

US renews Iran sanctions waivers – possibly for the last time

Despite a “strong inclination” to withdraw from the Iran nuclear deal, US President Trump has waived – maybe for the last time – certain nuclear-related sanctions against Iran. The president has to periodically waive the application of these sanctions to comply with US commitments under the Joint Comprehensive Plan of Action (JCPOA). The next waiver is due in mid-May 2018. Failure to waive the sanctions would result in the re-imposition of sanctions against Iran, affecting non-US persons as well as foreign-owned or controlled affiliates of US companies doing business with Iran. If you are contemplating or engaged in activities related to Iran, we recommend closely monitoring developments in the US related to sanctions against Iran, including the JCPOA. While uncertainty around the JCPOA persists, companies must continue proper due diligence of all Iran-related transactions and parties, and secure adequate contractual provisions to be able to exit from any restricted transactions in the future.

On 12 January 2018, US President Donald Trump announced that he would again waive the application of certain nuclear sanctions against Iran pursuant to the Joint Comprehensive Plan of Action (JCPOA), also known as the Iran nuclear deal. In his [statement](#), the president made it clear that this would be the last waiver, unless European countries join the US in amending the Iran nuclear deal that currently gives Iran “far too much in exchange for far too little”. If the JCPOA is not amended by the time the next waiver is due – mid-May 2018 – the US president has threatened not to waive the sanctions against Iran again. This, in effect, would mean US withdrawal from the JCPOA.

Background

The JCPOA is an agreement between the E3/EU+3 (France, Germany, the United Kingdom, the European Union, China, Russia and the United States) and Iran on Iran’s nuclear programme. Under the JCPOA, Iran is required to implement stringent restrictive measures regarding its nuclear programme, in exchange for broad relief of EU and US sanctions. US sanctions relief under the JCPOA is largely limited to “secondary” sanctions, which apply to non-US persons and entities with no jurisdictional nexus to the US, and aim to restrict certain business activities related to Iran by threatening to cut off these persons’ and entities’ access to the US market. In addition, the JCPOA partially relieves primary sanctions: foreign affiliates of US companies are generally authorised to engage in broad range of activities involving Iran, subject to certain limitations (General License H). For more information on the JCPOA see our [Legal Alert](#) of 17 July 2015 and [In context](#) of 19 January 2016. Before and during his presidency, Trump has taken a critical stance on the JCPOA and has on multiple occasions declared to be willing to terminate the deal (see our [In context](#) of 13 March 2017).

US President’s role in maintaining US participation in the JCPOA

Under US law, the US president has several pressure points on

the Iran nuclear deal, of which the following two are the most significant. First, under the Iran Nuclear Agreement Review Act (INARA), the US president must certify Iran’s compliance with the JCPOA every 90 days. If the President denies certification, the US Congress may introduce new legislation reinstating sanctions against Iran within 60 days. However, Congress is not obliged to do so, which makes decertification merely a domestic issue, not directly affecting US participation in the JCPOA. In fact, on 13 October 2017, President Trump did decline to certify that Iran was compliant with the JCPOA. Congress, however, did not re-impose sanctions on Iran, leaving the decision to the president.

Second, as part of the implementation of the JCPOA, President Obama suspended certain nuclear-related – mostly secondary – sanctions against Iran under four statutes by exercising waiver powers. The waivers have to be renewed every 120 or 180 days, depending on the statute. Failure to renew the waiver poses a much greater threat to the JCPOA than declining to certify compliance; unlike decertification, if Trump decides not to exercise his waiving power, he would violate the core of the U.S. commitments under the JCPOA and effectively withdraw from the deal.

EU response to Trump’s threat to withdraw from the JCPOA

With the next waiver renewal due in mid-May 2018, the US and its JCPOA allies, including European countries, have less than 120 days to come to an agreement on amending the Iran nuclear deal. The overall response on the EU side illustrates its continuing commitment to the JCPOA. On 12 January 2018 (the day when President Trump announced that this waiver of US sanctions was to be the last) an EU spokesperson [stated](#) that the European countries “remain committed to the continued full and effective implementation” of the JCPOA. The next day, the High Representative of the EU for Foreign Affairs and Security Policy, Federica Mogherini, [confirmed](#) that “European Union continues to fully support the Iran nuclear deal, and the full and strict implementation of all its provisions by all parties”. In an earlier press conference she did [acknowledge](#) that the EU is concerned about certain issues in Iran, but indicated that these issues need to be addressed outside the JCPOA in other formats and fora. Later, on 8 February 2018, the head of the Iranian taskforce at the EU, Denis Chaibi, [said](#) that as a countermeasure to the US withdrawal from the JCPOA, the EU is considering (among other possibilities) restoring the [Blocking Regulation](#) in order to protect European firms from US secondary sanctions. If amended accordingly, the Blocking Regulation would prohibit European companies from complying with US secondary sanctions against Iran.

Implications for European companies

If President Trump withdraws from the JCPOA, both secondary and primary sanctions relieved by the deal will be reintroduced. Reintroduced sanctions will not have retroactive effect, but may seriously affect transactions and projects initiated by European companies relying on the sanctions relief created by the JCPOA. While there are some indications that Iran may consider remaining in the JCPOA as long as the EU continues to honour its commitments, Iran could consider a US withdrawal a breach of the JCPOA, leading to either dispute resolution proceedings or complete termination of the agreement. This may have far-reaching consequences, such as the reinstatement of sanctions

lifted by the EU and the United Nations Security Council under the JCPOA.

If, in response to the US withdrawal, the EU amends the Blocking Regulation to cover the US “secondary” sanctions against Iran, European companies would face a typical “catch-22” situation. They would have a tough choice; either comply with EU law and violate US sanctions, or comply with the US sanctions in violation of EU law. The seriousness of this situation ultimately depends on whether, and to what extent, the EU and the US will enforce these conflicting rules.

If you are currently involved in or contemplating activities related to Iran, it is advisable to closely monitor new developments in the US in relation to sanctions against Iran, including the JCPOA. While the uncertainty regarding the future of the JCPOA persists, companies must continue conducting proper due diligence of all Iran-related transactions and parties. It is also recommended to secure adequate contractual provisions to be able to exit from any transactions or projects in the future that may become outlawed should the US sanctions be reintroduced. Ahead of the next waiver moment in mid-May 2018, we will closely follow the developments around the JCPOA in the US and will keep you informed.
