

Update

European Union extends sanctions against Iran

With the coming into force on 23 December 2012 of Council Regulation (EU) No 1263/2012 (1263/2012), the European Union has further augmented its sanctions regime in place against Iran.

The measures introduced by 1263/2012 build on those contained in Regulation 267/2012 of 23 March 2012. They include for the first time an almost blanket prohibition on European financial institutions dealing with their counterparts in Iran and, amongst others, a prohibition on importing Iranian natural gas, and a prohibition against selling, supplying, transferring or exporting certain types of graphite and raw or semi-finished materials where those might be used by industries controlled by the Islamic Revolutionary Guard Corps, or in Iran's nuclear, military or ballistic missile programme.

Some of the new prohibitions allow for the fulfillment of certain previously existing contracts. Ancillary contracts necessary for the fulfillment of these previously existing contracts are also permitted.

Financial restrictions

Asset freezing measures

The list of those entities designated under the sanctions regime and thus subject to the asset freeze has been expanded further. It is also now permitted to release funds from a frozen account where this is exclusively for the payment of fees in connection with the de-flagging of vessels.

Prohibition on transferring funds between the European and Iranian financial sectors

Whilst the financial restrictions introduced in the United Kingdom by the Financial Restrictions (Iran) Order 2011 effectively ended most financial transactions between the UK financial sector and Iran, this prohibition has now been expanded and is applicable to the entirety of the EU. It is now prohibited to transfer funds between EU credit and financial institutions and Iranian bureaux de change and credit and financial institutions, their branches and subsidiaries, and those bureaux de change and credit and financial institutions controlled by Iranian domiciled persons, entities or bodies.

There are some exceptions. These include transfers regarding foodstuffs, healthcare, medical equipment or for humanitarian purposes; personal remittances; transfers in connection with a specific, permitted trade contract; transfers for diplomatic or consular missions; and transfers regarding payment to satisfy claims by or against an Iranian person or body.

For each of these categories there is a complex array of limits at which notification to and/or authorisation from the relevant competent authority is required. For example,

transfers for personal remittances above €10,000 require notification in advance; transfers above €40,000 must be authorised in advance.

European credit and financial institutions are also required: to exercise continued vigilance over customer account activity; to ensure that in payment instructions all information fields which relate to the originator and beneficiary of the transaction are completed and if not, refuse the transaction; to keep all transactional records for a period of five years and produce them to national authorities on request; and if they have reasonable grounds to suspect that activities may be in breach of the Regulation, to report those suspicions to the financial intelligence unit or other relevant competent authority.

Trade

Information Security Systems

It is prohibited to sell, supply, transfer or export to Iran the goods or technology listed at Part C of Annex I. These items include certain systems and equipment designed or modified to use “cryptography” for information security purposes; and software for the same purpose.

Contracts concluded prior to 22 December 2012 may be executed, provided that this is done before 15 April 2013; as these items are designated “dual use equipment” under Regulation (EC) No 428/2009, the relevant permissions should be sought.

Key equipment for the oil and gas industry

Under a revised Article 8, the list of key equipment for the oil and gas industry that may not be sold, supplied, transferred or exported to Iran has been expanded with the inclusion of a new Annex VIA, which includes items such as casing, tubing and drill pipe (of a kind used in drilling for oil and gas); line pipe of a kind used for oil or gas pipelines; and containers for compressed or liquefied gas, of iron or steel.

As previously, it is also prohibited to provide, directly or indirectly, technical assistance, financial assistance or brokering services for any of these items to any Iranian person, entity or body, or for use in Iran.

Contracts for the key equipment and technology for the oil and gas industry listed in the original Annex VI may be executed up to 15 April 2013, provided that these contracts were concluded prior to 27 October 2012, or if they are required by a contract or agreement concluded prior to 26 July 2010 and relate to an investment in Iran made before 26 July 2010.

Contracts for key equipment and technology used in the petrochemical industry (also listed in Annex VI) may be executed up to 15 April 2013, provided that these contracts were concluded prior to 24 March 2012, or if they are required by a contract or agreement concluded prior to 23 January 2012 and relate to an investment in Iran made before 23 January 2012.

Contracts for the key equipment and technology for the oil and gas industry and petrochemical industry listed in the original Annex VIA may be executed up to 15 April 2013, provided that these contracts were concluded prior to 16 October 2012, or if they are required by a contract or agreement concluded prior to 26 July 2010 (for the oil and gas industry) or 23 January 2012 (for the petrochemicals industry) and relate to an investment in Iran made before those respective dates.

Any obligations arising from contracts concluded before the relevant dates are also not prohibited from being fulfilled. It is also permitted to provide technical assistance intended solely for the installation of equipment and technology which may be sold, supplied, transferred or exported to Iran.

Any persons wishing to engage in such a transaction or provide such assistance must notify the relevant competent authority (in the United Kingdom, HM Treasury) 20 working days in advance of that transaction.

Naval Equipment and Technology

It is prohibited to sell, supply, transfer or export key naval equipment and technology, as listed at Annex VIB, directly or indirectly to any Iranian person, entity or body, or for use in Iran. These items include equipment or technology for ship building, maintenance or refit, and for the construction of oil tankers. It is also prohibited to provide technical assistance, financial assistance or brokering services related to the provision, manufacture, maintenance and use of the items listed at Annex VIB.

It is permitted to fulfill existing contracts, provided that they were entered into prior to 22 December 2012, and are executed by 5 February 2012.

If a vessel which is not Iranian owned or controlled has been forced into an Iranian port or territorial waters by reason of force majeure, the prohibition above does not apply.

Software for integrating industrial processes

It is prohibited to sell, supply, transfer or export software for integrating industrial processes, as listed at Annex VIIA, to any Iranian person, entity or body, or for use in Iran. These items are those typically used by industries controlled directly or indirectly by the Islamic Revolutionary Guard Corps, or items relevant to Iran's nuclear, military or ballistic missile programme.

It is further prohibited to provide technical assistance, financial assistance or brokering services in respect of the above items.

Contracts entered into prior to 22 December 2012 may be executed until 15 January 2013.

Natural Gas

Under a new Article 14a, it is now prohibited to import into the European Union, purchase or transport natural gas from Iran, or of Iranian origin; it is also prohibited to swap¹ natural gas which originates in Iran or has been exported from Iran. The same prohibition on providing financing or financial assistance, including financial derivatives, as well as insurance and reinsurance, for the export of Iranian natural gas to anywhere in the world, its purchase or transport, or the swapping of natural gas, also applies.

There are some exceptions to this prohibition. It is permitted to import into the EU, purchase or transport natural gas that has been exported from a State other than Iran, where the exported gas has been combined with gas of Iranian origin, provided that the gas is combined within the infrastructure of a State other than Iran.

Additionally, nationals of EU Member States may purchase natural gas within Iran for civilian purposes for residential heating or power, or for the maintenance of diplomatic missions; and contracts for the delivery of natural gas originating in a State other than Iran into the Union are not prohibited.

Graphite and other unfinished or raw metals

Under a new Article 15a, it is prohibited to sell, supply, transfer or export graphite and raw or semi-finished materials, such as aluminium or steel, as listed in Annex VIIIB, to any Iranian person, entity or body, or for use in Iran. It is also prohibited to provide technical assistance, financial assistance or brokering services in respect of the same.

The items listed at Annex VIIIB are those items relevant to industries controlled directly or indirectly by the Islamic Revolutionary Guard Corps, or which are relevant to Iran's nuclear, military or ballistic missile programme.

Contracts concluded prior to 22 December 2012 may be executed until 15 April 2013.

Marine

Bunkers

Under Article 11 of Regulation 267/2012, it was prohibited to import into the European Union, purchase or transport crude oil from Iran, or of Iranian origin, or to provide financing or financial assistance, including financial derivatives, as well as insurance and reinsurance, for the export of Iranian oil to anywhere in the world, or its purchase or transport. There were certain exceptions under Article 12, which (amongst other things) permitted the fulfilment of previously existing contracts, provided that these were executed by 1 July 2012.

These exceptions to that prohibition have now been expanded to include the purchase of bunker oil produced and supplied by a third country other than Iran, intended for the propulsion of the engines of vessels; and the

purchase of bunker oil for the propulsion of the engines of a vessel which has been forced into an Iranian port, or Iranian territorial waters, under force majeure.

However, as previously, the relevant competent authority must be notified of this transaction or activity at least 20 working days in advance.

Oil tanker and cargo vessel services

It is prohibited to provide any of the following to vessels flying the flag of the Islamic Republic of Iran:

- classification services
- the supervision of and participation in the design, construction and repair of ships, including blocks, elements, machinery, electrical installations and control installation, and related technical assistance, financing and financial assistance
- the inspection, testing and certification of marine equipment, materials and components, as well as the supervision of the installation on board and supervision of system integration, and
- the carrying out of surveys, inspections, audits and visits and the issuance, renewal or endorsement of the relevant certificates and documents of compliance, on behalf of the flag State administration, in accordance with various protocols including (but not limited to) the International Convention of the Safety of Life at Sea 1974, and the International Convention for the Prevention of Pollution from Ships 1973

It is also prohibited to make available vessels designed for the transport or storage of oil and petrochemical products to any Iranian person, entity or body, or to any other person, entity or body, unless the providers of vessels have taken appropriate action to prevent the vessel from being used to carry or store oil or petrochemical products that originate in Iran or have been exported from Iran.

Discussion

The implementation of 1263/2012 has only served to complicate what was already a remarkably intricate assortment of prohibitions and exemptions. It will be necessary to continue to assess on a case by case basis whether an activity with a sanctions touchpoint will be permitted or prohibited, as this is a fact which will turn on the merits of each case's individual circumstances.

In order to prevent inadvertent breaches of sanctions, adequate due diligence should be carried out on all potential transactions, and contracts should contain a sanctions clause. However, neither of these should be relied on alone for protection.

Over the coming weeks, Clyde & Co will be providing further in depth analysis of the major themes of Regulation 1263/2012, including dedicated updates focused on the Marine, Financial and Trade restrictions it imposes.

¹ "To swap" means to exchange natural gas streams of different origins.

Further information

If you would like further information on any issue raised in this update please get in touch with any of the key contacts listed on our sanctions microsite, **sanctions.clydeco.com** or contact:

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