

Iran Sanctions Deal – new Adoption Day measures pave the way for sanctions relief

Sunday 18 October was "Adoption Day" under the Joint Comprehensive Plan of Action (JCPOA) and JCPOA participants are beginning to make the necessary arrangements and preparations to implement their JCPOA commitments. However, sanctions relief is not here yet and companies should carefully consider these new measures, which will take effect only on Implementation Day, and continue to exercise caution in proposed dealings with Iranian business.

What are the new measures?

The EU has published [Council Decision \(CFSP\) 2015/1863](#) (the **JCPOA Decision**), [Council Regulation \(EU\) 2015/1861](#) and [Council Implementing Regulation 2015/1862](#) (the **JCPOA Regulations**) to pave the way for the first round of EU sanctions relief on Implementation Day, while the US has [issued contingent sanctions waivers](#) which take effect only on Implementation Day for certain secondary sanctions that impact non-US persons. In addition, the US Office of Foreign Assets Control (OFAC) has issued [a statement](#) and some [FAQs](#) relating to Adoption Day.

What do these measures mean?

There is no immediate sanctions relief, but the groundwork has

been laid for the first phase of sanctions relief on Implementation Day.

The JCPOA envisages a phased lifting of UN, EU and US sanctions related to Iran's nuclear programme in exchange for Iran's agreement never to "seek to develop or acquire any nuclear weapons" and Annexes II and V to the JCPOA contain detailed provisions on that sanctions relief.

As set out in our [previous briefing](#), on Implementation Day, a large number (although not all) of the current EU sanctions will be lifted. US primary sanctions prohibiting trade and commerce between US persons and Iran, as well as trade by non-US persons involving the US financial system or US-origin goods, will remain in place (although certain activities, for example those concerning the supply to Iran Air of aircraft and aircraft parts by US persons, will be licensed by OFAC). US extra-territorial or "secondary" sanctions that expose non-US

Key issues

- No immediate sanctions relief
- Form of EU sanctions relief after Implementation Day now clearer
- US issues contingent waivers to take effect in relation to nuclear-related secondary sanctions only on Implementation Day
- Caution still required by international business
- See our [guide to the timeline for implementation of the JCPOA](#) for more details of the timeline to implementation

persons to designation risk if they engage in nuclear-related sanctionable activity will be lifted and some persons, entities and vessels will be removed from the Specially Designated Nationals (SDN) List. We note however that some secondary sanctions will remain.

The EU and US have laid the groundwork for these aspects of that phased lifting of sanctions through the JCPOA Decision, JCPOA Regulations and the contingent sanctions waivers.

The sanctions relief outlined in these measures will not be effective until "Implementation Day" (the date on which the IAEA verifies that Iran has complied with certain of its nuclear-related commitments under the JCPOA).

It is currently anticipated that Implementation Day will not occur until at least early 2016.

The key EU sanctions that will be or will remain in place after Implementation Day include:

- A requirement for prior authorisations for activities related to the sale, supply or export to Iran of:
 - items on the Nuclear Suppliers Group list
 - items that could contribute to reprocessing- or enrichment-related or heavy water-related or other activities inconsistent with the JCPOA
 - items on the Missile Technology Control Regime list
 - certain software designed for use in nuclear and military industries
 - graphite and certain other fabricated semi-finished raw metals.

Authorisations will not be granted if the relevant activity is incompatible with the JCPOA, relates to Iran's ballistic missile programme or is for the benefit of the Iranian Revolutionary Guard Corps) and, where appropriate,

contractual end-user guarantees are not in place.

- Prohibitions on activities related to items on the Common Military List.
- Prohibitions on the provision of specialised financial messaging services (including SWIFT), making available funds or economic resources, and a requirement to maintain asset freezes, all in relation to certain persons (including Bank Saderat), who will continue to be listed until "Transition Day" (i.e. 8 years from Adoption Day or sooner, should the IAEA reach the conclusion that all nuclear material in Iran remains in peaceful activities).
- Prohibitions on certain activities relating to the transportation of certain items which remain the subject of export prohibitions or are set out in the Common Military List. In accordance with the JCPOA Decision, the inspection regime for vessels will continue to apply where Member States have information providing reasonable grounds to believe that cargo contains items the supply, sale, transfer or export of which is being undertaken contrary to the EU sanctions.

Caution is still the word of the day

Sanctions relief will not occur unless and until Implementation Day occurs. In the meantime, risks remain, including in relation to entering into contracts contingent on the application of sanctions relief to take effect from Implementation Day.

The US takes a strict approach to contingent contracts. US persons are, as a general matter, prohibited from entering into contracts (contingent or otherwise) that involve Iran or its government, including with individuals and entities on the SDN List.

Additionally, of particular note is OFAC's response to a new FAQ released on Sunday concerning the entry into contracts by non-US persons involving Iranian entities prior to Implementation Day. OFAC has stated that "[e]ntering into contracts involving Iran or its government before Implementation Day may be sanctionable. In certain circumstances, this could include contracts that are contingent on the implementation of sanctions relief under the JCPOA, such as contracts involving individuals or entities on the SDN List".

OFAC has made clear that until Implementation Day, it will continue to vigorously enforce the sanctions that remain in effect.

In contrast to the US, no published guidance has yet emerged from the EU or HM Treasury.

In the interim, companies considering taking preliminary steps to engage with business in Iran should exercise caution, seek advice on any proposed arrangements and, as appropriate, seek *ad hoc* guidance from HM Treasury or the relevant competent authority. Particular attention should be given to contracts that involve entities or individuals that are currently designated persons, in order to avoid providing or making available any asset or economic resource to the designated person.

In addition, in view of the OFAC guidance referred to above, contingent contracts with SDNs or

other activities which currently are the focus of US secondary sanctions will continue to attract the possibility of designation risk, at least in theory, although we would expect strong EU objections in relation to contingent contracts of EU persons that the EU authorities have advised fully comply with EU sanctions requirements.

A compliance and risk management assessment should be considered in connection with any exploratory activities.

"Snap back"

One of the key provisions of the JCPOA aims to ensure that existing sanctions will "snap back" into place if Iran does not comply with its obligations.

Neither the JCPOA Decision and JCPOA Regulations nor the contingent waivers deal with the

possibility of "snap back" in their operative provisions. However, the recitals of the JCPOA Decision and JCPOA Regulations state that the *"commitment to lift all Union nuclear-related sanctions in accordance with the JCPOA is without prejudice to the dispute-resolution mechanism specified in the JCPOA and to the reintroduction of Union sanctions in the event of significant non-performance by Iran of its commitments under the JCPOA."*

The risk of "snap back" which is built into the JCPOA presents a material commercial risk to businesses planning long term investment with sectors of the Iranian economy to which sanctions currently apply and which therefore could be "snapped back" into place in the future.

The JCPOA Decision and Regulations provide some clarity about the intended treatment of

contracts entered into while sanctions are lifted in the event that the "snap back" becomes operative. In particular, the recitals state that " *[i]n case of reintroduction of Union sanctions, adequate protection for the execution of contracts concluded in accordance with the JCPOA while sanctions relief was in force will be provided consistent with previous provisions when sanctions were originally imposed."*

The language does not state clearly, however, that a grandfathering provision will necessarily be provided to enable long term contracts to be concluded indefinitely. In the past, EU sanctions have permitted ongoing execution of contracts entered before sanctions were in place, but in some cases only for a specified period. Accordingly, businesses will need to consider carefully the need to address the risks contractually at the appropriate time.

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