

The EU Council Tightens Iran Sanctions

On July 26, 2010, the Council of the European Union (the “Council”) adopted a Decision (the “Decision”) ¹ implementing UN Security Council Resolution 1929² and imposing accompanying measures, with a view to providing a robust and comprehensive package of trade and financial sanctions against Iran. The Council also adopted Council Implementing Regulation 668/2010 (the “Implementing Regulation”),³ adding 74 persons and entities to the list of persons and entities subject to Council Regulation 423/2007 (the “2007 Regulation”),⁴ which imposed sanctions on specified persons and entities identified as being engaged in or associated with Iran’s proliferation-sensitive nuclear activities or development of nuclear weapons delivery systems, as well as entities acting on behalf of or controlled by such a person or entity.

The new measures are effective from July 27, 2010. To become enforceable against natural and legal persons, however, the Decision must be supplemented by implementing measures. By contrast, the Implementing Regulation is binding immediately, but it implements the Decision only in part.

Among other things, the new restrictions target:

- The financial sector, imposing new restrictions on banking and insurance activities; and
- The oil and gas industry, prohibiting new investment, technical assistance and transfers of technologies, equipment and services.

The new measures build on existing EU trade sanctions in relation to Iran, which prohibit or restrict the export to and import from Iran of certain technologies relating to nuclear weapons and missiles, where they appear as controlled items in the 2007 Regulation or are dual-use items as listed in Regulation (EC) 429/2009, and freeze the funds and economic entities of specified persons and entities.

¹ <http://tinyurl.com/councildecision>

² <http://tinyurl.com/unsanction1929>

³ <http://tinyurl.com/councilregulation>

⁴ <http://tinyurl.com/regulation423-2007>. Amended by Council Regulation (EU) 1100/2009 <http://tinyurl.com/amedingregulation>

I. RESTRICTIONS ON THE FINANCIAL SECTOR

The Decision imposes far-reaching restrictions on activities by EU financial institutions relating to Iran. Specifically:

- The restrictions prevent the provision of financial services, or the transfer to, through or from the territories of the Member States, by nationals of Member States, or by any persons or financial institutions in the territories of Member States, of any financial or other assets, which could contribute to Iran's proliferation-sensitive nuclear activities.
- Transfers of more than €40,000 to banks domiciled in Iran or any of their branches and subsidiaries within or outside the EU will require approval from national authorities (Article 10).
- Iranian banks will be prohibited from opening any new branches, subsidiaries or representative offices in the EU. This prohibition includes the establishment of joint ventures, or the taking of an ownership interest by Iranian banks of banks within the jurisdiction of a Member State (Article 11).
- EU financial institutions will be prohibited from providing insurance and re-insurance services to the Government of Iran, to entities incorporated in Iran or subject to Iran's jurisdiction, or to any individuals or entities acting on their behalf or at their discretion or owned by them (Article 12).
- EU financial institutions will be prohibited from engaging in the direct or indirect sale or purchase of, or brokering or assisting in the issuance of, public or public-guaranteed bonds issued to and from the Government of Iran, the Central Bank of Iran or any bank domiciled in Iran, including its branches and subsidiaries, or any financial entities controlled by persons and entities domiciled in Iran (Article 13).

The Decision uses a number of general, undefined terms, making the Decision's exact scope ambiguous. The Decision does not apply directly to EU financial institutions, but it contemplates the adoption of further EU measures to implement the Decision, over and above the Implementing Regulation (which has implemented the Decision only in part). The Decision does not indicate any timetable for the adoption of EU implementing measures.

II. RESTRICTIONS ON IRAN'S ENERGY INDUSTRY

The Decision restricts a range of activities relating to Iran's oil and natural gas industries. The Decision prohibits the sale, supply or transfer of key equipment and technology for the refining, liquefied natural gas, exploration or production sectors of the

oil and natural gas industry in Iran (Article 4(1)). The Decision will also prohibit provision of technical assistance, training or other services relating to these activities, as well as financing or financial assistance (Article 4(2)).

The prohibition includes the granting of loans or credit, acquisition or extension of a participation in and creation of any joint venture with enterprises engaged in these sectors of the oil and gas industries in Iran or Iranian or Iranian-owned enterprises that are involved in such activities outside Iran, and any joint ventures with such enterprises in Iran (Article 6). Investments in any commercial activity involving uranium mining or production or use of nuclear materials and technology, in particular uranium enrichment and reprocessing, will also be prohibited (Article 5).

The Decision further requires Member States to exercise “restraint” in entering into new short term commitments for public and private provided financial support for trade with Iran, including the granting of export credits, guarantees or insurance, to their nationals or to entities involved in such trade. Member States are not prohibited from providing such support, but they are prohibited from entering into new medium and long-term commitments for public and private provided financial support for trade with Iran (Article 8).

III. THE IMPLEMENTING REGULATION

As noted, the Implementing Regulation lists 74 persons and entities subject to Article 7(2) of the 2007 Regulation, which freezes the funds and economic resources of persons and entities identified as being engaged in or associated with Iran’s proliferation-sensitive nuclear activities or development of nuclear weapons delivery systems and entities acting on behalf of or controlled by such a person or entity. The 2007 Regulation prohibits making funds or economic resources available, directly or indirectly, to or for the benefit of the listed persons or entities (Article 7(3)). The terms “funds”, “economic resources” and “freezing” are defined broadly.⁵

⁵ The 2007 Regulation defines “funds” as financial assets and benefits of every kind, including but not limited to: (i) cash, cheques, claims on money, drafts, money orders and other payment instruments; (ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; (iii) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts; (iv) interest, dividends or other income on or value accruing from or generated by assets; (v) credit, right of set-off, guarantees, performance bonds or other financial commitments; (vi) letters of credit, bills of lading, bills of sale; and (vii) documents showing evidence of an interest in funds or financial resources. “Economic resources” means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but which may be used to obtain funds, goods or services. “Freezing of funds” means preventing any moving, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management, while “freezing of economic resources” means preventing the use of economic resources to obtain funds, goods or services in any way.

In addition, Council Regulation 1110/2008 amending the 2007 Regulation calls for continuous vigilance on dealings by Member State credit and financial institutions with particular credit and financial institutions domiciled in Iran and any of their branches and subsidiaries, in particular Bank Saderat Iran (Article 11a), as listed in Annex VI to the Regulation.⁶ Member States may supplement the EU lists based on domestic concerns; the UK, for example, has done this.⁷

The 2007 Regulation permits derogations in respect of payments to satisfy judicial, administrative or arbitral liens imposed before December 23, 2006; to satisfy the basic needs of listed persons and their dependent family members; and for reasonable payments for professional services and expenses. In addition, EU financial institutions may credit frozen accounts with payments by third parties, as well as interest and other earnings.

The Decision does not refer to the Implementing Regulation, and *vice versa*. Unlike the Decision, however, the Implementing Regulation is enforceable directly against EU financial institutions and other entities. The restrictions imposed by the Implementing Regulation overlap to some extent with the Decision, since the Implementing Regulation includes a number of Iranian financial institutions in the list of entities whose funds and economic resources are frozen.⁸

IV. CONCLUSION

As noted, the Decision and the Implementing Regulation implement UN Security Council Resolution 1929 and expand the existing EU sanctions regime targeting Iran's nuclear industry. As such, the Decision and the Implementing Regulation represent the EU analogue to the U.S. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 signed by President Obama on July 1, 2010.⁹ Both sets of measures expand the prior sanctions regimes to include the Iranian oil and gas industry and cover a wider range of financial sector activities. The EU measures raise more questions than the U.S. law in certain respects, in light of the ambiguous status of the Decision (which requires implementing regulations to be enforceable).

On the other hand, the EU measures (even after they have been fully implemented through legislation yet to be adopted) will be narrower in scope than the U.S. measures. Existing U.S. sanctions prohibit nearly all dealings involving Iran by U.S. persons. The new U.S. sanctions also have extraterritorial application as to a range of sanctions affecting access to U.S. markets that may affect non-U.S. companies that are involved in significant sales of refined products, development of the oil and gas

⁶ <http://tinyurl.com/annexVI>

⁷ <http://www.hm-treasury.gov.uk/d/sanctionsconlist.pdf>

⁸ E.g., Bank Mellat, Bank Refah, Bank Saderat, Banque Sina, Export Development Bank of Iran and the Post Bank.

⁹ Please see CGS&H Alert Memorandum "President Obama Signs New Iran Sanctions into Law" July 6, 2010, for further information. <http://tinyurl.com/cgs-hmemo>

production and refining capacity of Iran, or the provision of services such as shipping, financing, and insurance related to sanctionable activities.

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For additional information, please feel free to contact any of your regular contacts at the firm if you have any questions.

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