



POLICY BRIEF

How Can the E3/EU Strengthen Its Strategic Position Between the US and Iran and Guide the Vienna Negotiations to a Successful Outcome?

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1. Background

The European Union, through the countries of the E3 - the UK, France and Germany - as well as the European High Representative for External Affairs, played a critical and central role in negotiating the Joint Comprehensive Plan of Action (JCPOA), commonly referred to as the Iran nuclear deal. This was a major achievement for a European community of states whose external policy and actorness on the international stage as a bloc is still a matter of debate whose foreign policy institutions are deemed by many to still be a work in progress.

After the withdrawal of the United States from the JCPOA under President Trump, the E3/EU took the lead in trying to reassure Iran of the deal's viability in an effort to avoid the deal's implosion. While Iran did not leave the agreement, it did reduce its compliance with the agreement in a series of steps. While the E3/EU's political position in support of the agreement was important to the structure of the JCPOA remaining intact, they were unable to sway European economic actors away from heeding Washington's extraterritorial writ.

The EU/E3 unsuccessfully erected two major initiatives to blunt US sanctions: A bartering facilitator mechanism known as INSTEX was created to facilitate financial flows and the activation of the so-called blocking statutes in order to stem the tide of European firms leaving Iran. The mechanism ultimately failed to provide financial transactions and the credibility of the blocking statutes was never meaningfully established¹.

The near-total flight of European firms demonstrated that when facing dueling edicts from the US and their own countries/Union, they will quickly acquiesce to Washington's demands². The Washington Post observed that according to "industry associations, government officials, analysts and representatives of companies that have been targeted, [i]n the struggle to determine whether the nuclear deal lives or dies, the United States has been willing to cross boundaries that Europe has, thus far, been reluctant to push"³.

European officials are obviously aware of the deficit this creates in terms of European credibility in managing global conflicts and establishing the European Union as a major actor in global security and diplomatic affairs as demonstrated by the discourse of economic sovereignty that preceded Washington's departure.. The current challenge of negotiating a path back to the JCPOA for the United States and a path back to full compliance for Iran, presents an opportunity for the European Union to demonstrate.

After a long series of rounds in what has become known as the Vienna process, the parties were unable to reach an agreement before the ending Rouhani administration. Now that a more conservative successor administration slowly works its way back to the negotiating table, the E3/EU has an opportunity to emphasize its international role by helping to resolve the issues that have, thus far, held progress back.

¹ Werner, M. J., Kampouridi, J., & Ryzgelyte, L. (2019). Undertakings caught in the crossfire: US sanctions on Iran vs. the EU Blocking Regulation and possible compensation as State aid. *ERA Forum*, 20(1), 63–79. doi.org/10.1007/s12027-019-00564-y. See also O'Tool, B. (2019). Facing Reality: Europe's Special Purpose Vehicle Will Not Challenge US Sanctions. , August 26. Atlantic Council. <https://www.atlanticcouncil.org/blogs/iransource/facing-reality-europe-s-special-purpose-vehicle-will-not-challenge-us-sanctions/>

² Drezner, D. W. (2019). Economic Statecraft in the Age of Trump. *The Washington Quarterly*, 42(3), 7-24.

³ Whitte, G. Cunningham, E. (2019). "While E.U. tries to bypass U.S. sanctions on Iran, Trump administration amps up pressure". *The Washington Post*. February 4th. Available at: https://www.washingtonpost.com/world/europe/while-eu-tries-to-bypass-us-sanctions-on-iran-trump-administration-amps-up-pressure/2019/02/02/6be486c0-1f22-11e9-a759-2b8541bbbe20_story.html?utm_term=.2d9260585bd6

2. Current State of Play

a. The Raisi Administration and the Policy Outline

The new Raisi government has come to office promising to be open-minded about negotiations with the West but are widely believed to lean towards taking a harder line on the details. As one scholar put it, when Iranian moderates and reformists look at the world, they see a mixture of opportunities and threats, while conservatives mainly see threats. During his candidacy and as President-elect, Raisi has outlined a more suspicious approach to the West. He has also presented a foreign policy vision that emphasized conflict resolution with the countries in the region and economic outreach to other states in Asia - of which China is clearly the most important.

Explaining the administration's approach to statecraft, Foreign Minister Hossein Amirabdollahian described the foreign policy of the Raisi administration as one that will be "balanced" geographically and involve "active, dynamic and intelligent diplomacy". He also stated that if Washington is serious about returning to the agreement, they must demonstrate that in deeds. What the Foreign Minister has also expressed, what is likely the most important issue to Iran moving forward, is the extent to which agreements on paper and formal withdrawals of sanctions translate into actual economic benefit⁴.

This foreign policy outlook, at least in part, reflects two key criticisms levied against the Rouhani administration. First, that the Rouhani administration's foreign and economic policy was entirely a gamble on the ability to secure a durable agreement with the West on the nuclear file. Second, critics, particularly conservative critics, charged that the Rouhani administration has effectively ignored the Eastern world and especially its critical and strategic ties with China hoping to pursue them in a relatively sanctions-free post-JCPOA environment. They charged that the Rouhani administration's policy was one-dimensional and premised on successful nuclear diplomacy, meaning that once that plan failed following Washington's departure from the agreement, no alternative strategy or guiding vision was available for the management of Iranian economic and foreign affairs.

b. Vienna Talks

By the time of the inauguration of the Raisi administration, after many rounds of negotiations in the Vienna process, there are still a set of issues that remain unresolved between the two sides. The American government has already committed to lifting sanctions on major Iranian economic sectors including banking and petroleum. The Iranian government has agreed to scale back its nuclear enrichment and reimplement its obligations under the agreement. However, the US government has not agreed to lift non-nuclear sanctions imposed on already sanctioned institutions for the purpose of complicating a return to the deal by the Trump administration. Since the JCPOA is only meant to remove nuclear-related sanctions, removing such non-nuclear sanctions, such as ones against the Office of the Supreme Leader and the Islamic Revolutionary Guard (IRGC), the US negotiators argue, would be outside the bounds of the JCPOA. If these sanctions were to remain in force, they would create substantial sanctions risk for any first seeking to engage with the Iranian economy⁵.

⁴ Salari, M. (2021). In an Interview with Iran Newspaper, the Foreign Minister stated: We will not tie the fate of the people to any country. Iran Newspaper. October 31st. Available at: <https://www.irannewspaper.ir/newspaper/item/590482> (Farsi - translation by the author)

⁵ Hundt, S., & Horsch, A. (2018). The Effects of Sanctions on the Lending Policy and the Value of International Banks: the Case of Iran. Review of Middle East Economics and Finance, 14(3).

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European⁶ and American⁷ officials meanwhile have expressed concern about Iran's recent nuclear developments including the production of uranium metal enriched to 20% and raised the enrichment cap to 60% - in accordance with the mentioned legislation passed by the Majlis. They've called on Iran to return to negotiations with "urgency". Recently, Secretary of State Anthony Blinken stated that because Iran is moving forward with nuclear technological progress, the "time it would take for it to produce enough fissile material for one nuclear weapon is getting shorter and shorter" and that if this trend continues, the US may not be able to "recapture all of the benefits of the agreement".⁸ This is a reference to the so-called 'breakout time' which is the duration required to enrich enough uranium to weapons-grade levels to develop one nuclear warhead. Iran's nuclear development means that the previously agreed-upon limits to its program (number of centrifuges etc.) will not yield one year of breakout time which was a key focus for the US during the 2013-15 nuclear negotiations.

It's important to understand that much of the current debates regarding the JCPOA such as Washington's unwillingness to provide guarantees for long-term fidelity to the term of the JCPOA, its unwillingness to promise not to impose new sanctions and lift sanctions on institutions like the SLO and the IRGC are seen through this prism in Tehran. Iran leaders believe that Washington is aiming to maintain sanctions pressure that was supposed to be relieved in the context of the 2015 agreement or impose new sanctions under non-nuclear rationalizations in order to extract new concessions from Iran in order for it to achieve the economic effect the JCPOA was meant to deliver.

In this context, the policies of the Biden administration are seen as representing continuity with superficial and tactical alterations. Biden is not tying formal reentry to the JCPOA to other nuclear and non-nuclear concessions, as his predecessor did, but he is tying Iran's actual economic benefits to them. During an address with the newly confirmed Raisi administration cabinet on August 29th, the Supreme Leader warned that "[t]he current U.S. government is no different from the previous one. They demand the same things that Trump demanded". Adding that "In [the Rouhani] government, it was shown that trust in the West does not work"⁹.

As scholar Daneil Drezner posits, sanctions episodes involving two adversaries are difficult to resolve. The target state fears that any concessions would be a dual concession, meaning a practical concession offered at the negotiating table that would also improve the adversaries position regarding the next round of security competition¹⁰. During the initial nuclear talks, this issue was somewhat addressed by the Iranian administration framing the JCPOA as a 'win-win' agreement. While this statement was a reference to the terms of the deal itself, it implied the prospect of further mutually beneficial exchanges that would take the Iran-US relationship from an aggressive enmity to a more civil competition characterized by both competition and cooperation.

Trump's withdrawal and the Biden administration's perceived effort to retain sanctions pressure firmly placed the Vienna talks in the context of power politics. The JCPOA is now no longer considered an opportunity for a recalibration of Iran-US relations but rather an intermission between rounds of security competition that alters the rules somewhat. This further heightens relative gains-

⁶ Statement by spokespersons of the foreign ministries of France, Germany and the United Kingdom (2021). August 19th. Available at: <https://www.diplomatie.gouv.fr/en/country-files/iran/news/article/iran-jcpoa-statement-by-spokespersons-of-the-foreign-ministries-of-france>

⁷ Price, N. (2021). Department Press Briefing. August 5th. United States Department of State. Available at: <https://www.state.gov/briefings/departement-press-briefing-august-5-2021/>

⁸ United States Department of State (2021). Secretary Antony J. Blinken with Margaret Brennan of CBS Face the Nation. October 31st. Available at: <https://www.state.gov/secretary-antony-j-blinken-with-margaret-brennan-of-cbs-face-the-nation/>

⁹ Tehran Times. (2021). Leader: Diplomacy should not be tied to nuclear issues. August 29th. Available at: <https://www.tehrantimes.com/news/464434/Leader-Diplomacy-should-not-be-tied-to-nuclear-issue>

¹⁰ Drezner, D. W., & Drezner, D. W. (1999). *The sanctions paradox: Economic statecraft and international relations* (No. 65). Cambridge University Press.

based thinking and severely limits both the level of domestic political flexibility and the scope of possible win-sets.

c. Iran's Anxiety about Economic Benefits

Regardless of what Biden does, the next Republican president is likely to exit the deal once again. This means that foreign enterprises and investors are unlikely to return to Iran. Many financial institutions had not returned to Iran in 2015 citing a lack of clarity about how the remaining primary (non-extraterritorial) banking sanctions would affect their legal exposure and fear in relation to the massive fines they had previously incurred for accepting Iranian clients before the nuclear deal¹¹. This is why, for example, banks like BNP Paribas Fortis that were willing to operate in Iran in violation of US secondary sanctions in the 2000s were unwilling to resume their operations after those sanctions had been removed. The lack of extensive banking channels will be a significant factor obstructing the reentry of even those non-financial European firms who do wish to resume their activity in Iran as the ability of firms to process financial transactions through their preferred financial institutions is a key pillar of international economic cooperation.

Indeed, when the European Council on Foreign Relations (ECFR) surveyed companies that had re-entered the Iranian market after the deal was struck in 2015, and had made preparations to do so nuclear negotiations were ongoing, they found that none were making such preparations now. These companies expressed that they had incurred significant losses after having to depart Iran following the Trump administration's decision to withdraw from the agreement and were not interested in assuming such risks again. Sizing up the disappointing prospects of Iran-Europe economic interactions in the event of a deal in Vienna, ECFR's Esmat Batmanghelidj stated that "[u]nder the optimistic scenario, annual European exports to Iran would total around €6.2 billion while imports from Iran would total €5.6 billion—Iran would disappointingly rank somewhere between the Philippines and Pakistan among Europe's trade partners."¹²

Arms-length trade and some petroleum sales may continue but even those activities will be hampered by the various factors mentioned above. Certainly, it is difficult to imagine a meaningful level of economic partnerships and investment taking place. Iranian officials are concerned that with sanctions ossified as a permanent part of US policy towards Iran, any sanctions relief they receive through the revival of the agreement would be limited, ineffectual, and fleeting. Excitement, and even interest, among the Iranian public for an agreement with the West is negligible compared to 2015 when Iranian took to the streets in celebration.

According to a recent poll, opposition to the JCPOA among Iranians has hit a record-high 27 percent and nearly two-thirds of respondents said the US is either somewhat or extremely unlikely to abide by its commitments even if formal JCPOA implementation is reinstated¹³. Iran's seeming hesitation about a swift re-entry to the nuclear deal and what prompts its toughened position is not the product of some enhanced leverage but rather the fact that Iran is likely to receive little of the benefits it negotiated for during the Rouhani administration.

¹¹ Makinsky, Michel. (27 July 2021). En cas de levée des sanctions en Iran, quelles transactions bancaires et commerciales ?, La Tribune, <https://www.latribune.fr/opinions/tribunes/en-cas-de-levée-des-sanctions-en-iran-quelles-transactions-bancaires-et-commerciales-889729.html>, access 01/09/2021

¹² Batmanghelidj, E. (2021). High stakes: How sanctions relief could impact EU-Iran trade. July 20. European Council on Foreign Relations. <https://ecfr.eu/article/the-politics-of-sanctions-relief-why-an-economic-rebound-matters-for-iran/>

¹³ University of Maryland CISSM (2021). Iranian public opinion as Raisi takes the stage. October 15th. Available at: <https://static1.squarespace.com/static/5525d831e4b09596848428f2/t/616d9ee5bb6a230ee56e3057/1634574054598/2021-Sept-IranPoll-CISSM+-Trend+Tables.pdf>

3. Policy Recommendations

As negotiations are scheduled to resume soon, there is an opportunity for the E3/EU to consider how best to position Europe as an effective actor in this critical phase of diplomacy and reestablish both a nuclear deal that serves as a pillar of stability and its own diplomatic credibility. Doing so sooner rather than later would also mean that the full value of the JCPOA would be retained from the perspective of the E3 and the United States.

In a recent statement by the US President and the leaders of the E3, they argued that “[r]eturn to JCPOA compliance will provide sanctions lifting with long-lasting implications for Iran’s economic growth.¹⁴” But as it stands, this is hardly clear. Clearing a path to an agreement would involve Europe providing Iran with a clearer sense of how its full participation would result in economic benefits even as American reassurances are not forthcoming. To do this, they must consider the short-term considerations, what is required to achieve a mutual reentry into the JCPOA, as well as matters involving Europe’s long-term position as a key.

Regarding short term considerations, as the talks reconvene, the European states should consider various steps to assist Iran with regard to the coronavirus pandemic. Such action, if effective, will likely help improve the environment in which the negotiations are taking place. While vaccination rates in Iran have increased significantly since the summer, the sanctions campaign has imposed significant hardship on the Iranian medical system and its ability to contend with the work still needed to adequately address the pandemic. The United States did issue an expanded general license¹⁵ in June regarding vaccines and medical equipment. However, as Obama era sanctions architect Richard Nephew said before taking on his new role as deputy US envoy for Iran, such exemptions are ineffective because “in reality” Iran’s “almost non-existent commercial and financial ties” due to sanctions make transactions difficult¹⁶.

A more effective approach would be allowing Iran access to its own finances. The European states should urge the United States to stop freezing Iranian funds in foreign accounts and to allow those funds to be used for trade involving basic food and medical equipment. But the trade authorized should go beyond traditional definitions of ‘humanitarian trade’ other medical and pandemic-related goods such as raw material and industrial equipment required for medical manufacturing and services. All of this trade can be facilitated through the instruments developed by the Europeans during the maximum pressure campaign - INSTEX and the Swiss humanitarian channel. The E3, as key members of the International Monetary Fund (IMF), should also urge a reconsideration of Iran’s request for a \$5 billion loan¹⁷ to help finance purchases of such goods.

The Biden administration reportedly considered such a concept specifically to facilitate vaccine imports by Iran but faced stiff pushback from Republicans who deemed even vaccine imports to be a “concession”¹⁸. To be clear, such a program may be useful in satisfying Iran’s mentioned demand

¹⁴ The White House. (2021). Joint Statement by the President of France Emmanuel Macron, Chancellor of Germany Angela Merkel, Prime Minister of the United Kingdom and Northern Ireland Boris Johnson, and President of the United States Joseph R. Biden, Jr. on Iran. October 31st. Available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/30/joint-statement-by-the-president-of-france-emmanuel-macron-chancellor-of-germany-angela-merkel-prime-minister-of-the-united-kingdom-and-northern-ireland-boris-johnson-and-president-of-the-united-st/>

¹⁵ U.S. Department of Treasury. (2021). Treasury Issues Additional COVID-19-related Sanctions Authorizations and Guidance. June 17th.

¹⁶ Fielder, R. (2020). Interview with Richard Nephew. Bekker Program NAWA scholar visit at Columbia University. 10.13140/RG.2.2.30113.43362

¹⁷ Talley, I., Faucon, B. (2020). U.S. to Block Iran’s Request to IMF for \$5 Billion Loan to Fight Coronavirus. April 8. The Wall Street Journal. Available at: <https://www.wsj.com/articles/u-s-to-block-irans-request-to-imf-for-5-billion-loan-to-fight-coronavirus-11586301732>

¹⁸ Bertrand, N. C. (2021). US weighs unfreezing \$1 billion in Iranian funds - CNNPolitics. May 7. CNN. Available at: https://edition.cnn.com/2021/05/06/politics/biden-administration-iran/index.html?utm_term=link&utm_medium=social&utm_content=2021-05-06T22%3A48%3A47&utm_source=twCNN

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that the West demonstrate its desire to rehabilitate the nuclear deal with ‘deeds’, but for Western states, it should not be considered a concession, but merely an effort to not allow the sanctions campaign to further obstruct Iran’s ability to provide healthcare services during a deadly pandemic. The use of instruments like INSTEX to facilitate trade would mean that very little of the funds would even enter Iran.

In order to provide assurances to Iran with regards to the economic benefits of rejoining the nuclear deal, the European Union should consider providing Iran with a strategy to ensure EU-Iran trade that would be more robust than currently projected. Some have recommended clearer guidelines about the remaining American sanctions and greater use of letters of comfort. But while such actions may be greatly helpful it requires medium to long term cooperation from Washington that is unlikely to materialize. But Europe can, on its own terms, take steps to provide Iran with some meaningful guarantees that returning to full implementation of the JCPOA will bring substantial economic benefits.

First, for many, a continuation of the JCPOA may mean that European financial instruments like INSTEX are no longer relevant. But major European banks are unlikely to abandon their current policy with Iran. INSTEX’s failure, as well as that of the Swiss humanitarian channel, are often blamed on the threat of sanctions emanating from Washington. With those threats removed after a successful conclusion to the Vienna process, the European Union can redouble its efforts to develop INSTEX into a meaningful system that would facilitate financial interactions of all stripes between Iran and the European Union.

Second, during the early stages of the maximum pressure campaign, European countries urged the European Central Banks to act as a banker of last resort, facilitating economic interaction between Iran and Europe. This strategy was derailed as Central Banks across Europe and even the ECB did not feel immune to US sanctions. With the JCPOA reinstated, new Central Bank arrangements can be struck with the Iranian Central bank and the Iranian banking system to facilitate cross-border interactions.

Third, the E3 and the European Union should consider a range of options that would allow them to help develop the investment-deprived Iranian petroleum industry. This is critical as Iran’s reservoir of hard currency heavily relies on the export of petroleum and petroleum products. A strategy to promote EU-Iran trade should include a plan to promote European purchase of Iranian oil to ensure that Iran has the hard currency required to pursue exports from the European Union. While European oil companies are unlikely to invest resources developing Iranian gas fields or building refineries, their expertise and technology may be critical to helping non-European oil firms successfully operate in Iran. This will also mean that European firms will benefit from the development of the Iranian oil industry while enduring little direct risk.

Finally, the European Union must engage in a comprehensive review of its own economic sovereignty. This is important not just in terms of providing Iran with some assurance that a future US withdrawal will not result in the same flight of European firms, the long-term endurance of the JCPOA will depend on it. Under the terms of the agreement, any ‘participant’ can issue a complaint to the agreement’s Dispute Resolution Mechanism (DRM). After a number of steps, if the said complainant is not satisfied, the matter could be referred to the Security Council where the removal of sanctions on Iran would be voted on again and any veto-wielding member could restore them, effectively ending the nuclear agreement.

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There is no satisfying explanation for why the Trump administration did not pursue this path as it was leaving the agreement. It tried to do so later on but the fact that it had terminated its position as a ‘participant’ meant that it could no longer do so. One should consider that a future Republican President will likely exercise this option upon taking office. One factor that may dissuade him or her from doing so is a European Union with greater economic sovereignty and a more credible strategy for confronting extraterritorial infringements. While this is a herculean task, considering the centrality of the US dollar and the New York financial services community, greater European cooperation on a general strategy to this extent will likely provide some assurances to Iran now and deterrence to a future unilateralist US administration in the years to come.

European scholars have already set out a range of recommendations about potential protections and countermeasures that can be taken against extraterritorial sanctions that infringe upon European sovereignty¹⁹. Such measures can include strengthening the blocking statutes to imposing restrictive measures on companies from the sanctioning country and issuing travel bans to officials involved with the sanctions. Critically, as the authors of these recommendations point out, it is important to ratify these measures in calmer circumstances and without reference to specific actors, so as to give them the legitimacy of standard practice and make their implementation easier.

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¹⁹ Lamy, P., Knudsen, E., Bérard, M. H., Fabry, E., Fatah, F., Pons, G., Vimont, P. (2021). American Extraterritorial sanctions. Did someone say European strategic autonomy?. Jacques Delors Centre. Policy Brief. March 2021. Hackenbroich, J. (2020). Defending Europe’s Economic Sovereignty: new ways to resist economic coercion. October 20th. European Council on Foreign Relations. Available at: Defending Europe’s Economic Sovereignty: new ways to resist economic coercion – European Council on Foreign Relations (ecfr.eu)