

IRAN SANCTIONS UPDATE - P5+1 Framework Agreement and Recent Court Decisions

There have been a number of significant developments in recent months in relation to the sanctions imposed on Iran, not least the framework agreement reached between the P5+1 countries and Iran on 2 April 2015. This alert provides a summary of the most recent developments, including the latest decisions of the European and English courts.

Joint Comprehensive Plan of Action between P5+1 and Iran

On 2 April 2015, the P5+1 (the United States, United Kingdom, Germany, France, Russia, and China) and Iran agreed the parameters for a Joint Comprehensive Plan of Action (“JCPOA”) regarding Iran's nuclear program. The final text of the JCPOA is to be drafted by 30 June 2015. This follows earlier technical understandings by the P5+1 and Iran on 12 January 2014 which resulted in the relaxation of sanctions imposed by the US and EU on Iran.

Amongst other steps, Iran has agreed to take a number of steps to reduce its installed centrifuges and place all excess centrifuges and enrichment infrastructure in IAEA monitored storage and to reduce its capacity to enrich uranium; and has also agreed to increased inspections and transparency measures.

If Iran abides by these commitments, it will receive sanctions relief. In particular:

- U.S. and E.U. nuclear-related sanctions will be suspended after the IAEA has verified that Iran has taken all of its key nuclear-related steps. If at any time Iran fails to fulfill its commitments, these sanctions will snap back into place (and architecture of such sanctions will be retained to ensure that such sanctions can be quickly reapplied). U.S. sanctions on Iran for terrorism, human rights abuses, and ballistic missiles will remain in place under the deal.
- All past UN Security Council resolutions on the Iran nuclear issue will be lifted upon the completion by Iran of nuclear-related actions addressing the key concerns. Core provisions in the UN Security Council resolutions – those that deal with transfers of sensitive technologies and activities – will be re-established by a new UN Security Council resolution that will endorse the JCPOA and urge its full implementation. Restrictions on conventional arms and ballistic missiles, as well as provisions that allow for related cargo inspections and asset freezes, will also be incorporated by this new resolution.
- A dispute resolution process will be specified, which enables any JCPOA participant to seek to resolve any disagreement about the performance of JCPOA commitments. If an issue of significant non-performance cannot be resolved through that process, then all previous UN sanctions could be re-imposed.

Judicial Decisions

EUROPE

Bank Tejarat v Council (T176-12)

On 22 January 2015, the General Court of the European Union lifted the asset freeze and other restrictions on Bank Tejarat (along with various shipping companies) on the basis that, amongst other factors, the Council's arguments in relation to Bank Tejarat did not demonstrate that Bank Tejarat had provided support for nuclear proliferation or aided other persons and entities to breach or avoid the restrictive measures against them. In particular, the notice did not give rise to the conclusion that financial services had actually been provided by Bank Tejarat to the entities that were the subject of restrictive measures, or even to identify, within any degree of accuracy, the entities and services concerned. In addition, the Iranian state was no longer the majority shareholder, and nor, failing concrete arguments on the part of the Council, did the composition of the shareholders in Bank Tejarat lead to the conclusion that it provided support for nuclear proliferation or aided other persons and entities to breach or avoid restrictive measures against them.

The General Court gave the Council two months to respond to its decision before the findings took effect. On 8 April 2015, the Council reimposed sanctions on Bank Tejarat and various shipping companies on new grounds, including that Bank Tejarat "provides significant support to the Government of Iran by offering financial resources and financing services for oil and gas development projects."

Central Bank v Council (T-563/12)

On 25 March 2015, the General Court handed down its decision in Central Bank v Council (T-563/12) in which it dismissed the Central Bank of Iran's application for the lifting of sanctions imposed upon it. The decision followed its successful application for lifting of sanctions in January 2012 and its subsequent relisting by the European Council in October 2012 for the provision of "financial support" to the Iranian Government.

In the March 2015 decision, the General Court considered to what extent the criterion of support to the Government of Iran may be distinguished from the criterion of support for nuclear proliferation. It held that "support to the Government" covered "*any activity of the person or entity concerned which, regardless of any direct or indirect link established with nuclear proliferation, is capable, by its quantitative or qualitative significance, of encouraging that proliferation, by providing the Government of Iran with support in the form of resources or facilities of a material, financial or logistical nature which allow it to pursue nuclear proliferation. The existence of a link between the provision of such support to the Government of Iran and the pursuit of nuclear proliferation activities is thus presumed by the applicable legislation, which is aimed at depriving the Government of Iran of its sources of revenue, in order to oblige it to end the development of its nuclear proliferation programme as a result of insufficient financial resources.*"

In relation to the provision of financial support to the Government, while the Council was obliged to state and to specify the resources and facilities which the Central Bank allegedly provided to the government, it was not obliged to give reasons for the contested acts in

relation to the possible use of those resources and facilities by the Government of Iran for the purpose of its pursuit of nuclear proliferation.

ENGLAND

National Iranian Tanker Company & Ors v Secretary of State for Foreign and Commonwealth Affairs[2015] EWHC 282

On 9 February 2015, the English High Court handed down a judgment in which it gave reasons for its decision to refuse an application for interim relief made by the National Iranian Tanker Company and Gholam Golparvar which sought to compel the Secretary of State for Foreign and Commonwealth Affairs to veto the re-listing of the applicants.

Both applicants had been listed as being subject to sanctions by virtue of an EU Council Decision. In two judgments in December 2013 and July 2014, the General Court annulled the listing of the two applicants. Subsequently, the EU Council sought to relist the two applicants, who brought an application before the High Court seeking an interim order that *“a decision to propose, support or participate in (whether by positive vote or abstention) the redesignation (“the Decision”) of the claimant is declared to be unlawful on an interim basis; and the Secretary of State be prohibited from taking any action giving effect to the Decision”*.

In dismissing the applications, Mr Justice Green focused heavily on the balance of convenience and public interest, which he held gave rise to “insuperable problems” for the applicants, and in particular two main difficulties:

- the existence of an application for annulment to the General Court was an ever-available alternative route and indeed the orthodox route which is explicitly created in EU law to cater for challenges by natural and legal persons to decisions of direct and individual concern to them, such was the position in the present case.
- the acutely political nature of the decision sought to be challenged and the international consequences of the grant of relief in and of themselves are powerful reasons to refuse relief.

Taking into account the factors of the case, he found that nothing in the facts of this case came even remotely close to justifying the exercise of the discretion to grant interim relief.

The decision by the EU Council to relist the applicants was also considered by the UK Parliament House of Commons European Scrutiny Committee (in its reports dated 21 January 2015 and 18 March 2015), which expressed dissatisfaction with the way the process was carried out and emphasized that *“it is important that a relisting of an entity or individual should be legally robust as multiple failures to withstand legal challenge undermines the credibility of the sanctions regime.”*

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