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# The Iran Nuclear Deal: What Does It Mean for US and EU Sanctions?

The long-term nuclear deal with Iran announced on July 14 will result in changes to both the US and the EU sanctions regimes, as the agreement is implemented. However, substantial US sanctions will remain. Although the text of the deal, known as the Joint Comprehensive Plan of Action (JCPOA),[1] is yet to be illuminated by regulatory guidance, it appears that while non-US businesses may eventually be able to resume many types of business with Iran, US businesses could continue to be prohibited from most dealings with Iran.

## Timing of Sanctions Relief

The only immediate effect of the JCPOA on EU and US sanctions is that the sanctions suspended during the negotiations continue to be suspended. The European Union has extended the suspension through January 14, 2016, while the United States has extended the suspension until Implementation Day, described below. Otherwise, all sanctions remain in place.

The first order of business for the US and EU governments is to complete the process for approval or adoption of the JCPOA.

In the United States, pursuant to the Iran Nuclear Agreement Review Act of 2015, the President formally transmitted the terms of the agreement on July 19 to congressional leadership and to the banking, intelligence, and foreign affairs-related committees in both houses of Congress for review. This transmission starts a review period, lasting a maximum of 60 calendar days, in which Congress may hold hearings, conduct briefings, and review the terms of the agreement. Congress has three possible courses of action during this review period: (i) take no official action beyond its review of the agreement; (ii) pass a joint resolution approving the agreement; or (iii) pass a joint resolution disapproving the agreement.

Should Congress enact a resolution of disapproval, President Obama would have up to 12 calendar days to veto the resolution. Congress would then have 10 days in which to attempt to override the veto, which would require two-thirds majorities in both the Senate and the House of Representatives. Barring a large-scale revolt from Democrats, a successful veto override is unlikely, as Republicans do not have the votes necessary to achieve an override on their own. If, unlikely though it may be, such a veto were successfully overridden and the joint resolution of disapproval became law, any statutory US sanctions relief agreed to pursuant to the agreement would be prohibited. Although sanctions are not permitted to be lifted during deliberations over the agreement by Congress and the President (a maximum of 82 days), ultimately there should be no impact on the timing of sanctions relief, since the preconditions for Implementation Day are not likely to be accomplished for several months.

In the European Union, the adoption of the JCPOA will take the form of changes to the relevant Council Decision and Regulation.

The United Nations must also endorse the JCPOA by UN Security Council resolution (UNSCR), which resolution was adopted unanimously on July 20. Adoption Day is the date that is 90 days after endorsement of the JCPOA by the Security Council. Presumably, by that date, the United States will have completed its approval process, and the European Union will have adopted the amendments to the Council Regulation. The parties can also decide that Adoption Day should come earlier. The JCPOA takes effect on Adoption Day.

The next key date in the JCPOA schedule is Implementation Day, which is the day on which the International Atomic Energy Agency (IAEA) verifies that Iran has implemented certain nuclear-related measures. Representatives of the United States and the European Union have estimated that Implementation Day will occur by January 2016, at the earliest, and possibly not for several months thereafter. Upon Implementation Day, the European Union and the United States are obligated to grant specified sanctions relief, as is more fully described below.

Transition Day occurs eight years from Adoption Day (i.e., in 2023), or earlier if the IAEA reports that "all nuclear material in Iran remains in peaceful activities." Upon Transition Day, the European Union will remove additional individuals and entities from the list of sanctioned individuals and entities. The United States will seek, through legislation, to terminate the secondary sanctions that have been suspended since Implementation Day and will remove from the Specially Designated Nationals and Blocked Persons List (SDN List) certain entities and individuals that had been designated for their proliferation activities.

UNSCR Termination Day is 10 years from Adoption Day (i.e., in 2025). On UNSCR Termination Day, the UN's oversight of Iran's nuclear activities would cease, provided that no contrary resolutions have been reinstated. Certain obligations under the JCPOA extend beyond that date.

## Scope of US Sanctions Relief

US commitments to lift sanctions are focused primarily on secondary sanctions imposed on non-US entities and individuals engaging in certain activities with Iran pursuant to legislation passed by Congress over the past several years to address Iran's nuclear program.[2] The secondary sanctions are not the sanctions that impose constraints on US citizens, US residents, US-incorporated entities, and individuals or entities located in the United States (collectively, US Persons), or non-US entities owned or controlled by US Persons.

On Implementation Day, the United States has agreed to cease the application of nuclear-related secondary sanctions. This suspension will permit non-US Persons to engage with Iran in the following areas (more fully described in the JCPOA):

- Financial and banking transactions with certain Iranian banks and financial institutions (including the opening of correspondent accounts at non-US financial institutions);
- Transactions in Iranian Rial;
- Provision of US banknotes to Iran;
- Bilateral trade without regard to prior limitations on Iranian revenues abroad, including limitations on their transfer;
- Purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt, including governmental bonds;
- Financial messaging services to the Central Bank of Iran and certain Iranian financial institutions;
- Underwriting services, insurance, or reinsurance;
- Transactions without regard to prior requirements to reduce Iran's crude oil sales;
- Investment, including participation in joint ventures, and the provision of goods, services, information, technology, technical expertise,

and support for Iran's oil, gas, and petrochemical sectors;

- Purchase, acquisition, sale, transportation, and marketing of petroleum, petrochemical products, and natural gas from Iran;
- Export, sale, and provision of refined petroleum products and petrochemical products to Iran;
- Transactions with Iran's energy sector;
- Transactions with Iran's shipping and shipbuilding sectors and port operators;
- Trade in gold and other precious metals;
- Trade with Iran in graphite, raw or semi-finished metals such as aluminum, steel, and coal, and software for integrating industrial processes;
- Sale, supply, and transfer of goods and services used in connection with Iran's automotive sector; and
- Sanctions on associated services for each of the categories above.

In addition, on Implementation Day, the United States has committed to remove specified individuals and entities identified in the JCPOA from the SDN List, the Foreign Sanctions Evaders List, and the Non-SDN Iran Sanctions List, and to unblock any of their property under US jurisdiction. Importantly, a number of the identified parties are the Government of Iran or its instrumentalities, and US Persons will continue to be prohibited from engaging in transactions with such parties.

Furthermore, if some of the identified parties are currently designated under sanctions other than nuclear-related secondary sanctions, dealings with them by US Persons (and possibly non-US Persons) may continue to be restricted. The United States also agreed to encourage officials at the state or local level to take into account the change in US policy reflected in the lifting of secondary sanctions under the JCPOA and to refrain from actions that are inconsistent with this change in policy.

As noted above, the JCPOA does not appear to provide much relief from those US sanctions that apply to US Persons. The JCPOA repeatedly cautions that the sanctions relief the United States is providing is limited to the secondary sanctions. In its press release regarding the JCPOA, OFAC sounds the same note: it says that US sanctions relief "will be provided by the suspension and eventual termination of nuclear-related secondary sanctions."

Thus, it appears that the United States is not obligated by the JCPOA to suspend or terminate the sanctions that constrain US Persons' dealings with Iran, with the exception of the following activities expressly cited in the JCPOA: (i) the sale of commercial aircraft, parts, and related services for exclusive use in civil aviation; (ii) the importation of Iranian-origin carpets and foodstuffs (including pistachios and caviar); and (iii) the engagement by non-US subsidiaries of US Persons in activities permitted under the suspension of US secondary sanctions. The JCPOA commits the United States to issue licenses, effective on Implementation Day, to permit the foregoing activities by US Persons.

Of course, the United States is not barred from relaxing sanctions beyond those that are required to be suspended or terminated under the JCPOA. Nevertheless, the US government may wish to preserve the sanctions applicable to US Persons and negotiate their suspension only in exchange for other Iranian actions, either in the nuclear sphere or in other areas of concern to the United States, such as terrorism, suppression of human rights, and regional destabilization.

## Scope of EU Sanctions Relief

On Implementation Day, the European Union has committed to terminate certain sanctions provided for in Council Regulation (EU) No 267/2012: these sanctions are merely suspended under the Council Decision 2010/413/CFSP such that there could be quick reinstatement if the JPCOA is not implemented by Iran according to its commitments. The European Union's commitments include the termination under Council Regulation (EU) No 267/2012 of the following sanctions:

- The prohibition and authorization regimes on financial transfers to and from Iran;
- Sanctions on banking activities (e.g., opening of new branches, subsidiaries, or representative offices of Iranian banks in the EU Member States; establishing new joint ventures);
- Sanctions on financial messaging services (but only with respect to certain de-listed persons and entities, as the full termination of such sanctions will not occur until all persons and entities are de-listed on Transition Day);
- Sanctions on insurance (provision of insurance and re-insurance to the Government of Iran, to entities incorporated in Iran, to any individuals or entities acting on their behalf or at their direction, or to entities owned or controlled by them);
- Sanctions on the import of oil and gas from Iran (this prohibition also covers financing and financial assistance, as well as insurance and reinsurance, related to the import, purchase, or transport of Iranian oil and gas);
- Sanctions on the importation of Iranian petrochemical products (this prohibition also covers the financing and financial assistance, as well as insurance and reinsurance, related to the import, purchase, or transport of Iranian petrochemical products);
- Sanctions on investment in the oil, gas, and petrochemical sectors (the prohibition covers loans or credit to, acquisitions of, or participation in (i) enterprises in Iran that are engaged in the oil, gas, and petrochemical industry, (ii) enterprises outside Iran (branches of Iranian enterprises) or locally incorporated companies that are Iranian-owned and engaged in these industries, or (iii) joint ventures with enterprises in Iran engaged in the aforementioned industries);
- Sanctions related to the shipping and shipbuilding industries (the prohibition covers the sale, supply, or transfer of key naval equipment and technology for shipbuilding, maintenance, or refit; construction, or participation in construction, of new oil tankers; provision of flagging and classification services; and the supply of vessels for the transport and storage of oil and petrochemical products); and
- Certain of the sanctions related to the transport sector (e.g., inspection of cargoes to and from Iran if they could contain items prohibited under the Decision, as well as the inspection of vessels).

In addition, beginning on Implementation Day, the European Union has committed to allow the sale, supply, transfer, or export of software for integrating industrial processes, as well as graphite and raw or semi-finished metals, such as aluminum and steel, to any Iranian person, entity or body or for use in Iran.

Some individuals and entities must be removed from the list of sanctioned individuals and entities in Council Regulation (EU) No 267/2012 (while the listing of the same persons on the list attached to the Council Decision is only suspended).

The European Union has also committed, by Implementation Day, to amend certain provisions of Council Decision 2010/413/CFSP and Council Regulation (EU) No 267/2012 regarding nuclear proliferation-related measures in order to implement the UNSCR.

All sanctions pursuant to Council Regulation (EU) No 267/2012 are to be removed by Transition Day, which is not likely to occur before 2023. Any sanctions still in existence or suspended under the Council Decision 2010/413/CFSP must be removed by Termination Day, which is not likely to occur before 2025.

## Implications for Business

Businesses worldwide should closely monitor UN, EU, and US actions as the various authorities work their way through the relevant approval or adoption processes. Because the date of Implementation Day is uncertain, it will be difficult for businesses currently constrained by the EU sanctions or the US nuclear-related secondary sanctions to make decisions about when it will be lawful to initiate transactions permitted as of that date.

Businesses should also be alert to any regulatory guidance offered by EU or US authorities. The precise meaning of many JCPOA provisions will not be clear in the absence of such guidance. For example, US dollar transactions involving Iran that are processed through the US financial system appear not to be permitted by the JCPOA (unless currently permitted under US sanctions), but regulatory guidance may illuminate that issue. Similarly, regulatory guidance may clarify whether any possible snap-back of sanctions (which could occur in the event of Iranian violations of the JCPOA) will permit businesses to wind down transactions that were permissible before the snap-back but are prohibited afterwards.

For US Persons, the prospect looms of non-US competitors gaining opportunities to do business that will remain off-limits for their US counterparts. US businesses will need to scrutinize the particulars of any regulations that implement the JCPOA provisions relating to non-US subsidiaries of US companies, to determine exactly what types of activities will be permitted. They will also need to be sure that the US businesses are not facilitating the activities of the non-US subsidiaries in any way that would be prohibited by the sanctions that remain. While complications and delays could arise in the coming months, the JCPOA has set the stage for change in the landscape of US and EU sanctions.

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## Endnotes

[1] The Joint Comprehensive Plan of Action and annexes can be found at: http://eeas.europa.eu/statements-eeas/2015/150714_01_en.htm.

[2] Secondary sanctions not imposed to combat Iran's nuclear program are not being relaxed. For example, Section 211(a) of the Iran Threat Reduction and Syria Human Rights Act of 2012, which imposes sanctions on certain shipping and insurance services associated with Iran's support of terrorism and the proliferation of weapons of mass destruction, is expressly preserved by the JCPOA.

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