Pressure Mounts on Iran as U.S. Expands Sanctions and EU States Trigger Iran Nuclear Deal Snapback Mechanism

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On 14 January 2020, France, Germany and the United Kingdom (the "E3") invoked the dispute resolution mechanism (the "DRM") of the Joint Comprehensive Plan of Action (the "JCPOA", also known as the Iran "denuclearisation" deal). This decision follows eight months of Iran gradually escalating its breaches of the JCPOA, culminating in Iran declaring on 3 January 2020 that it would no longer abide by any of the material restrictions in the agreement and further U.S. actions to increase its sanctions against Iran. This decision represents the first step by the E3 towards potentially dissolving the JCPOA, which could lead to the European Union and the UN Security Council reimposing their wide-ranging sanctions against Iran within 35 days. We review the DRM process and the recent U.S. sanctions against Iran.

DRM Process. The DRM consists of a multistage process, with the initial step requiring the alleged breach of the JCPOA to be referred to a "Joint Commission", consisting of the JCPOA participants (including the E3, China, Russia, the High Representative of the European Union for Foreign Affairs and Security Policy and Iran, but not the United States following its withdrawal from the JCPOA), which then has 15 days to resolve the issue, unless this period is extended by consensus. If either Iran or the E3 are dissatisfied with the Joint Commission's solution, they can refer the issue to the Ministers of Foreign Affairs of the participant countries to consider for a further 15 days (again, unless extended). Instead or in parallel to this second stage of discussion (or after it is completed), the parties involved in the dispute can refer the matter to an "Advisory Board", which effectively acts as a form of arbitration panel to consider the dispute, with representatives appointed by each of the disputing parties and a further independent member. The Advisory Board has 15 days to produce a non-binding opinion for the Joint Commission on whether a breach has occurred, with the Joint Commission then having a further five days to attempt to resolve the matter.

After this somewhat complex process, the disputing parties are permitted to cease performing their commitments under the JCPOA. In practice, this would allow the E3 to reimpose its currently suspended sanctions against Iran within 35 days of invoking the DRM. This process may also lead to the UN Security Council being formally notified of the breach, which triggers a process that could lead to the UN Security Council reimposing nuclear proliferation-related sanctions against Iran.

While the invocation of the DRM is a significant legal step, in practice it appears to be largely symbolic in this case, given that Iran has now been in breach of its JCPOA obligations for many months. Based on press reports, it may also be a step designed to force Iran back into negotiations with the E3 and other JCPOA participants, while allowing the E3 to save face in a situation where they were the only party to the JCPOA attempting to uphold their obligations under the agreement. Indeed, the E3's statement announcing the use of the DRM emphasised their commitment to preserve the agreement. Even if this process were to result in the EU reintroducing its full sanctions against Iran, the ramifications are likely to be relatively limited; many international companies stopped trading with Iran after the United States pulled out of the JCPOA and reintroduced its full gamut of secondary sanctions from November 2018.

U.S. Sanctions. In this regard, U.S. secondary sanctions against Iran have recently been further escalated following Iran's missile strikes on military bases in Iraq used by U.S. troops. On 10 January 2020, President Trump issued Executive Order 13902, "Imposing Sanctions with Respect to Additional Sectors of Iran," authorising secondary sanctions against persons operating in or transacting with the construction, mining, manufacturing or textiles sectors of the Iranian economy, with a wind-down period for such transactions ending on 9 April 2020. The Executive Order also authorises correspondent and payable-through account sanctions on foreign financial institutions that knowingly conduct or facilitate significant financial transactions for such persons.

Simultaneously, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") added 17 Iranian metals producers and mining companies, a Chinese-based trading company and a shipping vessel to the U.S. specially designated nationals ("SDN") list. These actions were taken under Executive Order 13871, issued on 8 May 2019, which authorises sanctions targeting Iran's iron, steel, aluminium and copper sectors.

Finally, OFAC also designated eight senior Iranian officials for being persons either appointed by, or acting on behalf of, Iran's Supreme Leader, and advancing the "regime's destabilizing objectives." These officials were designated pursuant to Executive Order 13876, issued on 24 June 2019, which imposes sanctions on Iran's Supreme Leader and authorises sanctions against other top Iranian government officials.

The sanctions are designed to isolate further Iran from the global economy. In sanctioning the Iranian metals and mining companies, OFAC noted it was targeting companies that generate millions of dollars for the Iranian economy.

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Please do not hesitate to contact us with any questions.

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