Council Regulation (EC) No 1110/2008 of 10 November 2008 amending Regulation (EC) No 423/2007 concerning restrictive measures against Iran

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301 thereof,

Having regard to Common Position 2008/652/CFSP of 7 August 2008 amending Common Position 2007/140/CFSP concerning restrictive measures against Iran[(1)],

Having regard to the proposal from the Commission,

Whereas:

(1) Common Position 2008/652/CFSP provides for additional restrictive measures concerning, inter alia, persons and entities subject to an assets freeze, the withholding of public financial support, including export credits, guarantees and insurance, in order to avoid any financial support that could contribute to proliferation-sensitive nuclear activities or to the development of nuclear weapon delivery systems, and the inspection of cargoes to and from Iran by aircraft and vessels owned or operated by Iran Air Cargo and Islamic Republic of Iran Shipping Line provided there are reasonable grounds to believe that the aircraft or vessel is transporting goods prohibited by that Common Position. Common Position 2008/652/CFSP also provides for a prohibition of the supply, sale or transfer of certain items, materials, equipment, goods and technology that could contribute to proliferation-sensitive nuclear activities or to the development of nuclear weapon delivery systems.

(2) Common Position 2008/652/CFSP also calls upon all the Member States to exercise vigilance over the activities of financial institutions within their jurisdiction with banks domiciled in Iran and their branches and subsidiaries abroad, in order to prevent such activities from contributing to proliferation-sensitive nuclear activities or to the development of nuclear weapons delivery systems. To that end, certain provisions of the said Common Position relate to Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing[(2)].

(3) It should be clarified that submitting and forwarding the necessary documents to a bank for the purpose of their final transfer to a person, entity or body that is not listed in order to trigger payments allowed under Article 9 of Regulation (EC) No 423/2007[(3)] does not constitute the making available of funds within the meaning of Article 7(3) of that Regulation.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1110/2008. (See end of Document for details)*

(4) Regulation (EC) No 423/2007 imposed certain restrictive measures against Iran, in line with Common Position 2007/140/CFSP. As a result, economic operators are exposed to the risk of claims and it is therefore necessary to protect such operators permanently against claims in connection with any contract or other transaction the performance of which was affected by reason of the measures imposed by that Regulation.

(5) These measures fall within the scope of the Treaty establishing the European Community and, therefore, notably with a view to ensuring their uniform application by economic operators in all Member States, Community legislation is necessary in order to implement them in the Community.

(6) The reference to Article 5(1)(c) in Article 12(2) of Regulation (EC) No 423/2007 should be modified in order to take account of the amendment made by Council Regulation (EC) No 618/2007 of 5 June 2007 amending Regulation (EC) No 423/2007 concerning restrictive measures against Iran[(4)].

(7) Regulation (EC) No 423/2007 should therefore be amended accordingly.

(8) In order to ensure that the measures provided for in this Regulation are effective, it should enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 423/2007 is hereby amended as follows:

(a) the following points shall be added to Article 1:

(l) "contract or transaction" means any transaction of whatever form and whatever the applicable law, whether comprising one or more contracts or similar obligations made between the same or different parties; for this purpose "contract" includes a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, and credit, whether legally independent or not, as well as any related provision arising under, or in connection with, the transaction;

(m) "claim" means any claim for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably any claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form;

(n) "person, entity or body in Iran" means:

(i) the State of Iran or any public authority thereof;

(ii) any natural person in, or resident in, Iran;

(iii) any legal person, entity or body having its registered office in Iran;

(iv) any legal person, entity or body controlled directly or indirectly by one or more of the above mentioned persons or bodies.;

(b) the following point shall be added to Article 2 point (a):

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(iii) certain other goods and technology that could contribute to enrichment-related, reprocessing or heavy-water-related activities, to the development of nuclear weapon delivery systems, or to the pursuit of activities related to other topics about which the IAEA has expressed concerns or identified as outstanding. These goods and technology are listed in Annex IA.;

(c) the following paragraph shall be added to Article 3:

1a For all exports for which an authorisation is required under this Regulation, such authorisation shall be granted by the competent authorities of the Member State where the exporter is established and shall be in accordance with the detailed rules laid down in Article 7 of Regulation (EC) No 1334/2000. The authorisation shall be valid throughout the Community.;

(d) Article 4 shall be replaced by the following:

It shall be prohibited to purchase, import or transport the goods and technology listed in Annexes I and IA from Iran, whether the item concerned originates in Iran or not.;

(e) the following Article is inserted:

Article 4a

In order to prevent the transfer of goods and technology that are listed in Annexes I and IA, cargo aircraft and merchant vessels owned or operated by Iran Air Cargo and Islamic Republic of Iran Shipping Line shall be required to submit pre-arrival or pre-departure information, for all goods brought into or out of the Community, to the competent customs authorities of the Member State concerned.

The rules governing the obligation to provide pre-arrival and pre-departure information, in particular time limits to be respected and data to be required, shall be as laid down in the applicable provisions concerning entry and exit summary declarations as well as customs declarations in Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code[(5)] and in Commission Regulation (EC) No 1875/2006 of 18 December 2006 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Regulation (EEC) No 2913/92[(6)].

In addition, Iran Air Cargo and Islamic Republic of Iran Shipping Line and or their representatives shall declare whether the goods are covered by Regulation (EC) No 1334/2000 or by this Regulation and, if their export is subject to authorisation, specify the particulars of the export licence granted.

Until 30 June 2009, the entry and exit summary declarations and the additional elements required as referred to above may be submitted in written form using commercial, port or transport information, provided that it contains the necessary particulars. In the case of an export declaration, the particulars set out in Annex 30A of Regulation (EC) No 1875/2006 are not required until 30 June 2009.

As from 1 July 2009, the additional elements required, as referred to above, shall be submitted either in written form or using the entry and exit summary declarations as appropriate.;

(f) Article 5(1) shall be replaced by the following:

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC) No 1110/2008. (See end of Document for details)*

1. It shall be prohibited:

a to provide, directly or indirectly, technical assistance related to the goods and technology listed in the Common Military List of the European Union, or related to the provision, manufacture, maintenance and use of goods included in that list, to any natural or legal person, entity or body in, or for use in, Iran;

b to provide, directly or indirectly, technical assistance or brokering services related to the goods and technology listed in Annexed I and IA, or related to the provision, manufacture, maintenance and use of goods listed in Annexes I and IA, to any natural or legal person, entity or body in, or for use in, Iran;

c to provide investment to enterprises in Iran engaged in the manufacture of goods and technology listed in the Common Military List of the European Union or in Annexes I and IA;

d to provide, directly or indirectly, financing or financial assistance related to the goods and technology listed in the Common Military List of the European Union or in Annexes I and IA, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for any provision of related technical assistance to any natural or legal person, entity or body in, or for use in, Iran;

e to participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibitions referred to in points (a) to (d).;

(g) Article 7(1) shall be replaced by the following:

1. All funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex IV shall be frozen. Annex IV shall include the persons, entities and bodies designated by the United Nations Security Council or by the Sanctions Committee in accordance with paragraph 12 of United Nations Security Council Resolution 1737 (2006) and paragraph 7 of United Nations Security Council Resolution 1803 (2008).;

(h) the following Articles shall be inserted:

Article 11a

1 Credit and financial institutions which come within the scope of Article 18 shall, in their activities with credit and financial institutions referred to in paragraph 2, and in order to prevent such activities contributing to proliferation-sensitive nuclear activities or to the development of nuclear weapon delivery systems:

a exercise continuous vigilance over account activity, particularly through their programmes on customer due diligence and under their obligations relating to money laundering and financing of terrorism;

b require that in payment instructions all information fields which relate to the originator and beneficiary of the transaction in question be completed and if that information is not supplied, refuse the transaction;

c maintain all records of transactions for a period of five years and make them available to national authorities on request;

d if they suspect or have reasonable grounds to suspect that funds are related to proliferation financing, promptly report their suspicions to the financial intelligence unit (FIU) or to another competent authority designated by the Member State concerned, as indicated on the websites listed in Annex III, without prejudice to Articles 5 and 7. The FIU or such other competent authority will serve as a national centre for receiving and analysing suspicious transaction reports regarding potential proliferation financing. The FIU or

such other competent authority shall have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake this function, including the analysis of suspicious transaction reports.

2 The measures set out in paragraph 1 shall apply to credit and financial institutions in their activities with:

a credit and financial institutions domiciled in Iran, in particular with Bank Saderat;

b branches and subsidiaries, where they come within the scope of Article 18, of credit and financial institutions domiciled in Iran, as listed in Annex VI;

c branches and subsidiaries, where they do not come within the scope of Article 18, of credit and financial institutions domiciled in Iran, as listed in Annex VI;

d credit and financial institutions that are neither domiciled in Iran nor come within the scope of Article 18 but are controlled by persons and entities domiciled in Iran, as listed in Annex VI.

Article 11b

1 Bank Saderat branches and subsidiaries that come within the scope of Article 18 shall notify the competent authority of the Member State where they are established, as indicated on the websites listed in Annex III, of all transfers of funds carried out or received by them, the names of the parties, the amount and the date of the transaction, within five working days after carrying out or receiving the transfer of funds concerned. If the information is available, the notification must specify the nature of the transaction and, where appropriate, the nature of the goods covered by the transaction and must, in particular, state whether the goods are covered by Regulation (EC) No 1334/2000 or by this Regulation and, if their export is subject to authorisation, indicate the number of the licence granted.

2 Subject to, and in accordance with, the information-sharing arrangements, the other notified competent authorities shall without delay transmit these data, as necessary, in order to prevent any transaction that could contribute to proliferation-sensitive nuclear activities or to the development of nuclear weapons delivery systems, to the competent authorities of other Member States where the counterparts to such transactions are established.;

(i) Article 12(2) is replaced by the following:

2. The prohibitions set out in Article 5(1)(d) and Article 7(3) shall not give rise to liability of any kind on the part of the natural or legal persons or entities concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe these prohibitions.;

(j) the following paragraph shall be added to Article 12:

3. The disclosure in good faith, as provided for in Articles 11a and 11b, by an institution or by a person covered by this Regulation or an employee or director of such an institution, of the information referred to in Articles 11a and 11b shall not involve the institution or person or its directors or employees in liability of any kind.;

(k) the following Article shall be inserted:

Article 12a

1 No claim for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment