

## IRAN SANCTIONS UPDATE OCTOBER 2012

**On 16 October 2012, the European Union (“EU”) introduced further sanctions against Iran. In this update, we look at some of the most significant new restrictions that will impact international trade and shipping.**

### **EU Council Decision 2012/635**

On 16 October 2012, the EU published Council Decision 2012/635 (the “Decision”) that introduces new restrictions on trade with Iran, as well as amending some of the existing restrictions (outlined in our previous updates, see links on page 3).

The Decision is only binding on the EU Member States and does not bind individuals and entities. It is anticipated, however, that the restrictions outlined in the Decision will, subject to any amendments that the EU may deem fit to make, be incorporated into an implementing Regulation in due course which, once published, will bind individuals and entities.

### **Natural gas**

The Decision sets out a prohibition on dealing with Iranian natural gas similar to the existing prohibitions relating to Iranian crude oil, petroleum and petrochemical products.

The Decision prohibits:

- > the import, purchase or transport of Iranian natural gas; and
- > the direct or indirect provision of financing or financial assistance, including (re)insurance and brokering of the same, related to the import, purchase or transport of Iranian oil.

It would appear that no grace period for the performance of existing contracts will be included in the new prohibitions on dealing with Iranian natural gas and, as such, the restrictions will, upon the publication of an implementing regulation, apply to all contracts immediately.

### **Metals**

The Decision prohibits:

- > the sale, supply or transfer to Iran of metals that are relevant to the industries controlled directly or indirectly by the Iranian Revolutionary Guard Corps (“IRGC”) or that are relevant to Iran’s nuclear, military and ballistic missile programme;
- > the provision to Iran of technical assistance or training and other services related to the prohibited metals; and
- > the provision to Iran of financing or financial assistance for the sale, supply or transfer of the above metals and the provision of related technical assistance or training.

The Decision gives the following examples of metals that this prohibition is intended to target: *“graphite, and raw and semi-finished metals, such as aluminium and steel”*.

These examples, however, are not exhaustive and, until an implementing Regulation is published, it is difficult to say which other metals will fall within the scope of this restriction. Guidance will also be required as to the industries that are controlled directly or indirectly by the IRGC or that are relevant to Iran’s nuclear, military and ballistic missile programme.

It is anticipated that, as with previous EU Regulations on Iran, the Regulation that implements the restrictions in the Decision will include detailed annexes that will clarify the subject matter of the restrictions.

The Decision provides that the restrictions relating to metals shall be without prejudice to the execution, until 15 April 2013, of pre-16 October 2012 (the date of the publication of the Decision) *“contracts or ancillary contracts necessary for the execution of such contracts”*.

The wording of the Decision here is similar to that which was used in Decision 2012/35 of January this year, which introduced the restrictions on dealing with Iranian oil.

In the Regulation which implemented Decision 2012/35, however, the wording was slightly amended by the insertion of the word “*trade*” in front of “*contracts*”. This amendment served to narrow the scope of the exception so that it applies solely to sale and purchase contracts and not to other commercial contracts such as, for example, long term charterparties. It is possible that a similar amendment will be made when the Regulation implementing the Decision is published.

### Shipbuilding and maintenance

The Decision prohibits:

- > the sale, supply or transfer of key naval equipment and technology for shipbuilding, maintenance or refit to Iran or to Iranian or Iranian-owned enterprises engaged in this sector; and
- > the use of vessels or aircrafts under the jurisdiction of Member States to perform any of the above activities.

An exemption from the above prohibitions shall be available in the event of a non-Iranian owned or controlled vessel being forced into an Iranian port or Iranian territorial waters under *force majeure*.

The above prohibitions will be subject to a grace period which runs until 15 February 2013 for the execution of pre-16 October 2012 contracts and ancillary contracts necessary for the execution of such contracts. As with the grace period for contracts involving restricted metals (please see above), in our view it is possible that the scope of this temporary exemption will be restricted to “*trade*” contracts.

As with the prohibitions relating to metals, the EU is yet to define the scope of “*key naval equipment and technology*”. Whilst it is anticipated that the implementing Regulation will define these terms, for the moment, precisely what this restriction is intended to prohibit is uncertain.

The Decision also prohibits:

- > the construction or participation in the construction of new oil tankers for Iran or Iranian persons and entities; and
- > the provision of technical assistance or financing or financial assistance in relation to the construction of new oil tankers for Iran or Iranian persons and entities.

### Vessels used for storing oil

The Decision prohibits:

- > the supply of vessels designed for the transport or storage of oil and petrochemical products to Iranian persons, entities or bodies; and
- > the supply of vessels designed for the transport or storage of oil and petrochemical products to any person, entity or body for the transport or storage of Iranian oil and petrochemical products.

The existing restrictions on the import, transport and purchase of Iranian crude oil, petroleum and petrochemical products did not expressly prohibit the use of vessels to store these products. There was, accordingly, some confusion as to whether or not using vessels as floating storage tanks was prohibited, but this has now been clarified by the Decision.

### Flagging and classification services

The Decision prohibits the provision of flagging and classification services to Iranian oil tankers and cargo vessels from 15 January 2013.

### Transactions with Iranian banks

The Decision prohibits EU financial institutions from entering into, or continuing to participate in, transactions with:

- > Iranian banks;
- > branches and subsidiaries of Iranian banks wherever located; and
- > financial entities controlled by persons and entities domiciled in Iran.

Such transactions will, however, be permissible if authorised in advance by the relevant Member State. Authorisation will only be granted in relation to certain, specified types of transaction, for example those relating to foodstuffs, healthcare, etc.

The UK authorities introduced national legislation in November 2011, which already includes wide-ranging prohibitions on UK financial entities dealing with Iranian banks. This latest EU Decision will bring other EU Member States into line with the UK position.

### EU Regulation 954/2012

EU Regulation 954/2012 was agreed alongside the Decision and implements the asset freezes contained in the Decision by amending the list of Iranian persons and entities subject to the EU's asset freeze. The Regulation added one individual and 34 entities mainly connected with the Iranian oil and gas sector to the EU's list of sanctioned persons. Among the most notable of these additions are:

- > the Ministry of Energy;
- > the Ministry of Petroleum;
- > National Iranian Oil Company (“NIOC”) (and many of its subsidiaries); and
- > National Iranian Tanker Company (“NITC”).

### Conclusion

The restrictions introduced by the Decision and the addition of the various entities subject to the EU's asset freeze will make trade with Iran even more difficult. Those engaged in contracts with Iranian entities, particularly those who deal with any of the newly listed oil and gas companies, will need to consider whether they are still able to continue doing business with those entities. If they have any EU connection, it is likely that the restrictions will prevent further dealings or limit the time frame within which business may be completed.

It is recommended that you seek legal advice as soon as possible if you are concerned that any of the new restrictions, when implemented, will affect you or your company.

<http://incelaw.com/documents/pdf/legal-updates/eu-sanctions-against-iran-update-june-2012>

<http://incelaw.com/documents/pdf/legal-updates/iran-sanctions-update-may-2012>

*This update is not intended to be, nor should it be relied on, as specific legal advice in relation to any sanctions issues. If you have a specific query in relation to sanctions which requires legal advice, please contact Michelle Linderman.*



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