

## *The European Union Adopts Restrictive Measures Against Iran*

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On July 26th, 2010, the Council of the European Union adopted a decision concerning restrictive measures against Iran (the "Decision"), which follows and exceeds the measures against Iran enacted by the United Nations on June 9th, 2010. It in some senses resembles and is designed to reinforce aspects of the United States' Comprehensive Iran Sanctions, Accountability and Divestment Act of July 1st, 2010 (please refer to our [Client Alert](#) of July 2010).

The Decision requests Member States (*i.e.*, all the 27 countries of the European Union) to strengthen their vigilance on transportation and transit through the territory of each Member State and requires them to monitor the activities of financial institutions in their jurisdictions with Iran entities and related entities. The Decision also provides a list of entities and persons subject to freezing orders, to which no funds or economic resources shall be made available.

In addition, the Decision has significantly expanded the categories of activities subject to sanctions.

The recent USD298 million settlement reached between US agencies and Barclays highlights the risks faced by corporations and financial institutions flouting the sanctions regime and the commitment of certain governments in enforcing the sanctions.

### **Restrictions on Import and Export**

The EU prohibits to all its Member States the direct or indirect supply, sale or transfer of goods, services, technologies, vehicles and dual-use goods (*i.e.*, items, including software and technology, which can be used for both civil and military purposes) that could contribute to the development of Iran's nuclear weapons program (the "Proliferation Activities").

Likewise, any:

- (a) technical assistance or training;
- (b) investment or brokering service; and
- (c) financing or financial assistance

to any person, entity or body in, or for use in, Iran in connection with the items and goods described above is prohibited without the authorization of the competent authority of the exporting Member State.

The competent authorities of the Member State shall not grant any authorization if they determine that the requested sale, supply, transfer or export, in fact, will contribute to the Proliferation Activities.

The measures described above shall not apply in the event that the Committee of the U.N. Security Council or the Member State competent authority determines in advance, on a case-by-case basis, that the supply, sale, transfer, provision or export would clearly not contribute to the development of Iran's technologies in support of its nuclear activities, provided that: (i) the relevant contracts contain appropriate end-user guarantees; and (ii) Iran has committed not to use such items for its nuclear activities.

### **Restrictions on the Oil and Natural Gas Sector**

The Decision further prohibits the sale, supply or transfer of key equipment and technology for the following sectors of the oil and natural gas industry in Iran or to Iranian or Iranian-owned enterprises engaged in activities in these sectors:

- (a) refining;
- (b) liquefied natural gas;
- (c) exploration; and
- (d) production.

The EU further prohibits (i) technical assistance or training and other services related to such key equipment and technology, and (ii) financing or financial assistance for any sale, supply, transfer or export of such key equipment and technology, or for the provision of related technical assistance or training, in each case if intended for those sectors or to Iranian enterprises engaged in those sectors.

Exceptions: The prohibitions above do not apply to the execution of obligations arising from contracts concluded before the date of the adoption of the Decision and relating to investments made in Iran before the same date.

### **Restrictions on Financing of Oil & Gas Enterprises and Other Enterprises**

The Decision prohibits any of the following:

- (a) the granting of any financial loan or credit to enterprises in Iran that are engaged in the the above-identified Iranian oil and gas sectors or to Iranian or Iranian-owned enterprises engaged in those sectors outside Iran;
- (b) the acquisition of or participation in enterprises in Iran that are engaged in those Iranian oil and gas sectors or to Iranian or Iranian-owned enterprises engaged in those sectors outside Iran, including the acquisition in full of such enterprises and the acquisition of shares and securities of a participating nature; and
- (c) the creation of any joint venture with enterprises in Iran that are engaged in those sectors and with any subsidiary or affiliate under their control.

Additionally, any investment in the territories of a Member State by Iran, its nationals, or entities incorporated in Iran or subject to its jurisdiction, or by persons or entities acting on their behalf or at their direction, or by entities owned or controlled by them in any commercial activity involving nuclear materials and technology is prohibited.

Exceptions: The prohibitions described under (a) and (b) above do not apply if the relevant obligation arises from contracts or agreements concluded before the date of adoption of the Decision.

### **Restrictions in the Financial Sector – Transfer of Funds**

Financial institutions of a Member State, in their activities with banks and financial institutions domiciled in Iran (including branches and subsidiaries of banks domiciled in Iran within the Member States jurisdiction or foreign jurisdictions) or controlled by persons and entities domiciled in Iran, shall (i) exercise continuous vigilance over account activity also under their obligations relating to money-laundering and financing of terrorism; (ii) require all the necessary information (payment instruction, originator and beneficiary) and refuse the transaction if such information is not provided; (iii) maintain all records of transaction for a period of five years; and (iv) report to the Financial Intelligence Unit or other competent authority designated by the Member State concerned any suspicious activity or funding.

Transfer of funds to and from Iran shall be notified to the competent authority of the Member State concerned if above Euro 10,000 and any transfer above Euro 40,000 shall require the prior authorization of such authority.

Furthermore, financial institutions of a Member State shall be prohibited from opening representative offices, subsidiaries or banking accounts in Iran or to establish new joint ventures or new correspondent relationships with Iranian banks.

The Decision also prohibits the direct or indirect sale or purchase of, or brokering or assistance in, the issuance of public guaranteed bonds issued after the date of the Decision to and from the Government of Iran, the Central Bank of Iran or banks domiciled in Iran, including any related entity.

### **Restrictions for Insurance Companies**

The provision of insurance and re-insurance to the Government of Iran or to entities incorporated in Iran or under Iran's jurisdiction (and to any individual or entity owned or controlled by them or acting on their behalf) is prohibited.

### **Restrictions in the Transport Sector**

The Decision prohibits the provision by nationals of Member States, or from territories under the jurisdiction of Member States, of (i) bunkering or ship supply services, or other servicing of vessels, to Iranian-owned or -contracted vessels (including chartered vessels), and (ii) engineering and maintenance services to Iranian cargo aircraft, if there are reasonable grounds to believe that the vessels and the cargo aircraft carry items, the supply, sale, transfer or export of which is prohibited under the Decision, unless those are for humanitarian purpose.

### **Sanctions for Violations of the Decision**

The specific sanctions for violations of the Decision shall be determined by each Member State according to the relevant national legislation and in compliance with the applicable EU principles.

### **The Impact of the New Restrictions**

The new tougher restrictions introduced by the European Union will have a significant impact on companies operating in the oil and gas industry, as well as on financial institutions, and industries heavily dependent on Iranian insurability (such as shipping).

It will be interesting to see whether and to what degree the new rules are strictly construed and enforced by the competent authorities, and whether they truly result in significant limitations on previously permitted Iran-related dealings. The Decision does seem to bolster the contention of many observers that the United States has won support among its European allies to give an effective “turn of screw” to the Iran embargo in the hope of stopping Iran’s proliferation activities. The Obama Administration is calculating that this broader European support, coupled with the threat of unilateral Israeli military action, will generate some movement on the diplomatic front. European governments appear to have decided that any harm to European industry in the interim represents an acceptable cost in that equation.

European companies should map their business to identify areas where potential violations of the Decision are possible, and review their internal control systems to minimize risks of non-compliance. Those companies that are subject to more than one sanctions regime (e.g., European subsidiaries of US corporations) should pay particular attention to the compliance with both applicable legal standards, which can be found to differ in specific areas.



*If you have any questions concerning the EU Decision or on European or United States embargo measures against Iran, please do not hesitate to contact any of the following Paul Hastings lawyers:*

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