

# E3 triggering JCPOA dispute resolution risks reimposition of sanctions against Iran

Early in the new year, Iran signalled that it would no longer comply with the restrictions imposed on its nuclear programme under the Joint Comprehensive Plan of Action (JCPOA), commonly known as the Iran Deal. In response, on 14 January, the ministers of foreign affairs of France, Germany and the UK (the E3) [triggered](#) the JCPOA dispute resolution mechanism. If the issue is not resolved, this may result in the reimposition of both the UN and the EU sanctions against Iran that were lifted pursuant to the JCPOA. The dispute resolution mechanism sets a time frame, but allows for an extension at certain points of the resolution process. The High Representative for Foreign Affairs and Security Policy recently extended the timeline for the first phase of the dispute resolution mechanism. This could lead to a period of uncertainty about the future of the JCPOA and the possibility of the reimposition of UN and EU sanctions against Iran. Any reimposed sanctions would prohibit companies from entering into new contracts for activities or with parties targeted by those sanctions. The sanctions could also restrict companies in the execution of already existing contracts. Companies doing business in Iran are advised to closely follow developments and assess whether any of their activities are covered by any of the UN or EU sanctions that might be reimposed.

## Background

In May 2018, the US stepped out of the JCPOA and subsequently reimposed its secondary sanctions against Iran, threatening non-US companies that continued trading with Iran with a range of penalties. Trade between Iran and the EU significantly declined as a result, seriously limiting the benefits of the deal for Iran. The US also imposed additional sanctions against Iran, most recently against its construction, mining, manufacturing and textiles industry.

Since the reimposition of US secondary sanctions, Iran has gradually reduced its compliance with its commitments under the JCPOA. On 5 January 2020, Iran announced that it would no longer comply with the last operational restriction on its nuclear program, relating to the number of its uranium enrichment centrifuges. Without formally withdrawing from the agreement, Iran announced that, in essence, it would no longer abide by the JCPOA – unless the US sanctions were lifted.

In response, the E3 have now triggered the dispute resolution mechanism, as provided in the JCPOA. The E3 have also expressed their intention to resolve the impasse through constructive diplomatic dialogue and to preserve the agreement.

## Dispute resolution procedure

The steps in the JCPOA dispute resolution mechanism are as

follows.

- First, the Joint Commission (consisting of representatives from the E3, the EU, Russia, China and Iran), will attempt to resolve the issue. The Joint Commission has 15 days to resolve the issue, unless this period is extended by consensus. As stated above, while this period has been extended, what's not clear is for how long.
- If the issue is not resolved, it may be referred to the participating countries' ministers of foreign affairs. They also will have 15 days to resolve the issue, unless this period is extended by consensus.
- In parallel with or instead of review at the ministerial level, either the E3 or Iran can refer the issue to the Advisory Board. The Advisory Board consists of three members: one appointed by each party to the dispute and one independent member. The Advisory Board has 15 days to deliver a non-binding opinion.
- If the issue remains unresolved, the Joint Commission has five days to review the opinion of the Advisory Board to find a solution.
- If the issue is still unresolved and the E3 deem it a significant non-performance of Iran's obligations under the JCPOA, the E3 may withdraw their commitments under the framework and/or notify the UN Security Council of Iran's significant non-performance.
- The UN Security Council has 30 days to vote on a resolution to continue the lifting of the sanctions. If this resolution is not adopted within 30 days of notification, the UN sanctions as they were in place before implementation of the JCPOA will be reimposed, unless the UN Security Council decides otherwise.

The UN Security Council includes five permanent members – China, France, Russia, the UK and the US. Each permanent member has a veto right in terms of making substantive resolutions. Given its constitution, it would seem unlikely for the UN Security Council to continue the lifting of sanctions or modify the reimposition of UN sanctions, should the E3 choose to give notification of significant non-performance.

## Recommendation to the EU Council

If the E3 deem the issue a significant non-performance of Iran's obligations under the JCPOA, they may withdraw their commitments under the framework. In addition to notifying the UN Security Council of significant non-performance, they may then also opt, together with the EU High Representative for Foreign Affairs and Security Policy, to recommend that the EU Council reintroduce EU sanctions against Iran. Pursuant to EU Council Declaration ([2015/C 345/01](#)), the EU Council is committed to reintroducing without delay all EU nuclear-related sanctions that have been suspended and/or terminated on the basis of the joint recommendation. Alternatively, it would seem possible that the E3 and the High Commissioner will not make such a recommendation, but that they will suggest to the EU Council to reintroduce the EU nuclear-related sanctions against Iran not all at once, but only in part or step by step.

## Implications for EU companies

It is clear that different scenarios are possible. However, the risk

that the UN and/or EU sanctions against Iran will be reimposed has significantly increased.

A reimposition of sanctions may include:

- re-designation of numerous individuals and entities as sanctioned parties, which would require freezing their assets and preclude virtually all business with such entities;
- restrictions relating to the oil, gas and petrochemical sectors, including with regard to the import of oil, gas and petrochemical products from Iran as well as the sale, supply, transfer and export of certain equipment and technology for the key oil, gas and petrochemical sectors and the provision of related services to Iranian parties;
- restrictions as to the sale, supply, transfer and export of certain naval equipment and technology and the provision of related services to Iranian parties;
- restrictions on the provision of insurance, re-insurance and related brokering services to Iranian parties; and
- prior notification and authorisation requirements regarding money transfers between EU and Iranian parties.

Any such reimposed sanctions will prohibit companies to enter into new contracts for activities or with parties targeted by those sanctions.

As to already existing contracts, the JCPOA provides that any reimposed UN sanctions will not have retroactive effect on contracts concluded before the reimposition, “provided that the activities contemplated under and execution of such contracts are consistent with this JCPOA and the previous and current UN Security Council resolutions”. This proviso seems to leave some room for interpretation. As a result, it remains to be seen how this would work out in practice. In any case, it seems likely that any reimposed sanctions may restrict companies in the execution of the contracts concerned. For example, reimposed product-related restrictions may limit companies in the procurement of certain supplies or services that they need to fulfil their contractual obligations.

For these reasons, companies conducting business in Iran would be well advised to closely follow these developments. They should also assess, ahead of time, whether any of their activities are covered by any of the UN or EU sanctions against Iran that might be reimposed.

Naturally, we will keep on monitoring the situation and update you on important further developments when they transpire. Also, please feel free to contact us, should you want to discuss the potential implications for your company’s activities.

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