

# ClientAlert

## International Trade

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### EU tightens Iran Sanctions with embargo on Iranian oil and petrochemicals plus new sanctions on precious metals, diamonds and key equipment & technology for the petrochemical sector



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#### I. Introduction

On 23 January 2012, the Council of the European Union (EU) adopted further measures to tighten existing EU sanctions<sup>1</sup> against Iran by introducing an **embargo on the imports/purchase/transport of Iranian crude oil, petroleum and petrochemical products** (and related financing, financial assistance, insurance); prohibiting the sale, supply and transfer of **key equipment and technology for the petrochemical industry in Iran**; prohibiting or restricting certain **technical and financial assistance and investment and joint ventures in the petrochemical sector**; **prohibiting the sale, purchase, transportation or brokering of gold, precious metals and diamonds to Iranian parties linked to the Government**; expanding the list of **dual-use items** whose supply, sale or transfer is prohibited; prohibiting the delivery of new or unissued **Iranian denominated banknotes and coins to the Central Bank of Iran**, and adding further parties to the **asset freeze list** (including the **Central Bank of Iran and Bank Tejarat**).

The new sanctions are laid down in Council Decision 2012/35/CFSP ('The Council Decision'),<sup>2</sup> Council Implementing Regulation 54/2012<sup>3</sup> and Council Regulation 56/2012.<sup>4</sup> Certain **transitional provisions** apply for contracts concluded before certain dates. In addition, deadlines are included for the **review** of some of the new measures to ensure sufficient energy supply to the EU. Some of the new sanctions **must be implemented by further Regulations** which will set out the detailed provisions for applying the sanctions and will specify the precise types of crude oil, petroleum and petrochemical equipment and technology covered by the new sanctions. See below for more details.

<sup>1</sup> See here for our previous alert of [29 October 2010](#).

<sup>2</sup> [Council Decision 2012/35/CFSP](#) of 23 January 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran.

<sup>3</sup> [Council Implementing Regulation \(EU\) No 54/2012](#) of 23 January 2012 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran.

<sup>4</sup> [Council Regulation \(EU\) No 56/2012](#) of 23 January 2012 amending Regulation (EU) No 961/2010 on restrictive measures against Iran.

## II. Council Decision 2012/35/CFSP

The Council Decision, which immediately entered into force on the date of its adoption on 23 January 2012, is a policy instrument introducing new obligations for the EU Member States, to be implemented into law at either EU or national level. Although EU law does not prevent Member States from adopting national legal provisions implementing CFSP Decisions, in the interest of achieving a harmonized sanctions regime, this is done by EU Regulations which will have direct legal effect on companies and individuals. Until such regulations are adopted, companies and individuals must already take note of the new sanctions (which Member States will already apply), using “common sense”, in ensuring compliance with Decision 2012/35/CFSP.

### ***Embargo on Iranian crude oil, petroleum and petrochemical products***

The Council Decision imposes a new **ban on the import, purchase or transport of Iranian crude oil and petroleum products, as well as Iranian petrochemical products**. Related financing, financial assistance (including financial derivatives in the case of crude oil and petroleum), and (re)insurance is also prohibited. The pending Implementing Regulation will determine the exact list of products covered by this new ban.

An **exemption** is made from the new ban **for crude oil and petroleum products** with respect to the **execution by 1 July 2012 of contracts or ancillary contracts concluded before 23 January 2012** - or obligations arising from such contracts, provided that the supply of the relevant products is for the reimbursement of outstanding amounts to EU parties and the contracts explicitly provide for such reimbursements.

The same **exemptions for contracts concluded before 23 January 2012** are available with respect to Iranian **petrochemical products**, but the **execution cut-off date for such contracts is 1 May 2012**.

The embargo on crude oil and petroleum products will be reviewed by 1 May 2012 (i.e. prior to their entry into force as regards contracts concluded before 23 January 2012), the aim of the review being to ensure the continuity of the energy supply to the EU Member States.

### ***Restrictions on financing/investing in enterprises in the petrochemical sector***

In addition to the existing restrictions on financing and investment with respect to enterprises in the oil & gas sector introduced in 2010, EU parties are now also prohibited from **financing, acquiring or extending participations in, or creating joint ventures with, the petrochemical industry** in Iran (or Iranian or Iranian-owned petrochemical enterprises outside Iran).

An **exemption** is available here, allowing for the execution of an obligation or the extension of an existing participation that arises from **contracts pre-dating 23 January 2012**.

### ***Restrictions on the supply of key equipment/technology to the – Iranian petrochemical industry***

The Council Decision further **prohibits the sale, supply or transfer of key equipment and technology for the petrochemical industry** in Iran, or to Iranian or Iranian-owned petrochemical enterprises outside Iran. The list of this

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“key equipment and technology” for the petrochemical industry will be defined in a further Regulation.

The provision of **related technical assistance, training and services or financing and financial assistance** to enterprises engaged in the Iranian petrochemical sector or to Iranian or Iranian-controlled petrochemical companies outside Iran is also forbidden.

However, an **exemption** is made allowing the execution of obligations arising from **contracts concluded before 23 January 2012** or with respect to **investments made in Iran before that date by enterprises established in the EU**.

#### *Expansion of the asset freeze list*

Council Decision 2012/35/CFSP **adds 9 entities (most notably the Central Bank of Iran and Bank Tejarat and 7 other legal entities) and 3 natural persons** to the EU list of parties to which the provisions on the freezing of funds and the restrictions with respect to the making available of economic resources apply (i.e. **Annex II of Decision 2010/413/CFSP**).<sup>5</sup> One entity (Syracuse S.L) has been removed from Annex II and the entries of two listed parties have been amended.

However, with respect to the **Central Bank of Iran**, an **exemption** is made for transfers *by* or through the Central Bank of Iran of **funds received and frozen after 23 January 2012**, provided that these transfers do not benefit listed parties. Transfers of funds *to* or through the Central Bank of Iran after 23 January 2012 are also exempted provided that these transfers relate to a payment by a non-designated financial institution due in connection with a specific trade contract **and do not benefit listed parties**. Transfers of frozen funds by or through the Central Bank of Iran to provide EU financial institutions with liquidity for the financing of trade are also exempt, but subject to prior Member State authorization.

With respect to **Bank Tejarat**, a 2-month **exemption** is granted for **making or receiving payments after 23 January 2012**, provided that those payments are made in connection with a specific trade contract and that the competent Member State authority has determined that they will not be received by a listed party.

Furthermore, payments into or from an account of a **diplomatic or consular mission or an international organization** enjoying immunities are also exempted from the provisions on freezing of funds and making available of economic resources, provided such payments are intended to be used for official purposes.

The prohibition on the making available of funds to listed parties does not apply with respect to **payments to the Central Bank of Iran in connection with contracts pre-dating 23 January 2012 related to Iranian crude oil, petroleum and petrochemical products**, provided the relevant conditions and execution deadlines have been complied with (see above.)

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.

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<sup>5</sup> Council Decision 2010/413/CFSP (see latest available [consolidated version](#)) and subsequent amending [Decision 2011/783](#) amending Annex II.

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### *Restrictions on gold, precious metals and diamonds*

The **direct or indirect sale, purchase or transportation or brokering of gold, precious metals and diamonds** to, for or from the government of Iran and its associated entities, the Central Bank of Iran (or to persons and entities acting on their behalf or at their direction, or to entities owned or controlled by them) is also prohibited.

The exact items covered by this ban will be determined in the pending Implementing Regulation.

### *Restrictions on the supply of dual-use list items tightened*

The list of **dual-use goods and technology** whose supply, sale or transfer to or for the benefit of Iran is prohibited has been extended (by narrowing the list of exemptions from the ban to supply dual-use items on the EU's Dual Use list (Annex I of Regulation 428/2009) to only "certain" items rather than an entire category.) However, the exact scope of the restrictions with regard to dual-use goods and technology will be specified in a future Implementing Regulation.

### *Restrictions with respect to Iranian banknotes and coinage*

The Council Decision also prohibits the **delivery of newly printed or minted and unissued Iranian denominated banknotes and coinage** to or for the benefit of the Central Bank of Iran.

## III. Implementing Regulations – some adopted – some still to come

The EU has already adopted two Regulations to implement the new sanctions imposed by Decision 2012/35/CFSP and make these **directly applicable to natural and legal persons falling with EU jurisdiction**.

**Council Implementing Regulation 54/2012** amends the EU's asset freeze list (Annex VIII of Council Regulation 961/2010)<sup>6</sup> in line with the amendments introduced by Decision 2012/35/CFSP described above.

**Council Regulation 56/2012** contains the derogations as regards Central Bank of Iran and Tejarat Bank (described above) without adding further detail.

These Regulations implement only part of the above Decision. So **further Regulation or Regulations will have to be adopted shortly**. Specifically, further Regulations will be needed **to complete all the details of the new sanctions**, for example, as to the exact petrochemical products and related technical assistance/equipment that is covered. We will send out a further alert when they are published.

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<sup>6</sup> Regulation 961/2010 (see latest [consolidated version](#)) and subsequent amending [Regulation 1245/2011](#) amending Annex VII Regulation 961/2010.