

EU Sanctions on Iran

I. EXECUTIVE SUMMARY OF THE NEW SANCTIONS ON IRAN

1. **Effect.** While the new (and old) sanctions on Iran are not binding on any party in the GCC area other than EU, UK or US persons and entities, their impact can be felt as they prevent EU, UK or US persons and entities from trading and dealing with entities which on their face appear to have economic connections to the regime of Iran. Hence though non-EU or non-US citizens and companies should not expect penalties based on these sanctions, their trading partners in the US and the EU may experience some exposure. In particular:

a. **The EU sanctions** under Article 49 cover “the territory of the Union, including its airspace; any aircraft or any vessel under the jurisdiction of a Member State; any person inside or outside the territory of the Union who is a national of a Member State; any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State; and any legal person, entity or body in respect of any business done in whole or in part within the Union.”

b. While the sanctions do not expressly forbid dealings with third intermediary parties in the GCC or elsewhere the sanctions include prohibitions against ‘indirect’ dealings (Articles 1(o)(iv), 2-5, 9, 11(d), 13(d), 15-16, 23(3), 34 and 37) and efforts to ‘circumvent’ the sanctions regime (Article 41). Member states will likely interpret this as a prohibition against dealing with companies which for example engage in business in Iranian oil and gas; no decisions have yet been issued.

c. **The US sanctions** impose obligations on “US Persons”, defined in section 112(20) as “a natural person who is a citizen of the United States or who owes permanent allegiance to the United States; and a corporation or other legal entity that is organized under the laws of the United States or any State if a natural US person owns more than 50 percent of the outstanding capital stock or other beneficial interest in such corporation or legal entity.”

d. Such persons are not only prohibited from dealing with Iran directly as defined in the sanctions, they are also unable to supervise, invest, provide services for or otherwise get involved with a third party which may for example re-export to Iran prohibited items or technology. The sanctions in the new law are elaborated in sections 105, 106, 202 and others. Contractors must certify that they do not engage in prohibited action (section 106(11)(b)(1)). Parent companies are liable for their foreign subsidiaries; individuals doing business in Iran may not be eligible for entry visas to the USA (section 602).

2. European Union:

a. **Effective Date.** 23 March 2012.

b. **Contents.** The main effect of the new sanctions is to reinforce the existing sanctions against listed persona non grata, against financing and against trade of goods, technology, oil and gas with Iran. They also effectively stop banks and finance entities from trading and communicating with Iran finance entities.

c. **Consequences of breach.** Sanctions are enforced by the governments. In the UK a breach can lead to two years imprisonment or a fine or to both.

3. Unites States:

a. **Effective Date.** Immediately¹ as of 21 May 2012, however individuals who agree to abandon prohibited projects within six months are exempt from the penalties.

b. **Contents.** This expansion of U.S. sanctions includes companies involved in joint energy ventures anywhere in the world in which Iran is a significant partner or investor. Penalties also apply if Iran receives energy technology or information that wasn't previously available to the government of Iran. Any joint venture with Iran in the mining, production or transportation of uranium is punishable. Shippers or insurers are included.

c. **Consequences of breach.** Penalties for the new sanctions are extremely strict². Willful commission can be punished with a fine of more than \$1,000,000, up to 20 years imprisonment or both. Offending companies can be fined either half of the value of the transaction that is the basis of the violation or \$10,000,000, whichever is greater.

II. EUROPEAN UNION SANCTIONS

Introduction

The European Union has recently published and already brought into force new sanctions³ against the state of Iran. These cover most notably detailed updated lists of forbidden goods and technology as well as entities and persona non grata with whom dealing is prohibited. Oil and petrol product imports are enforced. It re-asserts the freezing of Iranian assets and prohibits banks and finance institutes, most notably SWIFT, from dealing with Iranian financial entities. These new sanctions are policed and enforced on the member state level.

Pre-Existing EU Sanctions

The last EU sanctions were listed in the EU Council Regulation No 961/2010 of 24 October 2010 and include:

- Prohibition on sale or supply of certain goods and technology;
- Prohibition on provision of technical assistance related to goods and technology listed;

¹ Section 113

² Section 603(c)

³ <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:088:0001:0112:EN:PDF>

- Prohibition on sale, supply, transfer or export of equipment or technology relating to crude oil and natural gas;
- Prohibition on the grant of a loan, credit, joint venture or similar to anyone in Iran involved in developing arms, oil production, repression or nuclear development;
- Prohibition on loading and unloading cargoes on and from vessels owned or chartered by IRISL (Islamic Republic of Iran Shipping Line);
- Identification and listing of several individuals and entities;
- Freezing of all funds and economic resources belonging to, owned, held or controlled by certain persons listed;
- Requiring permission for the transfer of funds to and from an Iranian person;
- Requesting all financial institutions and other bodies in the UK to confirm whether they maintain any accounts or otherwise hold any funds for the individuals and entities named.

New Sanctions

The Council of the European has recently at the beginning of 2012 considered further sanctions against the state of Iran. On 23 January 2012, the EU Council agreed to:

- restrictive measures in the energy sector
- a phased embargo of Iranian crude oil imports to the EU
- restrictive sanctions in the financial sector, including against the Central Bank of Iran
- sanctions in the transport sector
- further export restrictions, notably on gold and on sensitive dual-use goods and technology
- additional designations of persons and entities, including several controlled by the Islamic Revolutionary Guards Corps (IRGC).”

SWIFT Ceases Dealings with Iranian Banks

On 15th March 2012 SWIFT, the banking and communication service, discontinued its communications services to Iranian financial institutions that are subject to European sanctions.

The new European Council decision prohibits companies such as SWIFT to continue to provide specialised financial messaging services to EU-sanctioned Iranian banks.

The New EU Regulations

On 23 March 2012 the detailed Council Regulations concerning the Iran sanctions were published and came into force. They include detailed lists of prohibited items and technology as well as an updated list of persona non grata for trading purposes, such as “goods and technology which could contribute to Iran's ...development of nuclear weapon delivery systems”, “equipment and technology for ...exploration of crude oil and natural gas”. Brokering services concerning any of those is also prohibited, as is import of oil and oil products. The lists are extensive and detailed.

The Regulation continues the previous Regulation’s agenda of freezing assets “belonging to, owned, held or controlled by the persons, entities and bodies ...designated by the United Nations Security Council or by the Sanctions Committee in accordance with paragraph 12 of UNSCR 1737 (2006), paragraph 7 of UNSCR 1803 (2008) or paragraph 11, 12 or 19 of UNSCR 1929 (2010).”

Who is affected?

Primarily the sanctions include any person inside or outside the EU who is an EU national, or any business incorporated or constituted in the EU or doing business in the EU attempting to do business with or in Iran. Such a person is also affected if seen to be doing business in or with Iran when acting on behalf or at the direction of another entity or person, which may be situated outside of the EU. The sanctions also prohibit dealing with Iran indirectly and contain a number of catch-all phrases to that effect.

Penalties and Competent Authorities

Penalties are enforced and decided on the member state level. The relevant competent authorities have been listed below:

UK: The relevant authority is the Foreign & Commonwealth Office, International Organisations

Department. However see also HM Treasury for a wealth of information including license application forms (see link below). The penalties state that a person guilty on conviction on indictment is liable to imprisonment for up to two years or a fine or to both. On summary conviction he may face imprisonment for up to three months and/or a fine.

Germany: The relevant authority is the Bundesministerium für Wirtschaft und Technologie (BMWT). Penalties can amount to up to six years imprisonment.

III. UNITED STATES SANCTIONS

Introduction

The US has recently brought into force new sanctions⁴ against Iran after some disagreement in Congress concerning the extent and wording of the new law.

Pre-Existing US Sanctions

Existing economic sanctions by the USA are the “Iranian Transaction Regulations” (“ITR”) and the “Iranian Assets Control Regulations” (“IACR”). The ITR constitute the majority of the sanctions⁵.

The IACR were established in November 14, 1979 when the assets of the Government of Iran in the United States were blocked in accordance with IEEPA (International Emergency Economic Powers Act) following the seizure of the American Embassy in Teheran. After 1981 when the Algiers Accords were signed most Iranian assets in the United States were unblocked and the trade embargo was lifted. Although greatly modified in scope, the old Iranian Assets Control Regulations remain in effect.

All US Sanctions are effected through the Code of Federal Regulations (CFR)⁶.

⁴ <http://www.gpo.gov/fdsys/pkg/BILLS-112hr1905rfs/pdf/BILLS-112hr1905rfs.pdf>

⁵ Overview: <http://www.treasury.gov/resource-center/sanctions/Programs/Documents/iran.pdf>

Penalties for breach of the existing sanctions:

Criminal: a fine up to \$1,000,000, and natural persons may be imprisoned for up to 20 years.
Civil: the greater of \$250,000 or an amount that is twice the amount of the transaction that is the basis of the violation.

New Sanctions

After some discussion in the legislative, the US Congress updated its sanctions regime on Iran on 21 May 2012. The new sanctions target Iran's Revolutionary Guard and its role in the export of oil from the country. It also makes it mandatory for US-listed firms to disclose any Iran-related business to the authorities. It requires the US administration to determine whether the National Iranian Oil Co. and National Iranian Tanker Co. are agencies of the country's Revolutionary Guard Corps, and then impose sanctions on anyone facilitating sanctions for either entity. Punishable is anyone who provides energy technology or information that wasn't previously available to the government of Iran. Any joint venture with Iran in the mining, production or transportation of uranium is punishable, which includes shippers or insurers.

Competent Authorities

Compliance with the sanctions is watched over by OFAC – the Office of Foreign Assets Control, a subdivision of the US Treasury. OFAC keeps a list of special designated nationals and entities (such as specific Iranian banks) which are subject to the sanctions in addition to the definitions set out in the regulations.

Who is affected?

U.S. persons are affected attempting to do business directly with Iran. Further, U.S. persons may not approve, finance, facilitate or guarantee any transaction by a foreign person dealing with Iran; in other words Americans are prohibited from investing in or giving advice to persons or parties who are not Iranian but are intending to do business in or with Iran. This includes buying shares in non-Iranian companies doing business in Iran.

IV. FURTHER READING

SWIFT announcement:

http://www.swift.com/news/press_releases/SWIFT_disconnect_Iranian_banks?lang=en

2012 Council decision:

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/127446.pdf

Full detailed 2012 Regulation:

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:088:0001:0112:EN:PDF>

6 Iranian Transactions Regulations, 31, C.F.R. Part 560-562 for the ITR and Iranian Assets Control Regulations, 31 C.F.R. Part 535 for the IACR

Full text of the new US sanctions:

<http://www.gpo.gov/fdsys/pkg/BILLS-112hr1905rfs/pdf/BILLS-112hr1905rfs.pdf>

UK penalties: http://www.hm-treasury.gov.uk/d/fin_sanc_councilreg_eu_si_925_2012.pdf

Germany information and penalties:

http://www.bafa.de/ausfuhrkontrolle/de/arbeitshilfen/merkblaetter/merkblatt_iran.pdf

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5th June 2012