

IRAN SANCTIONS UPDATE: THE EU ANNOUNCES NEW RESTRICTIVE MEASURES



Following detailed discussions throughout December and January, the European Union has agreed on new restrictive measures against Iran, in response to ongoing concerns about the nature and scope of Iran's nuclear programme. The measures supplement the extensive sanctions which are already in place against Iran.

The measures are contained in European Council (the "Council") Decision 2012/35/CFSP (the "Decision"), which was published on 24 January 2012. The Decision is binding only on the Member States of the EU and an implementing Regulation is required before the measures directly bind individuals and companies. The implementing Regulation is expected shortly.

The measures in the Decision will be of primary concern to those companies which trade in Iranian crude oil, petroleum products, petrochemical products and/or equipment for the Iranian petrochemical industry, as well as those companies which engage in related transactions, including shipping, insurance or financing of those cargoes. Those companies should carefully review their existing contracts and commitments now, in order to identify the extent to which the increased restrictions may affect them, as and when the implementing Regulation is published.

Summary

Once implemented, the new measures in the Decision will:

- Prohibit the import, purchase and transport of Iranian oil, petroleum products and petrochemical products, subject to a transitional period (considered in detail below) for contracts concluded prior to 23 January 2012. The provision of financial assistance (which for this prohibition alone expressly includes insurance) in relation to such transactions is also prohibited.
- Prohibit the supply of key equipment and technology for the Iranian petrochemical industry, thereby extending the scope of the existing ban for the oil and gas sectors. There is a transitional period, considered in detail below.
- Prohibit the provision to enterprises in Iran, or Iranian enterprises elsewhere, of technical and financial assistance relating to key equipment and technology for the Iranian petrochemical industry.



- Prohibit the granting of financial loans to, and the acquisition of shares in, Iranian companies involved in the petrochemical industry, thereby extending the scope of the existing ban for the oil and gas sectors. There is a transitional period, considered in detail below.
- Prohibit the sale, purchase, transportation or brokering of gold, precious metals and diamonds to the Iranian government and persons associated with it, and prohibit the provision of newly printed Iranian banknotes and coinage to or for the benefit of the Central Bank of Iran.

Once implemented, the prohibitions are expected to apply in accordance with the usual provisions on jurisdiction (ie they will apply, inter alia, to transactions by nationals of EU Member States, transactions within the territory of EU Member States, and to the use of vessels or aircraft under the jurisdiction of EU Member States).

Two Regulations have already been published, pursuant to the Decision, and as such, bind EU individuals and companies. Regulation 54/2012 adds, amongst others, the Central Bank of Iran, Bank Tejarat, and Tidewater Middle East Co. (which has operations at seven of the main ports in Iran) to the asset freezing list. Regulation 56/2012 carves out an exemption for certain transactions by the Central Bank of Iran and Bank Tejarat (see below).

When it is published, the Regulation implementing the remainder of the Decision will likely implement the restrictive measures with immediate effect. This means that when considering the availability of exemptions, the applicable date may be the date set out in the Decision (23 January 2012), rather than the date of the Regulation. Companies will therefore need to consider very carefully in the period prior to publication of the Regulation whether to enter into any new arrangements which may be subject to the prohibitions in the Regulation.

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The ban on imports of Iranian crude oil, petroleum products, and petrochemical products

The Decision prohibits the import, purchase, or transport of Iranian crude oil, petroleum products, and petrochemical products. The provision of financial assistance (including insurance) in relation to such transactions is also prohibited. The Decision provides exemptions in relation to:

- The execution of contracts concluded before 23 January 2012, provided those contracts are executed on or before 1 July 2012 (in relation to crude oil and petroleum products), or on or before 1 May 2012 (in relation to petrochemical products).
- The execution of ancillary contracts necessary for the execution of such contracts, provided they are executed on or before 1 July 2012 (in the case of crude oil and petroleum products) or 1 May 2012 (in the case of petrochemical products). "Ancillary contracts" is not defined in the Decision, so there is some uncertainty as to the meaning and scope of this exemption.
- The execution of obligations provided for in contracts concluded before 23 January 2012, or in ancillary contracts, where the supply of Iranian crude oil, petroleum products or petrochemical products, or the proceeds derived from their supply, are for the reimbursement to EU persons or entities of outstanding amounts. The entitlement to reimbursement must be specifically provided for in a contract concluded before 23 January 2012. There is no long stop date for this exemption.

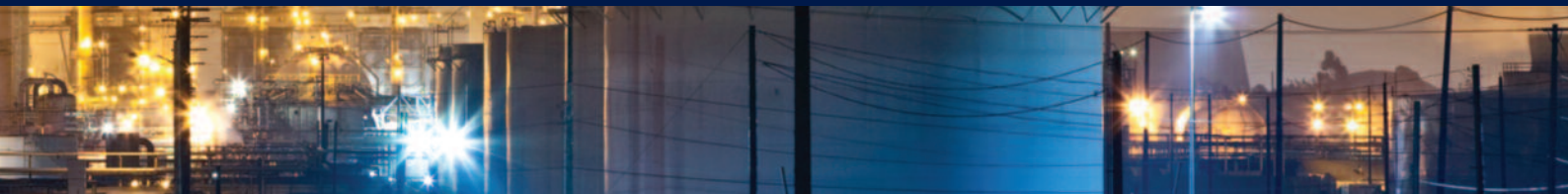
The Decision stipulates that the prohibition on the import, purchase, or transport of Iranian crude oil and petroleum products shall be reviewed by 1 May 2012, to take into account the effect (in terms of availability and price) which that ban has on imports into the EU of non-Iranian crude oil and petroleum products.

The prohibition of the supply of key equipment and technology to the Iranian petrochemical sector

The Decision also extends some of the existing restrictive measures imposed on the Iranian oil and natural gas industries to its petrochemical industry, as follows:

- The sale, supply, or transfer of key equipment and technology for the petrochemical industry in Iran, or to Iranian or Iranian-owned enterprises engaged in that industry outside Iran is prohibited.
- The provision of technical assistance or training, or the provision of financial assistance to enterprises in Iran (or Iranian enterprises elsewhere) in relation to such equipment is prohibited.

These new prohibitions in relation to petrochemicals do not apply to the performance of certain obligations arising from contracts concluded before 23 January 2012 (for pre-existing prohibitions for the oil and natural gas industries, the exemption relates to contracts concluded before 26 July 2010). There is no long stop date for this exemption.



Prohibition on financial assistance and shareholdings in the Iranian petrochemical sector

There is already a ban in place on the granting of financial loans or credit to, or the acquisition or extension of participations in, or the creation of joint ventures with, enterprises in the Iranian oil and gas industry. This ban has now been extended to the Iranian petrochemical industry, but with an exemption for obligations arising from contracts concluded before 23 January 2012. There is no long stop date for this exemption.

Prohibition on trading in precious metals, diamonds and currency

The sale, purchase, transportation or brokering of gold and precious metals, as well as of diamonds, to or from the Iranian government or its various affiliates (for example, the Central Bank of Iran) is now prohibited. The delivery of newly printed banknotes and coins to or for the benefit of the Central Bank of Iran is also prohibited.

The asset freezing provisions: Regulations 54/2012 and 56/2012

Regulation 54/2012 adds the Central Bank of Iran, Bank Tejarat, and Tidewater Middle East Co., amongst others, to the list of persons who are subject to an asset freeze.

All funds and economic resources belonging to, owned, held or controlled by such persons are frozen. EU companies and individuals are prohibited from making funds or economic resources available, directly or indirectly, to or for the benefit of such persons.

There is also a prohibition on participating in activities the object or effect of which is, directly or indirectly, to circumvent the asset freeze.

Regulation 56/2012 provides that the following shall be permitted where the EU Member State in which the relevant bank account is held has determined (on a case-by-case basis) that the transfer shall not benefit another person whose assets have been frozen:

- A transfer **by** or through Central Bank of Iran of funds or economic resources received and frozen after the date of its designation, or
- A transfer of funds or economic resources **to** or through Central Bank of Iran where the transfer is related to a payment by a person or entity who is not a designated person, and is due in connection with a specific trade contract.

Transfers made by or through the Central Bank of Iran in order to provide financial institutions within the EU with liquidity for the financing of trade are also permitted, provided that the relevant EU Member State has authorised the transfer.

Until 23 March 2012, Bank Tejarat is also permitted to make transfers from frozen accounts, and to receive payments into frozen accounts, where the payment is due in connection with a specific trade contract and the relevant Member State has determined (on a case-by-case basis) that the transfer shall not benefit another person whose assets have been frozen.

The Decision provides that payments to the Central Bank of Iran under the exemption for the execution of pre-existing contractual arrangements will not constitute an infringement of the asset freezing regulations.

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