

Iran, Global Powers Agree to Parameters for Long-Term Nuclear Deal

Potential for Significant Sanctions Relief in Second Half of 2015

April 3, 2015

International Trade Controls

On April 2, 2015, the United States, the United Kingdom, France, Russia, China, Germany, the European Union (“EU”), and Iran announced that they had reached consensus on the “parameters” of a long-term deal under which Iran would significantly curtail its nuclear program in exchange for potentially significant sanctions relief from the United States, EU, and United Nations (“UN”). The parameters announced yesterday have no effect in and of themselves, as was confirmed in [guidance](#) issued on April 3, 2015, by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”). Rather, the parameters will serve as the basis for a Joint Comprehensive Plan of Action (“JCPOA”) that the parties will seek to conclude by June 30. As the U.S. State Department noted when announcing the parameters: “Important implementation details are still subject to negotiation, and nothing is agreed until everything is agreed.”

As currently envisioned, the JCPOA would impose significant limitations on Iran’s uranium enrichment and plutonium production capabilities and subject Iran’s nuclear facilities to extensive inspections by the International Atomic Energy Agency (“IAEA”). In exchange, the United States and EU would—after the IAEA has verified that Iran has fulfilled its key nuclear commitments—suspend their “nuclear-related” sanctions against Iran, though U.S. officials emphasized that such sanctions would “snap back” into place if Iran fails to meet its commitments. Additionally, as Iran completes certain key actions, the UN Security Council would replace all of its prior resolutions imposing sanctions relating to Iran’s nuclear program with a single, more limited resolution.

With respect to potential sanctions relief, the framework announced yesterday leaves important questions unanswered. Most notably, neither the United States nor the EU has specified exactly which sanctions they consider to be “nuclear-related,” although from the U.S. perspective, “nuclear-related” measures are likely to include many of the more recent “secondary” or “retaliatory” sanctions that target non-U.S. companies that engage in certain types of business with Iran. Importantly, it does not appear that the envisioned sanctions relief will ease the primary sanctions that the United States has long imposed against Iran, which prohibit U.S. persons and their owned or controlled non-U.S. affiliates from engaging in virtually any dealings with Iran unless licensed by OFAC.

However, the potential relief announced yesterday could encompass a very substantial portion of the current EU-Iran sanctions framework, most of which was enacted in connection with the European Council’s policy of seeking to incentivize Iran to cooperate with the UN and other international stakeholders in reforming its nuclear program.

As a result, it is possible that the JCPOA framework could effectively leave European and U.S. companies in a similar position vis-à-vis Iran as prevailed prior to 2010—with U.S. companies (and, as a result of statutory changes in 2012, their owned or controlled non-U.S. affiliates) broadly prohibited from engaging in business with Iran, and European companies generally permitted to do so.

Limitations on the Iranian Nuclear Program

The parameters for a long-term nuclear deal envision a JCPOA under which Iran would agree to limitations on its uranium enrichment and plutonium production capabilities for a significant period of time, as well as to IAEA inspections intended to ensure that any covert efforts by Iran to impermissibly advance its nuclear program or develop a nuclear weapon could be detected quickly.

Uranium Enrichment and Plutonium Production

With respect to uranium enrichment and plutonium production, the parameters envision that Iran would, among other steps:

- Reduce its number of installed centrifuges by two-thirds (from approximately 19,000 to approximately 6,100) for 10 years, retaining only first-generation centrifuges; excess centrifuges will be placed in IAEA-monitored storage;
- Only enrich uranium up to 3.67% (suitable only for civil uses) for at least 15 years;
- Reduce its current stockpile of approximately 10,000 kilograms of low-enriched uranium to 300 kilograms of uranium enriched to 3.67% for 15 years;
- Not construct any new facilities for uranium enrichment purposes for 15 years;
- Conduct uranium enrichment exclusively at its Natanz facility for 10 years, using only first-generation centrifuges;
- Engage in only limited research and development of advanced centrifuges according to a schedule and parameters agreed among the parties;
- Convert its Fordow uranium enrichment facility into a research center and not conduct research and development associated with uranium enrichment at that facility for 15 years;
- Redesign and rebuild its heavy water nuclear reactor at Arak such that it will not produce weapons-grade plutonium;
- Destroy or remove from Iran the original core of the Arak reactor, which was suitable for the production of weapons-grade plutonium;
- Ship all spent nuclear fuel from the Arak reactor out of the country for the reactor's lifetime;
- Not reprocess spent nuclear fuel (from which plutonium is derived) for an indefinite period of time; and
- Restrict its enrichment capacity and research and development for 10 years to ensure a so-called “break-out” time period—the time necessary for Iran to develop a nuclear weapon—of at least one year and, thereafter, abide by an enrichment and enrichment

research and development plan submitted to the IAEA, as well as to the United States, United Kingdom, France, Russia, China, and Germany.

Inspections

To ensure that the international community can verify that Iran has met its commitments, the parameters envision that Iran would agree to wide-ranging IAEA inspections and transparency measures, including:

- Granting the IAEA regular access to all of its nuclear facilities, including access to uranium mines and continuous surveillance of uranium mills for 25 years;
- Granting the IAEA access to investigate any “suspicious sites” or allegations of covert nuclear facilities;
- Allowing for continuous surveillance of Iran’s centrifuge rotors and bellows production and storage facilities for 20 years;
- Consenting to the establishment of a dedicated procurement channel for Iran’s nuclear program to monitor and approve the transfer to Iran of certain nuclear-related and dual-use materials and technology; and
- Implementing an agreed set of measures to address the IAEA’s concerns about the possible military dimensions of Iran’s nuclear program.

Potential U.S., EU, and UN Sanctions Relief

In exchange for the limitations and transparency measures described above, a JCPOA, if concluded, would provide Iran with potentially significant relief from U.S., EU, and UN sanctions. However, only limited details on the scope and timing of such sanctions relief have been provided thus far.

United States and EU

According to a document issued by the U.S. State Department, U.S. and EU “nuclear-related” sanctions targeting Iran would be “suspended after the IAEA has verified that Iran has taken all of its key nuclear-related steps,” but these sanctions would “snap back into place” if Iran fails at any time to fulfill its commitments. The parameters also make clear that U.S. sanctions against Iran relating to terrorism, human rights abuses, and ballistic missiles will remain in place under a JCPOA. In its April 3, 2015 guidance, however, OFAC noted that the parameters “provide a path for sanctions on Iran to be suspended and eventually terminated.” The OFAC guidance, unlike the parameters announced yesterday, is not, on its face, limited to “nuclear-related” sanctions, thus raising the possibility that future sanctions relief stemming from a JCPOA potentially could extend to other types of sanctions targeting Iran.

The language in the document issued by the U.S. State Department also differs slightly, but notably, from the [joint statement](#) issued by EU High Representative Federica Mogherini and Iranian Foreign Minister Javad Zarif, which envisions that the EU will “terminate the implementation of all nuclear-related economic and financial sanctions and the U.S. will cease the application of all nuclear-related secondary economic and financial sanctions, simultaneously with the IAEA-verified implementation by Iran of its key nuclear commitments.”

The EU-Iran joint statement also is silent on the prospect of sanctions “snapping back” into place in the event that Iran fails to fulfill its commitments, and does not mention terrorism, human rights, or ballistic missile-related sanctions. These discrepancies highlight that the modalities for sanctions relief will need to be addressed in greater detail as the parties work towards a JCPOA by June 30.

U.S. “Nuclear-Related” Sanctions

From the U.S. perspective, the most important question is which sanctions qualify as “nuclear-related” and which are related to terrorism, human rights abuses, and ballistic missiles. The Joint Statement of the EU High Representative and Iranian Foreign Minister is telling in this regard, since it refers specifically—and only—to the U.S. ceasing the application of its nuclear-related “secondary” sanctions.

“Secondary” sanctions is the term that is used to refer to those sanctions that the United States imposes against non-U.S. persons that engage in certain activities involving Iran. These secondary sanctions—which have been significantly ratcheted up since 2010 in statutes such as the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, the Iran Threat Reduction and Syria Human Rights Act of 2012, and the Iran Freedom and Counter-Proliferation Act of 2012—have primarily targeted Iran’s energy, shipping, and financial sectors, and have made it very difficult for Iran to sell its oil and to repatriate the proceeds from any such sales. If the United States ceases to implement these secondary sanctions measures, then non-U.S. persons that are not owned or controlled by U.S. persons would not risk losing their access to U.S. markets if they engage in activities currently targeted by such sanctions, including potentially:

- Purchasing or acquiring petroleum, petroleum products, or petrochemical products from Iran;
- Making investments that contribute to Iran’s domestic production of refined petroleum or petrochemical products;
- Supplying, selling, or transferring to or from Iran significant goods or services used in connection with the Iranian energy, shipping, shipbuilding, and automotive sectors;
- Supplying or selling to Iran precious metals or certain other materials, such as aluminum, steel, and coal; and
- Providing underwriting services or insurance for various Iran-related activities.

With respect to secondary sanctions targeting the financial sector, a JCPOA would be expected to ease those secondary sanctions that specifically target non-U.S. financial institutions that engage in certain Iran-related activities tied to nuclear proliferation, such as knowingly conducting or facilitating significant financial transactions with the Central Bank of Iran or on behalf of an Iranian person or entity identified on the List of Specially Designated Nationals and Blocked Persons (“SDN List”) as a result of its involvement in Iran’s proliferation activities and not Iran’s terrorism activities.

However, not all secondary sanctions may be viewed as “nuclear-related.” For instance, the secondary sanctions targeting non-U.S. persons that make investments exceeding certain monetary thresholds that directly and significantly contribute to the enhancement of Iran’s ability to develop its petroleum resources date to the Iran Sanctions Act of 1996, and may be

considered to be related principally to concerns regarding Iran's support for terrorism. As a result, these measures may not be among the sanctions eased under a JCPOA.

Importantly, it is unlikely that a JCPOA would ease any of the "primary" U.S. sanctions codified in the Iranian Transactions and Sanctions Regulations ("ITSR"), which prohibit U.S. persons and their owned or controlled non-U.S. affiliates from engaging in virtually all unlicensed dealings with or relating to Iran. Many of the ITSR sanctions date to executive orders issued in 1995 and 1997, and were adopted in response to Iran's terrorism activities.

Presidential vs. Congressional Action

Members of the U.S. Congress have threatened to seek to block any agreement that they believe does not go far enough in dismantling Iran's nuclear program. It therefore will be important to understand which sanctions measures President Obama can terminate, suspend, or waive on his own, without congressional action, and what, if any, predicate steps or determinations he must make in order to do so. For example, in some cases, such as with measures imposed by executive orders that have never been codified by statute, the President has the unilateral authority to terminate sanctions. In other cases, the President may have discretion to terminate sanctions imposed by statute, but only once he has determined that certain conditions have been met. In still other cases, absent congressional action, the President's authority may be limited to waiving temporarily certain sanctions imposed by statute, or issuing broad general licenses that effectively suspend elements of the sanctions.

Importantly, the secondary sanctions measures that have been adopted by Congress generally authorize the President to waive the imposition of these sanctions under various circumstances, including when the President determines that such a waiver is essential to the national security interests of the United States. Accordingly, Congress would likely need to pass new legislation by a veto-proof majority to prevent President Obama from easing the application of secondary sanctions.

The dynamic between the U.S. executive and legislative branches will be an important one to follow in the weeks ahead, particularly given that the Chairman of the Senate Foreign Relations Committee—Senator Bob Corker (R-TN)—[has re-affirmed his intent](#) to press forward on April 14 with legislation to provide for congressional oversight of any nuclear deal with Iran.

EU "Nuclear-Related" Sanctions

The prospect of easing "nuclear-related" sanctions would have a more significant impact under the EU sanctions framework than in the United States. The EU currently maintains two separate sanctions regimes in relation to Iran. One, which was implemented in 2011, imposes asset-freezing measures against certain designated parties whom the European Council has deemed to be responsible for "serious human rights violations" in Iran. (The list of designated parties under those measures currently includes 86 individuals and one entity.) The EU-Iran "human rights" sanctions also impose limited export controls focusing on certain physical security and telecommunications monitoring equipment.¹

¹ See Council Decision 2011/235/CFSP (April 2011); Council Regulation No. 359/2011 (April 2011) (as amended).

These “human rights” sanctions are unlikely to be included within the term “nuclear-related” sanctions under the JCPOA parameters announced yesterday, but they are of limited practical importance for most EU companies. A broader, and more commercially significant, EU-Iran sanctions framework is reflected in European Council Decision No. 2010/435/CFSP (July 2010) and Council Regulation No. 267/2012 (March 2012). Those measures were first issued in 2007, and were expanded in 2010 and 2012 in consultation with the United States and other international stakeholders. They are designed to implement UN Security Council resolutions pertaining to Iran’s nuclear program, and also to impose “accompanying measures” at the EU level “with a view to supporting the resolution of all outstanding concerns regarding Iran’s development of sensitive technologies in support of its nuclear and missile programmes, through negotiation.”² They currently include a range of unilateral sanctions against Iran, such as:

- Broad asset-freezing measures against the Central Bank of Iran, the Iranian Revolutionary Guard Corps, Iran’s state-owned banks and energy companies, and other parties;
- Export controls and services-related restrictions associated with, among other areas, (1) dual-use goods, software and technology; (2) nuclear production facility equipment; (3) military equipment; and (4) certain oil and gas exploration and production equipment;
- Trade restrictions focusing on Iranian-origin crude oil, petroleum and petrochemical products, and natural gas;
- Licensing and notification requirements associated with transfers of funds to and from Iranian parties; and
- A range of additional finance and investment-related controls.

The reference in the JCPOA parameters to “nuclear-related” controls could cover the entirety of the above measures, though it is plausible that some features could be retained—for example, certain aspects of the regulations focus on military trade controls, and it is unlikely that the EU will move to significantly relax such restrictions with respect to Iran. If the sanctions noted above were to be lifted, the EU would, essentially, be left with a very narrow set of trade restrictions against Iran under the human rights measures—and a *substantially* narrower regime than would remain in place in the United States under the U.S. sanctions discussed above for terrorism, human rights, and ballistic missile activities. Thus, the JCPOA framework could effectively leave European and U.S. companies in a similar position vis-à-vis Iran as prevailed prior to 2010—with U.S. companies (and, as a result of 2012 legislation, their owned or controlled non-U.S. affiliates) broadly prohibited from engaging in business with Iran, and European companies generally permitted to do so, free from significant EU sanctions or risks under U.S. “secondary” sanctions.

Assuming the EU acts to ease its sanctions regulations, it is unclear what mechanisms would be implemented to “snap” them back into place as per the JCPOA parameters. Presumably, the European Council would need to meet and agree, by consensus vote among the 28 Member States, to re-impose sanctions measures should Iran fail to abide by its commitments.

² See Council Decision 2010/413/CFSP, at preface (5).

United Nations

The parameters announced yesterday also envision that all past UN Security Council resolutions relating to Iran's nuclear program will be lifted "simultaneous with the completion, by Iran, of nuclear-related actions addressing all key concerns," which the parameters define as enrichment, the Fordow facility and Arak heavy water reactor discussed above, concerns regarding the possible military dimensions of Iran's program, and transparency. In place of the legacy resolutions, the UN Security Council would adopt a new resolution endorsing the JCPOA, establishing the procurement channel for Iran's nuclear program noted above, and retaining restrictions on conventional arms and ballistic missiles, as well as related cargo inspections and asset freezes.

In considering the impact of the potential easing of UN sanctions, companies should be mindful that UN sanctions restrictions are only enforced to the extent that they are incorporated into the domestic laws of Member States. Accordingly, even if certain UN sanctions relating to Iran's nuclear program are eased, companies will need to understand how such easing may or may not impact the domestic laws of the jurisdictions to which they are subject.

Next Steps

The parameters announced yesterday mark a significant step towards a long-term deal that would limit Iran's nuclear program and provide sanctions relief. Over the next three months, the parties to the negotiations will work to fill in the details and resolve issues left open under the parameters, with the goal of concluding a JCPOA by June 30. If a JCPOA is concluded, we will be able to identify with greater certainty the specific limitations to which Iran's nuclear program will be subject, the specific sanctions measures that will be eased, and the timing and circumstances under which such easing will occur.

We will continue to follow these ongoing negotiations with Iran closely, and will provide additional updates as new information becomes available. We are well-positioned to assist clients in understanding how these developments may affect their operations and business opportunities.

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