonds and key equipment and technology for the petrochemical sector, the expansion of the list of dual-use items whose supply, sale or transfer is prohibited, the prohibition of delivering Iranian denominated banknotes and coins to the Central Bank of Iran, and an extension of the asset freeze list. Regulation 267/2012 clarifies the scope of a number of those restrictions, e.g. defining petrochemicals and banned petrochemical technology. See [our previous alert](#).

I. Council Regulation 267/2012

Council Regulation 267/2012 (hereafter: the Regulation), which entered into force on 24 March 2012, implements and provides further details for the restrictions introduced by Council Decision 2012/35/CFSP.ⁱⁱⁱ Contrary to Decision 2012/35/CFSP, this Regulation has immediate and direct legal effect on companies and individuals subject to EU jurisdiction.

As before, this new Regulation applies within the EU territory, to nationals of EU Member States (regardless of whether they are located inside or outside the EU territory) and on board vessels and aircraft under Member State jurisdiction. It also applies to companies incorporated or registered under the law of an EU Member State and to other non-EU companies in respect of business done in whole or in part within the EU. This means that even non-EU companies can be covered by the Regulation, depending on the particular circumstances under which they perform business activities in the EU

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and how they are connected to any activities restricted by the Regulation.

The new Regulation replaces and consolidates the changes passed since 2010. The new Regulation therefore now contains the following existing sanctions which remain in force (see our previous alerts)^{iv}:

- A ban on the sale, supply or transfer of listed goods and technology, including key equipment and technology for the oil and gas sector to an Iranian party or for use in Iran;
- Restrictions on financing of certain Iranian persons, entities or bodies;^v
- The freezing of funds and economic resources of certain designated natural persons and legal entities;
- Notification and authorisation requirements for the transfer of funds to and from Iran;
- The prohibition to carry out certain activities in relation to the Iranian bank sector;
- Restrictions on Iran's access to the EU's (re)insurance and bond markets; and
- Restrictions with respect to cargo to and from Iran.

Embargo on crude oil, petroleum and petrochemical products

The Regulation implements the **prohibition to import crude oil, petroleum products** (defined in **Annex IV** to the Regulation) **and petrochemical products** (defined in **Annex V**) originating in Iran, or being exported from Iran. It also prohibits the **purchase of these products** located in Iran or originating in Iran, and **the transport of these products** if they originate in Iran or are being exported from Iran to any other country. Related direct or indirect financing, financial assistance (including financial derivatives) as well as (re)insurance is also prohibited.

Exemptions for crude oil and petroleum products

As provided in Council Decision 2012/35/CFSP, an **exemption** is made for **crude oil and petroleum products** with respect to the **execution by 1 July 2012 of trade contracts or ancillary contracts concluded before 23 January 2012**.

The Regulation also provides an exemption, without a specific deadline, for the **execution of contracts concluded before 23 January 2012, or of ancillary contracts, where the contract explicitly provides that the supply of these products is meant for the reimbursement of outstanding amounts** to persons, entities or bodies under an EU Member State's jurisdiction.

Exemptions also apply for **the import, purchase or transport** of crude oil and petroleum products if they were **exported from Iran before 23 January 2012**; if the export takes place **pursuant to the execution of trade contracts or ancillary contracts concluded before 23 January 2012 by 1 July 2012**; or **when the export takes place pursuant to the execution of contracts concluded before 23 January 2012 (or ancillary contracts) where the contract explicitly provides that the supply of these products is meant for the reimbursement of outstanding amounts** to persons, entities or bodies under an EU Member State's jurisdiction.

These exemptions are all subject to notification to the competent Member State at least 20 days prior to the planned exempt activity or transaction.

Furthermore, the provision prohibiting the supply of **third party liability insurance and environmental liability (re)insurance** does not apply until 1

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Exemptions for petrochemical products

The Regulation provides for the **same exemptions and notification requirement for petrochemical products, but the execution cut-off date for those contracts is 1 May 2012** (as opposed to 1 July 2012 for crude oil and petroleum products). The provision prohibiting the supply of third party liability insurance and environmental liability (re)insurance for petrochemical products does not apply until 1 May 2012.

Restrictions on the supply of key equipment and technology to Iran's oil and gas sector extended to the petrochemical industry

The existing restrictions with respect to the sale, supply, transfer or export of key equipment and technology for the oil and gas sector to an Iranian party or for use in Iran remain in place. In addition, parallel restrictions now also apply to key equipment and technology for the petrochemical industry in Iran. **Annex VI to the Regulation lists the key equipment and technology for the petrochemical sector, in addition to the key equipment and technology for the oil and gas sector already listed.**

The provision of related technical assistance, brokering services, and financing or financial assistance for these products is also prohibited.

An exemption for petrochemical equipment and technology is made for **transactions, required by a contract concluded before 24 March 2012** or for ancillary contracts necessary for the execution of such trade contracts **or by a contract or agreement concluded before 23 January 2012 and relating to investments made in Iran before 23 January 2012.**

Restrictions on financing/investing in certain enterprises in the petrochemical sector

The Regulation implements the **prohibition** imposed in Council Decision 2012/35/CFSP **with respect to the financing, acquisition or extension of participation in, or creating joint ventures with, any Iranian person, entity or body in the petrochemical industry** (i.e. production plants for the manufacturing of the petrochemical products defined in Annex V).

An **exemption** is provided for transactions that are **required by contracts concluded before 23 January 2012 and provided that the Member State authorities are informed of the transaction** at least 20 working days in advance.

These restrictions are added to the existing restrictions on financing and investment with respect to certain enterprises in the oil and gas sector and enterprises manufacturing restricted goods and technology.^{vi}

Expanded asset freeze list

The asset freeze list is now contained in Annex VIII (reflecting the UN list) and Annex IX (reflecting the EU's own supplementary list of parties subject to the provisions on asset freezing and the making available of funds and economic resources). Annex VIII currently contains 41 natural persons and 57 entities involved in nuclear/ballistic activities, 15 entities linked with the Islamic Revolutionary Guard Corps (IRGC) and 3 entities linked with the Islamic Republic of Iran Shipping Lines (IRISL). Annex IX now includes 43 natural persons and 109 entities involved in nuclear/ballistic activities; 19 natural persons and 11 entities linked to the IRGC; and 13 natural persons and 152

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entities linked to IRISL.

Ban of the supply of financial messaging services to listed parties

In order to implement Council Decision 2012/152/CFSP, the Regulation also contains a prohibition of the supply of specialised financial messaging services which are **used to exchange financial data to listed bodies or entities**.^{vii} This ban will not apply in the event Member State authorities authorise the release of frozen funds or economic resources.

Restrictions and notification requirements for the transfers of funds and on financial services

The restrictions with respect to the transfer of funds (i.e. an authorisation requirement for transfers to and from an Iranian party of more than EUR 40,000 and a notification requirement for transfers of more than EUR 10,000) have been broadened, and include now **non-electronic transfers** (such as cash, cheques or accountancy orders) as well. However, parties acting under a contract with an EU credit or financial institution to merely handle the conversion of paper documents into electronic data are not subject to the fund transfer provisions. Likewise, parties that merely provide EU credit or financial institutions with a messaging or other support system for transmitting funds, or with clearing and settlement systems, are not subject to the restrictions and procedures on transfer of funds.

Furthermore, the Regulation contains much more **detailed rules and procedures for notifications and requests for authorisation for the transfer of funds** to Iranian parties depending on the location of the parties (i.e. located within or outside the Union).

As before, the restrictions on transfers of funds apply for transfers executed in a single operation or in several operations which appear to be linked, but the Regulation now explicitly **defines an operation that appears to be linked** as a series of consecutive transfers from or to the same Iranian person which are made in connection with a single obligation, or a chain of transfers involving different payment service providers or natural or legal persons which effects a single obligation to make a transfer of funds.

Diligence of EU credit and financial institutions extended

The existing provisions requiring EU credit and financial institutions to exercise due diligence in their activities with certain Iranian parties have been amended to explicitly include “bureaux de change” (currency exchange offices) as well.

Additional derogations from freezing of funds and economic resources

The Regulation contains amended language for certain exemptions with respect to the freezing of assets of the **Central Bank of Iran** introduced by Council Regulation 56/2012 on 23 January 2012^{viii} in consideration of the involvement of the Central Bank of Iran in the financing of foreign trade.

It is now specified that Member State authorities can authorise the making available of certain funds to the Central Bank of Iran **until 1 July 2012, provided that these funds are necessary for the execution of contracts for the import, purchase or transport of crude oil and petroleum products concluded before 23 January 2012.**

As before, the release of certain frozen funds or economic resources of the Central Bank of Iran or the making available of certain funds or economic

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resources to the Central Bank of Iran may be authorised, if these are **necessary for providing credit or financial institutions with liquidity or if these are necessary in connection with a specific trade contract**, provided that such a payment does not contribute to an activity prohibited under the Regulation.

The existing exemptions related to funds and economic resources to satisfy basic needs, payment of reasonable professional fees, reimbursement of expenses related to the provision of legal services, addition of interest to frozen accounts, payment by a listed party due under a contract concluded before that party's listing (subject to certain conditions), etc., remain in place as well.

List of prohibited dual-use items extended

The list of **dual-use goods** whose supply, sale, export or transfer to or for the benefit of any Iranian party or for use in Iran is prohibited has been extended to cover **all goods and technology set out in Annex I of the EU-dual use Regulation,^{ix} with the exception of only certain information security systems and certain types of software and related technology** listed in part A of Annex I to the Regulation, in view of their use in public communication services in Iran. However, in line with the prohibition of their supply to Iran (see below), certain telecommunications equipment and software previously not falling under this prohibition is now explicitly excluded from the exemption.

The purchase, import or transport of these items from Iran (whether or not originating there) remains forbidden, but the prohibition now explicitly applies to indirect purchase, import and transport as well.

Restrictions on gold, precious metals and diamonds

The Regulation implements the prohibition of both the direct or indirect **sale, supply, transfer, export, purchase, import, or transport of gold, precious metals and diamonds** to, for or from the Government of Iran (or to persons and entities acting on their behalf or at their direction, or to entities and bodies owned or controlled by them). Related technical assistance, brokering services or financing, and financial assistance are also prohibited.

Annex VII to the Regulation lists the products covered by this ban.

Restrictions with respect to Iranian banknotes and coinage

The Regulation also implements the Council's Decision to **prohibit the direct or indirect sale, supply, transfer or export of newly-printed or unissued Iranian-denominated banknotes and minted coinage** to or for the benefit of the Central Bank of Iran.

II. Council Regulation 264/2012 amending Regulation 359/2011

In line with Decision 2012/168/CFSP, Regulation 264/2012 amends Regulation 359/2011 in order to restrict the use of equipment for monitoring or interception of internet or telephone communications by the Iranian regime for internal repression purposes.

Regulation 264/2010 introduces an additional **prohibition on the direct or indirect sale, supply, transfer or export of telecommunications monitoring equipment**, technology and software as listed in **a new Annex IV** to Regulation 359/2011 unless prior authorisation has been given by the competent EU Member State. Furthermore, the **direct or indirect provision of telecommunications or internet monitoring or interception services of any kind^x** to or for the benefit of the Government of Iran, along with related technical

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assistance or brokering services, financing or financial assistance is also prohibited, unless a prior authorisation has been obtained.

Council Regulation 359/2011 now also includes the provisions restricting the sale, supply, transfer or export, including related assistance, of equipment that might be used for **internal repression**. These provisions were included in the old Regulation 961/2010 (which has now been repealed) but have not changed substantially.

17 more persons are included in the list of designated parties subject to restrictive measures in Annex I to Regulation 359/2011.

Finally, Annex II to Regulation 359/2011 listing the **Member State authorities** competent for the implementation of that Regulation has been updated.

ⁱ [Council Regulation \(EU\) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation \(EU\) No 961/2010.](#)

ⁱⁱ These restrictions were imposed by [Council Decision 2012/168/CFSP of 23 March 2012 amending Decision 2011/235/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Iran](#) and [Council Decision 2012/169/CFSP of 23 March 2012 amending Decision 2010/413/CFSP concerning restrictive measures directed against Iran](#). For Regulation 359/2011 (not including the latest amendment, see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2011R0359:20111012:EN:PDF>; for Decision 2011/235/CFSP (not including the latest amendment), see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2011D0235:20111010:EN:PDF>).

ⁱⁱⁱ [Council Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran](#). For an overview of the restrictions imposed by this Decision, please see our client alert of [26 January 2012](#).

^{iv} Client alerts dated [5 December 2011](#), [2 November 2010](#) and [12 August 2010](#).

^v With respect to the financing of certain manufacturers of restricted goods and technology, competent authorities in the Member States can no longer grant an authorisation to make investments through loans or credits for manufacturers of restricted goods or technology on the basis that the Iranian manufacturer has committed itself to apply appropriate end-user guarantees or on the basis that Iran committed itself not to use the goods and technology concerned in nuclear activities.

^{vi} For an overview of these existing restrictions, please see our client alert of [29 October 2010](#).

^{vii} For a description of this particular ban, please see our client alert of [19 March 2012](#).

^{viii} [Council Regulation \(EU\) No 56/2012 of 23 January 2012 amending Regulation \(EU\) No 961/2010 on restrictive measures against Iran](#).

^{ix} [Council Regulation \(EC\) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items](#).

^x Defined as "services that provide, in particular using equipment, technology and software as identified in Annex IV, access to and delivery of a subject's incoming and outgoing telecommunications and call-associated data for the purpose of its extraction, decoding, recording, processing, analysis and storing or any other related activity".