



## **Request of clarification and written Opinion**

### **Play by the rules initiative**

#### **Subject : Iran**

Extensive trade and financial sanctions are in place against Iran as a result of United Nations (UN), European Union (EU) and USA sanctions and embargoes.

The European Union applies sanctions or restrictive measures in pursuit of the specific objectives of the Common Foreign and Security Policy Framework (CFSP) as set out in Article 11 of the Treaty on European Union,

Each EU Member State adopts different foreign policy towards IRAN and these policies are changing depending on several factors. But for all EU Member States breaches of certain prohibitions from Council Regulation (EC) No 428/2009 of 5 May 2009 (Dual Use), Council Regulation (EU) No 961/2010 applicable till 23/3/2012 and latest Regulation No.267/2012 which revoke 961/2010 Regulation and is effective from 24/3/2012 are criminal offenses, in particular those relating to export of prohibited or unlicensed goods and services, the asset freezing measures, transfer of funds, dealing any person (Company, Organization or natural Person) listed in related Annexes and the additional restrictive measures again Iran set out in those Regulations.

The United States has imposed restrictions on activities with Iran under various legal authorities since 1979: the Iran Sanctions Act (ISA) in 1996, the IFSR, issued in August 2010 by the Treasury Department, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA), the National Defense Authorization Act for Fiscal Year 2012 (sec. 1245 d). Several amendments and reissue of these key acts has been increasingly extending the coverage, purpose and application of restrictions.

However recent escalate in international political and financial conditions towards IRAN are affecting broader the business community beyond the limits of sanction and regulations.

Many instances has been raised recently and put to our attention and a need of clarification upon agreed procedure, practices and common understanding was needed in the spirit of full cooperation between allied countries as strategic response to threat of dual-use items being



used for wrongful purposes and today challenge covering all activities of import and export of goods and/or services, tangible and intangible assets.

All parties desire that all the activities must be carried in full compliance with laws, regulations.

In a globally integrated world, efficient Export Compliance and Control with laws is only possible with co-operation at an European and international level. All the parties involved expect this process to be transparent and to take place in compliance with the law, regulations as well as in due respect of ethical principles.

Parties believe that whoever acts accordingly and in full compliance to rules, laws, legislations, regulations, authorizations, should be not discriminated or disadvantaged / disparage with others, to achieve their legal, compliant and legitimate pursue of business activity.

EU entities wish to maintain maximum legal and ethical certainty within the EU and USA concerning the application and implementation of Sanction on IRAN, thus promoting a full international compliance culture.

Parties believe that the guiding principles of a sound export compliance policy should be reaffirmed: Transparency, Compliance, Accountability, Consistency and effectiveness (EIFEC EC1001OPS Standards).

**In light of the above, we request the US Institutions a common understanding and opinion on certain issues and conditions to achieve an effective and compliant provisions in respect of activities carried by EU subjects in Italy under Regulations and successive amendments concerning restrictive measures against Iran.**

## **BACKGROUND**

Several authorities / organizations are mandated to manage and implement the various regulations and framework:

**The Bureau of Industry and Security** (hereinafter “**BIS**”) of US Department of Commerce have the mission to advance U.S. national security, foreign policy, and economic objectives by



ensuring an effective export control and export compliance system and promoting continued U.S. strategic technology leadership,

**The Office of Foreign Assets Control** (hereinafter “**OFAC**”) of US Department of Treasury have the mission to administer and enforce economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under US jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.

**The Ministry of Foreign Affairs of Italy** (hereinafter “**MAE**”) is the the competent authority designated by the Republic of Italy, as EU Member State, referred to several articles of EC 267 COUNCIL REGULATION (EU) No 267/2012 of 23 March 2012 (hereinafter “**EC267**”) on restrictive measures against Iran, identified and listed in Annex X therein. MAE has the responsibility to coordinate several italian authorities (as better described in attachment 1) to implement the EC267 Regulation:

**Ministry of Economy and Finance** (hereinafter “**MEF**”) responsible for implementation and administration of international financial sanctions in effect in the Republic of Italy  
Comitato di Sicurezza Finanziaria (Financial Security Committee) (hereinafter “**CSF**”) monitors and implements the sanctions system and has the power to inquire and assess all informations related

**Ministry of Economic Development** (hereinafter “**MSE**”)

**Agenzia delle Dogane** / Custom Agency (hereinafter “**ITCustom**”)

**EIFEC** is the european organization with the mission to foster international security through promoting the EU Export Compliance Framework - EU-ECF. The Framework included the European Charter for Export Compliance - EC-CEC that describes the guiding principles and



practices to promote an European culture of compliance with the rules and laws (Compliance) within the financial, economic, industrial, associative system of private and public sectors.

EIFEC aims to contribute by all appropriate steps to disseminate among the Organizations behaviors of excellence through proper management, transparency and audit of the activities performed in the production and transfer of goods and services.

Having regard to the Treaty on the Functioning of the European Union, the EU Council Decision 2010/413/CFSP of 26 July 2010 and Decision 2012/35/CFSP concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP, confirming the restrictive measures taken since 2007 and providing for additional restrictive measures against the Islamic Republic of Iran ('IRAN') in order to comply with UN Security Council Resolution 1929 (2010) have been issued.

Those restrictive measures comprise, in particular, additional restrictions on trade in dual-use goods and technology, as well as equipment which might be used for internal repression, restrictions on trade in key equipment and technology for, and restrictions on investment in the Iranian oil and gas industry, restrictions on Iranian investment in the uranium mining and nuclear industry, restrictions on transfers of funds to and from Iran, restrictions concerning the Iranian banking sector, restrictions on Iran's access to the insurance and bonds markets of the Union and restrictions on providing certain services to Iranian ships and cargo aircraft.

Decisions 2010/413/CFSP and 2012/35/CFSP also provide for additional categories of persons to be made subject to the freezing of funds and economic resources and for certain other technical amendments to existing measures.

Effective restrictions on Iranian investment in the Union require that measures be taken to prohibit natural or legal persons, entities and bodies subject to the jurisdiction of the Member States from enabling or authorizing such investment.

For the implementation of EC961 and EC267 Regulations and to create maximum legal certainty within the Union, the names and other relevant data concerning natural and legal persons, entities and bodies whose funds and economic resources must be frozen in accordance with the Regulation, are made public.



On 26 October 2010 the Council of the European Union in order to ensure that the measures provided in Decision 2010/413/CFSP of 26 July 2010 are effective has adopted the EC961 Regulation which is binding in its entirety and directly applicable in all EU Member States.

On 23 January 2012, the Council approved Decision 2012/35/CFSP providing for additional restrictive measures against the Islamic Republic of Iran ('Iran') as requested by the European Council on 9 December 2011.

EC961 has been revoked by the new EC267 Regulation which provides restriction on transfer of funds and on financial services as per art. 30, and payments are processed as follows:

- transfers due on transactions regarding foodstuffs, healthcare, medical equipment, or for humanitarian purposes shall be carried out without any prior authorization. The transfer shall be notified in advance in writing to the competent authorities of the Member States, as identified on the websites listed in Annex X, if above EUR 10 000 or equivalents;
- any other transfer below EUR 40 000 shall be carried out without any prior authorization. The transfer shall be notified in advance in writing to the competent authorities of the Member States, as identified on the websites listed in Annex X, if above EUR 10 000 or equivalent;
- any other transfer of or above EUR 40 000 or equivalent shall require a prior authorization of the competent authorities of the Member States, as identified on the websites listed in Annex X.

An Authorization Process (hereinafter “MEF/A and/or “MEF/B”) is in place in Italy and managed by MEF under advise of the Financial Security Committee (CSF) in coordination with all relevant authorities in charge of security and accordingly to art 30.4 of EC267: “..the competent authorities shall grant, under such terms and conditions as they deem appropriate, an authorisation for a transfer of funds having a value of EUR40000 or more, unless they have reasonable grounds to determine that the transfer of funds for which the authorisation is requested could be in breach of any of the prohibitions or obligations in this Regulation....”

The United States has imposed restrictions on activities with Iran under various legal authorities since 1979. In 1996 the Iran Sanctions Act (ISA) was introduced.

On July 1, 2010, President Obama signed into law the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA). The Act amends the Iran Sanctions Act of 1996 (ISA) which requires sanctions be imposed or waived for companies that are determined



to have made certain investments in Iran's energy sector. This law builds upon UNSCR 1929 by strengthening existing U.S. sanctions with respect to the Iranian energy industry, and adds the potential for the imposition of serious limits on foreign financial institutions' access to the U.S. financial system if they engage in certain transactions involving Iran. CISADA is consistent with the global consensus regarding Iranian behavior and is in line with the U.S. Government's core role of protecting its domestic financial system from exposure to Iran's illicit and deceptive financial practices.

The financial provisions of CISADA are implemented through the Iranian Financial Sanctions Regulations (IFSR), which the Treasury Department issued in August 2010. The IFSR prohibit entities owned or controlled by U.S. financial institutions from knowingly engaging in transactions with or benefiting Iran's Islamic Revolutionary Guard Corps (IRGC). Additionally, foreign financial institutions that engage in certain transactions with specific, troubling Iran-linked individuals and entities risk impeding their access to the U.S. financial system. Under the IFSR, the Secretary of the Treasury may prohibit or impose strict conditions on the opening or maintaining in the United States of correspondent accounts or payable-through accounts for foreign financial institutions that the Secretary finds knowingly engage in one or more sanctionable activities.

On December 31, 2011, the President of the United States of America, Barak Obama, signed into law the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81) ("NDAA"). Section 1245(d)(1) of the NDAA requires the President to prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by a foreign financial institution that the President determines has knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or another Iranian financial institution designated by the Secretary of the Treasury pursuant to IEEPA.

An Executive Order 13599 of February 5, 2012 (Federal Register Vol. 77, No. 26, Wednesday, February 8, 2012) issued by the President of the United States of America, Barak Obama, provides additional restriction and regulation on Blocking Property of the Government of Iran and Iranian Financial Institutions.

OFAC has amended and reissued on 27 February the IFSR in order to implement section 1245(d) of the National Defense Authorization Act (NDAA) for Fiscal Year 2012.



## AS CONSEQUENCE

1. All EU financial institutions are subject to Regulation 267/2012. Article 30 imposes express notification and authorization obligations on the Payment Service Providers of the payer and payee.
2. The economic pressure on Iran are multiplying. Iran is virtually cut off from the international banking system and is increasingly trading through barter arrangements rather than hard currency exchange.
3. These events are de facto affecting not only sanctioned goods or persons and organization but all Iranian people and even items which are essential to the livelihood as medicines, food, agricultural products are very difficult to deliver as the payments processes are almost blocked.

## CONSIDERING THAT

1. Who is compliant with the regulations and accepts to **“play by rules”** that EU and USA have laid down should not be de facto discriminated or discouraged but treated with equality to any other rights holders in our countries.
2. This request is to state a mutual understanding to promote the full compliance to US and EU regulations for the activities with Iran and provide the method for further understanding whereas the spirit of Transparency, Compliance, Accountability, Consistency and Effectiveness should guide and strengthen the mutual collaborative relationship
3. Therefore in order to allow people and organizations that are in accordance and compliance to EU/USA Regulations to transact in verifiably and orderly way with Italy the “play by the rules” initiative should be adopted and agreed:



## PURPOSE

### 1. Main objectives :

- Clarify and assess the correct procedures and compliance of policies applicable for EU subjects in Italy with special reference to Payment Service Providers (banks and financial institutions)
- Ensure to maintain maximum legal and ethical certainty for organizations in Italy that will act accordingly to this clarification.

## Situation to be Clarified

### Payment Service Providers / financial institutions in Italy

1. Five (5) Italian banks (hereinafter "ITABANKS"), representative of different nature, status and national presence), will have the possibility to maintain/ re activate or open a corresponding bank account to a maximum number of 5 NON EU LISTED/NON US SDN private reputable iranian banks (hereinafter "IRANBANKS") (attachment n.2)
2. ITABANKS may receive on these accounts funds and any other permitted financial instrument to be **used only for the payment** of:
  - I. Foodstuff
  - II. healthcare,
  - III. medical equipment
  - IV. humanitarian purposes
  - V. Goods with authorization (MEF A and MEF B) of MEF - the Italian Ministry of Economy and Finance
  - VI. Payments which are allowed under EC961/2010 or EC267/2012
3. Payment may be made only to EU entities or any entities that have received the MEF authorization. No payments will be made to any denied party.
4. ITABANKS will accept to transact only with iranian payers or intermediary ( including any Payment Service Providers) that have registered in the EU Export Compliance Register (EU-ECR) and have passed successfully the verification/certification process



accordingly to guidelines EU-C/ECO/IRAN (which provides for sanctions and money laundering checks) or any modification thereafter. It is required that all Iranian parties have subscribed the EU Transparency Code of Conduct and the EU Export Compliance Commitment.

5. Iranian parties will provide their ERN ID Number to ITABANKS to allow verification of validity and expiry date of their Registration/ verification at the EU-ECR for any payment to be done.
6. In case any of the payer is enlisted in US SDN or in the Consolidated list of persons, groups and entities subject to EU financial sanctions, payments due under contracts, agreements or obligations that were concluded or arose before the date on which the person, entity or body referred to in Article 16 has been designated by the Sanctions Committee, the Security Council or by the EU Council, ITABANKS may pay, transfer, assign, service what is due.
7. In case any of the IRANBANKS is enlisted in US SDN or in the Consolidated list of persons, groups and entities subject to EU financial sanctions, the funds deposited in the ITABANKS accounts can be used only for settlement of payments as per art. 2. The funds deposited cannot be transferred to any other bank or financial institution in favor of anyone if not the beneficiaries which have already received or applied for an authorization by MEF until the volume, amount is reduced to zero. Thereafter any further fund incoming may be frozen if the enlisting provide for.
8. The Italian Ministry of Economy and Finance will monitor the implementation and compliance of payments and authorizations to EU Regulations.



**Clarification /Consideration and assessment requested to the US Authority:**

Activities made by ITABANKS in compliance with these foregoing are considered legal and in compliance with in the spirit and the letter of the laws. We ( *the name of the US authority signing the clarification*) recognize that, these activities, do not constitute a breach or infringement or a “ trigger” in violation of ISA (IRAN SANCTION ACT), IFSR, CISADA and any other applicable regulation by the US Government and ITABANKS shall be considered compliant to US regulations.

**Brussels, 19 march 2012**



**EIFEC**

**EU Head Office**

Level 4, European Quarter- Schuman, Rue de la Loi 227, B- 1040 Brussels - Belgium - T.+32 2 8088 660 F. +32 2 8088 654



## Attachement 1

Administration responsible for coordinating the implementation of EC961 and EC267/2012 Regulation:

**Ministry of Foreign Affairs (MAE)**

Direzione Generale per la mondializzazione e le questioni globali – Ufficio II

[Dgmo2@esteri.it](mailto:Dgmo2@esteri.it)

Competent authority as set forth in various Sections of Regulation EC267:

**Ministero dello Sviluppo Economico /Ministry of Economic Development (MSE)**

[pietromaria.paolucci@sviluppoeconomico.gov.it](mailto:pietromaria.paolucci@sviluppoeconomico.gov.it); [polcom4@sviluppoeconomico.gov.it](mailto:polcom4@sviluppoeconomico.gov.it)

Competent authority as set forth in various Sections of Regulation EC267:

**Ministero dell'Economia e delle Finanze / Ministry of Economy and Finance (MEF)**

**Comitato di sicurezza finanziaria (Financial Security Committee) (CSF)**

[csf@tesoro.it](mailto:csf@tesoro.it)

[Indicazioni sul regime di autorizzazione e notifica disciplinato dall'art. 30](#)

[Allegato 1 Mod. A](#)

[Allegato 2 Mod. B](#)

[Appendice](#)

Competent authority as set forth in various Sections of Regulation EC267:

Unità di informazione Finanziaria (UIF)

Competent authority as set forth in various Sections of Regulation EC267 :

Agenzia delle Dogane

Direzione Centrale Accertamenti e Controlli

[Dogane.accertamenti@agenziadogane.it](mailto:Dogane.accertamenti@agenziadogane.it)

Competent authority as set forth in various Sections of Regulation EC267:

Ministero dell'Economia e delle Finanze – Comitato di sicurezza finanziaria (same email address as above)

Unità di informazione Finanziaria – Banca d'Italia

Largo Bastia, 35

00181- ROMA

source:

[http://www.esteri.it/MAE/EN/Politica\\_Europea/Deroghe.htm](http://www.esteri.it/MAE/EN/Politica_Europea/Deroghe.htm)

## **Attachement 2**

Iranian banks : IRANBANKS

### **EN Bank**

No.24 Esfandiyar Blvd. Valiasr Ave.  
Tehran, Iran  
Tel: +98-21-8233 0000

### **Karafarin Bank**

No 97,Nahid St. Vali-Asr Ave,  
Tehran, Iran  
Tel: +98-21-26215000-5 and +98-21-26214996-98

### **Parsian Bank**

No.4, Zarafshan St., Farahzadi Blvd, Shahrak Ghods.  
Tehran, Iran  
Tel: +98-21-88362600-24

### **Pasargad Bank**

No.430, Mirdamad Blvd.,  
Tehran, Iran  
Tel: +98-21-82890

### **Saman Bank**

No1543. Tarkesh Dooz Al- Parkway-Valiasr St  
Tehran, Iran  
Tel: +982126210926-31