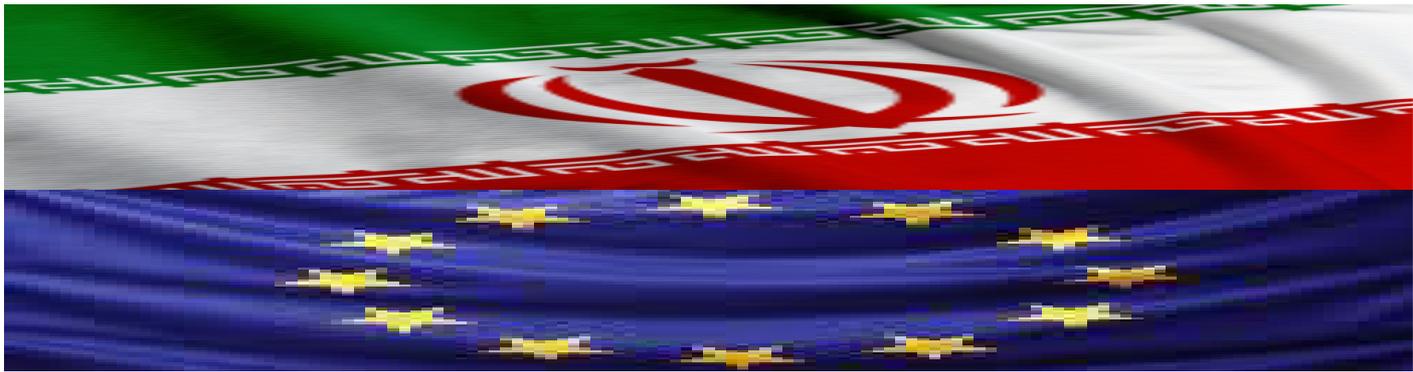


ECONOMIC SANCTIONS UPDATE

October 19, 2010



European Union Economic Sanctions: Iran

Background

In its Decision 2010/413/CFSP on 26 July 2010 (the “EU Council Decision”), the European Union (the “EU”) adopted new and additional economic sanctions against Iran. The new sanctions adopted by the EU implement the measures called for under UN Security Council Resolution 1929 (2010), impose sanctions beyond those called for under UNSCR 1929, and augment and extend already existing EU sanctions against Iran.

EU sanctions against Iran in place prior to the EU Council Decision and which continue to be in force are set forth in Regulation (EU) No. 423/2007. These prior and continuing sanctions primarily target Iran’s proliferation attempts, and prohibit or restrict the export to Iran of: (i) military goods, software and technology, and (ii) any goods, software, and technology that could be used in a nuclear enrichment process. These sanctions also prohibit financial and technical assistance in respect of the foregoing and freeze the assets of and prevent the provision of economic resources to certain persons deemed to be engaging in proliferation attempts/activities.

The new sanctions measures set forth in the EU Council Decision mainly impact companies in the oil and gas, transportation, as well as the financial and insurance sectors. Additional sectors will inevitably also be impacted due to the ban on the exportation of most "dual use" goods, or indirectly by new requirements and restrictions related to financial transactions with or involving Iran.

A Brief Overview Current EU Economic Sanctions: Iran

Exports: Nuclear and Military Sectors

With respect to the **nuclear and military sectors**, EU sanctions against Iran continue the pre-July 26, 2010 ban exports to Iran of: (a) items from the Nuclear Suppliers Group and the Missile Technology Control Regime; (b) other items contributing to Iran's nuclear activities or nuclear weapon delivery systems; and (c) arms and related material, and assistance related to these items, including technical assistance or training, investment, or brokering services, and providing financing or financial assistance (in particular grants, loans and export credit insurance). The EU Council Decision now places an embargo on nearly all other dual-use goods and technology. Licenses for 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. It should be noted that there are no special provisions for contracts in force prior to July 26, 2010.

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. Again, there are no special provisions for pre-July 26, 2010 contracts.

The EU Council Decision tightens existing restrictions on the exportation and supply of any items which could potentially have military applications and/or are related to proliferation-sensitive nuclear activity. 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. This prohibition also includes dual-use goods and technology.

Oil and Gas Sector

The new sanctions measures adopted by the EU 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.

With regard to the **oil and gas sector**, the EU Council Decision further bans:

- **exports of "key equipment and technology" to Iran** (to be specified once implementing EU legislation, *i.e.*, an EU Regulation is adopted) for oil refining, liquefied natural gas, and the exploration and production of oil and natural gas in Iran. 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; (b) acquisition or extension of participation in such enterprises, including acquisition of their shares and certain securities; and (c) creation of any joint ventures with such enterprises in Iran or with subsidiaries and affiliates under their control.

Transportation Sector

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

- a ban on **access to EU airports** by all cargo flights operated by Iranian carriers or originating from Iran with the exception of mixed passenger and cargo flights;
- requirement that all aircraft and vessels transporting cargo to and from Iran to submit **additional pre-arrival and pre-departure information** for all goods brought into and out of the EU;
- requirement that **EU Member States 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
- a ban on the **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;
- a **duty to inspect** all cargo to and from Iran.

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

The EU Council Decision tightens 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 EU Council 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), 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) 5-year record-keeping requirements; and (d) duty to report 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 new sanctions measures also impose 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 the EU Council Decision, Member states must prohibit the **provision of insurance and re-insurance** to:

- 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.

Freezing of Assets of Certain Individuals and Companies; Exclusion of Certain Individuals from Entering the EU

The EU Council Decision also **restricts and freezes funds of, and precludes the provision of economic resources** to, certain persons and entities, indicated in the annexes to the EU Council Decision and in Regulation (EU) No 668/2010 of 26 July 2010. In addition to those persons listed in UN Security Council Resolution 1929 (2010), the EU **blacklists and freezes the assets of, and excludes from entering the EU**, another 59 individuals and entities involved in nuclear and ballistic missile activities (including banks, financial services, trading and manufacturing companies), 19 other individuals and entities related to the Iranian Revolutionary Guard Corps (IRGC), and 25 additional subsidiaries and branches of IRISL, including those based outside of Iran.

See:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:154:0005:01:EN:PDF>

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:195:0025:0036:EN:PDF>

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:195:0039:0073:EN:PDF> (p. 50 ff.)

As noted above, EU persons furthermore are called upon to "**exercise vigilance**" when doing business with Iranian entities, including entities owned or controlled by the IRGC and IRISL, and persons acting on their behalf, under their direction or control, to ensure that transactions do not contribute to Iran's proliferation-sensitive nuclear activities.

* * *

Implementation and Compliance

All the provisions of EU Regulation 423/2007 and EU Regulation 668/2010 are in force. Since EU regulations are of direct effect, they must be observed by companies and any other person acting in the EU market place.

The EU Council Decision 2010/413 applies only to the Member States and, therefore, requires implementing acts at national and EU levels in order to have direct effect on companies and individuals.

Implementation at the EU level will be done only with regard to those aspects of the EU regulation that fall within the EU's legislation. Member States will implement measures as called upon by the individual provisions of the EU Council Decision.

It is likely that implementation at the EU level will be through a Regulation either amending or superseding EU Regulation 423/2007. As of 16 October 2010, there is a joint proposal by the Commission and the High Representative of the EU for Foreign Affairs and Security Policy COM (2010) 459 for a Council Regulation on restrictive measures against Iran, that should give effect to several measures provided by Decision 2010/413/CFSP of 26 July 2010 and replace Council Regulation (EC) No 423/2007. However, as long as the proposal has not been signed into law, the provisions of EU Regulation 423/2007 continue to apply. Thus, licenses that have been granted as well as other certificates still are valid. It should be noted, however, that the legal situation may suddenly change if and to the extent a new Regulation is issued.

Therefore, notwithstanding the absence of direct effect on individuals, companies are advised to comply with the sanctions set forth in the EU Council Decision without delay, last but not least, because certain EU Member States may already have implemented the EU Council Decision or are in the process of doing so, and some provisions could apply retroactively. For example, the EU-wide ban on the exportation of dual-use items will have direct effect only upon implementation by Member States, but Germany has already begun denying any license applications for dual-use exports to Iran.

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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Eren Lawyers

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

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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.

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.

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