

Sweeping Economic Sanctions Against Iran: Now What?

Law360, New York (August 24, 2010) -- On July 26, 2010, the Council of the European Union imposed a sweeping new set of economic sanctions against Iran, exceeding the United Nations sanctions adopted on June 9, 2010,[1] and rivaling U.S. measures implemented through the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010.[2]

The decision was published July 27, 2010, (L. 195/39) (the "EU decision") and expresses the common position of the governments of the 27 member states. A council regulation will subsequently be issued enforcing the EU decision, which will probably amend prior EU legislation on this subject, including council regulation number 423/2007, as amended by council regulation number 1110/2008, concerning restrictive measures against Iran.

The new EU measures target not only Iran's nuclear program, but also its energy, transport, banking and insurance sectors.

In short, in addition to freezing assets of those targeted under the U.N. sanctions and imposing travel bans, the EU measures (1) prohibit the "sales supply or transfer of key equipment and technology" to Iran for use in the following sectors of Iran's oil and gas industry: exploration, production and refining, and all sectors of Iran's liquefied natural gas industry; (2) impose restrictions on financial transactions with Iran, including notification of any transaction exceeding €10,000 and prior approval of transactions exceeding €40,000; and (3) prohibit the provision of insurance and reinsurance to the Iranian government and its related entities and enterprises.

New U.S. Measures

The new U.S. law establishes a far-reaching set of unilateral sanctions targeting foreign companies that support Iran's energy sector and assist Iran's effort to gain increased access to refined petroleum products.[3]

The new U.S. law requires the president to impose sanctions on foreign persons who engage in certain activities related to Iran's oil and natural gas industries, including, among others, (i) making an investment (including the entry into, performance or financing of a contract to sell or purchase goods, services or technology for the development of Iran's energy resources) of more than \$20 million annually in Iran's energy sector; (ii) making a combination of investments of at least \$5 million that in the aggregate equal or exceed \$20 million in any 12-month period and that "directly or indirectly significantly contribute" to enhancing Iran's ability to develop petroleum resources; and (iii) selling, leasing or providing to Iran goods, services, technology, information or support valued at \$1 million or more, or \$5 million or more over a 12-month period, that could either (a) "directly and significantly facilitate" the maintenance or expansion of Iran's domestic production of refined petroleum products or (b) directly and significantly "contribute to the enhancement of Iran's ability to import refined petroleum products."

The potentially sanctionable activities with respect to imports of refined petroleum products include (i) underwriting or entering into a contract to provide insurance or reinsurance for the sale, lease or provision of such goods, services, technology, information or support, (ii) financing or brokering such sale, lease or provision or (iii) providing ships or shipping services to deliver refined petroleum to Iran.

The General Accounting Office issued a report May 12, 2010, identifying 41 foreign companies, including a number of European companies, that have commercial activities in the Iranian oil, gas and petrochemical sectors and that could potentially be regarded as sanctions targets by the president and the secretary of state.

In fact, press reports also indicate that the secretary of state has drawn up a list of companies that may be subject to sanctions under the new law.

Notwithstanding, the president has some flexibility in imposing sanctions under the new law, including limited authority to waive the imposition of sanctions against individuals or foreign companies located in countries that cooperate with multilateral efforts against Iran.

New EU Sanctions Against the Oil and Gas Industry

The EU decision prohibits the “sale, supply or transfer of key equipment and technology” to Iran for the refining, liquefied natural gas, exploration, and production sectors of its oil and gas industry, or to Iranian or Iranian-owned firms engaged in these sectors, in Iran or abroad, by nationals of EU member states or from the territories of such member states, or using vessels or aircrafts under the jurisdiction of a member state.

Unlike the new U.S. law, which applies generally to “goods, services, technology, information or support,” the prohibition established by the EU decision concerns specific “key equipment and technology.”

Also, in contrast to the new U.S. law, which has certain actionable thresholds, the EU decision provides that a list of the specific items to be encompassed by the prohibition will be established (probably in a future council regulation).

The EU decision also prohibits the provision of technical assistance, training or other services related to such key equipment and technology and the provision of financing or financial assistance for the sale, supply or transfer of such key equipment and technology.

In addition, the EU decision prohibits the acquisition or extension of participation in enterprises in Iran, or Iranian-owned enterprises outside Iran, engaged in the production of liquefied natural gas, or the refining, exploration or production sectors of the Iranian oil and gas industry.

Likewise, the EU decision prohibits the granting of any loans or credit facilities to Iranian enterprises, or Iranian-owned enterprises outside Iran, engaged in those sectors.

These prohibitions are without prejudice to the performance of obligations resulting from contracts concluded prior to the EU decision.

New EU Sanctions Affecting the Banking and Financial Sectors

The EU decision contains potentially far-reaching prohibitions relating to other sectors of Iran’s economy, including its banking and financial sectors.

Pursuant to Article 8 of the EU decision, the member states “shall exercise restraint” in entering into new short-term commitments for public and private financial support for trade with Iran, including “export credits, guarantees or insurance to their nationals involved in such trade.”

Under Article 9 of the EU decision, the member states undertake not to enter into new commitments for “grants, financial assistance or concessional loans to the government of Iran,” except for “humanitarian and developmental purposes.”

The member states shall also perform enhanced monitoring of the financial institutions located in their jurisdictions as concerns their relationship with Iranian banks, including the central bank of Iran, and branches and subsidiaries of such institutions located in their jurisdictions.

Moreover, the EU decision prohibits the opening of new branches, subsidiaries or representative offices of Iranian banks in the territory of the member states.

In addition, the transfer of funds to and from Iran will be regulated. Transfers with respect to transactions concerning foodstuffs, health care, or medical equipment or for humanitarian purposes will be not be subject to prior authorization.

However, transfers of funds in excess of €10,000 will require notification to the competent national authorities, whereas transfers in excess of €40,000 will require prior authorization.[4]

The provision of insurance and reinsurance to the government of Iran, or to “entities incorporated in Iran or subject to Iran’s jurisdiction or to any individuals acting on their behalf at their direction or to entities owned or controlled by them,” is prohibited.

Likewise, the direct or indirect sale or purchase, or brokering in the issuance of public or publicly guaranteed bonds to and from the government of Iran, the Central Bank of Iran, or banks and other financial institutions whose principal place of business is located in Iran and their subsidiaries and branches located in Iran or abroad, or institutions located abroad but under the control of persons domiciled in Iran, is prohibited.

Targeted Actions Against Individuals and Entities

The EU decision also implements restrictions on admissions and asset freezes against individuals and entities targeted by the U.N.

It implements restrictions on admissions to the EU of those nationals and designated persons that are listed in the Annex to U.N. Security Council Resolution 1737 (2006) and all those that may be added to the list by the Security Council or the committee in accordance with paragraph 10 of Resolution 1737.

In addition, all funds and economic resources that “belong to, are owned, held or controlled directly or indirectly by” those persons and entities listed in the Annex to U.N. Security Council Resolution 1737 (2006) or that have been or become designated by the Security Council or the committee in accordance with paragraph 12 of Resolution 1737 and paragraph 7 of U.N. Security Council Resolution 1803 (2008), as well as IRGC (Iranian Revolutionary Guard Corps) individuals and entities and IRISL (Islamic Republic of Iran Shipping Lines) entities designated by the Security Council, are frozen.[5]

No funds shall be made available, directly or indirectly, to those persons or entities except in the limited cases that are provided in the EU decision, which concern, inter alia, funds or resources necessary to satisfy basic needs.

Potential Effects of the New Sanctions

The new economic sanctions appear to be increasing pressure on Iran’s economy, but they will also impact a number of European companies, especially those in the oil and gas industry.

Certain European companies have already announced their decision to stay projected investments, notably in Iran’s South Pars region. In fact, in statements made in hearings before the U.S. Congress, U.S. officials have contended that major international oil companies will not undertake any new business activity in Iran until the sanctions issues can be resolved.[6]

Reports in the Wall Street Journal and other news organizations indicate that Iran's gasoline imports have declined by nearly 50 percent since the new sanctions were imposed.

Companies involved in the oil and gas industry should carefully review their exports of equipment and technology to Iran.

Although the complete list of items of equipment and technology has not yet been established by the EU, companies that are active in the oil and gas industry should review their current operations to determine the potential impact of the new sanctions.

However, companies in the oil and gas industry are not the only companies that will be affected. Companies involved in banking and finance, as well as insurance and reinsurance, should also carefully review their activities and compliance programs to ensure that they reflect the full extent of the new sanctions, including the new U.S. law that specifically targets foreign companies.

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The opinions expressed are those of the authors and do not necessarily reflect the views of the firm, its clients or Portfolio Media, publisher of Law360.

[1] See U.N. Security Council Resolution 1929 (2010).

[2] H.R. 2194, signed into law July 1, 2010.

[3] A more detailed explanation of the new U.S. law is provided in "New U.S. Sanctions Law Targets Foreign Support for Iran's Petroleum Industry," Willkie Farr & Gallagher LLP Client Memorandum dated July 13, 2010.

[4] The competent national authorities, which will be specified in the implementing council regulation, will probably be the same ones as those that are currently listed in Annex III of council regulation number 423/2007.

[5] A number of (but not all) Iranian banks appear on this list. Authorized transactions (i.e., those that are authorized under the new set of sanctions or those that fall outside the scope of the new sanctions) should therefore pass through Iranian banks that do not appear on the list.

[6] See Daily Report for Executives: News Archive (07/30/2010), Regulation & Law, International Trade: Officials Cite Distancing by Firms From Iran, Chart Enforcement Outlook (145 DER A-16).

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