

EXTENSION OF CURRENT IRAN SANCTIONS

On 15 October 2012, the European Union Council (the “Council”) decided that the current sanctions against Iran should be extended in light of its concerns over Iran’s nuclear programme and the need for Iran to comply with all of its international obligations, including full implementation by Iran of UN Security Council and IAEA Board of Governors Resolutions (the “Council’s Decision”).

In summary, the Council agreed to additional restrictive measures in the financial, trade and transport sectors. It also designated additional entities involved in the oil and gas industry for sanctions. In addition, it extended the prohibitions on payments between European and Iranian banks unless authorised in advance. We have set out below further detail on the key proposed changes. It is important to note that there are different transitional provisions with respect to these new measures.

Council Decision 2012/635/CFSP of 15 October 2012

The Council’s Decision of 15 October 2012 amends Decision 2010/413/CFSP concerning restrictive measures against Iran. Following the Council’s Decision, a new EU Regulation, no. 945/2012, dated 15 October 2012, implemented the further asset-freezing measures contained in the Council’s Decision. As a consequence, one individual and 34 entities were added to the list of those subject to asset freezing and seven individuals and three entities were removed from the list. Amendment was made to the identifying information of one existing entry. As a result of the new EU Regulation, the asset-freezing measures contained within the Council’s Decision have immediate effect.

With respect to the other measures referred to in the Council’s Decision, the Council will have to take further action in order to implement them. The Treasury will publish a further financial sanctions notice once a new EU Regulation has been adopted. However, even though the provisions within the Council’s Decision further restricting the transactions which can be entered into with Iranian banks and financial institutions have not yet been implemented, financial institutions in the UK need to continue to be aware of the restrictions contained in the UK’s Financial Restrictions (Iran) Order 2011 (the “Order”) made under Schedule 7 of the Counter-Terrorism Act 2008. The Order prohibits financial transactions and relationships between UK financial and credit institutions and Iranian banks. The Order requires UK financial and credit institutions to apply to the Treasury for a licence under paragraph 17 of Schedule 7 to the Counter-Terrorism Act 2008 to undertake or maintain any relationship or transaction with an Iranian bank. Of course, once the Council’s Decision is implemented, then the Treasury’s ability to grant a licence will be limited to the circumstances set out in the EU Regulation. However, only one licence will be required in order to comply with both the provisions of the Order and any future EU Regulation.

The detailed prohibitions contained in the Council's Decision are as follows:

1. The import, purchase or transport of Iranian natural gas is to be prohibited. In addition, the provision of financing or financial assistance, either directly or indirectly, including insurance and reinsurance as well as brokering services related to insurance and reinsurance relating to the import, purchase or transport of Iranian natural gas, is to be prohibited (addition of Article 3(e)).¹
2. The sale, supply or transfer to Iran of graphite or raw or semi-finished metals, such as aluminium and steel, is to be prohibited. The prohibition applies to industries controlled directly or indirectly by the Iranian Revolutionary Guard Corps in addition to industries which are relevant to Iran's nuclear, military and ballistic missile programme (addition of Article 4(e)). It will also be prohibited to provide finance or financial assistance for any sale, supply or transfer of those items. Further due diligence will therefore be required before engaging in the sale, supply or transfer of those materials to Iran. There is an exception for contracts concluded before 16 October 2012 and executed prior to 15 April 2013.
3. The sale, supply or transfer of key naval equipment and technology for ship building, maintenance or re-fit to Iran or to Iranian-owned enterprises engaged in this sector is to be prohibited (addition of Article 4(g)). It will also be prohibited to provide finance or financial assistance for any sale, supply or transfer of those items. There is an exception for contracts concluded before 16 October 2012 and executed prior to 15 February 2013.
4. The sale, supply or transfer to Iran of software for integrating industrial processes which is relevant to industries controlled directly or indirectly by the Iranian Revolutionary Guard Corps or which is relevant to Iran's nuclear, military and ballistic missile programme is to be prohibited (addition of Article 4(i)). It will also be prohibited to provide finance or financial assistance for any sale, supply or transfer of those items. There is an exception for contracts concluded before 16 October 2012 and executed prior to 15 January 2013.
5. The construction or the participation in the construction of new oil tankers for Iran or for Iranian persons and entities is to be prohibited. It will also be prohibited to provide technical assistance or financing or financial assistance for the construction of new oil tankers for Iran or for Iranian persons and entities (addition of Article 8(a)). Banks and financial institutions involved in ship finance will therefore have to undertake further due diligence to understand who the ultimate purchaser is when financing the construction of new oil tankers.
6. A new Article 10 is to contain prohibitions on transfers to Iran to branches and subsidiaries of banks domiciled in Iran, whether they are in or outside of the jurisdiction of Member States; and to financial entities that are not domiciled in Iran but which are controlled by persons and entities domiciled in Iran. The prohibitions are to pertain to:

¹ Unless otherwise stated, amendments are to amendments or additions to Council Decision 2010/ 413/ CFSP.

- transactions regarding foodstuffs, healthcare or medical equipment or for agricultural or humanitarian purposes;
- transactions regarding personal remittances;
- transactions regarding the execution of the exemptions provided for in the Council's Decision;
- transactions in connection with specific trade contracts not prohibited by the Council's Decision;
- transactions regarding a diplomatic or consular mission insofar as such transactions are intended to be used for the official purposes of that diplomatic or consular mission; and
- transactions regarding payment to satisfy claims against Iran or Iranian persons or entities, on a case-by-case basis and subject to notification 10 days prior to authorisation and provided that the transactions do not contribute to activities prohibited by the Council's Decision.

The new Article 10 imposes new limits depending upon the nature of the transaction in question. Provided that the transaction is below €10,000, no authorisation or notification is required under the Council's Decision. (However, the same is not true with respect to the provision under the Order referred to above.)

For transactions above €10,000, there are then different authorisation and/or notification provisions depending upon whether the transfer of funds to and from Iran is using an Iranian bank or financial institution or is using another bank. Therefore:

- with respect to transfers of funds to and from Iran using Iranian banks, any transaction above €10,000 but below €100,000 (in the case of transfers regarding foodstuffs, healthcare or medical equipment or for agricultural or humanitarian purposes) or below €40,000 (with respect to personal remittances) can be carried out without any prior authorisation provided the transfer is notified to the relevant competent authority of a Member State;
- with respect to transfers above €100,000 or €40,000 (with respect to the above categories), they will require prior authorisation from the relevant competent authority of a Member State; and
- finally, with respect to any other transfer (ie. one not regarding foodstuffs etc. or a personal remittance), if the transfer is above €10,000, it shall require prior authorisation from a competent authority of a Member State.

With respect to transfers of funds to and from Iran which do not use Iranian banks or financial institutions, the position is as follows:

- for transfers with respect to foodstuffs, healthcare or medical equipment or for agricultural or humanitarian purposes, they can be carried out without prior authorisation provided they are notified in advance, even if above €10,000;

- with respect to any other transfers below €40,000, no prior authorisation is required but the transfer shall be notified to the relevant competent authority of a Member State if above €10,000; and
- any other transfers above €40,000 (ie. not regarding foodstuffs, healthcare etc.) will require prior authorisation from the relevant competent authority of a Member State. That authorisation shall be deemed granted within four weeks unless the relevant competent authority has objected.

In addition to these notifications/authorisation requirements, there are additional notification requirements for branches and subsidiaries of banks domiciled in Iran but present within the jurisdiction of the Member States.

7. The provision by Nationals and Member States of flagging and classification services, including registration and identification numbers of any kind, to Iranian oil tankers and cargo vessels is to be prohibited as of 15 January 2013 (addition of Article 18(a)).
8. The provision of vessels designed for the transfer or storage of oil and petrochemical products to Iranian persons, entities or bodies, or to any person, entity or body for the transport or storage of Iranian oil and petrochemical products, is to be prohibited (addition of Article 18(b)).

Conclusion

Given the breadth of a number of these provisions, it will be particularly important for those within the financial services industry to conduct further due diligence, particularly concerning the financing of transactions which might be affected by the Council's Decision, to ensure that they are aware of the differing transitional provisions.

We will issue a further briefing once the remainder of the Council's Decision has been implemented. In the meantime, attention should be paid to the immediate effect of extending the list of individuals and entities subject to asset-freezing measures.

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If you have any questions regarding this memorandum, please contact Peter Burrell (+44 207 153 1206, pburrell@willkie.com) or the Willkie attorney with whom you regularly work.

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