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DÉTENTE WITH IRAN: HOW EUROPE CAN MAXIMISE THE CHANCES OF A FINAL NUCLEAR DEAL

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SUMMARY

There is now a real chance of a solution to the issue of Iran's nuclear programme through diplomacy rather than military action. Europe has a particular interest in a final nuclear deal because of its commitment to the non-proliferation of nuclear weapons and because it could create space for a transactional relationship with Iran in which other pressing concerns such as regional security could be meaningfully discussed. But although there is broad consensus that a deal is in the European interest, domestic opposition in both Tehran and Washington could derail a comprehensive agreement.

Europeans should maximise the chances of a final deal by working with the US to maintain unity towards Iran while negotiations continue. If a deal is agreed, Europeans can play a key role in implementing it. But they should also prepare for a situation in which, because of opposition in the US or Iran, a final deal is not reached. If the US Congress effectively blocks the White House from agreeing or delivering a deal, Europe should act independently to salvage diplomacy with Tehran and go further than the US in easing sanctions as a way of maintaining progress on the nuclear talks. In doing so, Europe will need to take steps to protect its companies from the secondary reach of US sanctions.

There is now a real chance of a solution to the issue of Iran's nuclear programme. After years of increasing hostility between Tehran and the West, a Joint Plan of Action (JPA) was agreed between Iran's new negotiating team and the E3+3 last November.¹ There is a rare alignment between the US, Europe, and Iran, and both President Barack Obama and President Hassan Rouhani are personally invested in the success of the diplomatic process. The JPA goes further than previous agreements in outlining the substantive obligations of both sides and setting the parameters for a comprehensive nuclear deal. Iran has implemented the agreement – something that sceptics in the West doubted.² Thus a comprehensive nuclear deal is a real possibility.

However, the two sides differ over Iran's "practical needs" for a civilian nuclear programme – and in particular on the number of centrifuges and corresponding stockpile of enriched uranium that Iran requires for civilian use.³ Thus,

¹ The E3+3 (that is, France, Britain, Germany, China, Russia, and the US) is also referred to as the P5+1. The full text of the JPA is available at <http://www.iaea.org/Publications/Documents/Infircs/2013/infirc856.pdf>.

² The IAEA has so far affirmed that Iran is adhering to the JPA and found that it has reduced its 20 percent enriched uranium stockpile by capping enrichment to a five percent threshold and diluted half of its existing higher-grade stockpile to a fissile content less susceptible to bomb proliferation. See International Atomic Energy Agency, "Implementation of the NPT Safeguards Agreement and relevant provisions of Security Council resolutions in the Islamic Republic of Iran", 20 February 2014, available at <http://isis-online.org/uploads/isis-reports/documents/iaea-iranreport-02202014.pdf>. In April 2014, the IAEA reported that Tehran has also continued to convert the other half of its stock of uranium gas refined to a 20 percent fissile purity. See Scott Peterson, "Iran ahead of schedule in complying with nuclear deal, UN watchdog says", the *Christian Science Monitor*, 17 April 2014, available at <http://www.csmonitor.com/World/Middle-East/2014/0417/Iran-ahead-of-schedule-in-complying-with-nuclear-deal-UN-watchdog-says>.

³ While Iran wants to advance its enrichment programme by increasing the number and capacity of its centrifuges, the West wants to limit Iran's timeline for weaponising its programme. This inherently implies a reduction in Iran's existing numbers of centrifuges.

although relations between the West and Iran have taken a positive turn, it is not yet clear whether a zone of agreement exists that would simultaneously satisfy hardliners on both sides. Rouhani may ultimately be unwilling or unable to deliver the kind of limitations to Iran's nuclear facilities demanded by Western negotiators, who in turn may be too rigid in their own demands. At the same time, there is more unyielding opposition in the US Congress.

The details of what a reasonable final nuclear deal could entail have been outlined extensively elsewhere.⁴ This brief focuses instead on the role Europe can play in maximising the chances of such a deal. It examines the forces in Tehran and Washington that could potentially spoil a deal at its final stages and explores how Europeans could act creatively to increase the chances of reaching a comprehensive settlement in various scenarios. It argues that, while Europeans should seek to maintain Western unity and work closely with the Obama administration, they may need to act independently if the US legislative branch is not ready for a deal with Iran. In such a situation, Europeans might be uniquely placed to salvage diplomacy with Iran.

Europe's strategic objectives

Europe's overriding strategic interest is to find a solution to Iran's nuclear programme that limits its breakout capability to an acceptable timeline, thereby addressing proliferation concerns while avoiding a Western-led or Israeli military strike against Iran's nuclear facilities. Military escalation would be a disaster after the conflicts in Afghanistan and Iraq and the humanitarian tragedies and potential for blowback from the conflict in Syria. In addition, further destabilisation in the Middle East could disrupt energy markets and by extension the global economy. On the other hand, if a final nuclear agreement can be reached, it could also lay the foundations for a new, more transactional relationship between Europe and Iran in which other pressing concerns could be meaningfully discussed. A normalisation of economic relations with Iran, including on energy, would also have obvious benefits for Europe.⁵

A final deal could also create the possibility for Europe to begin to engage with Iran on regional security. Although there have been extensive negotiations between Iran and Europe on the nuclear issue, Europeans have in recent years been understandably reluctant to discuss regional security concerns with Tehran because they feared doing so could

give Tehran leverage or distract from the nuclear talks. However, few of the myriad security issues that blight the region can be solved without the engagement of such a key and activist regional stakeholder. Clearly, European and Iranian interests on regional security are fundamentally at odds on issues such as Syria and Lebanon, but it is precisely that opposition and the inability to deliver political solutions without Iran that makes dialogue important.

If a final deal can be reached it will offer Iran economic incentives and create opportunity costs in relation to how Iran conducts itself beyond the nuclear issue. This is not to suggest that Iran will be on a path to Western-style democracy or that the West or Iran will stop support for traditional allies that have both depth and proven efficacy in safeguarding their respective interests. But a nuclear deal could create space for Europe and Iran to co-operate in areas where their interests are closely or partly aligned (such as combating Al-Qaeda) or at least to confront their differences and explore whether they can selectively de-escalate where their interests do not align. The possible knock-on effects for regional security issues make a final nuclear deal even more important for Europe.

Opposition in the Majlis and the US Congress

However, in both Iran and the US, there is significant opposition that could pose serious obstacles to reaching a final deal. While Rouhani currently has a mandate and the support of Supreme Leader Ayatollah Ali Khamenei to settle the nuclear file, it is difficult to assess how long this backing will last and how much freedom the new administration has to determine the contours of a final deal. It is also unclear how far Rouhani can go beyond the nuclear issue given that his administration has, so far, neither taken control over key regional files nor loosened the hardliners' grip on issues such as political freedom.⁶

Tehran's hybrid theocratic-republican system displays constant competition between various power factions, which can be categorised broadly as the technocrats, ideologues (who range from radicals such as former president Mahmoud Ahmadinejad at one end to reformists such as Green Movement leader Mir-Hossein Moussavi on the other), and theocrats (who range from hardline to reformist clerics). The power bases of these rival factions are fluid: the Supreme Leader may tip the balance in favour of different sides.

Rouhani faces considerable challenge from the radicals in the Majlis (the Iranian parliament), who see any détente with the West as a strategic mistake and worry that it will empower moderates and weaken them. The Majlis, which

⁴ See, for example, Joseph Cirincione, "A Final Nuclear Deal: Getting from Here to There with Iran", Ploughshares Fund, 10 February 2014, available at <http://www.ploughshares.org/blog/2014-02-10/final-nuclear-deal-getting-here>; International Crisis Group, "Iran and the P5+1: Solving the Nuclear Rubik's Cube", Middle East Report No. 152, 9 May 2014, available at <http://www.crisisgroup.org/-/media/Files/Middle%20East%20North%20Africa/Iran%20Gulf/Iran/152-iran-and-the-p5-plus-1-solving-the-nuclear-rubiks-cube.pdf>; Robert Einhorn, "Preventing a Nuclear-Armed Iran: Requirements for a Comprehensive Nuclear Agreement", Brookings Institute, 31 March 2014, available at <http://www.brookings.edu/research/papers/2014/03/31-nuclear-armed-iran-einhorn>.

⁵ The fallout between Russia and the West over Ukraine has highlighted the need for Europe to diversify its energy supplies; Iran could be part of a solution.

⁶ Interview with advisor to President Rouhani, November 2013.

has constitutional powers to keep checks on the executive, has issued Rouhani's administration with a record 7,549 official warnings in his first six months as president.⁷ In an illustration of how hardliners on both sides can interact to affect negotiating dynamics, the US Congress has provided opportunities for the Majlis to attack Rouhani's recalibration of policies.⁸ But despite the efforts by the Majlis to take up every opportunity to restrict Rouhani's bargaining position, the Supreme Leader has largely disarmed these hardliners on the nuclear file in light of the recent progress made with the West and prospects of economic recovery.

Meanwhile, in Washington, opponents of détente have focused on whatever might trip up diplomatic progress, including the extent of sanctions relief provided to Iran under the JPA, the terms of a final deal, and issues unrelated to the nuclear file such as Iran in the region and human rights. Opposition has been channelled through Congress, which has sought, so far unsuccessfully, to impose additional sanctions on Iran during the JPA's lifetime. Opponents of détente claim this would increase leverage over Iran on a comprehensive deal – though it would violate the terms of the JPA and in practice severely strain the prospects of a final deal.⁹ The extent of opposition from Congress has led Iranian Foreign Minister Mohammad Javad Zarif publicly to voice doubts about whether the E3+3 is able to deliver a nuclear deal.¹⁰

Congressional opposition has been driven by a mixture of political, ideological, and lobby-driven interests. One danger is that hardliners in Congress could put Obama and Europeans under pressure to impose much stricter terms on Iran than they see as reasonable or necessary. In supporting negotiations, the Supreme Leader has said that Iran can only accept a deal that allows uranium enrichment on its soil, allows research and development, and keeps inspection and verification methods within the parameters of the Treaty on the Non-Proliferation of Nuclear Weapons. Some members of Congress have campaigned for the exact opposite of these three conditions, knowing this would set an unreachable bar for a deal and possibly allow the Iranian side to be depicted as the rejectionists.

Although the White House has a mandate to negotiate with Iran, only Congress can repeal the Comprehensive Iran Sanctions, Accountability, and Divestment Act of

2010 (CISADA) and the measures against Iran that have secondary impact on European entities/individuals.¹² The US executive can issue renewable waivers indefinitely that ease the secondary effects of CISADA. However, Iran is unlikely to accept anything short of the permanent easing of the sanctions in exchange for accepting an enhanced verification regime and limitations on how much uranium it can stockpile and enrich. Even if UN sanctions and the EU's unilateral sanctions against Iran were eased while US sanctions remained in place, the latter's secondary effect would continue to detrimentally impact, and most likely deter, European companies from trading with Iran.¹³

Maximising the chances of a final nuclear deal

The Obama administration, the Rouhani administration, and Europeans have all expressed a firm desire to achieve a deal by 20 July 2014, when the JPA expires. But given the gaps in negotiating positions, the extent of technicalities that need addressing, and the mistrust and opposition forces acting against détente in the US and Iran, it is unclear whether negotiators can translate their political will into a final deal in this timeframe. Iran's Supreme Leader has predicted that comprehensive nuclear talks would get "nowhere" while Obama rated the success chances of the talks as 50 percent. While Rouhani and Obama are somewhat preoccupied with appeasing internal actors, Europe should redouble its efforts to encourage, and develop arguments in favour of, a final deal.

Over the next two months, Europeans with good ties to the US administration and Congress should exert what influence they can on the US political and public debate. They should aim to shift the debate away from sanctions and military threats to focus on (a) implementation of the JPA, (b) mutual benefits gained from a more comprehensive arrangement on the nuclear issue, (c) how a deal advances shared national security interests, (d) realistic terms for a deal, and (e) explain the internal dynamics and differences inside Iran to a sceptical American audience. Europeans are unlikely to have much impact on hardliners in Congress but they could influence those who are sitting on the fence about détente with Iran.

Europeans should also extensively reach out to regional allies such as Israel, the Gulf States, and Lebanon's March 14 movement, which are not included in the nuclear negotiations and fear that détente will increase Iran's

7 Scott Peterson, "EU visit to Tehran elicits accusation of political meddling", the *Christian Science Monitor*, 13 March 2014, available at <http://www.csmonitor.com/World/Security-Watch/2014/0313/EU-visit-to-Tehran-elicits-accusation-of-political-meddling-video>.

8 Most notably, in response to the bill proposed to Congress in December 2013 for additional sanctions against Iran during the JPA's lifetime, hardliners in the Majlis introduced a bill calling for enrichment capabilities to increase from 20 percent to 60 percent.

9 In response to the sharp rise in support for the Iran sanctions bill (59 senators including 16 Democrats) that risked undercutting Obama's veto against the bill, the US administration began a sophisticated campaign to deter further Democratic senators from signing up to the bill.

10 See Karl Vick, "Iran's Foreign Minister Sounds Glum About Nuke Talks Over Skype", *Time*, 18 February 2014, available at <http://world.time.com/2014/02/18/irans-foreign-minister-zarif-skype/>.

11 See, "Khamenei's Red Lines on Nuclear Talks", The Iran Primer, 16 April 2014, available at <http://iranprimer.usip.org/blog/2014/apr/16/khamenei-s-red-lines-nuclear-talks>.

12 CISADA empowers the US government to impose restrictions on entities globally where they are found to have participated in a wide range of prohibited activities, including those related to Iran's energy sector, and dealings with the Iranian Revolutionary Guards Corps, and those designated pursuant to Executive Orders 13382 and 13324.

13 "Secondary sanctions" is the term used to describe the imposition of sanctions on a target engaged in economic activity with another party for which sanctions have already been applied. In the application of secondary sanctions, the targeted party may not itself be engaged in a proscribed category of activity which would lend itself to the direct application of sanctions; rather, the basis of the sanctioning is that the target has engaged in economic activity with parties that have been engaged in such proscribed activity.

capacity to advance its regional interests at their expense. Europeans should attempt to assuage their concerns by briefing them on the negotiations and reassuring them that the West will not allow a nuclear-armed Iran nor acquiesce to destabilising Iranian policies on other regional issues. Greater attention should be paid to how concerns that regional allies have can be integrated into Europe's expanding dialogue with Iran. At the same time, Europe should firmly relay to these actors that the E3+3 will resist pressures to derail a nuclear deal.

Four scenarios

It is possible to imagine four scenarios for the trajectory of the current nuclear negotiations:

1. A final deal is reached by 20 July 2014.
2. No final deal is agreed but the interim deal is extended for another six months.
3. A final deal is agreed but Congress blocks it.
4. Talks between the E3+3 and Iran break down.

Scenario 1: a final deal is agreed

If a final deal is reached within the initial deadline, Europeans will have a key role to play in its implementation, especially with respect to easing the EU's unilateral sanctions. In this scenario, Europe should encourage parties to the deal to fulfil their respective obligations in a timely manner and reassure sceptics that unprecedented monitoring is being carried out on Iran's nuclear programme by the International Atomic Energy Agency (IAEA). As well as taking active steps to unwind the unilateral sanctions the EU has imposed on Iran, Europeans should help the Obama administration to unwind US sanctions. This will require a high degree of legal and regulatory co-operation between Europe and the US – particularly regarding financial sanctions.

While implementing a final deal, Europe should also begin to engage Iran on regional security. The conflict in Syria, which is entering its fourth year, is clearly the priority. One option is a new contact group that would engage key regional actors, including Iran, Saudi Arabia, and Turkey. Progress with Iran on regional security issues such as Syria will be slow moving at best. Even if Rouhani is able to gradually play a greater role on regional issues, he will have to devise a policy based on a consensus between the foreign ministry, the Supreme Leader, and the Iranian Revolutionary Guards Corps's Quds Force. But if the 2016 parliamentary election produces a centrist majority to boost Rouhani's mandate and there is a gradual move towards de-securitisation, it could create the possibility of a shift towards policies that are more pragmatic and less driven by knee-jerk anti-Westernism.

Scenario 2: the interim deal is extended

It is likely that, if the terms of the final nuclear deal cannot be agreed within the original interim period, there will be an agreement to roll over the JPA for another six months to January 2015. Although it would indicate good faith, both Obama and Rouhani will be under even greater pressure to defend the talks from hardline attacks. In the US, looming mid-term congressional elections could create additional Republican resistance towards Obama's diplomacy and limit willingness among Democrats to expend political capital in defending détente with Iran. Meanwhile, Rouhani's team will need an economic recovery in order to maintain the support of the Supreme Leader and prevent opposition forces from successfully undermining negotiations on the nuclear issue.¹⁴

In this scenario, Europe could play an important role in supporting both Obama and Rouhani. Under the JPA, Iran agreed to a series of restrictions on its nuclear programme in return for limited sanctions relief and access to frozen assets. Substantively, the interim deal was favourable to the E3+3. It is clear that as part of the JPA's rollover, the E3+3 would seek to monitor and contain Iran's breakout timeline through continued limitations, inspection, and verification measures. To do so, Iran will need to either accept the same level of limitations as before, or potentially enhance its pledges and agree to more stringent conditions. In return, Rouhani will need to show evidence of economic relief in some nature to reciprocate Iran's extended commitments and maintain the support of the Supreme Leader for continued talks.¹⁵

For the West, the natural starting position for rolling over the JPA will be to resist giving economic relief to Tehran as a means to obtain optimal leverage for the E3+3. However, considering the realities of Rouhani's mandate and the extent of concessions provided by Iran, this approach may set the negotiations on a dangerous course. Iran received only limited relief under the original JPA; to receive nothing for maintaining JPA levels of restrictions and inspections would be transparently lopsided and could prematurely lead to a breakdown of negotiations. Such a scenario could be avoided by providing Iran with limited economic relief in exchange for agreement to further restrictions, which could maintain both the support of the Supreme Leader for extended talks and the political traction of the pro-diplomacy camp.

Obama will most likely be preoccupied with blocking Congress from imposing new sanctions against Iran, let

¹⁴ Ayatollah Khamenei has made several speeches to this effect. See, for example, Yeganeh Torbati, "Khamenei tells Iran's hardliners not to undermine nuclear talks", Reuters, 3 November 2013, available at <http://in.reuters.com/article/2013/11/03/iran-nuclear-khamenei-idINDEE9A204L20131103>.

¹⁵ It is widely speculated in the West that Iran has the knowledge and ability to produce fissile material for a nuclear bomb in two months (this time period is the so-called breakout capability). As part of a final deal, the E3+3 aim to increase this timeline in combination with additional IAEA inspections that can provide early detection if Iran speeds up its nuclear programme.

alone providing it with more economic relief. Given Europe's comparative institutional freedom to pass and implement decisions, it should consider creative options for providing an economic package to Tehran as part of a JPA rollover. It could do so either through lifting parts of its unilateral oil embargo or by allowing Iran further access to frozen assets in European bank accounts at intervals when Iran implements its commitments under an extended interim deal (such as unfreezing paved the way to the agreement over the initial JPA).

During an extended JPA period, it is crucial that both Iran and the E3+3 commit to timely fulfilment of their pledges as evidence of good faith. After complying with its JPA obligations, Iran complained that Europe and the US had been slow in implementing their side of the bargain, particularly in designating banks for channelling humanitarian funds.¹⁶ This was an activity that the West never intended to restrict via sanctions, but in practice became impossible to carry out because banks feared they would face penalties for allowing such transfers to take place.

Europe should also continue its soft outreach to Iran during a rollover period. Although trust has broken down during recent years, Europeans have had diplomatic and economic ties for most of the Islamic Republic's 35-year existence, though they broke down during Ahmadinejad's tenure as president. Italian Foreign Minister Emma Bonino met with Rouhani in Tehran soon after the signing of the interim deal; since then the foreign ministers of Austria, Belgium, Greece, Latvia, Poland, Slovakia, Spain, and Sweden have also visited, and the European Parliament and the British and German parliaments have sent delegations. High Representative Catherine Ashton made a landmark trip to Iran in March 2014 in which she expanded talks beyond the nuclear file. Such contact has re-opened channels of communication and relay an important signal that Europe and Iran can return to a degree of normalised relations. If the JPA is extended, confidence-building visits should also include Iran's hardliners, who have developed a deep distrust of Europeans in recent years and oppose détente.

Scenario 3: Congress blocks a deal

Congress has legislative power to allow or prevent the implementation of significant measures to ease sanctions. If it were to block a final deal, Europeans would be presented with a tough choice. Europe's reaction to such a move by Congress would depend not only on responses by the US and Iranian administrations, but also by China and Russia, which may become more sympathetic towards Iran's

position and see an opportunity to further advance their own interests at the expense of the US. The multitude of variations to this scenario make it difficult to assess how Europe should act, but broadly speaking it would have two options.

The easiest path for Europe in such a scenario would be to simply fall in line with the centre of gravity of the debate between the US legislative and executive organs. However, this would make Europe a bystander to the potential collapse of the kind of nuclear deal with Iran that Europe has been pursuing for over a decade. Alternatively, if both Obama and the Iranian leadership remained committed to trying to implement a deal in the face of Congressional obstruction, Europeans would have the option to take a more proactive approach. They could do so by offering Iran a European economic package that in essence creates additional phases to the implementation process of a final deal. Europe could carry out this phase on its own, by taking a different stance in comparison to the US Congress regarding sanctions relief provided to Iran.

This does not mean to suggest that Europe can or should implement the terms of a final nuclear deal in the absence of the US. Nor does this proposal suggest that Europe should take a softer approach towards Iran than the US administration in the actual negotiations. But if Europe can offer a serious economic package to Iran, this may be enough to persuade the Supreme Leader that Iran should continue to implement its obligations under the JPA – or at least those that are most crucial to the West in curtailing the nuclear programme. It would also buy time for Obama to persuade members of Congress to make the sanctions relief agreed to by the E3+3 permanent and to emphasise to those blocking implementation of a final deal that they could endanger the international consensus backing sanctions against Iran.

This active European approach would not necessarily be against US interests. In fact, it could even be tacitly approved by the Obama administration, which, like Europeans, will not want a collapse of the deal. While Obama could give his support to easing the UN Security Council resolutions' sanctions against Iran, only Congress can permanently lift US sanctions under CISADA (which would also neutralise the associated secondary impact on Europe). To expand on and implement its commitments under a final deal, Tehran will at a minimum demand credible and durable relief of sanctions against its oil sector. This is something Europe is able to deliver by easing its unilateral oil embargo against Iran. As discussed below, such sanctions relief will be meaningful to Iran if Europe is willing to also ring-fence its companies from the secondary reach of US sanctions.

Europe has the political ability to act more quickly than the US Congress in agreeing to and implementing a decision to peel back parts of its unilateral sanctions against Iran. Easing the financial sector sanctions that block Iran's major banks from accessing the Society for Worldwide

¹⁶ Interview with senior Iranian official, Tehran, March 2014; see also Jonathan Saul and Parisa Hafezi, "Western banks cold-shoulder Iran trade finance scheme", Reuters, 13 March 2014, available at http://www.reuters.com/article/2014/03/13/us-iran-trade-banks-idUSBREA2C1DX20140313?feedType=RSS&feedName=Iran&virtualBrandChannel=10209&utm_source=dlvr.it&utm_medium=twitter&dlvrit=59365; Barbara Slavin, "Iran not getting sanctions relief it was promised", *Al-Monitor*, 8 April 2014, available at <http://www.al-monitor.com/pulse/originals/2014/04/iran-no-sanctions-relief-nuclear-program.html#ixzz2yJsQq3H2>.

Interbank Financial Telecommunication (Swift) would require considerable joint action between Europe and the US administration. But Europe's oil embargo against Iran is less interlinked with the US. If the European Council agrees to ease this embargo, the European Parliament can be expected to ratify this decision without the kind of restrictions that Congress can impose on Obama.

Given Iran's bleak economic projection following years of sanctions and widespread mismanagement, Rouhani is unlikely to reject a reasonable offer by Europe.¹⁷ His economic goals cannot be fulfilled without achieving progress on the nuclear talks and delivering the associated sanctions relief, even if others in the Iranian system are willing to return to a "resistance economy".¹⁸ By reconnecting to Iran's oil sector and allowing financial channels to facilitate necessary transactions, Europe may be able to safeguard implementation of a final settlement. Such a step would also likely increase the transparency of Iran's economy, both in terms of how it functions domestically and also how it channels funds globally. This in turn may incentivise Tehran to consider, to a greater extent than before, the cost implications of its regional policy for trade with Europe.

However, Rouhani may come under pressure from the Majlis and other institutional actors who could push for withdrawing access for IAEA inspectors to nuclear facilities, forcing such inspectors to leave Iran, or pushing for new increases in uranium enrichment levels and the bringing online of additional centrifuges. If Iran pursues such options in response to Congress, Europe will have little appetite to take a different stance on sanctions from Congress and sceptics of détente in Europe will have more ammunition to block further diplomacy with Iran.

If the EU does lift some of its unilateral sanctions in this scenario, it will need to address the secondary effect of US sanctions under CISADA and other US regulatory measures in order for this to have the desired effect of allowing for trade with Iran. While the US executive can issue renewable waivers of the secondary effect of CISADA in specific scenarios, European entities are unlikely to do business with Iran under such temporary provisions because they will fear the costs involved with an eventual return of US Treasury penalties should the US administration, or the state authorities, revert to a more hardline stance towards those trading with Iran. So far, Europeans have been able to avoid dealing with the secondary effect of US sanctions because their unilateral sanctions regime against Iran

broadly mirrors that of the US.¹⁹ Attempting to permanently neutralise the impact of these US secondary sanctions will present Europe with a dilemma that requires a balancing of interests between the foreign policy pursued with Iran and Europe's discourse with the US in the short and long-term future.

Europeans have traditionally had an uneasy relationship with the secondary effect of US sanctions on foreign entities (see box). Europe could draw on precedents where it has resisted the secondary effect of US sanctions and ring-fence itself from CISADA through a mixture of political and legal measures including (a) issuing regulations ordering European companies to defy the secondary nature of US sanctions, (b) issuing regulations that annul US court decisions imposing penalties on European companies' assets beyond their jurisdiction on account of non-compliance with US sanctions, (c) creating a mechanism for European companies to claw back penalties paid to US enforcement agencies pursuant to secondary sanctions, and (d) threatening in some cases to complain to the World Trade Organization (WTO).

Circumventing the secondary impact of US sanctions against Iran will not be cost-free. US legislators seem to have learnt from these precedents and imposed sanctions on Iran through a complex patchwork of executive orders, legislation, and regulations that avoid potential legal challenges and make it extremely difficult for European entities to trade with Iran because they risk forfeiting business in the US.²⁰ If Europeans push for a permanent exemption from the secondary effect of US sanctions against Iran, they will need to work with the private sector to find a way for Iran and Europe to actually trade without significantly endangering their business in the US. If member states commit to creating the necessary political environment to push back against the secondary effect of US sanctions, European companies that have a long history of trade with Iran, particularly in the insurance and petroleum sectors, may also be more willing to resist them.

Europeans will also be concerned about a war with Congress that could endanger transatlantic co-operation on other issues. In particular, Congress could further thwart Obama's attempt to negotiate a Transatlantic Trade and Investment Partnership (TTIP) – a key priority for Europeans. However, this worry in relation to a TTIP may become less acute for Europe as Congress is denying Obama the fast-track negotiating authority he sought. Europe will have to balance these risks against the danger of a collapse in a nuclear deal with Iran as well as the potential for a more functional relationship with Iran in the Middle East and the dangers of setting a precedent that Europe will bow to US secondary sanctions. This more active and independent strategy for

¹⁷ Iran's nominal GDP fell from \$549 billion in 2012 to \$389 billion in 2013. Inflation rates reached almost 40 percent in 2013. European sanctions for an oil embargo cut Iran's oil exports by more than half from pre-2012 levels (which stood roughly at 3.5 million bpd) and deprived Iran of funds and know-how required for energy projects. The Iranian currency lost roughly 80 percent in value against the US dollar between 2012 and 2013. See Kenneth Katzman, "Iran Sanctions", US Congressional Research Service, 11 October 2013, page 51–52, available at <https://www.fas.org/sgp/crs/mideast/RS20871.pdf>.

¹⁸ Rouhani seeks to open Iran's energy portfolio to foreign investment, tackle problems of transparency and over-regulation in the commercial sector, and reduce the extent of quasi-state-owned companies (linked to the IRGC).

¹⁹ See European Union Council Regulation 267/2012, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:088:0001:0112:en:PDF>.

²⁰ This includes the ability to participate in US public sector procurements.

Europe and US sanctions

Europe has previously opposed the secondary impact of US sanctions. In 1982, the European Community openly condemned the Reagan administration for sanctions that prevented not only US companies but also foreign companies with US technology licences from exporting gas pipeline equipment to the Soviet Union.²¹ France issued an executive order compelling its corporations to continue performing their contracts with the Soviet Union, and the Dutch courts ruled that US entities operating in their jurisdiction were not excused from their contractual obligations.²² Under increasing political pressure from Europe, the Reagan administration retreated from imposing sanctions against Europe using presidential waivers.

In response to the Helms-Burton Act, which was passed in 1996 and imposed sanctions on foreign entities and individuals engaging in trade activities with Cuba, the EU retaliated with legal action against the US at the WTO. In addition, the European Council prohibited European companies from adhering to these sanctions and provided a claw-back mechanism whereby its entities could recover costs imposed on them by the US.²³ Under the Iran and Libya Sanctions Act (ILSA) passed by the Clinton administration in 1996, any foreign company investing more than \$20 million in petroleum sectors in either Libya or Iran faced US penalties. Divisions between Europe and the US over ILSA were resolved through diplomatic pressure on Clinton to exercise presidential powers suspending the impact of such sanctions on Europe.

Europe was comparably relaxed in its reaction to CISADA, which imposed the most extreme levels of secondary sanctions on European entities. CISADA penalises European companies engaging in financial and oil sector business with Iran and restricts the extent and length of presidential waiver authority. Europe largely sidestepped the necessity to question the secondary reach of CISADA because it harmonised its own laws quickly through unilateral sanctions.²⁴ Unlike ILSA and the Helms-Burton Act, of course, CISADA was in line with Europe's own unilateral sanctions and declared foreign policy goals towards Iran.

détente with Iran is one that Europe should seriously debate if the position taken by Congress opposes not only the US president but also European interests.

Scenario 4: negotiations break down

There may come a point, either during the initial JPA or a potential extension period, where the E3+3 and Iran cannot reach mutually agreeable terms for a final deal and one or both sides walk away from the negotiations. The US and Europe would likely hold Iran responsible for the breakdown while Iran would blame the West. Much would depend on the reactions of China and Russia. Whether they decide to support the West or on the other hand risk the unity of the E3+3 by leaning towards Iran will be influenced by the sequence of events and the reasoning for the breakdown. It could also be affected by other factors such as the Ukraine crisis.

In such a scenario, Europe would revert to the role it played until last year's breakthrough: it would seek to avoid a military strike on Iran (and prevent the associated negative spillover) and to keep the door open to diplomacy in future. Europe would need to manage the fallout in such a way that talks can be resumed while avoiding the possibility of Iran's administration (and the Supreme Leader) slipping back into a radical hardline narrative. The aim should be to encourage all sides to return to the negotiation table during the tenure of Obama and Rouhani, who have brought their respective administrations closer than ever before in reaching a zone of agreement over the nuclear file.

At the same time, to avoid the possibility of a military strike against Iran, Europe will also need to put in place mechanisms to slow down Iran's progress on its nuclear programme. Some will want to pressure Tehran through more extensive sanctions in the hope that Rouhani's administration will react more rationally than Ahmadinejad's. Although this may be preferable to a military strike, Europe should prepare for enhanced sanctions to cause a backlash from Tehran's hardliners pushing for Iran to pursue a shorter breakout capacity than it has in the past. This move will narrow options open to Europe and the US administration for resuming diplomacy.

Renewed sanctions could also have effects beyond the nuclear issue. They would strengthen the case of the hardliners that Iran should revert to the "economy of resistance" that would, among other things, bring Tehran closer to Moscow in circumventing Western sanctions – a prospect that has been made more tangible by the Ukraine crisis. In particular, the ongoing oil barter deal between Iran and Russia has been viewed as Iran's fallback option for economic revival if substantive sanctions relief is not forthcoming by January 2015 as part of the nuclear talks. In such a scenario, the Supreme Leader would also likely support the hardliners in pursuing a more aggressive policy towards the West on regional security.

²¹ See "Comments of the European Community on the Amendments of 22 June 1982 to the US Export Regulations", European Community News No. 23/1982, 12 August 1982, available at http://aei.pitt.edu/1768/01/US_dispute_comments_1982.pdf.

²² See Austen L. Parrish, "Developments in the Law: Extraterritoriality", *Harvard Law Review*, Vol. 124, 1226, at ft 15.

²³ See Council Regulation No. 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996R2271:EN:HTML>.

²⁴ See Council Decision concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP, Brussels, 26 July 2010, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:195:0039:0073:EN:PDF>.

Beyond the nuclear issue

In the wake of Rouhani's election and his outreach to the West, Europe should utilise its diplomatic, economic, and political ability to maximise the chances of a final nuclear deal – its overriding strategic interest – and short of that to continue expanding the space for diplomacy. Regardless of developments in the nuclear talks, Iran and the US have a long way to go before they overcome the “Great Satan” and “axis of evil” labels they have attached to each other. On the other hand, Europe's diplomatic ties with Iran are stronger and less tainted by mistrust and deep ideological antipathy. Europe can also act with more pace and predictability than the US administration in peeling back sanctions against Iran.

As long as the diplomatic track with Iran continues, the US and Europe should continue to co-operate closely in order to reach a final deal. But in a scenario in which hardliners in Congress are successful in an effort to isolate Iran even as it stands on the verge of a possible final nuclear deal, it may be in the European interest to act independently of the US – even if this comes at a cost. This scenario will hopefully not arise. But at least in private, Europeans should have a plan in place now in case they need to act to salvage the diplomatic process with Iran at a later stage. If there is a fallout among the parties during the negotiations, Europe will need to manage these differences in a way to keep open the option of resuming talks, otherwise it will be back between a rock and a hard place – accepting a nuclear Iran or supporting a military strike against Iran's nuclear facilities.

The outreach by Rouhani's administration, and the steps already taken by both sides, signal a new chapter in relations between Europe and Iran. The escalating regional conflicts highlight the need for strategic thinking by Europe that goes beyond a one-dimensional view of Iran as a spinning centrifuge with a country behind it. If the nuclear talks continue positively, it could be the first step in rebuilding trust with Iran and developing a transactional relationship that is not entirely tethered to the more limited options available to the US. A nuclear deal would bring Iran in from the cold and could even provide Tehran with incentives to gradually recalculate its interests in areas in which it currently opposes European interests.

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