

### EU

#### European Court of Justice Judgment on Damages for Unlawful European Union Sanctions Listing

On 30 May, the European Court of Justice handed down its [judgment](#) in an appeal brought by Safa Nicu Sepahan Co., an Iranian company whose main field of activities includes distribution and transmission of power projects.

The company successfully applied in November 2014, in its application before the General Court, to have its name removed from the list of entities involved in nuclear proliferation. Safa Nicu subsequently appealed the General Court's decision to dismiss the company's €7.7 million (rounded-up) claim for compensation for the material and non-material damage suffered as a result of its designation on the list of persons subject to restrictive measures. However, Safa Nicu was awarded €50,000 for reputational damage. The Council of the EU's appeal sought for the setting aside of the decision to award Safa Nicu non-pecuniary damages.

The European Court of Justice upheld all the findings of the General Court, and in particular the fact that the Council's inability to justify the reasons for Safa Nicu's listing with evidence for duration of three years was a "sufficiently serious breach" of EU law, constituting the pre-condition for an award of damages from an EU institution. The European Court of Justice also held that the General Court was justified in dismissing Safa Nicu's claim for material damage, as the company had not provided "sufficiently precise information" or evidence on the damage caused by the restrictive measures, or the direct link between the imposition of restrictive measures and the company's losses. The European Court of Justice dismissed the Council's cross-appeal and Safa Nicu's appeal, leaving the company with a €50,000 compensation for reputational damage.

#### Council of the European Union Extends Sanctions Against Syria Until 1 June 2018

On 30 May, the Council adopted [Decision 2017/917](#) that extends the EU's sanctions against Syria until 1 June 2018, amending [Council Decision 2013/255/CFSP](#). The sanctions impose travel bans and asset freezes against individuals supporting or associated with the Syrian regime or oppression in the country. A total of three ministers of the Syrian government have been added to the sanctions list, and the Council has also updated the information related to certain persons and entities on the list.

Currently, the sanctions targeting Syria include an oil embargo, restrictions on certain investments, a freeze of the assets of the Syrian central bank within the EU and export restrictions on equipment and technology that could be used for internal repression, in addition to equipment and technology for monitoring or interception of internet or telephone communications. [Council Implementing Regulation 2017/907](#) implements [Council Regulation 36/2012](#).

#### EU Adds Nine Entries to Its Financial Sanctions List Against the Democratic Republic of Congo

On 29 May, the Council of the European Union adopted [Council Implementing Regulation 2017/904](#), which implements [Regulation \(EC\) No 1183/2005](#). With respect to the Democratic Republic of Congo, asset freezes now apply to nine individuals, which can be found in the Annex of Council Implementing Regulation 2017/904. OFSI's notice can be accessed [here](#).

#### EU General Court Rejects Syria Annulment Application

On 18 May, the General Court of the EU [dismissed](#) Rami Makhoul's annulment application for his listing on the EU's restrictive measures targeting Syria. The General Court did so on the basis that he is a member of the Makhoul family, has close ties to and supports the Assad regime, and is an influential businessman in Syria. Rami Makhoul's annulment application was also unsuccessful owing to the fact that the EU's sanctions against Syria include influential businessmen in Syria and members of the Makhoul or Assad families as criteria, which constitute the basis on which the EU includes individuals for designation.

### UK

#### UK Joint Money Laundering Steering Group Consults on Revisions to Its Sanctions Guidance

The UK Joint Money Laundering Steering Group (JMLSG) has published proposed revisions to its guidance on the prevention of money laundering and the financing of terrorism for the UK financial services industry. The revisions reflect a number of factors, including the provisions of the proposed new Money Laundering Regulations published by HM Treasury on 15 March 2017; the creation of the UK Office of Financial Sanctions Implementation (OFSI); and changes to the guidance on a range of UK sanctions powers. [Here](#) are Part II and Part III of the consultation documents. Comments on the proposed revision are due 26 May 2017.

## US

### US Sanctions Persons Connected to Iran's Ballistic Missile Programme

On 17 May 2017, the US Treasury Department's Office of Foreign Assets Control (OFAC) [designated](#) for sanctions seven persons connected to Iran's ballistic missile programme.

Among those targeted by the sanctions are two senior Iranian defense officials, including the Deputy Director for Commerce of Iran's Defense Industries Organization, Morteza Farasatpour. Farasatpour was responsible for coordinating sale and delivery of explosives and other materials to Syria's Scientific Studies and Research Center, the Syrian entity involved in the development of non-conventional weapons and delivery systems. In addition, the sanctions target Chinese national Ruan Runling and a network of three Chinese companies found to have supplied Iran's military with missile-related items, including navigation-applicable technology and guidance systems, as well as one Iran-based company supporting Iran's missile programmes.

OFAC issued these designations under Executive Order 13382 of 28 June 2005, which targets proliferators of weapons of mass destruction and their means of delivery and supporters of such activity. All sanctioned persons are now included on OFAC's List of Specially Designated Nationals and Blocked Persons (the SDN List) and US persons are prohibited from virtually all dealings with those persons, their property or interests in property.

### US Court of Appeals Reverses OFAC Sanctions Penalty for Iran Transactions

In May, the US Court of Appeals for the District of Columbia issued a rare [ruling](#) reversing in part monetary penalties issued by OFAC against California-based automotive electronics supplier Epsilon Electronics Inc. (Epsilon). OFAC issued a [Penalty Notice](#) to Epsilon in July 2014 assessing total monetary penalties of US\$4,073,000 from 39 exports to Dubai-based distributor Asra International Corporation LLC (Asra) between 2008 and 2012. According to the Penalty Notice, those exports to Asra violated § 560.204 of the Iranian Transactions and Sanctions Regulations (ITSR, 31 C.F.R. part 560) because they were undertaken with knowledge or reason to know that the goods were intended specifically for export to Iran.

On review, the Court affirmed OFAC's finding of violations in 34 export transactions. In so ruling, the Court affirmed OFAC's long-held position that the agency need not show that items ultimately arrived in Iran to establish an export with knowledge or reason to know that the items are intended for reexport to Iran. With respect to the remaining five exports which occurred subsequent to OFAC's administrative subpoena to Epsilon, however, the Court held that the agency failed to provide a sufficient explanation for its finding of egregious violations in view of certain contrary evidence. The Court remanded the matter to the Federal District Court with instructions to direct OFAC to reconsider those violations and recalculate the overall penalty amount. While the ruling ultimately might have minimal impact on Epsilon's penalty amount, it could bring about greater transparency in future cases in how OFAC explains its analysis and justifies penalty determinations.

### US Congress Proposes New Iran Sanctions Legislation

On 25 May, the Senate Foreign Relations Committee voted 18-3 to pass S. 722, the Countering Iran's Destabilizing Activities Act of 2017 (CIDA Act). If enacted, the CIDA Act would create new sanctions against Iran with respect to ballistic missiles and the sale of prohibited arms.

The sanctions measures in the CIDA Act are ostensibly mandatory, but the Executive Branch would retain broad discretion in making necessary determinations to trigger the sanctions. The bill would authorise discretionary sanctions for abuses of human rights, although these are largely duplicative of those already authorized under the Global Magnitsky Human Rights Accountability Act. The bill would also direct the President to impose terrorist-related sanctions against Iran's Islamic Revolutionary Guard Corps (IRGC), a provision similar to a proposal being considered by the Trump Administration to designate the IRGC as a foreign terrorist organisation. Such terrorism-related designations would have limited legal and practical effects, and are reportedly opposed by US defense and intelligence officials. The bill also contains exceptions to the authorised sanctions, including for certain humanitarian purposes, and a national security waiver provision allowing the President to waive the imposition of sanctions on a case-by-case basis.

In addition to economic sanctions, the CIDA Act contains various investigation and reporting provisions. The Act calls on the Secretaries of State, Defense and the Treasury, as well as the Director of National Intelligence, to develop a strategy for deterring conventional and asymmetric Iranian activities that directly threaten the US and its allies. It would also require reports from the Executive Branch on (1) the level of coordination between the US and the European Union on their respective sanctions programmes, and (2) US citizens currently detained by Iran or groups supported by the country.

### BIS Updates Encryption Controls Guidance

The US Commerce Department's Bureau of Industry and Security (BIS) has posted long-awaited updates to parts of its [website](#) dedicated to guidance on the Export Administration Regulations' (EAR) encryption controls. The updates implement changes to encryption controls adopted in September 2016, under the Wassenaar Arrangement. Among other things, the new web pages include updated flow charts for classifying encryption items and additional guidance and examples explaining exclusions from encryption controls, such as under Note 4 to Category 5 – Part 2 of the Commerce Control List.

## Enforcement Action

### Export-Related Sentencing and Charges Announced

On 27 April, the US Department of Justice [announced](#) the sentencing of Lim Yong Nam to 40 months in prison for conspiracy to illegally export radio frequency modules from the US to Iran. Separately, it also announced two separate sets of charges: (1) the [indictment](#) of Mark Komoroski for the alleged attempted export of two riflescopes to an individual in Russia without a required license; and (2) the [charging](#) of seven individuals for "conspiring to steal trade secrets from a business in the U.S. on behalf of a company in China that was engaged in manufacturing a high-performance, naval-grade product for military and civilian uses".

## About Us

Our export controls and sanctions team has the ability to provide advice on the shifting regulatory framework on both sides of the Atlantic. We have extensive experience in advising and representing a wide range of companies and financial intuitions in Europe, the US and other jurisdictions on export control and sanctions from a multijurisdictional perspective. Our team is part of our overall International Trade Practice, providing a “one-stop shop” solution to global trade compliance through rapid, professional and tailored advice and compliance tools to fit your business needs and processes. If you have any questions relating to sanctions, please contact a member of our EU or US Sanctions team listed herein, or email [InternationalTradeCompliance@squirepb.com](mailto:InternationalTradeCompliance@squirepb.com) for assistance.

## Resources to Strengthen Compliance

We encourage you to visit our blog, *The Trade Practitioner*, where you will find additional updates and information on export controls, sanctions and other international trade topics. In addition, organisations engaged in the trade of items specially designed for military or space applications are encouraged to download our complimentary *ITAR Practitioner's Handbook*, which covers the International Traffic in Arms Regulations (ITAR) and the US Department of Commerce “600 Series”.

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