

IRAN SANCTIONS: CAN THE EU GO IT ALONE?

Madalina Dumitrescu¹ and Peter Caldwell²

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It is now almost a month since President Trump announced that the United States would end its participation in the Joint Comprehensive Plan of Action (JCPOA), and begin re-imposing US nuclear-related sanctions. Though long anticipated, this policy shift has left many non-US companies previously doing business under the sanctions relief provided by the JCPOA evaluating whether they can continue their activities as before.

In the US, the JCPOA had resulted in the lifting of the nuclear sanctions originally imposed in 2006. Thus, since 2016, Iran has been permitted to sell its oil to the world (it is estimated to hold 10% of the world's oil and 18% of identified gas reserves) and Boeing to sell its aircraft to Iran. Restrictions on financial transactions and arms have remained in place along with targeted sanctions on individuals and entities. Even though the new scope created by the JCPOA was limited, many companies embraced trade with Iran. The roll back of US sanctions on the energy sector in particular will have profound consequences for the rest of the world in maintaining these newly developed trading relations.

THE VIEW FROM EUROPE

Although the EU is no longer Iran's primary trading partner (accounting for 16.3% of trade), having fallen behind China and the United Arab Emirates (19.5% and 16.8% respectively), trade remains strong and is improving. Over 37% of Iran's crude oil and condensates are exported to European refineries, and in 2017, EU exports to Iran increased by 31.5% while EU imports from Iran increased by 83.9%. Both sides have much to gain from the continuation of this relationship.

In a joint statement issued on the same day as the US withdrawal, the leaders of the UK, France and Germany (the E3) emphasised their continued commitment to the JCPOA. The E3 urged the US to ensure that the structures of the JCPOA would remain intact, and to avoid taking action which would obstruct its full implementation by all other parties to the deal.

Ten days later, the European Commission announced four initiatives to protect trade with Iran:

1. Revival of the Blocking Statute

The Commission has launched the formal process to activate the Blocking Statute by updating the list of US sanctions on Iran falling within its scope. The Blocking Statute "forbids EU persons from complying with US extraterritorial sanctions, allows companies to recover damages arising from such sanctions from the person causing them, and nullifies the effect in the EU of any foreign court judgements based on them." The aim is to have the measure in force before 6 August 2018, when the first batch of US sanctions take effect.

¹ Madalina Dumitrescu is a litigation and arbitration partner at Constantine Cannon LLP in London.

² Peter Caldwell is a top-ranked barrister at Doughty Street Chambers.

- 2. Allowing the European Investment Bank (EIB) to guarantee investment activities in Iran**
This measure (which requires the approvals of the European Parliament and Council) will allow the EIB to support EU investment in Iran and could be useful, in particular, for small and medium-sized companies.
- 3. Sectoral cooperation**
This will include the energy sector and will focus on the position of small and medium-sized companies. Financial assistance through the Development Cooperation or Partnership Instruments will also be mobilised.
- 4. Fund transfers to the Central Bank of Iran from EU member states**
This proposal seeks to side-step the influence of the US on the international banking sector by using the central banks of member states to transfer funds to the Central Bank of Iran (CBI), therefore, allowing the Iranian authorities to receive their oil-related revenues should US sanctions target EU entities active in oil transactions with Iran.

ASSESSMENT

While these measures may limit the exposure of companies to penalties within the EU, they do not address the impact that may be felt by businesses, and especially banks, from secondary sanctions that may be imposed unilaterally by the US.

Secondary sanctions have been highly effective at deterring trade and capital exchanges with states such as North Korea, by isolating non-US businesses and depriving them access to US home markets. While a blocking statute may offer an EU company protection from the enforcement of penalties locally, it may not ameliorate the effect of loss of trade with US counterparts. Larger companies may need to seek waivers on a case-by-case basis.

Likewise, although direct payments from central banks to the CBI could assist smaller European refiners that do not have a large international presence or much exposure to the US, it is questionable how effective the EU initiative would be for companies and traders with a more global footprint. Looking ahead, if the former US sanctions regime were to be reinstated it is hardly likely that the Office of Foreign Assets Control (OFAC) would take the view that routing funds via the central banks of EU member states avoided liability for a refiner paying for Iranian oil. On the other hand, to imply that the central bank of a friendly state was engaged in money laundering may not be a step that OFAC would be prepared to take.

Certainly, the EU response represents a firm statement of intent and may give the US reason to pause. In 1996, when a Blocking Statute was developed in response to President Clinton's sanctions on Iran, Libya and Cuba, the initiative was supported by a strong diplomatic initiative which avoided a full-scale trade dispute. It is to be hoped that the law may be used once again as a tool of diplomacy.

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