

## CLIENT ALERT

### Escalating Tensions in the Middle East: U.S. and EU Sanctions Developments on Iran

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Keeping pace with the rapidly changing geopolitics in the region, the last week has brought a series of Iran-related sanctions developments with which global businesses need to keep up. First, on January 10, the United States further escalated sanctions against Iran, creating new designation authorities for those “operating in” Iran’s construction, mining, manufacturing, and textile sectors under Executive Order 13902 (“EO 13902”). These new measures come amidst the recent escalation of conflict between the U.S. and Iran. With the issuance of EO 13902 the U.S. announced it is taking additional steps “to deny Iran revenue, including revenue derived from the export of products from key sectors of Iran’s economy that may be used to fund and support its nuclear program, missile development, terrorism and terrorist proxy networks, and malign regional influence.”<sup>1</sup> Concurrently, the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) announced sanctions against key Iranian officials as well as several of the largest companies in the Iranian metals industries as well as certain Chinese and Seychelles based entities involved in the purchase and transport of certain metals from Iran.

Then, on January 14, in response to Iran’s most recent violation of its commitments under the Joint Comprehensive Plan of Action (“JCPOA”), the Foreign Ministers of France, Germany, and the United Kingdom (the “EU3”) announced (<https://www.gov.uk/government/news/e3-foreign-ministers-statement-on-the-jcpoa-14-january-2020>) that they were formally triggering the JCPOA’s dispute resolution mechanism.<sup>2</sup> While the three countries reaffirmed their commitment to the JCPOA and the EU and United Nations (“UN”) sanctions remain in place, triggering the dispute resolution mechanism represents the most formal step that the European countries have taken yet to escalate their dispute with Iran and could, potentially, ultimately result in the collapse of the JCPOA and/or the reimposition of repealed EU or UN sanctions.

#### I. Scope of New Authority

EO 13902 grants the U.S. Secretary of the Treasury, and therefore by delegation OFAC, the authority to impose blocking sanctions on persons who:

- “Operate in” the construction, mining, manufacturing, or textile sectors of the Iranian economy;
- “Operate in” **any** other sector of the Iranian economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State;
- Knowingly engage in a significant transaction for the sale, supply, or transfer of significant goods or services used in connection with one of the aforementioned sectors;
- Have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person identified above; or
- Are owned or controlled by, or acted on behalf of, any person identified above.

EO 13902 also provides a “secondary” sanctions authority targeting foreign financial institutions (“FFIs”). Specifically, the order authorizes the United States to prohibit or impose strict conditions on the U.S. correspondent or payable-through account of an FFI determined to have either knowingly conducted or facilitated any significant financial transaction in connection with (1) the targeted sectors or **any** other sector of the Iranian economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, or (2) for, or on behalf of, any other persons blocked under EO 13902.

OFAC has not yet announced any sanctions pursuant to EO 13902.

## II. New Iran-Related Designations Under Existing Authorities

In a simultaneous action, OFAC announced sanctions against eight senior Iranian regime officials, seventeen Iranian metals producers and mining companies, a network of three China- and Seychelles-based entities, and a vessel involved in the transport of Iranian metal products. These new measures consist entirely of blocking sanctions that were imposed pursuant to various existing authorities. Notable designations include:

- Senior Iranian government officials, including the Secretary of Iran’s Supreme National Security Council, the Deputy Chief of Staff of Iranian armed forces, and the head of the Basij militia of the Islamic Revolutionary Guards Corps (“IRGC”) for activities involving the IRGC and connection to Iran’s Supreme Leader;
- Iran Aluminum Company, Al-Mahdi Aluminum Corporation, National Iranian Copper Industries, top companies operating in the Iranian aluminum and copper sectors, which are sectors subject to U.S. sanctions;
- The largest steel and iron manufacturers in Iran, including Mobarakeh Steel Company, which is the biggest steel producer in the Middle East, for operating in the Iranian iron and steel sectors, also sectors subject to U.S. sanctions; and
- Pamchel Trading Beijing Co. Ltd., a Beijing-based trading company, Power Anchor Limited, a Seychelles-entity, and Hongyuan Marine Co. Ltd., located in Zhejiang, China, for purchasing and transporting Iranian steel and providing critical goods needed for Iranian metal production.

## III. EU3 Triggering of JCPOA Dispute Resolution Mechanism

On January 14, in response to Iran’s January 5 announcement that it “discards the last key components of its limitations in the JCPOA, which is the ‘limit on the number of centrifuges,’”<sup>33</sup> the EU3 announced that they had “been left with no choice, given Iran’s actions, to register . . . our concerns that Iran is not meeting its commitments under the JCPOA”<sup>44</sup> and to formally trigger the JCPOA dispute resolution mechanism.

That step has no current effect on the sanctions landscape. All UN and EU sanctions that were relaxed under the JCPOA remain relaxed. Indeed, the EU3 stated that they were utilizing the mechanism “in the sincere hope of finding a way forward”<sup>55</sup> while “preserving the agreement and remaining within its framework” and the EU3 “once again express our commitment to the JCPOA and our determination to work with all participants to preserve it.”<sup>66</sup>

Instead, triggering the dispute resolution mechanism started a formal process that was provided for in the terms of the JCPOA:

- The matter has now been referred to a “Joint Commission,” comprised of the remaining JCPOA participants (Iran, China, Russia, the EU3 and the High Representative of the European Union for Foreign Affairs and Security Policy). The Joint Commission has 15 days to resolve the issue, unless that time period is extended by consensus.
- After that time period, any participant can refer the dispute to the Ministers of Foreign Affairs of the remaining parties (“Ministers”) if it considers the dispute to not be resolved. The Ministers then have 15 days to resolve the issue unless that time period is extended by consensus.
- In parallel or in lieu of Ministers’ Consideration, a party can also refer the matter to an “Advisory Board” made up of three members: one appointed by the EU3, one appointed by Iran, and one appointed independently. The Advisory Board has 15 days to provide a non-binding opinion on the compliance issue.
- The Joint Commission then has no more than 5 days to review the opinion of the Advisory Board.
- If, after this process, the EU3 still consider the issue to not have been resolved to their “satisfaction” and if the EU3 considers the “issue to constitute significant non-performance,” then the EU3 would be permitted to treat the issue as “grounds to cease performing its commitments under the JCPOA in whole or in part” and/or bring the issue to the UN Security Council (“UNSC”).<sup>27</sup>
- If the issue is brought to its attention, the UNSC is required to vote on a measure that would continue the sanctions relaxation in place today. If such a measure does not pass within 30 days, then the UNSC’s previous sanctions regimes will be re-imposed.

The net effect of the above process is that if the dispute is not resolved to the EU3’s satisfaction within the next 35 days (unless a longer process is agreed to by consensus), it would be permitted to re-impose some or all of its currently repealed sanctions as well as potentially trigger a process whereby the UNSC would do the same.

#### IV. Practical Considerations

These developments pose significant risk, primarily for non-U.S. companies, given that U.S. companies remain prohibited to conduct virtually all Iran-related activity unless a license applies.

First, the current risk of U.S. designation has now increased, not only for companies acting in the enumerated sectors (construction, mining, manufacturing, or textile), but for companies in any other sectors, given the open-ended nature of the EO 13902 designation authority. Using a similarly drafted authority, in the Venezuela context, the United States has been willing to identify a new sector and to then designate a person for operating in that sector on the same day (*e.g.*, the identification of the oil sector and the subsequent designation of Petroleos de Venezuela, S.A. for operating in that sector, on January 28, 2019). While OFAC has not yet utilized its new EO 13902 authorities, it has shown itself willing to designate commercially integrated non-U.S. companies for Iran-related activity (*e.g.*, COSCO Shipping Tanker Dalian) and there is no reason to expect they would not be willing to utilize this authority in the same way.

Second, there is now a very real risk that the entire JCPOA structure could be repealed. While the EU3 has continued to reaffirm its commitment to the deal, the United States has withdrawn from the deal and Iran is in material noncompliance. Unless the

EU3 can identify a diplomatic resolution to the crisis—including, presumably, securing Iran’s agreement to begin complying with its own obligations, which seems increasingly unlikely given the U.S.-Iran geopolitical tensions—within the context of the JCPOA’s dispute resolution mechanism, by late February 2020, the EU could elect to begin to re-impose its own nuclear-related sanctions.

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<sup>[1]</sup> *Message to the Congress on Imposing Sanctions with Respect to Additional Sectors of Iran*, The White House (Jan. 10, 2020), <https://www.whitehouse.gov/briefings-statements/message-congress-imposing-sanctions-respect-additional-sectors-iran/>.

<sup>[2]</sup> *E3 foreign ministers' statement on the JCPOA*: 14 January 2020, GOV.UK (Jan. 14, 2020), <https://www.gov.uk/government/news/e3-foreign-ministers-statement-on-the-jcpoa-14-january-2020>

<sup>[3]</sup> *E3 foreign ministers' statement on the JCPOA*: 14 January 2020, GOV.UK (Jan. 14, 2020), <https://www.gov.uk/government/news/e3-foreign-ministers-statement-on-the-jcpoa-14-january-2020>

<sup>[4]</sup> *Id.*

<sup>[5]</sup> *Id.*

<sup>[6]</sup> *Id.*

<sup>[7]</sup> *Id.*

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