
Cefor Memo 03/11/2010

EU Council Regulation No 961/2010 of 25 October 2010 on restrictive measures against Iran

In Cefor Circular No 6/2010 of 6 August we advised Cefor members about the EU Council Decision of 26 July 2010 to impose further restrictive measures against Iran and that in order for the sanctions to take effect against companies and individuals an EC Regulation will have to be issued.

EU has now imposed such legislation by issuing EU Council Regulation No 961/2010 of 25 October 2010 on restrictive measures against Iran with effect from 27 October 2010.

According to Article 39 of the Regulation, it applies:

- (a) within the territory of the Union, including its airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State;
- (c) to any person inside or outside the territory of the Union who is a national of a Member State;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.

This means that the Regulation will directly affect Cefor's Danish, Finnish and Swedish members, but applies also to Norwegian members conducting business within the Union.

When it comes to Norway, the Norwegian Ministry of Foreign Affairs has advised that the text of the EU Regulation will be adapted to Norwegian conditions and passed as a Royal Decree hopefully by the end of December.

The Regulation imposes restrictions and prohibitions on selling, supplying, shipping, carrying a wide range of goods and technology to any Iranian person, entity or body or for use in Iran as set out in Annexes I – IV and VI for goods and Annexes VII and VIII for persons, entities etc. There are also restrictions and prohibitions on finance and insurance.

The Regulation's **insurance provision** is Article 26 which states that it is prohibited for an insurer to provide insurance to Iranian entities, persons or bodies or entities acting on behalf of or at the direction of an Iranian entity, although provision of insurance to the owners of an Iranian chartered vessel is not prohibited, unless that Charterer is on the Regulation ban list. Compliance with insurance contracts already in force is not prohibited, cf. Article 26 paragraph 4. The full text of Article 26 appears in the end of this Circular.

Restrictions on exports etc. to Iran

According to Article 2 it shall be prohibited to:

- a) sell, supply, transfer or export, directly or indirectly, the goods and technology listed in Annexes I and II, whether or not originating in the Union, to any Iranian person, entity or body or for use in Iran; or
- b) sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex III, whether or not originating in the Union, to any Iranian person, entity or body or for use in Iran;
to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in points (a) and (b).

According to Article 3 a prior authorisation shall be required for the sale, supply, transfer or export, directly or indirectly, of the goods and technology listed in Annex IV, whether or not originating in the Union, to any Iranian person, entity or body or for use in Iran.

Annex IV refers to components, materials, chemicals, etc. for the nuclear industry.

The websites for the EU authorisation authorities are listed in Annex V. For Cefor members the relevant links are:

Denmark

<http://www.um.dk/da/menu/Udenrigspolitik/FredSikkerhedOgInternationalRetsorden/Sanktioner/>

Finland

<http://formin.finland.fi/kvyhteistyo/pakotteet>

Sweden

<http://www.ud.se/sanktioner>

The Regulation does not impose any sanctions against individuals or companies which act in breach of the prohibition in Article 2 or the authorisation requirement in Article 3 but according to Article 37 “Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.”

The effect of this is that shipowners, freight forwarders or cargo owners may be subject to sanctions if they carry or ship goods etc. in breach of Regulation rules. Whether or not insurers may be subject to sanctions for insuring illegal goods or ships carrying such goods remains to be seen.

Most insurance conditions have limitations for the assured’s involvement in illegal activities. Some examples are

- Gard’s P&I Rule 74,
- the Danish Marine Convention Clause 5,
- the Finnish Hull Conditions Clause 15.3.2 d),
- the Norwegian Marine Insurance Plan Clause 3-6,
- the Swedish Hull Conditions Clause 7, 2 a, and
- the Norwegian Cargo Clauses § 18 No 4.

Insurance restrictions: Regulation Article 26:

I. It shall be prohibited:

(a) to provide insurance or re-insurance to:

- (i) Iran or its Government, and its public bodies, corporations and agencies;
- (ii) an Iranian person, entity or body other than a natural person; or
- (iii) a natural person or a legal person, entity or body when acting on behalf or at the direction of a legal person, entity or body referred to in (i) or (ii).EN 27.10.2010 Official Journal of the European Union L 281/13

(b) to participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibition in point (a).

2. Points (i) and (ii) of paragraph I(a) shall not apply to the provision of compulsory or third party insurance to Iranian persons, entities or bodies based in the Union.

3. Point (iii) of paragraph I(a) shall not apply to the provision of insurance, including health and travel insurance, to individuals acting in their private capacity, except for persons listed in Annexes VII and VIII, and re-insurance relating thereto.

Point (iii) of paragraph I(a) shall not prevent the provision of insurance or re-insurance to the owner of a vessel, aircraft or vehicle chartered by a person, entity or body referred to in point (i) or (ii) of paragraph I(a) and which is not listed in Annexes VII or VIII.

For the purpose of point (iii) of paragraph I(a), a person, entity or body shall not be considered to act at the direction of a person, entity or body referred to in points (i) and (ii) of paragraph I(a) where that direction is for the purposes of docking, loading, unloading or safe transit of a vessel or aircraft temporarily in Iranian waters or airspace.

4. This Article prohibits the extension or renewal of insurance and re-insurance agreements concluded before the entry into force of this Regulation, but, without prejudice to Article 16(3), it does not prohibit compliance with agreements concluded before that date.