

JCPOA Dispute Resolution Mechanism – Good move or gamble?



The ‘E3’ – the European participants in the Joint Comprehensive Plan of Action (‘JCPOA’) – have triggered the plan’s Dispute Resolution Mechanism. Helen Schlemminger takes stock of its prospects.

To say the very least, the fate of the JCPOA has been mixed, and the strong sense of dissatisfaction and uncertainty persists as we continue to await the outcome of the Dispute resolution mechanism (‘DRM’).

In May 2018 the US withdrew from the JCPOA, much to the stated disappointment of the other signatories. This left Iran burdened with re-imposed US sanctions, and ostensibly discouraged. So, from last July it began gradually to suspend its commitments, a phased non-compliance that turned into outright defiance this January when Iran announced that it would abandon its last key commitments on uranium limits. Recent geopolitics and other activity hardly helps to ease tensions – attacks and reprisals in the Gulf region, the detention of the *Stena Impero*, the saga of the *Grace 1*, the killing of Qasem Soleimani, the retaliation for that and the downing of the Ukrainian airliner. None of this could possibly make it easy for the JCPOA powers to find common ground.

On 14 January, the European participants in the JCPOA (the ‘E3’) responded to Iran’s latest moves by triggering the DRM, under Article 36 of the JCPOA. The aim is either to find a satisfactory solution or, should that fail, to re-impose the previously lifted EU and UN sanctions. As scheduled under the JCPOA, the first step is referral to the Joint Commission, made up of representatives of each signatory country, then to foreign ministers, then back to the Joint Commission before potentially (but very likely) the issue goes back before the Security Council.

Such must then vote within 30 days on whether to continue Iran’s sanction relief. Should the majority vote against, then the so-called ‘snap-back’ provision applies and the sanctions are



reintroduced. How this will affect the EU Blocking Statute depends on how aligned the re-imposed EU sanctions will be with the US sanctions, but undoubtedly it is likely to see considerable change. EU foreign policy chief Josep Borell has now extended the DRM timeframe to take account of the ‘complexity of the issues involved’, so we will be kept waiting for a while.

A bold move

This is the first time the DRM has been used, and it is a bold step by the E3. The reactions of the other signatories differ but are very much the same, in that they were all negative. Iran has announced that it is abandoning the JCPOA altogether, Russia and China claim that the DRM is useless and makes it impossible to return to the JCPOA afterwards, and the US had hoped that the E3 would take an even

stronger anti-Iran stance and replace the JCPOA with a new agreement authored by the Trump administration.

This leaves us with the question of why the E3 decided to go down this unpopular route. The DRM could be their last attempt to rescue the deal or,

The move could be something to preserve whatever relationship is left before a new and claimed ‘better’ wording appears.

equally, it could be something to preserve whatever relationship is left before a new and claimed ‘better’ wording appears, in effect as marriage guidance to the JCPOA signatories.

Paragraph 36 of the JCPOA

If Iran believed that any or all of the E3/EU+3 were not meeting their commitments under this JCPOA, Iran could refer the issue to the Joint Commission for resolution; similarly, if any of the E3/EU+3 believed that Iran was not meeting its commitments under this JCPOA, any of the E3/EU+3 could do the same. The Joint Commission would have 15 days to resolve the issue, unless the time period was extended by consensus.

After Joint Commission consideration, any participant could refer the issue to Ministers of Foreign Affairs, if it believed the compliance issue had not been resolved. Ministers would have 15 days to resolve the issue, unless the time period was extended by consensus. After Joint Commission consideration – in parallel with (or in lieu of) review at the Ministerial level – either the complaining participant or the participant whose performance is in question could request that the issue be considered by an Advisory Board, which would consist of three members (one each appointed by the participants in the dispute and a third independent member).

The Advisory Board should provide a non-binding opinion on the compliance issue within 15 days. If, after this 30-day process the issue is not resolved, the Joint Commission would consider the opinion of the Advisory Board for no more than 5 days in order to resolve the issue. If the issue still has not been resolved to the satisfaction of the complaining participant, and if the complaining participant deems the issue to constitute significant nonperformance, then that participant could treat the unresolved issue as grounds to cease performing its commitments under this JCPOA in whole or in part and/or notify the UN Security Council that it believes the issue constitutes significant non-performance.

The DRM is slanted one way, as it was plainly drafted to tackle any Iranian non-compliance, with little or insufficient focus on the possibility of some other signatory not conforming – so there was no provision for what amounted to a breach by the United States in the form of its withdrawal.

Likewise, many trade and other contracts do not address this in their sanction clauses, risking leaving them in legal limbo. Whatever one thinks of the DRM, it is clear that the JCPOA has

had a tough time since the US withdrawal, and triggering the DRM might be the final straw.

On 14 January, 2020, French, German and UK foreign ministers gave a joint statement in which they said that: ‘Following Iran’s announcement in May 2019 that it would cease meeting some of its commitments under the JCPOA, we have sought to persuade Iran to change course. The E3 have worked hard to address Iran’s concerns and bring it back into compliance with its commitments under the nuclear agreement. We have also undertaken and supported diplomatic efforts, such as France’s initiative, to deescalate tensions and to bring Iran and the US to the negotiating table for a comprehensive negotiated solution. The E3 remain fully committed to this diplomatic effort and intend to resume it as soon as conditions allow.

‘However, in the meantime Iran has continued to break key restrictions set out in the JCPOA. Iran’s actions are inconsistent with the provisions of the nuclear agreement and have increasingly severe and non-reversible proliferation implications.

‘We do not accept the argument that Iran is entitled to reduce compliance with the JCPOA. Contrary to its statements, Iran has never triggered the JCPOA Dispute Resolution Mechanism and has no legal grounds to cease implementing the provisions of the agreement.

‘We publicly stated our concerns, along with the High Representative of the European Union, on 11 November. At the Joint Commission on 6 December, we made clear to Iran that unless it reversed course, we would have no choice but to take action within the framework of the JCPOA, including through the Dispute Resolution Mechanism.

‘Instead of reversing course, Iran has chosen to further reduce compliance with the JCPOA and announced on 5 January that “the Islamic Republic of Iran, in the fifth step in reducing its commitments, discards the last key component of its limitations in the JCPOA, which is the ‘limit on the number of centrifuges’”, and that “the Islamic Republic of Iran’s nuclear program no longer faces any operational restrictions”, including on enrichment and enrichment-related matters.

Links and notes

The text of the JCPOA is at:

<https://www.europarl.europa.eu/cmsdata/122460/full-text-of-the-iran-nuclear-deal.pdf>

‘We have therefore been left with no choice, given Iran’s actions, but to register today our concerns that Iran is not meeting its commitments under the JCPOA and to refer this matter to the Joint Commission under the Dispute Resolution Mechanism, as set out in paragraph 36 of the JCPOA.

‘We do this in good faith with the overarching objective of preserving the JCPOA and in the sincere hope of finding a way forward to resolve the impasse through constructive diplomatic dialogue, while preserving the agreement and remaining within its framework. In doing so, our 3 countries are not joining a campaign to implement maximum pressure against Iran. Our hope is to bring Iran back into full compliance with its commitments under the JCPOA.

‘France, Germany and the United Kingdom once again express our commitment to the JCPOA and our determination to work with all participants to preserve it. We remain convinced that this landmark multilateral international agreement and its non-proliferation benefits enhance our shared security interests and strengthen the rules-based international order.

‘We are grateful to the Russian Federation and People’s Republic of China, with whom we remain in close consultation, for joining us in our common endeavor to preserve the JCPOA. We also thank the High Representative of the European Union for his ongoing good offices in this regard. Given recent events, it is all the more important that we do not add a nuclear proliferation crisis to the current escalation threatening the whole region.’

Helen Schlemminger is a trainee solicitor at London law firm M Taher & Co.

h.schlemminger@mtaher.com