

August 13, 2010

Adam J. Szubin
Director
Office of Foreign Assets Control
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Mr Szubin,

The European Banking Federation (“EBF”) and the Institute of International Bankers (“IIB”) are both strongly committed to the fight against nuclear proliferation in Iran and broadly support international efforts to prevent Iran’s acquisition or development of weapons of mass destruction (“WMD”) or delivery systems for WMD.¹ The recently enacted Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (the “Sanctions Act”) significantly expands the range of tools available to the President to deal with this threat. Among these provisions, section 104(c) calls for the promulgation of regulations imposing sanctions on foreign financial institutions knowingly engaged in specified types of activities, including those involving the Islamic Revolutionary Guard Corps (“IRGC”) or Iranian banks that are subject to U.S. sanctions.

We are writing to seek clarification of the applicability of the sanctions provided for under section 104(c) with respect to obligations arising from contracts a foreign financial institution entered into prior to the date of enactment of the Sanctions Act. As discussed below, similar questions exist regarding the sanctions provided for in section 102(a) of the Sanctions Act, and we believe both provisions should be applied consistently with respect to pre-existing contractual obligations. In addition, we recommend the adoption of the due diligence procedures set forth in section 104(e)(1)(D) as the most practical means for domestic financial institutions to comply with the requirements regarding their foreign financial institution account holders. We would appreciate the opportunity to meet with you and your colleagues to discuss further the matters addressed in this letter at such time as may be appropriate.

Section 104(c)(1) of the Sanctions Act requires the Secretary of the Treasury to prescribe regulations that prohibit or strictly restrict U.S. correspondent banks from maintaining or opening accounts for foreign financial institutions that the Secretary finds knowingly engage in specified types of activities involving various sanctioned Iranian persons. For example, such prohibitions or restrictions can be imposed on a foreign financial institution if it is found to be facilitating significant transactions or providing significant

¹ The EBF is the voice of the European banking sector (EU and EFTA countries). The EBF represents the interests of some 5,000 European banks, and encompasses large and small, wholesale and retail, local and cross-border financial institutions. The IIB represents internationally headquartered financial institutions from 39 countries, including Europe, the Americas and Asia, with banking, securities and other types of financial operations in the United States.

financial services for either the IRGC (or any of its agents or affiliates that are subject to U.S. sanctions²) or Iranian banks that are subject to U.S. sanctions.

It is possible under section 104(c) that a foreign financial institution may be subject to these U.S. sanctions as a result of performance after the date of enactment of the Sanctions Act required by contracts entered into prior to enactment (contracts which, when entered into, were permissible under applicable home country law and did not violate applicable U.S. law). This could be the case, for example, if the counterparty to the contract is either an Iranian bank or an entity that, subsequent to entering the contract, was designated by the United States as an agent or affiliate of the IRGC. Foreign financial institutions that do not have the option under the terms of their contract to terminate the contract are placed in an especially difficult situation under section 104(c) as they face the prospect of either breaching their contractual obligations or, in the worst case, being prohibited from maintaining correspondent accounts or payable-through accounts in the United States. This risk of being subject to sanctions under section 104(c) for contractual obligations existing prior to enactment of the Sanctions Act exists even for those foreign financial institutions that have already stopped generating any new business with Iran. Notwithstanding the termination of any new business, these institutions may have remaining obligations to satisfy under their agreements with respect to existing business.

With respect to the promulgation of the regulations called for under section 104(c) of the Sanctions Act, we recommend that they permit the performance of legally binding agreements entered into by foreign financial institutions prior to enactment of the Act. As to the requirements prescribed by section 104(e) of the Sanctions Act with respect to accounts that domestic financial institutions are permitted to maintain for foreign financial institutions, we believe a measured approach is called for, one which achieves compliance with the fundamental purposes of this part of the Act without placing an undue burden on institutions. In our view, the due diligence measures called for by section 104(e)(1)(D) would be the more effective, and certainly the most practical, means to accomplish section 104(e)'s purpose than would any type of audit, reporting or certification requirement.

The concerns discussed above regarding the treatment of pre-existing contractual obligations under section 104(c) would apply as well with respect to the expanded sanctions applicable to the Iranian petroleum industry under section 102. However, as we read section 102 we believe that it already ensures that pre-existing contractual obligations are not subject to the Sanctions Act, but rather to the predecessor statute, by specifically providing that it applies only to the extent an investment or activity "commenced" on or after the date of enactment. While the Sanctions Act does not call for implementing regulations under these provisions of section 102, we believe it would be appropriate to apply both sections 102 and 104 consistently to avoid imposing undue and unfair burdens on foreign financial institutions that entered into agreements with Iranian persons prior to enactment of the Sanctions Act.

² To facilitate financial institutions' compliance efforts, we suggest that those persons that are designated as agents or affiliates of the IRGC in some manner be separately identified as such on the lists of sanctioned persons maintained by OFAC. We believe it would be helpful to make such a revision in connection with the rulemaking under section 104(c).

We appreciate your consideration of our views. Please contact us if we can provide any further information or assistance.

Very truly yours,

EUROPEAN BANKING FEDERATION INSTITUTE OF INTERNATIONAL BANKERS



By _____
Guido Ravoet
Secretary General

By _____
Lawrence R. Uhlick
Chief Executive Officer

cc: Christopher Backemeyer
Office of Terrorism Finance & Economic Sanctions Policy
Bureau of Economic, Energy & Business Affairs
U.S. Department of State

David Mortlock
Office of Legal Advisor
U.S. Department of State