



COMMENTARY

A Possible Empowerment of the EU from the US in its Sanctions Policy (Iran, Syria, and Russia)?

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INSTEX: The European Union stands out from Washington

The United States withdrawal from the Joint Comprehensive Plan of Action on May 8, 2018, and the reinsertion of the US secondary sanctions on August 7, 2018, are not without writing the first lines of a new chapter in the history of Euro-American relations. Considering the Iranian nuclear deal as one of the last cornerstones preserving the Non-proliferation Treaty of 1968 from collapsing, the EU actively defends what may be regarded as the most achievement of its diplomacy. The Iranian nuclear deal is both a founding case of the foreign policy of an EU that has become too economically powerful, as well as an obstacle to the US energy ambitions in the Middle East.

The US economic sanctions, intended to deprive global companies of trading in Iran, also reveals the American will to curb the EU's trade expansion. On 6 June 2018, the European Commission adopts a delegated act to update the annex to the "blocking regulation" passed in 1996 to circumvent US sanctions against Cuba¹. Approved by the EU Foreign Ministers on 16 July 2018, this act prohibits European companies from complying with the extraterritorial effects of US sanctions. Otherwise, there would be potential penalties set by each Member State. One of the provisions of this mechanism is to award compensation to European companies that have been harmed by the legal or moral person who is responsible for it; in this case, the US.

The EU is committed to defending the business opportunities of its companies in Iran. Hence, on September 24, 2018, a Council of Ministers of the EU adopted a political response which may be considered as one of the most sophisticated legal protection mechanisms vis-à-vis US sanctions, a Special Purpose Vehicle (SPV). However, the effectiveness of this mechanism cannot yet be assessed, but it represents a diplomatic response symbolizing the EU's refusal to support or validate the US withdrawal, the commercial fight delivered to the EU as well as the Tehran's isolation advocated by Washington and Riyadh.

On January 31, 2019, the EU High Representative, Federica Mogherini, welcomed the "registration of INSTEX SAS (Instrument for Supporting Trade Exchanges), a Special Purpose Vehicle with France, Germany and the United Kingdom as initial shareholders"². It marks a turning point in the history of transatlantic cooperation as it aims at circumventing the use of the dollar but not US sanctions as stated by the EU's Ambassador to the US, Daniel O'Sullivan.

"We are essentially talking about products that are not subject to sanctions. This concerns articles for humanitarian purposes [...]. In this way, it is not a question of circumventing the sanctions, because they are exempted from them"³. The functioning of the INSTEX "is similar to that of a clearinghouse in the context of barter between importers and exporters between Iran and Europe. Companies exporting to Iran will be credited to INSTEX through the receivables of Iranian importers, only the balance of these flows is the subject of bank loans"⁴.

¹ https://ec.europa.eu/fpi/what-we-do/updated-blocking-statute-support-iran-nuclear-deal_en

² https://eeas.europa.eu/headquarters/headquarters-homepage/57475/statement-high-representativevice-president-federica-mogherini-creation-instex-instrument_en

³ *Op. cit.*

⁴ <https://www.lesechos.fr/monde/europe/0600655169264-leurope-mise-sur-instex-pour-commercer-avec-liran-2243324.php>

A POSSIBLE EMPOWERMENT OF THE EU FROM THE US IN ITS SANCTIONS POLICY

Headquartered in Paris, directed by the former German Head of Financial Institutions at *Commerzbank*, Per Fischer, and institutionally presided by London, one may observe that INSTEX brings together the three actors who initiated the talks in 2003 with Iran. Indeed, despite Brexit, the United Kingdom remains committed to the cause of EU foreign policy cooperation as stated by the Polish, Lithuanian and Romanian Foreign Ministers on September 19, 2018. “The EU’s Common Foreign and Security Policy (CFSP) is one of the least regulated areas of European integration and therefore offers a lot of room for maneuver and a strategic partnership with the UK”⁵.

A turning point occurs in the bilateral relations considering the close cooperation that has so far been with the US and the EU, in the context of a coordinated adoption of sanctions targeting Iran, Syria, and Russia for instance. These three case studies are characterized by their chronological simultaneity and the common presence of Washington and Moscow at the same negotiating table. While an international attempt is being made to marginalize the US dollar, which is no longer used by Beijing and Moscow, which participated in the negotiations on INSTEX⁶, the EU is now taking the legal means to stand out from Washington. Considering the coordinated adoption of economic sanctions in the three aforementioned cases, can the EU’s remoteness from Washington be considered superficial or does it reveal a fundamental movement?

Iran: A coordinated adoption of European and US sanctions (2006-2017)

This period of eleven years saw a very marked evolution of the American policy vis-à-vis the world, passing from republican interventionism to a progressive democratic disengagement to return to intervention even more pronounced but different from President D. Trump. The US, so naturally cautious about their external interventions, nevertheless has a formidable engine that triggers them: the race to control energy. The US concern for global control of these sources and for shaping their prices is particularly evident in its willingness to access the resources of its outside world to preserve its reserves and therefore its industrial power while perpetuating it. The US strategic game vis-à-vis Iran must be illuminated in the light of access to energy resources, but also in a movement on the global chessboard to help its energy allies, such as Saudi Arabia.

Washington still honours the Quincy Pact, concluded with Riyadh in 1945, which guarantees US military protection to the Wahhabi kingdom from access to its oil resources. The extraction of shale gas in the US, whose selling prices were meager compared to oil prices, was responsible for bending OPEC and Saudi Arabia, for lowering the cost per oil barrel. The American goal was laudable not to stifle Western economies with a second oil shock, while OPEC was intent on rising crude oil prices to increase its cash reserves for a short time left to its Member States to exhaust their hydrocarbon reserves and to transform themselves into industrial powers, instead of living from a cash economy.

Iran had therefore limited its production. The end of the embargo authorised by the Iranian nuclear deal of July 14, 2015, allowed Teheran to produce again and thus to lower world market prices, which pleased the OECD powers, including the US and the members of the EU. The end of the embargo authorized by the Iranian nuclear deal of 2015 allowed it to produce again and thus to lower world market prices, which satisfied the OECD powers.

⁵ <https://www.politico.eu/article/brexit-foreign-policy-security-eu-and-uk-need-each-other-on-post-brexit-security/>

⁶ <https://fr.sputniknews.com/international/201902081039950484-mecanisme-commerce-iran-ambassadeur-ue/>

A POSSIBLE EMPOWERMENT OF THE EU FROM THE US IN ITS SANCTIONS POLICY

But this downside threat was not contained by Iran's adherence to price cartelization by joining OPEC, as Riyadh urged, but declined. Iran's desire for decades is to become a regional power and a significant player in the global energy market. Saudi Arabia and the State of Israel, regularly threatened by Iran with destruction in case of accession to nuclear power and its ballistic vectors, denounced the agreement.

The attitude of the US vis-à-vis Europe in this global game is both that of a real ally but also that of a competitor. Too much European energy autonomy that would undermine US strategic interests in this area is quietly but effectively contained. Iran and its vast energy reserves are no exception to this game. The EU has become a global economic and political power. The US agrees, but to exceed the sum of the gross domestic products of the EU Member States with the US GDP cannot, in their view, give Europe the world supremacy that Washington claims. The US is, therefore, ensuring that the EU does not move away with diplomatic action that is too independent of theirs. The means to do this are quite well known but vary according to changes in their quadrennial political orientations.

As regards sanctions against Iran, the framework established by the institutional cooperation between the two partners has worked very well. The regular summits introduced by the 1990 Transatlantic Declaration provided a very fluid framework for diplomatic exchange. It should be noted that the main inspiring force of the US Foreign Policy Council on Foreign Relations (CFR) stated on July 15, 2015, that: "The European Union has augmented UN penalties against Iran with sanctions that are "nearly as extensive as those of the US"⁷.

It must be remembered that despite the respective efforts of the Clinton and Bush Administrations, the international community, in general, did not want to follow Washington's approach to Iran and fully respect its trade restrictions. From the 1990s until 2005, the EU opposed the US approach and continued to maintain normal economic relations with Iran, at least until the joint diplomatic effort British, French and German is knotted. The US also played on their British ally, still within the EU. This historic partner, a nuclear power enjoying a permanent seat on the United Nations Security Council, nevertheless played a crucial role in the emergence of the EU as an international player, alongside Paris and Berlin throughout the negotiations with Tehran.

It affects the third means of the influence of the US vis-à-vis the EU, which is the North Atlantic Treaty Organization, under American political and military domination. It included the newly joined countries of Eastern Europe and the Baltic States of the European Union and freed from the Soviet yoke. Their votes in the preparations for the Iraq war in favor of the US also reflected on US positions produced during European negotiations with Iran. The newcomers of the former Eastern and Central Europe and the Baltic Sea countries have been, since the enlargement of the EU, no doubt an additional political lever, maintained by the help that they have been provided with security to achieve greater transatlantic political unity.

⁷ <https://www.cfr.org/backgrounder/international-sanctions-iran>

A POSSIBLE EMPOWERMENT OF THE EU FROM THE US IN ITS SANCTIONS POLICY

Syria: Evolution of US influence on EU decisions (2011-2017)

The Administration of President George W. Bush had managed its relations with the Arab Republic of Syria as a progressive end of cooperation, because of the importance of this country for peace efforts in the Middle East by practicing interventionism against Iraq and Iran. The whole period of the Bush Administration was against Syria that of the opposition by isolation rather than engagement and dialogue. Under Sarkozy's Presidency, France was committed to a political and economic dialogue that had replaced American economic flows with Damascus. US sanctions were preventing American companies from making successful contracts with Syria, while European and Russian companies were breaking into the breach by replacing them.

As early as 2004, the spokesman for the European Commissioner for External Relations, Chris Patten, said: "At the same time that the EU shares the same aspirations as the US about Syria, we do not share the same tactical approach"⁸. Syria's suspicion of support for terrorism and the desire to hold weapons of mass destruction was then sidelined under Bill Clinton. The Obama Administration, meanwhile, had expressed a preference for the withdrawal of US forces from Iraq and Afghanistan, while its predecessor had deployed them. The Obama Administration's concerns over Israel's security also prompted US non-intervention in Syria, given al-Assad's clan ties with Hezbollah and Iran, which had nonetheless maintained a border with Israel in a relative state of calm.

The period strictly speaking from 2011 to 2017 saw the emergence of a crystallizing phenomenon around which the opinions of the US and its European allies were formed: that of the use of chemical weapons by Syria against its population. Barack Obama, like most European leaders at the time, did not want frontal military intervention against the Syrian regime for the reasons outlined above. They were followers of a regime change, while not wishing to see an Arab Sunni power come into existence, and with it the series of crises around the participation in the power of extremist terrorist organizations they had created on the margins of their actions of influence in this country and in Iraq.

UNSC Resolution 2118, adopted on September 27, 2013, prohibited Syria from "using, developing, producing, acquiring, stockpiling, holding or transferring chemical weapons". On August 21, 2013, the Syrian regime used sarin gas against the populations of Eastern Ghouta⁹. From then on, a rapprochement of points of view was established between Washington and its European allies, first with the ally of London and then with NATO. Paris joined the movement and stood ready for intervention in Syria. Berlin, which had traditionally been non-interventionist since 1945, expressed its condemnation, without however considering any direct military participation.

Within NATO, the countries of Central and Eastern Europe do not show enthusiasm for the project. Despite the German, French and British will, the Allied military intervention did not take place. On the other hand, as recalled by Alain Juppé, the EU was the first to impose sanctions against Bashar

⁸ https://books.google.be/books?id=6p8PlkGBzv4C&pg=PA93&lpg=PA93&dq=spokesman+for+the+European+Commissioner+for+External+Relations+said:+%E2%80%9CA+the+same+time+that+the+EU+shares+the+same+aspirations+as+the+US+about+Syria,+we+do+not+share+the+same+tactical+approach&source=bl&ots=kBHqgjBQnU&sig=ACfU3U3GtjRpe26etje5An3EkeRiBiL_Qw&hl=fr&sa=X&ved=2ahUKewi2u5DY8vzgAhWS6aQKHf5JB7MQ6AEwAXoECAkQAQ#v=onepage&q=tactical%20approach&f=false

⁹ <http://www.un.org/zh/focus/northafrica/cwinvestigation.pdf>

A POSSIBLE EMPOWERMENT OF THE EU FROM THE US IN ITS SANCTIONS POLICY

al-Assad with the freezing of assets, travel bans or the embargo on the oil trade. However, the US had started putting in place sanctions much earlier than the EU, i.e., in 2004, but spreading them until 2012. The lack of a European consensus on Allied military intervention was thus followed by restrictive European measures which often replicated those of the US¹⁰.

Washington has continued to enforce its sanctions against Syria but specially to head against the Islamic State the Arab-Western Coalition in Iraq and Syria, of which 10 of the 28 EU States are members. This informal division of tasks between allies came to light in April 2017 when an attack most likely to sarin gas caused a vast number of deaths. On April 6, 2017, President Trump ordered air strikes against Syria in response to this chemical attack. On April 14, 2018, the United Kingdom and France joined in the aftermath of the Duma chemical attack and moderated the US response by imposing specific targets. Paris and London do not act on behalf of the EU but as permanent members of the UNSC.

The evolution of the influence of the US on the sanctions policy adopted by the EU is undoubtedly characterised by coordination and influence. However, former EU High Representative Catherine Ashton said: “US-EU dialogue was not a substitute for attending EU meetings: “You can send as many briefing papers as you like, but if you are not in the room, you do not participate. Our colleagues in the US would send regular notes to ambassadors, Ministers and Governments about their views, which were always taken into account, but they were not in the room”¹¹.

The conclusion of the British parliamentary committee was that: “the US and the EU already coordinate closely on the design of sanctions. It would be desirable for the UK, the US and the EU to maintain a broadly similar approach to sanctions policy after Brexit”¹².

Russia: The influence of the American partner on European decisions (2014-2017)

Since the fall of the Berlin Wall, the balance of power between East and West has changed profoundly. A logic of eastward enlargement of the model of Western democracy and the market economy has been advocated by the US as much as by the EU since the era which saw the slow economic downturn of the USSR lead in 1991 to its dismemberment. For the next twenty years, Russia focused on improving its diplomacy and economy.

The Ukrainian crisis seems to be a potential turning point in Euro-Atlantic security. Russian officials have seen the enlargement of NATO and the EU, joined to the European ballistic missile defense project, as activities that are not those of a strategic partner. The 2014 Ukrainian crisis set the tone for a Russia that is forcibly setting a limit in time and space in the US and Europe.

It is indeed true that the Russian mentality, traditionally in love with continental space and imperialism, had very poorly accepted an expansion competing with his own, which succeeded in defeating it in territories formerly conquered by Russia. The Russian State has historically sought to secure maritime openings to play an international role. Russia’s territorial expansion also comes from

¹⁰ https://eeas.europa.eu/sites/eeas/files/restrictive_measures-2017-08-04.pdf

¹¹ <https://publications.parliament.uk/pa/ld201719/ldselect/ldcom/50/50.pdf>

¹² *Op. cit.*

A POSSIBLE EMPOWERMENT OF THE EU FROM THE US IN ITS SANCTIONS POLICY

the search for raw materials and fertile farmland. Crimea is a maritime lock at the mouth of the Sea of Azov to the Black Sea, and therefore to the warm seas. Due to its geographical configuration, the fact that it housed the only Ukrainian military port as much as it held a position of control of the flow of Russian gas trade to its external customers, Crimea occupied a nerve center to recover.

London was cautious enough: The House of Lords drew attention to the fact that the EU had between 12 and 14 times more trade with Russia than the US¹³. Washington and the EU have effectively coordinated their sanctions against Russia. The kick-off was given by the German Chancellor as early as March 14, 2014, which quickly rallied the President of the French Republic to her views to reach the Minsk Agreements with Russia and Ukraine on September 5, 2014¹⁴.

France was in a position to rally these views to several southern European countries and was thus included in this effort, in addition to its natural role in the “Franco-German couple” in Europe. President Obama could maintain some co-direction of crisis management with Angela Merkel while associating David Cameron and Matteo Renzi. But Washington has jointly pursued a policy of close direct consultations through existing institutional channels with the EU, even though its top representatives were not direct actors in Russia’s negotiations with Russia.

This process of coordination and similarity of transatlantic views lasted for more than three years. At the very beginning of Trump’s tenure as supreme magistrate of the US in January 2017, the Congress voted by a large majority of additional sanctions against Russia. By this legislation, the Congress had the diplomatic awkwardness to indicate that the policy of the US was: “to continue to oppose the construction of the Nord Stream 2 pipeline [...] and that the US Government should give the export priority of US energy resources to create American jobs, help US allies and partners, and strengthen US foreign policy”¹⁵. As much as the EU has hailed this text as a sign of continuity in transatlantic coordination, this legislation has provoked harsh reactions from the same EU to such an extent that the future of transatlantic coordination on sanctions against Russia could be blamed for a moment.

The first European complaint was that this news authorized the US Administration to penalize foreign, and therefore European, companies with a subsidiary in the US since they were partners of Russian companies in the development of new energy projects. The second complaint related to the necessary energy independence of the EU Member States, while the US wanted to replace the Russian energy supplier of the Member States of the European Union. The latter still depend on almost a third of their consumption of energy resources from Russia. German and French policymakers have therefore criticized the “extraterritorial reach” of the new American law.

In the face of strong opposition from the EU Member States and the Union’s governing bodies, the President and Congress of the US replaced the word “must” with the word “could”. This conditional helped significantly reduce transatlantic tensions over sanctions against Russia. Coordination will once again have been effective between the US and the EU’s governing bodies as well as with its Member States best able to influence the Union in the process of sanctions against Russia.

¹³ <https://publications.parliament.uk/pa/ld201415/ldselect/ldeucom/115/115.pdf>

¹⁴ <https://www.bundeskanzlerin.de/bkin-de/aktuelles/speech-by-federal-chancellor-angela-merkel-at-the-new-year-reception-for-the-diplomatic-corps-at-the-federal-chancellery-802582>

¹⁵ <https://www.congress.gov/bill/115th-congress/house-bill/3364/text>

A POSSIBLE EMPOWERMENT OF THE EU FROM THE US IN ITS SANCTIONS POLICY

Washington played a very political realism in that the Capitol and the White House played some intergovernmentalism.

Conclusion

Despite the limitations presented by the barter compensation structure of INSTEX, the distance of the EU towards Washington to preserve the nuclear agreement reveals the existence of a fundamental movement in European political thought. Its existence is confirmed by the desire to finance the premises of a potential European defense designed to stand out from NATO. Allies and competitors of the EU as part of a global race to gain access to energy, the US recently said: “We do not expect the SPV will in any way impact our maximum economic pressure campaign”.¹⁶

Given the American determination to counter the Iranian nuclear deal that the EU preserves and to keep Europeans under economic pressure to control economic opportunities in Iran, the creation of INSTEX reflects the premise of a distance from Washington. What may be a step must be monitored, while close transatlantic cooperation has been observed in the coordinated adoption of sanctions targeting Tehran, Damascus, and Moscow.

¹⁶ <https://uk.reuters.com/article/uk-iran-usa-sanctions-eu/skirting-u-s-sanctions-europeans-open-new-trade-channel-to-iran-idUKKCN1PP0KM>

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