

The Expansion of EU Sanctions

Recent weeks have seen an expansion of EU sanctions in relation to Iran, Syria and Belarus. In addition, the UK continues to extend the scope of EU sanction provisions to its overseas territories.

The scope of EU sanctions continues to widen. New measures which extend EU sanctions against Iran were adopted on 23 March 2012. The UK has extended part of these measures to its overseas territories. In addition, the list of individuals and entities subject to both the Syrian and Belarusian asset-freezing measures has been extended.

New EU Sanctions

On 23 March 2012, the EU adopted Council Regulations 267/2012 and 264/2012 which introduce a new framework for restrictive measures against Iran.

The new framework:

- Prohibits the export to Iran of key equipment or technology which could be used in the oil, natural gas and petrochemical industries;
- Restricts trade in crude oil and petroleum products, petrochemical products, gold, precious metals and diamonds;
- Extends the investment ban in the Iranian oil and gas sector to key activities, such as bulk gas transmission services for the purpose of transit or delivery to directly interconnected grids;
- Prohibits joint ventures as well as other forms of associations and cooperation with Iran in the natural gas sector;

- Extends asset freezing provisions to additional persons providing financial, logistic and material support to the Government of Iran;
- Extends restrictions on the "transfers of funds" to non-electronic transfers so as to counter attempts at circumventing the restrictive measures;
- Places restrictions on financial messaging services used to exchange financial data;
- Restricts the export of telecommunications monitoring equipment for use by the Iranian regime; and
- Adds further parties to the asset freeze list.

The UK government has extended the restrictions on the supply of telecommunications monitoring equipment and the asset freezing provisions in relation to human rights concerns to **UK overseas territories**.

Where the new sanctions will particularly bite is for any EU company or financial service provider doing business with, or financing business with the Iranian energy sector, or those managing wider assets which may be owned or controlled by Iranian sanctions targets.

In addition, EU Regulation 265/2012 and 266/2012 respectively extend the asset-freezing measures in relation to Syria and Belarus. This places a premium on ensuring enhanced due diligence is undertaken in relation to any commercial activity which directly or indirectly involves these destinations.

Whilst these new sanctions have been widely publicised, businesses must bear in mind that all companies based in the EU and all EU citizens are bound by EU Regulations and Directives regarding potential trade with destinations, entities and individuals subject to EU sanctions provisions.

Risks for Your Business

As well as EU sanctions, there are expected new and existing US sanctions against Iran and Syria. It is a common mistake for businesses to believe that if you are based in the US or compliant with US OFAC provisions, then EU sanctions do not apply to you. **This is not the case.** US parents with subsidiaries and wider business affiliates in the EU need to ensure compliance with domestic, host and wider international law.

US sanctions prohibit transactions by US citizens **regardless of where they are located**. Similarly, EU sanctions will apply to entities incorporated in any EU member state, all individuals and entities within the EU and again, all EU citizens **regardless of where they are located**.

Businesses with an international presence or whose employees travel for business therefore need to carefully consider their position.

Key Considerations

- How are you assessing whether any of your business partners are owned or controlled by, indirectly connected to, or associated with a sanctioned entity or individual?
- What avenues are available to you to secure outstanding payments for goods delivered or services performed prior to the introduction of sanctions?
- Do existing contractual provisions, or wider performance guarantees protect your position should the performance of obligations become frustrated by sanctions measures?

- Are trade financing mechanisms dependant on frozen funds being released from the account of a sanctioned party?
- Can you quickly assess whether the scope and application of derogations and exemptions or general licences authorise continued commercial activity?

Sanctions requirements associated with import/export activity, financial transactions and new business opportunities are often hard to identify. Considerations such as hiring foreign nationals, the actions of business partners, distributors, suppliers, resellers and parent-subsidiary relationships need to be considered.

Sanctions can often be frustrating and many companies may want to try and find a way around the measures — for example by using a subsidiary in a country that has not imposed sanctions. However, a company that knowingly diverts business via a subsidiary will be in violation of the so called “circumvention” provisions under the sanctions.

All companies who do business, either directly or indirectly with destinations subject to EU sanctions should seek legal counsel to ensure that you comply with the new measures.

How Dechert Can Help You

Dechert’s Trade and EU Government Affairs Practice regularly works with many businesses and financial institutions on the application of international sanctions measures, including advice on:

- How to ensure compliance with sanctions, whilst minimising the impact on business continuity and legitimate commercial aims;
- Screening potential transactions to identify “sensitive” destinations, entities and individuals;
- Minimising operational and commercial risks associated with changes to sanction regimes;
- Obtaining licence exemptions and prior authorisations;
- Reporting obligations under financial sanctions regulations;
- Compliance reviews and the presentation of voluntary disclosures; and

- Managing investigations and enforcement proceedings.



Dechert's Trade and EU Government Affairs Practice

Our Trade and EU Government Affairs team advises on all aspects of trade law and policy, including sanctions, export control, WTO matters, anti-dumping, customs law and trade agreements.

We bring together international trade lawyers and practitioners with political advisors to offer a unique blend of legal and strategic trade advice.

We have wide ranging experience in advising European, US and other companies and financial institutions on transactions involving countries, entities and individuals subject to sanctions regimes. We draw on the first hand experience of ex-regulators to provide legal advice and minimise corporate and personal exposure to enforcement proceedings.

Practice group contacts

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