Special purpose vehicle for trade with Iran

Following the May 2018 announcement of the United States' withdrawal from the 2015 Iran nuclear deal and of the re-imposition of US sanctions on Iran, the EU is continuing to endorse implementation of the agreement, providing Iran fulfils its nuclear-related obligations. The EU is also committed to ensuring that EU-Iran trade and economic relations continue to benefit from the positive impact of lifting the sanctions. The EU has already introduced measures to alleviate the effects of US sanctions on European firms, and has announced the creation of a new mechanism, a special purpose vehicle (SPV), to facilitate financial transactions with Iran.

Background

In July 2015, Iran and the E3/EU+3 (France, Germany and the UK / the EU plus China, Russia and the USA) signed the Joint Comprehensive Plan of Action (JCPOA). The agreement, which was implemented in January 2016, aims to 'ensure the exclusively peaceful nature of Iran's nuclear programme' and provides for the lifting of all UN, multilateral and national nuclear-related sanctions against Iran. However, non-nuclear related US primary sanctions against Iran, which prohibit US persons and companies from trading with and investing in Iran, were essentially never lifted under the JCPOA. Moreover, on 8 May 2018, US President Donald Trump announced that the USA was pulling out of the Iran nuclear agreement, arguing that it was a 'horrible, one-sided deal'. He also declared that US sanctions on Iran that had been lifted under the JCPOA would be re-instated. These secondary, or extra-territorial, sanctions 'target the commerce originating in other countries that engage in trade with and investment in Iran'.

The first batch of US sanctions, relating, for instance, to Iran's trade in gold and other precious metals, as well as its automotive sector, took effect on 7 August 2018; and the second batch, targeting, for instance, Iranian petroleum-related transactions and Iran's energy sector, came into effect on 5 November 2018. Among other consequences, under the secondary sanctions non-US firms with any US exposure doing business in Iran in violation of the sanctions face major fines and/or criminal charges in the USA, or even exclusion from the US market. Moreover, foreign companies that deal with Iran could be cut off from US banking and financial systems. The US government has granted a small number of exemptions. Thus, on 2 November 2018, the US Secretary of State announced that eight countries, identifying them on 5 November 2018 as China, India, Italy, Greece, Japan, South Korea, Taiwan and Turkey, would be allowed to continue importing Iranian oil for the time being.

EU measures to assist EU operators and to uphold the commitment to the JCPOA

After the US declared that it would withdraw from the JCPOA and re-impose sanctions on Iran, the Commission announced a set of measures on 18 May 2018 to protect the interests of European economic operators doing business in Iran, and to ensure the continued implementation of the Iran deal. Following up on its announcements, the European Commission proposed updates to the Blocking Statute and the European Investment Bank's (EIB) External Lending Mandate. The updates came into force on 7 August 2018.

Introduced in 1996, the Blocking Statute was designed to counter the unlawful effects of sanctions which the USA imposed outside its borders ('extra-territorial sanctions') in relation to Cuba, Iran and Libya. The recent update extends its scope to include the secondary sanctions re-imposed by the USA on Iran. The Blocking Statute allows EU economic operators to recover damages linked to the application of US extra-territorial sanctions, nullifies the effect in the EU of any foreign decision based on these sanctions, and prohibits EU persons from complying with the US extra-territorial sanctions, unless there is explicit authorisation from the Commission to do so.

As regards the European Investment Bank (EIB), the update has extended its lending mandate to include finance activities in Iran, but it is up to the EIB's governing bodies to determine whether to pursue such activities.

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Special purpose vehicle (SPV)

In the joint statement issued on the occasion of the 24 September 2018 ministerial meeting of the remaining parties to the JCPOA, 'the participants welcomed practical proposals to maintain and develop payment channels, notably the initiative to establish a special purpose vehicle, to facilitate payments related to Iran's exports (including oil) and imports'. As the EU High Representative for Foreign and Security Policy explained, this would mean in practical terms that EU Member States would create a legal entity to facilitate financial transactions with Iran, to allow European companies to continue trade with this country. The mechanism could also be made available to other global partners. The High Representative also announced that EU experts would conduct technical discussions to set out the operational details. Following the statement, the US Secretary of State expressed disappointment concerning the EU's decision to create a mechanism for financial transactions with Iran.

According to media sources, the SPV would be designed to handle transactions between companies and their Iranian trade partners without being transparent to US authorities, and thus not be subject to sanctions. The vehicle would operate as a barter system allowing Iran to supply, for instance, oil and, in return, to purchase the goods or technology it needs, using a credit account. To carry out payment processing between trade partners, so as to balance out different amounts and varying payment periods, the mechanism may require a banking licence. Moreover, the EU reportedly plans to ensure that the SPV would be able to provide export loans to facilitate significant economic projects.

The new financial instrument could also facilitate humanitarian trade with Iran, including sales of pharmaceuticals and food products. Although these transactions are not covered by US sanctions, concerns have been raised about the negative effect of US sanctions on humanitarian transfers, as Western banks may suspend these transactions out of fear of sanctions.

Although no deadline has been set for the launch of the mechanism, the EU High Representative initially stated on 25 September 2018 that the SPV could be established before November 2018. However, the mechanism has not yet become operational. On 2 November 2018, the EU High Representative, together with the French, German and UK ministers of foreign affairs and finance, published a joint statement mentioning the intensified efforts of recent weeks to establish the SPV. One source reported that important details, such as the SPV's location and participants, had still to be decided. France and Germany have been suggested by another source as possible hosts.

Positions

During a 2 November 2018 briefing on Iran sanctions, the US Secretary of the Treasury expressed doubts as to whether any significant transaction would go through the prospective SPV, adding that 'if there are transactions that go through there that have the intent of evading our sanctions, we will aggressively pursue our remedies'. Experts see the SPV rather as an opportunity for smaller enterprises that have no US nexus to continue trading with Iran.

Analysts have also highlighted that the SPV might lead to the creation of an alternative to the dollar-dominated payment architecture extending beyond the case of Iran. It was pointed out that Jean-Claude Juncker, President of the European Commission, in his 2018 State of the Union speech, stressed the need for the EU to reinforce the international role of the euro, the second most used currency worldwide. Moreover, China and Russia have already considered challenging the US dollar's dominance in international transactions, but this could be envisaged only with the participation of the EU.

During the 10 October 2018 joint meeting of the Committees on International Trade (INTA) and Foreign Affairs (AFET), there was an exchange of views on the latest developments concerning the JCPOA and the impact on EU companies. Majid Takth-Ravanchi, a high-level official and senior advisor of the Iranian negotiating team to the JCPOA, presented, among other things, Iranian expectations concerning the SPV. In their interventions, MEPs raised issues such as the EU commitment to the JCPOA, the human rights situation in Iran, the euro's international role, and the protection of European businesses.

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