



## **Iran - Council Regulation (EU) No 961/2010 – Frequently Asked Questions**

Council Regulation (EU) No 961/2010 is directly applicable in the UK.

The Iran (European Union Financial Sanctions) Regulations 2010 provide criminal penalties in the UK for any breaches of the prohibitions contained in Regulation 961/2010.

The below FAQs refer only to the provisions of Regulation 961/2010 and not the corresponding provisions of the UK Regulations.

The Treasury has published these FAQs on the basis that its views are not determinative of questions of law. It is recommended that, where necessary, independent legal advice is sought.

### **Notification and authorisation requirements**

#### **1. How far in advance can financial institutions notify the Treasury of transfers less than €40,000?**

Notifications of transfers of less than €40,000 can be submitted to the Treasury at any point prior to the transfer actually being made. However, a notification should only be submitted if it is certain that the transfer will be made; speculative notifications are unnecessary. It should be noted in this regard that with the notification relevant underlying documents must be submitted. If any of the transaction details (payer, payee, payment route etc) change, it will be necessary to submit a new notification.

#### **2. Are there some transfers for which it will be necessary for the Payment Service Provider of both payer and payee to notify or seek authorisation?**

The Treasury note that there may be some cases where it appears under Article 21 that the Payment Service Provider of both the payer and payee should notify or seek authorisation. For example, where a transfer is made from one Iranian entity to another and both have EU banks. It is the Treasury's view that, for the purpose of meeting the objective underpinning Article 21, it is only necessary in such cases for the payer's Payment Service Provider to notify or seek authorisation.

#### **3. Is it possible to obtain authorisation when there is a designated person involved in a transfer?**

Any transfer of funds must be compliant with the asset freezing prohibitions, which are separate from the Article 21 requirements. If there is a designated person involved in the transaction you should contact the Treasury for further advice. If the payment engages the asset freezing prohibitions it cannot be made, unless under Treasury licence. Licences may only be issued if the relevant conditions of an applicable licensing ground are satisfied. Where such a license has been issued no Article 21 authorisation is required (see art. 21(5)).

- 4. If a bank's business unit is outside of the EU must it also comply with Regulation 961/2010? Does it make a difference if it is a branch or subsidiary?**

Article 39 explains who is caught by the Regulation. A branch of a legal entity incorporated or constituted under the law of a Member State would be caught by the Regulation, even if that branch were located outside the EU. A subsidiary incorporated or constituted outside the EU would not be caught.

- 5. Article 10 of Regulation 961/2010 permits the continuation of 'prior contracts' relating to the Iranian oil and gas sector that would otherwise be subject to Article 9. Is there a dual reporting obligation to the Export Control Organisation (for the contractual exemption) and the Treasury (for related financial transactions caught Article 21)?**

Yes, if a contract is considered by a party to fall under Article 10 and transfers of funds in relation to that contract fall under Article 21, there will be reporting requirements under both provisions. Your customer is responsible for notifying the Department for Business, Innovation & Skills (BIS) under Article 10 of the Regulation. If such a notification has been made, the customer or its bank should communicate this to the Treasury as part of any prior authorisation request under Article 21. The Treasury will liaise with BIS as necessary.

#### **Activity by other EU countries**

- 1. If a transfer engages Article 21, but the Treasury or any other EU competent authority has already issued an asset freezing licence for that transaction, do I still need to notify or seek prior authorisation?**

No – the existence of an asset freezing licence means Article 21 does not apply. However, Payment Service Providers should be aware that licences may contain conditions which affect them - this will depend on the circumstances of the transaction in question.

If a transaction falls within an exemption in Article 20, there is also no need to comply with Article 21 - see Article 21(5).

If you are unsure about the validity of a licence (particularly if a licence is old), or whether an exemption is applicable, then you should contact the relevant competent authority to confirm.

- 2. Where a transfer of funds has been notified or authorised by the Treasury, am I also required to notify or to seek authorisation from other Member States?**

Each transfer of funds only needs one notification or authorisation within the EU. Where notification has already been made to, or authorisation granted by, a competent authority in the EU, it is not necessary for further notifications to be made or authorisations sought.

- 3. What are the reporting requirements for EU intermediaries where the remitting and beneficiary banks are outside the EU? What if there is more than one intermediary?**

All EU financial institutions are subject to Regulation 961/2010 by virtue of Article 39. Although Article 21 only imposes express notification and authorisation obligations on the Payment Service Providers of the payer and payee, we, along with other Member States' competent authorities, believe that the

intention is that any EU based Payment Service Provider which knows or has reasonable cause to suspect it is involved in a transfer to which Article 21 applies should start from the assumption that it should be required to notify or seek authorisation.

Where there is more than one EU intermediary, the obligation will fall in principle on the first EU intermediary involved.

If it is not possible for an EU intermediary to know or have reasonable cause to suspect that the transfer that it is processing involves an Iranian person, entity or body as payer or payee (or both) it cannot be found liable for failing to comply with the Article 21 requirements (Article 32(2)).

#### **4. Will the Treasury link up notifications and authorisations from other competent authorities?**

Article 21(4) places an obligation on Member States to inform other Member States when an authorisation has been rejected. The Treasury will not know about other competent authorities' authorisations, or notifications made to them, unless specifically informed of them. Financial institutions are asked to advise the Treasury if notification or authorisation has been confirmed by another Member State's competent authority in other cases where otherwise, notification or authorisation would be required from the Treasury. This will help ensure that duplicate authorisations are avoided.

#### **Definitions**

##### **1. Does the definition of 'transfer of funds' include transactions made on credit and debit cards, ATM withdrawals and direct debits as detailed in paragraph 9 of Regulation 1781/2006?**

'Transfer of funds' is defined in Article 1(r) of Regulation 961/2010. It is our view that this definition excludes transactions made on credit and debit cards, ATM withdrawals and direct debits.

##### **2. Do BACS payments fall within the definition of 'transfer of funds'?**

Yes – BACS payments fall within the definition of "transfer of funds".

Where a Payment Service Provider knows or reasonably suspects from the information available that BACS payments are to/from an Iranian person, entity or body the necessary notification or authorisation should be submitted to the Treasury if the relevant thresholds are exceeded.

We are aware that the availability of remitter information is limited with BACS transfers. If it is not possible to obtain sufficient information to know, or to reasonably suspect, that the transaction falls within Article 21, the bank may benefit from Article 32(2). Under that Article, the prohibitions set out in Regulation 961/2010 do 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.

##### **3. How does the definition of 'transfer of funds' at Article 1(r) relate to correspondent banking?**

**An example of this is where a customer of a New Zealand branch of an EU incorporated bank, "Bank A", wants to pay Euros to an Iranian person's Swiss bank account. The Euro hub for Bank A is in London. The funds and SWIFT messages would transfer from Bank A's NZ branch to Bank A London; from Bank A London to the Swiss Euro clearer; from Swiss Euro clearer to the Swiss bank account.**

**Where would the obligation to notify or seek authorisation fall? What if there are many EU banks within the chain?**

Article 39(d) applies Regulation 961/2010 to any legal person, entity or body which is incorporated or constituted under the law of a Member State. So Bank A would be subject to Article 21, as would its New Zealand branch. As the Payment Service Provider to the payer, it would fall on Bank A's New Zealand branch to notify or seek authorisation. If this branch notifies or seeks authorisation, there is no obligation on correspondent banks within the EU also to notify/seek authorisation.

The situation would be different if the New Zealand bank was not a branch of an EU incorporated bank but a subsidiary incorporated under New Zealand law and therefore not subject to the Regulation. It would have no obligation to notify or seek authorisation. But Bank A in London would be making a transfer of funds to an Iranian person, via the Swiss Euro clearer, and our view is that Bank A is treated as if it were the payer's Payment Service Provider in these circumstances so must notify/seek authorisation.

Where there is more than one intermediary, the obligation will fall on the first bank of entry into the EU.

**4. What is the definition of 'indirectly'? Does Article 21 apply to transfers that are made indirectly?**

The term 'indirectly' is a standard term that banks are used to complying with in the context of asset freezing, such as Article 16. It typically refers to a payment made by person X to a designated person, Z via a third party, Y. It is a matter of fact in each particular case whether a payment will be made indirectly to a designated person.

The term 'indirectly' is not used in this sense in Article 21, but Article 21(2) reads:

"These provisions shall apply regardless of whether the transfer of funds is executed in a single operation or in several operations which appear to be linked."

This language would indicate that Article 21 would apply to a payment made from X to Z (an Iranian person, entity or body) via Y.

If it is not possible for an EU financial institution which is in the middle of a chain of transfers to obtain sufficient information to know, or to reasonably suspect that the transaction falls within Article 21, banks may benefit from Article 32(2).

**Linked transactions**

**1. Article 21(2) of Regulation 961/2010 states that Article 21 applies:**

**"regardless of whether the transfer of funds is executed in a single operation or in several operations which appear to be linked"**

**Do I need to seek authorisation for aggregated payments adding up to over €40,000 when the only common factor is that the remitter/beneficiary is the same Iranian person and there is no common underlying transaction e.g. all electronic payments to and from accounts held for Iranian residents by EU Payment Service Providers?**

If the sole common factor is that the remitter/ beneficiary is the same Iranian person, entity or body, the Treasury do not need to authorise these transfers.

## **2. What is the definition of ‘linked operations’ and over what period of time should they be linked?**

Whether a series of transfers are made in a linked operation will depend upon the facts of each case. It is clear that a series of loan repayments, such as for a mortgage, are linked. Similarly a schedule of payments under a letter of credit or bond would also be linked. Consideration should be given to issues such as the timing of the transfer (is it regular, whether daily, monthly or yearly), the parties to the transaction and the sum involved. For less clear cases we would expect Payment Service Providers to exercise their judgement.

If a Payment Service Providers anticipates that over the course of time, linked transfers such as repayments under a loan, will add up to an amount which exceeds a relevant threshold for the purposes of Article 21, the Payment Service Providers must submit a notification/seek authorisation prior to the relevant threshold(s) being met.

A linked operation would also include where there are two or more links in a chain of transfers. For example an Iranian importer (or their Payment Service Provider) of EU goods gives a payment order to a bank in Dubai, who then gives a second and separate payment order to the EU exporter (or their Payment Service Provider). These separate transfers are a linked operation because together they permit the Iranian importer to discharge a payment obligation to the EU exporter. It is accepted that banks may not always know the origins of a transfer.

Article 31(1) requires that the link between the transactions is explained in the notification/application and underlying documents.

### **Who should notify or seek authorisation?**

#### **1. Article 21(3) states that:**

**“notifications and requests for authorisation relating to the transfer of funds to an Iranian person, entity or body shall be addressed by or on behalf of the payment service provider of the payer”**

**Where does the obligation fall when the Payment Service Provider of the payer is outside of the EU and the Payment Service Provider of the payee is within the EU?**

The reporting obligation in this example would be on the payer if the payer itself is in the EU, and if not, on the payee’s Payment Service Provider - please refer to the third paragraph of Article 21(3) of Regulation 961/2010.

While the Regulation does, in these particular circumstances, technically require the payer to provide notification, as a matter of practice the Treasury does expect the EU-based Payment Service Provider of the payee to check that this has been done and, if in any doubt, to notify or seek authorisation itself if necessary.

**2. Article 21(3) states that:**

**“notifications and requests for authorisation relating to the transfer of funds from an Iranian person, entity or body shall be addressed by or on behalf of the payment service provider of the payee”**

**Where does the obligation fall when the remitting bank is inside the EU and funds are being transferred:**

**(a) to another EU financial institution**

**(b) outside the EU**

The reporting obligation to notify or request authorisation in case a) would still fall on the payee’s Payment Service Provider (PSP) and should be addressed to the competent authority of the Member State in which the payee is resident or the PSP established. Please refer to the second paragraph of Article 21(3). Although this appears counter-intuitive since the payer’s PSP is in the EU, the second paragraph is unambiguous in its placing of the obligation on the payee’s PSP.

The reporting obligation in scenario (b) is set out in the third paragraph of Article 21(3). On the assumption that the payee’s PSP is outside the EU, it will fall initially on the payee. However, as a matter of practice the Treasury would expect an EU-based PSP to check that this has been done and, if in any doubt, to notify or seek authorisation itself if necessary.

Article 21 does not contemplate on whom the notification/authorisation obligation falls in the event that both the payee and its PSP are outside the EU. However, as a matter of practicality, and to meet the objective of Article 21, Treasury would advise that should the payee also be outside the EU, the obligation is best met by the payer’s PSP; and if the payer’s PSP is outside the EU, by the payer itself.

**3. If a company exports goods to Iran and receives payment from a Dubai bank to his account in the EU, who must notify or seek authorisation?**

The ultimate payer is the importer of the goods in Iran, so the funds are transferred from Iran to the EU, via Dubai. This would classify as a linked operation. Therefore the Payment Service Provider of the EU exporter should notify or seek authorisation (Article 21(3), second paragraph).

If it is not possible for the Payment Service Provider of the EU exporter to know or have reasonable cause to suspect that the transfer that it is processing ultimately comes from Iran it cannot be found liable for failing to comply with the Article 21 requirements (Article 32(2)).

The EU exporter also has a responsibility to ensure that proper notification or authorisation procedures are followed, either by ensuring that its Payment Service Provider has full information about the transaction (and any linked operations) or by informing the Treasury itself, where required.

**4. Article 23(b) requires “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”. Does this take precedence over the wire transfer regulations?**

The answer lies in Article 23(1), which states:

“The above requirements [i.e. those in paragraph 23 of Regulation 961/2010] for credit and financial institutions shall be complementary to existing obligations deriving from Regulation (EC) No 1781/2006 [the Wire Transfer Regulation] and from the implementation of 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 [the Third Money Laundering Directive].”

This means that if the information requirements of Article 23(1) are not met, the transaction should be refused even if the information provided is otherwise sufficient for the purposes of the Wire Transfer Regulation.

### **Treatment of transactions**

**1. If a bank rejects a payment for any reason, is there a requirement to notify or seek authorisation?**

No. If no transfer of funds takes place, there is no duty to notify or seek authorisation under Article 21.

**2. Is it possible for a customer to cancel an instruction to transfer funds after authorisation has been sought but before authorisation has been granted?**

Yes. In such circumstances it is required to inform HM Treasury of the cancellation (see art. 31).

**3. How does the Treasury expect banks to treat funds whilst they await authorisation?**

Transfers should be suspended until the notification or authorisation process is complete. Authorisations are deemed granted if no objection is raised by the Treasury within four weeks of having received the request.

**4. What happens if exchange rates fluctuate to an extent that the value of a transaction is likely to exceed one of the limits, how shall it be treated?**

If the bank considers it possible that foreign exchange movements might push the value of the transfer above one of the thresholds in Article 21, the bank may consider it prudent to notify or seek authorisation in advance of that anticipated foreign exchange movement. If such a movement isn't foreseen but takes place without the bank having been able to comply with Article 21, the bank may benefit from Article 32(2) and should notify the Treasury as soon as possible after the event.

**5. Banks are seeing an increase in remittances via Dubai trading companies where it is almost impossible to determine whether the funds originate from Iran. How should we treat such transfers?**

If a bank knows or suspects that a transfer of funds involves an Iranian person, entity or body, the necessary notification or authorisation should be submitted together with details of the information on which its knowledge or suspicion is based. If in doubt, the bank should notify or seek authorisation.

It is also worth pointing out that the obligation to notify or seek authorisation does not only rest with the Payment Service Provider – the final paragraph of Article 21(3) also places obligation on payers and payees.

Article 32(2) protects banks where they are not able to determine if the transfer from Dubai represents a stage in a series of transfers which effect a payment by an Iranian person, entity or body.

## **Due diligence requirements**

### **1. How do I determine whether an individual is an ‘Iranian person’?**

Article 21 applies to transfers of funds to and from Iranian persons, entities and bodies. The definition of Iranian person, entity or body in Article 1(m) and includes “any natural person in, or resident in, Iran”.

Whether a person should be considered as resident in Iran will depend on the circumstances of each case. Factors that may be relevant to an assessment of his or her residency status include:

- duration and frequency of time spent in the country
- purpose of being in the country (e.g. short term study, vs. long-term employment)
- main place of residence
- the person’s visa and immigration status
- the person’s tax status

If a financial institution has reasonable cause to suspect that a transfer of funds is to or from a natural person in, or resident in, Iran, it should comply with the provisions of Article 21 if one or other of the thresholds is met. If there is insufficient information to be able to determine that there is a reasonable cause so to suspect, then the institution will be afforded protection by Article 32(2).

### **2. How do I determine whether an entity is ‘owned or controlled’?**

The term “owned or controlled’ is used in both Article 16 (asset freezing) and in the definition of Iranian person, entity or body in Article 1(r) which in turn is relevant to the provisions of Article 21.

The ownership or control of an entity will depend on the facts of each case. Some cases will be clear cut. For example a wholly owned subsidiary is clearly owned and controlled by its parent whilst a publicly listed company in which a designated person or an Iranian person, entity or body has a less than 1 percent shareholding is unlikely to be owned or controlled by such person. Others will not be so clear cut, such as a 45% stake held by a designated person or an Iranian person, entity or body in a company.

When considering this issue, the types of information that may be relevant include:

- Size of shareholding, including in comparison to the holdings of other shareholders (for example, a designated person or an Iranian person, entity or body holds 40% but no other shareholders hold more than 5%, may indicate control by the designated person or Iranian person, entity or body)
- Nature of shares held – some shares may carry voting rights while others may not
- the management of the entity (for example the composition of the board of directors)
- the entity’s Articles of Association
- voting/veto rights
- ability to exercise power over important matters affecting the company



In the context of Article 21, if the institution has reasonable cause to suspect that a legal person, entity or body (“X”) is owned or controlled directly or indirectly by one or more of the persons or bodies listed in Article 1(m)(i)-(iii) (the definition of Iranian person, entity or body), and that it is processing a transfer of funds to or from X, the institution should comply with the provisions of Article 21. If there is insufficient information to give rise to a reasonable cause to suspect ownership or control, then the institution will be afforded protection by Article 32(2).

**3. Is there a requirement for our clients to carry out due diligence on payees and payers to ensure that Article 21 is not engaged?**

Payment Service Providers may wish to note that under Article 32(2), the prohibitions set out in the Regulation do 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.

If a Payment Service Provider’s normal due diligence checks give rise to a suspicion that a payment is to or from an Iranian person entity or body, the Payment Service Provider should carry out further investigations. What those steps comprise is a matter for the Payment Service Provider and depends on the Payment Service Provider’s assessment of the risk of the transfer in question being subject to Article 21.

In accordance with Article 23, banks should exercise continuous vigilance in connection with transactions involving Iranian banks, and should also refer to the Treasury’s Statement on Money Laundering Controls in Overseas Jurisdictions dated 10 November 2010, with reference to Iran.

**4. What due diligence are banks expected to conduct on transactions in relation to Article 8?**

Article 8 relates to export controls and is targeted at the suppliers and exporters of the relevant goods and services. Banks are not expected to police compliance with these provisions by suppliers and exporters, although if banks have information that a supplier or exporter is breaching the provisions, then they should report this to the Department for Business, Innovation & Skills (BIS) as soon as possible.

If the transactions concerned exceed EUR 10,000 or are at or above EUR 40,000 then banks do have an obligation to notify or seek authorisation from the Treasury under Article 21.

**Other**

**1. What should a bank tell its customer in the event that the Treasury refuses to authorise a transaction? Should it end its relationship with the customer if a transfer is refused authorisation?**

If the Treasury refuses to authorise a transaction it will communicate this openly to the bank. The bank will be free to pass on the information to its customer.

Unlike in money laundering legislation, there is no tipping off provision in the Regulation 961/2010. It will be the transaction itself that will be unauthorised, rather than the customer relationship. In such circumstances, the bank would not be legally obliged to discontinue the customer relationship; it is a commercial decision for a bank as to whether it wishes to continue a relationship with a customer.

**2. Where a firm is a member of a syndicate for a loan facility that involves an Iranian entity, are payments to and from the non-Iranian agent bank (for drawdown, interest or principle repayment) subject to Article 21?**

Where the agent bank is in the EU then the obligation will be on them to notify/seek authorisation if they are making transfers to, or receiving transfers from, an Iranian person, entity or body. Where the agent bank is not in the EU, the syndicated banks will need to consider whether the payments they are making/receiving are from or to an Iranian person, entity or body.

**3. How are trade instruments and bonds affected by Regulation 961/2010? Do all open trade agreements have to be reviewed?**

If a transfer of funds is due to be made under a trade instrument or bond, and it is caught by Article 21, it will be subject to notification or authorisation. Similarly, if the payment is due to or from a designated person then it will be subject to the requirements of Articles 16 to 20 of the Regulation. Of course, if such payments are authorised or exempt from the asset freeze, Article 21 does not apply.

Separately, the Regulation places prohibitions on the sale, purchase or brokering of public or public-guaranteed bonds issued after 26 July 2010 to or from certain Iranian entities. This prohibition is set out at Article 25.

The Regulation does not require a review of all open trade agreements but we would expect financial institutions to conduct appropriate due diligence to ensure that transfers in connection with such agreements are compliant with the Regulation

**4. Are 'prior contracts' exempt from Article 21?**

No. Unlike the asset freezing regime and export licensing, there is no separate 'prior contract' exemption or authorisation ground for Article 21.

**5. Article 21 refers only to EUR values – has the Treasury set a standard GBP value?**

Regulation 961/2010 sets out requirements by reference to EUR values. The Treasury has not set a standard GBP value and banks should rely on the markets for the exchange rate.

**6. What is the status of notifications given to/authorisations obtained from the Channel Islands and Isle of Man authorities?**

It should be noted that, while the Channel Islands and the Isle of Man have enacted their own legislation adopting Regulation 961/2010, those jurisdictions are not part of the EU. Therefore, in the case of any Article 21 transfers of funds which involve parties in one or more of those jurisdictions and in the UK, the Treasury remains the competent authority for the purposes of the Regulation and the appropriate notifications and requests for authorisation should be directed to the Treasury, notwithstanding any notifications given or authorisations obtained from authorities on the Channel Islands and the Isle of Man.

HM Treasury  
October 2011