

# EU, US and Iran agree on significant yet still conditional sanctions relief

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On 14 July 2015, the E3/EU+3 (France, Germany, the United Kingdom, the European Union, China, Russia and the United States) and Iran announced that they reached agreement on a Joint Comprehensive Plan of Action (JCPOA) regarding Iran's nuclear program.

The JCPOA requires Iran to implement stringent restrictive measures regarding its nuclear program in exchange for broad relief of EU and US sanctions against Iran. Any sanctions relief will be implemented in phases if and when Iran has implemented the measures imposed on it, which is to be verified by the International Atomic Energy Agency (IAEA). This process will probably take considerable time and any relief of sanctions is not expected to become effective before early 2016.

In anticipation of this, the suspension of certain EU and US sanctions already in place has been extended. The other EU and US sanctions, however, must still be complied with. The JCPOA also provides for a "snap back" mechanism, allowing the reinstatement of all or certain sanctions in case Iran does not comply with the JCPOA. Certain non-nuclear-related sanctions are not affected by the JCPOA and will remain in full force.

## Timeline: phased approach

The JCPOA provides for a detailed phased implementation schedule.

- The JCPOA participants will promptly submit a resolution to the UN Security Council, proposing to terminate all nuclear-related UN sanctions against Iran once it has complied with the relevant conditions imposed on it. Today, several sources report that the UN Security Council has scheduled a vote on the proposed resolution for Monday 20 July 2015.
- 90 days after the adoption of the UN Security Council Resolution (or earlier, if the JCPOA participants so agree), the JCPOA will come into effect. Beginning on that day, referred to as "**Adoption Day**", the JCPOA participants will start making arrangements for the implementation of their respective commitments under the JCPOA.
- On the day that the IAEA has verified the implementation by Iran of the nuclear-related measures imposed on it, the first phase of EU and US sanctions relief (as further described below) will be implemented. This day is referred to as "**Implementation Day**".
- 8 years after Adoption Day or, if earlier, on the day that the IAEA has reached the "Broader Conclusion" that "all nuclear material in Iran remains in peaceful activities", the second phase of EU and US sanctions relief will be

implemented. This day is referred to as "**Transition Day**".

- 10 years after Adoption Day, the provisions and measures imposed under the UN Security Council Resolution referred to above will end and the EU will terminate all remaining sanctions against Iran pursuant to Council Decision 2010/413 and Council Regulation 267/2012 (but not Council Decision 2011/235 and Council Regulation 359/2011). This day is referred to as "**UNSCR Termination Day**".

## EU sanctions relief

As set out above, the EU will terminate in phases all sanctions against Iran pursuant to Council Decision 2010/413 and Council Regulation 267/2012.

In brief, the first phase of sanctions relief, to be implemented on Implementation Day, will include:

- almost all financial, banking and insurance restrictions, including with regard to transfers between EU and Iranian parties, which are now subject to prior notification and authorisation requirements
- all restrictions relating to the oil, gas and petrochemical sectors, including with regard to the import of oil, gas and petrochemical products from Iran
- the majority of the sanctions relating to the shipping, shipbuilding and transport sectors.

Importantly, the asset-freezing measures and the corresponding prohibition on making available any funds or economic resources to designated persons and entities under Council Decision 2010/413 and Council Regulation 267/2012 will be lifted with regard to a significant number, but not all, of the relevant persons and entities. Restrictions with regard to the remaining persons and entities will only be lifted on Transition Day.

On Transition Day also certain nuclear proliferation and arms-related measures will be terminated.

Finally, on UNSCR Termination Day all remaining sanctions under Council Decision 2010/413 and Council Regulation 267/2012 will be terminated.

It is noted that the sanctions under Council Decision 2011/235 and Council Regulation 359/2011 do not relate to Iran's nuclear program and as such are unaffected by the JCPOA. Thus, the asset-freezing measures that they provide for and the corresponding prohibition on making available any funds or economic resources to the persons designated under this Decision and Regulation remain in full force.

The limited EU sanctions relief, already in place since 20 January 2014, has been extended until 14 January 2016. This concerns the suspension of certain restrictions with regard to the export by Iran of crude oil and petrochemical products as well as the relaxation of the prior notification and authorisation requirements for payments to and from Iran.

## US sanctions relief

As regards the US sanctions relief, US Congress has a 60-day

period to review the agreement and could potentially block the lifting of any US sanctions against Iran. President Obama has indicated that he will veto any action to block the veto, but his veto can be overridden by a two-thirds majority of the Senate.

In addition, US sanctions relief does not concern the 'primary' sanctions, which prohibit US persons and entities from engaging in almost all Iran-related activities, including the facilitation of non-US companies' transactions involving Iran. US persons and entities will remain subject to very strict sanctions against Iran. For purposes of the US primary sanctions, "US persons" include foreign-owned entities established or incorporated in the US, foreign entities and individuals acting in the US, and US employees working abroad. Significantly, US owned or controlled foreign entities are treated as US persons for purposes of the Iran sanctions.

The US sanctions relief only concerns certain 'secondary' sanctions against Iran, which currently target non-US persons and entities that are not owned or controlled by US persons or entities engaging in activities relating to Iran and deemed contrary to US interests.

The JCPOA provides for the US to license non-US entities that are owned or controlled by a US person to engage in activities with Iran consistent with the JCPOA. Thus, non-US subsidiaries of US parent companies could be licensed to undertake certain Iran-related activities. However, it is unclear what activities will be considered consistent with the JCPOA. Furthermore, it is uncertain whether US companies will be permitted to "facilitate" any Iran-related activities by such entities (e.g., support any Iran-related business in any way or refer any Iran-related business to such entities), which as a practical matter could undercut the ability of US owned or controlled foreign entities to avail themselves of the favourable licensing policy.

The JCPOA provides for the US to cease as per Implementation Day the application of secondary sanctions to non-US persons engaging in amongst other things:

- financial and banking transactions with the Government of Iran, the Central Bank of Iran, specified Iranian financial institutions and certain other Iranian persons
- underwriting, insurance and re-insurance activities in connection with activities consistent with the JCPOA, including with regard to the energy, shipping and shipbuilding sectors of Iran
- the import and export of petroleum, petroleum products, petrochemical products and natural gas to and from Iran and the provision of support to, and investment in Iran's energy sector;
- activities relating to the shipping, shipbuilding and port sectors of Iran
- transactions regarding goods and services used in connection with the Iranian automotive industry.

In addition, on Implementation Day a significant number of persons and entities will be removed from the Specially Designated Nationals and Blocked Persons List (SDN List) and certain other lists of persons and entities subject to US sanctions,

allowing non-US persons and entities to enter into transactions with the delisted persons and entities. US persons, however, will probably still be prohibited from dealings with those delisted persons and entities because the delisted entities would in most cases remain prohibited pursuant to the Iranian Transactions and Sanctions Regulations (ITSR).

The limited US sanctions relief already in place since 20 January 2014, which suspended certain secondary sanctions regarding among other things Iran's export of crude oil and petrochemical products and Iran's auto industry, has been extended through Implementation Day.

#### **Possibility of re-imposition of sanctions**

The EU, the US and the UN may re-impose all or certain sanctions if Iran does not comply with its commitments under the JCPOA. Any re-imposed sanctions, however, would not apply retroactively, and should therefore not affect any conduct having taken place prior to any re-imposition.

#### **What it means**

If the JCPOA is implemented according to plan, this will open up important business opportunities for many foreign companies, which will again be allowed to invest in the Iranian economy and enter into various transactions with Iranian parties and relating to Iranian products. At the same time, it is clear that there will be no immediate relief of sanctions and that any relief is not expected to come into force in the coming months.

It is to be expected that many companies in the following months will consider beginning preparations to (re-)enter the Iranian market and (re-)establish relationships with Iranian parties in anticipation of the implementation of the JCPOA. While doing so, companies should, among other things:

- continue to comply with all current sanctions until sanctions relief is implemented
- determine which current sanctions apply to the contemplated activities and whether and when those sanctions will be lifted
- verify whether any relevant agreements (such as financing and banking facilities, or supplier agreements) must be amended before the contemplated activities can be developed.

In addition, companies should be mindful that:

- certain applicable EU or US sanctions may not be lifted at the same time or not at all
- any US subsidiaries and US employees remain subject to stringent sanctions
- sanctions may be re-imposed, which might require winding down the newly developed activities.