

First EU Steps to Prepare for Sanctions Relief under Iran Deal

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On July 31, 2015, the European Union (EU) adopted the first measures to prepare for the implementing of the Joint Comprehensive Plan of Action (JCPOA) with Iran by allowing EU Member States to authorise certain activities and transfers directly related to specific Iranian nuclear activities, subject to strict conditions, including prior notification to the United Nations (UN) Sanctions Committee.

JCPOA Timelines

On July 14, 2015, the P5+1 (China, France, Russia, the United Kingdom, and the United States (US) plus Germany), the EU and Iran announced their agreement on the JCPOA, which was endorsed on July 20, 2015 by the UN Security Council (UNSC) in Resolution 2231 (2015).¹ For more information on the JCPOA and Resolution 2231, click [here](#) for our client alert of July 21, 2015. Importantly, the JCPOA provides for an implementation plan (see attached flowchart), requiring the JCPOA participants to start making the necessary legal and administrative preparations for the implementation of the JCPOA by “Adoption Day” (occurring around October 18, 2015). The adoption of Council Regulation (EU) 2015/1327² and Council Decision (CFSP) 2015/1336³ on July 31, 2015 marks the first step in the EU’s JCPOA implementation process. Both measures took effect on August 2, 2015. They are intended to allow certain activities related to the Fordow and Arak facilities, the export by Iran of enriched uranium in excess of 300 kilograms in return for natural uranium, and – subject to prior UN approval – certain other nuclear-related activities.

¹ See [UNSC Resolution 2231](#).

² See [Council Regulation \(EU\) 2015/1327](#) of 31 July 2015 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran. For the latest consolidated version of Regulation 267/2012 (as subsequently amended), click [here](#).

³ See [Council Decision \(CFSP\) 2015/1336](#) of 31 July 2015 amending Decision 2010/413/CFSP concerning restrictive measures against Iran. For the latest consolidated version of Regulation 267/2012 (as subsequently amended), click [here](#).

Activities Opened for Possible Authorisation

Council Regulation (EU) 2015/1327 and Council Decision (CFSP) 2015/1336 give effect to certain “Exemptions” to longstanding UN resolutions in accordance with UNSC resolution 2231. The exemptions notably concern Resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), and 1929 (2010).⁴

Relevant UN resolution provisions

Concretely, the UN Security Council decided in Resolution 2231 (in paragraph 21) that the abovementioned resolutions

shall not apply to the supply, sale or transfer of items, materials, equipment, goods and technology, and the provision of any related technical assistance, training, financial assistance, investment, brokering or other services by JCPOA participant States or Member States acting in coordination with them, that is directly related to: (a) the modification of two cascades at the Fordow facility for stable isotope production; (b) the export of Iran’s enriched uranium in excess of 300 kilograms in return for natural uranium; and (c) the modernization of the Arak reactor based on the agreed conceptual design and, subsequently, on the agreed final design of such reactor.

Resolution 2231 (in paragraph 22) further requires that countries engaging in these projects

shall ensure that: (a) all such activities are undertaken strictly in accordance with the JCPOA; (b) they notify the Committee established pursuant to resolution 1737 (2006)⁵ and; when constituted, the Joint Commission ten days in advance of such activities; (c) the requirements, as appropriate, of the Guidelines as set out in the relevant INFCIRC referenced in resolution 1737 (2006), as updated, have been met... [and] they also notify the IAEA within ten days of the supply, sale or transfers[.]

In addition, Resolution 2231 (in paragraph 23) allows transfers and activities, as approved on a case-by-case basis by the UN Sanctions Committee, that are:

- (a) directly related to implementation of the nuclear-related actions specified in paragraphs 15.1-15.11 of Annex V to the JCPOA;*
- (b) required for the implementation of the JCPOA; or,*
- (c) determined by the Committee to be consistent with the objectives of this resolution[.]*

EU Implementation

Regulation 2015/1327

The above UN exemptions have been implemented by the EU through the introduction of new Articles 43b and 43c into Council Regulation 267/2012. Article 43b(1) reflects paragraph 21 by allowing EU Member States to grant relevant authorisations, while Article 43b(2)-(3) contains the notification requirements including not only the obligation set out in paragraph 22 above to notify the UN Sanctions Committee and the IAEA, but also the obligation to notify the other EU Member States and the European Commission ten days prior to granting the authorisation. Article 43c reflects the final exemption set out in paragraph 23 of Resolution 2231, and requires the EU Member States to seek approval from the UN Sanctions Committee before granting authorisations, and to notify the other EU Member States and the Commission.

Decision 2015/1336

In parallel, a new Article 26b has now been added to Council Decision 2010/413/CFSP to implement paragraphs 21-24 of the resolution. This new provision in addition also explicitly obliges the EU Member States to ensure that “*they have obtained and are in a position to exercise effectively a right to verify the end-use and end-use location of any supplied item*”.⁶

⁴ For copies of these resolutions, see the [UN Security Council database](#).

⁵ *i.e.*, the so-called “Sanctions Committee” of the UN.

⁶ See new Article 26b(2)(d).

Further Amendments to Asset Freeze

In parallel, on July 31, 2015, the Council also adopted Regulation (EU) 2015/1328⁷ amending the exemption for pre-existing contracts contained in Article 28a of Regulation 267/2012 in light of the Iran deal. Article 28a had provided that the EU asset freeze does not apply to transactions involving listed parties⁸ concluded until June 30, 2015, that are necessary for the execution of obligations resulting from certain oil/petroleum supply contracts concluded before January 23, 2012. This exemption has been extended to such transactions concluded until January 14, 2016, which is the new end-date for the temporary suspension of sanctions. Council Decision (CFSP) 2015/1337⁹ amends Decision 2010/413/CFSP along the same lines.

Conclusion and Next Steps

While these EU measures open the door for allowing certain previously prohibited activities, it is important to note the prior authorisation requirement. Also, any of the other currently restricted or prohibited activities involving Iran or Iran-related parties remain in place until they are formally lifted by the EU. The precise timing of the lifting of sanctions on “Implementation Day” remains unclear. Such date depends on verification by the IAEA that Iran has implemented certain obligations under the JCPOA. For the time being, the EU has decided to extend the temporary relief of certain sanctions against Iran until January 14, 2016.¹⁰

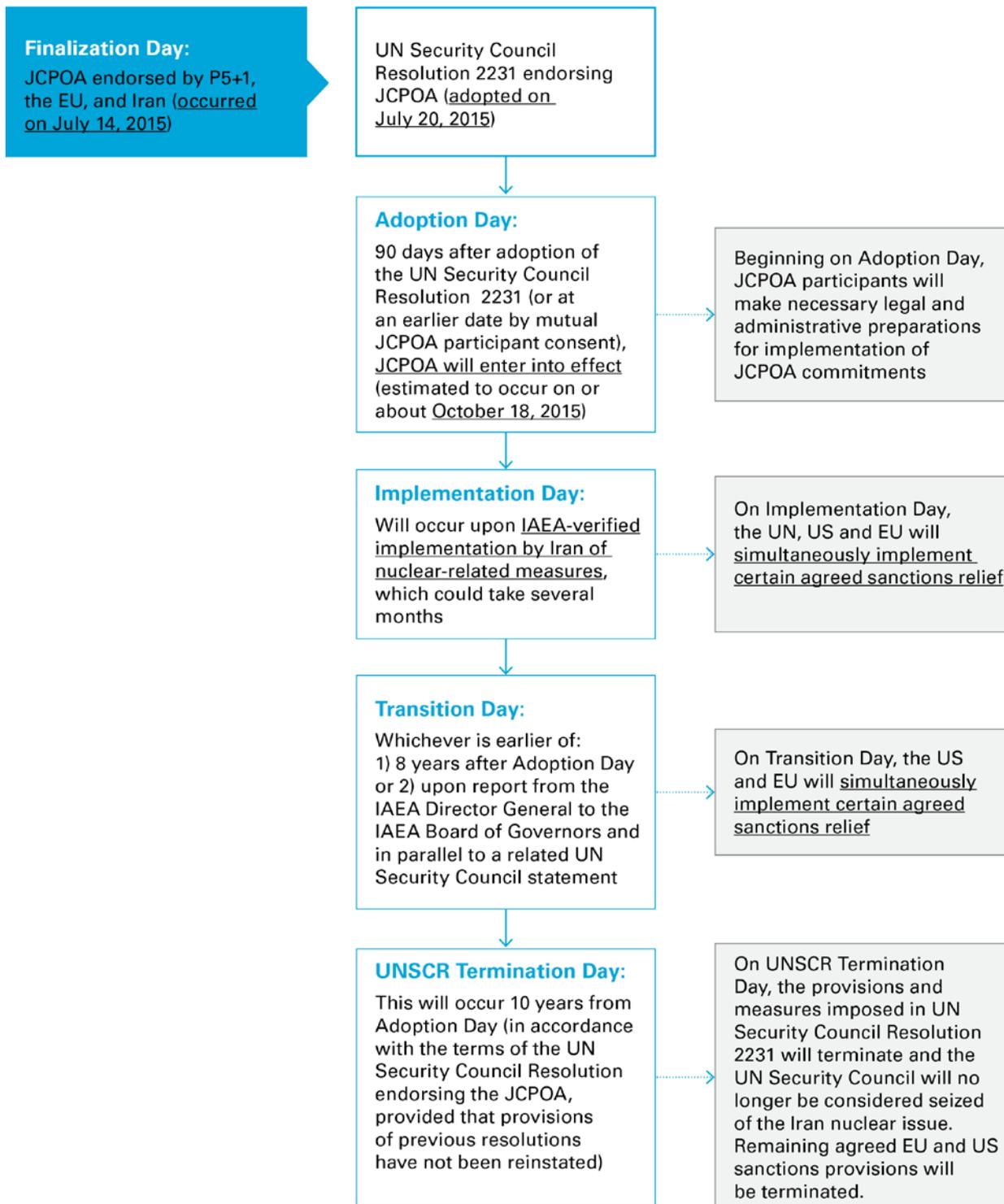
⁷ See [Council Regulation \(EU\) 2015/1328](#) of 31 July 2015 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran.

⁸ Listed in Annex IX to Regulation 267/2012.

⁹ See [Council Decision \(CFSP\) 2015/1337](#) of 31 July 2015 amending Decision 2010/413/CFSP concerning restrictive measures against Iran.

¹⁰ See our [client alert](#) of July 14, 2016 for more information on the temporary suspension of the sanctions.

Flowchart



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