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EU Council Adopts Iran Sanctions Implementing Regulation

On October 25, 2010, the EU Council of Ministers (the “Council”) adopted Regulation No 961/2010 (the “Regulation”)¹ on restrictive measures against Iran. The Regulation implements the Council Decision adopted on July 26, 2010 (the “Decision”).² The Decision was binding on Member States, but not directly on natural or legal persons. The Regulation is directly applicable in Member States and entered into force on October 27, 2010.

The Regulation prohibits or restricts a wide range of activities involving EU nationals or territory and “Iranian persons, entities or bodies,” including: (i) exports and imports of certain goods and technologies; (ii) financing of enterprises in certain sectors, notably the oil and gas and uranium mining sectors; (iii) transfers of funds and financial services; and (iv) transportation of certain goods. “Iranian persons, entities or bodies” are defined as the State of Iran or any public authority; any natural person in, or resident in, Iran; any legal person, entity or body having its registered office in Iran; and – importantly -- any legal person, entity or body, inside or outside Iran, owned or controlled directly or indirectly by one of the above mentioned. Notably, the Regulation does not affect the import or export of oil or gas to or from Iran.

The main provisions of the Regulation are discussed below.

I. EXPORT AND IMPORT RESTRICTIONS

The Regulation’s export and import restrictions apply to several categories of goods and technologies: dual use goods listed in Council Regulation 428/2009 (with some exceptions) (Annex I); goods and technologies that could contribute to Iran’s nuclear activities, including those identified by the UN Security Council or by the Sanctions Committee (Annex II); equipment that might be used for internal repression, for example firearms, ammunition and explosive substances (Annex III); other goods and technologies that could contribute to Iran’s nuclear activities (Annex IV); and key equipment and technology used in exploration and production of crude oil and natural gas or refining and liquefaction of natural gas (Annex VI). The key equipment and technologies included in Annex VI include drilling equipment, pumps, and equipment designed for analyzing the quality of oil and gas.

¹ <http://tinyurl.com/2cbv2zp>

² <http://tinyurl.com/councildecision>. Please see CGS&H Alert Memorandum “The EU Council Tightens Iran Sanctions” August 5, 2010. <http://tinyurl.com/2cduey3>

Subject to certain exceptions, the Regulation prohibits the export of goods, technologies and equipment (and the provision of related services) listed in Annexes I-III and Annex VI to any Iranian person, entity or body or for use in Iran. Imports of goods, technologies and equipment listed in Annexes I, II or III are also prohibited. Member State authorities may exempt exports of goods and technologies in Annexes I-III -- but not those in Annex VI -- where the export clearly would not contribute to the development of Iran's nuclear activities, but would serve, for example, agricultural or humanitarian purposes, if the contracts in question include appropriate end-user guarantees and if Iran has committed not to use such items for nuclear activities.

Prior authorization is required for the export of goods, technologies and equipment listed in Annex IV (other nuclear-related goods and technologies) to any Iranian person, entity or body or for use in Iran. Member State authorities may grant authorizations on a case-by-case basis, except in certain prohibited circumstances, such as the supply of goods that would contribute to the development of nuclear weapon delivery systems.

II. RESTRICTIONS ON FINANCING AND FINANCIAL TRANSACTIONS

A. RESTRICTIONS ON FINANCING OF CERTAIN ENTERPRISES

The Regulation prohibits the grant of financial loans or credits, the acquisition or extension of participations in and/or the creation of joint ventures with Iranian persons, bodies or entities engaged in:

- The manufacture of goods and technologies listed in Annex I and II (dual-use goods and nuclear-related goods and technologies);
- The manufacture of equipment listed in Annex III (equipment that might be used for internal repression);
- The exploration or production of crude oil and natural gas, the refining of fuels or the liquefaction of natural gas; and
- Uranium mining, uranium enrichment and reprocessing, and manufacture of goods or technology included in the Nuclear Suppliers Group and Missile Technology Control Regime lists.

The establishment of cooperation³ with Iranian companies engaged in the transmission of natural gas is also prohibited.

As with imports and exports, these restrictions do not apply to contracts in existence when the Decision was adopted, provided the competent authority has been informed.

³ As defined in the Regulation, "cooperation" includes (i) the sharing of investment costs in a supply chain for the receipt or delivery of natural gas and (ii) direct cooperation for the purpose of investing in liquefied natural gas facilities.

B. RESTRICTIONS ON FINANCIAL SERVICES

EU credit and financial institutions are prohibited from opening new bank accounts in Iran; establishing new correspondent banking relationships or joint ventures with Iranian credit or financial institutions; or opening new representative offices, branches or subsidiaries in Iran. Similarly, EU financial institutions may not authorize the opening in the EU of new branches, subsidiaries or representative offices of Iranian credit or financial institutions, nor allow Iranian banks to acquire or extend participations in any credit or financial institution incorporated or doing business in the EU.

Other restrictions include a prohibition on the purchase or sale of Iranian public or public-guaranteed bonds, as well as the provision of brokering services with respect to such bonds. The provision of insurance and re-insurance services is prohibited (subject to some exceptions) to: (i) Iran or its Government, and its public bodies, corporations and agencies; (ii) an Iranian person, entity or body other than a natural person; or (iii) a natural or a legal person, entity or body when acting on behalf or at the direction of (i) or (ii).

More generally, the Regulation sets out guidelines on how EU credit and financial institutions should comport themselves when dealing with their Iranian counterparts. They are expected to exercise continuous vigilance over account activity, require all the necessary information and refuse to carry out transactions if such information is not provided. In addition, they should maintain records of all transactions for five years and report any suspicious activity or funding to the Financial Intelligence Unit or other competent authority.

C. RESTRICTIONS ON TRANSFERS OF FUNDS

The Regulation prescribes the following on transfers of funds to and from Iranian persons, entities of bodies:

- Transfers of €10,000 or less can be made without any new requirements.
- Transfers of more than €10,000 and less than €40,000 must be notified in advance to a competent authority.

Transfers of €40,000 or more are subject to prior authorization, unless they relate to foodstuffs, healthcare, medical equipment or humanitarian purposes, in which case they need only be notified to the competent authorities. A prior authorization will not be granted if there are reasonable grounds to determine that the transfer would contribute to, for example, Iran's enrichment-related services or the development of nuclear weapon delivery systems.

D. FREEZING OF FUNDS AND ECONOMIC RESOURCES

All funds and economic resources belonging to persons and entities associated with, among other things, Iran's proliferation-sensitive nuclear activities and the development of nuclear weapon systems, are frozen. Moreover, no funds or economic resources shall be made available to these persons or entities. Lists of covered persons

and entities can be found in Annexes VII and VIII of the Regulation.⁴ If the person or entity needs the funds to cover basic needs or for payment of legal services, the competent authorities may grant approval. The authorities may also release frozen funds that are the subject of a judicial, administrative or arbitral lien or when a payment is due under an obligation that arose before the funds were frozen.

III. RESTRICTIONS ON TRANSPORT

To implement the restrictions on transfers of prohibited goods and technologies, pre-arrival or pre-departure information must be submitted to the competent customs authorities in relation to all goods brought into or leaving the EU customs territory from or to Iran. If there are reasonable grounds to believe that Iranian-owned or contracted vessels carry prohibited items, the provision of bunkering or ship supply services to these vessels is prohibited unless the provision of such services is for humanitarian purposes. The provision of engineering and maintenance services to Iranian cargo aircraft is prohibited under the same circumstances.

IV. CONCLUSION

The Regulation is directly applicable in the EU and to EU persons. Member States must designate the competent authorities referred to in the Regulation and establish penalties for infringements, which must be effective, proportionate and dissuasive. Although contracts entered into before July 26, 2010 may be completed, interested parties must notify the competent authorities.

While the Regulation significantly expands the 2007 sanctions regime it has replaced, EU sanctions remain significantly less stringent than those administered by the U.S. Office of Foreign Assets Control (OFAC). In particular, U.S. sanctions prohibit all imports and exports of goods, services, and technology between the United States and Iran and many transactions indirectly benefiting Iran. In addition, the U.S. has recently adopted the Comprehensive Iran Sanctions, Accountability, and Divestment Act of July 1, 2010, which expands upon prior extraterritorial regimes and makes non-U.S. companies potential targets of U.S. sanctions if they engage in certain activities supporting the development of Iranian oil and gas resources, the import of refined petroleum products to Iran or the development of Iranian refining capacity, or Iranian activities linked to terrorism or weapons of mass destruction. In contrast, the Regulation prohibits imports and exports and financial transactions only in defined sectors, and notably does not prohibit imports and exports of oil or gas to or from Iran.

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For additional information, please feel free to contact any of your regular contacts at the firm if you have any questions.

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⁴ Annex VII includes persons designated by the UN Security Council or the Sanctions Committee, and Annex III includes, for example, the Islamic Revolutionary Guard Corps and the Islamic Republic of Iran Shipping Lines.

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