

After the Iran nuclear "deal" of Lausanne: Don't jump the gun (just yet)

Late at night on 2 April 2015, after almost 14 months of intense bargaining, negotiators for the E3+3 Group (China, France, Germany, Russia, the UK, the US, also known as the P5+1) and Iran reached a "framework agreement" designed to ensure a peaceful use of the Iranian nuclear programme. Following a pattern established in previous negotiations, Iran was offered a gradual easing of the international sanctions regime in exchange for considerable cuts to the nuclear programme. The agreement was hailed by world leaders and the media as a great diplomatic breakthrough after more than a decade of uncertainty.

Introduction

This newsletter will take the opportunity to examine what this "deal" is and, crucially, what it is *not*. It will lay out what practical consequences the "deal" will have, which obstacles to a final agreement are still lying ahead, and what companies considering doing business in Iran in the short- and mid-term future should keep in mind.

Recent developments concerning the sanctions regime

Relations between Iran and the West, particularly the US, have been tense ever since the 1979 Islamic revolution. Throughout the last decade and beyond, they have been dominated by fears surrounding a possible use of weapon-grade material stemming from Iran's nuclear programme. As a consequence, the international community implemented a rigorous

sanctions regime, the details of which were set out in the respective information portals run by the US and the EU and are summarised in our December 2013 newsletter ("Easing of Iran sanctions – an opportunity to (re)enter the Iranian market?"). In essence, Iranian entities and individuals are cut off from much of the international trade and flows of capital. Western businesses, in turn, may face severe penalties under the applicable criminal and administrative law provisions if they continue their business with designated entities and individuals which are based in the country or have done business with Iran in the past. In particular, European banks like BNP Paribas or, most recently, German Commerzbank AG paid fines of up to USD 8.9 billion to various US enforcement authorities for violations of Iran Sanctions.

In general, recent years have seen a constant expansion of the sanctions. However, it appears that with the

election of Hassan Rouhani as president in 2013, Iran has turned a new page in its relationship with the West. A gradual rapprochement took shape. Negotiations on the nuclear programme were resumed, leading to the "first step" agreement of an interim Joint Plan of Action ("**JPOA**", also known as the "Geneva interim agreement") on 24 November 2013, the content of which is described in our aforementioned [December 2013 newsletter](#) as well. The JPOA was originally supposed to be in force for one year, i.e. until 24 November 2014. The expiry period was extended by mutual consent until 30 June 2015, after which time all suspended sanctions will be reinstated, unless the parties come to a final agreement. Hence, the parties convened at Lausanne, Switzerland to work towards a comprehensive solution within this time frame.

What the Lausanne "deal" is and what it is not

Against the backdrop of a very enthusiastic reception, it is vital to understand what the Lausanne agreement actually is and what it is not. The term "deal", often used by the media, suggests that a final agreement has already been reached or, at least, that a successful conclusion is now only a matter of time. But while it can certainly be said that the final stage of negotiations has been entered, this is far from the truth.

To the contrary, the one point that all parties, despite having considerable differences in other areas, seemed to agree on in their subsequent assessment of the Lausanne agreement was that it was merely a "political understanding" and that it was still a long way from a final agreement. Negotiators for the E3+3 Group publicly reiterated the familiar mantra of "nothing is agreed until everything is agreed". Their counterpart, Iran's Minister of Foreign Affairs Mohammad Javad Zarif stated: "No agreement has been reached so we do not have any obligation yet.

Nobody has obligations now other than obligations that we already undertook under the Joint Plan of Action that we adopted in Geneva in November 2013. Additionally, after the talks, the US and Iran went on to publish partially conflicting factsheets on the details of the framework agreement, which may suggest that there is still some disagreement. All of which shows that while the Lausanne agreement may well lay the ground for a political breakthrough, it does not have any immediate legal effect. It is meant to serve as a term sheet and a mere basis for a final, comprehensive solution, entitled Joint Comprehensive

Plan of Action ("JCPOA") that it is hoped will eventually replace the JPOA.

Key elements of the Lausanne framework agreement

Under the Lausanne framework agreement, Iran accepts a number of obligations which would take effect once the final agreement has been concluded. All of these aim, *inter alia*, to extend Iran's "breakout time", i.e. to prolong the period of time that it would take Iran to produce uranium fit for military use, currently estimated to be in the region of 2 to 3 months to 1 year. Iran is required to reduce its enrichment capacity, enrichment level and stockpile of enriched uranium. Furthermore, enrichment shall only take place at the Natanz facility, whereas the facility at Fordow is to be converted into a research and technology centre. The heavy water reactor at Arak will be modified so that it no longer produces weapon-grade plutonium. No new facilities may be built. Nuclear reprocessing is not going to be permitted. Instead, all spent nuclear fuel must be exported from the country.

The duration of these obligations could still become the subject of dispute, with Iran said to have initially envisaged a period of about 5 and the US about 20 years. According to a fact sheet released by the US State Department, the duration for most obligations would be 15 years. Iran's compliance with its obligations under the agreement is to be monitored by regular inspections of the International Atomic Energy Agency (IAEA).

In return, the international community offered to remove sanctions against Iran, notably those affecting the

energy and banking sectors and the complementary sanctions against individuals dealing with Iran. None of those measures will be taken before the JCPOA has been agreed upon. Western nations will continue the ongoing process of repatriating previously frozen overseas funds to Iran.

All in all, many aspects of the framework agreement had already been contained in the JPOA.

Short-term practical consequences

It has already been said that in terms of the legal situation in Western countries, little has changed as a consequence of the Lausanne framework agreement. But still, some additional guidance has been provided.

How will US authorities apply the Lausanne framework agreement?

After the conclusion of the framework agreement, the US State Department and the Office of Foreign Assets Control (OFAC) gave some insight into the interpretation by the US Government. However, they refused to provide a full clarification regarding the extent of sanctions relief resulting from the JCPOA prior to its conclusion. They reiterated that, in any event, any relief would only apply to sanctions related to Iran's nuclear programme, while sanctions imposed for other reasons (e.g. human rights abuses, terrorism and ballistic missiles) would remain untouched. Moreover, they warned that no one should expect the US to provide any relief extending beyond what was required under the JPOA (Geneva agreement) and that the talks might still collapse, possibly leading even to an expansion of US sanctions. The reason for this non-committal stance

might be of a tactical nature, but it might also mean that as of April 2015, the US Government holds the view that, even internally, nothing has been agreed upon yet.

How will European authorities apply the Lausanne framework agreement?

After 2 April 2015, the date the Lausanne framework agreement was reached, neither the EU nor any of the E3+3 states (including Germany) have issued any guidance to businesses. Public statements have focussed exclusively on the political side of the agreement, but all EU sanctions against Iran remain in place for the time being. Therefore, for now nothing has changed in terms of the European stance on dealings with Iran. Arguably, a position taken by the UK Government at the end of last year is still representative for the whole of Europe: "If you decide to trade with Iran, you do so at your own risk. Having weighed up the risks, the final decision on whether to trade with Iran lies with you. However, if your business dealings get into trouble, the government will not be able to assist.

What are the next steps?

The next round of talks is currently taking place in Vienna. Helga Schmid, senior negotiator for the E3+3 Group, is holding meetings with the Iranian deputy foreign minister, Abbas Araghchi. Both will try and ensure that a timely completion by 30 June 2015 is possible.

Political risks that might potentially jeopardise a final deal

Negotiators are facing some issues in their countries that could pose a threat to a final resolution, notably strong political opposition to it.

Non-compliance on Iran's part

First of all, even if a final deal is eventually agreed upon, should Iran in any way renege on it, the outcome may indeed be stricter sanctions than ever before.

The fine print: Differences with regard to the staging of relief

One issue, which has continuously led to differences and might prove to be a major obstacle, is the exact timing of the relief. Some Western members of the E3+3 Group have envisaged a staged relief over a period of 4 to 12 months after the final agreement on the JCPOA. In their ideal scenario, this would give them some extra time to monitor Iran's progress. There is also an argument as to the phrasing, namely whether the relief is going to come in the form of a "suspension" or a "termination".

In this particular respect, however, the unique features of Iran's political system may complicate matters. There are two centres of power in Iran, with the political sphere intricately intertwined with the religious sphere. The Supreme Leader, Ayatollah Khomeini, and not President Rouhani's administration, wields the ultimate power and will have the final say on the "deal" as well. Mr. Khomeini and other religious authorities in the country are known to pursue their own agenda. What their position will be is difficult to predict. On the one hand, the Supreme Leader commented on the Lausanne framework agreement saying that he "neither accepted nor rejected" it. On the other hand, he already expressed his opposition to certain aspects of it: In particular, he demanded that all sanctions against Iran be lifted immediately upon reaching the final deal, rather than gradually, and that all military installations be off-limits to

international inspectors. At least the former demand has been seconded by Mr. Rouhani.

Mr Khomeini's remarks could, however, also be interpreted as tactical maximum demands with the aim of strengthening Iran's position at the negotiation table.

Possible change of leadership in Iran in 2017

Even if Mr. Khomeini decides to give his blessing to the final agreement, there are other domestic developments that may challenge its success. The longevity of the agreement would appear to be closely linked to the political fate of Mr. Rouhani. The next presidential elections will take place in 2017. A less moderate candidate may win this election based on a more confrontational agenda and may agitate against the JCPOA.

Domestic opposition in the US aiming to undermine the deal

A potential final agreement is also facing firm opposition from the West. In this context, one need only consider the open letter by 47 US Senators warning Iran that any deal would only constitute an executive agreement and could be repealed after the 2016 presidential elections or the unprecedented invitation of a foreign head of government without the US President's consent when Israeli Prime Minister Netanyahu was given the opportunity to express his reservations regarding the agreement in the House of Representatives. It is conceivable that there may be a high degree of uncertainty over the future of the agreement until the 2016 presidential elections, held in November of that year, and possibly even beyond.

Practical advice for businesses intending to invest in Iran

The immense potential of one of the largest economies in the Middle East makes it a desirable market for many Western companies, especially those with previous ties to Iran. But while the Lausanne framework agreement constitutes a step forward that may ultimately prove decisive, not much has changed in legal terms. If an activity was sanctionable before

2 April 2015, it still is now.

While trade associations and interest groups in Germany, for instance, have already set dates for workshops titled "Doing business in Iran" and plan to receive Iranian delegations, the US Government in particular has actively discouraged companies to send trade delegations to Iran or meet with Iranian government officials just yet, while stopping short of explicitly stating that such activities would themselves be regarded as sanctionable.

It has further underlined that there will be no leniency in the enforcement of existing sanctions. For now, it is advisable to stay alert and adopt a wait-and-see approach. In short: keep your eyes on the ball – but don't jump the gun.

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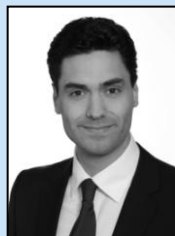
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