

Review



On 26 July 2010, EU introduced new restrictions against Iran. Council Decision 2010/413 intensified the current sanctions with further restrictive measures in the areas of trade, transport, energy and financial services. The new restrictions are currently being implemented at EU and national levels and are bound to have a significant impact on the operations of any organisation involved with trading with or investing in Iran.

The current sanctions under EU Regulation 423/2007 primarily target Iran's proliferation attempts and prohibit or restrict the export to Iran of (i) military goods, software and technology and (ii) any goods, software and technology that could be used in a nuclear enrichment process. Regulation 423/2007 also prohibits financial and technical assistance in these respects and freezes the funds of persons deemed to engage in proliferation attempts.

The Council Decision 2010/413 significantly extends the current sanctions by introducing inter alia the following restrictions:

- Prohibition on the export of dual-use goods, software and technology listed in Annex 1 of Regulation 428/2009 (except for Category 5 – telecommunications and information safety);
- Prohibition on the export of equipment that might be used for internal repression;
- Prohibition on the sale of key equipment and technology for the oil and natural gas sector;
- Prohibition on provision of technical assistance and financial support to enterprises in Iran that are engaged in the oil and natural gas sector;
- Further restrictions on the financial sector, including restraints on financial support for trade with Iran and strict reporting and monitoring criteria including prior authorisation by Member State authorities for any funds transferred from or to Iranian banks (or their foreign subsidiaries);
- Prohibition on the provision of insurance to entities incorporated in Iran or subject to Iran's jurisdiction, or to any individuals or entities acting on their behalf or at their direction, or to entities owned or controlled by them;
- Member States will have to introduce stricter controls including pre-arrival and pre-departure information and inspection requirements for cargo travelling to and from Iran by air and sea;
- A prohibition on the provision by nationals of Member States of engineering and maintenance services to Iranian cargo aircraft where they have information to believe that the cargo aircraft carry items connected with proliferation attempts;
- An extension of the list of persons and entities that are engaged in or associated with providing support for Iran's proliferation attempts of whom all funds and economic resources are frozen and/or whose access is prohibited. (These restrictions were implemented by Council Implementing Regulation (EU) No 668/2010 of 26 July 2010 implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran); and
- Member States will have to take the necessary measures to prevent specialised teaching or training of Iranian nationals, within their territories or by their nationals, of disciplines which would contribute to Iran's proliferation attempts.

To ensure the effectiveness of the sanctions, no claims (including for compensation, set-off or claims under a guarantee) in connection with any contract or transaction the performance of which was affected, directly or indirectly, wholly or in part by the sanctions shall be granted to or for Iranian persons or entities included on the sanction lists.

The full text of Council Decision 2010/413 can be accessed [here](#).

Council Decision 2010/413 is addressed to the Member States and does not have direct effect. In order to become binding upon companies and individuals it requires implementing acts at national and EU levels. The EU is expected to amend Regulation 423/2007 to give effect to the new sanctions later in September.

Until such implementation the current measures remain in force. There are however factual differences among Member States concerning the day-to-day application. The UK authorities, for example, announced on 20 August that the export of all goods listed in Annex I (except Category 5) of Regulation 428/2009 is prohibited with effect from 26 July 2010. By contrast the German authorities announced that the status quo would remain unchanged until the new sanctions are implemented.

This obviously creates legal uncertainties especially for multinational companies with subsidiaries in various Member States. Companies would be well advised to exercise extreme caution when entering into business relationship with Iran. It might be sensible to consider the new rules already, to avoid bad surprises at a later stage.

In particular, if you consider establishing new or extending existing relationships with Iranian business partners, you should carefully consider the new sanctions. You might also wish to include contract provisions into any contracts concerning business with Iran that expressly release you from any liability should you not be able to fulfil your obligations under the contract due to the Iran embargo.

Furthermore, it is likely that there will be attempts to circumvent the intensified sanctions by misleading European businesses e.g. about the true nature of the underlying deal. Enhanced caution about so-called “red flags” should therefore be exercised. Red flags can be any requests by a potential buyer that deviate from the normal business practice in your sector and for which no reasonable and convincing explanation is provided, e.g. requests for abnormal shipping routes or payment modalities, vague description of the products procured, refusal of standard after-sales and support services, request to do business with a foreign subsidiary, etc.

FURTHER INFORMATION:

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