

Client Alert

Latham & Watkins
Litigation Department

The EU Imposes Further Sanctions on Iran

On October 15, 2012 the Council of Ministers of the European Union approved a new round of sanctions against Iran. These bring the EU regime closer to the punitive sanctions that are in force in the United States. EU foreign ministers have further made it clear that sanctions will continue to tighten until Iran engages with the international community to address concerns regarding its accelerating nuclear programme. This Client Alert provides a short summary of the recent sanctions developments in the EU.

These EU sanctions accompany dramatically expanding US sanctions on Iran and companies and persons doing business with Iran. In recent weeks, the longstanding US embargo of Iran has been further broadened to reach non-US persons and non-US companies that are doing business with Iran. This has included the extension of all US sanctions to overseas subsidiaries of US companies; requirements that publicly traded companies in the United States disclose to the Securities and Exchange Commission certain business activities involving Iran; and measures designed to prevent non-US companies, especially banks and trading companies, from funding or supporting transactions involving Iran's energy sector or "blacklisted" Iranian entities.

"These new EU sanctions reflect the seriousness with which the EU is pursuing its goal of denying Iran's oil and gas industry access to markets in Europe and generally restricting business between Europe and Iran."

Expanding EU Sanctions

The EU sanctions aimed at preventing Iran from developing a nuclear weapons capability have been steadily strengthened, particularly since 2010 when the EU imposed restrictive measures on Iran beyond those contained in resolutions of the United Nations Security Council.

Before the most recent sanctions, which were published on October 16, 2012, the main EU sanctions on Iran were contained in Council Regulation (EU) No 267/2012 (as amended). This regulation, which has direct effect throughout the EU, contained a series of restrictions on business and financial transactions with Iran, including the following:

- Increased export and import restrictions, including a prohibition on the import, purchase and transport of Iranian crude oil, petroleum and petrochemical products
- Restrictions on financing of certain enterprises (including Iranian entities engaged in the petroleum or petrochemical industries)
- An extensive asset freeze on persons and entities associated with Iran's nuclear program and serious human rights violations
- Restrictions on transfers of funds and financial services, including requirements that transfers of funds to or from Iranian persons or entities over certain thresholds be notified to or approved by a competent governmental authority
- Transportation and shipping restrictions

The most recent EU sanctions are contained in Council Implementing Regulation (EU) No 945/2012 (the Implementing Regulation) and Council Decision 2012/635/CFSP (the Council Decision).

New Focus on Iran's Oil and Gas Industries

The Implementing Regulation, which has immediate direct effect throughout the EU, made a number of important additions to the entities which are subject to the EU asset freeze as listed in Annex IX to Council Regulation (EU) No 267/2012.

The recently added entities include the Iranian Ministry of Energy and Ministry of Petroleum, the National Iranian Oil Company (NIOC) and several of its subsidiaries, including Naftiran Intertrade Company and Petropars Ltd., and the National Iranian Gas Company.

Consequently, all funds and economic resources belonging to, owned, held or controlled by these entities that are located in the EU are frozen. In addition, EU persons are prohibited from making available to these entities, directly or indirectly, funds or "economic resources", which is broadly defined as "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."

New Measures Targeting Iran's Economy

The Council Decision announced several further "restrictive measures" focusing in particular on Iran's hydrocarbon and shipping industries. The Council Decision will be followed by a corresponding Council Regulation which will determine the scope of several of the new measures and implement them in the EU.

These new sanctions include the following:

1. Embargo on Iranian Natural Gas

The Council Decision prohibits the import, purchase and transport of Iranian natural gas. This embargo, which mirrors the existing embargo on Iranian crude oil, petroleum products and petrochemical products, is accompanied by a ban on the provision of financial assistance, and insurance services relating to the import, purchase and transport of Iranian natural gas.

The embargo is subject to a series of complex "grandfathering" provisions that permit the execution, until April 15, 2013, of pre-existing contracts in limited circumstances.

2. Export Restrictions

The Council Decision prohibits the sale, supply and transfer to Iran of:

- Certain raw and semi-finished materials (such as graphite, aluminium and steel) relevant to industries controlled by the Revolutionary Guard or Iran's nuclear, military and ballistic program
- Key naval equipment and technology for ship-building, maintenance or refit
- Software for integrating industrial processes relevant to industries controlled by the Revolutionary Guard or Iran's nuclear, military and ballistic program

As is typically found in EU sanctions, these prohibitions include a ban on the provision of related technical and financial assistance. Service providers should pay particular attention to the broad definition of "technical assistance," which covers "any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; including verbal forms of assistance."

These prohibitions are also subject to certain “grandfathering” provisions which permit the execution until various dates (depending on the measure in question) of pre-existing contracts in certain circumstances.

Businesses should also take note of the express prohibition to participate, knowingly or intentionally, in activities which aim to circumvent these provisions.

3. Prohibition on Construction of Oil Tankers

The Council Decision contains a blanket ban on the construction of or participation in the construction of new oil tankers for Iran or Iranian persons and entities, and on the provision of related technical or financial assistance.

4. Ban on Shipping Services to Iranian Oil and Cargo Vessels

As part of the extensive new sanctions against the Iranian shipping industry, the Council Decision prohibits the provision of flagging and classification services, including registration and identification numbers, to Iranian oil tankers and cargo vessels.

The Council Decision also prohibits the supply of vessels designed for storing or transporting oil or petrochemical products:

- to Iranian persons, entities or bodies; or
- to any person, entity or body, for the storage or transportation of Iranian oil and petrochemical products.

5. Further Restrictions on Transfers of Funds Via the Central Bank of Iran

The Council Decision has narrowed the exceptions that permit the transfer of funds or economic resources through the Central Bank of Iran. Any such transfers can now only be authorized by Member States in the following circumstances:

- Where the transfer is for the purpose of providing financial institutions under the jurisdiction of Member States with liquidity for the financing of trade
- Where the transfer is a reimbursement, by or through the Central Bank of Iran of claims due under a contract or agreement that was concluded by public or private Iranian entities before the adoption of the Council Decision

6. Further Restrictions on Transfers of Funds to or From Iran

The existing EU sanctions reflected in Council Regulation (EU) No 267/2012 contained significant restrictions on the transfer of funds to or from any Iranian person, entity or body. In particular, transfers in excess of €10,000 were required to be notified in advance to the competent authority of the relevant EU member State, while transfers equal to or more than €40,000 required prior authorization from the relevant competent authority.

The Council Decision has further tightened these restrictions, making it increasingly difficult for EU businesses to do any form of business with Iran. For example, the Council Decision prohibits financial institutions from participating in any transactions with Iranian banks, subject to certain exceptions.

This measure brings the EU sanctions closer to those already in force in the UK, following the imposition by the UK in November 2011 of measures under the Counter-Terrorism Act 2008, which required UK credit and financial institutions to cease all business with banks incorporated in Iran and their branches and subsidiaries.

The EU sanctions landscape is constantly evolving and difficult to navigate, and violations of these rules carry with them risks of significant penalties and reputational damage.

If you have any questions about this *Client Alert*, please contact one of the authors listed below or the Latham attorney with whom you normally consult:

William M. McGlone
+1.202.637.2202
william.mcglone@lw.com
Washington, D.C.

Charles Claypoole
+44.20.7710.1178
charles.claypoole@lw.com
London

Les Carnegie
+1.202.637.1096
les.carnegie@lw.com
Washington, D.C.

Robert Price
+44.20.7710.4682
robert.price@lw.com
London

Kari K. Gregory
+1.202.637.2297
kari.gregory@lw.com
Washington, D.C.

Annie E. Simpson
+1.202.637.2375
annie.simpson@lw.com
Washington, D.C.

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