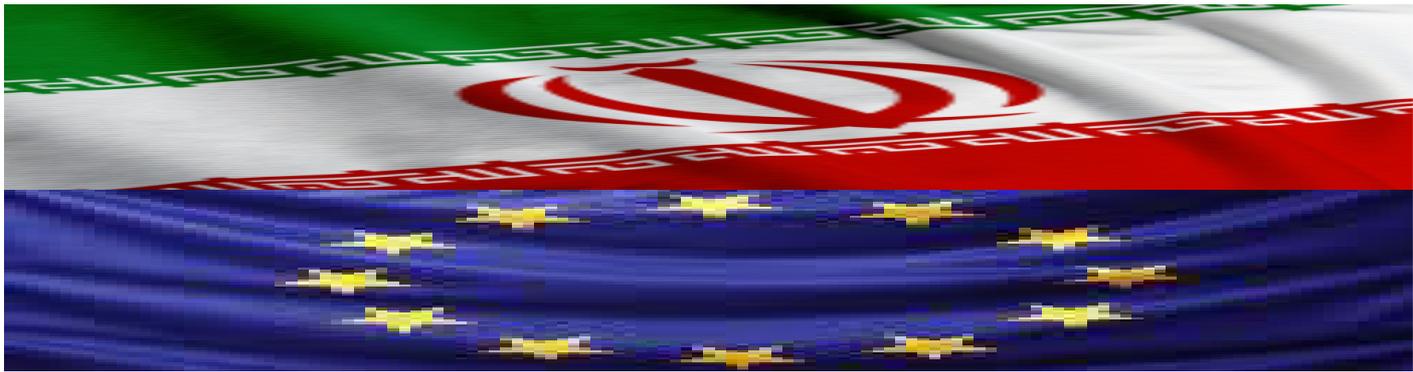


## **ECONOMIC SANCTIONS UPDATE**

October 30, 2010



### **European Union Economic Sanctions: Iran**

#### **Background**

Prior to October 27, 2010, sanctions of the European Union (the "EU") against Iran primarily were set forth in Regulation (EC) No. 423/2007, mainly targeting Iran's nuclear proliferation activities.

On 26 July 2010, the Council of the EU approved Decision 2010/413/CFSP (the "July 2010 Decision"). The July 2010 Decision confirms the restrictive measures taken by the EU against Iran since 2007, implements the measures called for under UN Security Council Resolution 1929 (2010), and adopts new and additional economic sanctions against Iran. The sanctions contained in the July 2010 Decision mainly concerns companies in the oil and gas, transportation, and the financial and insurance sectors.

Under EU law, most of the measures contained in the July 2010 Decision required further implementation. With a view to ensuring the uniform implementation as well as a uniform application of these measures in all EU Member States, the EU adopted Regulation (EU) No. 961/2010 on restrictive measures against Iran on October 25, 2010. For the sake of clarity, this new Regulation (EU) 916/2010 replaces Regulation (EC) No 423/2007.

According to its preamble and in light of its aim to implement the measures contained in the July 2010 Decision, the revised measures contained in Regulation (EU) 916/2010 mainly impact companies in the oil and gas, transportation, as well as the financial and insurance sectors. However, companies in other sectors will inevitably also be impacted due to the ban on the exportation now of most "dual use" goods, or indirectly by new requirements and restrictions related to financial transactions with or involving Iran.

## A Brief Overview on Current EU Economic Sanctions: Iran

### Exports: Nuclear and Military Sectors

With respect to the **nuclear and military sectors**, the new EU sanctions regime tightens existing restrictions on the exportation and supply of any items which could potentially have military applications or which are related to proliferation-sensitive nuclear activity.

EU sanctions against Iran ban exports to Iran of: (a) dual-use items as specified in Annexes to Regulation (EU) No 916/2010, (b) goods and technology which could contribute to Iran's enrichment-related, reprocessing or heavy-water-related activities; (c) other items contributing to Iran's nuclear activities or nuclear weapon delivery systems; and (d) arms and related materiel, and assistance related to the foregoing items, including technical assistance or training, investment, or brokering services, and the provision of financing or financial assistance (in particular grants, loans and export credit insurance). Licenses, that are only possible for some of the prohibited exports of listed items, have to meet the high standard that the exported item would "clearly not contribute" to Iran's nuclear activities or nuclear weapon delivery systems. Thus, the issuance of licenses authorizing prohibited exports and related transactions has become more difficult.

Furthermore, the supply, sale or transfer to Iran of additional items, materials, equipment, goods and technology, that could contribute to either Iran's proliferation-sensitive nuclear activities, or to the development of nuclear weapon delivery systems or to the pursuit of activities about which the International Atomic Energy Agency (IAEA) has expressed concerns, or to other weapons of mass destruction programs, are prohibited.

The exportation of non-listed items that could contribute to certain nuclear-related activities, as well as provision of related assistance, requires an authorization from the respective national EU authority.

Finally, EU sanctions prohibit investments in the EU by Iran (or its nationals or companies incorporated in Iran or entities controlled by them, respectively), to the extent that such investments involve uranium mining, nuclear materials and technology, uranium enrichment, or technologies related to ballistic missiles capable of delivering nuclear weapons.

### Oil and Gas Sector

With regard to the **oil and gas sector**, the current EU sanctions regime further bans:

- **exports of "key equipment and technology" to Iran** for oil refining, liquefied natural gas, and the exploration and production of oil and natural gas in Iran, as specified in an Annex to Regulation (EU) No 916/2010. This prohibition also applies to Iranian or Iranian-owned enterprises engaged in these sectors outside Iran;
- **technical assistance, training and other services** related to the banned equipment and technology, and financing or financial assistance for sales, supply, transfer or export of banned equipment and technology, or for provision of related technical assistance or training; and

- **financing** of Iranian, or Iranian-owned, enterprises engaged in the Iranian oil and natural gas industry, including a prohibition on: (a) financial loans and credits to such enterprises, with the only exception being obligations resulting from a pre-July 26, 2010 agreement; (b) acquisition or extension of participation in such enterprises, including acquisition of their shares and certain securities, again with the only exception being obligations resulting from a pre-July 26, 2010 agreement; and (c) creation of any joint ventures with such enterprises in Iran or with subsidiaries and affiliates under their control.

Financial investments in the oil and gas sector are possible subject to special licenses, only.

### Transportation Sector

The EU sanctions regime against Iran requires Member States to implement the following measures against the Iranian transportation sector:

- EU Member States must ban all cargo flights operated by Iranian carriers or originating from Iran from **accessing EU airports**, with the exception of mixed passenger and cargo flights;
- **EU Member States must inform** the United Nations Sanctions Committee of any attempts by Iran Air Cargo (IAC) and Islamic Republic of Iran Shipping Lines (IRISL) to evade sanctions by transferring UN-targeted activities to other entities, as well as by re-registering of aircraft, vessels and ships; and
- EU Member States must ban any **provision of bunkering or ship supply services** or other servicing of Iranian-owned or contracted vessels, and engineering and maintenance services to Iranian cargo aircraft (with certain limited exceptions) if such vessels and aircraft have been involved in sanctions violations;
- EU nationals are **required to submit extensive pre-arrival or pre-departure information to the competent national authorities for all goods brought into the EU from Iran and for all goods exported to Iran from the EU.**

The current EU sanctions regime also grants **EU member States to the right to inspect**, with consent of the flag State, vessels in international waters if they are suspected of carrying illegal material, and to seize and dispose of any contraband.

### Financial Services – Banking/Finance Sector

By its new legal instruments, the EU increases the scrutiny of Iranian banks operating in the EU:

- **money transfers** to and from Iran of more than EUR 40,000 (subject to exceptions for food, humanitarian, and healthcare/medical purposes) require prior authorization from the respective Member State financial authorities.
- funds transfers of more than EUR 10,000 not related to foodstuffs or healthcare and medical equipment require notification to the respective Member State financial authorities.

According to the July 2010 Decision, Member States must **exercise restraint in entering into new short term commitments for public and private provided financial support for trade with Iran** in order to avoid any financial support contributing to proliferation-sensitive nuclear activities, or to the development of nuclear weapon delivery systems, and should prohibit any medium and long-term commitment for publicly and privately provided financial support for trade with Iran. These measures are in addition to existing and continuing asset freeze requirements, and the ban on financial assistance and concessionary loans to the Government of Iran by Member States, including financial assistance through international institutions such as the World Bank.

The EU sanctions also ban the establishment of a presence in the EU by **Iranian banks**, and entail a prohibition on Iranian banks and Iranian-controlled third-country financial institutions on setting up of joint ventures with, taking an ownership interest in, or establishing corresponding banking relationships with, EU banks. EU financial institutions are prohibited from establishing a presence in Iran.

Additionally, the sale or purchase of, or brokering or assistance in the issuance of **public or public-guaranteed bonds** to and from the Government of Iran, the Central Bank of Iran or Iranian banks, including branches and subsidiaries, and financial entities controlled by persons and entities domiciled in Iran is prohibited.

EU Member States also must exercise "**enhanced monitoring**" of activities of all EU financial institutions with all banks domiciled in Iran, their branches and subsidiaries (including foreign branches and subsidiaries), or with third-country financial institutions controlled by Iranian persons, including (a) vigilance over account activity; (b) requiring that all fields related to originator and beneficiary of payment instructions be filled in; (c) complying with 5-year record-keeping requirements; and (d) requiring reports of possible proliferation financing. The new EU measures also require EU branches and subsidiaries of Iranian banks to report to EU authorities any transfers effected or received by them.

The July 2010 Decision imposes a duty on Member States to require their nationals, persons subject to their jurisdiction and firms incorporated in their territories or subject to their jurisdiction ("EU persons") to **exercise vigilance** with respect to transactions with or involving Iranian entities to guard against and ensure that transactions do not contribute to Iran's nuclear proliferation activities.

### Insurance Sector

Under Regulation (EU) No 961/2010, in general, the provision of **insurance and re-insurance** to the following is prohibited:

- the Government of Iran,
- entities incorporated in Iran
- anyone subject to Iran's jurisdiction
- individuals and entities acting on behalf of the foregoing or at their direction,
- entities owned and controlled by the foregoing, including through illicit means.

The extension or renewal of insurance or re-insurance agreements concluded prior to entry into force of Regulation (EU) 916/2010 is also prohibited. However, compliance with agreements concluded before

that date, is not prohibited. In addition, certain exceptions, with regard to, *inter alia*, third party insurance may apply.

### Freezing of Assets of Certain Individuals and Companies

The Regulation (EU) No 961/2010 also **freezes funds of, and precludes the provision of economic resources** to, certain persons and entities, indicated in its Annexes. The Annexes include the persons, entities and bodies designated by the UN, but also list additional persons and entities that, *inter alia*, have been identified as being engaged in Iran's proliferation-sensitive nuclear activities or associated with IRISL.

See:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:281:0001:0077:EN:PDF> (page 52 ff.)

### Implementation and Compliance

All the provisions contained in EU Regulation 961/2010 are in force as of October 27, 2010. Since EU regulations in general are of direct effect, they must be observed by companies and any other person subject to the jurisdiction of the EU and its Member States.

It is upon the individual EU Member States to decide on the penalties applicable to violations of the EU sanctions regime, and to take all measures necessary to ensure that the measures are implemented.

Lawyers of the Eren Law Firm will continue to very closely monitor the implementation by the EU and Member States of the provisions of EU economic sanctions against Iran, and will advise clients on EU sanctions compliance, and, if necessary, represent clients before the EU or Member State authorities.

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For more information or questions regarding the subjects covered in this EconomicSanctionsUpdate, please contact:

Barbara Maucher	Washington, DC	☎ + 1 240 581 0235	barbara.maucher@erenlaw.com
Hal Eren	Washington, DC	☎ + 1 202 429 9883	hal.eren@erenlaw.com

The Eren Law Firm is an economic sanctions boutique. Its other core areas of concentration and practice include corporate transactions, and international dispute resolution, anti-money laundering, and international trade regulation. The Firm's clients from around the world include banks and financial institutions; insurance, reinsurance and other financial services companies; natural resource extraction companies, industrial companies, marine and air transportation companies; sovereign governments; foreign state enterprises; and individuals.

**Mr. Pinter** and **Mr. Eren** of the Firm served at the U.S. Treasury's Office of Foreign Assets Control (OFAC), the US government agency that administers and enforces US economic sanctions, for a combined 25 years prior to entering private law practice, respectively 8 and 10 years ago.

**Ms. Maucher**, who is admitted to practice in Germany as well as in New York, focuses on international corporate transactions, transnational financial and trade regulatory matters, including US as well as EU economic sanctions and export controls, and related dispute resolution and enforcement defense. She has advised and represented clients in multi-jurisdiction litigation and arbitration proceedings and dealt extensively with international conflict of laws and international jurisdiction issues, including, recently, the application of extradition agreements in the context of US extra-territorial sanctions enforcement.

**Mr. Comras** of the Firm, a former diplomat of the United States, served at the US State Department, where he was in charge of numerous economic sanctions programs and issues, most notably in the context of the past multilateral sanctions against the former Yugoslavia and those against Iraq. Mr. Comras has also served at the United Nations, and until recently, was a member of the UN Panel of Experts dealing with sanctions against North Korea.

## ECONOMIC SANCTIONS UPDATE

October 30, 2010

**EREN**

Economic Sanctions Lawyers

**Mr. Ristau**, who leads the Firm's international dispute resolution practice, is an internationally-recognized authority on international law issues, particularly issues dealing with dispute resolution. Mr. Ristau's practice consists of transnational litigation and international commercial arbitration. Mr. Ristau also advises clients on a variety of international law matters, including, sovereign immunity, diplomatic immunity, international treaties, and international judicial assistance. Mr. Ristau is the author of the authoritative two-volume treatise entitled *International Judicial Assistance, Civil and Commercial*, published by the International Law Institute in Washington.

For more information about the Firm, and its lawyers, please visit: [www.erenlaw.com](http://www.erenlaw.com).

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