

**Confidential**

## RUSSIA

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Andrey Baklitskiy reports from Moscow:

### WHAT FUTURE FOR THE JCPOA

#### SUMMARY

*The future of the Joint Comprehensive Plan of Action (JCPOA) may soon be clarified. There is little doubt in Tehran that US will withdraw from the JCPOA. PIR Center consultant Andrey Baklitskiy, who had recently visited Teheran for participating in Russian-Iranian Dialogue, shares his view on the future of Iran nuclear deal.*

*With May 12 - the deadline for US President to waive nuclear related sanctions against Tehran - fast approaching, there is a real possibility that Washington will violate its obligations under the Iran deal, basically walking out of the JCPOA. Since his election campaign President Donald Trump consistently criticized the Iran deal, during his presidency he gradually undermined the agreement and has specifically promised not to wave sanctions in May unless his demands for re-negotiation of the JCPOA are met (Iran has ruled out any changes to the existing deal). His new cabinet members - National Security Advisor John Bolton and the nominee for the Secretary of State Mike Pompeo - unlike their predecessors, seem inclined to support the President's effort to leave the JCPOA.*

*French President Emmanuel Macron on a state visit the US on April 24 presented his plan for a bigger, four-pillar deal, that would keep the JCPOA, deal with Iranian nuclear program in the long-term, address Iranian ballistic missiles and the regional security issues.<sup>1</sup> It is unclear, whether Donald Trump will subscribe to this project. Even if he does, there is no indication, Tehran would be willing to negotiate all of the proposed issues with the West or if such negotiations would be successful. If President Trump agrees to the European plan, this might get the JCPOA through May 12, however, the issue will re-emerge in September 2018 when the new waiver would expire.*

<sup>1</sup> President Trump Oval Office Meeting with French President Macron. CSPAN video library. April 24, 2018. <https://www.c-span.org/video/?444586-1/presidents-trump-macron-speak-iran-nuclear-deal>

Saving the Iran deal is in the interest of all the parties, since the collapse of the JCPOA would put in question the very possibility of multilateral diplomacy and undermine the credibility of participants of the agreement. Failure of the JCPOA will also be a huge blow to the nuclear nonproliferation regime. The restart of a full scale Iranian nuclear program could result in nuclear technology race in the Middle East, security escalation around Iran, or even military strikes against Tehran by United States, Israel or other regional players.

The future of the JCPOA after the US withdrawal will mainly depend on three big unknowns:

- 1) what would **US do**,
- 2) what would **Iran do** and
- 3) what would **Europeans do**.

#### US LEAVES THE JCPOA:

Joint Comprehensive Plan of Action is a political agreement between the executives of the member-states which sets a number of obligations on all of the participants. **Iran promised to limit its nuclear program** and implement unprecedented verification measures. In return the **US promised to stop or suspend nuclear related sanctions against Tehran** and not to impose new ones.

- ❖ President Trump could have left the Iran deal at any moment simply by issuing executive order imposing nuclear related sanctions on Tehran, though he never used this opportunity. **At the same time, according the US law, President has to sign an executive order waiving the existing sanctions every 120 day.** Donald Trump has in past promised he would not sign such an order and was vague on the prospects of following the European proposal. If the previous waiver expires, US secondary sanctions (aimed at barring the third parties from doing business with Iran) will automatically be reimposed (US primary sanctions barring US citizens from engaging with Iran were never lifted). Washington will be in open non-compliance with the agreement and basically leaving it.
- ❖ A more nuanced approach to the US sanctions snap-back is advocated by an outspoken critic of the deal Mark Dubowitz, the chief executive of the Foundation for the Defense of Democracies.<sup>2</sup> In his view Donald Trump could let the waiver expire but instruct the Department of the Treasury not to implement sanctions for a certain period of time. **This would give the US more time to pressure the EU into a common position towards Tehran,** and would live Iran in limbo, provoking the country into violating the JCPOA and give US pretext for further anti-Iranian actions. Such a scenario would fit a broader US administration strategy of half-measures towards Iran deal which culminated in de-certification of the JCPOA in October 2017. However, such scenario would require patience on the part of president Donald Trump, which he might be running out of
- ❖ Finally, the third and potentially most problematic scenario for the international community could become the abuse by Washington of the

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<sup>2</sup> Lake, E. (2018). Don't Blow Up The Iran Deal. Trump's Strategy Is Working. Bloomberg Opinion March 28, 2018. <https://www.bloomberg.com/view/articles/2018-03-28/trump-and-the-iran-deal-the-u-s-strategy-is-working>

conflict-resolution mechanism in the JCPOA and the UN SC Resolution 2231. According to the deal,<sup>3</sup> any state party can rise at the JCPOA

Joint Commission a non-compliance case by other party. If the decision by the Commission will not satisfy the accuser, the issue could be raised to the level of the Foreign Ministers, and subsequently to the UN Security Council. Resolution 2231, which endorsed the JCPOA, have created a unique mechanism for sanctions snap back. Unlike other cases, to keep the status quo UN SC will have to pass a resolution confirming sanctions relief for Iran. If such a resolution fails to pass in 30 days (US can veto any resolution of the Council), «all of the provisions of resolutions 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), and 1929 (2010) that have been terminated pursuant to paragraph 7 (a) shall apply in the same manner as they applied before the adoption of this resolution».<sup>4</sup>

*International community including Russia and China will have to either enforce something they see as unfair, or openly violate UN SC resolutions. With John Bolton, highly skilled in national and international bureaucracy, as new US National Security Advisor this scenario doesn't seem far-fetched. However, it will require even more patience on behalf of President Trump, who seems less and less interested in self constraint.*

#### IRAN WEIGHTS ITS OPTIONS

There is no consensus in Iran regarding country's response to US walkout of the JCPOA.<sup>5</sup>

- There are those who **believe that the nuclear deal is beneficial for the country** as it brings economic benefits, normalizes relations with Europe and other Western countries and Iran should try to stay in the JCPOA even if Washington leaves.
- There are also people who take the transactional approach and **consider that JCPOA is underdelivering for Iran** and is not worth participating. In their view Tehran should restart its peaceful nuclear program and look for closer cooperation with Eurasian countries, chiefly Russia and China. Generally, those are the people who never liked the deal in the first place.
- Finally, there are people who **believe that US unfair targeting of Iran requires even harder response like leaving the Nuclear Non-Proliferation Treaty.**<sup>6</sup>

*Iran reaction will be decided internally but it will depend heavily on the benefits that the country will receive from staying in the JCPOA.*

US withdrawal will not only be a violation of the agreement, its secondary sanctions will affect the willingness of Iranian trading partners (India,

<sup>3</sup> UN SC Resolution 2231 (2015), par. 11-12. [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2231\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231(2015))

<sup>4</sup> Резолюция 2231 (2015), принятая Советом Безопасности на его 7488-м заседании 20 июля 2015 года, пункты 11-12. [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/RES/2231\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2231(2015))

<sup>5</sup> Author's interviews with high-level Iranian officials, April 2018

<sup>6</sup> Iran to Pull Out of NPT If Sanction Reinstated: MP. Iran Front Page. November 5, 2017 <http://ifpnews.com/exclusive/iran-pull-npt-sanction-reinstated-mp/>

Turkey, Japan and South Korea among the biggest) to do business with Tehran.<sup>7</sup> US sanctions could even put in question Iranian trade with the European members of the JCPOA, who will presumably stay in the deal. The \$9 billion fine which Bank BNP Paribas was sentenced to less than four years ago serves as a powerful reminder of the costs European business might pay for working with Tehran. Even without direct fines, if EU companies are left to choose between the US and Iranian markets they will have clear incentive to choose Washington over Tehran.

With economic benefits from the JCPOA being the factor that could swing Iranian decision to leave the or stay in the deal, actions of the EU to safeguard the agreement will likely be the key to the outcome.

#### EUROPE HAS TO DECIDE

If European Union is interested in keeping Iran in the JCPOA and the deal alive, it **will have to provide Tehran the economic benefits the country was promised under the agreement** even in case US leaves the deal. Obviously, EU cannot force its companies to do business with Iran but **it can create favorable conditions for trade and investment in Iranian economy.**

According to the numerous statements, EU is considering passing blocking regulation, that would shield its companies from the US secondary sanctions and permit them to do business with Iran.<sup>8</sup> Brussels already has experience in this sphere. When the European Community faced US extraterritorial sanctions over trade with Cuba in 1990-s, Council Regulation No 2271/96 was passed, which put in place measures shielding European companies from sanctions and required them to implement concluded contracts. Brussels also invoked the WTO consultation mechanisms to pressure Washington.<sup>9</sup> In the end the US decided to strike a deal and exempt European companies from the secondary sanctions.

***Such a move would be beneficial to EU trade with Iran, (according to the Crisis Group 2017 survey of senior managers at multinational companies, it would "positively affect the decision to invest in Iran" in more than half of the companies<sup>10</sup>) and thus increase Iranian interest in staying in the JCPOA. To make its actions more effective, EU would be wise to coordinate its actions with Russia and China, and large Iranian trading partners like India and Turkey,<sup>11</sup> who would be interested in protecting their bilateral trade.***

With the snap-back of US nuclear-related sanctions, trade with Iran in dollars, already barely possible, will be blocked completely. EU as the eminent of the second most commonly held reserve currency should develop a mechanism for payments **based on euro to process transactions with Tehran.** Russia and China should be fully briefed on the new mechanism to **harmonize it with their national financial systems.** Other major trading partners of

<sup>7</sup> South Korea's crude imports from Iran have already dropped over 30 percent year-on-year. Reuters. March 15, 2018. <https://www.reuters.com/article/us-southkorea-oil-iran/south-koreas-february-crude-imports-from-iran-drop-over-30-percent-year-on-year-idUSKCN1GR03C>

<sup>8</sup> EU could impose blocking regulations if U.S. pulls out of Iran deal. Reuters. February 8, 2018 <https://www.reuters.com/article/us-iran-nuclear-eu/eu-could-impose-blocking-regulations-if-u-s-pulls-out-of-iran-deal-idUSKBN1FS2FG>

<sup>9</sup> World Trade Organization. United States-The Cuban Liberty and Democratic Solidarity Act. April 22, 1998 [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds38\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds38_e.htm)

<sup>10</sup> International Crisis Group. The Iran Nuclear Deal at Two: A Status Report. January 16, 2018. <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iran/181-iran-nuclear-deal-two-status-report>

<sup>11</sup> Iran regaining oil market. Mehr News Agency. October 2, 2017. <https://en.mehrnews.com/news/128255/Iran-regaining-oil-market>

Iran should **get access to the mechanism as well**. EU should also continue work to **reconnect Iranian banks to the international financial system**. Brussels might also consider providing euro denominated credit lines to companies **to do business with** Tehran<sup>12</sup> and not limit it to EU companies.

***In case US will try to dismantle the JCPOA and the UN SC Resolution 2231, EU, and especially France and the UK, who are permanent members of the Security Council, should work together with Russia and China to come up with legal solutions to block the US assault. One possible line of action would be questioning<sup>13</sup> the 'significant non-performance of commitments under the JCPOA' by Iran that US would have to invoke to trigger the snap-back and therefore treat SC Res. 2231 as continuing in force. Maintaining a unified opposition to actions of Washington in the Council will therefore be of outmost importance.***

Europe might have to pay a heavy price for standing up to the United States on the JCPOA. A standoff would probably mean a "sanctions war" with the world's biggest economy. However, letting the deal collapse would result in even bigger damage for Europe and the world.

## CONCLUSION

The fate of Iran deal is highly uncertain, **European leaders are still trying to persuade Donald Trump to stay in the JCPOA**. French President Emmanuel Macron and German Chancellor Angela Merkel are making this point during their visits to Washington before the May 12 deadline. But it is highly unlikely they or anyone else are able to change President Trump's deep-held contempt for the Iran deal. Without US interest in the JCPOA, even another extension of sanction relief will just kick the can down the road until the next crisis arrives.

With this in mind other members of the JCPOA would be wise to have a coherent strategy to continue implementing the deal and making sure it benefits all the participants even after the US walkout.

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<sup>12</sup> EU may offer credit to firms trading with Iran if Trump pulls out of nuclear deal. The Guardian. March 23, 2018. <https://www.theguardian.com/world/2018/mar/23/eu-may-offer-credit-to-firms-trading-with-iran-if-trump-pulls-out-of-nuclear-deal>

<sup>13</sup> Galbraith, J. (2017). If President Trump Ends the Iran Deal, Can He Trigger the Security Council Snapback? September 20, 2017. <http://opiniojuris.org/2017/09/20/if-president-trump-ends-the-iran-deal-can-he-trigger-the-security-council-snapback/>

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