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Commentary

## Will the EU and the USA part ways on the Iran deal?



Tiles from a game board spell "IRAN DEAL". Photo: Marco Verch /Flickr

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Dr Tarja Cronberg and Dr Tytti Erästö

The Iran nuclear deal has demonstrated that diplomacy can triumph in nuclear non-proliferation: dialogue, rather than military action, can convince states to forgo pursuing nuclear weapons. The European Union has long played an instrumental role in the multilateral diplomacy that produced the historic deal, formally known as the Joint Comprehensive Plan of Action (JCPOA).

In 2003, the EU took the lead in the negotiations on Iran's nuclear programme, largely as an attempt to prevent an Iraq-style US military action in Iran. The Obama administration's subsequent efforts at diplomacy were likewise driven by the concern

that the nuclear crisis might escalate to war. The deal—brokered in 2015 with Iran by the P5 + 1 (the five permanent members of the United Nations Security Council—China, France, Russia, United Kingdom, United States—plus Germany) and the EU—solved the nuclear dispute and seemed to effectively put an end to such concerns.

However, since the election of Donald Trump as US president, this key foreign policy success has been under threat. Contrary to all evidence and EU positions, the US president still thinks the nuclear deal is ‘the worst deal ever’. This week, he is expected to issue a formal declaration that the JCPOA is no longer in the interest of US national security. What does this mean for the future of the deal and the transatlantic relationship?

### **The deal is working, but the United States questions its merits**

The International Atomic Energy Agency (IAEA) has repeatedly confirmed that Iran is in compliance with the provisions of the nuclear deal—most recently in August 2017. As a result of the deal, Iran’s uranium-enrichment activities and number of centrifuges remain limited, its stockpile of enriched uranium has been transported to Russia, and the heavy water reactor in Arak has been modified. Furthermore, Iran is under the most extensive nuclear inspection regime in the world: in addition to implementing the IAEA Additional Protocol, it has also agreed to additional inspections including potential IAEA access to suspected undeclared nuclear facilities and military sites.

In the USA, however, Republicans have been critical of the deal all along. Reflecting the deep-seated US–Iranian enmity, an enmity shared by Israel and Saudi Arabia, the Republicans tend to view Iran as an enemy to be isolated and sanctioned, rather than a state with which to partner and cooperate. Trump’s seemingly irrational dismissal of the JCPOA must be understood against this background.

Since his election campaign, Trump has remained consistent in his opposition to the Iran deal. Personally, he has said that the Iranians are ‘not in compliance with the agreement and they certainly are not in the spirit of the agreement’. However, there are divisions among senior administration officials on the issue. Both US Secretary of Defense James Mattis and Chairman of the Joint Chiefs of Staff Joseph Dunford have called for continued US adherence to the deal. While Secretary of State Rex Tillerson has said that Iran is in ‘technical’ compliance, he has also said that Iran is ‘clearly in default of’ the expectation that the JCPOA would also have helped address other issues, **such as Iran’s regional activities and continued missile testing.**

The EU, in contrast, has been united in its support for the JCPOA. EU High Representative Federica Mogherini has repeatedly stressed that the deal is delivering and will be implemented as agreed. Europeans also stress that the deal was limited to addressing the nuclear dispute and should not be confused with other issues.

As a seeming middle way, the Trump administration has raised the idea of renegotiating the JCPOA, or parts of it, and has lobbied for this alternative in private meetings with Europeans. However, Iran has rejected such suggestions. According to Iran's Foreign Minister Javad Zarif, **'It was complicated enough to reach this deal already, and it would be impossible to reach another deal'**. Europeans do not seem to have warmed up to suggestions for renegotiation either. **For example**, Peter Wittig, Germany's Ambassador to the USA, recently said that he saw no practical way of renegotiating the deal and did not regard it possible to do so.

### **What if Trump decertifies Iran's compliance?**

According to the US Iran Nuclear Agreement Review Act of 2015, the president has to certify every 90 days that Iran 'is verifiably and fully implementing the JCPOA'. As part of this process, the president must also assess whether adhering to the JCPOA is vital to the national security interests of the USA. Trump has certified the deal twice, but reluctantly and under pressure to do so by his aides. As the next certification deadline of October 15 draws near, reports from Washington, DC, suggest with increasing certainty that Trump will decertify the deal, based on the argument that it is **not in the interest of US national security**.

Decertification would be a major blow to the deal. In addition to showing a complete lack of appreciation for Iran's actual compliance and other JCPOA partners' views, the president's decision to decertify would open the door for the US Congress to reimpose the unilateral US sanctions that were lifted as part of the JCPOA. Congress would have 60 days to decide on the reimposition of those sanctions against Iran.

However, decertification does not necessarily mean that the USA is walking out of the deal. The White House seems to be gambling that Trump's decertification—which would allow him to maintain consistency with his previous anti-Iran line—would be offset by a congressional decision to waive nuclear-related sanctions. This way the USA could not be accused of breaching its own commitments under the JCPOA, the deal could be preserved and a conflict with European partners could be avoided. As part of the effort to influence the Congress, **the administration is expected to push for tough non-nuclear sanctions legislation**, notably by targeting the Islamic Revolutionary Guards Corps (IRGC).

Even if this strategy plays out as planned, the JCPOA would still face an uncertain future. In Iran, Trump's decertification, coupled with new non-nuclear sanctions and potential new calls for additional inspections of Iranian **military sites** would be viewed as provocations requiring a response.

The comment by IRGC Head Mohammad Ali Jafari on the **US plans to designate the IRGC as a foreign terrorist organization illustrates the problem**. If the USA is 'considering the Revolutionary Guards a terrorist group', he said, 'then the Revolutionary Guards will consider the American Army to be like Islamic State all around the world, particularly in the Middle East'.

More US sanctions and tensions in the region would also negatively impact international trade with Iran. Despite the lifting of sanctions, international banks and firms have been wary of entering into financial relations with Iran out of fear of being penalized as a result. This has contributed to one of the main Iranian grievances about the JCPOA, namely that sanctions relief—a key concession made to Iran under the deal—has not led to the expected recovery of the Iranian economy.

Thus, the mere talk of reimposing old US sanctions or drafting new ones is creating political tensions and economic uncertainty. This could undermine domestic support for the JCPOA in Iran and empower hardliners, who have promoted themselves by attacking the moderate policies of Iranian President Hassan Rouhani and Foreign Minister Javad Zarif.

### **What can Europeans do if the US Congress reimposes sanctions?**

The problem with the Trump administration's reported strategy is that there is no guarantee that Congress will ultimately be convinced by any White House appeals to not reimpose nuclear sanctions. A congressional decision to reimpose US nuclear sanctions could be potentially fatal to the JCPOA. It would also put Europe in a very difficult position, both politically and economically.

Because the US sanctions are mainly extraterritorial, they would not hit Iran directly, but instead target third parties dealing with Iran. In principle, the EU could provide its banks and companies legal protection against the US Department of the Treasury. As several observers have suggested, this could be done by including the US sanctions in the 1996 blocking statute (**Council Regulation EC 2271/96**) that shields European companies 'against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom'. Additionally, it has been suggested that **the EU could explore offshore dollar-clearing facilities to substitute US-based financial transactions with Iran**. One potential

partner in such an effort could be **China**, which has both extensive trade relations with Iran and the economic base necessary for creating alternative financial networks.

It is unclear whether the EU would ultimately find the political will and unity to enter into an economic confrontation with the USA. Recent statements by EU officials, however, suggest that it might be ready for this. When asked how Europe would react to US sanctions being reimposed on Iran, EU ambassador to the USA David O'Sullivan said that he had 'no doubt' that the 'European Union will act to protect the legitimate interests of our companies'. The Secretary General of the European External Action Service, Helga Schmid, for her part, stated last week that the EU 'will do everything to make sure it [the JCPOA] stays'. As **one concrete example**, Schmid referred to the European Commission's proposal to allow the future operation of the European Investment Bank in Iran. In addition, **credit agencies** in Austria, Denmark and Italy have stepped in to provide export guarantees to Iran.

If faced with a situation where US sanctions interfere with legitimate trade with Iran, European choices might prove crucial for the JCPOA. As the **Foreign Minister Javad Zarif has said**, in such a case, 'the only way Iran would be persuaded to continue to observe the limits on its civil nuclear programme would be if the other signatories ... all remained committed to its terms and defy any subsequent US sanctions'.

### **Potential 'snap back' of UN sanctions**

The reimposition of unilateral US sanctions would be a breach of the JCPOA. However, the USA could also (mis)use the JCPOA's Joint Commission dispute resolution mechanism to legally reinstate all previous UN sanctions against Iran. This possibility has, thus far, been overlooked by most observers, as it is an unintended consequence of the formulation of Article 37 of the JCPOA—originally meant to prevent any party from protecting Iran if it breached its commitments.

The Commission, which is chaired by the EU and consists of Iran and the six world powers that negotiated the deal, reviews the implementation of the JCPOA. The parties have agreed that, if no agreement is reached regarding claims of non-performance with the JCPOA, the complaining party may take the issue to the UN Security Council. In such a case, the Security Council is to vote on a resolution to continue the lifting of the sanctions.

Due to its veto power in the Security Council, the USA could thus, at least in theory, block the resolution, and alone cause all previous UN sanctions against Iran to 'snap back'. Such an action would oblige all UN members to abide by the previous



sanctions resolutions issued by the Security Council. Although this would not bring back the harshest sanctions against Iran's oil industry and the Central Bank, it is hard to imagine how the EU and the rest of the JCPOA partners could continue JCPOA implementation in such a context.

### **The EU's high stakes in preserving the JCPOA**

Due to its international economic and political leverage, the USA has several tools at its disposal to undermine and potentially kill the JCPOA. If the deal collapses, this could create a crisis far worse than the one before 2015. In the absence of even the rudimentary trust that agreements are honoured, diplomacy between Iran and the USA would be effectively ruled out. In effect, military action would likely return to the USA's portfolio of policy options for dealing with Iran.

Disagreements over the JCPOA are already straining the transatlantic relationship. If the US Congress decides to walk away from the deal, the EU has the means to push back, at least when it comes to extraterritorial sanctions. However, given the depth of the political, economic and military ties between the EU and the USA, it is an open question whether the EU would eventually muster the political will and unity needed to confront the USA economically. At the same time, going along with a policy that is almost universally condemned as illegitimate would question the EU's foreign policy independence as well as its reliability as a serious international actor committed to existing agreements.

It is to be hoped that the US Congress will continue to stick to the Iran deal. But even if it does, this does not mean that the JCPOA is safe. The deal will continue to be affected by the overall US–Iranian relationship, and it remains precarious even if it survives for now.

In the meantime, the EU must do everything that it can to preserve the historic non-proliferation achievement. The stakes are more than political and economic. At its heart, the issue is one of international security. The demise of the JCPOA would lead to nothing less than the recreation of the Iran nuclear crisis, bringing back not only the risk of proliferation, but also the prospect of a new disastrous war in the Middle East.

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### **ABOUT THE AUTHOR(S)**

**Dr Tarja Cronberg** is a Distinguished Associate Fellow with the European Security Programme at SIPRI.

**Dr Tytti Erästö** is Researcher on nuclear weapon issues at SIPRI.