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Can Europe save the Iran nuclear deal?

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Summary

On 8 May 2018 President Donald Trump announced the end of US support for the Joint Comprehensive Plan of Action nuclear deal with Iran, meaning that [US sanctions would at various points be re-imposed](#) and US sanctions waivers, protecting third country companies and individuals trading with Iran from being targeted by US sanctions.

Iran as benefited from the deal, with some \$100 billion in frozen Iranian assets being released to Iranian control. But the wider economic benefits of access to international markets have been disappointing to Iranians who hoped for a stronger uplift. Iranian foreign policy has not been moderated, dashing the hopes of backers of the deal. Indeed, Iran's regional policies have become more aggressive, if anything.

European countries led early negotiations and backed the deal strongly from the start. With Donald Trump in the White House they knew that the future of the deal was uncertain and tried to address some of the concerns about the deal. After 8 May's announcement, they presented a [united front](#) in defending the deal and expressing hopes that it could be saved.

There are several possible moves that the EU could take to [try to defend](#) the deal.

- A 'blocking regulation', defending European companies from secondary US sanctions, could be passed. This has been [tried before, in 1996](#), in relation to US policy on Cuba.
- Other measures could be taken, including using the European Investment Bank to back trade with Iran or using overseas aid to back trade.
- The sanctions could be fought at the World Trade Organisation, although the WTO's 'national security' exemption would make that difficult.

Whether any or all of these would be enough to counteract the chilling effect of the 8 May announcement on trade with Iran is questionable.

Even if the economic benefits to Iran were preserved by measures such as these, it is still possible for any signatory to the deal to initiate a [procedure](#) at the UN Security Council that automatically re-imposes international sanctions.

Meanwhile, the background for any negotiations with Iran is becoming more difficult, with tensions in the Middle East rising to dangerous levels. The likelihood of the deal surviving long seems slight.

See also

[Iran nuclear deal: what next?](#), 10 May 2018

[The Iran nuclear deal and 'decertification'](#), 25 October 2017

[Iran and the re-election of Rouhani](#), 8 June 2017

[The Joint Comprehensive Plan of Action nuclear deal with Iran](#), 16 October 2015

1. US ends support

Donald Trump announces the end of US support

Donald Trump [announced on 8 May](#) that the United States was withdrawing from the nuclear agreement, the [Joint Comprehensive Plan of Action](#) (JCPOA), agreed by China, France, Germany, Russia, the UK and the US in 2015. The decision had been widely flagged but came as a shock, nevertheless.

The deal was the culmination of negotiations originally started by the UK, France and Germany in 2003. Although the US eventually joined the negotiating team, and was crucial to its success, the EU and the 'E3' still see the deal as a European achievement.

According to the International Atomic Energy Agency, the JCPOA had been achieving its limited goals: Iran had been implementing its nuclear-related commitments and was subject to "the world's most robust nuclear verification regime".¹

The US will, after varying 'winding-down periods', start to re-introduce sanctions and end the waivers that protect entities from third countries from US sanctions.²

¹ ['Statement by IAEA Director General Yukiya Amano'](#), IAEA, 9 May 2018

² For more on the timetable for US sanction re-introduction, see the House of Commons Library Insight [Iran nuclear deal: what next?](#), 10 May 2018

2. JCPOA and Iran

After the JCPOA nuclear deal, Iran's oil exports, which had fallen from 2.4 million barrels per day in 2011 to 1 million barrels per day under the sanctions regime, bounced back to 2.2 million barrels per day in August 2017.³ The JCPOA was concluded in the middle of a dramatic drop in the oil price, however, so revenue from exports was not what it would have been. Frozen Iranian funds amounting to perhaps \$100 billion were also returned to Iranian control.⁴ The value of EU-Iranian trade grew from \$9.2 billion in 2015 to \$25 billion in 2017,⁵ while US trade was only \$201 million in 2017 and had in fact fallen since 2015.

The broader effect on the Iranian economy was disappointing to Iranians, however. With important exceptions, Western firms did not rush to invest in Iran, deals with Western oil companies to modernise Iranian production facilities were slow to bear fruit. Even without the uncertainty about US participation in the JCPOA, Western firms were cautious about involvement with Iran, where corruption is high, the Revolutionary Guards control much of the economy and financial systems are not up to international standards.

Meanwhile the military sector, especially the Revolutionary Guards, was taking a growing slice of Government expenditure, leaving ordinary Iranians angry at economic hardships.⁶ Rouhani himself said in 2017 that military budget had increased 145% during his tenure (since 2013).⁷ The Stockholm International Peace Research Institute (SIPRI) says that Iranian defence expenditure grew by 23% from 2014 to 2016.⁸ The deal is losing popular support in Iran.⁹

Iranian policy in the region

Any hopes that agreement on the JCPOA might restrain Iran's aggressive policy in the region proved groundless. Iran has in recent years increased its support to the Assad government in Syria, to Hizbollah in Lebanon and to the Houthis rebels in Yemen, who, with help from Hizbollah and Iran, have been firing missiles at residential areas in Saudi Arabia. As well as criticising Iranian regional policy, detractors also drew attention to the 'sunset clauses' which mean that the limits on the Iranian uranium enrichment would be lifted variously in 2025, 2028 and 2030, and argue that the inspection regime is not as fool-proof as it is claimed to be.

³ Nader habibi, [The Iranian Economy Two Years after the Nuclear Agreement](#), Brandeis University, February 2018

⁴ ['Iran claims \\$100 billion now freed in major step as sanctions roll back'](#), *Washington Post*, 1 February 2016

⁵ ['Why The EU Has The Most To Lose If The Iran Deal Collapses'](#), *Forbes*, 8 May 2018

⁶ For more information, see the Commons Briefing Paper [Iran update](#), February 2018

⁷ ['Rouhani Says Iran's Military Budget Increased by 145 Percent During His Term'](#), Middle East Institute, 18 April 2017

⁸ *SIPRI Yearbook*, 2017, p346

⁹ [How Europe Can Save the Iran Nuclear Deal](#), International Crisis Group, 2 May 2018

US secondary sanctions

Iran has been the subject of US sanctions regimes since 1979. Despite the JCPOA, a broad US embargo on trade with Iran has remained in place throughout, meaning, for example, that the US did not start importing Iranian oil in 2015. It was firms in the rest of the world whose situation changed, because other countries lifted their sanctions against Iran, and because the US waived secondary sanctions (with effect on companies and individuals from other countries than the US), allowing non-US firms to trade with Iran without fear of being targeted by the US.

Hassan Rouhani, the president, said that he hoped that Iran would be able to stay in the agreement: "If the remaining five countries continue to abide by the agreement, Iran will remain in the deal despite the will of America".¹⁰ Supreme Leader Ali Khamenei has cast doubt on the idea of preserving the deal without the US. He said he does not trust the UK, France and Germany, and would need guarantees. Javad Zarif, the Iranian foreign minister, embarked on a tour of non-US countries in May, seeking those guarantees. His first stop was China.

¹⁰ For more on the immediate reaction to the Trump announcement, see the House of Commons Library Insight [Iran nuclear deal: what next?](#), 10 May 2018

3. European attempts to save the deal

European countries are the perhaps most important potential trading partners with Iran (although other countries, such as India, are big customers for Iranian oil). Having been at the forefront of negotiations to achieve the deal, European leaders value the restrictions that the deal has placed on Iran's nuclear programme, arguing that it has improved Middle East security and that there is no replacement for it.

Ever since the election of Donald Trump to the White House, the future of the JCPOA has been in doubt. The uncertainty had already taken its toll on Iranian benefits, having a chilling effect on investment decisions there. The growing tension between Iran and Saudi Arabia and its Sunni-led allies added to the threats to the deal.

A commentator at the Royal United Services Institute argues that the future of the deal is in European hands:

In the months ahead, the future of the JCPOA will not be determined by Trump in Washington or Iranian President Hassan Rouhani in Tehran; rather, the survival of the agreement will depend on what Europe does next.¹¹

3.1 Structured dialogue

After meetings with US officials during 2017, European leaders said they would step up their action against the Iranian missile programme and Iran's regional policy. On 12 January, Trump gave the Europeans three months to fix the perceived problems with the JCPOA.¹² European allies worked hard to try to appease the US Administration, by seeking to work on these perceived deficiencies: its failure to cover the Iranian missile programme and Iran's aggressive foreign policy in the Middle East. (Defenders of the JCPOA say that it was never intended to cover these problems and would not have succeeded if it had.) Italy has increasingly been taking an active role in the negotiating group, joining the Structured Dialogue between Iran and the E3 in January 2018, discussing issues of concern outside the JCPOA.

Diplomatic efforts were intensified. The UK Government raised these questions with the Iranian Government in December 2017 and February 2018,¹³ and in December 2017 the UK representative at the UN made a speech criticising Iran's transfer of missile technology to the Houthis in Yemen, leading to the missile attacks on Riyadh.¹⁴

¹¹ Emil Dall, '[Collateral Damage: President Trump's Decision on Iran and Its Impact on Europe](#)', RUSI, 9 May 2018

¹² [Statement by the President on the Iran Nuclear Deal](#), White House, 12 January 2018

¹³ [HC Deb 27 March c632](#)

¹⁴ "[The Joint Comprehensive Plan of Action is one of the greatest diplomatic successes in recent memory](#)", Statement by Ambassador Matthew Rycroft, UK Permanent Representative to the UN, 19 December 2017

France's President Macron took the lead in trying to persuade President Trump of the deal's merits, but said in April 2018 that Trump would pull the US out of the deal "for domestic reasons".¹⁵

3.2 United front on the Trump announcement

After the announcement of US withdrawal, French President Emmanuel Macron said that the deal was "not dead," and promised to contact President Rouhani later in the day:

The region deserves better than further destabilization provoked by American withdrawal. So we want to adhere to it and see to it that Iran does too, that Iran behaves with restraint.¹⁶

The governments of the E3 issued a joint statement on 8 May saying that it was with:

...regret and concern that we, the Leaders of France, Germany and the United Kingdom take note of President Trump's decision to withdraw the United States of America from the Joint Comprehensive Plan of Action.¹⁷

In his statement to the House of Commons on 9 May, Foreign Secretary Boris Johnson mentioned "steps that we propose to take" to save the deal:

Britain has no intention of walking away; instead, we will cooperate with the other parties to ensure that while Iran continues to restrict its nuclear programme, its people will benefit from sanctions relief in accordance with the central bargain of the deal. I cannot yet go into detail about the steps that we propose to take, but I hope to make that information available as soon as possible, and I spoke yesterday to my French and German counterparts.¹⁸

Brexit

Although formal UK participation in EU foreign and security policy-making in general after EU withdrawal is uncertain, Iran policy seems to be an exception. The leadership of the E3 countries, the UK, France and Germany, agree that the E3 group will continue to lead Iran policy.¹⁹

On 11 May, French Finance Minister Bruno le Maire said he would meet E3 partners: "At the end of May I will meet with the British and German finance ministers and the three of us will look at what we can do."²⁰

¹⁵ ['Macron says he thinks Trump will pull out of Iran nuclear deal'](#), *Bloomberg*, 25 April 2018

¹⁶ ['France says Iran deal 'not dead', Macron to contact Rouhani'](#), *Reuters*, 9 May 2018

¹⁷ ['Joint statement from Prime Minister May, Chancellor Merkel and President Macron following President Trump's statement on Iran.'](#) Downing Street press release, 8 May 2018

¹⁸ [HC Deb 9 May 2018, cc679-94](#)

¹⁹ [Better Together. Brexit, the E3, and the Future of Europe's Approach towards Iran](#), RUSI/Friedrich Ebert Stiftung, April 2018

²⁰ ['US faces European backlash against Iran sanctions'](#), *Guardian*, 11 May 2018

3.3 How could Europe save the JCPOA?

In theory, the other signatories to the deal can simply say they are sticking to it and continue to import from Iran, allowing Iran to continue to benefit from the deal and to stick to its side of the bargain. In practice, this will be extremely difficult. One commentator says that President Trump has “all but guaranteed” the deal’s collapse.²¹

The immediate problem is how to protect European companies and those of other countries from secondary or extraterritorial US sanctions if they continue to deal with oil purchases from Iran.

Blocking regulation

In 1996 the EU enacted a [‘blocking regulation’](#), which aimed to protect EU firms from the extra-territorial effect of US sanctions against Cuba. That dispute ended with the US offering exemptions to European companies.

In February an EU official dealing with Iran said that the EU is looking at a number of possibilities, including re-instating the 1996 blocking regulation. He said:

It could be revived or put back, but only if it is clear that the U.S. is putting back sanctions with extraterritorial sanctions and that they are being applied. It can’t be done protectively.²²

Analysts question whether such a regulation would work. Uncertainty over the future of the deal since the election of Donald Trump has already had a chilling effect on Western firms doing business with Iran, even though the US was technically still on board. With the US technically out, it will be difficult to persuade those firms that legal counter-measures from the EU will really be enough to protect them, should they be excluded from US markets or handed enormous fines. When it comes to choosing between doing business in Iran or the US, most companies, except small ones with no exposure to US markets, would choose to keep their US options open.

With the UK’s exit from the EU imminent, the position of UK companies trying to do business in Iran is even more uncertain.

Whether EU leaders have an appetite to escalate the confrontation, in what [some describe](#) as the worst transatlantic rift since the invasion of Iraq, is also open to question. Comments from Angela Merkel on 10 May suggested that perhaps they have: she said that Europe could no longer rely on the US for protection:

It is no longer the case that the United States simply protects us, but Europe must take its destiny in its own hands. That’s the task of the future.²³

Passing a blocking regulation might be more effective politically than economically: it could solidify European opposition to the US move and

²¹ [‘After dumping the nuclear deal, Trump has no strategy for Iran’](#), Brookings Institution, 9 May 2018

²² [‘EU could impose blocking regulations if U.S. pulls out of Iran deal’](#), Reuters, 8 February 2018

²³ [‘Merkel: Europe can no longer rely on US protection’](#), The Hill, 10 May 2018

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signal to the US and the rest of the world that the EU takes the matter seriously.

Separate economic cooperation package?

For Iran to abide by the restrictions, analysts at the International Crisis Group (ICG) have suggested that the remaining partners in the deal would have to present a package of political and economic measures that would guarantee that Iran would receive as many of the benefits set out in the deal as possible.²⁴

The ICG suggested a range of measures to support EU-Iranian trade, including:

- Empowering central banks to process Iran trade payments
- Negotiate special exemptions for EU firms from US secondary sanctions
- Set up replacement legal mechanisms for the 'blocking regulation' of 1996, supporting European firms in legal action against US authorities for illegitimate extraterritorial effect of sanctions
- Guarantee export credits for Iranian trade
- Use overseas aid to support Iranian infrastructure development
- Use the European Investment Bank to lend to Iran.²⁵

Such steps would be technically difficult and could be derailed by Iran re-starting its enrichment activities or by deterioration in political relations, something which seems all too possible.

World Trade Organisation

The EU could lodge a complaint at the World Trade Organisation, the body that regulates international trade relations. That strategy would be undermined by the security exception in [Article XXI](#) of the General Agreement on Tariffs and Trade (GATT), which states that nothing in the rules will: "prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests". Nevertheless, in the case of the Cuba dispute in 1996, the EU made a complaint to the WTO, which reached the stage of a consultation panel being set up at the WTO to discuss the complaint.²⁶

The EU withdrew its complaint because a political solution was agreed, involving exemptions (see above). If the matter had not been settled, however, observers question whether the US would have complied with a ruling against policy that it had described as important to US national security.

²⁴ [How Europe Can Save the Iran Nuclear Deal](#), International Crisis Group, 2 May 2018

²⁵ [How Europe Can Save the Iran Nuclear Deal](#), International Crisis Group, 2 May 2018

²⁶ WTO Dispute settlement, [United States — The Cuban Liberty and Democratic Solidarity Act](#)

4. Outlook

4.1 Further obstacle at the Security Council

Even if the deal's supporters did manage to keep it on life support, maintaining enough benefits for Iran to abide by the restrictions to its nuclear programme, the Trump Administration could still destroy the deal. A dispute resolution mechanism allows parties to the deal to go to the UN Security Council with an "unresolved issue". After a month, if the aggrieved party is not satisfied that the issue is resolved, all multilateral sanctions must be re-imposed, killing the deal. If this mechanism, designed to keep the Iranians in line, was used against the Europeans by the US, it would be considered very aggressive. But there would be no way of stopping it.²⁷

4.2 Deteriorating situation in the Middle East

Israel has repeatedly asserted its determination to prevent an Iranian military presence in neighbouring Syria, while analysts suggest that Syria sees preserving Syria as a land corridor, through Iraq, to Lebanon, Hizbollah and Israel as an existential matter. The prospects of a stable and Iran-friendly Government controlling the whole of Syria on its own are remote, which means that Iran and/or Hizbollah are likely to want to retain a military presence to protect that land corridor. Israel and Syria could be on a collision course.

The night after the US announcement, Israel and Iran were described in the press as "[on the brink of full-scale war](#)"; Iran had, according to reports, launched missiles at Israeli positions in the occupied Golan Heights. Israel responded by launching the biggest assault on Iranian military positions in Syria yet.

Some observers suggested that full on confrontation between Iran and Israel is not imminent; both sides have been trying to avoid direct confrontation for some time. Nevertheless, an accidental escalation could easily lead to armed conflict, particularly given the increasing brinkmanship that has taken place in recent weeks and months. As the *Financial Times* put it:

A salvo of 20 Iranian rockets, followed by a retaliatory barrage of Israeli bombs on Iranian positions inside Syria, changed that last week, turning a cold war into one that is becoming alarmingly hot.²⁸

Armed conflict between Iran and a Western ally would make it much more difficult for 'doves' in the West (Europe) and Iran (Rouhani) to reach agreement. The narrative will be dominated by their respective 'hawkish' opponents: the US Administration, Israel and Saudi Arabia; and Iran's Revolutionary Guards (IRGC) and other hard-line conservative elements of the Iranian state.

²⁷ [Trump withdraws from the Iran nuclear agreement: what comes next?](#), Lawfare Blog, 8 May 2018

²⁸ ['The march to another Middle East disaster'](#), *Financial Times*, 13 May 2018

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