



IRAN: EUROPEAN UNION SANCTIONS

by The Swedish Club and Reed Smith LLP
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Who do the EU Sanctions apply to?

EU sanctions apply:

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

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.

The sanctions do not apply to non-EU companies. However, if those companies take any action which is in breach of sanctions, associated EU companies and employees who are EU citizens may face penalties under the EU regime. In particular, EU parent companies may be sanctioned for the actions of their non-EU subsidiaries (although this will depend on the facts of any particular situation).

In addition, under point (e) above, non-EU companies may face sanctions in respect of any business they do which is done in whole or in part within the EU. Note that the sanctions would be limited to that particular business, and would not extend to exclusively non-EU 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. However, some prohibitions remain in place.

The following general prohibitions apply under EU law:

A. Asset freezes

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 shall be made available, directly or indirectly, to or for the benefit of listed parties. These provisions have a very wide scope, and are intended to go beyond affecting only the funds and economic resources of listed parties. The prohibition on making available funds and economic resources goes beyond prohibiting direct payments to listed parties. Indirect payments, such as payment 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/or purchase of goods from Iran. The latter often includes prohibitions on transporting listed goods, both inside and outside the EU.

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, financing and financial assistance.

C. Restrictions on Financial Transfers

The restrictions on financial transfers to and from non-listed Iranian entities have been abolished. It is, therefore, no longer necessary to apply for prior authorisation or notify the competent authority of transfer of funds sent to or received from Iran.

D. Restrictions on Financial Services

The general restrictions on financial services have been lifted. Banking activities (such as the establishment of new correspondent banking relationships with Iranian Banks and the opening of branches, subsidiaries or representative offices of Iranian Banks) in EU states are permitted. The provision of insurance and reinsurance to non-listed Iranian entities is now permitted.

E. General Transport Restrictions

Certain sanctions related to the transport sector, including the provision of associated services have now been lifted. As a result, the following activities are allowed—the sale, supply, transfer or export of naval equipment and technology for shipbuilding, maintenance or refit, to Iran or to any Iranian person engaged in this sector; the design, construction or the participation in the design or construction of cargo vessels and oil tankers for Iran or for Iranian persons; the provision of vessels designed or used for the transport or storage of oil and petrochemical products to Iranian persons, entities or bodies; and the provision of flagging and classification services, including those pertaining to technical specification, registration and identification numbers of any kind, to Iranian oil tankers and cargo vessels.

The provision of bunkering or ship supply services, or any other servicing of vessels, to Iranian-owned or Iranian-contracted vessels not carrying prohibited items is allowed.

Further guidance on these restrictions can be found at pages **5-10** below.

Due diligence as a defence to liability

The EU 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 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 is 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. However, in June 2018, the EU confirmed its continued support to the JCPOA.

As part of this continued support, the EU introduced the EU Blocking Statute – as a reaction to the US’ re-introduction of extra-territorial sanctions.

The basic principle of the Blocking State is to prohibit EU persons from complying with extra-territorial sanctions or any decision, ruling or award based upon them, given that the EU does not recognise their applicability to EU persons – unless authorised by the European Commission. That being the case, 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](#).

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

Possible collapse of 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.

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.

Brexit

EU restrictions continue to apply to the UK during the transition period post-Brexit (i.e. currently until 31 December 2020); thereafter it remains unclear to what extent English law will continue to follow the EU sanctions regime imposed against Iran.

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 regime, either directly or indirectly (e.g. making the payment to a non-designated party in the knowledge 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 regime 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”. They 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](#).

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.

The Islamic Republic of Iran Shipping Lines (IRISL) and its related entities had been such a party. IRISL and most (but not all—there are a very few which remain designated) of its related entities are no longer designated by the EU (although IRISL is designated under US sanctions).

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.

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.

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

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 regimes. Factors to take into account when determining whether a designated party controls a company will include:

- (i) the size of that party’s shareholding;
- (ii) the nature of the shares held (some may carry voting rights, whilst others may not);
- (iii) the composition of the board of directors;
- (iv) the provisions of the company’s Articles of Association; and

- (v) the designated party's ability to exercise power over matters affecting the running of the company.

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

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.

Funds may be added to frozen accounts 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.

NB: 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 Regulation 267/2012. The payment must also be notified to the EU Sanctions Committee, who must not object to the payment.

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

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

→ Exceptions regarding arbitral, judicial and administrative decisions

Member State authorities may authorise the release of frozen funds or economic resources if the following conditions are met:

- (i) the funds or economic resources are the subject of: (i) an arbitral decision rendered prior to the date on which the designated party was put on the asset freeze list; (ii) a judicial or administrative decision rendered in the EU, or (iii) a judicial decision enforceable in the Member State concerned, prior to or after that date;
- (ii) the funds or economic resources 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;
- (iii) the decision is not for the benefit of a party on the asset freeze list; and
- (iv) recognising the decision is not contrary to public policy in the Member State concerned.

→ Exceptions regarding certain contracts

Member States may authorise the release of frozen funds or economic resources 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.

B. Cargo: Export and Import Restrictions

Please note that even where a trade or transaction is no longer prohibited, it is essential that thorough investigations are still carried out. There will still be issues under EU sanctions if, for example, a designated part is involved. There may also be issues under US sanctions if payments are to be made in US Dollars.

Carrying cargo to Iran – what cargos are prohibited?

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 Regulation 267/2012), that is to say, goods and technology contained in the Missile Technology Control Regime list.

→ *Are there any exceptions?*

There are no exceptions to this prohibition.

2. Without prior authorisation, the goods and technology listed in Annex I of Regulation 267/2012 (items contained in the Nuclear Suppliers Group list), Annex II of Regulation 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 Regulation 267/2012) and graphite and raw or semi-finished metals (as listed in Annex VIIB of Regulation 267/2012)

→ *Are there any exceptions?*

Transactions involving these goods can be authorised by Member States in certain circumstances.

3. Without prior authorisation, equipment which might be used for internal repression (as listed in Annex III of Regulation 359/2011).

→ *Are there any exceptions?*

Transactions involving these goods can be authorised by Member States in certain circumstances.

4. Without prior authorisation, equipment, technology or software (as listed in Annex IV of Regulation 359/2011).

→ *Are there any exceptions?*

Transactions involving these goods can be authorised by Member States in certain circumstances.

Carrying cargo from Iran – what cargos are prohibited?

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 Regulation 267/2012.

→ *Are there any exceptions?*

There are no exceptions to this prohibition.

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. Financial Transfers

It is no longer prohibited to transfer funds between EU financial and credit institutions and:

- (a) credit and financial institutions and bureaux de change domiciled in Iran;
- (b) branches and subsidiaries, both within and outside the EU, of such institutions domiciled in Iran; and
- (c) credit and financial institutions and bureaux de change which are not domiciled in Iran, but which are controlled by a party domiciled in Iran.

It is important to note that payments in United States dollars remain problematic and many EU based commercial banks continue to be reluctant to be involved in Iran-centred transactions.

D. Financial Services

The restrictions on the provision of financial services have been lifted.

E. Transport and Miscellaneous Shipping-Related Sanctions

Bunkering, ship supply and other services

It continues to be 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, or goods whose supply, sale, transfer or export is prohibited.

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

→ *Are there any exceptions?*

The only exception to this prohibition is if the provision of the services in question is necessary for humanitarian and safety purposes.

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