

IRAN: EUROPEAN UNION AND UNITED KINGDOM SANCTIONS

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Overview

The EU and UK have adopted similar sanctions regimes with regard to Iran.

The relevant EU regulation is Council Regulation (EU) No 267/2012. The UK regulations relating to Iran are the Iran (Nuclear) (Sanctions) (EU Exit) Regulations 2019 and the Iran (Sanctions) (Human Rights) (EU Exit) Regulations 2019. These were introduced following the UK's exit from the EU and the former largely replicates the terms of Council Regulation (EU) No 267/2012.

Who do the EU Sanctions apply to?

The scope of the EU and UK sanctions regimes are very similar in how they apply in their respective jurisdictions. Specifically, both apply:

- (a) within the territory of the EU / UK respectively, including their airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of an EU Member State / the UK;
- (c) to any person inside or outside the territory of the EU / UK, who is a national of an EU Member State / the UK;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of an EU Member State / the UK; and
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the EU / UK.

This will include Owners, Managers, Operators, Charterers and even vessels which are registered, incorporated, constituted or do business in whole or in part within the EU / UK.

The sanctions do not apply to non-EU / non-UK companies. However, if those companies take any action that is in breach of sanctions, associated EU / UK companies and employees who are EU / UK citizens may face penalties under the EU and UK regimes.

In addition, non-EU / non-UK companies may face sanctions in respect of any business they conduct that is done in whole or in part within the EU / UK. The sanctions would be limited to that particular business and would not extend to exclusively non-EU / non-UK business carried out by those companies.

Prohibitions: Overview

On 16 January 2016, in accordance with the Joint Comprehensive Plan of Action ("JCPOA"), the EU lifted various nuclear-related sanctions on Iran and the UK has mirrored that approach following Brexit. However, some prohibitions remain in place.

The following general prohibitions apply under EU and UK law:

A. Asset freezes

Under the EU and UK sanctions regimes, all funds and economic resources belonging to, owned, held or controlled by listed parties are to be frozen. In addition, no funds or economic resources may be made available, directly or indirectly, to or for the benefit of listed parties. The prohibition on making available funds and economic resources goes beyond prohibiting direct payments to listed parties. Indirect payments, such as payments to a non-listed party who then in turn pays the money to a listed party, are prohibited.

B. Export and Import Restrictions

Prohibitions are in place in respect of certain goods. Generally, prohibitions will relate either to the “sale, supply, transfer or export, directly or indirectly” of listed goods to or for use in Iran, or the import into the EU and the UK and/or purchase of goods from Iran. These prohibitions mostly relate to military or nuclear related goods and goods that can be used for internal repression.

There are also restrictions on providing services associated with the import/export of listed goods. The most common prohibitions are on the provision of technical assistance, brokering services, financing and financial assistance.

Further guidance on these restrictions can be found at pages 5-9 below.

Due diligence as a defence to liability

The EU and UK sanctions regulations implementing these prohibitions include a defence to liability where the person or entity concerned “*did not know, and had no reasonable cause to suspect*”, that their actions would infringe the relevant prohibitions.

Conducting thorough investigations into any particular trade or transaction involving sanctioned jurisdictions is, therefore, critical; well-documented investigations and screenings may serve as a defence to unintentional sanctions violations.

Anti-circumvention

The EU and UK sanctions regulations contain anti-circumvention wording that provides that it “*shall be prohibited to participate, knowingly and intentionally, including indirectly, in activities the object or effect of which is to circumvent the prohibitions...*”. Therefore, even if a transaction is not in direct breach of sanctions, if it intended to circumvent sanctions, a violation and liability may still arise.

Blocking Statute

In May 2018, the US announced its decision to withdraw from the JCPOA whereas, In stark contrast, the EU maintained its support of the JCPOA.

As part of this continued support, the EU extended the EU Blocking Statute (legislation dating back to 1996) to address the re-imposition of U.S. extraterritorial sanctions imposed in respect of Iran.

The intention of the Blocking Statute is to protect EU operators, regardless of their size and field of activity, by:

- a. nullifying the effect in the EU of any foreign court ruling based on the foreign laws listed in its Annex;

- b. allowing EU operators to recover in court damages caused by the extra-territorial application of the specified foreign laws.

Of concern to EU operators, however, is that the Blocking Statute prohibits compliance by EU operators with any requirement or prohibition based on the specified foreign laws (namely U.S. secondary sanctions in respect of Iran). EU operators whose economic and financial interests are affected by the extra-territorial application of those laws are obligated to inform the European Commission. Compliance with U.S. extra-territorial sanctions in respect of Iran may give rise to damages claims and criminal liability as a matter of EU law.

A Guidance Note on the implementation of the Blocking Statute can be found on the European Commission's website. Exemptions may be granted on application to the European Commission.

The UK equivalent of the Blocking Statute is the Protection of Trading Interests (retained Blocking Regulation), which has a similar effect but is applicable to UK persons.

If a UK person requests a licence from U.S. authorities to be exempt from legislation imposing the proscribed sanctions, it would be compliance with said sanctions and thus a breach of the retained Blocking Regulation.

Nevertheless, in exceptional circumstances, a UK person may be authorised by the Secretary of State to comply with legislation imposing the proscribed sanctions. In assessing authorisation applications, the Secretary of State will consider the criteria set out in the Implementing Regulation.

External legal advice should be contemplated when navigating these complex issues.

Status of the JCPOA

On 14 January 2020, the UK, France and Germany (the E3) triggered the JCPOA's dispute resolution mechanism. This came in response to an announcement from Iran on 6 January 2020 that it would no longer abide by any of the restrictions imposed under the JCPOA.

The dispute resolution mechanism provides for a resolution process that takes roughly two months. However, the E3 have continued to extend the timeline for the dispute resolution process and have indicated they still hope to save the deal.

On February 18, 2021, the Biden Administration rescinded the re-imposition of UN sanctions against Iran, which were lifted as part of the JCPOA.

On 19 June 2021, the parties to the JCPOA, including the U.S., held a meeting in Vienna, Austria to conclude the sixth round of talks that have been underway since April 2021 to revive the JCPOA.

On 6 July 2021, the E3 made a [joint announcement](#) with respect to Iran's violation of its commitment under the JCPOA by taking steps for the production of enriched uranium metals. The E3 stated that: "*This further step in Iran's escalation of its nuclear violations is all the more concerning at a time when no date has been set for the continuation of the negotiations in Vienna on a return to the JCPOA*".

Although there seems to be some progress since the U.S. administration's reengagement with the JCPOA, should the JCPOA framework collapse, it is highly likely that the pre-JCPOA UN sanctions will "snap back" and be re-introduced. Members are advised to continue to monitor events closely.

A. Dealing with Designated Parties: Asset Freezes

What is prohibited?

1. Funds and economic resources belonging to, owned, held or controlled by designated parties are to be frozen.

→ *What does this mean?*

This provision is largely aimed at banks and financial institutions, who must freeze all accounts belonging to, owned, held or controlled by designated parties.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of designated parties.

→ *What does this mean?*

No payments can be made to any party designated by the EU and UK regimes, either directly or indirectly (e.g., making the payment to a non-designated party knowing that they will pay it on to the designated party).

No payments can be made “for the benefit of” a designated party. This includes, for example, making payments to a non-designated company which is owned or controlled by a designated party.

The prohibition extends beyond the payment of monies to “economic resources”. These are defined by the EU and UK regimes as “*assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but which may be used to obtain funds, goods or services*”. This can include letters of credit, bills of lading and bills of sale.

The wide scope of this provision emphasises the importance of thoroughly investigating all parties involved in a particular transaction or trade

How can I find out which parties are designated?

A full up to date list of all parties designated by the EU regime can be found [here](#).

A full up to date list of all parties designated by the UK regime can be found [here](#).

Designated parties of key concern to the Shipping industry

The Shipping industry is of central importance to the Iranian economy, and as such several companies involved in and associated with the industry had been designated by the EU and the UK.

Another party of key concern to the Shipping industry is Tidewater. It remains designated, although it appears to be the case that its involvement in port and terminal operation in Iran has much declined in recent times. It would still, however, be prudent to identify the party which operates the port and/or terminal in Iran where a vessel is calling.

Where cargo is to be loaded or discharged at a terminal run by a designated party, the payment of port dues and other charges will amount to making funds available to a designated party, and so will be

prohibited. It is essential, therefore, to obtain information about the Iranian ports being used as well as the parties involved in a transaction.

Iran Marine Industrial Company is also among the designated parties under the EU and UK regimes, and is involved in a broad range of activities, including shipbuilding and repair, construction of offshore oil, gas, and drilling rig platforms, construction of ports, oil terminals, and jetties as well as installation and repair of sub-sea pipelines, and the laying of submarine cables.

Members must continue to ensure that all parties involved in any particular transaction are cleared, unless and until there are no remaining designated entities at all.

How can I avoid a breach?

Thorough investigations must be carried out in order to determine whether any party involved in a transaction is designated. If so, there is a risk that involvement in the transaction will amount to sanctionable conduct, even if the listed party is not a direct contractual counterpart.

The following investigations should be carried out:

- (a) Identify all parties involved in the transaction, for example shippers, receivers, agents and any intermediaries.
- (b) Investigations must go further than simply identifying the names of the parties and checking them against the asset freeze lists. The prohibitions extend to parties owned and controlled by designated persons. Where possible the corporate structure, ownership and control of all companies involved in the transaction must be investigated.
- (c) Where a cargo is to be loaded or discharged in Iran, the relevant ports and terminals must be identified. Involvement in a trade which would require payment of port dues and other similar charges to a designated entity, either directly or indirectly, is likely to amount to a breach of sanctions.

Further, it is also necessary to consider whether a non-designated party is owned or controlled by a designated party.

Under the UK sanctions regime, a party is considered to be “owned or controlled” by another party if:

- (a) that person holds directly or indirectly more than 50% of the shares or voting rights in the company or the rights to appoint or remove a majority of the board of directors of that company; and
- (b) it is reasonable, having regard to all the circumstances, to expect that that person would (if such person chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the company are conducted in accordance with that person’s wishes.

Under EU regulations, a party is considered to be “owned” by another party which is in possession of more than 50% of its proprietary rights, or which has a majority in it. There is no definitive meaning of “control” for the purposes of the EU sanctions regime – however, it is likely to follow similar principles to the UK position.

Are there any situations in which payments can be made to a designated party?

Under EU and UK regulations, payments to designated parties may be authorised in certain specified circumstances. The majority of these are not relevant to a commercial situation and reflect circumstances such as satisfying the basic needs of designated parties, or the payment of fees or service charges for the maintenance of frozen funds.

Under EU Regulations, these payments must be authorised by the relevant authority in the Member State of the party making the payment. Those authorities are listed in Annex X to Council Regulation (EU) No 267/2012. The payment must also be notified to the EU Sanctions Committee, who must not object to the payment. Under the UK regulations, a licence to carry out any such payments must be obtained by the UK's HM Treasury.

Even if it appears that a particular payment may be permitted, it should never be assumed that authorisation will be given.

Funds may be added to frozen accounts of interest or other earnings on those accounts or where they reflect payments due under contracts, agreements or obligations that were concluded or arose before the date on which the designated party in question was listed. Those funds must then be immediately frozen. As above, the relevant EU competent authorities must be notified without delay regarding any such transactions. A licence by the HM Treasury is required in the UK.

Are there any situations in which funds may be released from a frozen account?

In the EU, the competent Member State authorities may authorise the release of frozen funds or economic resources where:

- (a) the funds or economic resources are:
 - (i) the subject of an arbitral decision rendered prior to the date on which the designated party was put on the asset freeze list, or of a judicial or administrative decision rendered in the EU, or a judicial decision enforceable in the Member State concerned, prior to or after that date; and
 - (ii) will be used exclusively to satisfy claims secured by such a decision or recognised as valid in such a decision, within the limits set by applicable laws and regulations governing the rights of persons having such claims; and
 - (iii) the decision is not for the benefit of a party on the asset freeze list and is not contrary to public policy in the Member State concerned.
- (b) if a payment is due under a contract or agreement concluded, or an obligation that arose, before the party was designated provided that the payment will not be directly or indirectly received by a designated party.

Under EU regulations, authorisation may be given provided that the competent authority of the relevant Member State has determined that the payment will not directly or indirectly be received by any person or entity on the asset freeze list and provided that the transfer is not otherwise prohibited.

Under UK regulations, similar exceptions those of the EU as listed above apply save that a HM Treasury licence is required to authorise any such release of frozen funds or economic resources that fall under the above exceptions.

B. Cargo: Export and Import Restrictions

Carrying cargo to Iran – what cargos are prohibited?

Under EU regulations, it is prohibited to sell, supply, transfer or export, directly or indirectly, to any Iranian party or for use in Iran, the following goods:

1. Goods and technology which could contribute to the development of nuclear weapon delivery systems (as listed in Annex III of Council Regulation (EU) No 267/2012), that is to say, goods and technology contained in the Missile Technology Control Regime list. There are no exceptions to this prohibition under the EU regulations.
2. Without prior authorisation:
 - (a) the goods and technology listed in Annex I of Council Regulation (EU) No 267/2012 (items contained in the Nuclear Suppliers Group list), Annex II of Council Regulation (EU) No 267/2012 (that is to say items that could contribute to reprocessing or enrichment-related or heavy-water related or other activities inconsistent with the JCPOA), Enterprise Resource Planning software designed specifically for use in the nuclear and military industries (as listed in Annex VIIA of Council Regulation (EU) No 267/2012) and graphite and raw or semi-finished metals (as listed in Annex VIIB of Council Regulation (EU) No 267/2012). Transactions involving these goods can be authorised by the competent authority of the relevant Member State and the UN Council in certain circumstances.
 - (b) equipment which might be used for internal repression (as listed in Annex III of Regulation 359/2011). Transactions involving these goods can be authorised by the competent authority of the relevant Member State in certain circumstances.
 - (c) equipment, technology or software (as listed in Annex IV of Regulation 359/2011). Transactions involving these goods can be authorised by the competent authority of Member State in certain circumstances.
3. There are also restrictions with respect to engaging in activities that involve uranium mining where authorisation from the competent authority of the relevant Member State after approval by the UN Council is received.

Under UK regulations, similar prohibitions to the above apply and a licence from the Secretary of State is required to carry out prohibited activities and in some instances, further approval by the UN Security Council.

Carrying cargo from Iran – what cargos are prohibited?

Under EU regulations, it is prohibited to purchase, import or transport from Iran, directly or indirectly, goods and technology contained in the Missile Technology Control Regime List, as set out in Annex III of Council Regulation (EU) No 267/2012. There are no exceptions to this prohibition.

It is also prohibited, without authorisation to purchase, import or transport from Iran goods listed in Annexes I and II of Council Regulation (EU) No 267/2012 (as set out in 2 above), whether or not originating in Iran. Transactions involving these goods can be authorised by the competent authority of the relevant Member State.

Under UK regulations, without a licence from the Secretary of State, it is prohibited to import broadly the same items as those listed in the section above in relation to the UK, as well as any goods falling within Chapter 93 of the Harmonized Commodity Description and Coding System.

How can I avoid a breach?

In order to avoid falling foul of the cargo prohibitions, the following questions should be asked:

- (a) What is the cargo? It should be identified as precisely as possible.
- (b) What is the origin of the cargo?
- (c) What is the location of the cargo? This may be different to the cargo's origin.
- (d) What is the destination of the cargo? This should include the cargo's final destination and any intermediate destinations.
- (e) Who will be the ultimate receiver of the cargo? Will the cargo pass through the custody of any intermediaries before reaching the ultimate receiver and if so, who are they?
- (f) What will the cargo be used for?

These questions should also be asked in respect of bunkers, if it is suspected that a vessel is taking on bunkers of Iranian origin.

Prohibited Services related to the Import and Export of Cargo

It is prohibited to provide the following services, both directly and indirectly, in respect of all prohibited cargo:

- (a) technical assistance;
- (b) brokering services;
- (c) financing; and
- (d) financial assistance.

C. Transport and Miscellaneous Shipping-Related Sanctions

Bunkering, ship supply and other services

Under both EU and UK regulations, it is prohibited to provide bunkering, ship supply services, or any other servicing of vessels, to vessels owned or controlled, directly or indirectly, by an Iranian party where the providers of the service have information which provides reasonable grounds to determine that the vessels carry goods on the Common Military List (EU)/military goods (UK), or goods whose supply, sale, transfer or export is prohibited.

In the EU, this prohibition will apply until the cargo has been inspected and, if necessary, seized and disposed of.

Under EU regulations, the only exception to this prohibition is if the provision of the services in question is necessary for humanitarian and safety purposes. Under UK regulations, the only exception is if the provision of the services in question is required to save the lives onboard that ship if these are endangered. Otherwise, a licence by the Secretary of State that applies to trade restrictions is required instead.

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