

TRUMP, THE EU, AND IRAN POLICY: MULTIPLE PATHWAYS AHEAD

CORNELIUS ADEBAHR | JANUARY 31, 2017

With U.S. President Donald Trump now in office, the campaign rhetoric that created anxiety and uncertainty around the globe is giving way to actual presidential policies. While candidate Trump did not elaborate much on his foreign policy agenda, he was very vocal about a few things: in addition to obliterating the self-proclaimed Islamic State and getting tough with China on trade, one of his highest priorities would be to “dismantle the disastrous deal with Iran.”¹ The 2015 agreement that put an end to Tehran deceiving the world about its nuclear program is thus in real danger.

UNCERTAINTY RULES

The Trump administration’s likely antagonistic stance on Iran has pleased not only the governments of Israel and Saudi Arabia, but also hardliners in Tehran.² Yet it is hard to estimate how the future policy process on Iran will play out among the Trump White House; the National Security Council; the departments of state, defense, and treasury; and the intelligence community that Trump has regularly disparaged. While, as president-elect, Trump did not repeat his campaign promise to kill or renegotiate the deal, there remains a risk of its intentional or unintentional undoing.

Four policy scenarios are possible based on the president’s likely disposition toward Iran and the assumption that Trump can be both deeply ideological and ruthlessly pragmatic: the former characteristic encompasses an isolationist streak hostile to immigrants and radical Islam, while the latter reveals the businessman-turned-president who wants the United States to materially benefit from each relationship. One Trump simply does not care about the U.S.-led global order; the other is happy to use it as a tradable asset for his country’s (short-term) gain.



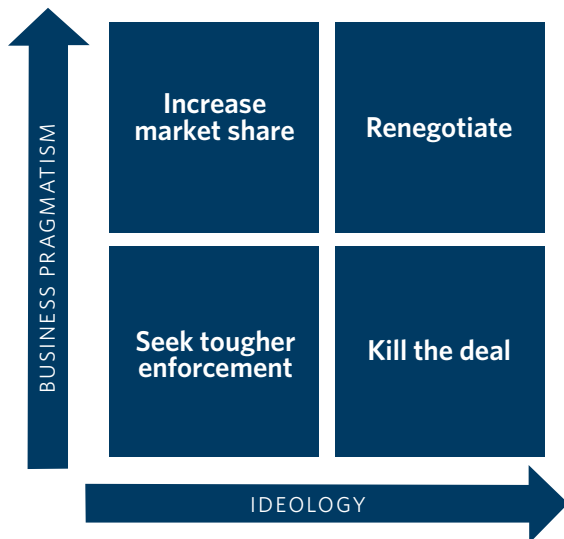
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Depending on which Trump will have the upper hand on Iran and, equally important, who emerges as his key adviser on this topic, the four scenarios are the following:

1. He kills the deal.
2. He attempts to renegotiate the deal.
3. He aggressively enforces the deal.
4. He accepts the deal provided that U.S. companies gain market share.

Four Scenarios for U.S. Action on Iran



While these four scenarios are not equally likely, they are all possible based on the assumed inclinations of Trump. The challenge for Europe—as the shepherds of a decade-long diplomatic process with Iran—is to preserve the negotiations’ outcome while preparing for all four options.

HOW EU-U.S. COOPERATION BROUGHT ABOUT THE NUCLEAR DEAL

The Joint Comprehensive Plan of Action (JCPOA) signed by Iran and the P5+1 (China, France, Germany, Russia, United Kingdom, and United States) is not merely a transatlantic success, but a collective effort to defuse a global challenge. That said, the instrumental EU-U.S. policy cooperation that led to the 2015 deal was the exception rather than the rule. More often than not, policymakers in European capitals were at odds with their counterparts in Washington over how to treat the regime in Tehran.

Since Iran’s 1979 Islamic Revolution, the United States has seen Iran more cynically than its European allies. These allies—spared of a single traumatic event such as the U.S. hostage crisis and continuous death to America slogans—sought to maintain diplomatic and economic ties with Tehran. In contrast, Washington—seeing Iran as an ideological challenge and a possible, though limited, threat—pursued a policy of isolation and economic sanctions. When the EU began its policy of critical dialogue with Iran in the early 1990s (upon conclusion of the disastrous Iran-Iraq War), the United States responded with increased sanctions and a policy of containment. In the late 1990s, both the United States and EU attempted to engage Iran’s reformist president at the time, Mohammad Khatami, and Washington even managed to cooperate with Iran in Afghanistan in the immediate aftermath of the September 11, 2001, attacks. This tactical cooperation would prove short-lived, however, and both countries soon reverted back to a default posture of antagonism.

To come together across the Atlantic in what came to be called a dual-track approach during the second term of former U.S. president George W. Bush, each

side had to give up one of its planks: after the 2002 revelations of Iran's clandestine nuclear program, the EU warmed to the idea of toughening its diplomatic efforts with multilateral sanctions, while the United States agreed to back up its decades-old sanctions with a concerted push for negotiations that included both China and Russia. In other words, Washington abandoned its isolationist position in 2006 when it entered the nuclear negotiations the Europeans had started in 2003, whereas the EU reduced its economic engagement and eventually, by 2012, agreed to a stinging sanctions regime.³ The latter included an oil embargo and a cutoff from the international financial system, maintained by the EU and the United States and actively supported by Iran's regular trading partners such as China, India, Japan, and South Korea.⁴

This broad international consensus would eventually bring about the July 2015 agreement that curtailed Iran's nuclear activities in exchange for sanctions relief.

Such transatlantic, as well as near-global, consensus notwithstanding, the immediate aftermath of the negotiations in July 2015 showed how differently each side of the Atlantic viewed the outcome: European governments welcomed the deal and immediately explored commercial relations with Iran, whereas a heated domestic debate began in the United States (just as it did in Iran). Former president Barack Obama's administration faced a hostile Congress, where both Houses—with their Republican majorities plus a few Democrats—spoke out against the deal. It was only in the absence of a vote of disapproval from Congress, which the Democratic minority could block on procedural grounds, that Obama could sign the deal and begin implementing it through executive orders.⁵

Already at that time, many experts warned that because the JCPOA would not have the same statutory power as a law passed or a treaty approved by the U.S. Congress, it would hinge on the goodwill of the U.S. president alone (again, just like it depends on the continuous though conditional support of the Supreme Leader in Iran).⁶ Consequently, a number of contenders for the 2016 U.S. presidential race vowed to scrap the deal “on day one.”⁷ Republican primary rivals Ted Cruz and Donald Trump joined forces at a public rally in front of the U.S. Capitol to argue against the nuclear agreement.⁸ With Trump now in office—where he can make good on his contradictory promises to variously undo, renegotiate, or strictly enforce what he sees as the “dumbest” deal⁹—the JCPOA has become a key concern for U.S. partners.

PERSISTING DISAGREEMENTS ABOUT IRAN AND THE JCPOA

Even before the election of Trump, the JCPOA had run into domestic difficulties in the United States. From lawsuits at the state level to the need for official licensing by the U.S. Treasury of trade agreements with Iran to the persisting restrictions on financial transactions through non-nuclear sanctions, a number of obstacles remain, also hampering the warming of business relations between Iran and Europe.¹⁰

Trump's early leadership nominations have confirmed the tangible threat to the JCPOA—not because these cabinet picks are united in tearing up the deal but because their conflicting views on Iran make a coherent policy harder. Who will Trump, undecided as he appears to be on the Iran deal, listen to more: his national security adviser, Gen. Michael Flynn, with his decades-long anti-Iran stance;¹¹ his secretary of defense, Gen. James Mattis, who was against the

deal at the start but warns against tearing it up;¹² Congressman Mike Pompeo, who shortly before being tapped for director of the Central Intelligence Agency tweeted he “[looks] forward to rolling back this disastrous deal;”¹³ or the designated secretary of state, Rex Tillerson, who as the chief executive officer of Exxon Mobile is on the record for “not [supporting] sanctions, generally”¹⁴ and could manage the JCPOA from a more pragmatic, if not business-like, perspective?

In the end, Trump may decide that foreign policy is not for him anyway (bar intermittent tweets against foreign leaders) and leave that field to Vice President Mike Pence. That would not bode well for the JCPOA either. As governor of Indiana, Pence cosigned a 2015 letter to Obama pledging to maintain state-level sanctions against Iran (inter alia banning public investment in companies that do business with the country), calling the JCPOA “a bad deal [that] should be rejected.”¹⁵ On the campaign trail, Pence vowed to “rip up the Iran deal.”¹⁶ His views are thus clear; whether he would put them into practice, and to what extent, is less so.

This eclectic predisposition of the Trump administration increases the likelihood of a fitful posture toward Tehran—to which the Iranian leadership would respond in kind. Such ad hocery driven by overzealous advisers, if unrestrained by their principals, risks creating a spiral of provocations that could lead to the unintentional unraveling of the deal. Moreover, the president’s own impulsiveness—and the unpredictability of the consequences of his actions—could even risk a military confrontation, as some fear.¹⁷

The EU and its member states, meanwhile, have confirmed their commitment to uphold this landmark

deal.¹⁸ On the first anniversary of the JCPOA’s implementation, Federica Mogherini, the high representative of the EU’s Foreign Affairs and Security Policy and vice president of the European Commission, recalled that “the JCPOA is working for all.”¹⁹ According to her, the “full commitment to respect and implement the deal” of all parties “sends a reassuring signal to the international community of Iran’s adherence to a civilian nuclear programme exclusively for peaceful purposes.”²⁰ The EU, she said, “will continue to work hand in hand with all those willing to contribute to its full implementation.”²¹

For the EU, specifically the deal’s supporters, the JCPOA represents the best alternative to either another war in the Middle East or an Iranian nuclear bomb, threatening both the global nonproliferation regime and neighbors like Israel. In Mogherini’s words, the deal is “the result of brave choices, political leadership, collective determination and hard work”—doing away with it might mean “facing one more military conflict, in a region that is already far too destabilised.”²² That is why, in various op-eds published in European and Iranian newspapers on the same day, she firmly extended her hand to the incoming U.S. administration.²³

Beyond praising the JCPOA for its benefits, the Europeans have also made it clear that they would not reopen the nuclear file. Between the U.S. election and presidential inauguration, Washington visitors from EU capitals notified Trump’s transition team that the EU would not embark on new sanctions, unless triggered by Iranian noncompliance.²⁴ Instead, preserving the Iran deal, by ensuring full compliance from all sides with both its letter and its spirit, is in the EU’s genuine interest.²⁵

Moreover, while the remaining U.S. sanctions still forbid U.S. firms from reentering the Iranian market—the sale of aircraft (such as from Boeing) being an explicit exception under the JCPOA²⁶—European companies have begun doing so, as permissible and, some would say, desirable under the nuclear deal. However, they have been held back by a mixture of real obstacles and perceived threats. For example, they need to obtain licenses from the U.S. Treasury for certain trades, are unable to do U.S. dollar transactions involving Iran, and cannot find global banks to provide credit. They also face Iran-related factors such as political instability, lack of transparency and rule of law, and widespread corruption. Further, it is unclear how the new U.S. administration would enforce the sanctions regime or how existing contracts would be affected by a possible sanctions snapback (a restitution of the pre-JCPOA UN sanctions regime caused by Iran violating the deal).²⁷

Finally, the EU has been eager to use the JCPOA as a stepping-stone to develop broader relations with Iran, despite objecting to its regional activities. Brussels and other member state capitals see Tehran as a central player in the Middle East that must be engaged, not isolated. Therefore, the EU does not only aim to increase economic ties but also collaborate on energy issues, migration challenges, and educational exchanges. To explore these areas of cooperation, a high-level EU delegation, including Mogherini and seven other commissioners, visited Tehran in April 2016.²⁸

Consequently, Europe is politically and commercially more invested in the deal—and thus much more vulnerable to its potential undoing—than the United States.

HOW THE JCPOA COULD UNRAVEL: FOUR SCENARIOS

Killing the Deal

“Undoing the Iran Deal? Easy.” is how the conservative *Weekly Standard* titled an opinion piece shortly after Trump’s election.²⁹ And, indeed, it would not take much for a willing U.S. government to effectively cancel the agreement—merely a ceasing of the presidential waivers needed to suspend the statutory sanctions. Rather than actively killing the deal, Trump could let it die when the respective waivers, signed by the outgoing Obama administration on its last day, begin to lapse after 120 days (in other words, in mid-May 2017, just around the time of the Iranian presidential election).³⁰ Other small deaths could stem from a refusal to issue U.S. licenses for business that is legal under the JCPOA or to defend the deal’s stipulations against congressional interference.

If Washington thus breaks its commitment, Tehran would likely do the same, despite all assurances that the JCPOA is a multilateral agreement approved by the UN Security Council. The UN can be ignored, as Iran demonstrated when it refused to abide by consecutive Security Council resolutions asking it to halt its nuclear program before the 2015 deal was struck. The United States alone could trigger the sanctions snapback even if it violates the deal first, and a U.S. veto would prevent the UN Security Council from taking any decisive action. Already the Iranian parliament has instructed the government to resume uranium enrichment in case Washington reneges on the deal.³¹

Little can be done to prevent a president from killing the deal other than exposing its disastrous consequences. A U.S. abandonment of the deal with the stroke of a pen (or actually without it, if the waivers are simply

not reissued) would only complicate relations with China, where Trump seems likely to pick a fight, and Russia, where he is expected to seek a warming of ties. It would undo not only the fencing in of Iran's nuclear program, but also the global understanding that the JCPOA embodies of how the world (ideally) should be run: through compromise and commonly agreed-upon rules that all actors subscribe to and which, if violated, are backed up by a harsh, multilateral sanctions regime.

The real problem, however, is that even if Trump somewhat wisely decides against this option, his other possible courses of action might lead to the very same outcome.

Renegotiating the Deal

If killing the deal is easy, trying to renegotiate it would be much harder. That is because there is no justifiable, commonly agreeable rationale to do so. Imperfect as the deal is, it carries significant international legitimacy.

The JCPOA is the collective expression of the interests of all its signatories, including China, France, Germany, Iran, Russia, the United Kingdom, the United States, and the European Union. It is also underwritten by a UN Security Council resolution. As Mogherini confirmed in a mid-December 2016 interview, "there is no way the agreement can be reopened bilaterally."³² Moreover, there is no credible international sanctions leverage (beyond self-congratulatory statements about how hard U.S. sanctions can bite) to force Iran into new concessions, as a former state department official has pointed out.³³ U.S. partners are not without choice when it comes to deciding whether to align with Washington.

Trump could try to cloak a renegotiation attempt within a legalistic debate around the JCPOA's adoption procedure in Congress. It would involve the resubmission of the deal to the legislature for approval as a treaty, with the near-certain result of refusal.³⁴ With this so-called mandate, Trump could claim political legitimacy in approaching Tehran to renegotiate the deal. But, given that this would be a mere rehash of the domestic debate in summer 2015 (though this time with the White House and Congress in tandem), in which all the other signatories came out strongly in favor of the agreement, this ruse is unlikely to be successful.

In sum, any unilateral U.S. attempt to renegotiate the deal is liable to undermine the international coalition that has forged and maintained the existing, well-performing agreement.³⁵

Pursuing Aggressive Enforcement

While the first two scenarios are possible, after a sober analysis of the potential consequences, a Trump administration is more likely to pursue an aggressive enforcement of the deal, while pushing back decisively against Iran's regional endeavors (as scenarios one and two also include). Ironically, this might not be so different from what presidential candidate Hillary Clinton would have done.

Yet with Iran broadly fulfilling its obligations under the JCPOA,³⁶ there is not much to be aggressive about. The violations detected by the International Atomic Energy Agency, the UN watchdog tasked with supervising implementation of the agreement, were minor infringements in the amount of heavy water that Tehran was allowed to produce.³⁷ The JCPOA's Joint Commission (on which all eight powers sit with equal voting rights) was able to fairly quickly resolve these issues.

Given that there is no generally agreed-upon schedule of fines for possible violations of the deal, the Joint Commission will have to consider each alleged case on its merits. Triggering the nuclear option (pun intended) of a sanctions snapback for a couple of liters of heavy water will not find the United States friends among its cosignatories. Conversely, the hardliners in Tehran who run the nuclear program would be delighted to match a professed aggressiveness in Washington with their own cat-and-mouse game of small-scale breaches to test the resolve of the international community—and to tire their U.S. counterparts.

Much more legitimate is a change in tactics vis-à-vis Iran's regional policies, such as its backing of Hezbollah and Syrian President Bashar al-Assad and its ongoing ballistic missile program.³⁸ The JCPOA allows the United States, or any other actor, to counter such activities including through increased sanctions. Indeed, the Trump team has already indicated its intention to place new terrorism- or human rights-related sanctions on Iranian firms and people. The difficulty would be to not simply repackage previous legislation on the nuclear program (for example, by relisting the exact firms and persons that have benefited from the lifting of sanctions).

More generally speaking, new sanctions must not take away the precise economic gains that Iran has received in return for mothballing a large part of its nuclear program. Reenacting formerly nuclear-related sanctions as non-nuclear-related sanctions would certainly lead not only Tehran but also other JCPOA signatories such as China and Russia and, possibly, the EU to claim that the United States was violating the deal. To avoid giving hardliners of the Islamic Republic the opportunity to renege on the deal in response to the United States allegedly breaking it, the benchmark

for unwarranted sanctions should be whether the envisaged measures would receive approval from the Joint Commission (in which Americans and Europeans together hold five out of eight votes).

The Iranian reaction to the extension of the U.S. Iran Sanctions Act in December 2016 demonstrated this dilemma: The law itself remains legitimate under the JCPOA, as the Joint Commission confirmed in January 2017.³⁹ Yet it fits a pattern, at least as perceived in Tehran, of the United States allegedly cheating on the deal (similar to the ire roused in Washington at Iran's missile tests and regional activities). The difficult domestic balancing act for Iran's leaders thus was to clamor about their disapproval of the sanctions act and call for an emergency meeting of the Joint Commission (it is preelection season there), but at the same time to show restraint in the actual response (research on a nuclear propeller for vessels sounds bombastic but is not banned by the JCPOA).⁴⁰

So while there is scope for additional pressure on Iran, such ratcheting up of sanctions would have to be carefully calibrated. Washington would have to win over its allies and partners, in particular the P5+1 group but also beyond, to win UN support. The question will be whether Trump has the patience for such an approach.

Doing Business With Iran

Though candidate Trump barely alluded to this possibility, doing business with Iran remains a distinct course of action given his apparent conviction that “everything is negotiable.” The scenario is as follows: Faced with a global pushback against anything that would threaten to undo the deal and with nearly two-thirds of Americans opposing a withdrawal from the deal and instead preferring to keep the deal “as

long as Iran continues to comply with the terms,”⁴¹ Trump might be tempted to get a good deal for U.S. companies too. He could set out to waive sections of the statutory sanctions that forbid U.S. firms to do business with Iran.

Trump could justify this turnaround with his number one overall priority to keep American jobs safe, eventually overcoming strong reservations from his top national security officials and from Congress. Tellingly, Boeing announced its \$16 billion deal selling eighty aircraft to state-owned Iran Air in Trump fashion: “Today’s agreement will support tens of thousands of U.S. jobs directly . . . and nearly 100,000 U.S. jobs in the U.S. aerospace value stream.”⁴² Republicans in Congress have vowed to kill Boeing’s own Iran deal,⁴³ so the outcome of this struggle will be a good indicator of whether there is any room for Trump’s business instincts with regard to Iran.

If this course is pursued, the difficulty for European companies would not necessarily be increased competition—say, over oil and gas contracts or automobile sales—but rather the arbitrariness with which a Trump-instructed U.S. Treasury might limit European business. In 2016, the parallel sales orders for Airbus and Boeing aircraft both received the necessary licenses from the Treasury’s Office of Foreign Asset Control in due course. However, if the U.S. government starts to actively promote American business with Iran, any delay in issuing a license for a European company, even if justifiable, would immediately smack of favoritism.⁴⁴

The difficulty for EU policymakers will likely stem from trying to maintain a coherent front with the United States on the JCPOA implementation while confronting Washington on trade issues that would leave Iran as a happy onlooker.

SO WHAT SHOULD THE EU DO?

Given the uncertainty over the United States’ eventual course, the EU and its member states will have to prepare for all four scenarios. In fact, European leaders should also contemplate a possible fifth scenario—no coherent policy at all. A particular challenge, however, is that the EU is currently struggling with self-inflicted wounds such as the UK’s decision to leave the bloc, as well as outside factors like a belligerent Russia (possibly courted by the United States) and an instable Middle East.

Moreover, the EU suffers from an inherent reluctance to engage in foresight and prepare accordingly, including through building an escalation potential. Even so, the Iran deal, crucial as it is, will most likely not be the biggest bone of contention between the Europeans and the Trump administration; larger issues include maintaining the transatlantic alliance itself and confronting Russia (or not), dealing with the Middle East more broadly and the Syrian and Israeli-Palestinian conflicts in particular,⁴⁵ and saving the global compact on climate change.

Still, the EU has a number of options at its disposal:

- As the JCPOA’s “guardian,” the EU needs to enlist the backing of the other two more sanguine signatories (China and Russia) to keep the two more confrontational partners (Iran and the United States) on board. The first half of 2017, when the new U.S. administration is settling into office while the Iranian public is preparing for its May 2017 presidential elections, will be crucial for the deal’s survival. Mogherini should remind all parties of their obligations related to the letter and to the spirit of the deal, avoiding any provocation among each other.

She should use the Joint Commission process to deal with even minor violations, as has happened in the past over Iran's excess production of heavy water and U.S. Congress's extension of its sanctions legislation.

- The EU should work with UN Secretary-General António Guterres to invite representatives of all eight JCPOA signatories to reaffirm the multilateral nature of the agreement. If Washington refuses to participate, it will fall on the Europeans together with China and Russia to defend the accord. Such an alliance's defense of U.S.-inspired multilateralism but without the United States may be odd to watch and exactly what the isolationists in the Trump administration want.⁴⁶
- Depending on Trump's first moves in office, the EU should quickly step up its diplomatic engagement in defense of the Iran deal. This would include concerted, back-channel efforts at the level of heads of state or government. In the public domain, the EU Council could task Mogherini with developing a plan to safeguard the JCPOA. Merely discussing European options to possible U.S. policy changes will increase the EU's preparedness—and send a stern message to the administration in Washington early on.
- If Trump focuses on renegotiating the deal, the EU should direct his attention to medium-term, not short-term adjustments.⁴⁷ Rather than trying to get a better deal now, which really cannot be done because the one in place already works, the dealmaker president should set his eyes on the JCPOA's eight- and ten-year benchmarks. This is when the deal's stipulations on nuclear-capable missiles and uranium enrichment in Iran expire. Finding ways to ensure that Tehran does

not revert to an industrial-size nuclear program in the mid-2020s is a worthy goal indeed.

Ultimately, the EU's response depends on whether the Trump administration is open to any of the aforementioned arguments. Going beyond merely refusing to support new (unwarranted) U.S. sanctions against Iran, the EU could threaten to actively object to any such measures. The EU's blocking regulation, which dates back to previous transatlantic disputes over Iran policy and forbids EU companies to observe U.S. sanctions, is still in the books and could technically be reactivated.⁴⁸ Politically, however, this threat would be difficult to follow through on, as Washington would not back down easily. Moreover, threatening to take the United States to the World Trade Organization over sanctions (as the EU did in the late 1990s) will be futile if Trump is ready to start a trade war with no respect for the global trading system.⁴⁹

Obviously, the EU standing firm against the Trump administration would be contingent on Iran continuing to uphold its obligations under the JCPOA even in the face of a U.S. policy change. It would also depend on whether the UK remains a committed supporter of the deal or whether it senses an opportunity to cozy up to the Trump administration.⁵⁰ Stressing the benefits of the JCPOA for the nonproliferation regime—and the UK's long-standing policies in this field—should prevent such an intra-European split (reminiscent of the transatlantic disagreements over the 2003 Iraq invasion).

Preserving the Iran deal goes beyond maintaining an international agreement that reduces the risk of a regional arms race and nuclear competition. For the Europeans, it also means preserving both their diplomatic achievement and the authority of the rules-based order without which they cannot thrive.

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