

SANCTIONS: A SNAPSHOT OF CURRENT AND FUTURE DEVELOPMENTS AS AT 15 JULY 2015



Recent weeks have seen a flurry of activity in respect of international sanctions, which have never been more complex and fast-moving. Restrictions are being imposed or removed on a frequent basis, as a result of evolving diplomatic and political issues, creating a significant challenge for businesses engaged in international commerce.

This briefing gives an update on the position as of 15 July 2015 in respect of the long awaited deal between Iran and major powers, and also on current key restrictions against Russia and Cuba.

Iran

On 14 July 2015 the E3/EU+3 and Iran announced a landmark agreement to lift sanctions on Iran. The terms of the agreement are set out in an agreed version of the Joint Comprehensive Plan of Action (**JCPOA**). Party to the negotiations were China, France, Germany, the Russian Federation, the United Kingdom, the United States, the High Representative of the European Union for Foreign Affairs and Security Policy, and of course Iran.

Iran's commitments

In return for the suspension and eventual removal of UN, US and EU sanctions, Iran reaffirms that

under no circumstances will Iran ever seek, develop or acquire any nuclear weapons. Iran must comply with a long list of commitments, set out in paragraphs 1 to 17 of the JCPOA and annex I.

Some of the key commitments are as follows.

1. Enriched uranium, enrichment and R&D

- Iran must reduce its enrichment capacity by two-thirds and stop using its underground facility at Fordow for enriching uranium.
- Iran's stockpile of low enriched uranium must be reduced to 300kg, a 96% reduction. Excess quantities are to be shipped out of the country or down-blended to natural uranium.
- Uranium research and development will be limited to the Natanz facility for 15 years.

2. Limits on reactors, heavy water and reprocessing

- The core of the heavy water reactor in Arak must be removed and redesigned in such a way that it will not produce significant



amounts of plutonium. No new heavy water reactors or heavy water accumulation will be permitted for 15 years.

- For 15 years Iran will not engage in, or intend to engage in after that, any spent fuel reprocessing or construction of a facility capable of spent fuel reprocessing, or reprocessing R&D activities leading to a spent fuel reprocessing capability, with the exception of separation activities aimed exclusively at the production of medical and industrial radio-isotopes from irradiated enriched uranium targets.

3. Transparency and confidence building measures

- Iran will cooperate with the IAEA to address its past and present concerns, and will allow UN inspectors to enter sites, including military sites, when the inspectors have grounds to believe undeclared nuclear activity is being carried out there.
- Iran can object to access but a multinational commission can override any objections by majority vote. After that Iran will have three days in which to comply. Inspectors will only come from countries with diplomatic relations with Iran.
- The IAEA will maintain a presence in Iran to monitor Iran's nuclear program and compliance with the JCPOA. The IAEA will report to its Board of Governors and to the UN Security Council.

Dispute resolution mechanisms and continued review

A joint commission consisting of the E3/EU+3 and Iran will be established to monitor the implementation of the JCPOA.

Any of the parties to the JCPOA may submit allegations of a violation of the

agreement to the joint commission for review. If the issue has not been resolved within 35 days to the satisfaction of the complainant then the complainant can notify the UN Security Council, which will then decide whether or not to continue the suspension/termination of sanctions. The whole dispute resolution procedure may take up to 65 days in total.

The terms agreed will not be the last negotiations between the parties to the JCPOA. The E3/EU+3 and Iran will meet at the ministerial level every two years, or earlier if needed, in order to review and assess progress and to adopt appropriate decisions by consensus.

Approval

"Finalisation Day" is the date on which negotiations of the JCPOA were concluded. Following Finalisation Day, the JCPOA must be presented promptly to the UN Security Council "for adoption without delay". The UN Security Council must adopt the JCPOA with a resolution which incorporates the JCPOA and its five annexes.

The JCPOA will then enter into force 90 days after adoption of the UN Security Council Resolution, or such earlier date as determined by mutual consent of the JCPOA participants, at which time the commitments under the JCPOA come into effect. From that date (**Adoption Day**), the JCPOA participants must make the necessary arrangements and preparations for the implementation of their JCPOA commitments, including implementation of the commitments on Iran's side, and preparing the necessary consents and legislation for lifting sanctions on the part of the US and EU (and the EU's member states).

In the US, from Finalisation Day, President Obama has five days to present the deal to the US Congress. The US Congress will then have 60 days to review the agreement, hold hearings and ultimately choose

whether to issue a vote of disapproval. If Congress votes against the agreement then Obama will have 12 days in which to issue a Presidential veto, in accordance with his powers under the constitution. Obama has said in unequivocal terms that he will veto a negative result from Congress. Congress would then need to achieve a two-thirds majority in each house in order to override the Presidential veto.

Iran's Majlis must also debate and approve the deal, but there is no fixed timetable for this and the process is expected to be swift. Only if and when the agreement survives both internal processes will it start to be implemented. Once Iran has carried out specific nuclear-related commitments set out in paragraphs 1 to 17 of the JCOA and in Annex I the IAEA will issue a report verifying this implementation and the US and EU will start to suspend sanctions. The day on which the IAEA issues the implementation verification report is called "Implementation Day".

Implementation and timeline of sanctions relief

In return for its cooperation and reduction of its nuclear programme, Iran will receive sanctions relief in successive stages, starting with Implementation Day. Paragraphs 18 to 33 and annexes II and V of the JCPOA deal with sanctions and timing of sanctions relief.

It is important to note that US sanctions relief will with certain exceptions be only for non-US persons (i.e. only US secondary sanctions are affected). Both the EU and the US will issue guidance on the sanctions relief.

1. Implementation Day

Implementation Day is unlikely to happen before the end of the year. Sanctions can only start to be lifted once the IAEA has given the green light by issuing a report verifying Iranian



implementation of its commitments. Although Tehran intends to implement its commitments quickly, it is expected that Iranian implementation, including verification by the IAEA, will take at least six to nine months.

Under the terms of the JCPOA, on Implementation Day the UN Resolution will suspend all UN sanctions on Iran except for those relating to weapons and missiles.

The EU will likewise terminate its nuclear-related sanctions under Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (**the Regulation**), including related designations. For example, sanctions on banking activities and financial support contained in the Regulation will be terminated on Implementation Day and the corresponding provisions in the EU Decision¹ will be suspended. Sanctions related to proliferation-sensitive nuclear related goods and technology, investment and training will be amended rather than terminated, so that activity which is permitted under the JCPOA can be carried out.

Persons listed in Attachment 1 to Annex II of the JCOA will be delisted, and the asset freeze and visa ban measures applicable to certain categories of persons will be lifted (for example listed Iranian banks, persons related to the oil, gas and petrochemical sectors and persons related to shipping, shipbuilding and transport). Sanctions in relation to weapons and missile technology will remain in place, as will the sanctions on financial messaging services.

The US will suspend economic and financial sanctions which impose obligations and penalties on non-US persons (note that the US will maintain sanctions applicable to dealings which

involve US persons or the US financial system).

On Implementation Day OFAC will grant licences for certain US person activities (listed in Annexes II and V), such as exports of aircraft and aircraft parts, certain activities of non-US subsidiaries of US companies and the importation into the US of Iranian-origin carpets and foodstuffs. In addition, OFAC will remove a number of Iranian persons, entities and vessels from the SDN list in order to facilitate their involvement in non-US business of non-US persons and certain OFAC-licensed activities under the sanctions applicable to US person/US financial system dealings.

2. Transition day

“Transition Day” will occur eight years from Adoption Day, or once the IAEA has reached the conclusion that all nuclear material in Iran remains in peaceful activities (whichever is the sooner).

On Transition Day the EU will terminate all provisions of the EU Regulation implementing EU proliferation-related sanctions which were not terminated on Implementation Day. In addition, the EU will terminate the provisions of the Regulation (and suspend the provisions of the Decision) relating to weapons and ballistic missiles, financial messaging services and remaining sanctions on metals and software.

The US will terminate sanctions on non-US persons which were suspended on Implementation Day and remove further persons from the list of designated persons.

Both the EU and the US will issue guidelines and statements on the details of sanctions or restrictive measures lifted under the JCPOA.

3. UNSCR termination day

10 years from Adoption Day, provided that the provisions of previous

resolutions have not already been reinstated (i.e. because Iran has breached the agreement and the sanctions have “snapped back”), the UN Security Council will no longer be seized of the Iran nuclear issue. The EU will terminate all remaining provisions of the Regulation.

The termination of sanctions will not affect any continuing obligations under the JCPOA.

Snap back

It should be emphasized that existing sanctions can “snap back” (i.e. immediately come back into force) at any point in the event that Iran fails to comply with its JCPOA obligations. Given the longevity of some of Iran’s JCPOA obligations (such as the indefinite agreement to ship spent fuel from the Arak reactor out of Iran), uncertainty over whether sanctions might be re-introduced will continue for the foreseeable future.

Russia

The EU sanctions which were imposed as a result of events in Ukraine were intended to have a limited duration and as a result, they do not continue indefinitely, but need to be renewed. The package of measures contains a number of separate strands, including restrictions on trade with Crimea, an asset freeze directed at Ukrainian individuals and entities, an asset freeze directed at Russian individuals and entities and restrictions on activities with certain sectors of Russia’s economy (banking, oil and gas exploration, dual use goods).

To add to the complexity, the various different strands have different validity periods, as follows:

- Both sets of asset freezes and travel bans (which collectively apply to 167 individuals and 37 entities) have been renewed until 15 September 2015.

¹ Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP



■ The restrictions affecting the above sectors of Russia's economy have been renewed until 31 January 2016, reflecting the agreement among EU leaders in March 2015 to link the duration of these sanctions to the complete implementation of the Minsk agreement between the leaders of Ukraine, Russia, France, and Germany, which is expected to take until at least 31 December 2015.

■ The restrictions affecting trade with Crimea and Sevastopol have been renewed until 23 June 2016.

Cuba

Certain US restrictions were lifted on 17 December 2014, with the result that, amongst other things, US persons are now permitted to travel to Cuba without a licence (provided the purpose and nature of the travel falls within one of 12 categories) and there

has been a partial relaxation of the 180 day rule (which prohibits vessels from calling in the US to load or unload cargo for 180 days after calling in Cuba).

Cuba's designation as a state sponsor of terrorism was removed on 29 May 2015.

The balance of the US embargo remains in place.

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