



How Europe Can Save the Iran Nuclear Deal

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Principal Findings

What's new? The U.S. is threatening to withdraw from the 2015 nuclear accord with Iran if what it calls the deal's "disastrous flaws" are not fixed by 12 May. Europe is scrambling to placate Washington without alienating Tehran, but the prospects appear dim.

Why does it matter? U.S. withdrawal from the deal might kill it instantly; more uncertainty over the deal's fate might suffocate it, as opinion in Tehran is turning against it. Iran could cancel the deal; target the U.S. or its Middle Eastern allies; or leave the Nuclear Non-Proliferation Treaty – all exacerbating the regional turmoil.

What should be done? Europe should develop a plan B to keep Iran party to the deal regardless of what the U.S. does on 12 May. This plan should include short- and medium-term measures to build trade with Iran, contingent upon verification of continued Iranian compliance with the deal and additional reforms.

Executive Summary

The nuclear agreement between Iran and the P5+1 (also known as the E3/EU+3) is beginning to look like a pyrrhic victory. U.S. President Donald Trump has had the 2015 Joint Comprehensive Plan of Action (JCPOA) in his crosshairs since taking office in January 2017. A year into his term, he declared that unless the U.S. Congress and European allies addressed the deal's "disastrous flaws" by 12 May 2018, the U.S. would withdraw from it despite Iran's ongoing, independently verified compliance. Amid rising tensions in the region, Israel has once again alleged that Iran has neither come clean about its past nuclear activities nor abandoned its nuclear weapons ambitions. Europe has made last-ditch efforts to meet Trump's challenge. But it may very well need a backup plan to salvage the nuclear deal if the U.S. withdraws or carries out its part of the bargain half-heartedly.

Negotiators for the U.S. and the UK, France and Germany, collectively known as the E3, have made progress toward accommodating the White House's concerns. In the last week of April, French President Emmanuel Macron and German Chancellor Angela Merkel were in Washington to give talks a final push. Yet, notwithstanding the rollercoaster quality of Macron's visit (first suggesting an understanding might be struck, saying there is no "plan B", then dashing hopes the following day), at this writing the success of their entreaties is highly questionable. Indeed, even were Trump to accede, uncertainty will likely continue to hover over the accord, economic benefits to Iran will therefore dwindle, and Tehran's incentives to remain in the deal will diminish.

Since Trump's ultimatum, negotiators have discussed four main concerns: Iran's ballistic missile program, its regional policies, the inspection of Iranian nuclear sites and so-called sunset clauses contained in the JCPOA, which refer to time-limited restraints on Iran's nuclear capabilities. The contours of a transatlantic understanding have emerged, particularly on the first three items. But the E3 insist they will not unilaterally change the JCPOA's terms, which means that – contrary to the White House's demand – they will not agree to automatically punish Iran if it expands its nuclear activities in ways consistent with the deal's terms. They also are unconvinced that Trump will ever abide by a deal he has consistently derided. In fact, they fear he will reject whatever compromise the negotiators reach.

President Trump's administration has four broad options: reach some kind of understanding with the E3 that includes U.S. compliance with the JCPOA and continued waiving of U.S. nuclear-related sanctions on Iran; postpone a decision by waiving sanctions once more to allow for additional negotiations with the E3; refuse to waive sanctions but delay their imposition, again to allow for additional negotiations with the E3; or withdraw from the deal, refusing to waive sanctions and beginning penalising those who violate them. The first option would be the best but also, based on what Macron said at the tail end of his visit, and given Israel's recent accusations, the least likely. As for the other three, they range from the undesirable to the frankly destructive. Each would, at a minimum, mean the damaging ambiguity surrounding the nuclear deal's fate would persist.

Absent from the deliberations are Russia, China and Iran. Moscow and Beijing have both expressed continued support for the accord. As for Tehran, it has left no doubt as to its determination to respond if the U.S. reimposes sanctions; there is greater uncertainty as to how it would react to a U.S./E3 agreement that preserves the JCPOA but sanctions its missile program and regional activities, suggests a tough U.S./E3 line toward Iran's future nuclear program, and insists on negotiating a broader deal addressing all those issues. Iranian leaders bitterly criticised Macron's suggestion of a U.S./E3 push for a broader agreement with Iran covering all those matters, seeing it as rewarding the U.S.'s threats to exit the deal by appeasing Trump rather than simply insisting on Washington's full compliance.

Views vary in Tehran, but those who advocate continued adherence to the deal and attempting to drive a wedge between Europe and the U.S. are losing ground. Iran's reaction to a U.S. withdrawal or to what it perceives as a hostile U.S./E3 understanding could be to violate its own JCPOA commitments; respond asymmetrically against U.S. forces or assets in the Middle East; or, in the most extreme version, withdraw from the deal and go even further by pulling out of the Nuclear Non-Proliferation Treaty (NPT). As talks with the U.S. continue, the E3 should be careful not to act in ways that will be read in Tehran as moving the goalposts given Iranian domestic dynamics: opinion is rapidly turning against any additional compromises with what Tehran views as a mercurial U.S. and an unreliable Europe.

At this point, it appears that without a European initiative vis-à-vis Tehran – and barring a last-minute understanding with Washington that meaningfully preserves the JCPOA – the deal either will expire instantaneously or die a slow death. To minimise these risks, the E3 should cease focusing solely on keeping the U.S. in compliance with the JCPOA; it should also devise a means of keeping Iran on board even if the U.S. is not. As the E3 continue discussions with the U.S. until the 12 May deadline, they should develop a plan B to roll out if a compromise agreement proves elusive or the U.S. keeps chipping away at the JCPOA's intended dividends for Iran. This contingency plan could succeed if the E3 present it to Iran as an economic co-operation package with short- and medium-term components. Of course, such an effort would be conditioned on Iran's continued compliance with the JCPOA and meaningful action toward reforming its financial institutions and de-escalating tensions in the region.

A unilateral U.S. withdrawal would doubtless deal a serious blow to the JCPOA. Proactive E3/EU steps could ensure it is not fatal.

Washington/Brussels, 2 May 2018

How Europe Can Save the Iran Nuclear Deal

I. Introduction

U.S. President Donald Trump came into office as a staunch Joint Comprehensive Plan of Action (JCPOA) critic.¹ Some thought he would abrogate the deal immediately or during the first year of his presidency. He did not, due at least in part to warnings from his national security team about adverse diplomatic repercussions of a unilateral – and given Iran’s compliance, unjustified² – withdrawal. Another reason he stayed his hand was an inter-agency strategic review of U.S. policy toward Iran that took nearly ten months to complete. In the meantime, his administration continued to issue periodic, congressionally mandated certifications of Iran’s compliance and extend nuclear sanctions relief, while in parallel designating new Iranian individuals and entities for non-nuclear U.S. sanctions and withholding licences for commercial agreements allowed under the JCPOA.³ The strategic review laid out a broadly pressure-centric policy toward Iran; in tandem, the president refused to certify the JCPOA on the grounds that sanctions relief had been disproportionate to steps Iran had taken to implement the deal.⁴

This decision placed the deal’s fate into the hands of the U.S. Congress, which had the power – under the 2015 Iran Nuclear Agreement Review Act (INARA) – to use an

¹ Crisis Group Statement, “President Trump and the Art of the Iran Nuclear Deal”, 23 November 2016.

² Since the JCPOA’s implementation in January 2016, the International Atomic Energy Agency (IAEA) has verified on ten separate occasions that Iran is fulfilling its JCPOA obligations, most recently in “Verification and Monitoring in the Islamic Republic of Iran in Light of United Nations Security Council Resolution 2231 (2015)”, GOV/2018/7, IAEA, 22 February 2018.

³ President Trump has issued nine extensions of Iran’s sanctions relief so far. See Crisis Group Middle East and North Africa Report N°181, *The Iran Nuclear Deal at Two: A Status Report*, 16 January 2018. Iranians argue that most important evidence for the U.S.’s failure to live up to its end of the bargain is its refusal to issue licences for the sale of civilian airliners to Iran. As a U.S. diplomat told his Iranian counterparts: “You use your commercial airlines to move terrorists and weapons around the Middle East, including to Syria, and we will not issue licences at the expense of our national security”. Quoted in “Director of Policy Planning Brian Hook on the Joint Comprehensive Plan of Action Joint Commission in Vienna”, U.S. State Department, 21 March 2018. A European official noted that the U.S. Treasury Department has not issued a single licence for civilian aircraft since 2017 and that maintenance of existing planes has also faced hurdles. Crisis Group interview, Paris, March 2018. Scuttling the aircraft sales would violate a U.S. commitment under Annex II, Section B, paragraph 5 of the JCPOA. See www.un.org/en/sc/2231. Iran has refrained from paying instalments for the delivery of 80 Boeing planes that Iran Air purchased in 2016, lest U.S. authorities seize the down payment. Crisis Group interviews, Iranian official, Brussels, February 2018; British official, London, March 2018. See also Felicia Schwartz and Ian Talley, “Boeing ordered to give Israeli terror victims details of \$16b Iran deal”, Associated Press, 2 March 2018.

⁴ Crisis Group Statement, “Saving the Iran Nuclear Deal, Despite Trump’s Decertification”, 13 October 2017; “Remarks by President Trump on Iran strategy”, White House, 13 October 2017; Peter Baker, “‘He threw a fit’: Trump’s anger over Iran deal forced aides to scramble for a compromise”, *Washington Post*, 11 October 2017.

expedited process to restore U.S. nuclear-related sanctions by a simple majority.⁵ Yet Congress, reluctant to alienate such key U.S. allies as the E3, instead attempted to put in place an automatic snapback mechanism in case Iran were to expand its nuclear program after some of the JCPOA-imposed restraints lapse between 2026 and 2031.⁶ The effort ran aground when most Democrats and key Republicans proved loath to consider measures that risked jeopardising European support and could put the U.S. in violation of the JCPOA.⁷ Instead, Congress effectively threw the ball back into the E3's court, with the Republican leadership telling the administration that if it reached a deal with the E3, they would be happy to legislate that agreement.⁸

By January, Trump, who had long expressed distaste for his predecessor's every achievement, had run out of patience and his national security team seemingly out of excuses to buy time.⁹ While renewing U.S. sanctions waivers on 12 January, he declared that unless Congress and Europe addressed several "disastrous flaws" in the agreement, he would no longer extend sanctions relief but pull the U.S. out of the agreement. "This is a last chance", the president warned.¹⁰ The announcement triggered a 120-day deadline to meet the White House's terms to "fix" the JCPOA before 12 May 2018.¹¹

⁵ See Crisis Group Statement, "Saving the Iran Nuclear Deal, Despite Trump's Decertification", op. cit.; the "Iran Nuclear Agreement Review Act of 2015", H.R. 1191, Public Law: 114-17, 22 May 2015.

⁶ Crisis Group interviews, congressional staff, Washington, November-December 2017.

⁷ Rebecca Kheel, "Corker 'semi-hopeful' on Iran legislation as key deadline passes", *The Hill*, 12 December 2017.

⁸ Crisis Group interviews, members of Congress, Washington, March 2018.

⁹ A White House official observed, "the national security advisor, the secretary of state and the defense secretary are at the end of their rope. They can no longer buy time". Crisis Group interview, Washington, 19 February 2018.

¹⁰ "Statement by the president on the Iran nuclear deal", White House, 12 January 2018. Crisis Group Report, *The Iran Nuclear Deal at Two*, op. cit.

¹¹ The waiver due for renewal on 12 May is related to Section 1245 of the "National Defense Authorization Act for fiscal year 2012", H.R. 1540, Public Law: 112-81, 31 December 2011, which bans, inter alia, foreign banks from processing oil receipts through the Central Bank of Iran. See also Richard Nephew, "Trump's middle ground on Iran deal sanctions waivers is a myth", *Foreign Policy*, 26 April 2018.

II. Between a Rock and a Hard Place

President Trump's declaration put the burden of alleviating the U.S. administration's concerns on Europe's shoulders.¹² The E3 evinced surprise. A senior European official noted: "It didn't make much sense for U.S. negotiators to try to address with us what they could not get agreement on with their own Congress".¹³

Nonetheless, the E3 believed that even if the path through which the U.S. could remain party to the deal was narrow, it was incumbent upon them to explore whether a compromise consistent with the JCPOA was reachable.¹⁴ The ultimatum created a sense of urgency.¹⁵ Between February and April, the U.S. and E3 negotiators met four times, in London, Paris, Berlin and Washington, to address U.S. concerns within and beyond the JCPOA.¹⁶

While the quartet's discussions dismayed other JCPOA participants, there was a high degree of harmony among the E3.¹⁷ Moreover, transatlantic talks showed there was considerable common ground concerning Iran's ballistic missile program and its Middle East policies.¹⁸ Both sides could agree on imposing tough penalties on any Iranian move toward developing intercontinental ballistic missiles (ICBMs); on enforcing strict export controls and responding jointly to Iran's testing of short- and medium-range missiles capable of carrying a nuclear warhead; and on pushing back against what they see as Iran's regional meddling. There is likewise apparent consensus on steps related to efforts by the International Atomic Energy Agency (IAEA): that it should vigorously verify Iranian compliance; receive from the E3 and U.S. timely intelligence regarding suspicious activities at Iranian military or nuclear sites; and rigorously enforce the JCPOA's access provisions.¹⁹ A senior European official

¹² A European diplomat said, "this JCPOA drama is not induced by a flagrant violation. It stems from a change in the U.S. administration and is basically an intra-American debate. The antagonism toward the deal has no parallel in Europe". Crisis Group interview, Washington, 7 February 2018.

¹³ Crisis Group interview, Paris, February 2018.

¹⁴ Crisis Group interviews, French, German and British officials, Paris, Berlin and London, January-March 2018.

¹⁵ A European official said, "we once told a senior U.S. diplomat that we felt he was putting us under pressure and presenting us with an ultimatum. Referring to President Trump, he responded: 'I feel the same way!'" Crisis Group interview, Paris, March 2018.

¹⁶ According to the lead U.S. negotiator, each session was split between discussions over the parameters of an E3-U.S. "supplemental agreement" addressing Iran's ballistic missile program, international inspections of its nuclear program and the "sunset" provisions laid out in the JCPOA, and further discussions over six issues falling under "Iran's other malign activities". "Brian Hook on the Joint Comprehensive Plan of Action Joint Commission in Vienna", State Department, op. cit.

¹⁷ The EU attended the E3-U.S. talks, but only as an observer. A Russian diplomat complained: "This is an effort to divide the P5+1. It is neither possible nor acceptable to use the JCPOA as leverage to extract more concessions from Iran". Crisis Group interview, Washington, 7 February 2018. Tom Miles, "Russia and China seek international support for Iran nuclear deal", Reuters, 24 April 2018.

¹⁸ Crisis Group interviews, Washington, Brussels and Paris, January-March 2018.

¹⁹ Annex I of the JCPOA provides a unique mechanism for IAEA access to suspect sites within 24 days through the Joint Commission, with Iranian non-cooperation resulting in the activation of a dispute resolution mechanism and potential snapback of UN sanctions.

said, “we are going very far but, honestly, it is justified, regardless of the JCPOA. We were awakened to the magnitude of what Iran is doing”.²⁰

The four countries also made progress on the most contentious issue, the JCPOA’s so-called sunset clauses – ie, the fact that several, albeit not all, restrictions on Iran’s nuclear program will expire at some point. Critics, the U.S. administration among them, claim that the expiry provides Iran with a pathway to building nuclear weapons over time.²¹ The U.S. has been seeking an E3 commitment to automatically reimpose sanctions if Iran, although acting in compliance with the JCPOA, expands its nuclear program after certain constraints go away.²² For the E3, however, this step would be tantamount to a violation – even if a deferred one – of the JCPOA, which contemplates the normalisation of Iran’s civilian nuclear program after a confidence-building period that ends gradually between 2026 and 2031. A senior Iranian official said, “the question of duration was the toughest in the talks. We wanted two years and the U.S. wanted twenty. We compromised and now will agree to neither a one-sided change nor a renegotiation [of this clause]. It is either all or nothing”.²³ As a French official put it, “it’s totally unrealistic to believe that Iran will accept perpetual limits on its sovereignty”.²⁴

Instead, the E3 have said they are willing to reassert their determination not to allow Iran to acquire a bomb and to judge Tehran’s intentions by assessing a range of factors, including whether its nuclear program was commensurate with its civilian needs for nuclear fuel.²⁵ In other words, the U.S. and E3 would seek to define indicators of a potential Iranian move toward nuclear weapons. They would also agree on what they would and would not provide Iran in terms of nuclear-related technology after those constraints expire.²⁶ Finally, they would consent to a U.S.-E3 review after a few years to assess Iran’s intent.

In return for their cooperation with the U.S., the E3 would want the Trump administration to stabilise the JCPOA by halting the cycle of uncertainty that derives

²⁰ Crisis Group interview, Berlin, April 2018.

²¹ Under the JCPOA, some restrictions on the production and testing of advanced centrifuges will be relaxed in 2024; in 2026, Iran can start phasing out its first-generation centrifuges, but its total enrichment capacity (less than one third of what it was prior to the deal) will remain at the 2016 level until 2028. Until 2031, the enrichment level is restricted to 3.67 per cent; Iran’s low-enriched uranium stockpile is capped at 300kg; and constructing a new heavy-water reactor and reprocessing spent fuel are banned. Continuous surveillance of centrifuge production sites lasts until 2036, while the monitoring of Iran’s uranium mines and mills will continue until 2041. Some provisions have no expiry date. For instance, Tehran is forever required to notify the IAEA when it makes a decision to build a nuclear facility. If Iran ratifies the Additional Protocol to its Comprehensive Safeguards Agreement in 2023 in conjunction with the U.S. Congress permanently lifting its nuclear-related sanctions, the IAEA will have enhanced access to suspect Iranian sites in perpetuity.

²² As a U.S. official asked, “if you agree that it is a good thing Iran is twelve months away from a breakout and that’s why you like the deal, then why wouldn’t you like Iran to preserve that distance in the future?” Crisis Group interview, Washington, 8 February 2018.

²³ Crisis Group interview, New York, 21 April 2018.

²⁴ Crisis Group interview, Washington, 8 February 2018.

²⁵ The JCPOA’s preface notes: “The JCPOA reflects mutually determined parameters, consistent with practical needs, with agreed limits on the scope of Iran’s nuclear program, including enrichment activities and R&D”.

²⁶ Crisis Group interviews, European officials, Paris, Berlin and London, March-April 2018.

from the administration having to certify Iranian compliance or extend sanctions relief at frequent intervals. They also seek a firm commitment that the U.S. will issue licences for legitimate business in Iran and put a stop to U.S. Treasury officials explicitly discouraging such commerce, in contravention of the JCPOA.²⁷

By late April, a mutually acceptable compromise seemed within reach, with a few brackets remaining over the key question of the sunset clauses. Even if the differences were bridged, however, it remains unclear whether a compromise would satisfy Trump.²⁸ His April 2018 decision to bring ardent JCPOA opponents into key national security posts bodes ill. Both the new national security advisor, John Bolton, and the new secretary of state, Mike Pompeo, have in the past openly favoured abrogating the agreement, a military strike on Iran and regime change.²⁹ Indeed, in dismissing his first secretary of state, Rex Tillerson, Trump specifically cited the JCPOA as one area of disagreement: “I wanted to either break it or do something, and he felt a little bit differently”.³⁰ As seen from Europe, these changes at the top portend a growing hawkishness and cast a shadow over the viability of putative U.S.-E3 compromise on the JCPOA, even though the talks have made progress in the interim.³¹

Some European officials are sceptical that the administration’s ultimate goal is to improve the accord. They believe its aim is to restore maximum coercive pressure on Iran in order to change not only that country’s behaviour, but also its regime. In that

²⁷ Crisis Group interviews, European officials, Paris, London, Berlin and Brussels, March-April 2018. A Treasury official said: “We say any company thinking about doing business in Iran or with Iranian companies faces serious risks that they will be doing business with those, like the [Islamic Revolutionary Guard Corps (IRGC)], supporting terrorism and instability throughout the world”. Quoted in William James, “U.S. backs EU Iran sanctions push, warns firms against Tehran trade”, Reuters, 10 April 2018.

²⁸ Crisis Group interviews, European officials, Washington and Berlin, 11-17 April 2018. U.S. diplomats and congressional staffers interviewed for this report put the odds of Trump accepting a potential U.S.-E3 agreement at no more than 50 per cent. Crisis Group interviews, Washington, March-April 2018.

²⁹ John Bolton, “How to get out of the Iran nuclear deal”, *National Review*, 28 August 2017. More recently, he has written that “no fix will remedy the diplomatic Waterloo Mr. Obama negotiated”, going on to propose that “America’s declared policy should be ending Iran’s 1979 Islamic Revolution before its 40th anniversary”. See “Beyond the Iran nuclear deal”, *Wall Street Journal*, 15 January 2018. In his last tweet prior to his selection as Trump’s Central Intelligence Agency (CIA) director in November 2016, Pompeo stated, “I look forward to rolling back this disastrous deal with the world’s largest state sponsor of terrorism”. In 2014, as a member of Congress, he said it would take “2,000 sorties to destroy the Iranian nuclear capacity. This is not an insurmountable task”. Quoted in Shashank Begali and Ramin Mostaghim, “Iran reacts to Pompeo as Trump’s secretary of state pick: ‘Cowboyish’ and ‘eager to start a war’”, *Los Angeles Times*, 14 March 2018.

³⁰ Quoted in Michael Crowley, “Tillerson’s ouster could kill the Iran nuclear deal”, *Politico*, 13 March 2018.

³¹ A European official said, “our impression is that our U.S. counterparts have deduced a set of criteria from Trump’s 12 January statement that they believe might address his concerns. But neither they nor we know if he’d accept a compromise along those lines. Now we are not even sure if our interlocutors will remain in their posts in the coming weeks”. Crisis Group interview, Paris, March 2018. Another European official said: “Our conversations with Bolton have not left us optimistic. We interpreted the fact that no one from the White House attended the latest meeting with the E3 as Bolton’s desire to have nothing to do with the negotiations, so that he can oppose whatever emerges at the end”. Crisis Group interview, Paris, April 2018.

reading of Trump's intentions, the JCPOA is an obstacle. As a French official put it, "the truth is that the Trump administration's problem is not with the deal; it's with the Islamic Republic of Iran. We are in 2018, but the U.S. is stuck in 1979".³² Trump seems to have bought into Israeli Prime Minister Benjamin Netanyahu's argument that because little investment has flowed into Iran thus far, the time to cut it off is now, before European firms develop a strong financial interest in the country being open. Withdrawing from the JCPOA and increasing pressure on Iran might also satisfy the president's political base ahead of U.S. midterm elections in November.³³ Should Trump decide to leave the JCPOA, his approach arguably would enable him to pin responsibility on the E3. As a Republican senator mused, "Trump is in the 'catbird seat'. He'll be able to blame Europe if a 'fix' fails to emerge, and whether or not this is fair, his base is likely to buy it. Internationally, perceptions may be different, but that is not Trump's concern".³⁴

Macron engaged in a last-ditch effort to sway Trump during his visit to Washington. In what appeared to be a somewhat new approach, the French president suggested that he and Trump had discussed building on, rather than destroying, the JCPOA. As he described it, the U.S., Europe, along with several other interested countries would seek to achieve a "new" broader agreement with Iran that had "four pillars", of which preserving the JCPOA would be one. As he explained:

The first one is to block any nuclear activity of Iran until 2025. This was feasible thanks to the JCPOA. The second is to make sure that, in the long run, there is no nuclear Iranian activity. The third fundamental topic is to be able to put an end to the ballistic activities of Iran in the region. And the fourth one is to generate the conditions for a solution – a political solution to contain Iran in the region – in Yemen, in Syria, in Iraq and in Lebanon.³⁵

The idea was intriguing, though it left many important questions unanswered – notably, whether the JCPOA would remain in force regardless of the outcome of the negotiations and, if so, for how long; whether Trump would agree to fully implement it; and why Iran would accept negotiations about these matters under these conditions. Yet, before such issues could even begin to be elucidated, Macron poured considerable cold water on his own proposal. As he was departing Washington, he said, "my view – I don't know what your president will decide – is that he will get rid of this deal on his own, for domestic reasons". He added that "his experience with North Korea is that when you are very tough, you make the other side move and you can try to go to a good deal or a better deal" – though he went on to say that "it can

³² Crisis Group interview, Paris, 29 March 2018.

³³ Crisis Group interviews, Republican senators and Israeli officials, Washington, March 2018. An Israeli official said, "the leverage is to fix it now, not later, when the benefits for Iran are there". Crisis Group interview, Jerusalem, April 2018.

³⁴ Crisis Group interview, Washington, March 2018.

³⁵ Trump said, "I think we will have a great shot at doing a much bigger maybe deal, maybe not deal. We're going to find out, but we'll know fairly soon". "Remarks by President Trump and President Macron of France in joint press conference", White House, 24 April 2018.

work in the short term, but it's very insane in the medium to long term".³⁶ In other words, and as a senior French official had previewed the previous week, "Trump believes he can negotiate a better deal than anyone. So he's tempted to do with Tehran as he did with Pyongyang – maximum pressure, followed by negotiations. Whether he'd try to do those unilaterally or in a multilateral format is anyone's guess".³⁷

Nonetheless, the idea of adding provisions to the JCPOA as a means of securing continued U.S. adherence to the deal has gained more currency within the E3.³⁸ For its part, Iran seems loath to accept additional constraints on its nuclear program, but has declared itself ready to discuss regional issues.³⁹

³⁶ Julian Borger, "Donald Trump likely to scrap Iran deal amid 'insane' changes of stance, says Macron", *The Guardian*, 25 April 2018.

³⁷ Crisis Group interview, senior French official, Paris, April 2018.

³⁸ "Entretien téléphonique avec le président iranien Hassan Rohani", Elysée, 29 April 2018; "Britain, France and Germany agree on support for Iran nuclear deal", Reuters, 29 April 2018.

³⁹ "President: Iran will not accept limitations beyond commitments", IRNA, 29 April 2018.

III. The Iranian Wild Card

Even prior to President Trump's refusal to certify the JCPOA in October 2017, Iranian officials complained of U.S. "bad-faith implementation".⁴⁰ An official said he believed that "the White House wants to turn the JCPOA into an empty shell by creating uncertainty around it, depriving Iran of its economic dividends and forcing us to walk away from the deal".⁴¹ The leadership in Tehran, however, decided not to fall into what they viewed as a trap by announcing that Iran would not be the first to violate the agreement.⁴² But increased anxiety over the JCPOA's fate means that Iran has not reaped the foreign capital and investment it keenly anticipated and badly needs. Instead Iran has witnessed massive capital flight and currency devaluation as a result of JCPOA-related uncertainties and structural economic problems in the country.⁴³

Iranian officials have been critical of the E3 for putting so much effort into reassuring the U.S., arguing that Tehran is in full compliance with its JCPOA obligations – but not Washington. A senior Iranian diplomat complained, "the E3 are dead set on appeasing Trump, forgetting that we, who unlike the U.S. have fulfilled our JCPOA commitments, also have a contentious domestic atmosphere".⁴⁴ A conservative lawmaker added, "the irony is that we signed the JCPOA to unshackle ourselves from sanctions. Now the Europeans are telling us, 'we have to sanction you to satisfy Trump and preserve the JCPOA'".⁴⁵ They also reject any U.S.-E3 initiative to alter the deal or seek to negotiate a new one, as Macron proposed. "Together with a leader

⁴⁰ Crisis Group interviews, Iranian officials, Tehran and Brussels, January 2017-April 2018.

⁴¹ Crisis Group interview, New York, September 2017. At a meeting of the JCPOA's Joint Commission in April, a senior Iranian official reportedly asked a senior U.S. official, "if even you can't say whether President Trump will extend sanctions relief in May, how do you expect companies to invest in Iran?" Crisis Group interview, European official, Washington, April 2018.

⁴² Crisis Group interviews, Iranian officials, Tehran and Vienna, December 2017. See also "Iran says it will not be the first to violate nuclear deal", Reuters, 20 September 2017. As Iran's deputy foreign minister puts it, "as far as Iran is concerned, the JCPOA is not a success story ... [the U.S.] is violating the JCPOA on a daily basis almost". Abbas Araqchi, "Iran's foreign policy priorities", speech to Chatham House, London, 22 February 2018. Available at www.chathamhouse.org/event/irans-foreign-policy-priorities. European officials privately agree with this assessment. Crisis Group interviews, Washington, March-April 2018.

⁴³ A French lawyer involved in facilitating European firms' access to the Iranian market said, "since Trump's decision not to certify the JCPOA in October, there is an absolute standstill. All the investment projects have come to a grinding halt". Crisis Group interview, Brussels, 18 April 2018. Echoing a similar view, a European banker said, "from the perspective of 90 per cent of international banks, the JCPOA is already dead". Crisis Group interview, Brussels, 18 April 2018. See also "خروج 30 میلیارد دلار در چند ماه" ["\$30 billion capital flight in a few months"], *Bourse Press*, 27 March 2018. At the start of 2018, the dollar was trading at around 43,000 rials. It broke the 60,000 rial barrier in late March or early April. The International Monetary Fund identified "a weak banking sector, structural bottlenecks and heightened uncertainty" as significant risks adversely affecting Iran's economic growth. See "Islamic Republic of Iran: Staff Report for the 2018 Article IV Consultation", IMF, 7 March 2018.

⁴⁴ Crisis Group interview, Brussels, 28 March 2018. An Iranian official said, "the consensus around the JCPOA's utility for Iran has been shattered, and its proponents are in danger – not just politically, but even physically". Crisis Group interview, Brussels, April 2018. Reza Haghghatnejad, "Iran's nuclear negotiators discredited amid spy allegations", *IranWire.com*, 16 April 2018.

⁴⁵ Crisis Group interview, Tehran, April 2018.

of a European country [the U.S. leaders] say: ‘We want to decide on an agreement reached by seven parties’. For what? With what right?’ President Hassan Rouhani asked, adding: “If Europe wishes to satisfy Trump, it should spend out of its own pocket, not Iran’s”.⁴⁶

Iranian officials have warned that internal political imperatives will compel them to reject a joint U.S.-E3 agreement and to react even more strongly if the U.S. withdraws from the JCPOA.⁴⁷ The nature of such a response is a subject of debate within the political elite. There appear to be three schools of thought. One group – an increasingly narrow circle around President Rouhani – argues that while it is important to rectify the European perception that Iran is willing to stay in the deal no matter what the circumstances or how meagre the economic dividends, Tehran should not play into the Trump administration’s hands. In other words, it should remain committed to its JCPOA obligations, preserve the moral high ground, and seek to drive a wedge between the U.S. and other E3/EU+3 members to neutralise new or revived U.S. sanctions. This course of action, however, would not be an option if Europe either fails to preserve as much of the deal’s economic dividends for Iran as possible or joins the U.S. in slapping sectoral sanctions (targeting economic sectors instead of individuals and entities) on Iran.⁴⁸ The bleak economic situation has rendered this posture difficult to sustain for JCPOA supporters in Tehran.⁴⁹ One official predicted that the foreign ministry might soon lose control over the nuclear dossier. It might be reassigned to the Supreme National Security Council, where the deal’s sceptics have more sway.⁵⁰

A second group, apparently comprising the majority of national security decision-makers, argues that if the E3 impose sectoral sanctions on Iran or fail to stand up to the U.S. in case the latter violates the JCPOA, Iran should retaliate with its own JCPOA violations. These could include stepping up its nuclear research and development, resuming enrichment at the Fordow bunker facility up to 20 per cent and/or

⁴⁶ “Iran nuclear deal: Rouhani says West has no right to make changes”, BBC, 25 April 2018.

⁴⁷ A senior Iranian official explained: “Hardliners have accused the Rouhani administration of being naïve and too compromising. They tell us, ‘if you had enriched uranium to 3.8 per cent instead of 3.7 in response to U.S. violations, we would not have ended up here’. If we don’t react to a hostile joint U.S.-E3 effort to punish us, we will provide the government’s critics with more ammunition”. Crisis Group interview, Brussels, March 2018.

⁴⁸ Crisis Group interviews, Iranian officials, Brussels and Tehran, March-April 2018.

⁴⁹ The editors of a pro-Rouhani daily wrote: “If the U.S. abrogates the JCPOA, it might be better for us. Instead of investing our hope in an agreement that has no benefit for us, we can move on and focus on enhancing our domestic [economic] capabilities”. See “ترامپ، درصدد مذاکرات هسته‌ای” [“Trump bent on nuclear talks”], *Arman*, 7 April 2018. A European diplomat based in Tehran observed, “even the Rouhani team, for whom the JCPOA is a major achievement, might welcome a scapegoat for explaining the economic malaise in the face of dashed popular expectations”. Crisis Group interview, Washington, 11 April 2018. See also “Iran says may withdraw from nuclear deal if banks continue to stay away”, Reuters, 22 February 2018; “Iran tells Trump he would regret dropping nuclear deal”, Reuters, 9 April 2018.

⁵⁰ Crisis Group interview, Brussels, April 2018. During the nuclear standoff, from 2003 to 2013, the nuclear file was highly securitised under the control of the Supreme National Security Council. It was transferred to the foreign ministry in 2013 as the talks with the P5+1 started making progress toward an agreement. Crisis Group Middle East and North Africa Briefing N°36, *Great Expectations: Iran’s New President and the Nuclear Talks*, 13 August 2013.

halting voluntary cooperation with the IAEA (thus limiting the agency's access to Iran's non-nuclear sites).⁵¹ It could also hit back through non-nuclear/indirect measures: targeting U.S. forces in Iraq and Syria through Shiite militias; encouraging Huthi rebels in Yemen to fire rockets and missiles at Saudi or Emirati cities or ships in the Red Sea.⁵² Finally, the most dramatic step would be to walk away from the JCPOA altogether. They might do this by first initiating the JCPOA's dispute resolution mechanism, thereby giving themselves 35 days to try to reach an understanding with Europe, or by withdrawing immediately.⁵³

The third group, which is now gaining momentum, consists of even more hard-line political elements and some within the Islamic Revolutionary Guard Corps (IRGC). The response to a U.S. withdrawal from the JCPOA that they advocate is pulling out of not just the JCPOA, but also the Nuclear Non-Proliferation Treaty (NPT). This move would allow Iran to resuscitate its enrichment program at full speed and change its nuclear doctrine to pursue weaponisation.⁵⁴ They point to the Trump administration's desire to engage with North Korea as evidence that Iran can only deal with the U.S. from a position of strength with the ultimate deterrent in hand. A senior Iranian official said, "the [nuclear] bomb is increasingly seen as the rational option".⁵⁵ Pursuing this option would allow them to close the door on any further improvement in Iran's relations with the West, which they view as a threat to their economic interests and loathe for its cultural subversion; it would also further discredit the Rouhani administration ahead of the 2020 parliamentary and 2021 presidential elections, with the supreme leader's succession additionally looming on the horizon.⁵⁶ Thus the hardliners reject continued adherence to the deal after a U.S.

⁵¹ Crisis Group interviews, Iranian national security officials, Tehran, March-April 2018. This move would be on a par with Iran's reaction in 2005 and 2006, when it resumed uranium enrichment, after the 2003-2005 nuclear negotiations with the E3 collapsed. In mid-2003, the E3 had taken the lead in formal discussions with Iran over its nuclear program, in the absence of U.S.-Iranian contacts. See Crisis Group Middle East and North Africa Report N°51, *Iran: Is There a Way Out of the Nuclear Impasse?*, 23 February 2006. Since two cascades of centrifuges remain operational in the bunkered Fordow facility, it is possible to quickly rearrange them to start producing 20 per cent enriched uranium. "Iran can resume 20% uranium enrichment in 4 days", *Mehr News*, 9 April 2018.

⁵² Crisis Group interviews, Iranian officials, Brussels and Tehran, March-April 2018. See also, Borzou Dargahi, "Iranian-backed militias set sights on U.S. forces", *Foreign Policy*, 16 April 2018.

⁵³ According to Article 36 of the JCPOA, after receiving a complaint from a deal participant, the Joint Commission, comprised of all the signatories and chaired by the EU, would have fifteen days to resolve the issue, unless the time period was extended by consensus. After Joint Commission consideration, any participant could refer the issue to foreign affairs ministers, who would have a similar fifteen-day window (unless extended by consensus). If after this 30-day process the issue is not resolved, the Joint Commission would consider the non-binding opinion of an advisory board, comprised of three members (one appointed by each participant in the dispute and a third independent member) for no more than five days. A senior Iranian official said, "if we go to the Joint Commission it will be only to set the record straight and demonstrate to the world that we exhausted all options". Crisis Group interview, New York, April 2018.

⁵⁴ Crisis Group interviews, Iranian officials, Tehran and Brussels, April 2018. See also Fouad Izadi, "خروج ایران از «ان پی تی» می‌تواند هزینه خروج آمریکا از برجام باشد" ["Iran's withdrawal from the NPT can be the price of the U.S. withdrawal from the JCPOA"], *Resalat*, 11 April 2018; Bozorgmehr Sharafedin, "Iran warns Trump it might withdraw from Non-Proliferation Treaty", *Reuters*, 24 April 2018.

⁵⁵ Crisis Group interview, senior Iranian official, New York, April 2018.

⁵⁶ Crisis Group interviews, current and former Iranian officials, Tehran, April 2018.

withdrawal. As the editors of the *Kayhan* newspaper, which is closely aligned with the supreme leader, wrote, “the JCPOA is a disaster, with or without the U.S.”⁵⁷

It is difficult to predict the outcome of this debate though a dash to nuclear breakout capability – let alone the pursuit of a bomb – is far from the most likely response. The Iranians also see merit in trying to get Europe to side with it against Trump, rather than with the U.S. against the Islamic republic. But complacency would be ill-advised. As a senior European official noted, “Iran, facing a lot of threats now, sees the JCPOA as more than an economic guarantee – as also a security one. They fear that without it they could be exposed to an attack by the U.S. or Israel. So they are likely to remain in the deal”.⁵⁸ Yet Iran’s response will be informed both by domestic politics and by the supreme leader’s determination not to project weakness in the face of what he considers U.S. bullying, lest Iran invite more harassment. As a senior Iranian official put it, “even JCPOA supporters within Iran’s political elite express regret at how little, in their view, President Rouhani has pushed back against growing U.S. pressure”.⁵⁹

Compounding these risks, the JCPOA’s apparent demise is occurring amid rising tensions between Iran, the U.S. and their respective Middle Eastern allies. As detailed in Crisis Group’s Iran-U.S. Trigger List, an incident at any one of the points of friction between the parties, be it in Yemen, Syria, Iraq, Lebanon, Afghanistan or the Gulf, could easily spiral into military confrontation.⁶⁰ Paradoxically, one result of the Macron visit to Washington appears to have been to bolster Trump’s resolve to counter Iran in Syria – in other words, and contrary to the French president’s hope, we could find ourselves with a more bellicose U.S. posture and without the JCPOA.⁶¹

⁵⁷ “برجام فاجعه است با آمریکا یا بدون آمریکا” [“the JCPOA is a disaster, with or without the U.S.”], *Kayhan*, 17 April 2018.

⁵⁸ Crisis Group interview, Berlin, April 2018.

⁵⁹ Crisis Group interview, New York, April 2018.

⁶⁰ These flashpoints can be monitored on Crisis Group’s Iran-U.S. Trigger List: www.crisis.group.org/trigger-list/iran-us-trigger-list.

⁶¹ Trump said, “Emmanuel and myself have discussed the fact that we don’t want to give Iran open season to the Mediterranean, especially since we really control it”. See “Remarks by President Trump and President Macron”, White House, op. cit.

IV. A European Contingency Plan

On the eve of his April state visit to the U.S., President Macron said there was no “plan B” if the JCPOA collapses. He might have said that to warn the U.S. against a unilateral withdrawal or because he knows Europe cannot defy the U.S. with contingency measures to protect the deal. Or he might have had both factors in mind.⁶² A senior European official said: “Our firms are clear that they will not be able to do business with Iran if sanctions are reimposed. This is not like the 1990s; integration into international banking and financial sectors is such that all our firms touch the U.S. and thus risk losing big. Even oil exports from Iran might not be able to continue. So we can try, but Iran will soon see economic benefits disappear, so pressure will grow on them to withdraw or violate [the] deal”.⁶³

For these reasons, the E3 are trying hard to keep the U.S. in the agreement. Yet, while the odds of achieving a JCPOA-compliant compromise that would stabilise the deal seem long, there could still be a joint U.S.-E3 understanding that would signal to Washington the E3’s willingness to act on issues of mutual concern regarding Iranian behaviour, while stopping short of violating a multilateral agreement with which Tehran continues to comply. It could also bring a degree of reassurance for foreign capital and technology to flow into Iran. As a stepping stone toward a broader agreement with Iran to address its ballistic missile program and regional activities, such an understanding could include the following elements:

- ❑ A permanent commitment to prevent Iran from manufacturing or acquiring nuclear weapons; this could apply specifically to the list in the JCPOA’s Section T concerning activities that could contribute to the design and development of a nuclear explosive device,⁶⁴ as well as regular U.S./E3 assessments of the growth and evolution of Iran’s uranium enrichment activities and their commensurability with the country’s civilian nuclear fuel needs;
- ❑ A commitment to seek a supplemental agreement among JCPOA signatories to address all parties’ concerns. Talks could begin once confidence in the JCPOA’s implementation has been restored, optimally two years prior to the JCPOA’s Transition Day in October 2023, when Iran is to ratify the Additional Protocol to the NPT and the U.S. and EU are to terminate nuclear-related sanctions;⁶⁵

⁶² “France’s Macron says he has no ‘plan B’ for Iran nuclear deal”, Reuters, 22 April 2018.

⁶³ Crisis Group interview, Paris, April 2018.

⁶⁴ Crisis Group interviews, European officials, Paris and Berlin, April 2018. The NPT fails to define what is entailed in manufacturing a nuclear weapon. The JCPOA’s Section T closes that loophole in the case of Iran by explicitly banning certain activities and dual-use material related to nuclear weaponisation. It outlines four categories of activities: computer modelling to simulate nuclear explosive devices; using multi-point explosive detonation systems suitable for a nuclear explosive device; using explosive diagnostic systems; and using explosively driven neutron sources. Section T is the only part of the JCPOA, however, that neither explicitly names the IAEA nor specifies Iran’s commitments. The deal’s detractors charge that the agency is not authorised to verify Iran’s compliance under this provision. What they fail to mention is that Section T was devised primarily as a deterrent to ensure that weaponisation activities are unambiguously banned with no sunset provisions.

⁶⁵ For details see Annex V, Section D of the JCPOA.

- ❑ A commitment to consider an Iranian move toward acquiring long-range inter-continental ballistic missiles a threat to international peace and security, and grounds for imposing targeted sanctions;
- ❑ Enforce strict export controls and impose targeted sanctions against individuals and entities engaged in the production of missiles that are designed to be nuclear capable, specifically Ghadr medium-range missiles, as well as anyone engaged in transferring ballistic missile technology to non-state actors in the region;⁶⁶
- ❑ Dedicate additional intelligence resources to, and share information about, suspicious activities at Iranian nuclear and non-nuclear sites; assess and fulfil the funding needs of the IAEA; and underscore the IAEA's full authority under the JCPOA's Section Q to inspect non-nuclear sites in Iran;
- ❑ A statement of policy by the Trump administration to adhere to U.S. commitments under the JCPOA, as long as the IAEA has verified Iran to be complying with the JCPOA's terms;⁶⁷ to refrain from discouraging business that is permissible under the JCPOA; and to issue licences for legitimate trade with Iran, including those related to civilian aircraft, in a timely manner;
- ❑ White House support for congressional action to amend existing Iran sanctions statutes by removing the periodic waiver requirements and replacing them with a bill pursuant to which sanctions would be reimposed if the executive branch reports to Congress a significant JCPOA violation by Iran, as verified by the IAEA; and support for congressional action to replace INARA's 90-day certification requirement on Iran's JCPOA compliance with an executive branch report to Congress in case of a significant JCPOA violation by Iran, as verified by the IAEA.

In parallel to these measures, the E3/EU could launch an effort to prevent the proliferation of dual-use nuclear fuel cycle technology in the Gulf region. This goal could be reached in several ways: proposing a joint venture enrichment plant among countries in the region; multinationalising Iran's enrichment program by staffing its facilities with technicians and experts from Iran and the EU countries to add another layer of monitoring; and/or establishing a nuclear fuel bank for use by Iran and other countries in the region before the JCPOA's Transition Day to discourage enrichment activities on their soil.⁶⁸

⁶⁶ See Michael Elleman and Mark Fitzpatrick, "Are Iran's ballistic missiles designed to be nuclear capable?" International Institute for Strategic Studies, 28 February 2018. There is evidence that Iranian weapons, including missile parts, are going to the Huthis. A January 2018 UN panel of experts accused Iran of violating the arms embargo against Yemen. "Final Report of the Panel of Experts on Yemen", UNSC S/2018/68, 26 January 2018.

⁶⁷ This should include reiteration of the JCPOA's paragraph 28, which notes that the U.S. should make its "best efforts in good faith to sustain [the] JCPOA and prevent interference with realization of the full benefits by Iran of the sanctions lifting".

⁶⁸ The most feasible approach to multinationalising Iran's enrichment program would be through a multinational staffing arrangement. Iranian centrifuge halls could be staffed by experts from the E3, possibly under the guise of civilian nuclear cooperation, as outlined in Annex III of the JCPOA. This step could help increase confidence that no undeclared activities are taking place and that centrifuge cascades have not been modified. The Ford administration pursued a similar approach toward Iran in the 1970s. William Burr, "A Brief History of U.S.-Iranian Nuclear Negotiations", *Bulletin of the Atomic Scientists*, vol. 65, no. 1, 1 January 2009, p. 23; Peter Friend, "URENCO's views on

The E3's negotiating position is complicated by the uncertainty over what Trump will decide in May. Among possible options, he could reach an agreement with the E3, waive sanctions, bring the U.S. into compliance with the JCPOA and shift the focus of his and Europe's pressure strategy to Iran's regional activities; once more waive sanctions to give the U.S.-E3 talks more time to yield results while maintaining uncertainty about the JCPOA's fate; reimpose nuclear-related sanctions but not enforce them in order to grant negotiations more time; or reimpose sanctions and enforce them as soon as bureaucratically possible.⁶⁹

Neither unilateral U.S. withdrawal from the JCPOA nor protracted uncertainty about Washington's stance is desirable – either for Europe or for the future of the nuclear deal. By taking the former course, the Trump administration might strangle the nuclear deal; by taking the latter, it might condemn the accord to slow suffocation. To minimise the damage, the E3 should broaden its approach, developing a plan B that might induce Iran to continue respecting the JCPOA's terms even if the U.S. stops doing so, whether entirely or in part.

If the U.S. withdraws, and the nuclear agreement no longer can be maintained as an E3/EU+3 arrangement, Europe might still be able to salvage it as a JCPOA minus – with Russia and China, but without the U.S. This, at a minimum, would require presenting an economic and political package to Tehran pursuant to which as many of the benefits envisioned by the JCPOA for Iran as possible would be preserved. This could help Iranian policymakers justify restraint in the face of U.S. non-compliance, prevent renewed crisis over Iran's nuclear activities and leave the door open to continued EU-Iran dialogue on Iran's ballistic missile program, regional policies and human rights situation, as well as the fate of dual nationals arrested in Iran on dubious charges.⁷⁰ Alternatively, if the U.S. remains party to the JCPOA but in a grudging and potentially temporary way, adopting parts of the package could offset continued uncertainty as to the accord's fate and tackle existing bottlenecks in permissible trade.

While there is no foolproof way to shield Iran's economy completely from the repercussions of a U.S. exit or from continued uncertainty, the E3 could develop a package whose political and economic value would be greater than the sum of its individual elements. The package could contain two sets of elements:

International Safeguards Inspection", 8th International Conference on Facility-Safeguards Interface, Portland, Oregon, 30 March 2008. The IAEA inaugurated its first nuclear fuel bank in Kazakhstan in 2017. "U.N. nuclear watchdog opens uranium bank in Kazakhstan", Reuters, 29 August 2017.

⁶⁹ "Renewed sanctions need not mean U.S. exit from Iran deal: Mnuchin", Reuters, 11 April 2018. The next deadline for waiving sanctions is on 12 July 2018.

⁷⁰ "Europeans engage with Iran on regional issues as Trump deadline nears", Reuters, 1 March 2018.

Short-term measures designed to provide immediate reassurance to European businesses interested in entering the Iranian market, while empowering those in the Iranian leadership who advocate continued compliance with the deal:

- The E3 and European Council would publish a statement reiterating their strong support for the JCPOA;⁷¹
- In an effort to minimise the effects of U.S. secondary sanctions on Iran's ability to export oil and repatriate its revenue, the EU would protect energy companies with a small footprint in the U.S. to continue purchasing Iranian oil and gas, and empower pertinent European central banks to process related payments. Movement of funds could occur at the "net level", ie, Iran's revenues from exporting oil to Europe could be used to pay for Iran's imports from Europe;
- The EU could publish a general licence describing an acceptable standard for due diligence and regulatory compliance for its companies to conduct legitimate business with Iran, thus providing them with a legal shield against secondary U.S. sanctions;⁷² Brussels could also negotiate with the U.S. Treasury Department to retain General License H, which authorises U.S.-owned or controlled foreign entities to engage in certain Iran-related transactions;⁷³
- In parallel, the EU – as a whole, not each state individually – could negotiate with the U.S. to acquire special protection for a set of its industries or companies that do business with Iran, threatening to impose tariffs on U.S. exports to the EU if such carve-outs are not granted;⁷⁴
- The EU could replace its so-called 1996 Blocking Statute that prohibited European companies from complying with secondary U.S. sanctions imposed on Iran with legislation that supports its companies when they press charges against U.S. regulators at the International Court of Justice or International Chamber of Commerce. It could also establish a "clawback" clause for recovery of damages incurred for alleged sanctions violations through imposing tariffs on U.S. exports to the EU.⁷⁵

⁷¹ This would be on par with their statements after President Trump's October 2017 decision. See "Declaration by the heads of state and governments of France, Germany and the United Kingdom", 10 Downing Street, 13 October 2017; and "EU 28 committed to full and effective implementation of Iran deal", EU External Action Service, 16 October 2017.

⁷² Many European firms have sought letters of comfort from their local regulators for doing business with Iran. A general licence could replace and standardise these.

⁷³ "General License H", Iranian transactions and sanctions regulations, 31 C.F.R. Part 560, Office of Foreign Assets Control, U.S. Treasury Department.

⁷⁴ Such negotiations should not occur before the U.S. withdraws from the agreement, as they could make it easier for the Trump administration to contemplate withdrawal. "Oil major Total to seek waiver if U.S. reimposes Iran sanctions: UAE newspaper", Reuters, 18 March 2018.

⁷⁵ Council Regulation (EC) 2271/96, "Protecting against the Effects of the Extra-territorial Application of Legislation Adopted by a Third Country ...", 22 November 1996. The legislation was designed to resist U.S. extraterritorial sanctions against Iran and Cuba. It effectively deterred Washington from enforcing those sanctions for more than a decade. A senior European official said, "statutes are technically easy to revise but politically difficult to enforce". Crisis Group interview, Washington, March 2018. See also Esfandiyar Batmanghelidj, "Can blocking regulations help Europe protect its Iran business from Trump?" *Bourse & Bazaar*, 13 February 2018.

- ❑ The E3 – along with other willing EU member states – could announce a joint effort by their state-owned export credit or investment agencies to cover the risks, including those related to sanctions, that their companies might face in trading with Iran. In the past few months, a number of European governments have taken significant steps to facilitate legitimate trade with Iran by sharing the risks through such a mechanism, but the E3 can spearhead a more systematic, multilateral effort;⁷⁶
- ❑ France’s Agence Française de Développement, Germany’s Kreditanstalt für Wiederaufbau and the UK’s Department for International Development could launch a joint effort to support infrastructural development projects in Iran and enter into negotiations with Tehran to select projects and extend loans as soon as possible; and
- ❑ The E3 could more readily facilitate visas for Iranian students and entrepreneurs.

Medium-term measures would require more time to negotiate and implement, but could signal the seriousness of the European commitment to the JCPOA as well as to developing a cooperative and mutually beneficial relationship with Iran:

- ❑ The EU could create a multilateral Euro-denominated trading bank comprising state-owned and medium-size to smaller private banks. Its aim would be to pool these institutions’ resources and share risks, process payments, and provide credit guarantees and insurance services to European private-sector firms seeking to trade with or invest in Iran, and share due diligence and compliance information;⁷⁷
- ❑ The European Commission could move Iran from the list of potentially eligible to fully eligible countries for receiving loans from the European Investment Bank to finance large public or private sector projects, and negotiate a framework for the bank’s operations in Iran;⁷⁸

⁷⁶ Italy’s Invitalia Global Investment signed a master credit agreement with two Iranian banks on 11 January 2018 for up to €5 billion. “Italy and Iran sign a master credit agreement for investments in Iran,” press release, Italian Ministry of Economy and Finance, 11 January 2018. Bpifrance intends to provide €1.5 billion in export guarantees by the end 2018. “France to finance exports to Iran, aims to sidestep U.S. sanctions”, Reuters, 1 February 2018.

⁷⁷ Most international banks are likely to stay away from Iran, and smaller financial institutions lack the resources to fund large projects in Iran. This is a multipronged challenge: most international banks have considerable U.S. exposure (operations in U.S. jurisdiction, employment of U.S. staff or reliance on U.S. corresponding banking network), and thus fear running afoul of existing U.S. sanctions and/or the return of nuclear-related ones. Some have agreements with U.S. regulators in which their prosecution was deferred in return for a commitment not to do business with Iran. Iran’s own internal banking shortcomings (from inadequate standards related to anti-money laundering and financing of terrorism to a high ratio of non-performing loans) compound the problem. Crisis Group interviews, European bankers, Brussels, 18 April 2018. For more background, see Crisis Group Middle East and North Africa Report N°173, *Implementing the Iran Nuclear Deal: A Status Report*, 16 January 2017.

⁷⁸ On 8 February 2018, the European Parliament passed a resolution noting that “Iran should be added to the list of potentially eligible regions and countries”; the European Council followed up on 27 February with a regulation that confirmed Iran as “potentially eligible” for European Investment Bank loans. Crisis Group interviews, Brussels, March 2018.

- The EU and Iran could negotiate and sign a long-term energy partnership, which in return for Iranian natural gas supplies to Europe via existing or new pipelines would provide Iran with access to cutting-edge renewable energy technologies;
- The EU and Iran could support the establishment of an Iran-EU chamber of commerce; and
- The EU and Iran could enhance civil nuclear cooperation, including construction of new civilian nuclear power reactors, in return for an agreement to turn Iran's enrichment plants into joint European-Iranian ventures, or staff them with European nationals.

Of course, such measures would have to be conditioned on Iran abiding by its JCPOA commitments. If Iran resuscitates its nuclear activities, gradually or at full speed, the E3 almost certainly would themselves end their support for the JCPOA and back the reimposition of multilateral nuclear-related sanctions. As a French official said, “the nuclear crisis began in 2003 because of concerns over Iran’s nuclear activities. If Iran restarts the program, we are back to square one and have no choice but to side with the U.S. in imposing maximum pressure on Iran”.⁷⁹ Furthermore, Iran could not benefit from the banking mechanisms described above if it fails to take additional steps to reform its finance and banking sectors, including outstanding areas of its action plan with the Financial Action Task Force (FATF).⁸⁰

A genuine and measurable Iranian effort to de-escalate tensions in the region, along the lines Crisis Group recommended in an April 2018 report, is equally critical.⁸¹ Recent European (E3 plus Italy, coordinated by the EU) engagement with Iranian officials over the crisis in Yemen has yielded little.⁸² The Europeans criticised Iran for intransigence, while Tehran put the blame on European unpreparedness and Saudi Arabia’s unwillingness to reciprocate.⁸³ Regardless, given the perception of its ascendancy in the region, the onus is on Iran to act first if it wants the E3’s help in preserving the JCPOA. By taking the first step, Tehran would demonstrate the value of engaging it versus coercing it to play a more constructive regional role.

⁷⁹ Crisis Group interview, Paris, 29 March 2018.

⁸⁰ The FATF decided to continue suspending countermeasures against Iran in February 2018. Still, it called on Iran to implement reforms across nine areas still inadequately implemented. FATF public statement, 23 February 2018. European sanctions officials say that Tehran has done little to avail itself of the expertise and assistance they have offered to provide. Crisis Group interviews, Brussels, March 2018.

⁸¹ Crisis Group Middle East and North Africa Report N°184, *Iran’s Priorities in a Turbulent Middle East*, 13 April 2018.

⁸² The first round of talks took place in Munich in February 2018 and the second round will occur in Rome in early May.

⁸³ A European official expressed frustration: “Rouhani and Zarif promised cooperation, but they haven’t delivered at all”. Crisis Group interview, Paris, 29 March 2018. A senior Iranian official said, “Iran agreed with the E3/EU and encouraged the Huthis to cooperate with the UN special envoy for Yemen, yet the following day France and the UK joined the U.S. in tabling a resolution against Iran’s role in Yemen at the UN Security Council, poisoning the air. They should decide whether they want to cooperate with Iran or confront it. They can’t do both”. Crisis Group interview, New York, April 2018. See also Michelle Nichols, “Russia resists Western bid to condemn Iran at U.N. over Yemen arms”, Reuters, 21 February 2018.

Finally, Tehran should agree in principle to future negotiations over a mutually beneficial supplemental agreement that could alleviate concerns about the eventual expansion of Iran's nuclear fuel cycle activities and set in place regional limits on range and payload of ballistic missiles in return for reciprocal steps – eg, the lifting in whole or in part of U.S. primary sanctions that, as the JCPOA's implementation record proves, hinder Iran's reintegration in the global financial system.⁸⁴

⁸⁴ Recommending a better-for-better deal, Crisis Group wrote in 2017: "A Republican president backed by a Republican-controlled Congress would have more credibility in offering incentives to Iran than President Barack Obama ever did". See Crisis Group, *Implementing the Iran Nuclear Deal*, op. cit., p. ii.

V. Conclusion

The E3 now find themselves caught between trying to placate the U.S. by “fixing” the JCPOA and ensuring that, in so doing, they do not prompt Iran to walk away. They face the additional challenge of ensuring that other EU member states accept what they propose. This is not self-evident; in April 2018, EU member states rejected an E3 recommendation to impose targeted sanctions upon fifteen Iranian individuals and entities involved in the country’s ballistic missile program and regional activities.⁸⁵

Given the intricate set of compromises on which the agreement is built, the E3 have made it clear that it can be neither renegotiated nor reinterpreted (at least, not without a consensus decision of the Joint Commission established under the JCPOA). Nonetheless, the E3 engaged the Trump administration in an effort to accommodate its principal concerns in order to keep it a party to the JCPOA. The question is not only whether this can be done, but also whether it can be done in a manner that will not push Iran out of the deal and that does not merely preserve the deal beyond yet another deadline. The goal – aside from the declared aim of achieving stronger transatlantic consensus on how to address Iran’s ballistic missile program and regional activities – should be to stabilise the JCPOA by allowing Iran the economic dividends to which it is entitled.

The Trump administration, confident in the utility of its maximum pressure strategy, which appears to have borne some fruit in opening dialogue with North Korea, appears oblivious to the fact that no broader deal could be constructed on the JCPOA’s ruins in the foreseeable future, as its demise likely would destroy Iranian trust in the utility of future talks. Also, unlike Pyongyang, which has secured the ultimate deterrent, Iran has given away most of its nuclear leverage and would be loath to renegotiate from a position of perceived weakness.

It is not too early for Europe to devise a plan that would seek to protect the JCPOA from both a U.S. withdrawal and continued uncertainty. This aim could be achieved through a package of incentives aimed at persuading the Iranian leadership that the benefits of remaining compliant with the JCPOA outweigh the potential costs of non-compliance and retaliation. If the E3 preserve their current unified position and, if need be, chart a path independent of the U.S. to salvage the nuclear deal, they potentially could help avert the reignition of the nuclear crisis in a Middle East in turmoil.⁸⁶ This course also would leave the door open for a future U.S. return to the JCPOA. Trump has demonstrated in other cases that he might be prepared to rejoin agreements he previously abandoned.⁸⁷ Moreover, even if U.S. nuclear-related sanctions against Iran come back into force, there will be another U.S. presidential election in two years that could bring to power leaders with a different view about U.S. adherence to its international commitments.⁸⁸

⁸⁵ “EU fails to agree new Iran sanctions as Trump deadline nears”, Reuters, 16 April 2018.

⁸⁶ A senior Republican lawmaker said, “if the U.S. leaves the deal, it will lose its leverage to influence Europeans on issues like IRGC activities and its missile program”. Crisis Group interview, Washington, March 2018.

⁸⁷ “Trump changes his mind on joining the TPP on Twitter again”, Vox, 18 April 2018.

⁸⁸ As a U.S. official explained, “the redesignation of nearly 400 Iranian individuals and entities, who were delisted after the JCPOA came into force, will take between three to six months. Also, the

Almost everyone thinks that, with his next decision on the JCPOA, Trump will endanger the deal. But the peril need not be mortal.

Washington/Brussels, 2 May 2018

U.S. authorities appear committed for now to grant Iran's trading partners a 180-day grace period to wind down their businesses in Iran". Crisis Group interview, Washington, April 2018. If this position is maintained, it would mean that if U.S. sanctions are reimposed in May, they would not come into force until mid-November 2018.

Appendix A: Map of Iran



Map No. 3891 Rev. 1 UNITED NATIONS
January 2004

Department of Peacekeeping Operations
Cartographic Section

Appendix B: About the International Crisis Group

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 120 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries or regions at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international, regional and national decision-takers. Crisis Group also publishes *CrisisWatch*, a monthly early warning bulletin, providing a succinct regular update on the state of play in up to 70 situations of conflict or potential conflict around the world.

Crisis Group's reports are distributed widely by email and made available simultaneously on its website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policymakers around the world. Crisis Group is chaired by former UN Deputy Secretary-General and Administrator of the United Nations Development Programme (UNDP), Lord Mark Malloch-Brown. Its Vice Chair is Ayo Obe, a Legal Practitioner, Columnist and TV Presenter in Nigeria.

Crisis Group's President & CEO, Robert Malley, took up the post on 1 January 2018. Malley was formerly Crisis Group's Middle East and North Africa Program Director and most recently was a Special Assistant to former U.S. President Barack Obama as well as Senior Adviser to the President for the Counter-ISIL Campaign, and White House Coordinator for the Middle East, North Africa and the Gulf region. Previously, he served as President Bill Clinton's Special Assistant for Israeli-Palestinian Affairs.

Crisis Group's international headquarters is in Brussels, and the organisation has offices in ten other locations: Bishkek, Bogota, Dakar, Kabul, Islamabad, Istanbul, Nairobi, London, New York, and Washington, DC. It has presences in the following locations: Abuja, Algiers, Bangkok, Beirut, Caracas, Gaza City, Guatemala City, Hong Kong, Jerusalem, Johannesburg, Juba, Mexico City, New Delhi, Rabat, Sanaa, Tblisi, Toronto, Tripoli, Tunis, and Yangon.

Crisis Group receives financial support from a wide range of governments, foundations, and private sources. Currently Crisis Group holds relationships with the following governmental departments and agencies: Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, European Union Instrument contributing to Stability and Peace, European Commission, Directorate General for Neighbourhood Enlargement Negotiations, Finnish Ministry for Foreign Affairs, French Development Agency, French Ministry of Europe and Foreign Affairs, Irish Aid, Japan International Cooperation Agency, Principality of Liechtenstein, Luxembourg Ministry of Foreign Affairs, New Zealand Ministry of Foreign Affairs and Trade, Norwegian Ministry of Foreign Affairs, Swedish Ministry of Foreign Affairs, and the Swiss Federal Department of Foreign Affairs.

Crisis Group also holds relationships with the following foundations: Carnegie Corporation of New York, Heinrich Böll Stiftung, Henry Luce Foundation, John D. and Catherine T. MacArthur Foundation, Konrad Adenauer Stiftung, Korea Foundation, Oak Foundation, Omidyar Network Fund, Open Society Foundations, Ploughshares Fund, Robert Bosch Stiftung, Rockefeller Brothers Fund, and Wellspring Philanthropic Fund.

May 2018

Appendix C: Reports and Briefings on the Middle East and North Africa since 2015

Special Reports

Exploiting Disorder: al-Qaeda and the Islamic State, Special Report N°1, 14 March 2016 (also available in Arabic and French).

Seizing the Moment: From Early Warning to Early Action, Special Report N°2, 22 June 2016.

Counter-terrorism Pitfalls: What the U.S. Fight against ISIS and al-Qaeda Should Avoid, Special Report N°3, 22 March 2017.

Israel/Palestine

The Status of the Status Quo at Jerusalem's Holy Esplanade, Middle East Report N°159, 30 June 2015 (also available in Arabic and Hebrew).

No Exit? Gaza & Israel Between Wars, Middle East Report N°162, 26 August 2015 (also available in Arabic).

How to Preserve the Fragile Calm at Jerusalem's Holy Esplanade, Middle East Briefing N°48, 7 April 2016 (also available in Arabic and Hebrew).

Israel/Palestine: Parameters for a Two-State Settlement, Middle East Report N°172, 28 November 2016 (also available in Arabic).

Israel, Hizbollah and Iran: Preventing Another War in Syria, Middle East Report N°182, 8 February 2018 (also available in Arabic).

Iraq/Syria/Lebanon

Arming Iraq's Kurds: Fighting IS, Inviting Conflict, Middle East Report N°158, 12 May 2015 (also available in Arabic).

Lebanon's Self-Defeating Survival Strategies, Middle East Report N°160, 20 July 2015 (also available in Arabic).

New Approach in Southern Syria, Middle East Report N°163, 2 September 2015 (also available in Arabic).

Arsal in the Crosshairs: The Predicament of a Small Lebanese Border Town, Middle East Briefing N°46, 23 February 2016 (also available in Arabic).

Russia's Choice in Syria, Middle East Briefing N°47, 29 March 2016 (also available in Arabic).

Steps Toward Stabilising Syria's Northern Border, Middle East Briefing N°49, 8 April 2016 (also available in Arabic).

Fight or Flight: The Desperate Plight of Iraq's "Generation 2000", Middle East Report N°169, 8 August 2016 (also available in Arabic).

Hizbollah's Syria Conundrum, Middle East Report N°175, 14 March 2017 (also available in Arabic and Farsi).

Fighting ISIS: The Road to and beyond Raqqa, Middle East Briefing N°53, 28 April 2017 (also available in Arabic).

The PKK's Fateful Choice in Northern Syria, Middle East Report N°176, 4 May 2017 (also available in Arabic).

Oil and Borders: How to Fix Iraq's Kurdish Crisis, Middle East Briefing N°55, 17 October 2017 (also available in Arabic).

Averting Disaster in Syria's Idlib Province, Middle East Briefing N°56, 9 February 2018 (also available in Arabic).

Winning the Post-ISIS Battle for Iraq in Sinjar, Middle East Report N°183, 20 February 2018 (also available in Arabic).

North Africa

Libya: Getting Geneva Right, Middle East and North Africa Report N°157, 26 February 2015 (also available in Arabic).

Reform and Security Strategy in Tunisia, Middle East and North Africa Report N°161, 23 July 2015 (also available in French).

Algeria and Its Neighbours, Middle East and North Africa Report N°164, 12 October 2015 (also available in French and Arabic).

The Prize: Fighting for Libya's Energy Wealth, Middle East and North Africa Report N°165, 3 December 2015 (also available in Arabic).

Tunisia: Transitional Justice and the Fight Against Corruption, Middle East and North Africa Report N°168, 3 May 2016 (also available in Arabic and French).

Jihadist Violence in Tunisia: The Urgent Need for a National Strategy, Middle East and North Africa Briefing N°50, 22 June 2016 (also available in French and Arabic).

The Libyan Political Agreement: Time for a Reset, Middle East and North Africa Report N°170, 4 November 2016 (also available in Arabic).

Algeria's South: Trouble's Bellwether, Middle East and North Africa Report N°171, 21 November 2016 (also available in Arabic and French).

Blocked Transition: Corruption and Regionalism in Tunisia, Middle East and North Africa Report N°177, 10 May 2017 (only available in French and Arabic).

How the Islamic State Rose, Fell and Could Rise Again in the Maghreb, Middle East and North Africa Report N°178, 24 July 2017 (also available in Arabic and French).

How Libya's Fezzan Became Europe's New Border, Middle East and North Africa Report N°179, 31 July 2017 (also available in Arabic).

Stemming Tunisia's Authoritarian Drift, Middle East and North Africa Report N°180, 11 January 2018 (also available in French and Arabic).

Iran/Yemen/Gulf

Yemen at War, Middle East Briefing N°45, 27 March 2015 (also available in Arabic).

Iran After the Nuclear Deal, Middle East Report N°166, 15 December 2015 (also available in Arabic).

Yemen: Is Peace Possible?, Middle East Report N°167, 9 February 2016 (also available in Arabic).

Turkey and Iran: Bitter Friends, Bosom Rivals, Middle East Briefing N°51, 13 December 2016 (also available in Farsi).

Implementing the Iran Nuclear Deal: A Status Report, Middle East Report N°173, 16 January 2017 (also available in Farsi).

Yemen's al-Qaeda: Expanding the Base, Middle East Report N°174, 2 February 2017 (also available in Arabic).

Instruments of Pain (I): Conflict and Famine in Yemen, Middle East Briefing N°52, 13 April 2017 (also available in Arabic).

Discord in Yemen's North Could Be a Chance for Peace, Middle East Briefing N°54, 11 October 2017 (also available in Arabic).

The Iran Nuclear Deal at Two: A Status Report, Middle East Report N°181, 16 January 2018 (also available in Arabic and Farsi).

Iran's Priorities in a Turbulent Middle East, Middle East Report N°184, 13 April 2018.

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