

NEW EU LAW – CARGO ISSUES



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This article concentrates on some of the new Regulation’s provisions in respect of dual-use cargoes and prohibited exports, particularly in respect of key equipment for the key sectors of the oil and gas industry in Iran.

HAS THE “DUAL-USE CARGO” DILEMMA EASED – JUST DON’T LOAD IT IN THE FIRST PLACE?

The dual-use dilemma is normally reserved for the classic scientific quandary: science is primarily used to benefit humanity, but innocently published and disseminated information can be unethically used in civilian or military settings. In these times of heightened international security, the dilemma is not limited to the scientific community but is now a concern for shipowners, charterers, cargo interests, insurers and reinsurers.

Contractual carriers do not warrant the accuracy of the description of any cargo loaded on their ships beyond the usual statements as to “apparent good order and condition”. No warranties are offered, for example, in respect of the actual contents of containers beyond the usual averments that they are “said to contain” certain goods (or indeed be of a certain weight). Carriers make no warranties in respect of goods’ fitness for purpose or quality; they are not strictly liable for, nor the guarantors of, international trade. Typically, carriers are not the end user of the goods carried. Historically, carriers did not need to know what use any particular cargo was destined for. However, circumstances have changed in the context of trade with Iran, and carriers are now expected to make diligent and reasonable enquiries as to whom they deal with and the possible end use of their cargoes in compliance with multiple (and sometimes contradictory) legal systems. This is particularly the case with dual-use items.

Dual-use items are goods, software, technology or information that have civil purposes but may also have military applications. They include raw materials, alloys, computer components, mechanical components (including bearings, pumps and pipes) and complete manufacturing (machine tools and chemical manufacturing items) and electronic systems (such as lasers and telecommunication equipment, computers and encryption software).

Dual-use goods have been subject to control under national laws and EU Regulations (since 2000). EU law (Council Regulation 428/2009, issued on 5 May 2009) set up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. An authorisation was needed prior to the export of certain items listed in Annex I in the following categories:

Category 0	Nuclear materials, facilities and equipment
Category 1	Special materials and related equipment
Category 2	Materials processing
Category 3	Electronics
Category 4	Computers
Category 5	Telecommunication and “information security”
Category 6	Sensors and lasers
Category 7	Navigation and avionics
Category 8	Marine
Category 9	Aerospace and propulsion

The marine items (Category 8) that needed prior authorisation included:

Category 8 – Marine	Certain submersible vehicles, ROVs and associated equipment
	Ocean salvage systems
	Underwater vision systems
	Certain propellers, noise reduction, power generation and transmission systems, including controllable pitch propellers and hub assemblies
	Rebreathing diving and underwater swimming apparatus
	Software and technology designed for the development, production or use of the above.

NEW REGULATION EXTENDS PROHIBITED EXPORTS LIST

The EU has now issued a fresh Regulation, 961/2010, which tightens restrictions on trade with Iran. It was issued on 25 October 2010 and has immediate direct effect. Member states do not have to issue implementing legislation. This Regulation follows and implements the Council Decision of 26 July 2010 concerning restrictive measures against Iran.

The EU stance has hardened. Rather than prospectively allowing the export to Iran of the items in Annex I under an authorisation, it is now prohibited to sell, supply, transfer or export most of the items in that Annex (with the exception of certain Category 5 Telecommunication and “information security” items). It is also prohibited to sell, supply, transfer or export, directly or indirectly, items that could contribute to Iran’s enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery systems. It is further forbidden to sell, supply, transfer or export equipment that might be used for internal repression to any Iranian person, entity or body, or for use in Iran. Extant embargoes in respect of military equipment remain.

Essentially, export to Iran of many items that were subject to licensing, is now prohibited.

FRESH LIST OF ITEMS REQUIRING PRIOR AUTHORISATION

The new regulation sets out a fresh list of items (Annex IV) for which prior authorisation is now needed, including:

Nuclear materials, facilities & equipment	Pipes, piping, flanges, and fittings made of or lined with nickel or nickel alloys
	Vacuum pumps
Materials, chemicals, 'micro-organisms' and 'toxins'	Ring-shaped seals and gaskets composed of certain materials
	Personal dosimeters
Materials processing	Controlled atmosphere heat treatment furnaces
	Industrial equipment, components and multi- and seal-less pumps made of specific materials (including certain alloys, glass, graphite, nickel, titanium and stainless steel)
	Spectrometers and diffractometers.

OIL, GAS AND LNG EQUIPMENT

Under the new Regulation (Article 8), it is prohibited to sell, supply, transfer or export key equipment or technology (listed in Annex VI) directly or indirectly to any Iranian person, entity or body or for use in Iran, in respect of the following key sectors of the oil and gas industry in Iran:

Exploration of crude oil and natural gas (which includes the exploration for, prospection of and management of crude oil and natural gas reserves and the provision of related geological services)	Equipment:
	Geophysical survey equipment and ships
	Sensors for down-hole well operations
	Drilling equipment, bits, pipes, drill collars, wellheads, blowout preventers and Christmas trees
Production of crude oil and natural gas (which includes bulk gas transmission services)	Drilling and production platforms
	FPSOs
	Liquid/gas separators, gas compressors, high-capacity/pressure pumps and subsea production control equipment
	Materials: Drilling mud, additives, corrosion inhibiting emulsion treatment and defoaming agents and cements for use in oil and gas wells



Refining (which means the processing, conditioning or preparation for ultimate final sale of fuels)	Equipment: Heat exchanges, cryogenic pumps and 'cold box' equipment
	Equipment for shipping terminals, liquefied gases, flexible and non-flexible transfer lines
	Crackers, hydrotreaters and catalytic reformers
	Certain pumps
	Pipeline Inspection Gauges (components, launchers and catchers)
	Storage tanks for crude oil and fuels
	Subsea flexible pipes specifically designed for transport of hydrocarbons
	Flexible pipes used for high-pressure topside and subsea applications
	Materials: Catalysts for cracking and conversion of hydrocarbons
	Additives formulated to increase octane number of gasoline
Liquefaction of natural gas	Equipment for shipping terminals, liquefied gases, flexible and non-flexible transfer lines
	Software and technology: For liquefaction of natural gas
	For development, production and use of: LNG plants
	Maritime LNG vessels Refinery plant

The Regulation's prohibitions do not apply to pre-existing contracts, provided that 20 working days' notice is given to the competent authorities, but do apply to both new and used goods.

PRACTICAL RECOMMENDATIONS:

1 Identify your trading partners

The new Regulation updates the list of persons, entities and bodies whose funds and economic resources are to be frozen. Separate national laws also designate individuals with whom it is forbidden to trade. The US Office of Foreign Assets Control continues to regularly revise its list of Specially Designated Nationals. Regulation 428/2010 now forbids business dealings, including the creation of joint ventures with any Iranian person entity or body engaged in, for example, the exploration or production of crude oil and natural gas, the refining of fuels or the liquefaction of natural gas. We recommend members continue to make diligent enquiries in respect of the identity of their prospective business partners and to exercise caution before commitment.

2 Identify the cargo

The list of prohibited items and those requiring prior authorisation are lengthy and complex. Dual-use items can be difficult to identify. Given the increased tensions surrounding trade with Iran, members are advised to closely examine the details of cargoes nominated for shipment to Iran and to investigate the potential end uses.

3 Co-operate with competent authorities

Pre-arrival and pre-departure information must be delivered to the competent customs authorities in respect of all shipments to and from Iran. Transparency is recommended.