

BICOM Briefing

Trump's decision on Iran

May 2017



Introduction

- *On 8 May US President Donald Trump will decide whether or not to waive US sanctions against Iran as required under the Iran nuclear agreement* (Joint Comprehensive Plan of Action – JCPOA). If Trump decides not to waive the sanctions, which under US law he has to do every 120 or 180 days (depending on the law underpinning each specific waiver), he will be in violation of the agreement and risk its collapse. Though the deadline for Trump’s decision is 12 May, he has elected to announce his intentions early.
- On 12 January, *Trump announced that he would not waive US sanctions in May unless the “flaws” that he sees in the agreement are addressed. He also put the onus on his JCPOA partners* (the UK, France, Germany [E3], Russia, China and Iran) *to negotiate a “supplemental” framework agreement* that addresses Iran’s development and testing of ballistic missiles, ensures stronger international inspections and addresses his concerns with the sunset clause. As a result, the E3 (who act as lead negotiator for JCPOA partners) began separate consultations with the US and Iran to try and reach an agreement to prevent Trump from withdrawing.
- This paper sets the context of Trump’s concerns regarding the JCPOA; addresses events since Trump’s 12 January speech and discussions between the E3 and US over a “supplementary” agreement; and analyses what may happen the “day after” if the US does not waive US sanctions.

Trump’s concerns

- *Strengthening international inspection.* Until 2009, Iran was suspected of operating a clandestine nuclear weapons programme in contravention of its Non-Proliferation Treaty (NPT) commitments. The International Atomic Energy Agency (IAEA), the international body for all nuclear monitoring, is charged with ensuring that Iran is in compliance with its JCPOA and NPT commitments. Critics of the deal say the IAEA is failing to inspect all of Iran’s nuclear

sites, including military sites where the weapons programme was believed to have occurred. Under the JCPOA’s verification process, Iran can delay IAEA access to locations for 24 days. Trump is demanding that the IAEA has unlimited inspection rights in Iran, including to all military sites without delay.

- *Eliminating sunset clauses.* Iran’s nuclear programme is under several restrictions that lapse over time. For example, limitations on advanced centrifuges will begin to be progressively relaxed from 2023; restrictions on centrifuge production lapse in 2028; constraints on Iran’s stockpile of enriched uranium last until 2030. Trump is demanding that these restrictions do not expire and thus “deny Iran all paths to a nuclear weapon”. Whilst the sunset clauses do prevent Iran from possessing nuclear weapons when active, once they become inactive Iran will be free to reduce its breakout time (the time needed to produce enough weapons-grade uranium for nuclear weapons) to a matter of days if it so chooses.
- *Preventing ballistic missile testing.* Since the JCPOA was signed, Iran has increased the frequency of its ballistic missile testing. It has test-launched at least 25 cruise missiles and medium and long-range ballistic missiles, the latter reflecting no logic unless an intention existed to develop a nuclear warhead. Commenting on Iran’s ballistic missile testing, former US Undersecretary of State for Political Affairs, Thomas Shannon, [said](#) in 2016: “From our point of view, UN Security Council Resolution 2231 prohibits Iran from launching ballistic missiles. I believe that Iran violated the intent of 2231.” Under the JCPOA, UN-imposed limitations on Iran’s ballistic missile programme will be lifted in 2023 and exports on arms in 2020.
- *Roll back regional activities.* The JCPOA deliberately does not deal with any of Iran’s non-nuclear activities. Trump believes this omission has allowed Iran to use its adherence to the JCPOA as leverage to dissuade other countries from vigorously countering its expansionist activity in the region.

What has happened since 12 January?

- *Iran rejects attempts to renegotiate the JCPOA.* Iranian Foreign Minister Mohammad Javad Zarif responded to President Trump's 12 January speech by saying that the JCPOA is "not renegotiable" and criticised US attempts to "undermine a solid multilateral agreement". In April, whilst attending a UN meeting in New York, Zarif [said](#) that it was "highly unlikely" that Iran would stay inside the JCPOA if the US effectively pulled out because "it's very important for Iran to receive the benefits of the agreement – there's no way that Iran would do a one-sided implementation of it".
- *The JCPOA also enjoys unanimous support among its other signatories.* UK Prime Minister Theresa May has called the JCPOA "vitally important for regional security". On 17 February, then-German Foreign Minister Sigmar Gabriel, [said](#): "We have achieved a lot by signing an agreement with Iran. We acted together on a single frontier, and we advise our American friends not to leave the joint plan." On 4 March French President Emmanuel Macron "[reaffirmed](#) to [Iranian] President [Hassan] Rouhani France's commitment to the Vienna agreement [JCPOA] of 14 July 2015 on the nuclear programme, and to its strict implementation."
- However, fearing the collapse of the JCPOA if the US leaves the agreement, *the E3 have made it clear they will support additional measures to address Iran's ballistic missile testing and arms transfers* that violate UN Security Council (UNSC) resolutions. The E3, joined by Italy, entered into a "Structured Dialogue" with Iran in January to address issues of concern outside the JCPOA whilst also beginning talks with the US to address Trump's demands.
- *There are precedents for supplemental deals.* Speaking to [NPR](#) on 24 April, Brian Hook, Director for Policy Planning at the US State Department, said that negotiating a supplemental deal is not unprecedented in non-proliferation history as many arm control agreements are often augmented by newer agreements. Hook also said that if an agreement is reached, it will be presented to Trump, who would make a decision on "whether he wants to remain in the deal or stop waiving sanctions".
- In March, *Trump fired Secretary of State Rex Tillerson and National Security Advisor Lt Gen. HR McMaster, both of whom advocated for the US to remain in the JCPOA.* He replaced them with two vocal critics of the deal, former CIA Director Mike Pompeo and former US Ambassador to the UN John Bolton. While their views on the deal are clear, it is difficult to ascertain the impact Pompeo and Bolton will have on Trump. During his Senate confirmation hearing, Pompeo [refused](#) to say whether he would advise Trump to pull out of the deal if there was not a fix, but vowed to work with allies to achieve a better deal. In a 2017 comment piece in *The Hill*, new National Security Advisor John Bolton [advocated](#) for regime change in Iran and for withdrawing from the nuclear deal. He has also recommended pre-emptive strikes against North Korea if it refuses to give up its nuclear weapons. If nothing else, Pompeo and Bolton's appointments likely pushed the E3 into more serious negotiations with the US in trying to fix the nuclear agreement.
- In April *Trump hosted Macron for a state-visit during which the two leaders held talks on the nuclear agreement.* The French President [said](#) that they had discussed "new" solutions to stop Iranian nuclear activity both now and beyond when the current deal expires. Macron said the JCPOA should not be scrapped, but instead become one pillar of a broader comprehensive agreement focused on preventing Iran from developing ballistic missiles and discouraging it from interfering in neighbouring countries.
- On 30 April, *Israeli Prime Minister Benjamin Netanyahu revealed that in January 2018 Mossad conducted an operation* in which thousands of documents were stolen from a warehouse in Tehran containing a secret archive relating to Iranian nuclear activity. According to Netanyahu, more than 55,000 files on 183 CDs contained incriminating documents, charts, presentations, blueprints, photos and videos of Iran's previous nuclear weapons programmed named Project Amad.

- *The reaction to the Israeli intelligence coup has reinforced the divide regarding the deal.* Those who support the JCPOA say that the agreement was made precisely because the international community didn't trust Iran's intention and therefore required verification mechanisms and the strict monitoring done by the IAEA. UK Foreign Secretary Boris Johnson said that "the Iran nuclear deal is not based on trust about Iran's intentions; rather it is based on tough verification, including measures that allow inspectors from the IAEA unprecedented access to Iran's nuclear programme. The fact that Iran conducted sensitive research in secret until 2003 shows why we need the intrusive inspections allowed by the Iran nuclear deal today. The verification provisions in the Iran nuclear deal would make it harder for Iran to restart any such research. That is another good reason for keeping the deal while building on it in order to take account of the legitimate concerns of the US and our other allies." Those who support a *fix* for the deal argue that the revelations reveal the flaws in the agreement, such as the sunset provisions and the IAEA's difficulty in gaining full access to all nuclear sites and Iranian scientists. Those arguing for the agreement to be *cancelled* say that Israel's intelligence exposé provides Trump the necessary political space to walk away, arguing that Iran cannot be trusted.
- *The revelations raise questions regarding future Iranian intentions.* While Netanyahu's revelations made no suggestion that Iran was not in compliance with its JCPOA commitments since 2015, that Iran decided to hide its previous nuclear weapons data from IAEA inspectors puts in doubt its commitment and intention to never "seek, develop, or acquire any nuclear weapons" even after limits in the JCPOA run out. In effect, it seems likely that Iran hid its data as an insurance policy after the JCPOA expires if it ever decided to restart a weapons programme. Following the revelations, Israeli newspaper *Hadashot News* quoted US government officials who raised the possibility that Iran's retention of computer models to simulate nuclear explosive devices is in breach of clause T82.1 of the JCPOA, whereby Iran vows that it will not engage in "activities which could contribute to the

development of a nuclear explosive device." This includes "designing, developing, acquiring, or using computer models to simulate nuclear explosive devices".

UK-Iranian relations since the JCPOA nuclear agreement

- Britain played a vital role, along with France and Germany (E3), in reaching a diplomatic solution to the Iranian nuclear issue. The JCPOA is a result of numerous E3-Iranian talks and agreements since 2003, making the E3 model a cornerstone of international diplomacy. This can be seen in the UK and France's decision to join the US in targeted airstrikes in Syria, as well as the consensus among the countries that the E3 format should be maintained independent of Brexit.
- UK-Iranian diplomatic relations have significantly improved since 2015. The two countries reopened embassies in 2016 (after the attack on the British Embassy in Tehran in 2011 that led the UK to downgrade their diplomatic ties). Philip Hammond became the first UK Foreign Secretary to travel to Iran in more than a decade in 2015, and in 2016 Iranian Foreign Minister Javad Mohammad Zarif was the first Iranian minister to travel to London in more than 12 years. Such exchanges have led to new opportunities for UK firms to re-enter the Iranian market.
- Bilateral trade has also increased. According to former UK Chancellor of the Exchequer Lord (Norman) Lamont, who now heads the British Iranian Chamber of Commerce. Trade increased by [42 per cent](#) from January to October in 2016 and [57 per cent](#) in the same period in 2017, reaching £228m.
- An October 2017 RUSI and British Council roundtable involving British and Iranian experts noted that UK firms remain apprehensive about investing in the Iranian market due to structural issues in the economic system, such as outdated technology, the dominant role of the IRGC and a lack of transparency.

Can the E3 persuade Trump to continue to waive sanctions?

- *It is unclear how much progress has been made in the framework of US-E3 talks.* Germany, France and the UK have stated that any supplementary agreement must respect the exact terms of the nuclear deal; and cannot sanction Iran over breaches that have not been committed. The key question for the Trump administration is whether waiving US sanctions and sticking to the JCPOA provides the most leverage for reaching a supplement agreement with the EU and ultimately with Iran. In any event, E3-US agreement at this stage is unlikely to include Iran, but would rather delineate areas where Iranian violations will not be tolerated, and will elicit specific punitive measures.
- In terms of dealing with Trump's concerns, *a zone of possible agreement may include the following:*
 - *Sunset provisions:* The sunset provisions are the most difficult to address without opening up the deal to renegotiation, something the EU and Iran will not do. It has been suggested that the US and E3 could agree on a minimum one year breakout clause, whereby if Iran develops its civilian nuclear programme to an extent which reduces the time it would take to produce enough weapons-grade nuclear material to under one year than international sanctions would automatically snapback.
 - *Ballistic Missiles:* The E3 and the US are reportedly close to agreement on curbing Iran's ballistic missiles programme and regional activities. On the former, there has been a growing tendency by EU leaders to relate to "long range missiles" rather than "missiles" in the hope of gaining Iranian approval. Emily B. Landau, Daniel Shapiro, Moshe Ya'alon and Ephraim Asculai of the Institute for National Security Studies (INSS) have set out their belief that this initiative is ill-conceived as Europe would be sacrificing action against Iran's medium range missiles that cover Israel, the Gulf states, and Turkey, for their own security fears. In October 2017, Iranian stakeholders

signalled openness to discussions on the country's missile programme, although Israeli expert Sima Shine told BICOM it was highly unlikely the Iranians would agree to any limitation on their ballistic missiles program (or if they did it would only be to those missiles capable of reaching Europe but would not affect their ability to hit Israel or other states in the Middle East.)

- *Iran's Regional Policy:* On 16 February, the EU failed to *reach an agreement* after Italy, Spain, and Austria resisted E3 proposals to place new sanctions on Iran over its role in the Syrian civil war. This demonstrates the challenge ahead for the E3 in getting a consensus from the 28-member EU to agree to new sanctions to tackle Iran's regional activities.

What could Trump do?

- *Of the four key pieces of US legislation which place sanctions on Iran, and which were waived under the JCPOA, only one is up for renewal on the 12 May:* the National Defense Authorization Act (NDAA) for FY2012. The other three key pieces of legislation – the Iran Sanctions Act, the Iran Threat Reduction and Syria Human Rights Act, and the Iran Freedom and Counter-Proliferation Act – all expire on 11/12 July. The law requires the US Treasury to impose sanctions on foreign financial institutions that conduct business with the Central Bank of Iran or other designated Iranian financial institutions unless the country holding jurisdiction over those foreign financial institutions had reduced their purchases of Iranian oil to "a significant degree". NDAA sanctions take six months to come into effect.
- In light of this, *there are four scenarios that could play out regarding US sanctions:*
 - *Scenario 1: Cease Waiving Sanctions; Wait and See.* Trump can decide not to waive NDAA sanctions but also announce he is not withdrawing from the deal. This would allow the E3 up to 6 months to finalise a supplementary agreement. Analysts have argued that this approach

could also be used to maintain a degree of uncertainty that discourages foreign investment in Iran, putting more pressure on the country's regime.

- *Scenario 2: Cease Waiving Sanctions; Seek UN snapback sanctions.* Fearing a potential backlash from the international community for being accused of terminating the JCPOA unilaterally and needlessly, Trump can attempt to renew UN sanctions via the Dispute Resolution Mechanism as set out in article 37 of the JCPOA. If JCPOA partners fail to resolve a compliance dispute within 35 days, the US can notify the UNSC of an issue it believes "constitutes significant non-performance of commitments under the JCPOA". This would give the Security Council 30 days to decide whether it should continue to withhold the sanctions imposed on Iran through its earlier resolutions. If a decision is not made within the 30 days then all sanctions automatically snapback. As the US has a veto power at the Security Council, it can force the reinstatement of the UN sanctions on Iran.
- *Scenario 3: Cease Waiving Sanctions; Pull out of JCPOA.* Trump could decide not to waive NDAA sanctions and also re-impose executive orders (mostly secondary sanctions) that were revoked, and/or relist "specially designated entities" including the National Iranian Oil Company (NIOC), various Iranian banks, and many energy and shipping-related institutions that were delisted under the JCPOA. This approach would be taken if the Trump administration's ultimate objective of re-imposing US sanctions is to force the Iranians to change their regional behaviour and to put more pressure on the EU and the international community to conform.
- *Scenario 4: Renew Sanctions Relief.* For Trump to waive US sanctions, avoiding potentially jeopardising the nuclear deal, there would have to be agreement from the E3 in addressing Iran's ballistic missile programme, terrorism and human rights violations, potentially through new

sanctions. Trump has also demanded that US Congress passes (or be in the process of passing) new legislation that puts more restriction on Iran's nuclear programme after the JCPOA expires.

The day after: will the JCPOA collapse?

- *A decision to cease waiving NDAA oil sanctions would not necessarily end the JCPOA.* Rather, the agreement's survival will depend on a number of questions: 1) what sanctions the US decides to re-impose and the level of enforcement it gives to such sanctions; 2) the EU's and wider international community's response to such sanctions and; 3) Iran's response to such sanctions.

The US decision on re-imposing sanctions

- Trump has several options regarding which sanctions to reimpose and how strictly to enforce them. One option is to reimpose NDAA oil sanctions and to implement them more vigorously than the Obama administration did between 2012 until the JCPOA was signed. Another, even more aggressive option would be to impose secondary sanctions alongside NDAA oil sanctions.
- If this were the case, then European countries and businesses with commercial dealings in Iran (industrial MOUs signed by European multinational companies include [Enel](#), [Saipen](#), [Peugeot](#), [Siemens](#), [Airbus](#), [Renault](#) and [Total](#)), will probably pull their investments in Iran rather than risk their access to the far more lucrative US market. Iranian leaders will therefore withdraw from the agreement having already indicated their dissatisfaction with the level of economic benefit it derives from the deal.
- As July approaches, Trump could also threaten to not waive sanctions relief regarding the other three legislative acts, namely the Iran Sanctions Act, the Iran Threat Reduction and Syria Human Rights Act, and the Iran Freedom and Counter-Proliferation Act.

The EU's and wider international community's response

- *The EU's and international community's response to NDAA oil sanction and other possible US sanctions will impact whether the JCPOA survives.* Countries such as China, India, Turkey and Japan (the four largest buyers of Iranian oil) could simply decide to ignore NDAA sanctions, as they have done in the past with UN sanctions on Iran, which would in turn minimise the impact of US sanctions on Iranian oil sales.
- *Critics accuse Europe of treating its JCPOA commitments primarily via economic interests.* Although less than 0.5 per cent of EU foreign trade is with Iran, Iran's exports to the EU have increased by 344.8 per cent since 2015 and [a third of Iran's crude exports](#) have gone to Europe since sanctions were lifted. In other words, the EU has a commercial reason – as well as making a political statement – not to comply with NDAA oil sanctions, or implement rules to nullify them. This could persuade Iran that it is still economically beneficial to stick with the JCPOA.
- *EU foreign policy chief Federica Mogherini has said the EU is preparing to “protect European interests”* in case “decisions are taken elsewhere” not to abide by the deal. The EU can adopt a variety of measures. One option is to shield their oil companies from any US penalties through blocking regulations (as the EU did in 1996 in [response](#) to US sanctions on Cuba, Iran and Libya). However, taking this option today would be much more complex as European banks and the US financial system have a much higher degree of connectivity than in 1996. Other options could be: to initiate a dispute process at the World Trade Organisation; to work with the US to carve out [exemptions](#) for EU business in certain economic sectors (as it did when Congress last year authorised Trump to withhold sanctions on Russian energy projects that are backed by European investors); or to [improve](#) financing options for oil companies operating in Iran.
- Dennis Ross told BICOM that *if the EU appears sympathetic to Iran, the Islamic*

Republic would likely play on such sentiments and “play the victim,” in an attempt to try and convince the EU and the UN not to abide by US sanctions.

Iran's response

- *Iran's policy on the JCPOA has been to ensure that it gradually reintegrates into the international community* and [believes](#) this is the most effective means of safeguarding the country from the multilateral sanctions that laid the groundwork for Iran's isolation during the 2000s. Until recently, Iran's leadership had not overreacted to Trump's threats, particularly since Tehran views Trump succeeding as driving a wedge between Europe and the US on Iran, which would take away the threat of a renewed multilateral sanctions regime that put Iran under immense financial pressure in the years prior to the JCPOA.
 - In April, [Zarif warned of “drastic measures” if the US were to pull out](#) and claimed it was “highly unlikely” that Iran would remain part of the agreement in such a scenario. More drastically, the political debate in Iran includes serious discussions of Iranian withdrawal from the Non-Proliferation Treaty, which opens the door for a full Iranian nuclear weapons programme. If the US were to pull out of the deal, Iran could issue a complaint through the dispute mechanism set up in the agreement, leave the deal and/or restart nuclear activities, or adopt more “drastic measures,” in which Zarif declined to specify. This could include upping their destabilising activities against Western interests in Syria, Yemen and elsewhere.
- Iran has already passed legislation in Parliament stating that *if sanctions were illegally re-imposed, within a two-year period the country will increase uranium enrichment* to 190,000 SWU [separate work units]. Under the JCPOA, Iran's total enrichment output until the limitation expires in 2028 would be 14,567 SWU. Today Iran [has an enrichment output](#) of 4500-5,060 SWU.

- *It's the economy stupid.* The nationwide protests in Iran in January, based on the dire state of the economy, as well as Iran's current currency [crisis](#) will make its leaders more hostile to renewed sanctions on oil exports, especially given that Iran has doubled its oil exports to about 2.2m barrels a day since the JCPOA. However, non-oil GDP growth has only accounted for 3.3 per cent of an overall 13.4 per cent growth rate in 2016, and that 90 per cent of the [currency exchange](#) in the market is made possible by oil revenues which means that any reduction of oil revenues would have a significant influence on Iran's already troubled currency. However, reimplementing of NDAA oil sanctions will also give regime hardliners in Iran an opportunity to deflect blame on the currency crisis away from the mishandling of the economy and toward foreign influence.

Conclusion

There is "zone of possible agreement" that involves the Trump administration, the E3 and the Iranian regime over re-opening the JCPOA to address the sunset clauses or ballistic missile development. Attempts by Macron, Merkel and May to design a supplementary agreement with the Trump administration that might touch on these issues, as well as Iran's regional activities, are a possibility. However, it remains unclear what Trump's minimum "bottom line" is that would cause him to renew sanctions relief.

Scenarios exist for Trump to cease waiving sanctions, yet remain in the JCPOA for now. Although Zarif warned of "drastic measures," which could include increased uranium enrichment, Iran's reaction will depend on the views of the international community to any unilateral US action or decision. In any event, reduction of Iranian oil revenues would have a significant influence on the country's already troubled currency.

Israel's JCPOA dilemma

- Israel's Prime Minister Benjamin Netanyahu has been one of the JCPOA's most ferocious critics and has called for the deal to be cancelled unless it is significantly improved. Netanyahu argues that the nuclear agreement not only provides Iran a legitimate path to build a nuclear weapons programme when many of the clauses expire, but that the original intentions of the deal (that the JCPOA would lead to what European and Obama administration officials often refer to as a *more constructive* Iranian role in the Middle East) has failed to materialise. Netanyahu points out that Iran has not tempered its regional strategy, but has rather increased its involvement in Syria, its financial and military support to non-state actors the region, and the development of its ballistic missile programme.
- Israel's security establishment generally [believes](#) that the JCPOA is working, in terms of blocking Iranian nuclear ambitions for the time being. However, it has also raised specific key flaws: that the JCPOA provides Iran with the legitimacy to become a nuclear threshold state once the agreement expires; that if there are no restrictions on Iran's ballistic missile programme, Iran will [ultimately be better placed](#) to get nuclear weapons down the line; that not all the suspected nuclear sites [have been visited](#) by IAEA inspectors, either because of Iran's refusal to grant entry or UN officials' reluctance to confront Iran on the issue; and that the JCPOA fails to rollback Iran's destabilising activities in region, especially in Syria, which have only increased since the accord was signed.
- At the same time, the collapse of the JCPOA might result in Iran renewing its nuclear program and uranium enrichment without any of the international constraints and with an absence of international consensus over sanctions. Alternatively, if the US leaves the JCPOA but all other parties remain committed to it, and receive immunity from US sanctions, the Islamic Republic might continue to economically gain from the agreement without the threat of facing multilateral sanctions while simultaneously benefiting from the loss of Western consensus at pushing back against its non-nuclear activities.

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