

Insights: Alerts

Sanctions-Related Developments

May 18, 2020

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Developments in Europe's Response to Post-JCPOA Iran Sanctions and the U.S. Administration's Warning to INSTEX

Following the current U.S. administration's withdrawal from the Iran nuclear deal ("JCPOA") in 2018, which sought to scale back Iran's nuclear program and downgrade its uranium reserves in exchange for sanctions relief, a handful of European countries conceived a complex barter-type system called the EU-Iran Instrument in Support of Trade Exchanges ("INSTEX"), aimed at enabling trade with Iran and protecting participating companies from U.S. sanctions. On March 31, 2020, German's foreign ministry, speaking on behalf of Britain, France, and Germany, stated in a [press release](#) that "INSTEX has successfully concluded its first transaction, facilitating the export of medical goods from Europe to Iran." The German foreign ministry added that "INSTEX aims to provide a suitable, long-term solution for legitimate trade between Europe and Iran as part of the continued efforts to preserve the JCPOA." With the first transaction complete, "INSTEX and its Iranian counterpart STFI will work on more transactions and enhancing the mechanism."

According to statements by U.S. Department of the Treasury Secretary Steven Mnuchin made during a [January 2020 press briefing](#) prior to INSTEX's first transaction, the U.S. has "warned INSTEX and others that they will most likely be subject to secondary sanctions, depending on how" INSTEX is used. Perhaps the U.S. will take a more reserved approach to INSTEX since the first transaction under that system pertained to humanitarian assistance. However, if INSTEX is used more broadly, then one could reasonably expect a new wave of U.S. secondary sanctions in response to sweeping use of INSTEX with other sectors of Iran's economy. It's also unclear whether Iran sees INSTEX as a reasonable solution, particularly since Iran has already scaled back its JCPOA commitments and taken measures contrary to the JCPOA, while also indicating that the first steps in utilization of INSTEX were positive but insufficient, according to [reported statements](#) by Iran's President Hassan Rouhani.

Sanctions-Related Executive Orders and Regulatory Developments

Increased Economic Sanctions on Iran

Days following the missile strikes by the Iranian regime at Iraqi air bases housing U.S. troops in early January 2020, OFAC, on January 10, took action by [designating on the Specially Designated Nationals and Blocked Persons List](#) ("SDN List") various senior Iranian officials "for their involvement and complicity in" the ballistic missile strikes. Additionally, OFAC designated Iran's largest steel, aluminum, copper and iron manufacturers, and imposed sanctions on new sectors of the Iranian economy, consisting of the construction, mining,

manufacturing, and textiles sectors. OFAC also added to the SDN List Chinese and Seychelles-based entities as well as a vessel involved in the purchase, sale, and transfer of Iranian metal products, as well as in the provision of critical metals production components to Iranian metal producers.

Concurrently with OFAC's designations, the President signed [Executive Order No. 13902 \("EO 13902"\)](#) blocking all property and interests in property that are in the U.S., or in the possession or control of U.S. persons, of the designated individuals. EO 13902, among other things, authorizes the imposition of secondary sanctions against non-U.S. persons (1) conducting transactions involving Iran's construction, mining, manufacturing, and textiles sectors, or any other to-be-determined sector of the Iranian economy; or (2) knowingly engaged in a significant transaction for the sale, supply, or transfer to or from Iran of significant goods or services used in connection with any of the new sanctioned sectors of the Iranian economy. (This follows the May 2019 Executive Order No. 13871 that authorized secondary sanctions on Iran's iron, steel, aluminum and copper sectors.) Also under EO 13902, the Treasury Secretary is authorized to prohibit the opening, and prohibit or impose strict conditions on the opening or maintaining correspondent or payable-through accounts in the U.S. for foreign financial institutions that knowingly engage in or facilitate any "significant transaction" (1) for the sale, supply, or transfer to or from Iran of significant goods or services used in connection with any of the new sanctioned sectors of the Iranian economy, or (2) for or on behalf of any person blocked pursuant to EO 13902 (see OFAC's FAQ 671 for factors to determine whether a transaction is "significant"). OFAC issued [FAQ 816](#) providing for a 90-day wind-down period for those persons engaging in existing transactions that would be exposed to sanctions pursuant to EO 13902. OFAC advises that persons "entering into a new business that would be sanctionable under [EO 13902] on or after January 10, 2020 will not be considered wind-down activity and could be sanctioned even during the wind-down period."

For non-U.S. persons, the imposition of secondary sanctions pursuant to EO 13902, and any other existing executive order, can lead to possible limitations on access to, or even exclusion from, the U.S. financial system and marketplace. The CIA World Factbook on Iran indicates that sectors active in the Iranian economy include, among others, the petroleum, petrochemicals, textiles, cement and other construction materials, and metal fabrication. This wave of new secondary sanctions, including the existing secondary sanctions on Iran's energy sector as well as those covered under EO 13781, means that there are now far fewer areas of the Iranian economy that are not subject to secondary sanctions.

Throughout the first quarter of 2020 and into April, OFAC designated various other Iranian individuals and entities transacting with Iranian sectors. For example, OFAC sanctioned four international petrochemical and petroleum companies that had transferred the equivalent of millions of dollars' worth of exports from the National Iranian Oil Company, which helps finance Iran's Islamic Revolutionary Guard Corps-Qods Force ("IRGC-QF") and its terrorist proxies. OFAC also sanctioned five Iranian regime officials who used their power to manipulate elections to favor the regime's malign agenda, and 20 Iran and Iraq-based front companies, senior officials and business associates that provide support to, or act for, or on behalf of the IRGC-QF. These actions further underscore the U.S.'s ["maximum pressure campaign on Iran."](#)

Increased Economic Sanctions on Venezuela and Nicaragua

On January 13, 2020, OFAC [designated](#) seven Venezuelan government officials ["who, at the bidding of \[former President Nicolás\] Maduro, attempted to block the democratic process in Venezuela"](#) by attempting to seize control of the National Assembly in an illegitimate effort to block interim President Juan Guadió and others from participating in a constitutionally required election of the National Assembly leadership. As of January 22, 2020,

OFAC has imposed sanctions on at least 144 Venezuelan individuals (or those connected to them), including on Venezuela's state oil company (Petróleos de Venezuela, S.A.), the Venezuelan government, and central bank.

On February 18, 2020, OFAC [designated](#) Rosneft Trading S.A. ("Rosneft") for operating in the oil sector of the Venezuelan economy. Also designated was Rosneft's president and chairman of the board of directors. Rosneft (a Swiss entity) is Russian-controlled, and a subsidiary of the Russian-state-controlled Rosneft Oil Company. On March 12, 2020, OFAC [designated](#) TNK Trading International S.A. ("TTI") for also operating in the oil sector of the Venezuelan economy. TTI (a Swiss entity) is a subsidiary of Rosneft.

On March 5, 2020, OFAC [designated](#) the Nicaraguan Nation Policy ("NNP"), as well as three senior NNP commissioners, for NNP's role in serious human rights abuses in Nicaragua.

Increased Economic Sanctions on North Korea, Syria, and Ukraine/Russia-related Sanctions

On January 14, 2020, OFAC [designated](#) North Korea's Namgang Trading Corporation ("NTC") for engaging in, facilitating, or responsibility in the exportation of workers from North Korea, and also for its role in generating revenue for the Government of North Korea or the Workers' Party of Korea. OFAC [indicates that](#), among other things, NTC "handles North Korean personnel's visas, passports, departures and overseas employment, and "then[s] repatriate funds back to North Korea, some of which are routed directly back to the Government of North Korea." Also designated was China-based Beijing Sukbakso for having materially assisted, sponsored, or provided financial, material or technological support for, or goods or services to or in support of, NTC and Namgang Construction (which was designated in 2016).

On January 29, 2020, OFAC [designated](#) various Crimean officials of the so-called Republic of Crimea and one Moscow-based private railway company (and its CEO) operating in the Crimea region of Ukraine as [continued pressure against Russia](#) for its interference in Crimean politics and destabilizing activity in Ukraine. The designation renders the property or interests in property of the designated individuals and entities that are in the U.S. or in the possession or control of U.S. persons blocked.

On March 17, 2020, OFAC [designated](#) the Minister of Defense Lieutenant General Ali Abdullah Ayoub for his actions in [preventing a ceasefire in Northern Syria](#), which resulted in close to a million people being displaced and in need of humanitarian aid in the middle of the cold winter. The designation renders Minister Ayoub's property or interests in property that are in the U.S. or in the possession or control of U.S. persons blocked.

OFAC Revised Guidance Regarding Its Reporting, Procedures and Penalties Regulations ("RPPR")

In June 2019, OFAC issued an amendment to its RPPR to add "new requirements for parties filing reports on blocked property, unblocked property, or rejected transactions." Prior to the June 2019 amendment, the RPPR required, among other things, all U.S. persons and persons subject to U.S. jurisdiction to file a report with OFAC with respect to property blocked pursuant to OFAC sanctions. The amendment required, among other things, a reporting entity/individual to provide additional information in its reporting of blocked property, as well as extending the universe of persons required to report rejected transactions to include non-financial institutions. The amendment also presented a hanging question: whether the reporting requirement includes the requirement to report transaction inquiries regardless of whether the inquiry was formally rejected or not (i.e., such as where the company simply remains silent after receiving a purchase inquiry that is rejected).

On February 20, 2020, OFAC published [two FAQs \(Nos. 819 and 820\)](#) that relate to its 2019 amendment to the RPPR and, presumably, seeks to clarify the hanging question. In its two FAQs, OFAC re-establishes the expectation that "all U.S. persons and persons otherwise subject to U.S. jurisdiction, including parties that are not U.S. financial institutions, [will] comply fully with all requirements of [the] rule, including the expanded requirement in Section 501.604 of the RPPR to provide reports to OFAC regarding rejected transactions within 10 business days of the rejected transactions." OFAC also clarified that in reporting rejected transactions, filers are not expected to seek further information from the counterparty solely to provide information required to be reported under the amended RPPR. At a minimum, filers are still required to provide information that is applicable in all rejected scenarios: the identity of the filer; the date of the rejected transaction; the authority under which the transaction was rejected; and all pertinent documentation required with the transaction.

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