

# Iran and Syria – New EU Sanctions

In January, the EU passed a raft of new restrictive measures against both Syria and Iran, which will have a significant impact on already strained business and trading relations with both countries.

As has been reported widely, the new sanctions against Iran are intended to exert further pressure in relation to its nuclear programme, whereas the sanctions against Syria are principally targeted at those responsible for the violent repression of the civilian population. While the new sanctions are designed to achieve different political objectives, the broad range of sanctions now in place against both countries imposes similar compliance challenges.

In this briefing we summarise the principal features of the new measures. As the political climate continues to develop and sanctions imposed are ever more complex, businesses in Europe that have connections with either country need to consider the new measures carefully and seek advice as appropriate.

## Iran

The new EU sanctions against Iran announced on 23 January 2012 in Council Decision 2012/35/CFSP<sup>1</sup> (the "**Council Decision**") have been described as an "unprecedented package" and build on the already extensive measures in place since October 2010, which broadened European sanctions far beyond United Nations-mandated restrictions.

Before the new measures become law directly applicable in EU Member States, they need to be transposed into a Council Regulation. Thus far, only the asset freezing and related prohibitions directed at the Central Bank of Iran ("CBI"), Bank Tejarat and others, have been implemented by Council Regulations passed in tandem with the Council Decision. The remaining elements of the Council Decision have yet to be implemented by Regulation and it is not currently known when that further step will be taken.

### Asset Freezes against The Central Bank of Iran and Bank Tejarat

The asset freeze and related prohibitions against making funds or economic resources available to the CBI and Bank Tejarat are set out in Council Implementing Regulation (EU) No. 54/2012<sup>2</sup>. Council Regulation (EU) No. 56/2012<sup>3</sup> provides for

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:019:0022:0030:EN:PDF>

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:019:0001:0005:EN:PDF>

<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:019:0010:0011:EN:PDF>

certain limited exceptions to the requirements of Regulation No. 54/2012 intended to ensure that legitimate trade with other, non-designated persons can continue under strict conditions. The language of the exceptions in Regulation No. 56/2012 is far from clear, and to date limited guidance has been published. However, in general terms:

- Funds or economic resources that are frozen in EU bank accounts may be transferred by or through the CBI where
  - the relevant Member State authority has determined, on a case by case basis, that the payment will not directly or indirectly be received by any designated person or where the payment has been licensed; or
  - under license, in order to provide EU financial institutions with liquidity for financing trade.
- Other funds or economic resources can be transferred to or through the CBI in connection with a specific trade contract, where the transfer relates to a payment by a non-designated person and where the competent authority of the relevant Member State has determined in advance, on a case by case basis, that the payment will not directly or indirectly be received by a designated person;
- In relation to Bank Tejarat, there is an exception which allows, until 24 March 2012, payments to be made to and from Bank Tejarat, including from funds or economic resources that are frozen (presumably in accounts at EU banks), in each case in connection with a specific trade contract where the relevant Member State authority has determined in advance, on a case by case basis, that the payment will not directly or indirectly be received by any designated person.

The designation of Bank Tejarat, the last of the major Iranian banks to come under the umbrella of the EU asset freeze regime, means those seeking to trade with Iran will find it increasingly difficult to make payment arrangements, even for trade in goods which is otherwise permissible.

For financial institutions in the UK, the new restrictions in relation to the CBI and Bank Tejarat may have limited practical impact because under the Financial Restrictions (Iran) Order 2011 (the "Order"), UK financial and credit institutions are already prohibited from entering into or continuing any transactions or business relationships with any Iranian bank, not just those subject to an asset freeze. Thus where an Iranian bank is, in addition to being affected by the requirements in the Order, subject to an asset freeze (as is now the case for the CBI and Bank Tejarat), any transactions involving such entities will need to be licensed both in respect of the Order and the new prohibitions in the Regulation No. 54/2012. HM Treasury has indicated that any licence applications in relation to those transactions can be considered together in a single application.

## Other Measures

The Council Decision sets out a range of additional measures that will come into force in due course in the form of a new EU Regulation. Among these additional measures are the following:

- A ban on the import, purchase or transport of Iranian **crude oil and petroleum products**, as well as a prohibition on the provision, directly or indirectly of related financing or financial assistance (including the provision of financial derivatives as well as insurance and reinsurance). Until 1 July 2012, it will still be possible to execute contracts that were concluded before 23 January 2012 (the date of the Council Decision). Contracts concluded between now and the date of any implementing Regulation will not qualify.

While the products which are covered by the term "crude oil and petroleum products" are not yet specified, it is possible that these will mirror the corresponding list in Annex IV<sup>4</sup> of the EU Regulation implementing the Syrian sanctions (Council Regulation (EU) No 36/2012, referred to below).

- A ban on the import, purchase or transport of Iranian **petrochemical products**, as well as a prohibition on the provision, directly or indirectly of related financing or financial assistance (including the provision of financial derivatives as well as insurance and reinsurance). Until 1 May 2012, it will still be possible to execute concluded contracts that were

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<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:016:0001:0032:EN:PDF>

concluded before 23 January 2012 (the date of the Council Decision). The items covered by the term "petrochemical products" is also not defined, and as there is no precedent in any other EU sanctions Regulation.

- A ban on the sale, supply or transfer to Iran (or Iranian or Iranian-owned/controlled enterprises outside Iran) of "**key equipment and technology**" for the petrochemical industry in Iran, whether originating from the EU or otherwise, as well as a prohibition on the provision, directly or indirectly of related technical assistance, financing or financial assistance. The list of "key equipment and technology" in this context is not yet defined. It is also not clear at this stage whether the prohibition will apply with respect to the sale, supply or export of the yet-to-be listed items to anyone in Iran (or Iranian or Iranian-owned/controlled enterprises outside Iran), (as is the case with the existing measures directed at key equipment for use in the oil and gas exploration and production sector), or only to persons or entities in Iran who are engaged in that sector. There will be an exception for contracts concluded before the date of the Council Decision.
- A ban against the granting of any financial loan or credit to, the acquisition or extension of a participation in, or the creation of any joint venture with enterprises in Iran that are engaged in the Iranian petrochemical industry. There is an exception which applies in relation to obligations arising under contracts concluded before 23 January 2012.
- A ban on trade in gold, precious metals and diamonds with the Government of Iran, its public bodies, corporations and agencies or any persons or entities acting on its behalf and a ban on the delivery of Iranian-denominated banknotes and coinage to the CBI.

## Syria

On 18 January 2012, by Council Regulation (EU) No. 36/2012<sup>5</sup>, the EU imposed a new set of restrictive measures in relation to Syria. These designated further individuals and entities as subject to the existing asset freeze, and imposed various new restrictions of potentially broader implication. Unlike the Iranian sanctions, these measures are now all contained in an EU Regulation and therefore are directly applicable in all Member States.<sup>6</sup>

As well as introducing various new measures against Syria, Regulation (EU) No. 36/2012 maintains the pre-existing measures which were introduced in 2011 in previous Regulations (now repealed).

Among the new restrictions are the following:

### Provisions related to the monitoring or interception of internet or telephone communications

- A ban on the sale, supply, transfer or export (or the provision of related technical assistance, financing and financial assistance) to any person of listed equipment, technology and software which may be used by the Syrian regime for the **monitoring or interception of internet or telephone communications**. These restrictions apply to the items listed in Annex V, unless the sale, supply etc has been authorised in advance by the competent authority of the Member State where the exporter is established.
- In conjunction with this measure, it is also prohibited to provide any **telecommunications or internet monitoring or interception services** of any kind to, or for the direct benefit of, the Government of Syria or any person or entity acting on their behalf, unless authorised in advance by the competent authority of the Member State where the exporter is established.

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<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:016:0001:0032:EN:PDF>

<sup>6</sup> In the UK, statutory instruments are passed in order to, among other matters, provide for penalties in the event of a breach of the sanctions. As at the time of writing, a statutory instrument exists only in relation to the new measures described below under the heading "Financial Restrictions". A statutory instrument in the UK in relation to the remaining elements of Regulation (EU) No. 36/2012 has yet to be enacted.

## Provisions related to the Oil and Gas Industry

- A ban on the sale, supply, transfer or export (directly or indirectly) of **equipment and technology for use in the oil and gas industry**, as listed in Annex VI, to any Syrian person, entity or body, or for use in Syria. It is also prohibited to provide related technical assistance, financing, financial assistance and brokering services (which includes negotiation or arrangement of transactions).

The list of items in Annex VI is the same as the list of equipment and technology related to the oil and gas sector which appears at Annex VI to Council Regulation (EU) No. 961/2010 in relation to Iran<sup>7</sup>, and includes key equipment and technology for the (i) exploration of crude oil and natural gas; (ii) production of crude oil and natural gas; (iii) refining; and (iv) liquefaction of natural gas.

The following comprise a "Syrian person, entity or body": (i) the State of Syria or any public authority of the State of Syria; (ii) a natural person in (or resident in) Syria; (iii) any legal person, entity or body having its registered office in Syria; and (iv) any legal person, entity or body (whether inside or outside Syria) which is owned or controlled, directly or indirectly, by any of the persons or entities within (i), (ii) or (iii).

While there is no applicable licensing regime in relation to these controls, there is an exception which applies to the performance of obligations required under pre-existing contracts which were awarded or concluded on or before 19 January 2012. Guidance in the UK issued by BIS<sup>8</sup> clarifies that the exception arises only where: (i) an EU person is under a contractual obligation to supply the equipment or to provide technical or financial assistance or brokering services related to the equipment; (ii) that contract was concluded or awarded on or before 19 January 2012; (iii) the contract in question is documented (verbal agreements or agreements in principle are not acceptable); and (iv) notification has been given to the relevant authority (in the UK, the Export Control Organisation of BIS) at least 21 calendar days in advance of executing the transaction contemplated by the contract.

The guidance from BIS also states that it is for the exporter to determine "*whether or not the exemption applies before you make the notification as we cannot advise in individual cases whether or not the contract exemption would apply. If you are unsure whether or not you have a qualifying contract you should seek your own legal advice.*"

## Provisions related to Infrastructure Projects

- A ban on the sale, supply, transfer or export of **equipment used in the construction or installation in Syria of new power plants for electricity production** as listed in Annex VII. It is also prohibited to provide technical or financial assistance to any such project. Note, however that there is no prohibition against "brokering services" as there is in relation to the prohibitions regarding equipment and technology for use in the oil and gas industry noted above. As with those restrictions, however, there is also an exception which applies to the performance of an obligation required under contracts or agreements concluded on or before 19 January 2012. The same considerations as set out above apply in relation to reliance on this exception.
- A prohibition on the granting of any financial loan or credit, creation of joint ventures, with or acquisition or extension of a participation in, any Syrian person, entity or body engaged in the construction or installation of new power plants for electricity production.

## Financial Restrictions (including insurance)

- Syrian banks are also prohibited from opening new branches, subsidiaries or representative offices in EU Member States and from establishing joint ventures or acquiring an interest in banks in the EU. Likewise, EU financial institutions are prohibited from doing the same activities in Syria.

<sup>7</sup> [http://www.hm-treasury.gov.uk/d/council\\_regulation\\_eu\\_961\\_251010.pdf](http://www.hm-treasury.gov.uk/d/council_regulation_eu_961_251010.pdf)

<sup>8</sup> <http://www.bis.gov.uk/assets/biscore/eco/docs/notices-to-exporters/2012/notice-to-exporters-2012-04.doc>

- EU financial institutions are also prohibited from opening a new bank account or establishing a new correspondent banking relationship with any Syrian credit or financial institution.
- A ban on the provision of insurance or re-insurance to the State of Syria, its Government, public bodies, corporations or agencies or anyone acting on behalf of any such entities.
- A ban on selling or purchasing Syrian public or public-guaranteed bonds, directly or indirectly, from (or providing related brokering services or other assistance (for example, advertising services) to) the State of Syria or its Government, and its public bodies, corporations and agencies or any Syrian credit or financial institution or anyone acting on their behalf or at their direction.

In common with most EU sanctions measures, it is prohibited to knowingly and intentionally participate in activity that has the object or effect of directly or indirectly circumventing the above restrictions.

The above new measures are in addition to various existing measures imposed in the second half of last year. These include:

- A prohibition on the sale, supply, transfer or export of arms and related materiel of all types; and of equipment that could be used for internal repression as listed in Annex I of the Regulation (as well as, in each case, the provision of related technical assistance, financing and financial assistance).
- A ban on the import, purchase or transport of Syrian **crude oil and petroleum products** (as listed in Annex IV of the Regulation), as well as a prohibition on the provision, directly or indirectly of related financing or financial assistance (including financial derivatives as well as insurance and reinsurance).
- Restrictions on the acquisition or extension of a participation in, or the granting of any financial loan or credit to, any Syrian person, entity or body which is engaged in the exploration, production or refining of crude oil or the construction or installation of new power plants for electricity production.
- An asset freeze against, and prohibitions on making funds or economic resources available to legal persons, entities and bodies listed in Annex II and IIa of the Regulation.
- A ban on the sale, supply, transfer or export (directly or indirectly) to the Central Bank of Syria of new Syrian-denominated banknotes and coinage which have been printed or minted in the EU.

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