

Top 10 Things to Know About the Future of Sanctions on Iran

As deadline for nuclear agreement approaches, any easing of sanctions will be gradual, and global businesses will continue to face compliance and enforcement risks.

This Client Alert outlines the approaches the US Government and the European Union could take to roll back sanctions on Iran if the P5+1 countries (the US, UK, France, Russia, China and Germany) and Iran reach a final nuclear non-proliferation agreement. It is difficult to predict whether the parties will reach a final accord, what specific paths the US and the EU will take (and when) to ease sanctions, and what additional factors — including actions by the US Congress — could affect any final agreement or efforts to lift sanctions.

Notwithstanding continuing uncertainty, a final agreement between the parties appears increasingly likely. Should an agreement be reached, the EU will probably act quickly to lift its main sanctions against Iran, but the US Government will take a more incremental approach to easing US sanctions. Subject to some degree of scrutiny by the US Congress, we expect the Obama Administration to take early steps to suspend “secondary sanctions” relating to other countries’ imports of Iranian oil and other business activities between foreign entities and Iran. We expect the Administration to move more deliberately, however, with respect to any loosening of the longstanding “primary sanctions,” which prohibit most transactions and dealings between US-regulated persons and Iran.

- 1. Final Agreement on June 30 (or thereabouts) seems likely.** Despite continued posturing and competing pressures on Iranian and P5+1 negotiators, the parties likely will reach a final agreement to pave the way for suspending, and in some cases terminating, EU and US sanctions. There is no guarantee, however, that the parties will meet their self-imposed deadline of June 30. The parties have in the past extended their deadlines to reach a framework agreement, and Iran’s leadership has recently [signaled an openness](#) to doing so again for a final agreement.
- 2. Only some sanctions will be lifted upon execution of agreement.** Despite recent [statements](#) from senior leadership in Iran that all sanctions must be “totally lifted on the first day of the implementation of the deal,” there is virtually no chance that all sanctions (especially US sanctions) will be lifted immediately. As a US State Department [media note](#) previews, the US is prepared to ease sanctions if Iran “verifiably abides by its commitments” and “the IAEA has verified that Iran has taken all of its key nuclear-related steps.” Further, the State Department has announced that “U.S. sanctions on Iran for terrorism, human rights abuses, and ballistic missiles will remain in place under the deal.”

Similarly, the April 2 [Joint Statement by the EU High Representative and Iranian Foreign Minister](#) noted that “[t]he EU will terminate the implementation of all nuclear-related economic and financial sanctions and the US 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.”

These statements suggest that the US and EU agree on a targeted easing of sanctions conditioned on IAEA verification. The principal differences between the EU and US approach stem from the fact that most EU sanctions are tied to the nuclear issue, while US sanctions are far more comprehensive and complex. Further, the parties are reportedly continuing to debate the mechanics of the IAEA inspection regime and the sequencing of sanctions easing and verification.

- 3. The EU will likely suspend its main nuclear-related sanctions promptly.** Following established practice, we expect (assuming consensus among EU Member States) that the EU Council, shortly after agreement on the text of the Joint Comprehensive Plan of Action (JCPOA), will adopt a Council Decision and then a Council Regulation to suspend most EU sanctions. Given the more targeted nature of the EU sanctions and the energy needs of certain EU Member States, there is a stronger appetite within the EU than in the US for relaxing sanctions on Iran as soon as possible.

Details of the exact timing and extent of the suspension of the EU sanctions remain to be settled. The EU has implemented two sanctions regimes against Iran: one in response to nuclear proliferation concerns and the other tied to human rights abuses. We expect that the bulk of the EU’s nuclear proliferation sanctions will be suspended, but the human rights sanctions (which impose an asset freeze on over 80 targeted persons) likely will remain in place. In addition, the EU will likely retain restrictions on transfers of nuclear-sensitive technologies to Iran under an anticipated UN Security Council resolution.

- 4. US Congress could slow pace of sanctions easing, but President retains broad discretion to act or refrain from acting.** The US Congress is considering legislation that would authorize congressional review of any nuclear agreement. If enacted in its present form, [the legislation](#) would temporarily restrict the President from easing “statutory sanctions” during the period of congressional review. But the legislation would not add new substantive constraints on the President’s ability to modify or lift sanctions under existing legal authorities.

Even under so-called “statutory sanctions,” the President retains broad discretion to suspend sanctions, authorize certain activities that would otherwise be prohibited, or to refrain from imposing secondary sanctions on particular activities between non-US entities and Iran. Indeed, the President has, since November 2014, suspended certain statutory sanctions during the ongoing negotiations with Iran.

- 5. Initial US easing will focus on “secondary” sanctions.** As noted in the April 2 [Joint Statement](#) by the EU and Iran, the first US sanctions slated for roll back are its nuclear-related secondary sanctions. The term “secondary sanctions” captures a broad range of US measures (and threatened measures) against non-US persons and entities that are not subject to US “primary sanctions.”

Secondary sanctions are designed to deter non-US persons and firms from engaging in various activities involving certain sectors of the Iranian economy, including energy, automotive, financial, mining, shipbuilding and shipping. Upon reaching a nuclear accord, and subject to the IAEA verification described above, the US will most likely lift or suspend secondary sanctions that currently target the following activities by non-US persons:

- The purchase of Iranian petroleum, petroleum products, and petrochemicals
- Transactions in support of Iran’s energy, shipping, shipbuilding, and automotive sectors

- The supply or sale to Iran of gold and other precious metals
- Banking and financial transactions in connection with the foregoing

- 6. US “primary” sanctions will likely remain in place for some time.** “Primary sanctions” are those that apply directly to the activities of US persons (and in the case of the Iran sanctions, entities outside the US that are “owned or controlled” by a US person), to non-US persons who cause US persons to violate the sanctions maintained by the Treasury Department’s Office of Foreign Assets Control (OFAC), and to transfers of US-regulated goods and technology to Iran. These sanctions measures, which date back decades, have been imposed mainly for anti-terrorism reasons, and they are aggressively enforced, both criminally and administratively.

While the President has broad discretion to suspend or even remove most if not all primary sanctions, this category is less likely to be relaxed, at least in the short term. The bulk of these sanctions have not been linked to the nuclear proliferation issue and the more recent secondary sanctions. Moreover, the Obama Administration will likely continue to face domestic political pressure to maintain these sanctions. But even within the category of primary sanctions, we see grounds for gradations and some possible candidates for eventual easing through changes in OFAC licensing policy and regulations.

- 7. Sanctions easing may initially advantage businesses in EU Member States.** If, as expected, most EU trade sanctions are suspended shortly after the JCPOA text is agreed, and the US maintains the core of its primary sanctions, EU-based companies will be able to pursue business opportunities in Iran that remain foreclosed to US companies and persons. That said, EU and other non-US entities, including foreign subsidiaries of US companies as well as financial institutions and other businesses with a presence in the US, will nevertheless need to be vigilant to ensure compliance with US sanctions that will continue to apply to them.

- 8. Previous sanctions rollbacks could serve as precedent for easing of Iran sanctions.** The US sanctions on Iran are a complex mix of statutory and regulatory restrictions that have been imposed over decades. These varied and complex layers will add to the challenge of easing sanctions.

Past US Presidents have taken different approaches to rolling back earlier sanctions programs. In the case of US sanctions on Vietnam, the George H. W. Bush Administration took initial steps in 1992 to allow exploratory business discussions and “executory” contracts with parties in Vietnam, but that embargo remained in place until President Clinton lifted remaining sanctions in 1994.

A decade later, the George W. Bush Administration terminated longstanding sanctions on Libya more rapidly by revoking the national emergency and corresponding sanctions on Libya [in September 2004](#). The US imposed new sanctions against Libya in February 2011, and OFAC gradually suspended those sanctions in the fall of 2011 by issuing [broad general licenses](#).

[In July 2012](#), the Obama Administration eased limited US sanctions on Burma/Myanmar through OFAC general licenses, which could be revoked quickly because the underlying regulations remain in place.

- 9. Parties are continuing to address methods for re-imposing sanctions after an agreement takes effect.** The proposed JCPOA framework agreement contemplates the “snap-back” or re-imposition of sanctions if Iran fails to comply with its obligations. Significant uncertainty exists as to how this would work in practice. Furthermore, what Iranian conduct would constitute a breach triggering the re-imposition of sanctions remains unclear — a point sure to generate disagreement among the parties.

Unilateral US sanctions would be easier to re-impose as a practical matter, but the political costs of doing so could be high both domestically and internationally.

10. Compliance and enforcement risks will continue. The risks of non-compliance with sanctions laws remain, even while the rules are in transition. Indeed, the risks of violations and aggressive government enforcement can actually increase. Business personnel can misconstrue the timing or scope of sanctions easing measures, or succumb to pressure when their overseas competitors are allowed to pursue business activities that remain prohibited for US persons. In addition, the already strong pressures to enforce aggressively US sanctions could be heightened as the Obama Administration seeks to demonstrate a tough stance on Iran as a trade-off for rolling back certain sanctions measures.

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