

Alert 10-184



## ReedSmith Energy Trade & Commodities Alert

### Iran Sanctions Update

The European Union has on 26 July 2010 imposed tough new economic sanctions against Iran, going beyond the fourth round of sanctions approved by the UN Security Council last month. The move echoes the US' tightening of its own sanctions against Iran in June of this year.

The new sanctions focus in particular on the country's oil and gas, transport, insurance and banking sectors. The EU has also taken the anticipated step of adding more than 40 individuals and over 50 companies to the "blacklist" created by previous Regulation (EC) No. 423/2007, including (a) the Iranian national shipping line, IRISL, its subsidiaries and a number of other ship-owners / managers believed to be front companies for IRISL and (b) several banks including Bank Mellat and all subsidiaries, Bank Saderat and its subsidiaries and the subsidiaries of Bank Melli.

The new sanctions are set out in EU Council Decision of 26 July 2010 (the "Council's Decision") and Regulation (EU) No. 668/2010 (the "Regulation"). Whilst the Regulation takes immediate effect and does not require any implementing legislation the same is not true of the Council's Decision. The Council's Decision is only immediately effective against those to whom it is addressed, *i.e.* the Governments of the Member States. We have consulted the UK Treasury and it has confirmed that the Council's Decision is not presently binding on individuals or companies. It is widely expected that an EC Regulation will be issued later this year in order for the sanctions to take effect against companies and individuals. The UK Treasury's current intention is to delay implementing legislation until September of this year in anticipation of this. Therefore, it is a question of when rather than if the sanction set out in the Council's Decision will become applicable to EU companies and individuals. It is important that all those involved in the international trade of goods are aware of the new EU sanctions and prepare for their implementation.

This Client Alert follows on from our previous 'Iran sanctions updates' (Client Alert No. 10-146, 10-147 and 10-164 and summarises the European Union's latest sanctions pursuant to EU Council Decision of 26 July 2010 and Regulation (EU) No. 668/2010.

For more detail on the specific US sanctions please refer to [Client Alert 10-164](#).

The Council's Decision and the Regulation can be found at: [eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2010:195:SOM:EN:HTML](http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2010:195:SOM:EN:HTML).

### EU Council's Decision of 26 July 2010

In summary, the Council's Decision:

- Mandates the inspection of all cargo to and from Iran into Member States, by sea or air, and prohibits the provision of bunkering or supply of services to Iranian owned and chartered vessels. These measures are subject to a reasonable suspicion that prohibited items relating to the country's nuclear program will be or are being transported.
- Prohibits the investment in or sale, supply or transfer of key equipment and technology for the oil and natural gas industry, including the refining, liquefied natural gas, exploration and production sectors. Financing and providing technical assistance to the same is also prohibited. These measures are expressly stated (by Article 7) to be without prejudice to the performance of obligations arising under contracts which pre-date the adoption of the Council's Decision (*i.e.* before 26 July 2010).

- Bans the direct or indirect supply, sale or transfer of services, technology and equipment which may assist in military and/or enrichment related activities including mainstream items with potential 'dual-use' capabilities in conventional, biological or chemical weapons.
- Restricts commercial dealings with Iranian enterprises engaged in or related to the oil and gas sector.
- Restricts the provision of insurance/re-insurance directly or indirectly to the Government of Iran or Iranian entities.
- Places tight controls over Iranian banks operating in Member States. Specifically, any money transfers of more than €10,000 will require notification to the relevant national authority, with transfers of over €40,000 requiring pre-authorisation.

## Regulation (EU) No. 668/2010 of 26 July 2010

The latest Regulation adds various Iranian persons and entities to the list set out in Annex V of Regulation (EC) No. 423/2007 which requires that all funds and economic resources belonging to those parties entered on the said list be frozen.

The Member States' power to freeze funds and economic resources is set out in Article 7 of EU Regulation 423/2007 which provides that:

- all funds and economic resources belonging to, owned, held or controlled by the relevant persons/ entities shall be frozen (Article 7(1));
- no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the relevant persons/ entities (Article 7(3)); and
- the participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the freezing measures in Regulation (EC) No. 423/2007 shall be prohibited (Article 7(4)).

Importantly for those involved in international trade, "funds" and "economic resources" are broadly defined in Article 1 of Regulation (EC) No. 423/2007 and include bills of lading and rights of set off. The "freezing of funds" is equally broadly defined as "preventing any moving, transfer, alteration, use of, access to or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change...", such as providing credit.

Accordingly, there is a real risk that if a shipper or subsequent consignee receives or transfers to its buyer a bill of lading issued by a vessel that is owned or controlled by one of the entities listed in Annex V of Regulation (EC) No. 423/2007, such action may be deemed to involve "moving, transfer, alteration, use of, access to or dealing with funds" contrary to Article 7 of Regulation (EC) No. 423/2007. On this basis the shipper/consignee would be exposed to the risk of penalties if its actions were done "knowingly and intentionally" with the levels of such penalties to be determined by the relevant Member State.

Significantly, it should be noted that IRISL, its subsidiaries and a number of entities related to IRISL have been added to the existing list (certain subsidiaries of IRISL were already on the list established by Regulation (EC) 423/2007, although IRISL itself was not). This move was widely anticipated following recent efforts by the US Department of the Treasury, through its Specially Designated Nationals list, to target vessels owned or managed directly or indirectly by IRISL.

It is worth noting that Recital (3) of the Regulation specifically refers to IRISL and provides that the freezing of economic resources of designated IRISL entities does not require the impounding or detention of vessels owned by such entities or the cargoes carried by them insofar as such cargoes belong to third parties.

## Conclusion

Clearly, these new sanctions are intended to exert financial pressure on Iran by specifically targeting the country's energy-based economy: Iran has little refining capacity despite being the world's fifth largest crude oil exporter and is therefore dependent upon gasoline imports for domestic consumption. Those who operate in the energy sector need therefore to pay special attention.

Following the addition of IRISL and related entities to the EU "blacklist", all those involved in the trade or financing of commodities and who are subject to the EU Regulation will need to adapt their vessel-vetting procedures and review their

contractual arrangements to ensure that they do not engage in commercial activities with or involving these entities which contravene the Regulation.

If you require specific advice regarding sanctions affecting Iran in the EU or any other jurisdictions, please do not hesitate to contact us.

Client Alert Authors:

→ [Richard Swinburn](#)  
*Partner, London*  
+44 (0)20 3116 2933

→ [Andrew Duckworth](#)  
*Associate, London*  
+44 (0)20 3116 2901

Other Contacts:

→ [Suzanne Bainbridge](#)  
*Partner, London*  
+44 (0)20 3116 2815

→ [Peter Cassidy](#)  
*Partner, London*  
44 (0)20 3116 3697

→ [Paul Dillon](#)  
*Partner, London*  
+44 (0)20 3116 2893

→ [Kyri Evagora](#)  
*Partner, London*  
+44 (0)20 3116 2914

→ [Siân Fellows](#)  
*Partner, London*  
+44 (0)20 3116 2809

→ [Diane Galloway](#)  
*Partner, London*  
+44 (0)20 3116 2934

→ [Keith Hartley](#)  
*Partner, London*  
+44 (0)20 3116 3694

→ [Robert Parson](#)  
*Partner, London*  
+44 (0)20 3116 3514

→ [John Varholý](#)  
*Partner, London*  
+44 (0)20 3116 2933

→ [Shai Wade](#)  
*Partner, London*  
+44 (0)20 3116 3620

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