

Update

Delay in finalising latest trade sanctions against Iran – continuing uncertainty

As has been widely reported, on 23 January the Council of the European Union decided to impose significant further sanctions on Iran – including a phased embargo of Iranian crude oil imports to the EU - in response to continuing concerns over the Iranian nuclear programme.

Although the Council Decision came into force with immediate effect on 23 January, key aspects of the Decision, including the oil embargo, will require an amending Council Regulation for them to be given effect. It now appears that despite the initial publicity surrounding the Council Decision, there may be significant delay before this further Regulation is published.

The UK Treasury Asset Freezing Unit has confirmed that negotiations on the implementing Regulation are currently underway and that the Regulation will be published 'in the coming weeks'. A similar time-frame was indicated in the latest Notice to Exporters (2012/06) issued by the Department for Business Innovation and Skills which estimates that the new Regulation will be published 'in the next few weeks'.

So what do the oil and associated trade sanctions comprise and what can we expect the Regulation to cover when it is eventually published? The

Notice to Exporters highlights the following key points:

- "A prohibition on the purchase, import or transport from Iran of crude oil and petroleum and petrochemical products. The list of products covered by this prohibition will be defined in the Regulation.
- A prohibition on the provision, either directly or indirectly, of financing or financial assistance, including financial derivatives and insurance or re-insurance, related to the import, purchase or transport of such products.

Further information

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- A prohibition on the sale, supply or transfer to Iran, or to Iranian or Iranian-owned enterprises outside Iran, of key equipment and technology for the petrochemical industry. The list of equipment and technology covered by this prohibition will be defined in the Regulation. The provision of technical assistance or training, and of financing or financial assistance, related to these items is also prohibited.
- A prohibition on any new investment in the petrochemical sector in Iran or in Iranian or Iranian-owned enterprises engaged in that industry outside Iran. This includes the granting of financial loans or credit, the acquisition or extension of a participation (such as through the purchase of shares), or creation of joint ventures.
- Further prohibitions on the supply, sale or transfer to Iran of dual-use items. The additional items covered by this prohibition will be defined in the Regulation."

Existing sanctions already prohibit the supply of key equipment etc. to, and investment in, Iran's petrochemical industry (Articles 8-12 of 961/2010) and presumably therefore, the new Regulation will broaden the current prohibitions. This is also the case with dual-use items. Accordingly, the one wholly new aspect of the sanctions is the ban on the purchase, import or transport from Iran of crude oil, petroleum and petrochemical products.

Given the wide scope and technical nature of the measures it is perhaps not surprising that an extensive negotiation process appears to be underway within the EU before the Regulation can be finalised. However it does mean that a significant degree of uncertainty remains regarding the eventual impact of the Council Decision.

For example, while it is known that the prohibitions on Iranian crude oil, petroleum and petrochemical products are subject to specific exemptions as specified in the Decision (regarding the dates on which relevant contracts are

concluded and executed) the crucial definitions of the oil and products to which the prohibitions and exemptions apply will not be known until the Regulation is published. This raises the possibility that, unlike previous Regulations, certain aspects may in practice have retrospective effect.

Furthermore, the prohibition on financial support, derivatives, insurance and reinsurance will potentially have far-reaching implications for EU service providers and their EU and non-EU clients, though the details of this key measure will also not be known until the Regulation is released.

However, if we look to the sanctions imposed against Syria (878/2011) and the view of HM Treasury that this prohibition applies even if the underlying transaction or carriage has nothing to do with the EU, it is likely that the same view will be taken by HM Treasury in relation to the forthcoming Iran Regulation – accordingly, the Regulation could have an even more substantial impact on the London market than might otherwise appear. For example, on this interpretation, (re) insurers in the EU would be prohibited from covering Iranian crude purchased by, for example, a company in India, or, say, a Chinese-owned vessel carrying that cargo.

In the circumstances a prudent approach may be to avoid entering into any contracts that appear likely to be covered by the measures to be detailed in the Regulation, particularly having regard to the potential for certain measures to have retrospective effect.

With a vote now expected in the US Senate Banking Committee on Thursday 2 February regarding additional US sanctions against Iran, it is clear that there is a long way to go before the full effect of the latest round of international sanctions against Iran is known. Details of further measures, and in particular the publication of the Regulation implementing the EU Council Decision of 23 January, will be provided in future updates.