

European Union Measures against Iran - Council Decision 2012/635/CFSP - Frequently Asked Questions 1 November 2012

Background

1. On 15 October 2012 the European Union Foreign Affairs Council agreed further measures restricting trade activities with Iran. The Council Decision 2012/635/CFSP will require an implementing Regulation to give effect to the Decision. Any new implementing Regulation is likely to amend the current Iran sanctions Regulation 267/2012. The Group has asked Government officials to comment on the possible timing of a new Regulation, but they were unable to provide advice on a specific timeframe or deadlines. In the meantime the Decision is binding only on the Member States.
2. The following FAQs outline those provisions that are likely to affect members and Clubs and they should be read in conjunction with the FAQs issued on 8 February 2012, 27 March 2012, 25 May 2012 and 14 August 2012.

What is the legal status of Decision 2012/635?

3. The Decision amends an earlier Decision 2010/413, as amended by Decision 2012/35. At this stage the new Decision is binding on the Member States only. It will become binding on private persons and entities when given effect by implementing Regulation. It is not clear if such Regulation will amend Regulation 267/2012 or whether it will repeal and replace it.

What products and services are prohibited by the new Decision?

4. The Decision introduces new measures and prohibitions that will, if implemented, further restrict trade activities with Iran. In addition to the restrictions that apply now by virtue of Regulation 276/2012, the Decision 2012/635 prohibits:
 - a) The import, purchase or transport of Iranian natural gas and the provision of insurance and reinsurance related to such activities. UK Government officials expect product codes to be agreed by Council and published in an annex to any new implementing Regulation.
 - b) the supply of vessels designed for the transport or storage of oil and petrochemical products to Iranian persons, entities or bodies or any others transporting or storing Iranian oil or petrochemical products;

- c) financing or financial assistance and insurance and reinsurance and associated broking services related to the import, purchase and transport of Iranian natural gas;
- d) the sale, supply or transfer to Iran of graphite, and raw or semi-finished metals such as aluminium and steel (the Group has asked UK Government officials to ensure the Foreign Affairs Council identify and publish specific product codes and list them in an annex to the implementing Regulation), which are relevant to industries either controlled directly or indirectly by the Iranian Revolutionary Guard Corps (IRGC) or which are relevant to Iran's nuclear, military and ballistic missile programme. It is prohibited for Member State nationals, vessels or aircraft under the jurisdiction of Member States to transport such products to Iran and for such products to be exported from Member States to Iran.
- e) the sale, supply or transfer to Iran and Iranian or Iranian owned enterprises of key naval equipment and technology for ship building, maintenance or refit (UK Government officials have been asked to ensure the Council identify and define specific prohibited items and products and publish them in an annex to any new implementing Regulation);
- f) the sale, supply or transfer to Iran of software for integrating industrial processes relevant to industries controlled directly or indirectly by the IRGC or which is relevant to Iran's nuclear, military and ballistic missile programme by nationals or from territories of EU Member States or using EU flagged vessels or aircraft.;
- g) It is also prohibited to provide Iran with technical assistance or training and other services, related to the items in paragraphs (d) (e) and (f) above and financing or financial assistance related to their sale, supply or transfer.
- h) with effect from 15 January 2013 the provision by nationals or from the territory of EU member States of ship registration services and ship classification services to Iranian oil tankers and cargo vessels (UK Government officials have been asked to clarify whether such restrictions apply to passenger ships also);
- i) the construction or participation in the construction of new oil tankers for Iran or Iranian persons and entities and the provision of technical assistance or financing and financial assistance related there to; and
- j) EU financial institutions entering into or continuing to participate in transactions with banks domiciled in Iran, including their branches and

subsidiaries in EU Member States and elsewhere, and Iranian controlled financial entities (unless authorised in advance by the relevant Member State).

Summary

5. The new prohibitions on the purchase, import and transport of natural gas products and the insurance and reinsurance relating to this activity mirror the existing prohibitions contained in Regulation 267/2012 in respect of oil, petroleum and petrochemical products.
6. The new restrictions on the supply of vessels designed for the transport or storage of oil and petrochemical products do not expressly prohibit the insurance of vessels used exclusively for storage, but where such a vessel is engaged in the transport or storage of oil and it is entered in a Group Club, the owner and/ or the Club could be considered to be in breach of the prohibitions contained in Regulation 267/2012 for transporting products prohibited in that Regulation and cover be excluded under the Club Rules.
7. The new restrictions prohibit the supply of vessels designed for the transport or storage of oil and petrochemical products to Iranian persons, entities or bodies and to anyone for the transport or storage of Iranian oil and petrochemicals. "Supply" would seem to include both the sale and charter of a vessel. The Group has asked for clarification of these new prohibitions and a request that EU tariff codes of all prohibited products are published in an annex to the implementing Regulation. The Regulation is likely to mirror the text of the Decision so in anticipation of the introduction of new measures on the supply of vessels Members are advised to exercise due diligence before contracting for the supply (sale or charter) of a vessel to Iranian persons, entities or bodies or where such vessel is used for the transport or storage of Iranian oil or petrochemical products.
8. Tougher financial restrictions amend article 10 of Council Decision 2010/413 which previously required Member States to exercise enhanced monitoring over all the activities of financial institutions within their jurisdiction. The new restrictions contained in Council Decision 2012/635 prohibit financial institutions subject to the jurisdiction of the EU Member States to enter into or continue to participate in any transactions with:
 - a) banks domiciled in Iran, including the Central Bank of Iran;
 - b) branches and subsidiaries, within the jurisdiction of the Member States, of banks domiciled in Iran;
 - c) branches and subsidiaries, outside the jurisdiction of the Member States, of banks domiciled in Iran; and

- d) financial entities that are not domiciled in Iran, but that are controlled by persons and entities domiciled in Iran, unless such transactions are authorised in advance by the relevant Member State.
9. The new restrictions could, in certain circumstances, prohibit a Club's ability to settle local fees and or claims, including local correspondents and lawyers' fees through usual banking channels.
 10. Vessel construction restrictions will directly impact the suppliers of labour and equipment and ship registry and classification societies, and may impact the availability of insurance for activities prohibited in the Decision.
 11. Further information will be provided once the Group has received clarification on a number of issues from the competent authorities in the UK.