





## COMMENTARY


### Finding Lessons in Failure - What can the EU learn from its involvement in the JCPOA?

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EUROPE

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## Background

In 2003, following concerns raised by the International Atomic Energy Agency (IAEA) about Iran's nuclear projects, the European Union (EU) and the E3 (Germany, the United Kingdom, France) opened dialogue with Iran to solve the issue diplomatically.<sup>1</sup> This willingness to cooperate over the 1970 Non-Proliferation Treaty (NPT) and the future of Iran's nuclear development led to the 2004 Paris Agreement. Dialogue would stall between 2005 and 2006 as trust between parties diminished, leading to a series of UN Security Council (UNSC) sanctions against Iran between 2006-2012.<sup>2</sup>

Discussions resumed with vigour in 2013, when the UNSC informally assigned the E3/EU+3 group (or P5+1), and the EU'S High Representative, to lead negotiations with Iran. These negotiations would culminate with the signing of the Joint Comprehensive Plan of Action in 2015.<sup>3</sup> The question of the EU's capacity to act as a third-party actor in the negotiations was partly answered with the general success of the discussions and the EU's continued commitment to resolve the nuclear issue diplomatically.

Yet, in a period with ever-increasing inter-state conflicts, understanding the complexity of the EU's mediating capacity is vital in order to consider whether this ability is applicable in other contexts. More specifically, one must ask what are the lessons to be learnt from the EU's engagement with the JCPOA from 2013 until now are, and how these can be used in the future of the Iranian Nuclear Issue.

This question is important to ask, as the EU sees itself as a global actor that can use its influence and expertise to provide solutions for global issues. Rule of law and multilateralism are intrinsic parts of the EU's identity as a global actor. Therefore, the analysis of the JCPOA as a complex diplomatic process involving several major international actors is necessary in order to dilute the successes along with the failures of EU action in the Iranian nuclear issue.

Additionally, a study of the Iran nuclear deal is important in the context of both its possible collapse, or re-negotiation, in the near future. The EU has maintained that it will remain involved in the resolution of the Iranian nuclear issue, which means that examining the JCPOA allows for insights that may prove useful in the years to come surrounding this issue. The withdrawal of the United States (US) offers an opening for the EU to become an even more relevant actor in the issue's resolution, and to further display its capacity and ability to act globally.

Despite initial success with the implementation of the JCPOA and the green light of the IAEA, tensions have continued to rise in the Middle East, as well as between Iran and the US. In 2016, the US Senate approved the continuation of the Iran Sanctions Act, meaning that non-nuclear related sanctions were to remain active for another ten years. This was then followed by the Trump administration's actions to undermine the EU and the US' commitments to the JCPOA. These actions included lobbying European companies in 2017 to terminate their investments in Iran under threat of US second-hand sanctions, and in May 2018, by re-imposing nuclear-related sanctions, this effectively declared the US' intent to fully withdraw from the JCPOA.<sup>4</sup> In response, Iran has

<sup>1</sup> Riccardo Alcaro, *Europe and Iran's Nuclear Crisis: Lead Groups and EU Foreign Policy-Making* (Palgrave Macmillan, 2018), 62-63.

<sup>2</sup> Ibid, 68.

<sup>3</sup> Tarja Cronberg, *Nuclear Multilateralism and Iran: Inside EU Negotiations* (Routledge, 2017), 25.

<sup>4</sup> Radosław Fiedler, "Iran and the European Union after the Nuclear Deal," CES Working Papers 10, no. 3 (2018): 301; Cronberg, *Nuclear Multilateralism and Iran*, 116.



progressively abandoned its commitments to the JCPOA, especially for its nuclear enrichment program the amount of centrifuges it plans to build.<sup>5</sup>

The ongoing proxy conflicts in the Middle East and the belligerency of the Trump administration have done nothing but worsen US-Iran relations. While the EU attempts desperately to maintain the structure of the JCPOA in hopes that a change in the US administration may undo the damage dealt, the two main signatories have renounced the diplomatic outcome of the decade-long negotiation process. In order to keep Tehran interested, the EU attempted to implement the Instrument in Support of Trade Exchanges (INSTEX) which was established in order to facilitate non-SWIFT transactions and avoid the US sanctions. The tool was set up in June 2018 but would remain unused for close to two years.<sup>6</sup>

## Current State of Play

As it stands, the present state of the Iranian nuclear issue is reliant on the outcome of two factors. The first being the US Presidential elections, which will decide the fate of the JCPOA and the future of US foreign policy. The Biden victory will partly reinvigorate interest on all sides into the JCPOA, as the president-elect considers the 'path of diplomacy' to be the foremost tactic when approaching Iran.<sup>7</sup> It remains to be seen if international issues will be neglected in favour of a socially divided USA, especially if the Democrats do not take the Senate. Still, president-elect Biden will likely signify a return to a multi-laterally minded, pro-diplomacy United States. With regards to the JCPOA, the president-elect has made it clear that the US would return to the deal if Iran "returns to compliance" in order to strengthen and extend the JCPOA.<sup>8</sup>

Even so, many bridges have been burnt by the Trump administration, particularly in the UN Security Council, where the US has been gradually losing influence and support over the Iranian nuclear issue due to its aggressive attitude. Since 2017, Brussels and Washington could not be further apart in terms of policy goals over the JCPOA.

Additionally, a US return to the JCPOA will be in the short time period between Biden's inauguration in January 2021 and the incoming Iranian presidential elections. Even with a victory by the Democrats in the US, the delegitimization of the Reformists in Iran over the promised economic benefits of the treaty and Iran's rapprochement to the West have sapped the bloc's political capital.<sup>9</sup> Tehran's increasing disinterest with the resolution to the nuclear issue made itself apparent with its declaration in January 2020 that it would no longer be abiding by its commitments to the JCPOA, although it would continue to cooperate with the IAEA. The IAEA's subsequent monitoring report of September 2020 indeed states that Iran surpassed the quotas as listed in the treaty, but had not

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<sup>5</sup> "I.R. of Iran's Fifth Step Statement on JCPOA Commitments Reduction," IranWatch.org, January 6, 2020, <https://www.iranwatch.org/library/governments/iran/atomic-energy-organization-iran-aeoi/ir-irans-fifth-step-statement-jcpoa-commitments-reduction>.

<sup>6</sup> Alexandra Brzozowski, "EU's INSTEX mechanism facilitates first transaction with pandemic-hit Iran," Euractiv.com, April 1, 2020, <https://www.euractiv.com/section/global-europe/news/eus-instex-mechanism-facilitates-first-transaction-with-pandemic-hit-iran/>.

<sup>7</sup> <https://edition.cnn.com/2020/09/13/opinions/smarter-way-to-be-tough-on-iran-joe-biden/index.html>

<sup>8</sup> <https://joebiden.com/americanleadership/>

<sup>9</sup> Fiedler, "Iran and the European Union After the Nuclear Deal," 299.

resumed its construction of the Arak Heavy Water Research reactor, which had been one of the cornerstones of the JCPOA's resolution in 2016.<sup>10</sup>

Brussels and the E3 have continued to encourage a diplomatic solution to Iran's breach of the treaty, contrasted with the US' failed attempt to introduce snapback sanctions at the UN Security Council.<sup>11</sup> While the E3 did trigger the treaty's dispute mechanism in response to Iran's January declaration, this move was later suspended. The EU maintains that it is fully committed to guaranteeing and upholding the JCPOA, reinforced by statements made by High Representative Borrell, who sees the JCPOA as "an historic achievement for global nuclear non-proliferation contributing to regional and global security. [He] remain[s] determined to continue working with the participants of the JCPOA and the international community to preserve it".<sup>12</sup>

Indeed, there are key lessons that the EU can take from their experience with the JCPOA that could prove beneficial for future attempts to resolve the Iranian nuclear issue, or other international issues that may require its mediation. These lessons stem both from positive and negative aspects of the EU's involvement in the negotiations. Both are necessary to provide an overview of the lessons that the EU can learn.

Firstly, there are the points relating to the EU's successes in its engagement in the JCPOA. Chief among them is the EU's consistent longitudinal role as a trust-builder and facilitator between parties. Throughout the negotiations, the EU had an important role in convening and chairing international summits. It was the representer of one side of the negotiating table, enhancing the cohesion and harmonisation amongst the E3+3, as well as initially being one of the main points of reference for Iran's proposals and their responses to E3/EU+3 proposals. One of the EU's strengths in its international engagement is its ability to create and maintain a solid backdrop for multilateral negotiations between states. This was made apparent with the E3/EU being the first to approach Iran on a multilateral level in 2003, and continuing to engage with it until talks could occur at the UNSC.<sup>13</sup>

In spite of this, and the eventual success of the JCPOA, the EU's engagement has not been without faults. The second phase of the negotiations saw the EU's role as mediator being put aside in favour of bilateral talks between Iran and the US. This made it so that the EU was forced to follow the US line for the latter portions of the negotiations.<sup>14</sup> The EU was unable to bring about a return to multilateralism for the final stretch of the discussions, thereby weakening the input of other major parties and making the treaty wholly reliant on the Iran/US axis. In the third and final phase of the JCPOA, in the implementation and post-implementation period, the EU has been powerless to the geopolitical changes that have occurred by the election of President Trump in 2016. As mentioned before, due to the EU's non-involvement in the ultimate stages of the JCPOA talks, the institutional basis to the maintenance of the treaty was greatly hindered by the bilateral negotiations between Iran and the US.

<sup>10</sup> <https://isis-online.org/isis-reports/detail/analysis-of-iaea-iran-verification-and-monitoring-report-September-2020>

<sup>11</sup> <https://www.aljazeera.com/news/2020/8/25/uns-c-dismisses-us-demand-to-impose-snapback-sanctions-on-iran>

<sup>12</sup> [https://eeas.europa.eu/headquarters/headquarters-homepage/82059/jcpoa-statement-high-representative-josep-borrell-coordinator-joint-commission-joint\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/82059/jcpoa-statement-high-representative-josep-borrell-coordinator-joint-commission-joint_en)

<sup>13</sup> Riccardo Alcaro, and Aniseh Bassiri Tabrizi, "Europe and Iran's Nuclear Issue: The Labours and Sorrows of a Supporting Actor," *The International Spectator* 49, no. 3 (2014): 16.

<sup>14</sup> Tarja Cronberg, "No EU, No Iran Deal. The EU's Choice Between Multilateralism and the Transatlantic Link," *The Non-Proliferation Review*, 24, no. 3-4 (2017): 253.

As a result, the dispute mechanism offers no real guarantees to keeping the plan of action except for tools to delay the issue being brought up to the UNSC. In addition to this, the EU failed to act decisively against the US' sabotage of the JCPOA. American withdrawal from the JCPOA was one of President Trump's campaign promises, yet the EU only began planning responses after May 2018, which led to rushed counter-measures that were not taken seriously both within and outside of the EU. Finally, an important lesson is in regards to EU sanctions. While these managed to bring Iran to the negotiating table in 2012, these will not have the same effect in 2020/2021 with the emergence of China as Iran's foremost trading partner. Presently, a new sanctions regime would only work to alienate Iran and harm the Iranian people.<sup>15</sup>

### Policy Recommendations

The future of the JCPOA remains unclear, irrespective of the results of the US elections. However, this uncertainty does provide the EU an opportunity to be proactive in the Iranian nuclear issue. First and foremost, it is no longer advisable, or even reasonably possible, to force Iran to the negotiating table through sanctions. The EU must find different ways to appeal to Tehran's willingness to negotiate. These can include further developments of European economic activity in Iran, which could be done with greater ease with a Biden presidency. Another possibility lies in increased cooperation over resolving regional conflicts through peaceful and diplomatic means, most notably in the Middle East, which could lead to trust-building over the nuclear issue.

Internally, it is important for the E3/EU to maintain a united position over Iran. More specifically with regards to the nuclear issue, the EU should not let Brexit affect the common positions of the E3 on Iran. The EU and the UK both have similar concerns and policy objectives on a peaceful resolution of the issue, and they should remain a single negotiating bloc so that they can use their influence more effectively amongst other major actors, such as the US, China and Russia.

Finally, should there be a re-negotiation of the JCPOA, the EU needs take charge and ensure a fully multilateral outcome, so as to make it harder for major actors to deviate from the plan of action post-negotiation. As mentioned beforehand, a bilateral treaty that is dependent on political will in the US and Iran has led the JCPOA to the purgatory state that it is in today. This does not mean that the EU should lead the negotiations, but that it must utilise the common stances held by most major actors involved in the Iranian nuclear issue, in order to maintain the JCPOA or at least guarantee the creation of a new deal, both with less reliance on the US.

The transatlantic partnership is unlikely to fully recover to the 'way things were' pre-Trump, and while a Biden presidency may revert courses taken by the US internationally, the situation should serve as an opportunity for the EU to further develop its independence on the international stage vis-a-vis the US. At the end of the day, the maintenance of an Iranian nuclear deal is vitally important for European security, and it is in the interest of the EU to ensure its existence, which may put it at odds with the US regardless.

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<sup>15</sup> Cronberg, *Nuclear Multilateralism and Iran*, 116.

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