

# New U.S. Sanctions Against Sectors of Iran's Economy and European Trigger of the JCPOA Dispute Resolution Mechanism

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International Trade Controls

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On January 10, 2020, President Trump issued a new [Executive Order](#) ("January 10 Executive Order") that provides authority for the imposition of sanctions with respect to certain additional sectors of Iran's economy, including Iran's construction, mining, manufacturing, and textiles sectors. The January 10 Executive Order introduces both property-blocking sanctions and secondary sanctions in relation to the newly targeted sectors of Iran's economy. The Administration has not yet designated any parties pursuant to this Executive Order by adding them to the List of Specially Designated Nationals and Blocked Persons ("SDN List"), but certain aspects of the Order do not require such designations.

On the same day, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") added to the SDN List eight senior Iranian officials as well as 17 of the largest steel, aluminum, copper, and iron manufacturers in Iran, along with several other entities. These designations were made under earlier executive orders, specifically Executive Order 13876 imposing sanctions on certain individuals associated with Iran's Supreme Leader and Executive Order 13871 imposing sanctions with respect to the iron, steel, aluminum, and copper sectors of Iran.

The January 10 Executive Order and designations follow a period of increased U.S.-Iranian tension. President Trump [declared](#) last week that the United States would impose additional sanctions against Iran for striking two U.S. military bases in Iraq. The Iranian attacks followed a U.S. drone strike that killed Major General Qasem Soleimani, then-Commander of the Iranian Quds Force. Announcing the new sanctions and designations, OFAC [stated](#) that they are intended to "target[] additional sources of revenue used by the Iranian regime to fund and support its nuclear program, missile development, terrorism and terrorist proxy networks, and malign regional influence."

Following the targeted strike against Major General Soleimani, Iran [announced](#) its intention to halt its commitments to the Joint Comprehensive Plan of Action ("JCPOA"). In response, President Trump [beseeched](#) European nations, including the United Kingdom, Germany, and France, to abandon the deal. Nonetheless, as discussed in greater detail below, EU leaders appear to want to address concerns about Iranian compliance with the JCPOA in a way that preserves the deal and avoids the re-imposition of EU sanctions, at least in the near term.

## **Executive Order of January 10, 2020**

The January 10 Executive Order authorizes the imposition of two distinct types of sanctions – property-blocking sanctions and correspondent/payable-through account sanctions against non-U.S. financial institutions. Both sets of sanctions target activities involving (i) the construction, mining, manufacturing, or textiles sectors of the Iranian economy (or any other sector of the Iranian economy as may be determined by the Secretary of the Treasury, though no such additional sector has yet been identified under the January 10 Executive Order), or (ii) persons whose property is blocked pursuant to the Order, even if those activities are undertaken without any nexus to U.S. persons or U.S.-regulated items.

Nothing in the January 10 Executive Order prohibits transactions for the conduct of the official business of the United Nations by its employees, grantees, or contractors.

### Property-Blocking Sanctions

The January 10 Executive Order requires the blocking of property and property interests in the United States or the possession or control of a U.S. person of persons whom the Secretary of the Treasury determines, in consultation with the Secretary of State, are engaged in certain activities relating to the construction, mining, manufacturing, or textiles sectors of the Iranian economy. Specifically, Section 1 of the Executive Order provides for the imposition of such blocking measures against any person determined by the Secretary of the Treasury:

- To operate in the construction, mining, manufacturing, or textiles sectors of the Iranian economy (or other sectors of the Iranian economy if and when identified by the Secretary of the Treasury);
- To have knowingly engaged, on or after January 10, 2020, in a “significant transaction for the sale, supply, or transfer to or from Iran of significant goods or services used in connection with” the construction, mining, manufacturing, or textiles sectors of the Iranian economy (or any other sector of the Iranian economy as may be determined by the Secretary of the Treasury);
- To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property is blocked under the January 10 Executive Order; or
- To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property is blocked pursuant to the January 10 Executive Order.

Notably, no parties have been designated to date for property-blocking sanctions pursuant to the Executive Order. However, if and when persons are designated for such property-blocking sanctions, their property and interests in property that are or come into the United States or the possession or control of a U.S. person will be required to be blocked, and U.S. persons (and non-U.S. entities owned or controlled by U.S. persons) will be prohibited from engaging in virtually any dealings with such persons without prior authorization from OFAC.

In addition, non-U.S. persons that are not owned or controlled by U.S. persons will themselves be exposed to U.S. property-blocking sanctions if they provide material support to such designated/blocked persons.

Managing the risk of secondary sanctions for “the sale, supply, or transfer to or from Iran of significant goods or services used in connection with” the newly designated sectors may be challenging because OFAC has not yet issued guidance regarding the intended scope of this aspect of the January 10 Executive Order. In particular, OFAC has not explained what it considers to be a part of Iran’s construction, mining, manufacturing, and textiles sectors or what would constitute “significant goods or services used in connection with” Iran’s construction, mining, manufacturing, and textiles sectors.

### Correspondent/Payable-Through Account Sanctions

Section 2 of the January 10 Executive Order authorizes the Secretary of the Treasury to impose correspondent/payable-through account sanctions against non-U.S. financial institutions determined by the Secretary, in consultation with the Secretary of State, to have, on or after January 10, 2020, knowingly conducted or facilitated any significant financial transaction:

- For the sale, supply, or transfer to or from Iran of significant goods or services used in connection with the construction, mining, manufacturing, or textiles sectors of the Iranian economy (or any other sector of the Iranian economy as may be determined by the Secretary of the Treasury); or
- For or on behalf of a person whose property is blocked pursuant to Section 1 of the January 10 Executive Order.

A non-U.S. financial institution targeted for sanctions under Section 2 of the Executive Order would be prohibited from opening, and prohibited or restricted from maintaining, correspondent or payable-through accounts in the United States.

Again, pending additional guidance from OFAC, it may be challenging for non-U.S. financial institutions to manage the risk of correspondent/payable-through account sanctions for knowingly engaging in or facilitating a significant transaction for the sale, supply, or transfer to or from Iran of significant goods or services used in connection with the construction, mining, manufacturing, or textiles sectors of the Iranian economy (or any other sector of the Iranian economy as may be determined by the Secretary of the Treasury in the future). In the absence of guidance specific to the January 10 Executive Order, non-U.S. financial institutions might reasonably rely on guidance that OFAC has issued with respect to analogous provisions of Executive Order 13871, which imposes similar sanctions with respect to certain other sectors of Iran’s economy (*i.e.*, the iron, steel, aluminum, and copper sectors).

Specifically, for purposes of the correspondent and payable-through account sanctions authorized by Executive Order 13871, OFAC has explained that it has broad discretion to determine if a transaction is “significant” based on the totality of the facts and circumstances, and that a range of factors can play a role in such a determination. Those factors include: (a) the size, number, and frequency of the transactions; (b) the nature of the transactions, including their type, complexity, and commercial purpose; (c) the level of awareness of management and whether the transactions are part of a pattern of conduct; (d) the nexus of the transactions and blocked persons; (e) the impact of the transactions on statutory objectives; (f) whether the transactions involve deceptive practices; (g) whether the transactions solely involve the passive holdings of Central Bank of Iran (“CBI”) reserves or repayment by the CBI of official development assistance or the transfer of funds required as a condition of Iran’s membership in an international financial institution; and (h) other relevant factors that the Secretary of the Treasury deems relevant.

## Potential EU Measures

Tensions between the United States and Iran have raised questions over the future of the JCPOA. The Foreign Ministers of France, Germany, and the United Kingdom (the “E3”) announced on January 14, 2020 that they would trigger the dispute resolution mechanism (“DRM”) set forth in paragraph 36 of the JCPOA. While triggering the DRM is a first step toward re-imposition of UN sanctions against Iran, the E3 Foreign Ministers made clear that this is not their objective. In a joint statement, the E3 explained, with respect to triggering the DRM, they had “been left with no choice, given Iran’s actions,” but that they do so “in good faith with the overarching objective of preserving the JCPOA and in the sincere hope of finding a way forward to resolve the impasse through constructive diplomatic dialogue, while preserving the agreement and remaining within its framework.”

Once initiated, the DRM process can take up to 65 days (unless extended by consensus) — but sanctions can be reintroduced by the complaining party in as little as 35 days. Pursuant to the DRM as set out in paragraph 36:

**Step 1:** When a party triggers the DRM, the issue is referred to the Joint Commission comprised of representatives of the JCPOA participants. The Joint Commission has 15 days to resolve the issue, subject to an extension by consensus of the participants.

**Step 2:** Any participant that believes the issue has not been resolved by the Joint Commission can engage the group’s Ministers of Foreign Affairs. Foreign Ministers in turn have a further 15 days to resolve the issue (unless extended by consensus). Alternatively or concurrently, the complaining participants or the participant whose performance is in question may request that the issue be considered by a three-member advisory board (one appointed by each of the participants in the dispute respectively and a third independent member). The Advisory Board provides a non-binding opinion within 15 days.

**Step 3:** If the issues remain unresolved after 30 days, the Joint Commission has a further 5 days to consider the Advisory Board opinion.

**Step 4:** If the complaining participants feel that the issue has still not been resolved to their satisfaction, and view the issue to constitute significant non-performance, then those participants may: (i) treat the unresolved issue as grounds to cease performing their commitments under the JCPOA in whole or in part; and/or (ii) notify the UN Security Council (“UNSC”) that they believe there has been significant non-performance.

Referral of the issue to the UNSC triggers a further UN process that, ultimately, can result in a “UN snapback” — *i.e.*, the re-imposition of the UN sanctions — within 30 days. A UN snapback in turn would lead to the re-imposition of all of the EU’s nuclear proliferation-related sanctions that were lifted pursuant to the JCPOA (an “EU snapback”).

Under paragraphs 10-13 of UN Security Council Resolution 2231, it would also be possible for any party that signed the JCPOA (including the United States) to immediately trigger the UN process for re-imposing UN sanctions within 30 days, irrespective of the status of the DRM process. There has been no indication to date that the United States or any other signatory of the JCPOA is currently considering overriding the DRM process in this manner.

As required under paragraph 14 of Resolution 2231, [EU guidance](#) on the JCPOA is clear that, in the event of an EU snapback, sanctions would not apply with retroactive effect. EU regulations

will permit the fulfilment of contracts concluded in accordance with the JCPOA while sanctions relief was in force in order to allow companies to wind down their activities, along the lines of analogous wind-down provisions in prior EU sanctions against Iran. The EU regulations that re-impose the relevant sanctions measures would specify the period of time allowed for this wind down.

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Covington has deep experience advising clients on the legal, policy, and practical dimensions of U.S. and EU sanctions. We will continue to monitor developments with respect to Iran and more generally in this area, and we are well positioned to assist clients in understanding how these developments may affect their business operations.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our trade controls practice group:

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