

IRAN SANCTIONS UPDATE: THE NEW REGULATION

London
Paris
Rouen
Brussels
Geneva
Piraeus
Dubai
Hong Kong
Shanghai
Singapore
Melbourne
Sydney

The new Regulation No 961/2010 (the “Regulation”), which applies to business done in whole or in part within the EU, and also to those based in the EU, is wide-ranging and impacts on the business operations of buyers, sellers and transporters of goods, as well as related industries (e.g. brokers, financial institutions, insurers and reinsurers).

As well as a freeze of funds and resources of restricted persons, and prohibitions on trade in restricted materials, there are prohibitions which affect those who enter into investments or joint ventures with Iranian enterprises or make or receive funds from entities in Iran. Of particular interest to the shipping community are (i) the prohibition (with some important derogations) on the provision of insurance to the Government

of Iran and Iranian nationals and (ii) the prohibitions affecting IRISL, including cargoes on board vessels which are owned or chartered by IRISL and related companies, and which are in ports of Member States.

Background

The European Union sanctions regime against Iranian entities was initially contained in Council Regulation No. 423/2007 of 19 April 2007. This regime was broadened with the publication of Council Regulation No. 668/2010 on 26 July 2010 which amended parts of the earlier regulation. On the same day, the Council of the European Union (the “Council”) also adopted Decision 2010/413/CFSP, which contained wide ranging measures in the areas of trade, financial services, energy, transport and asset freezing. The Decision stated that further implementing measures would have to be taken in order to give it full effect.



As a result, on 31 August 2010, the Council began the implementation process by publishing a proposal for a new Council Regulation.

Regulation No 961/2010

The Regulation was published on 27 October 2010. The Regulation gives effect to the EU sanctions in one consolidated regime, and repeals the previous Regulation No 423/2007. The Regulation confirms all of the restrictive measures taken against Iran since 2007 and provides for additional measures in order to comply with UN Security Council Resolution 1929 (2010).

The restrictive measures contained within the Regulation comprise in particular:

- additional restrictions on trade in dual-use goods and technology and equipment which might be used for internal repression;
- restrictions on trade in key equipment for, and on investment in, the Iranian oil and gas industry;
- restrictions on Iranian investment in the uranium mining and nuclear industry;
- restrictions on transfers of funds to and from Iran;
- restrictions concerning the Iranian banking sector;
- restrictions on Iran's access to the insurance and bonds markets of the EU; and
- restrictions on providing certain services to Iranian ships and cargo aircraft.

The Regulation also provides for additional categories of persons to be made subject to the freezing of funds and economic resources. This includes a provision prohibiting the loading and unloading of cargoes on and from vessels owned or chartered by the Islamic Republic of Iran Shipping Lines ("IRISL"). However, the Regulation provides that the obligation to freeze economic

resources of designated entities of IRISL does not mean that vessels owned by such entities or cargoes (belonging to third parties) carried by such vessels need to be impounded or detained.

The Regulation has direct effect in all Member States of the EU, and applies:

- within the territory of the EU;
- to any aircraft or vessel under a Member State's jurisdiction;
- to any national of a Member State, wherever they are located;
- to any person, body or entity incorporated or constituted under the law of a Member State; and
- to any legal person, body or entity in respect of any business done in whole or in part within the EU.

The Regulation applies to buyers, sellers and transporters of goods, as well as brokers (as defined), financial institutions, insurers and reinsurers.

Goods, technology and identified persons and entities

The provisions of the Regulation make reference to specific categories of goods and technology, details of which are found in the annexes to the Regulation. Trade in these items is generally prohibited (although it is possible to seek authorisation in the case of goods within Annex IV).

Annexes I, II, III and IV identify prohibited goods and technology which, in broad terms, may be used in Iran's nuclear and arms industries, including dual use items, as well as equipment which might be used for internal repression.

Annex VI contains a list of key equipment used in the oil and gas industry. Annexes VII and VIII contain lists of identified persons, entities and bodies to which the provisions of certain articles apply. Annex IX contains a list of specific credit and financial institutions to which the Regulation applies.

Export and import restrictions

The Regulation includes a prohibition on the direct or indirect sale, supply, transfer or export to any person or entity in, or for use in, Iran, or to an Iranian entity, certain goods, technology or equipment which are set out in the annexes. This prohibition applies whether or not such goods, technology or equipment originates within the EU. This specifically includes goods and technology which could contribute to Iran's enrichment-related, reprocessing or heavy-water-related activities, or to the development of nuclear weapon delivery systems, or to the pursuit of activities about which the IAEA has expressed concerns.

The Regulation allows for Member States to grant authorisation for certain goods contained within Annex IV to be sold, supplied, transferred or exported to any Iranian entity, provided that such authorisation is granted within strict parameters as set out in the Regulation.

It is further prohibited to purchase, import or transport the specific goods and technology set out in Annexes I to III from Iran, whether or not the item in question originates in Iran.

The Regulation prohibits the provision of technical assistance, whether directly or indirectly, to entities in Iran in relation to specific goods and technology and to equipment which might be used for internal repression.

Energy

There is a specific prohibition on the sale, supply, transfer or export of specific goods and technology used in the oil and gas industry to any entity in, or for use in, Iran, if that entity is engaged in any of the following activities:

- exploration of crude oil and natural gas;
- production of crude oil and natural gas;

- refining; and
- liquefaction of natural gas.

It is also prohibited to provide technical assistance or brokering services related to specific goods and technology used in the oil and gas industry, or related to the manufacture of such goods and technology, to an entity in, or for use in, Iran if that entity is involved in any of the activities mentioned above. Finally, it is prohibited to enter into any cooperation (which is widely defined) with any Iranian entity engaged in the transmission of natural gas.

There are certain exceptions to these prohibitions where the provision of goods, technology or assistance relates to a trade contract concluded before 26 July 2010 and where certain conditions are met.

Restrictions on financing of certain enterprises

The Regulation prohibits the granting of any financial loan to, the acquisition of a participation in, or the creation of a joint venture with any Iranian entity which is engaged in the manufacture of specified goods or technology, the manufacture of equipment which might be used for internal repression or the exploration of crude oil and natural gas, the refining of fuels or the liquefaction of natural gas. Production of crude oil and natural gas includes bulk gas transmission services for the purpose of transit or delivery to directly interconnected grids.

There is provision for the competent authorities of Member States to grant authorisation for the making of investments in relation to goods specified in Annex IV. However, such authorisation cannot be made where the investment might contribute to Iran's enrichment-related, reprocessing or heavy water-related activities, the development of nuclear weapon delivery systems or the

pursuit of other activities about which the IAEA has expressed concerns.

It is specifically prohibited to accept or approve that an investment be made by an Iranian enterprise or by a person or entity in Iran, in an enterprise engaged in the following activities:

- uranium mining;
- uranium enrichment and reprocessing of uranium;
- the manufacture of certain goods and technology.

Freezing of funds and economic resources

All funds and economic resources which belong to or are owned, held or controlled by the specific bodies listed in Annexes VII and VIII, are to be frozen, and no funds or resources are permitted to be made available for the benefit of these specific people and entities. The prohibition extends to persons and entities who are not specifically identified, but who are engaged in, directly associated with or provide support for Iran's nuclear activities or the development of nuclear weapon facilities.

The Regulation specifically provides for the freezing of funds and economic resources of IRISL and of designated entities owned or controlled by IRISL. Pursuant to this obligation, it is specifically prohibited to load and unload cargoes on and from vessels owned or chartered by IRISL or by such entities in ports of EU Member States. This prohibition does not, however, prevent the execution of a contract concluded before the entry into force of the Regulation. The obligation to freeze the funds and economic resources of IRISL and specific entities owned by IRISL does not require vessels owned by such entities to be impounded or detained.

Member States are permitted to authorise the release of frozen funds in certain narrow circumstances as set out in the Regulation; these circumstances include the release of funds necessary to satisfy the basic needs of the specific people listed in the annexes and their dependent family members.

Financial or credit institutions are permitted to credit frozen accounts with funds transferred to them, provided that the additional funds are also frozen on receipt. In such a situation, the financial institution is under an obligation to inform the competent authority of the relevant Member State.

Restrictions on transfers of funds and on financial services

The Regulation sets out specific provisions concerning the transfer of funds to Iranian entities. Transfers on transactions regarding foodstuffs, healthcare, medical equipment or for humanitarian purposes can be carried out without prior authorisation, as can all other transactions below EUR 40,000; any transactions within these categories should be notified in writing to the competent authorities of the relevant Member State if it is above EUR 10,000. Transactions above EUR 40,000 require prior authorisation from the competent authority of the relevant Member State. Such authorisation is to be given unless the authority has reasonable grounds to believe that the transaction would contribute to:

- Iran's enrichment-related, reprocessing or heavy water-related activities;
- the development of nuclear weapon delivery systems by Iran;
- the pursuit by Iran of activities about which the IAEA has expressed concerns; or



- prohibited activities relating to the exploration or production of crude oil and natural gas, or refining or liquefaction of natural gas.

Credit and financial institutions are required to exercise particular vigilance over their accounts and in meeting their obligations relating to money laundering and financing of terrorism. There are prohibitions on opening bank accounts with financial institutions domiciled in Iran, establishing correspondent banking relationships with financial institutions in Iran, opening representative offices in Iran and establishing joint ventures with financial institutions in Iran.

The Regulation specifically prohibits the sale or purchase of public bonds issued after 26 July 2010 to specified categories of people, including Iran or its Government and public bodies, and credit or financial institutions domiciled in Iran (including the Central Bank of Iran).

Insurance

It is prohibited to provide insurance or re-insurance to the Government of Iran and its public bodies, an Iranian person or entity (other than a natural person), or a person acting on behalf of or at the direction of either of these groups. However, this does not prevent the provision of insurance to the owner of a vessel which is chartered to the Government of Iran and its public bodies, or to an Iranian person or entity, which is not listed in the annexes. It also does not

prevent the provision of compulsory or third party insurance to Iranian persons or entities based in the EU. Further, a person is not considered to act at the direction of a body where that direction is for the purposes of docking, loading, unloading or safe transit of a vessel temporarily in Iranian waters.

The extension or renewal of insurance contracts entered into prior to the entry into force of the Regulation is prohibited, but the Regulation does not prohibit compliance with agreements concluded before that date.

Restrictions on transport

When goods are brought into or leave the customs territory of the EU from or to Iran, all pre-arrival and pre-departure information is to be submitted to the customs authority of the relevant Member State. Further, the person responsible for submitting the information is under an obligation to declare whether the goods are covered by the Regulation or by the Common Military List of the EU. If the customs authority has reason to believe that prohibited goods are being carried, they are obliged to inspect the cargo.

Member States are prohibited from providing services to vessels or cargo aircraft owned or controlled by an Iranian person or entity where the pre-arrival or pre-departure information gives the relevant customs authority reason to believe

that the vessel or aircraft is carrying goods whose supply, sale, transfer or export is prohibited under the Regulation. These restrictions apply until such time as the cargo has been inspected and, if necessary, seized or disposed of.

Enforcement

The individual Member States are responsible for enforcing the Regulation and are required to lay down rules on penalties applicable to infringements of the Regulation which are “effective, proportionate and dissuasive”. The Regulation “respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably the right to an effective remedy and to a fair trial, the right to property and the right to protection of personal data” and the Member States are required to enforce the Regulation in accordance with those rights.

For more information, please contact [Anthony Woolich](mailto:anthony.woolich@hfw.com), Partner, on +44 (0)20 7264 8033 or anthony.woolich@hfw.com, or [Mark Morrison](mailto:mark.morrison@hfw.com), Partner, on +44 (0)20 7264 8396 or mark.morrison@hfw.com, or [Daniel Martin](mailto:daniel.martin@hfw.com), Associate, on +44 (0)20 7264 8189 or daniel.martin@hfw.com, or your usual contact at HFW.

Lawyers for international commerce hfw.com

HOLMAN FENWICK WILLAN LLP
Friary Court, 65 Crutched Friars
London EC3N 2AE
T: +44 (0)20 7264 8000
F: +44 (0)20 7264 8888

© 2010 Holman Fenwick Willan LLP. All rights reserved

Whilst every care has been taken to ensure the accuracy of this information at the time of publication, the information is intended as guidance only. It should not be considered as legal advice.

Holman Fenwick Willan LLP incorporates the firm's London, Paris, Rouen, Brussels and Shanghai offices. Holman Fenwick Willan Middle East LLP incorporates the firm's Dubai office. Holman Fenwick Willan International LLP incorporates the firm's Piraeus office. Holman Fenwick Willan Singapore LLP incorporates the firm's Singapore office. Our practices in Hong Kong, Melbourne and Sydney remain as partnerships.

Holman Fenwick Willan LLP is the Data Controller for any data that it holds about you. To correct your personal details or change your mailing preferences please contact Craig Martin on +44 (0)20 7264 8109 or email craig.martin@hfw.com