

## E-ALERT | International Trade Controls

October 19, 2012

### EU STRENGTHENS SANCTIONS AGAINST IRAN AND SYRIA AND EXTENDS THE APPLICATION OF THE SANCTIONS AGAINST BELARUS

On October 15, 2012, the Council of the European Union (“EU Council”) adopted new sanctions against Iran and Syria. These measures were published on October 16, 2012.

In parallel, on October 15, 2012, the EU Council extended the application of the EU sanctions against Belarus until October 31, 2012.

**Iran:** In light of the continued lack of progress in persuading the Iranian Government to alter its nuclear policies, the EU Council adopted [Regulation 945/2012](#) and [Decision 2012/635/CFSP](#), which introduce a broad new set of sanctions that target Iran’s nuclear, oil and gas, petrochemical, transport, and financial sectors.

Regulation 945/2012 designates 35 new parties as subject to the asset freeze, including the National Iranian Oil Company (NIOC) and its core subsidiary operating companies. Decision 2012/635/CFSP adopts a range of new import and export restrictions, as well as broad restrictions against transactions between EU and Iranian financial institutions. At present, the measures adopted by Decision 2012/635/CFSP apply only to Member States’ governments; they will apply to individuals and companies only when they are implemented through a Council Regulation (likely to be enacted within the next several weeks).

**Syria:** The EU Council adopted as well [Regulation 944/2012](#) and [Decision 2012/634/CFSP](#) in response to intensifying violence in Syria. Regulation 944/2012 designated further 30 parties as subject to the asset freeze. Decision 2012/634/CFSP imposed restrictions on trade in Syrian arms and prohibited access of Syrian cargo and certain other flights to European airports. The measures adopted by Decision 2012/634/CFSP apply only to Member States’ governments; they will apply to individuals and companies only when they are implemented through a Council Regulation.

The new Iran and Syria measures represent the latest in a series of continually expanding EU trade sanctions against those countries.

#### IRAN

##### Dealings with Designated Parties

Regulation 945/2012 adds one individual and 34 entities to the list of designated parties. The newly designated entities include *inter alia*:

- Ministry of Energy;
- Ministry of Petroleum;

- National Iranian Oil Company (NIOC);
- Several subsidiaries and affiliates of NIOC including Naftiran Intertrade Company and Petropars Ltd.;
- National Iranian Gas Company (NIGC);
- National Iranian Oil Refining and Distribution Company (NIORDC);
- National Iranian Tanker Company (NITC);
- Trade Capital Bank;
- Bank of Industry and Mine; and
- Cooperative Development Bank (a.k.a. Tose'e Ta'avon Bank).

The designated entities are subject to the freeze of funds and economic resources. In addition, individuals and entities under Member States' jurisdiction are prohibited from making available funds and economic resources to the designated entities. Importantly, Member States interpret these restrictions as extending to entities owned and controlled by designated parties, as explained in our [e-alert](#) of May 25, 2011.

These new designations constitute a significant enhancement of the EU sanctions against Iran. The NIOC and other state oil and gas companies have historically been a source of a substantial body of trade with European companies, and the EU had faced pressure for several years for not taking the step of designating these parties for asset freezing restrictions. Although many EU companies have resisted engaging in new business with the NIOC and other Iranian oil and gas enterprises in view of other aspects of the EU sanctions (as well as the US sanctions regime, which has restricted trade with Iranian oil-and-gas entities for many years, and has a broad extra-territorial scope), the new designations will need to be considered in connection with EU companies' completion of legacy work that began before the recent expansion of the EU sanctions against Iran.

Decision 2012/635/CFSP also adopts additional exemptions to the asset freezing measures. In line with those exemptions, the freeze and the making available prohibition will not apply to:

- Acts and transactions carried out with regard to entities designated under Annex II of the EU sanctions<sup>1</sup> that hold rights derived from an original award before October 27, 2010, by a sovereign Government other than Iran, of a gas production sharing agreement, insofar as such acts and transactions relate to those entities' participation in that agreement;
- Acts and transactions carried out with regard to entities designated under Annex II of the EU sanctions, insofar as those acts or transactions are necessary for the execution, until December 31, 2014, of contracts related to (i) the import, purchase or transport of Iranian crude oil and petroleum products and (ii) related financing, financial assistance, insurance and reinsurance, provided these acts and transactions are not otherwise prohibited by the EU sanctions. These acts and transactions must be authorized in advance, on a case-by-case basis, by the competent Member State authority.

### Restrictions on Transfers of Funds

Decision 2012/635/CFSP prohibits financial institutions under the jurisdiction of Member States from entering into, or continuing to participate in, any transactions with: (i) banks domiciled in Iran, including the Central Bank of Iran; (ii) branches and subsidiaries of banks domiciled in Iran, whether

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<sup>1</sup> Annex II includes parties that are not designated for asset freezing measures under UN Security Council's Resolutions (those parties are set forth in Annex I), but have been designated under the EU's unilateral sanctions.

within or outside the jurisdiction of EU Member States; and (iii) financial entities that are not domiciled in Iran, but that are controlled by persons and entities domiciled in Iran unless such transactions are authorized in advance by the competent Member State authorities. These restrictions are similar in some respects to the UK banking sanctions against Iran issued in November 2011 (which broadly restrict UK financial institutions from dealing with Iranian banks, as described in our November 2011 [e-alert](#)), but offer a much wider range of permitted transactions, subject to licensing and/or notification requirements.

In line with the Decision, transactions with Iranian financial institutions may be permitted in specific circumstances, including if they relate to:

- foodstuffs, healthcare, medical equipment, or agricultural or humanitarian purposes;
- personal remittances;
- the execution of the exemptions provided by the EU sanctions;
- other specific trade contracts not prohibited under the EU sanctions;
- expenses of diplomatic or consular missions or international organizations enjoying immunities in accordance with international law;
- transactions regarding payment to satisfy claims against Iran, Iranian persons or entities, on a case-by-case basis and subject to notification ten days prior to authorization, and transactions of a similar nature that do not contribute to activities prohibited under the EU sanctions.

Payments falling into those categories may require a prior notification to the relevant Member State authority, or a prior license, depending upon the amount of the transfer and the specific type of activity that the transaction relates to (the Decision sets forth a range of monetary thresholds that would trigger notification or licensing requirements, depending on the nature of the transaction).

### **Additional Sanctions against the Iranian Central Bank**

Decision 2012/635/CFSP limited circumstances in which Member State authorities can authorize transfers made by or through the Central Bank of Iran. In line with the revised provisions, Member States may only authorize:

- transfers by or through the Central Bank of Iran of frozen funds or economic resources where such transfers are for the purpose of providing financial institutions under the jurisdiction of Member States with liquidity for the financing of trade;
- the reimbursement by or through the Central Bank of Iran of claims due under a contract or agreement that was concluded by public or private Iranian entities before the adoption of the EU sanctions.

These revisions have the effect of tightening trade restrictions against the Iranian Central Bank, which was previously designated for financial sanctions under earlier Council Decisions and Regulations. Whereas earlier restrictions allowed Member States a broad flexibility to issue licenses for payments *from or to* the Iranian Central Bank if those payments were in support of third party trade contracts, the current provision permits Member State licensing only for payments by or through the Central Bank, and thus may not cover payments from EU parties *to* Iranian counterparties that are made through the Central Bank. The new provision also limits the scope of any licensing for trade contract payments via the Central Bank to payments due under contracts concluded prior to Council Decision 2010/413/CFSP (which was adopted on July 26, 2010).

## Restrictions on Financial Support for Trade with Iran

Decision 2012/635/CFSP further prohibited Member States from entering into new commitments to provide financial support for trade with Iran, including the granting of export credits, guarantees or insurance, to Iranian nationals or entities involved in trade with Iran. Member States are also prohibited from guaranteeing or reinsuring such commitments.

## New Export and Import Restrictions

Decision 2012/635/CFSP introduces new export controls restrictions on the supply to Iran of a variety of goods and related technical assistance, training, and financial assistance. The scope of these export restrictions are left to be defined in the forthcoming implementing regulation (the regulation will also introduce grandparenting provisions for certain pre-existing contracts), but will include the following:

- The Decision prohibits the sale, supply or transfer to Iran of **graphite**, and raw or semi-finished metals, such as **aluminum and steel**, whether or not originating in Member States' territories, (i) by nationals of Member States, or (ii) from the territories of Member States, or (iii) using vessels or aircraft under the jurisdiction of Member States.
- The Decision also prohibits the sale, supply or transfer to Iran or to Iranian or Iranian-owned enterprises engaged in this sector of **key naval equipment and technology for ship-building, maintenance or refit**, whether or not originating in Member States' territories, (i) by nationals of Member States, or (ii) from the territories of Member States, or (ii) using vessels or aircraft under the jurisdiction of Member States.
- The Decision also prohibited the sale, supply or transfer to Iran of **software for integrating industrial processes**, whether or not originating in Member States' territories, (i) by nationals of Member States, or (ii) from the territories of Member States, or (ii) using vessels or aircraft under the jurisdiction of Member States.
- The Decision retains pre-existing restrictions on the export to Iran of **key equipment and technology for the Iranian oil, gas and petrochemical sectors**, but limits the application of the pre-existing grandparenting provision for contracts involving those exports to cover only transactions completed by April 15, 2013, of any obligation relating to the delivery of goods provided for in contracts pre-dating the imposition of sanctions.

Finally, the Decision prohibits the import, purchase or transport of Iranian **natural gas**, as well as financing or financial assistance, insurance, reinsurance, and brokering services relating to insurance and reinsurance, related to the import, purchase or transport of Iranian natural gas.

## Transport Restrictions

Decision 2012/635/CFSP prohibited the construction or the participation in the construction of new oil tankers for Iran or for Iranian persons and entities and provision of related technical assistance, financing or financial assistance.

In addition, the Decision prohibited the supply of vessels designed for the transport or storage of oil and petrochemical products to Iranian persons, entities or bodies or to any person, entity or body for the transport or storage of Iranian oil and petrochemical products.

Finally, the Decision prohibited the provision, as of January 15, 2013, (i) by nationals of Member States or (ii) from the territory under the jurisdiction of the Member States, of flagging and classification services, including registration and identification numbers of any kind, to Iranian oil tankers and cargo vessels.

## SYRIA

### Dealings with Designated Parties

Regulation 944/2012 added 28 individuals and one entity to the list of designated parties. In particular, the Regulation designated all Syrian Government Ministers in view of their collective responsibility for the violent repression against the population in Syria.

These designated parties are subject to the freeze of funds and economic resources. In addition, individuals and entities under Member States' jurisdiction are prohibited from making available funds and economic resources to these designated parties. Importantly, Member States interpret these restrictions as extending to entities owned and controlled by designated parties (for more guidance, see our [e-alert](#) of May 25, 2011).

### Restrictions on Trade in Arms

Decision 2012/634/CFSP prohibited the purchase, import or transport of arms and related material of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, from Syria or originating in Syria. It also prohibited provision, directly or indirectly, of financing or financial assistance as well as insurance and reinsurance, and brokering services related to insurance and reinsurance, for any purchase, import or transport of these items.

### Restrictions on Access to EU Airports

Decision 2012/634/CFSP also prohibited access to the airports under Member States' jurisdiction of (i) all exclusively cargo flights operated by Syrian carriers and (ii) all flights operated by Syrian Arab Airlines.

## BELARUS

Finally, on October 15, 2012, the EU Council extended the application of the EU sanctions against Belarus until October 31, 2012. This decision was motivated by the fact that Belarusian parliamentary elections of September 23, 2012 have been found to be inconsistent with international standards and that the situation as regards democracy, human rights and rule of law in Belarus remains precarious. Decision [2012/642/CFSP](#) adopting the extension was published on October 17, 2012.

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