



# The Iran Nuclear Deal at Two: A Status Report

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# Principal Findings

**What's the issue?** The 2015 Iran nuclear accord is as successful as it remains fragile. President Trump has warned he will scuttle it unless Congress, in coordination with Europe, unilaterally alters its terms, an outcome which is unlikely and a violation of the deal. Meanwhile, friction between Iran, the U.S. and their regional rivals is growing and could undermine the deal's implementation.

**Why does it matter?** Iranians are frustrated by problems with sanctions relief, international banking ties and a hoped-for economic upsurge. Washington is frustrated by Iran's regional activism, prompting more militarised U.S. responses and possible new sanctions. The resulting frictions have fuelled domestic Iranian protests, U.S.-Europe tensions, dangers of the deal's unravelling, and conflict in the Middle East.

**What should be done?** Attempts to renegotiate the deal through brinkmanship or unilateral demands are unlikely to work. The deal's other signatories need both to persuade the U.S. not to renege on its commitments and to preserve sufficient incentives for Tehran to remain in the deal, even if Washington reneges on it or if U.S. actions continue to eat away at Iran's economic benefits.

## Crisis Group survey on business sector attitudes toward Iran

### Key Findings

Business leaders are crucial stakeholders in realising the JCPOA's economic dividends and thus in determining its fate. As a result, Crisis Group has commissioned a first-of-its-kind survey of more than 60 senior managers with direct responsibility over Iran business at leading international companies. The results, further developed in an appendix to this report, show that:

**79 per cent** of surveyed businesses delayed plans to enter the Iranian market in the past two years.

**57 per cent** cited as the primary reason for their delay fear of existing U.S. sanctions or snapback of the nuclear ones.

**11 per cent** point to difficulties of doing business in Iran as the reason for their slower than anticipated market rollout.

**50 per cent** say Trump's failure to recertify the Iran deal in October negatively affected their decision to engage the Iranian market.

**63 per cent** believe that the JCPOA can potentially survive if the U.S. unilaterally withdraws from it.

**54 per cent** say an EU move to reinstate the "blocking regulations" to shield European companies against unilateral U.S. sanctions, while Iran remains committed to the deal, would positively affect their decision to invest in Iran.



## *Executive Summary*

It could have been worse. President Trump's 12 January decision to waive sanctions while threatening to withdraw from the Joint Comprehensive Plan of Action (JCPOA) – the July 2015 nuclear agreement between Iran and the five permanent members of the UN Security Council plus Germany (the P5+1) – unless Congress and Europe agree to unilaterally alter its terms, leaves the deal in the state of limbo it acquired shortly after his election. Still, given his unpredictability, manifest hostility to the deal, abhorrence at the thought of validating anything that bears his predecessor's mark and the unrest that has shaken Iran, speculation had been rampant that he would announce the agreement's demise. But celebration is premature. The White House decision constitutes little more than a reprieve: taken at face value, the standard Trump insisted be met by May in order for the U.S. to remain in the deal is inconsistent with the JCPOA. The accord's other signatories should use this period to encourage the U.S. not to withdraw while considering ways to sustain the accord regardless of U.S. actions. Its collapse would reignite a crisis that could deepen tensions in a tumultuous region and strike a hard-to-reverse blow to multilateral diplomacy and the non-proliferation regime.

As it enters its third implementation year, the JCPOA continues to serve its essential purpose: last year, Tehran scrupulously adhered to its nuclear obligations, according to the International Atomic Energy Agency (IAEA), rendering an undetected dash toward nuclear weapons impossible. This apparently is only of marginal interest to the Trump administration, which continues to denounce the accord as flawed because some of its nuclear restraints expire between 2026 and 2031 and because it fails to address Iran's broader policies, including its ballistic missiles program and support for non-state actors in the region.

Trump took a first major step toward undermining the JCPOA in October, when he refused to certify the accord on the grounds that the sanctions it suspended were not proportionate to Iran's nuclear steps. Pressed by most of his cabinet members, who argued that withdrawal from the deal would be diplomatically costly, he has continued to waive the sanctions. But the administration has both imposed other economic penalties and discouraged international business with Iran, thereby putting Tehran in the uncomfortable position of having to comply with the deal's nuclear restrictions while only partially benefiting from its economic rewards. Trump also tasked Congress with passing legislation that would unilaterally alter the terms of the JCPOA. As some of his backers put it, his message was plain: either fix the deal, or I will nix it.

By the time Trump once again had to decide whether to waive the sanctions, his approach had not borne fruit. This in no small part is because unilateral alteration of the JCPOA would constitute a violation and thus would isolate the U.S., something even many Republican members are loath to do. Congress to date has been unable to find a compromise that simultaneously placates the White House, complies with the deal and is acceptable to the Europeans. So this time he upped the ante: he made clear he would pull the plug on the JCPOA if over the next 120 days Congress and Europe failed to meet his demands.

For its part, and for the time being, Tehran has complied with the deal, focused on winning the international blame game and ensuring continued European economic dealings. But patience could be wearing thin. Iran's favourable diplomatic posture hasn't helped inside Iran, where the accord's dividends have been slow to materialise, dashing popular expectations and contributing (alongside deeply rooted dissatisfaction at mismanagement, endemic corruption, and political and socio-economic deprivation) to unrest and protests in several cities. Should those dividends further erode as a result of U.S. actions – more uncertainty, more sanctions, or pulling out of the deal – Iran could respond in damaging fashion.

Europe, with which Iran's trade has nearly doubled in the past year, arguably holds the key to the deal's survival: it needs both to persuade the U.S. not to renege on its commitments and to preserve sufficient incentives for Tehran to remain in the deal even if Washington does so or if its actions continue to eat away at Iran's economic benefits. But here too there is uncertainty over how effective Europe can be. The Trump administration would like to act in unison with its European partners, but not at all costs; it could decide to go its own way notwithstanding European opposition. And the imposition of U.S. secondary sanctions on European companies doing business in Iran would confront them with the choice of either scaling back their (still relatively modest) Iranian trade and investment or risk jeopardising access to the far larger and more lucrative U.S. market.

Fear that the president might keep his word and walk away from the deal likely will motivate European actors and members of the U.S. Congress to seek ways to mollify Trump without endangering the JCPOA. Several Republicans and Democrats in the U.S. Congress already have been floating draft legislation that would meet the White House half-way. For their part, France, Germany, the UK and the European Union (EU) have been debating how to signal greater concern about Iran's ballistic-missile program and regional activities, considering what to do once some of the nuclear restrictions expire and weighing their reaction to passage of the above-mentioned U.S. legislation. How Trump's bombastic 12 January ultimatum will affect their calculus – and whether his tough rhetoric still leaves room for compromise – remains uncertain.

There was some ambiguity in the president's language that it is worth testing, but only up to a point. Should Congress pass legislation or Europe agree to U.S. measures that constitute JCPOA violations – for example by threatening automatic sanctions snapback if Iran engages in activity permitted under the deal – they would be complicit in the deal's breakdown. This in turn would render it virtually impossible to keep Iran from taking reciprocal measures of its own. In other words, steps designed to forestall a U.S. pullout from the deal could end up killing it. Neither the U.S. Congress nor Europe should have anything to do with them.

If the Trump administration is determined to breach the JCPOA, better it do so on its own, and better Europe then do what it can to save it. Key would be to ensure sufficient diplomatic and economic dividends for Iran provided Tehran abides by its commitments and even though these dividends undoubtedly would fall short of the full realisation of what the JCPOA envisioned. For this to happen:

- Europe should move beyond rhetorical support and ensure the JCPOA's survival by providing cover for its businesses in the event of unwarranted U.S. secondary sanctions. According to an exclusive Crisis Group survey of more than 60 senior managers at multinational companies actively pursuing opportunities in Iran, this could be achieved if Iran remains committed to its JCPOA obligations and European countries pre-emptively revive their "Blocking Regulations", shielding their companies from U.S. extraterritorial sanctions. Europe so far has been wary of taking a step that could prompt a trade war with the U.S., but may now feel its own security is at stake. It should also reach agreements on a bilateral EU plan to invest in the Iranian economy and a long-term energy partnership with Tehran, while diplomatically engaging on its regional policies and human rights record.
- Iran should take several steps of its own. It should put its house in order by improving its banking standards and creating a less corrupt and more transparent business environment; this is not only essential to attract foreign capital and technology, but also to address popular grievances. To increase Europe's confidence in its intentions, Tehran should bolster cooperation with the 1996 Comprehensive Nuclear Test-Ban Treaty (CTBT) organisation, sign the 2002 Hague Code of Conduct (HCOC) against ballistic-missile proliferation, and release dual-nationals arrested in Iran on dubious charges.
- The U.S. Congress should refrain from altering the JCPOA's terms by threatening to reimpose sanctions even if Iran abides by the deal. Such legislation might defer an immediate crisis, but it would violate a delicately balanced multilateral accord and undermine U.S. credibility as a reliable negotiating partner. Congress could reduce the president's certification burden, strengthen sanctions' snapback provisions tied to potential Iranian JCPOA violations, and express its sense that there needs to be a supplemental deal, but it must not be complicit in killing a deal that is working.

That the JCPOA, despite Trump's antagonism, has outlived other multilateral accords that he rolled back is a testament to its utility and possibly its strength: the agreement has put a lid on Iran's nuclear program and opened the door to its economic rehabilitation. But its other signatories should not assume that it can withstand further blows. They ought to defend it proactively, before it gets too late.

**Washington/Brussels, 16 January 2018**





# The Iran Nuclear Deal at Two: A Status Report

## I. Introduction

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The process that led to the 14 July 2015 Joint Comprehensive Plan of Action (JCPOA) was long and torturous: it took more than a decade of diplomatic fits and starts and a perilous cycle of mutual escalation for Iran and the P5+1/E3+3 (the UN Security Council's five permanent members plus Germany) to reach it.<sup>1</sup> The accord received unanimous Security Council endorsement on 20 July 2015, and entered into force on 18 October 2015.<sup>2</sup> This triggered Iran's rollback of its nuclear program and cooperation to resolve longstanding questions raised by the International Atomic Energy Agency (IAEA) about its past nuclear activities.

Implementation Day occurred on 16 January 2016, after the IAEA certified that Iran had fulfilled its key commitments under the agreement, prompting sanctions relief. Since then, the JCPOA has transformed Iran from the most sanctioned country in the world to the one with the most rigorously monitored nuclear program. It also opened the door to Iran's economic rehabilitation, even if the pace of recovery in the aftermath of sanctions relief has been more sluggish than anticipated. In last year's status report, Crisis Group noted that implementation of the complex agreement was not flawless. Iran committed several technical violations and struggled to normalise its international banking ties.<sup>3</sup>

Implementation of Iran's nuclear commitments has improved in the 2017-2018 period and the JCPOA's Joint Commission (the seven negotiating parties, coordinated by the EU) has proven adept at problem-solving. Major financial institutions remain circumspect, however, hampering Iran's re-integration into the global economy and dashing inflated public expectations of rapid economic recovery. The reasons for these delays in sanctions relief are manifold, ranging from concerns over a possible snapback, to the overall uncertainty created by the Trump administration, to internal deficiencies of the Iranian economic environment.

A key question is what the business community, which plays a critical role in generating the deal's economic dividends and makes autonomous decisions, will do. To better understand its calculus and possible response to key policy shifts, Crisis Group commissioned a survey of more than 60 senior managers at multinational compa-

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<sup>1</sup> See Crisis Group Middle East and North Africa Reports N°18, *Dealing with Iran's Nuclear Program*, 27 October 2003; N°51, *Iran: Is There a Way Out of the Nuclear Impasse?*, 23 February 2006; N°116, *In Heavy Waters: Iran's Nuclear Program, the Risk of War and Lessons from Turkey*, 23 February 2012; and N°152, *Iran and the P5+1: Solving the Nuclear Rubik's Cube*, 9 May 2014; and Briefings N°34, *The P5+1, Iran and the Perils of Nuclear Brinkmanship*, 15 June 2012; N°40, *Iran and the P5+1: Getting to "Yes"*, 27 August 2014; and N°43, *Iran Nuclear Talks: The Fog Recedes*, 10 December 2014.

<sup>2</sup> UN Security Council Resolution 2231, 20 July 2015.

<sup>3</sup> Crisis Group Middle East Report N°173, *Implementing the Iran Nuclear Deal: A Status Report*, 16 January 2017.

nies actively pursuing opportunities in Iran (see detailed results in Appendix A). This survey's results, in conjunction with interviews conducted with officials from Iran, the P5+1, and the IAEA over the past year, have informed our analysis and policy recommendations in this report.

Another development occurred as year two reached its end: protests erupted across Iran in late December 2017, resulting in at least two dozen deaths and thousands of detentions. While not directly related to the JCPOA, the events nonetheless were connected. Polls show the deal remains popular, but hopes that it would lead to rapid economic recovery have been dashed, adding to disgruntlement over economic conditions, from chronic unemployment to endemic corruption and glaring income inequalities.<sup>4</sup> President Hassan Rouhani over-promised and under-delivered, both because his government genuinely expected greater JCPOA returns and because it hyped anticipated benefits to sell the deal to domestic detractors.

As the protests started waning, Rouhani admitted that the ruling elite was out of touch with the population and that dissent reflected widespread demands for a more open society and polity. Ayatollah Khamenei, however, while acknowledging economic problems, put the blame on a triangle of enemies: the U.S. and Israel, Saudi Arabia, and exiled Iranian dissidents.<sup>5</sup> Left unanswered is whether the leadership can absorb the shock and implement much needed structural reforms, whether popular or not, that are key to fulfilling the JCPOA's potential.

Projecting the JCPOA's trajectory as it enters its third year of implementation is impossible without understanding what it has achieved so far, where it has fallen short, and what this implies not just for its future but also for Iran's relations with the West and its role in the region. This report analyses the second-year record of implementation, draws lessons and offers suggestions for improving and sustaining an accord that remains a net positive for non-proliferation.

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<sup>4</sup> "Iran lawmaker says some 3,700 arrested amid protests, unrest", Associated Press, 9 January 2018. According to a survey conducted in May 2017, two thirds of Iranian support the JCPOA. "The Ramifications of Rouhani's Re-election", Center for International and Security Studies, Maryland University, and IranPoll, July 2017. There was a steady stream of protests in 2017, but severe pollution, a chain of earthquakes and their mismanaged aftermath as well as an austerity budget that hiked fuel prices, slashed subsidies and granted additional perks to religious and military institutions, made for a perfect storm. The proposed budget showed a 42 per cent increase in funding for the Revolutionary Guard Corps and a nearly 10 per cent rise in resources allocated to religious foundations, while increasing fuel prices by 50 per cent and cutting cash handouts to 34 million Iranians. "Iran budget bill 2018-19", *Financial Tribune*, 10 December 2017.

<sup>5</sup> Thomas Erdbrink, "Iran can't keep dictating lifestyle, its president warns", *The New York Times*, 8 January 2018; "Enemy triangle created recent unrest in Iran: Ayatollah Khamenei", Press TV, 9 January 2018.

## II. Delivering Results

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Two years after its implementation, the nuclear accord's opponents and proponents continue to relitigate its merits, shortcomings, and linkage to other issues like Iran's growing regional clout, ballistic-missile tests, and human rights record. Amid the noise, it is easy to lose sight of an important fact: the JCPOA's two key components – restricting and rigorously monitoring Iran's nuclear program and (to a lesser extent) sanctions relief – are working and delivering concrete results.

### A. Nuclear Commitments

Since January 2016, the IAEA has verified on nine separate occasions, and the UN Secretary-General has attested four times, that Iran is fulfilling its JCPOA obligations.<sup>6</sup> So far, the Trump presidency has neither altered the U.S. approach toward technical aspects of the deal's implementation nor compelled Iran to change its level of cooperation with the IAEA.<sup>7</sup> Though Iran overproduced heavy water on two occasions during the first year, it committed no technical infringements in the second.<sup>8</sup> Tehran kept a comfortable distance from JCPOA thresholds for stockpiles of sensitive material – ie, 130 metric tons for heavy water and 300kg for low-enriched uranium.<sup>9</sup> Although the Trump administration halted U.S. purchases of Iran's heavy water, Iran was diligent in transferring its excess material to Oman and is seeking more domestic uses for it – eg, in oil exploration.<sup>10</sup>

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<sup>6</sup> See “Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015)”, GOV/INF/2016/1, 16 January 2016; GOV/2016/8, 26 February 2016; GOV/2016/23, 27 May 2016; GOV/2016/46, 8 September 2016; GOV/2016/55, 9 November 2016; GOV/2017/10, 24 February 2017; GOV/2017/24, 2 June 2017; GOV/2017/35, 31 August 2017; and GOV/2017/48, 13 November 2017. Also see “Secretary-General report on the implementation of Security Council resolution 2231 (2015)”, S/2016/589, 12 July 2016; S/2016/1136, 30 December 2016; S/2017/515, 20 June 2017; S/2017/2010, 8 December 2017.

<sup>7</sup> Crisis Group interviews, Iranian and IAEA officials, Vienna, December 2017; U.S. officials, Washington, December 2017. A U.S. diplomat said: “Our general policy in the Joint Commission is to be less permissive where the Obama administration was more lenient, but so far it hasn't prompted tensions”. Crisis Group interview, Washington DC, 8 December 2017. A senior White House official said: “Whenever Iran tries to push the envelope on the deal's interpretive details, our answer is ‘No’”. Crisis Group interview, Washington DC, October 2017.

<sup>8</sup> Crisis Group Report, *Implementing the Iran Nuclear Deal*, op. cit.

<sup>9</sup> As of November 2017, Iran had 114 metric tons of heavy water and 96.7kg of uranium enriched to 3.67 per cent.

<sup>10</sup> An Iranian official said: “The Trump administration wants to sound tough, but the reality is that when the Obama administration bought 30 metric tons of our heavy water in 2016, they told us this was a one-off transaction”. Crisis Group interview, Vienna, December 2017. A U.S. official confirmed his account and added, “what's more, we don't have any immediate needs for additional heavy water”. Crisis Group interview, Washington DC, December 2017. The deal's critics have complained that Iran maintains ownership of the heavy-water storage facility in Oman, but this is not unusual since Tehran pays for the storage until a buyer is found; besides, any repatriation of the material that would result in Iran exceeding the threshold would be a clear breach. “Iran tells IAEA it plans to ship heavy water abroad”, Reuters, 6 June 2017; “Iran says US new policy on heavy water is ‘Washington's problem’”, IRNA.ir, 1 December 2017.

Debates at the JCPOA's Joint Commission over diverging interpretations of the accord, especially where its language is ambiguous, continued apace. But these were mostly over technical minutiae. For instance, Iran's enrichment research and development plan indicated that it would test "roughly" ten advanced IR-6 centrifuges with uranium until 2019, whereas in practice it had deployed thirteen machines. After long debates at the Joint Commission, Iran accepted its Western members' interpretation that "roughly ten" is eleven.<sup>11</sup>

By provisionally implementing the IAEA's Additional Protocol (AP) to the Comprehensive Safeguards Agreement (CSA), as well as all the supplementary enhanced safeguards and transparency measures outlined in the JCPOA, Iran's nuclear program is under the most robust inspection regime that currently exists.<sup>12</sup> In 2017, the IAEA had no problem inspecting any sites it needed to access.<sup>13</sup> The fact that the agency did not visit military sites, which Iranian officials have publicly declared off-limits, became a political football.<sup>14</sup> "If inspections of Iranian military sites are 'merely a dream', as Iran says, then Iranian compliance with the JCPOA is also a dream", said U.S. ambassador to the UN, Nikki Haley.<sup>15</sup>

Yet, in practice, there was no crisis, as the IAEA has the authority to visit any location it deems necessary; and benefits from a unique feature of the JCPOA – beyond the CSA/AP – that requires Iran to grant access to any suspect sites within 24 days or face activation of a dispute resolution mechanism and possible sanctions snapback. The IAEA apparently has had no grounds to request access to military sites; and, despite the rhetoric, has been granted access by Iranian officials to such sites in the past.<sup>16</sup> It should be sufficient reassurance that the IAEA's verification is iterative

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<sup>11</sup> Crisis Group interviews, Iranian, U.S. and European officials, Vienna, Berlin and Washington, December 2017. George Jahn, "Iran nuclear constraints to ease in about a decade, secret document reveals", Associated Press, 18 July 2016.

<sup>12</sup> The Additional Protocol (INFCIRC/540) to the IAEA's Comprehensive Safeguards Agreement (CSA) expands the agency's reach to all parts of a state's nuclear fuel cycle and provides greater access rights. According to the IAEA's director general, "IAEA inspectors now spend around 3,000 days in the field in Iran each year, twice as many as in 2013. As part of their extensive verification activities, they have taken hundreds of environmental samples and placed some 2,000 tamper-proof seals on nuclear material and equipment. In addition, the IAEA collects and analyses hundreds of thousands of images captured daily by its sophisticated surveillance cameras in Iran, and also collects and analyses several million pieces of open source information each month". "IAEA now has more inspection powers in Iran, increased knowledge of its nuclear program", IAEA.org, 14 November 2017.

<sup>13</sup> Iran has received nearly two snap nuclear inspections a month and almost double the overall number of visits it had just five years ago. Under the CSA's managed-access provision, inspectors can request access within two hours to a facility at a site they are presently inspecting and within 24 hours to a new site. Jonathan Tirone, "Iran atomic inspections double with deal questioned by Trump", Bloomberg, 11 September 2017.

<sup>14</sup> Parisa Hafezi, "Iran rejects U.S. demand for U.N. visit to military sites", Reuters, 29 August 2017. Bob Corker, Republican chairman of the U.S. Senate Foreign Relations Committee, said that the U.S. was pushing for access to "various facilities" in Iran, and "if they don't let us in, boom! ... You want the breakup of this deal to be about Iran. You don't want it to be about the U.S., because we want our allies with us". *Washington Post*, 26 July 2017.

<sup>15</sup> "Ambassador Haley on the latest Iranian misbehavior", U.S. mission to the UN, 31 August 2017.

<sup>16</sup> "Nuclear inspectors should have access to Iran military bases: Haley", Reuters, 25 August 2017. A senior White House official said: "Despite the Iranians' shrill 'no way, no how' rhetoric, there is

– going through repeated rounds of inspections and analysis – and that, without full access, the agency could never draw its so-called “broader conclusions”, which Iran deeply cares about because they imply that all nuclear material and activities in Iran are purely civilian. Politicising verification is sure to backfire – unless the goal is to find a pretext for undermining the JCPOA.<sup>17</sup>

One of the JCPOA’s most innovative elements became one of its most controversial in 2017: Section T, concerning activities that could contribute to the design and development of a nuclear explosive device. The Nuclear Non-Proliferation Treaty (NPT) fails to define what manufacturing a nuclear weapon entails. Section T closes that loophole by explicitly banning certain activities and dual-use material related to nuclear weaponisation. It is, however, the only section in the JCPOA’s nuclear section that neither explicitly names the IAEA nor specifies Iran’s commitments.

The deal’s detractors charge that the agency is unable to verify Iran’s compliance under this provision.<sup>18</sup> The fact that IAEA’s director general, Yukiya Amano, noted that “our tools are limited” and “more clarification would be helpful” reinforced these claims.<sup>19</sup> But the push to do more to verify Section T seems aimed more at instigating an inspection crisis, which critics could then use to suggest Iran is in non-compliance, than at addressing a real verification concern: in fact, the IAEA has the authority under UN Security Council Resolution 2231 to monitor all of Iran’s nuclear commitments and has confirmed that it is doing so with regards to Section T.<sup>20</sup> Its director general’s request for clarification stems from the lack of detail about the verification mechanism itself, rather than a lack of authority or access; but the Joint Commission has not been able to guide the agency on these issues because of its own internal divisions on how far the IAEA should go.<sup>21</sup> Above all, Section T was devised

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plenty of precedence for them granting access to military sites”. Crisis Group interview, Washington DC, October 2017. Between 2003 and 2005, the IAEA inspected several Iranian military sites. See “GOV/2005/87”, IAEA, 18 November 2005. An IAEA official noted: “The agency doesn’t even distinguish between military and civilian sites, but we have had no reason to visit a military compound so far”. Crisis Group interview, Vienna, December 2017. The JCPOA’s access provisions are designed to prevent foot dragging; for example, it took Iran three years to grant the IAEA access to Parchin military compound before the JCPOA. For more details, see JCPOA Annex I, Section Q at [https://eeas.europa.eu/sites/eeas/files/annex\\_1\\_nuclear\\_related\\_commitments\\_en.pdf](https://eeas.europa.eu/sites/eeas/files/annex_1_nuclear_related_commitments_en.pdf).

<sup>17</sup> A non-proliferation expert wrote: “Over time, the IAEA would zero in on locations that host Iran’s nuclear fuel-cycle industry, and thereafter, on myriad universities, laboratories, and other R&D installations – including military sites – that may be involved in doing work that is pertinent to Iran’s nuclear program. Doing verification this way may disappoint critics looking for instant results, but it may build confidence while at the same time posing incrementally greater risk that Iran may not cooperate”. Mark Hibbs, “Implementing the JCPOA”, Arms Control Wonk, 4 October 2017.

<sup>18</sup> Olli Heinonen and David Albright, “Verifying section T of the Iran nuclear deal”, Foundation for Defense of Democracies, 31 August 2017.

<sup>19</sup> “IAEA chief calls for clarity on disputed section of Iran nuclear deal”, Reuters, 26 September 2017.

<sup>20</sup> “The Agency’s verification and monitoring of Iran’s other JCPOA nuclear-related commitments continues, including those set out in Sections D, E, S and T of Annex I of the JCPOA”. Paragraph 26 in “GOV/2017, 48”, IAEA, op. cit.

<sup>21</sup> A nuclear inspector asked: “The JCPOA’s paragraphs 82.2 and 82.3 indicate technologies that are suitable for a nuclear explosive device, which is a vague term. Should the IAEA use the Nuclear Supplier Group’s guidelines or another list?” Crisis Group interview, Vienna, December 2017. Rus-

primarily as a deterrent to ensure that weaponisation activities are unambiguously banned with no sunset provisions.<sup>22</sup>

These controversies notwithstanding, other members of the P5+1 demonstrated their commitment to the JCPOA by materially investing in Iran's nuclear program: Russia started constructing a second nuclear power plant in the southern Iranian port city of Bushehr and continued conducting feasibility studies for transforming the bunkered Fordow enrichment plant into an international physics centre;<sup>23</sup> China continued work on modernisation of the heavy-water reactor in Arak, a joint project between Iran, China and the U.S.;<sup>24</sup> and the EU held two high-level seminars on nuclear cooperation with Iran and invested €20 million (about \$24.4 million) in enhancing the country's nuclear safety practices.<sup>25</sup> While Iranian scientists have regained access to and even hosted IAEA's technical workshops, nuclear cooperation with other countries beyond the P5+1 has lagged.<sup>26</sup> The Trump administration's hostility toward the agreement, and deliberate efforts to obstruct such cooperation, is one reason for limited progress on this front.<sup>27</sup>

The JCPOA's procurement channel for Iran to access dual-use material and equipment, managed by the Joint Commission's procurement working group, received and processed eighteen applications (compared to only six in the 2016-2017 period) related to export of dual-use technology to Iran.<sup>28</sup> Critics pointed to a German intelligence report indicating that Iran is continuing illicit procurement of proliferation-

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sia is strongly opposed to setting a precedent for the IAEA to extend its mandate beyond nuclear material accountancy. Crisis Group interviews, Russian officials, Moscow, 23 October 2017.

<sup>22</sup> As a senior Iranian official put it, "the reality is that the IAEA can neither prove a negative nor inspect every single laptop in Iran in search of computer models to simulate nuclear explosive devices". Crisis Group interview, New York, September 2017.

<sup>23</sup> With Russian help Iran will produce stable medical isotopes at Fordow, using 358 centrifuges. "Russia starts building Bushehr 2 nuclear power plant in Iran", *Russia Today*, 31 October 2017.

<sup>24</sup> Iranians complain of China dragging its feet on the project, which advances slowly. Crisis Group interviews, Iranian officials, New York, September 2017. A U.S. official said: "Remember that the Chinese invented bureaucracy! But the Iranians are also at fault by making changes, for example to the fuel design. Although Arak is constantly two steps forward, one step back, we made considerable progress this year". Crisis Group interview, Washington DC, December 2017. Ali Kushki, "Iran, China sign nuclear plant redesign contract", *Tehran Times*, 23 April 2017.

<sup>25</sup> "EU donates €20m for nuclear energy in Iran", *Financial Tribune*, 23 November 2017.

<sup>26</sup> Nuclear cooperation, as outlined in JCPOA Annex III, is a key – yet voluntary – component of the accord. Iran has discussed agreements with other countries, but they have yet to bear fruit. "Iran, Switzerland underline continued cooperation on nuclear safety system", *Fars News*, 26 November 2017; "Iran hosts nuclear safety forum", *Tehran Times*, 2 May 2017.

<sup>27</sup> For instance, the U.S. blocked Iran's participation in the International Thermonuclear Experimental Reactor (ITER) nuclear fusion project in France. Richard Stone, "United States blocks Iran from fusion megaproject", *Science*, 31 October 2017.

<sup>28</sup> The channel is unprecedented, complementing existing export control arrangements while largely delegating the UN Security Council's authority to the Joint Commission's procurement working group. See S/2017/1030, UN, op. cit. Of the 24 proposals received since 2016, sixteen were approved, three were rejected and five were withdrawn by proposing states. A U.S. official said: "The relatively small number of applications means that more needs to be done on familiarising UN member states with this process". Crisis Group interview, December 2017.

sensitive material outside of the channel.<sup>29</sup> The public version of that report, however, noted that it was mostly related to Iran's missile program, which is not covered by the deal, and that the evidence "did not reveal any violation of the [JCPOA]".<sup>30</sup>

## B. Sanctions Relief Commitments

During the reporting period, the impact of sanctions relief on the indicators of Iran's macroeconomic performance became increasingly tangible, even though benefits failed to reach the general population, dashing expectations and contributing to popular unrest throughout the country.

According to the International Monetary Fund (IMF), Iran – buoyed by a post-sanctions resurgence of oil sales – achieved 12.5 per cent economic growth during the Iranian fiscal year (March 2016-March 2017) and is projected to grow 4.2 per cent in the 2017/2018 period. Inflation was contained at single digits.<sup>31</sup> Iran's trade with the EU grew by a factor of 1.6 in the first nine months of 2017 compared to the same period last year, reaching €14.8 billion (about \$18 billion).<sup>32</sup> Iran signed major investment contracts, including the symbolically significant \$4.8 billion agreement with French energy giant Total to invest in an Iranian off-shore natural gas field.<sup>33</sup> Overall, the country absorbed around \$8 billion in foreign direct investment and secured lines of credit for projects in Iran by banks in Europe and East Asia.<sup>34</sup>

<sup>29</sup> "Cotton and colleagues urge Tillerson not to certify Iran compliance with the JCPOA", Senator Cotton's office, 11 July 2017.

<sup>30</sup> "Brief summary 2016 Report on the Protection of the Constitution", German Federal Interior Ministry, 4 July 2017.

<sup>31</sup> "IMF Staff Completes 2017 Article IV Mission to Islamic Republic of Iran", IMF, 17 December 2017.

<sup>32</sup> Iran's exports to the 28 European countries in 2017 stood at €7.3 billion, a twofold increase compared to 2016; its imports from the bloc amounted to €7.5 billion, a 1.3-time increase from 2016. "Iran-EU trade rises", *Financial Tribune*, 2 December 2017.

<sup>33</sup> The contract, which has a twenty-year duration, is the first based on the new Iranian Petroleum Contract (IPC). Total holds a 50.1 per cent interest alongside China's CNPC (30 per cent), and Iran's Petropars (19.9 per cent). "Total and NIOC sign contract for the development of phase 11 of the giant South Pars gas field", Total, 3 July 2017. By June 2017, the national Iranian oil company had signed 33 memoranda of understanding with 28 companies, out of which four were executed. *Inna.ir*, 22 July 2017. For a list of other major contracts with European firms, see Cathleen Cimino-Isaacs and Kenneth Katzman, "EU-Iran trade and investment relations", Congressional Research Service, 25 October 2017.

<sup>34</sup> "8 میلیارد دلار سرمایه خارجی در سال ۹۶ جذب شد", Mehr News, 14 December 2017. The largest credit lines have been arranged through China's state-owned CITIC investment group (\$10 billion), Korea's Export-Import Bank (\$9.4 billion), and Japan's Nippon Export and Investment Insurance and Japan Bank for International Cooperation (jointly \$10 billion). In Europe, smaller credit lines have been opened by Austria's Oberbank (\$1.2 billion) and Denmark's Danske Bank (\$600 million). By mid-September 2017, Iranian banks were able to establish 797 corresponding relations with 273 banks around the world, conducting transactions worth \$57 billion. "هفتمین گزارش سه‌ماهه وزارت امور خارجه به کمیسیون امنیت ملی و سیاست خارجی مجلس شورای اسلامی در خصوص اجرای برجام" ["Seventh quarterly report of the foreign ministry to the parliament's national security and foreign policy committee on JCPOA's implementation"], Iranian foreign ministry, 23 October 2017.

Nevertheless, significant challenges remain. The Rouhani administration clearly has over-promised and under-delivered, as Iran's impressive growth figures flatter to deceive: unemployment has grown since the nuclear deal; poverty and income inequality have increased, and export figures for 2017 indicate that non-oil exports shrank.<sup>35</sup> Persistent reluctance of first-tier international banks hampered Iran's re-integration into the global economy by hindering clearing services and the financing of large contracts.<sup>36</sup>

The causes are manifold. There are legal or compliance risks, pertaining to possible violations of remaining (and in the U.S. case, new) U.S. and EU sanctions on Iran.<sup>37</sup> In 2017, Congress enacted the Countering America's Adversaries through Sanctions Act of 2017, imposing sanctions on individuals and entities associated with Iran's ballistic-missile program or the sale or transfer to Iran of military equipment and the Islamic Revolutionary Guard Corps (IRGC).<sup>38</sup> The Iranian parliament retaliated by enacting its own measure, entitled "Countering America's Terrorist and Adventurist Actions".<sup>39</sup>

For its part, the administration blacklisted nearly 100 Iran-related individuals and entities for their involvement in Iran's ballistic-missile program, support for non-state actors and human rights violations.<sup>40</sup> It also labelled the IRGC as a terrorist entity; the first time an official branch of a state's armed forces has been designated as such, and significant because of the IRGC's expansive role in Iran's opaque economy, which in turn renders due diligence particularly cumbersome.<sup>41</sup> The IRGC had

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<sup>35</sup> Youth unemployment is 26 per cent, despite the creation of nearly 700,000 new jobs by spring 2017. "Unemployment remains critical", *Financial Tribune*, 7 November 2017; "Iran 2017 foreign trade records: Imports still exceeding exports", Mehr News, 31 December 2017. A prominent economist noted, "the percentage of people earning less than \$3.6 per day in rural and \$5 per day in urban areas increased from 3.3 and 3 percent, respectively, in 2013 to 6.8 and 4.3 per cent in 2016". Crisis Group email correspondence, Djavad Salehi Isfahani, professor at Virginia Tech University, Washington DC, 2 January 2018.

<sup>36</sup> An expert said: "The problem isn't the financial plumbing's diameter; it's the fact that it's not connected to the international financial system, thus rendering even routine financial transactions costly or complicated". Crisis Group interview, Esfandiyar Batmanghelidj, founding partner, Bourse and Bazaar, Washington DC, 20 December 2017. Both British and German officials tried to strong-arm their state-owned banks into doing business with Iran – to no avail. Crisis Group interviews, London and Berlin, April and December 2017.

<sup>37</sup> For a description of lingering sanctions, see Crisis Group Report, *Implementing the Iran Nuclear Deal*, op. cit.

<sup>38</sup> On 2 August 2017, Trump signed the Countering America's Adversaries Through Sanctions Act (CAATSA) into law. See Public Law 115-44.

<sup>39</sup> The bill requires the Iranian government and armed forces to draw up a strategy to "counter U.S. violations of human rights around the world, and to support Iranian bodies and individuals affected by U.S. sanctions". The measure also allocated over \$260 million each to Iran's ballistic-missile program and the Quds Force. Thomas Erdbrink, "Iranian parliament, facing U.S. sanctions, votes to raise military spending", *The New York Times*, 13 August 2017.

<sup>40</sup> The U.S. treasury department issued nine tranches of sanctions, designating 95 targets in China, Iran, Lebanon, the United Arab Emirates and Ukraine in connection with the IRGC and Iran's ballistic-missile program, support for terrorism and human rights violations. For its part, the U.S. state department sanctioned eighteen individuals and entities.

<sup>41</sup> Crisis Group interviews, European entrepreneurs, Zurich, Berlin, Vienna, October-December 2017. The U.S. treasury department designated the entirety of the IRGC, whose affiliated bodies and lead-



threatened to retaliate by treating U.S. forces in the region as terrorists and warned against U.S. presence in the range of Iran's ballistic-missiles, but so far has not taken any such measures.<sup>42</sup>

No less chilling for investment is the threat that sanctions suspended under the deal may be reimposed, given the Trump administration's hostile rhetoric toward the JCPOA and repeated threats to walk away from it. Unilateral U.S. sanctions can be resumed by simple executive order; a snapback mechanism embedded in the accord can reinstate UN sanctions if one party contends that Iran has reneged on its commitments.<sup>43</sup> There are also political or reputational risks – a lever that Trump reportedly employed to dissuade nations at the July 2017 G-20 summit from doing business with “nations that sponsor terrorism, especially Iran”. Iran blasted this, not without justification, as a JCPOA violation, even though the Trump administration did not see it as such.<sup>44</sup> Some of Iran's regional rivals have also pressed Western companies to choose between investing in Iran or doing business with them.<sup>45</sup>

Iran's banking system is still designated by the Financial Action Task Force (FATF), which sets anti-money laundering and counter-terrorism financing standards for financial institutions worldwide, as a high-risk and non-cooperative jurisdiction. The Rouhani administration took substantial steps to improve transparency within the

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ers were already subject to several other U.S. sanctions, as a Specially Designated Global Terrorist (SDGT) under Executive Order 13224 and Section 105 of CAATSA because of its support for its expeditionary Quds Force, which itself was designated an SDGT in 2007. John Hudson and Borzou Daragahi, “Trump's boldest foreign policy move today wasn't decertifying the Iran deal”, BuzzFeed, 13 October 2017.

<sup>42</sup> “IRGC Commander: CAATSA means abrogation of nuclear deal, U.S. should withdraw bases to 2,000km away”, Fars News, 8 October 2017.

<sup>43</sup> Per JCPOA paragraphs 36-37, if, after a 35-day adjudication process, the complaining party is still unsatisfied, it can refer its complaint as significant non-performance to the UN Security Council, which within 30 days must vote on a resolution to continue suspension of sanctions – a resolution the complaining party can veto, thus snapping back sanctions.

<sup>44</sup> A senior Iranian official said: “The JCPOA's implementation is unbalanced. Iran has been 100 per cent compliant according to the IAEA. The U.S., by contrast, has violated not the spirit, but the letter of the deal. Via its signature, the U.S. committed to refrain from anything which undermines the JCPOA, including through its public statements. Trump has done the opposite”. Crisis Group interview, Tehran, 7 January 2018. Zeeshan Aleem, “Iran says the US is violating the nuclear deal. It has a point”, Vox, 21 July 2017. A senior European official likewise said, “The real threat to the JCPOA right now are the statements and actions emanating from the U.S. Treasury department designed to chill investment. It's hard not to see these as inconsistent with the JCPOA”. Crisis Group telephone interview, January 2018. The U.S. should, per JCPOA paragraph 29, “refrain from any policy specifically intended to directly and adversely affect the normalisation of trade and economic relations with Iran”, and according to paragraph 33, “agree on steps to ensure Iran's access in areas of trade, technology, finance and energy”.

<sup>45</sup> Several energy executives told Crisis Group that Saudi and Emirati officials have directly and indirectly conveyed this message to them. Crisis Group interviews, London, April 2017. In his 10 November 2017 meeting with French President Macron, Saudi Deputy Crown Prince Mohammed bin Salman allegedly dangled the prospect of lucrative business with Riyadh if France were to stop its commercial dealings with Iran. Macron reportedly reacted with shock and anger. Crisis Group interviews, European officials, December 2017, January 2018.

Iranian financial system and enhance banking standards.<sup>46</sup> In response, the FATF suspended its countermeasures requiring enhanced due diligence in dealing with Iranian banks in June 2016, a decision it renewed in June 2017 and will reassess in February 2018 after the deadline for Iran's implementation of agreed reforms lapses on 31 January.<sup>47</sup> Some operational risk remains, however: rampant corruption and cumbersome regulations are among the myriad endemic challenges that make it difficult to do business in Iran.<sup>48</sup>

Crisis Group's survey of senior managers with direct responsibilities for Iran business at multinational companies shows that 79 per cent of firms pursuing opportunities in Iran have delayed their plans since the JCPOA's implementation. The overwhelming majority (57 per cent) indicate that the primary reason for the delay was fear of U.S. sanctions snapback, followed by Iran's weak regulatory environment (11 per cent) and legal protections, among other risks (see graph 3 in Appendix A). When asked to name the primary obstacle to their market rollout in Iran, respondents again cited above all the risks associated with U.S. sanctions compliance (32 per cent), followed by lack of access to financing (21 per cent) and political and reputational risks (15 per cent).

Most companies have clearly delayed major commercial decisions regarding Iran because of exogenous risks, though they acknowledge the internal deficiencies of Iran's business environment, which a majority (79 per cent) believe Iran has failed to address adequately. An executive of a French insurance company summed up the prevailing sentiment: "Iran's internal issues, from corruption to mismanagement, are not more or less complicated than any other frontier market. What's different is the Damocles sword of sanctions hanging over the market".<sup>49</sup>

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<sup>46</sup> The government went as far as instructing banks to cease providing banking services to IRGC-affiliated firms. "Iranian banks give Revolutionary Guard the cold shoulder", *Financial Times*, 18 September 2016.

<sup>47</sup> "FATF extends suspension of Iran countermeasures", *Financial Tribune*, 25 June 2017.

<sup>48</sup> The World Bank ranked Iran in 124th place among 190 economies in its 2018 ease of doing business index, down from 118th place among 189 when JCPOA was first implemented. Masoud Nili, Rouhani's chief advisor, pointed to six "super-challenges" in the Iranian economy: high unemployment, toxic debt in the banking system, inadequate tax collection, exposed pension funds, and an environmental crisis. "Causes of super challenges", *Financial Tribune*, 18 September 2017.

<sup>49</sup> Crisis Group interview, Washington, December 2017.

### III. The Year of Living Dangerously

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Since assuming office, President Trump has repeatedly excoriated the JCPOA as one of the “worst and most one-sided transactions”, and an “embarrassment to the U.S.”.<sup>50</sup> Yet while the administration was conducting an inter-agency strategic review of U.S. policy toward Iran, of which the JCPOA was only one element, it held its end of the bargain by continuing to periodically issue congressionally mandated certifications of Iran’s compliance and extend sanctions relief.<sup>51</sup> It did so reluctantly; the president and some of his close advisers publicly expressed deep scepticism.<sup>52</sup> Each affirmative action to extend sanctions relief was, however, followed by fiery statements condemning Iran’s regional or domestic policies and adding new designations to the U.S. sanctions list.<sup>53</sup>

Finally, in October, despite a widely-shared view among Trump’s national security team that Iran was complying, the president refused to recertify the JCPOA on the grounds that sanctions relief had not been proportionate to steps Iran has taken.<sup>54</sup> This option allowed the White House to signal its opposition to the deal; created doubts as to its survival without taking immediate responsibility for torpedoing it; and shifted that burden to Congress, which could use an expedited process by a simple majority – devised under the 2015 Iran Nuclear Agreement Review Act (INARA) – to restore the suspended U.S. nuclear-related sanctions.<sup>55</sup>

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<sup>50</sup> See “Remarks by President Trump to the 72nd Session of the UN General Assembly”, White House, 19 September 2017; “Remarks by President Trump on Iran Strategy”, White House, 13 October 2017.

<sup>51</sup> President Trump has now issued nine extensions of Iran’s sanctions relief by renewing the 2012 National Defense Authorization Act’s (NDAA) 120-day waiver on 18 May 2017, 13 September 2017 and 12 January 2018; the Iran Threat Reduction and Syria Human Rights Act (ITRA) and Iran Freedom and Counter-Proliferation Act’s 180-day waivers on 14 July 2017 and 12 January 2018; and the Iran Sanctions Act’s (ISA) 180-day waivers on 17 July 2017 and 12 January 2018.

<sup>52</sup> “We’ve been extremely nice to them in saying they were compliant. Personally, I have great respect for my people, but if it was up to me, I would have had them noncompliant 180 days ago”, Trump said in July. See “Trump eyes tax-code overhaul”, *Wall Street Journal*, 25 July 2017. CIA Director Mike Pompeo said, “Iran’s compliance with the nuclear deal is grudging, minimalist and temporary”, likening Iran to “bad tenants”. Aspen Security Conference, Aspen, 21 July 2017.

<sup>53</sup> A senior Iranian official said: “The U.S. administration feels compelled to sandwich each action to keep the U.S. in the deal between an insult and an injury [ie, a harsh statement and sanction designations]. That’s the definition of bad-faith implementation”. Crisis Group interview, New York, September 2017. For an example, see “Iran continues to sponsor terrorism”, State Department, 18 April 2017.

<sup>54</sup> Peter Baker, “Trump recertifies Iran nuclear deal, but only reluctantly”, *The New York Times*, 17 July 2017; Karoun Demirjian, “Top military officials endorse staying in Iran deal, contradicting Trump”, *Washington Post*, 3 October 2017; Anne Gearan, “‘He threw a fit’: Trump’s anger over Iran deal forced aides to scramble for a compromise”, *Washington Post*, 11 October 2017.

<sup>55</sup> See Crisis Group Statement, “Saving the Iran Nuclear Deal, Despite Trump’s Decertification”, 13 October 2017. Under INARA, the president must determine every 90 days that i) Iran is fully implementing the JCPOA; ii) Iran has not committed a material breach; iii) Iran has not taken any action that could significantly advance a nuclear weapons program; and iv) suspension of sanctions is appropriate and proportionate to the measures taken by Iran and vital to U.S. national security interests. The Iran Nuclear Agreement Review Act of 2015, Public Law: 114-17, 22 May 2015. A U.S. official said: “We were very diligent in finding an option that would give us manoeuvring space without putting the U.S. in breach”. Crisis Group interview, Washington DC, December 2017. A

The administration highlighted three main justifications for this decision. The first is the only one that relates to the JCPOA itself. It revolves around what the administration calls its “sunset provision”, a misnomer that refers to the fact that various – but not all – restrictions imposed on Iran’s nuclear program expire at some point and which critics say provides Iran with a patient pathway to building nuclear weapons.<sup>56</sup> In reality, while some provisions restricting Iran’s nuclear program lapse between 2025 and 2030, other important ones are permanent.<sup>57</sup> The second concerns Iran’s ballistic-missile program.<sup>58</sup> And the third has to do with Iran’s regional policies, which the administration denounces as destabilising and expansionist, and as violating the spirit of the deal.<sup>59</sup> The White House also announced a new Iran strategy that was long on what the U.S. deems Iranian wrongdoings and short on how Washington intended to address them.<sup>60</sup> In the meantime, it declassified intelligence regarding Tehran’s past ties with al-Qaeda and provided information on Iran’s purported cooperation with North Korea and alleged provision of missiles to Huthi rebels in Yemen.<sup>61</sup>

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congressional official said, “The president has unpinned a grenade and thrown it into our court, amid a very busy legislative agenda, only because the president didn’t like this recurring political thorn in his side”. Crisis Group interview, Washington, October 2017.

<sup>56</sup> Israeli Prime Minister Benjamin Netanyahu warned: “In a few years, [nuclear] restrictions will be automatically removed ... not by a change in Iran’s behaviour, not by a lessening of its terror or its aggression – they’ll just be removed by a mere change in the calendar”. Quoted in “Iran risks ‘mortal peril’ by threatening Israel”, *Jerusalem Post*, 19 September 2017. Echoing the same view, U.S. Secretary of State Rex Tillerson said: “We can almost start the countdown clock as to when they will resume the nuclear weapons capability”, Fox News, 20 September 2017.

<sup>57</sup> In 2024, some restrictions on the production and testing of advanced centrifuges are relaxed; in 2026, Iran can start phasing out its first-generation centrifuges, but its total enrichment capacity (less than a third of what it was prior to the deal) will remain at the 2016 level until 2028. Until 2031, the level of enrichment 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 goes on 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 AP in 2023 in conjunction with Congress permanently lifting its nuclear sanctions, IAEA’s enhanced access will be perpetual.

<sup>58</sup> Iran conducted three ballistic-missile tests in 2017: of the Khorramshahr medium-range missile in January and September, and the short-range anti-ship Hormuz-2 missile in March. It also tested the Simorgh space launch vehicle in July. In June, Iran fired six short-range Zolfagar missiles at the Islamic State in Syria’s Deir al-Zour province in retaliation for the group’s attacks in Tehran earlier that month. “Western nations decry Iran space launch; U.S. levies sanctions”, Associated Press, 28 July 2017; “Iran launches missiles into eastern Syria, targets ISIS”, CNN, 19 June 2017.

<sup>59</sup> “Tillerson: Iran in ‘technical compliance’ with nuclear deal, but problems remain”, CBS, 20 September 2017. A European official rejected this argument, noting that “the sentence that Tillerson refers to [that the JCPOA will positively contribute to regional and international peace and security] is in the preface to the preamble of a non-binding agreement and has no weight whatsoever”. Crisis Group interview, New York, September 2017.

<sup>60</sup> “President Donald J. Trump’s new strategy on Iran”, White House, 13 October 2017.

<sup>61</sup> “CIA docs from Osama bin Laden raid suggest Iran-al Qaeda link”, Associated Press, 2 November 2017; “North Korea, Iran draw suspicion over nuclear cooperation”, *Wall Street Journal*, 20 September 2017; “Haley’s ‘smoking gun’ on Iran met with skepticism at U.N.”, *Foreign Policy*, 14 December 2017.

The other countries that negotiated the deal all reacted to the administration's failure to recertify it with expressions of continued support for the JCPOA.<sup>62</sup> Iran shrugged off the decision. Rouhani said, "[Trump's] speech tonight showed that the [JCPOA] is much stronger than what this gentleman thought during the presidential campaign. This is an international, multilateral deal. It is not a document between Iran and the U.S. that he can treat the way that he likes".<sup>63</sup>

The administration and key lawmakers, their rhetoric notwithstanding, were disinclined to reimpose nuclear-related sanctions, which would be tantamount to a unilateral U.S. exit from the deal and thus a recipe for U.S. isolation and condemnation by its allies.<sup>64</sup> Instead, they gravitated toward a more subtle but potentially damaging approach: they threatened to legislate an automatic snapback of sanctions that Congress previously had suspended if, among other things, Iran were to expand its nuclear program, as the agreement entitles it to, after some of the JCPOA's restraints lapse.<sup>65</sup>

Depending on its precise language, such an attempt to force alteration of the JCPOA could well constitute a violation of the accord. But its enactment requires 60 votes in the Senate and thus buy-in from Democrats, who conditioned their support on compliance with the JCPOA and bringing European allies on board. Several weeks of intensive congressional consultations and discussions with France, Germany, the UK and the EU so far have not produced any concrete result. Consumed with tax reform and other legislative priorities, Congress delayed negotiations. What internal deliberations have occurred have yet to result in consensus on a bill that would tighten nuclear restrictions on Iran pursuant to the White House's desire, end the Trump's obligation to certify or decertify the deal every 90 days and secure buy-in from U.S. allies.<sup>66</sup>

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<sup>62</sup> "Declaration by the Heads of State and Governments of France, Germany and the United Kingdom", 10 Downing Street, 13 October 2017; "Iran, EU and Russia defend nuclear deal after Trump threat", Reuters, 13 October 2017; "EU 28 committed to full and effective implementation of Iran deal", EU External Action Service, 16 October 2017.

<sup>63</sup> "Iran's president fires back at Trump on nuclear deal", *Washington Post*, 13 October 2017. Foreign Minister Javad Zarif used it to question U.S. credibility: "Nobody else will trust any U.S. administration to engage in any long-term negotiation because the duration of any commitment from now on with any U.S. administration would be the remainder of the term of that president". CBS, 14 October 2017.

<sup>64</sup> Crisis Group interviews, U.S. Congressional staff, October 2017.

<sup>65</sup> Senate foreign relations committee chairman, Bob Corker and Tom Cotton, both Republicans, prepared a bill – a draft of which was seen by Crisis Group – that would reimpose waived U.S. sanctions if at any time Iran's "breakout period" of being able to accumulate enough nuclear material for one weapon falls below one year. It included other sanctions triggers related to Iran's nuclear research and development of ballistic-missiles. "Corker, Cotton to propose bill changing Iran deal oversight", *The Hill*, 13 October 2017.

<sup>66</sup> Democrats made it clear that the onus was on the Trump administration and Republicans to get European support and rejected amendments that would deprive Congress of its ability to exercise oversight of the deal's implementation. Crisis Group interviews, Congressional staff, Washington DC, December 2017.

In late 2017-early 2018, work was continuing on finding a legislative solution.<sup>67</sup> Privately, European officials expressed willingness to work with the administration in order to ensure Trump waived the sanctions, while expressing concern that the drafts they had seen were inconsistent with the JCPOA. They also made clear their willingness to work more closely with the U.S. to curb Iran's ballistic-missile program and counter its regional activities. But they refuse to hold the JCPOA's fate hostage to agreement on such measures. As one official put it, "the best way for us to work more closely with Washington on issues of concern is for them to put the JCPOA aside and reassure us it will not be tinkered with. If the U.S. wants a common front, that's the way to produce it".<sup>68</sup>

Some of the deal's critics have seized on French President Emmanuel Macron's stated willingness to supplement the agreement by addressing ballistic missiles and extending the duration of some constraints on Iran's nuclear program as a sign that Paris is open to a renegotiation.<sup>69</sup> That appears to be a mistaken and self-serving interpretation. Macron, like leaders of all other P5+1 states, repeatedly has emphasised the primary importance of preserving the JCPOA. True, France and others wish to address other aspects of Iran's approach, like its ballistic-missile program or regional activities, and see pressure and diplomacy as twin tools to that end. But they do not propose doing so by holding the JCPOA hostage or threatening to violate it in the event such a supplemental deal cannot be reached.<sup>70</sup>

While Trump, echoing Israeli Prime Minister Benjamin Netanyahu's recommendation to "fix or nix" the deal, threatened that "in the event we are not able to reach a solution working with Congress and our allies, then the agreement will be terminated", the risks associated with a go-it-alone U.S. policy of tanking the deal combined with the prospect of Congress coming up with a legislative answer led him to kick the can down the road once more.<sup>71</sup>

On 12 January, while again refraining from recertifying Iran's compliance with the JCPOA, and "despite [his] strong inclinations", Trump extended the waivers suspending U.S. nuclear-related sanctions as required by the deal. But he warned that this was the last extension he would implement unless Congress and Europe "fix[ed] the deal's disastrous flaws". Of Congress, he demanded bipartisan legislation that would do the following:

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<sup>67</sup> Crisis Group interviews, congressional staffers and lobbyists, Washington DC, December 2017. Senator Bob Corker, chairman of the senate foreign relations committee, said, "I'm actually feeling like we might get someplace". Quoted in Michael Crowley, "How Trump could kill the Iran nuclear deal in January", *Politico*, 28 December 2017. U.S. diplomats confirmed that a legislative compromise was in the works. Crisis Group interviews, Washington DC, December 2017.

<sup>68</sup> Crisis Group interviews, senior EU official, Rome, December 2017; senior European officials, Paris, London, Brussels, Berlin, November-December 2017.

<sup>69</sup> "Iran rejects Macron call for talks on Iranian missiles", Reuters, 12 November 2017.

<sup>70</sup> Crisis Group interviews, French officials, Paris, November 2017. "France seeks to save Iran nuclear deal", Associated Press, 15 October 2017.

<sup>71</sup> "Remarks by President Trump on Iran Strategy", op. cit.; "Netanyahu's address to UN General Assembly", *Haartz*, 19 September 2017.

- “demand that Iran allow immediate inspections at all sites requested by international inspectors”;
- “ensure that Iran never even comes close to possessing a nuclear weapon”;
- “contain no expiration date” for these provisions, and link automatic snapback of U.S. nuclear sanctions to Iran’s refusal to oblige by them; and finally,
- “explicitly state that long-range missile and nuclear weapons programs are inseparable, and that Iran’s development and testing of missiles should be subject to severe sanctions”.

Simultaneously, Trump insisted that the Europeans agree “to fix the terrible flaws of the Iran nuclear deal” in such a manner that new multilateral sanctions would be imposed if Iran at any time “develops or tests long-range missiles, thwarts inspections, or makes progress toward a nuclear weapon”.<sup>72</sup> In parallel, the Trump administration levied a new set of sanctions against Iran, targeting fourteen officials and institutions involved in repressing the protesters in early January, in weapons proliferation and cyber activities.<sup>73</sup>

The statement is somewhat fuzzy in several substantive aspects. The conditions required of Congress are not strictly identical to those demanded of Europe; the latter is asked to *agree* to fix the deal, not to fix it; and some of the requirements addressed to both actors are somewhat vague and, perhaps, open to interpretation.<sup>74</sup> This could leave some wiggle room for negotiations. But substantive imprecision was matched by tonal clarity: “this is a last chance”, Trump said, asserting that absent a fix, and Europe’s agreement he would “not again waive sanctions”. And, haziness aside, it is hard to escape the conclusion that by fix he means making the accord’s constraints everlasting and subjecting Iran to new, automatic U.S. and multilateral sanctions for activity permitted by the JCPOA. That is both unrealistic and plainly at odds with the deal

A year into the Trump administration, questions continue to surround its ultimate objective with regard to the JCPOA – or whether it even has one. It often argues that the JCPOA is flawed because it only delays Iran’s nuclear capabilities, has insufficient inspection authorities, provided Iran with excessive upfront sanctions relief, and failed to curb Iran’s ballistic-missile program and regional clout.<sup>75</sup> But its opposition to the JCPOA stems less from the accord’s technical details, or scope, or implementation record than from its narrow nature as an arms-control agreement that allows an adversary to come in from the cold and normalise its nuclear program without altering its policies more broadly. Senator Tom Cotton, an ally of the administration, put it unambiguously: “Let’s understand the Iranian threat. It’s not the

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<sup>72</sup> “Statement by the President on the Iran Nuclear Deal”, White House, 12 January 2018.

<sup>73</sup> These included the head of Iran’s judiciary, Sadegh Amoli Larijani. “Iran Designations, Non-proliferation Designations”, U.S. Treasury Department, 12 January 2018.

<sup>74</sup> In theory, one could argue for example that the JCPOA requires that Iran never come close to possessing a nuclear weapon, and that missile development and testing already is subject to sanctions. Still, Trump seemed to insist on new requirements and that non-compliance with them would prompt automatic reimposition of sanctions.

<sup>75</sup> For a detailed description, see “Ambassador Nikki Haley’s Remarks on Iran and the JCPOA”, American Enterprise Institute, 5 September 2017.

deal's technical flaws, though there are a lot of those. The threat is not the nature of Iran's weapons; it's the nature of Iran's regime".<sup>76</sup>

Questions over whether arm-twisting as opposed to diplomatic engagement (with Europe, but also Iran and other JCPOA co-signatories) would produce better results, or whether derailing the accord would strengthen or weaken U.S. ability to negotiate a better one or address other outstanding concerns often appear mere afterthoughts. Moreover, if the objective was, as a senior White House official put it, "to prevent the nuclear tail from wagging the rest of the Iran-policy dog", as it accuses its predecessor of doing, its refusal to recertify the deal has brought the JCPOA and its future back into the spotlight, overshadowing most other debates.<sup>77</sup>

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<sup>76</sup> "Cotton Calls for Decertifying the Iran Deal", Senator Cotton's office, 3 October 2017. For a similar view by one of the administration advisers on Iran, see Mark Dubowitz, "Confront Iran the Reagan way", *Wall Street Journal*, 4 July 2017.

<sup>77</sup> Crisis Group interview, Washington DC, October 2017. Ambassador Haley echoed the same view: "The nuclear deal must not become 'too big to fail'". "Ambassador Haley on Iran's Threats to Quit the JCPOA", U.S. mission to the UN, 15 August 2017.



#### IV. Candle in the Wind?

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The Trump administration's simultaneous decisions not to recertify the JCPOA, extend sanctions relief, and impose new sanctions while threatening to kill the deal next time – which a prominent critic of the deal dubbed “decertify, waive and slap” – has bought four additional months for Washington to decide what it will do.<sup>78</sup> Legislation that partly addresses White House concerns over the JCPOA might still be within reach, but several risks exist: such a bill might violate the deal's plain language (eg, by unilaterally extending the time horizon of certain constraints, or by tying sanctions snapback to activities not covered by the JCPOA, such as Iran's ballistic-missile program) and thus potentially trigger a parallel Iranian violation;<sup>79</sup> no such bill might emerge and Trump could decide to reimpose sanctions in May; the U.S. and Europe could fail to concur on a so-called “supplemental agreement”, again provoking resumption of U.S. sanctions; a clash could occur involving the U.S., Iran and their respective allies; and continued imposition of U.S. sanctions – such as those announced on 12 January – could be viewed by Tehran as inconsistent with the deal and, by incrementally eroding its economic benefits, lead Iran to question the JCPOA's value.<sup>80</sup>

The mere prospect of one of these outcomes, let alone their realisation, could seriously destabilise the JCPOA and threaten its survival. The White House might welcome this, as it would allow the U.S., as a senior Iranian official said, “to have its cake and eat it, too”: either by ensuring that Iran complies with the agreement's nuclear provisions without enjoying its economic benefits, or by pushing Iran to exit the deal.<sup>81</sup> Already, failure to issue the certification in October, which had no immediate practical consequence and, in the words of a Trump administration official, was a “big nothing-burger”, adversely affected future plans of half the companies surveyed by Crisis Group – a dynamic that could have a snowball effect, as 67 per cent

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<sup>78</sup> Mark Dubowitz and David Albright, “How Trump can improve the Iran deal”, *Wall Street Journal*, 25 September 2017.

<sup>79</sup> Iran can be expected to pursue its missile program, despite sanctions, a legacy of its having been the victim of Iraqi missiles during the 1980-1988 war and a product of inferior conventional military capabilities compared to those of its neighbours. The P5+1's Western members perceive Iran's missile tests as inconsistent with Security Council Resolution 2231, whereas Tehran does not. The resolution “calls upon” Iran not to undertake until 2023 any activity related to ballistic missiles “designed to be capable of delivering nuclear weapons”. The language is non-binding, and lack of an internationally-agreed definition of nuclear-capable missiles invites diverging views on the Iranian program. According to the Missile Technology Control Regime (MTCR), missiles able to carry a 500kg payload at least 300km could carry weapons of mass destruction. That said, Iran did commit in 2011 – and then publicly in 2017 – to restrict its missile range to about 2,000km and focus on their accuracy. “Iran: No need to extend 2,000km ballistic missile range”, Al Jazeera, 31 October 2017. Israel and Saudi Arabia possess the longest-range ballistic missiles in the Middle East, as well as sophisticated anti-missile defence systems. Kelsey Davenport, “Worldwide ballistic missile inventories”, Arms Control Association, December 2017.

<sup>80</sup> One of the entities targeted on 12 January, Iran Aircraft Industries, was delisted pursuant to the JCPOA's implementation. While the pretext was non-nuclear, such measures could become a matter of controversy with Iran.

<sup>81</sup> Crisis Group interview, New York, September 2017.

report that “the apparent movement of other companies in the market” is somewhat or very important to their company’s decision-making (see graph 2 in Appendix A).<sup>82</sup>

One potentially damaging measure already could be in the works: an attempt to derail Iran’s ability to purchase civilian aircraft by claiming Iran uses these to ferry weapons and military personnel to Syria.<sup>83</sup> Boeing, Airbus and ATR (a Franco-Italian aircraft manufacturer) have signed contracts to sell around 300 jetliners to Iranian airlines worth nearly \$40 billion. Since coming to office, the Trump administration has not issued any new licenses for delivering aircraft to Iran; scuttling these deals would violate a U.S. commitment under the JCPOA to facilitate these sales.<sup>84</sup>

Iran’s strategy, absent a blatant U.S. violation that would render the political costs of remaining in the deal unbearable and the economic advantages insufficient, is to play victim, blame Washington and hope to erode new U.S. sanctions by driving a wedge between the U.S. and its partners. As a senior Iranian official said:

The Trump administration wants to turn the JCPOA into an empty shell by creating uncertainty around it and depriving us of its economic dividends. By not playing into their hands, remaining committed to the deal, and refraining from provocations, we will isolate them and turn their sanctions into an empty shell. This is Iran’s strategic patience at play.<sup>85</sup>

Although some hardline voices in Tehran advocate retaliation by resuscitating Iran’s nuclear program and reducing cooperation with the IAEA, there seems to be a consensus within the senior leadership that Iran should not be the first to violate the JCPOA.<sup>86</sup> What is less certain is how Iran would respond should the U.S. patently violate or withdraw from the deal, enshrine the deletion of the JCPOA’s various experi-

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<sup>82</sup> Crisis Group interview, Washington, January 2018. For examples of companies getting cold feet, see “Bouygues deal to build Tehran airport terminal cancelled”, Reuters, 5 May 2017; “China’s CNPC weighs taking over Iran project if Total leaves”, Reuters, 15 December 2017.

<sup>83</sup> Felicia Schwartz and Ian Talley, “Boeing, Airbus sales imperilled as Trump administration formulates Iran plan”, *Wall Street Journal*, 15 December 2017. There is no evidence of suspicious IranAir flights to Syria since May 2017. Crisis Group interviews, aviation experts, London, November 2017. However, as a U.S. Congressional staffer put it, “even one would suffice to scuttle the deal”. Crisis Group interview, Washington, December 2017.

<sup>84</sup> JCPOA Annex II, Section B, Paragraph 5. Iran has missed several deadlines to pay Boeing for its purchases out of fear that it could lose its investment if the Trump administration annuls the contract. Crisis Group interviews, U.S. and Iranian officials, Washington and Vienna, December 2017. Congress attempted several times in 2017 to block Boeing sales, which would also doom the deal with Airbus, which requires U.S. licensing to sell any planes containing more than 10 per cent U.S.-made content. “U.S. House votes to bar sales of commercial aircraft to Iran”, Reuters, 17 November 2017.

<sup>85</sup> Crisis Group interview, New York, September 2017.

<sup>86</sup> “Iran says it will not be the first to violate nuclear deal”, Reuters, 20 September 2017. A former Iranian nuclear negotiator under President Mahmoud Ahmadinejad wrote: “What it takes is for Mr. Rouhani to change its appeasing approach after five years and resolutely stop implementing parts of Iran’s JCPOA obligations. You’ll then see how the U.S. calculus will start changing”. Mehdi Mohammadi, “1929 ترامپی” [“Trump’s version of 1929”], *Vatan Emrouz*, 18 August 2017. Tellingly, during the 2017 presidential campaign, hardline candidates did not challenge the JCPOA but disagreed with Rouhani over the extent to which post-sanctions trade and investment could be relied upon to spur Iran’s economic recovery. Erin Cunningham, “Iran’s presidential candidates vow to uphold nuclear deal in televised debate”, *Washington Post*, 5 May 2017.

rations dates in law or if the accord's benefits were to diminish to the point where preserving it becomes indefensible in Iran.<sup>87</sup> Some Iranian officials have indicated that under such circumstances, Iran would ratchet up its nuclear program beyond the threshold permitted by the JCPOA.<sup>88</sup> Ultimately, Tehran's decision likely will be guided both by political interests (such as the desire to maintain robust relations with Europe and isolate the U.S.), and commercial considerations, ie, maintaining trade and business relations with the rest of the world.<sup>89</sup>

Developments not directly related to the JCPOA also could strain it beyond breaking point. As detailed and explained in Crisis Group's Trigger List, escalation on one front could provoke escalation on another: perceived or real U.S. JCPOA violations could prompt Iran to respond asymmetrically by targeting U.S. forces in Iraq or Syria, in turn provoking a U.S. military response; another Huthi missile launch against Saudi Arabia could result in U.S. or Saudi retaliation against Iran; an Israeli airstrike against a target in Syria could trigger Hizbollah retaliation, in turn engulfing Lebanon.<sup>90</sup> Rising tensions also could push Iran to double down on its ballistic-missile program. Any of these could prompt tighter U.S. economic retribution and eventually make it impossible for Trump to continue waiving sanctions – or politically easier not to do so.

Dialogue that could alleviate the growing sense of impending crisis seems unlikely. The Trump administration has closed the small diplomatic openings crafted with Iran during the nuclear talks. Ayatollah Khamenei feels vindicated in his habitual mistrust of the U.S. Iran sees no justification or need to initiate the first de-escalatory move toward its regional rivals, while Saudi Arabia is convinced that only after it has restored strategic balance might dialogue be useful.<sup>91</sup> This is a recipe for a precarious standstill that could deliberately or inadvertently descend into direct conflict.

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<sup>87</sup> "Khamenei says Iran will 'shred' nuclear deal if U.S. quits it", Reuters, 18 October 2017. The Iranian parliament has mandated the government to ratchet up uranium enrichment and reduce cooperation with UN inspectors should the U.S. renege on the accord. "Law on the Proportional and Reciprocal Measures ... in Implementing the JCPOA", Iranian parliament, 15 October 2015. The full text is available here: <https://www.belfercenter.org/publication/translation-iranian-legislation-approving-nuclear-deal>.

<sup>88</sup> A senior Iranian official said, "instructions have been issued to the foreign ministry and atomic energy organisation of Iran to speed up the nuclear program the moment we activate JCPOA's paragraph 36, citing non-compliance by the U.S." Crisis Group interview, Tehran, 7 January 2018. "صالحی: در فردو ۴ روزه به تولید ۲۰ درصد می‌رسیم" ["Salehi: We'll achieve 20 per cent enrichment in Fordow in four days"], ISNA, 4 November 2017.

<sup>89</sup> Crisis Group interviews, New York, Berlin, Moscow, September-December 2017.

<sup>90</sup> These flashpoints can be monitored on Crisis Group's Iran-U.S. Trigger List: <https://www.crisisgroup.org/trigger-list/iran-us-trigger-list>.

<sup>91</sup> Crisis Group interviews, senior Iranian officials, New York and Berlin, September and December 2017; senior Saudi officials, Riyadh, May 2017.

## V. Hoping for the Best, Preparing for the Worst

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In short, if the U.S. currently has decided not to walk away from the deal, there is little room for complacency. Trump has put himself in a rhetorical corner and other U.S. steps or regional events could endanger the JCPOA's survival. It is not too soon for other co-signatories, and Europe in particular, to think of measures that would ensure Tehran remains compliant in the face of diminishing economic returns or, worse, a full-fledged U.S. pullout.

For now, Washington's European allies likely will continue to explore whether there is a viable path to placate the White House.<sup>92</sup> This will be a tough balancing act, as dealing with U.S. concerns in the way the White House has suggested most probably would entail a violation of the very deal European engagement is designed to salvage. The same holds true for Democrats and some Republicans in the U.S. Congress, who will look to Europe's assessment before concluding whether legislation designed to "fix" the JCPOA in fact contravenes it. Discussions in Congress and between the administration and its European allies have focused in particular on the so-called sunset clauses; they also have touched upon other, non-nuclear topics including Iran's ballistic-missile program.

Optimally, these would have been addressed in renewed negotiations between the P5+1 and Iran aimed at forging a follow-on agreement. But if President Trump truly sought such a better-for-better agreement, along the lines Crisis Group recommended before his inauguration, it would have taken a starkly different route: building trust by implementing the JCPOA in good faith and then exploring mutually-beneficial arrangements that would strengthen some of the JCPOA's nuclear provisions or add non-nuclear ones in return for positive incentives, such as relief from U.S. primary embargo.<sup>93</sup>

That road seems foreclosed, at least for the time being: Iranian leaders have made plain they will not renegotiate a just-concluded deal under pressure from a co-signatory that is threatening to walk away and whose compliance with the agreement's provisions they already question.<sup>94</sup> Even the more pragmatic among the Iranian leaders believe that renegotiation with an administration that is seeking maximalist objectives, such as indefinite limits on Iran's nuclear program, through a pressure-centric approach is bound to fail and could bring down the JCPOA with it.<sup>95</sup> As a close confidante of Rouhani put it, "there will be no negotiations with the U.S. before 2020. If Washington believes it can negotiate with the same government it says it wants to topple, it is deluding itself. Moreover, Rouhani and Foreign Minister

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<sup>92</sup> Crisis Group telephone interviews, senior European officials, January 2018.

<sup>93</sup> Crisis Group wrote: "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 Report, *Implementing the Iran Nuclear Deal*, op. cit.

<sup>94</sup> Since implementation, Zarif has sent ten letters to EU's Federica Mogherini, who is the Joint Commission's coordinator, complaining about what Iran sees as U.S. violation of the deal. Crisis Group interview, EU officials, Zurich, October 2017. "Iran nuclear deal cannot be renegotiated: Rouhani", Reuters, 21 September 2017.

<sup>95</sup> Crisis Group interview, senior Iranian officials, New York, July 2017.

Javad Zarif have exhausted their political capital on the JCPOA and don't have much to show for it".<sup>96</sup>

Instead, the administration has resorted to the threat of unilaterally altering the existing accord. As seen, Trump has insisted on tying the reimposition of sanctions to Iranian steps that would be compliant with the JCPOA after certain constraints lapse. This is risky. While, in the words of a senior European official, it would constitute a "crisis deferred", sanctions imposed for such reasons likely would represent a JCPOA violation to which Iran could react, setting in motion a dynamic that eventually could unravel the deal.<sup>97</sup> Tying the reimposition of sanctions to Iran's ballistic-missile activities, would also conflict with the JCPOA. It would make no sense for Europe (or Congressional Democrats for that matter) to try to save the deal in a manner that risks killing it – only this time, with their imprimatur.

Even as efforts to mollify Trump in a manner consistent with the deal continue, therefore, Europe should think of a Plan B: how to preserve the essence of the deal in terms of Iran's obligations irrespective of Washington's actions, just as members of the international community have sought to salvage the Paris Climate accord despite the U.S.'s withdrawal, or Pacific nations have put together an alternative trade pact despite Trump's rejection of the Trans Pacific Partnership.

Discussion in Tehran and European capitals has centred on whether Europe could effectively stand up to U.S. pressure and continue to engage in business transactions with Iran should U.S. secondary sanctions be reimposed. European businesses would face the choice of either scaling back their (relatively modest) Iranian trade and investment or risk jeopardising access to the far larger and more lucrative U.S. market. As U.S. officials see it, this is a no-brainer. In response, European officials publicly claim that as long as key European stakeholders remain united and Iran remains committed to the deal, they can guarantee Iran's economic incentives and keep the deal from unravelling by protecting their businesses against U.S. sanctions – though in private many are far less sanguine.<sup>98</sup>

Europe's determination to protect the deal stems less from economic than from political calculations – the fear that breaking the deal would heighten regional tensions, potentially unleash Iran's nuclear program, and call into doubt the reliability

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<sup>96</sup> Crisis Group interview, Tehran, November 2017.

<sup>97</sup> Crisis Group interview, January 2018. Iran would in any event flatly reject what would amount to a demand for perpetual extraordinary restrictions on Iran's nuclear program. Iranian officials adamantly refuse to see their country treated as an outlier among NPT signatories. Iranians see the JCPOA's nuclear limits as voluntary, serving the purpose of building trust, until Iran can be treated like any other NPT member state. An Iranian official said: "If Trump doesn't like the JCPOA's sunset provisions, his problem is not with Iran, but with the NPT and CSA/AP". Crisis Group interview, Vienna, December 2017.

<sup>98</sup> A senior European official said: "As long as the three Ms [Germany's Angela Merkel, France's Emmanuel Macron and the UK's Theresa May] stay together, the JCPOA can weather the storm". Crisis Group interview, Berlin, 5 December 2017. Despite Prime Minister Theresa May's desire to maintain strong relations with the U.S., Donald Trump's deep unpopularity in the UK has made it virtually impossible for her to side with Trump against her European colleagues. Crisis Group interviews, senior UK officials, London, November 2017.

of multilateral agreements.<sup>99</sup> Even so, there is only so much Europe could do in the face of a reimposition of U.S. secondary sanctions or, should it come to that, a return of UN sanctions that they would feel bound to implement. An increasing number of companies inevitably will have cold feet and opt to either stay away from or leave Iran. The majority of respondents in our survey – 83 per cent – believe that if the U.S. unilaterally reimposed sanctions, European and Asian companies would be “very to somewhat” averse to trade and investment with Iran (see graph 6 in Appendix A).

Still, even with shrinking economic benefits Iran might be better off complying with the deal and preserving business ties with Europe than walking away entirely. Many companies represented in the survey conducted compliant business in Iran in the face of past sanctions; 33 per cent did not cease trading with Iran between 2006 and 2015, when multilateral sanctions were at their peak. Executives used a combination of carve-outs, licenses, and de-risking (reducing their footprint in the U.S. market) to protect Iran business ties under those conditions. Moreover, some 54 per cent of senior executives indicated that “assuming Iran remains committed to the nuclear deal”, enforcement by Europe of blocking regulations – which protect companies from U.S. penalties – would “positively affect the decision to invest in Iran” (see graph 8 in Appendix A).

So long as the U.S. reimposes sanctions unilaterally while Iran remains in compliance with its JCPOA commitments, Europe can help ensure that Iran fares better with than without a deal. Other JCPOA signatories would be in a position to work with at least some companies and ensure a modicum of economic engagement. Perhaps this is why a majority of respondents – 64 per cent – believe that the nuclear deal is “very/somewhat likely” to survive even if the U.S. were to withdraw from it (see graph 7 in Appendix A). This confidence, if cultivated, could help preserve the accord. Based on these considerations:

- ❑ France, Germany, the UK, Russia and China should clearly and publicly reiterate their position that they will neither alter the JCPOA nor comply with unwarranted unilateral U.S. sanctions on Iran and will continue to abide by their own obligations.
- ❑ European countries in particular should revive their “Blocking Regulations” prohibiting compliance with U.S. extraterritorial sanctions, thereby making clear that they will not give effect to U.S. judgments and administrative determinations pursuant to such sanctions, and that companies will be reimbursed for fines and other damages incurred for alleged sanctions violations.<sup>100</sup> Although European officials are loath to resort to these measures, which have rarely been enforced and could lead to a transatlantic trade war, the costs arguably would be less than

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<sup>99</sup> A German official said: “Only 0.22 per cent of almost €1 trillion in German exports go to Iran. As such, it is unfair to point at German business interests as the ulterior motive behind our support for the JCPOA”. Crisis Group interview, Berlin, 5 December 2017.

<sup>100</sup> Council Regulation (EC), no. 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.

those incurred if Iran were to resume its nuclear program and prospects of U.S. or Israeli military action were revived.<sup>101</sup>

- ❑ Europe could also negotiate a long-term energy partnership with Iran and/or a bilateral investment agreement, demonstrating its long-term commitment to the JCPOA and sending a strong signal to both Tehran and Washington.<sup>102</sup>
- ❑ To overcome the banking bottleneck, a public European body could help smaller to medium size firms conduct due diligence in Iran to ensure their local partners are not targeted by the remaining EU or UN sanctions. This would be akin to the role played by the European Bank for Reconstruction and Development in Eastern Europe after the Soviet Union's dissolution, and elsewhere today.
- ❑ The EU could expedite the process of allowing Iran to become a European Investment Bank partner to support private sector and infrastructure development in the country.<sup>103</sup>
- ❑ While protecting the JCPOA and bolstering trade with Iran, European countries should diplomatically engage Tehran to find options for deescalating tensions in the region and enhancing the country's human rights record.
- ❑ To respond to and facilitate Europe's proactive efforts, Iran should enact the FATF's legal instrument against anti-money laundering and counter-terrorism financing before the FATF's action plan deadline at the end of January 2018. Continued progress on these fronts would facilitate Iran's reintegration into the global financial system by enhancing financial transparency and governance, thus encouraging greater economic investment in the country.

Other steps could help both bolster Iran's incentives to remain in the deal and international confidence that Iran's nuclear program will remain strictly civilian, while reducing regional tensions – all of which would make it politically easier for Europe to remain economically and diplomatically engaged with Tehran. To that end:

- ❑ Various countries could increase their nuclear cooperation with Tehran, for example over nuclear safety and security, for which the JCPOA's Annex III provides a good starting point.<sup>104</sup>

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<sup>101</sup> Crisis Group interviews, senior European officials, Brussels, Rome, Berlin, November-December 2017.

<sup>102</sup> The EU Energy Commissioner visited Tehran twice (in April 2016 and April 2017) to discuss energy cooperation; but these efforts should be stepped up. Due to their World Trade Organisation membership, European countries cannot offer preferential trade agreements to non-members like Iran, but can sign bilateral trade deals. Crisis Group email correspondent, EU official, 10 January 2018.

<sup>103</sup> Saeed Kamali Dehghan, "Europe's business heads aim to keep Iran nuclear deal despite US threat", *The Guardian*, 6 October 2017. Iran is now on the list of "potentially eligible countries" for the European Investment Bank's external lending after completion of the legal procedure between the EU Council and European Parliament. The final step is an internal EU commission procedure. Crisis Group email correspondent, EU official, 10 January 2018.

<sup>104</sup> For specific recommendations, see Kelsey Davenport, "Building on the Iran deal to enhance nuclear security", Atlantic Council, 7 July 2017.

- ❑ As a means of addressing concerns over the JCPOA's sunset provisions, either existing enrichment consortiums, like Urenco, or regional governments could approach Tehran to start a multinational enrichment plant, which would allow peer scrutiny over Iran's nuclear program even after its JCPOA limitations elapse.<sup>105</sup>
- ❑ Iran could invite officials from the 1996 Comprehensive Nuclear Test-Ban Treaty (CTBT) organisation to Tehran, start transmitting data from CTBT monitoring stations on its soil to the international data centre in Vienna and set a timeframe for ratifying the CTBT in accordance with Ayatollah Khamenei's *fatwa* against nuclear weapons and the global Treaty on the Prohibition of Nuclear Weapons that Iran signed in 2017.<sup>106</sup>
- ❑ With regards to its missile program, Iran could sign the 2002 Hague Code of Conduct (HCOC) against ballistic-missile proliferation, which would commit Iran to providing pre-launch notifications for ballistic-missiles and space-launch vehicles and submission of an annual declaration of the country's related policies.<sup>107</sup>
- ❑ An even more significant and long overdue step would be to release dual nationals arrested in Iran on dubious charges, who are being held as virtual hostages – an issue that has poisoned relations with the West and could provide ammunition for those who advocate more sanctions.<sup>108</sup>

Finally, even as it seeks to mollify the White House, the U.S. Congress should be very careful about any legislation that would restore sanctions in response to Iranian actions either not covered or allowed by the JCPOA. Depending on how it is worded, such a bill could represent a clear-cut violation of the accord, giving license to Iran to act in reciprocal fashion. It also would set an unwelcome precedent of U.S. unreliability and thus further dim prospects for a diplomatic resolution of the nuclear crisis on the Korean peninsula.

The Trump administration already possesses all the tools required to sanction Iranian ballistic-missile activity, support for militant groups or human rights violations without contradicting the JCPOA. Congress could pass legislation that reduces the administration's certification burden, bolsters the prospect of sanctions reimposition in reaction to Iranian violations of the nuclear deal that the JCPOA adjudication mechanism fails to remedy, and express its sense that the U.S. administration should seek a follow-on agreement to address concerns over the outer years of the existing one. But it should not be complicit in an effort to undo the deal by stealth.

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<sup>105</sup> Ali Ahmad, Sidra Salahieh and Ryan Snyder, "Multinational uranium enrichment in the Middle East", *Energy Policy*, 106 (2017), pp. 103-110.

<sup>106</sup> The speaker of Iran's parliament has invited the head of CTBT to Tehran, but no date has been set. Crisis Group interview, CTBT officials, Vienna, December 2017. Three seismic stations have been installed in Iran but they are disconnected from the CTBT network. The CTBT text is at [www.ctbto.org/fileadmin/content/treaty/treatytext.tt.html](http://www.ctbto.org/fileadmin/content/treaty/treatytext.tt.html). "Iran hails UN treaty banning nuclear arms", *Financial Tribune*, 9 July 2017.

<sup>107</sup> By signing the HCOC, Iran would join the treaty's other 138 signatories. The text of the treaty is at [www.hcoc.at/documents/Hague-Code-of-Conduct-A\\_57\\_724-English.pdf](http://www.hcoc.at/documents/Hague-Code-of-Conduct-A_57_724-English.pdf).

<sup>108</sup> Bozorgmehr Sharafedin, "Iran's Revolutionary Guards arrest more dual nationals", Reuters, 9 November 2017.



## **VI. Conclusion**

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Successful implementation of the JCPOA unfortunately has done little to strengthen it despite the absence of any viable alternative mechanism for achieving its important goals. The deal is capping Iranian nuclear activity right now; it seems illogical to weaken or even abrogate it over fears about what Iran might do more than a decade from now; with the agreement unravelling, that growth could begin as soon as tomorrow. It seems equally irrational to unshackle Iran's nuclear program while simultaneously seeking to roll back its regional influence and curtail its ballistic-missile program. Yet such is the mindset among some U.S. officials and some of their outside backers.

If the White House subscribes to this warped logic, there is no reason for other JCPOA signatories to do likewise. Even as they continue seeking to persuade the Trump administration to stick to the deal, they ought to be prepared to move beyond the sterile and often counterproductive Washington policy debate and do their best to sustain the accord with or without active U.S. participation.

**Washington/Brussels, 16 January 2018**

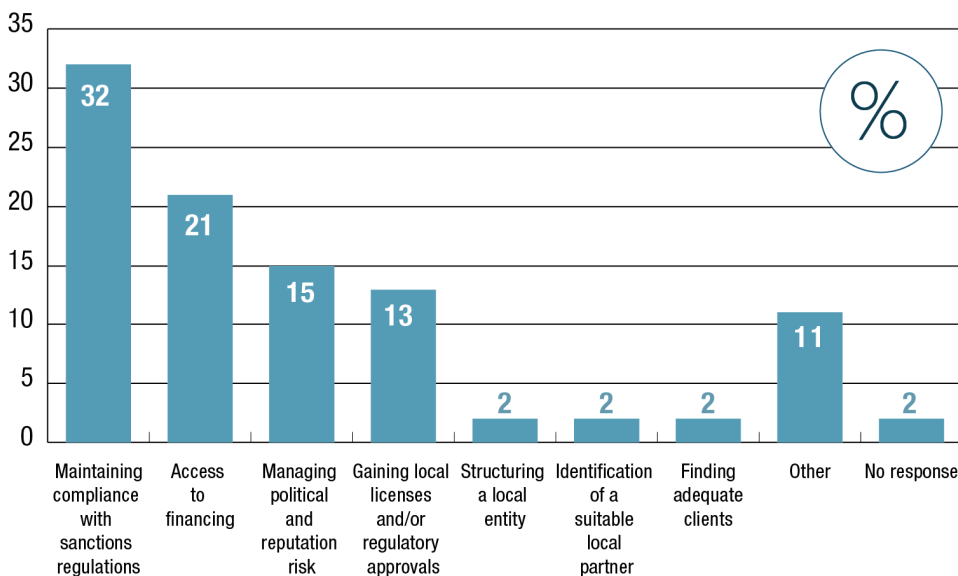
## Appendix A: Survey Results – Iran Business Attitudes

Crisis Group in collaboration with Bourse & Bazaar designed and implemented an online survey of senior managers with direct responsibilities for Iran business at multinational companies. This initial cohort includes 63 respondents, who anonymously fielded their results between 20 December 2017 and 5 January 2018.

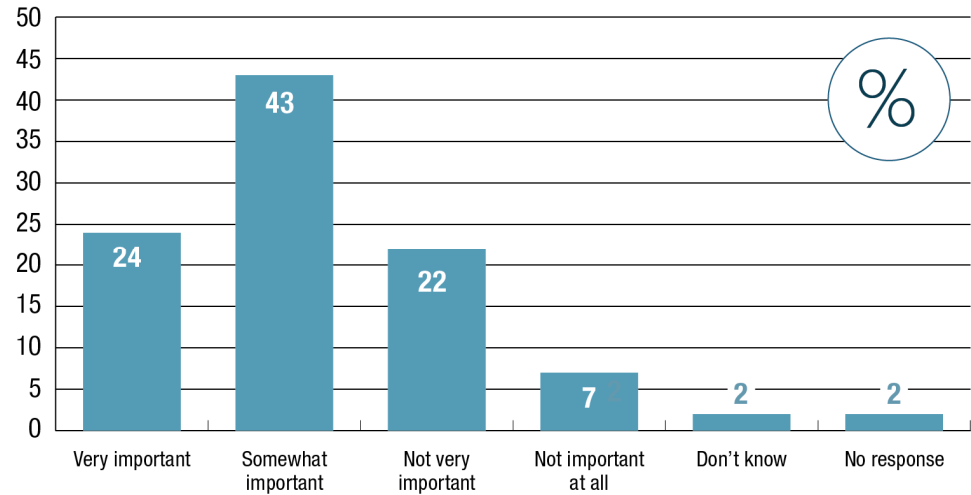
The survey was administered via a Computer Assisted Web Interview (CAWI) and included 42 questions. All questions were optional. Individuals were invited to participate on the basis of their senior position at a company pursuing commercial opportunities in Iran. While respondents included executives at a range of companies, half of those surveyed work at organisations with 10,000 or more employees globally, among them leading global energy, automotive, mining, technology, chemicals, consumer goods, and pharmaceutical companies.

Respondents were drawn from companies headquartered in nineteen countries, working across eighteen different sectors. The survey results were supplemented with interviews of several respondents to gather further qualitative insights. These interviews are quoted in this report anonymously, given the commercially sensitive nature of the information shared.

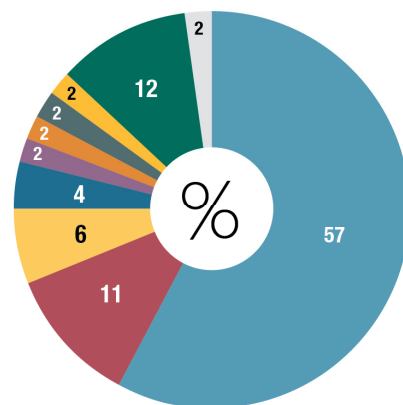
**Graph 1.** What do you feel is the primary obstacle facing your market rollout in Iran?



**Graph 2.** How important is the apparent movement of other companies in the market to your company's decision-making progress?

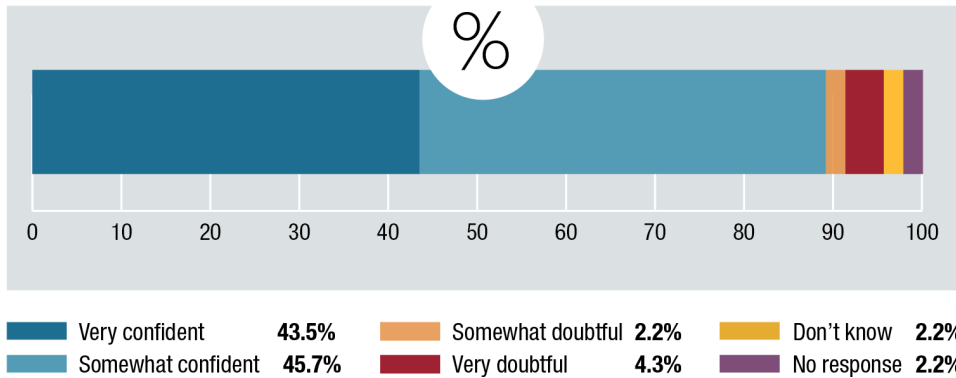


**Graph 3.** Why do you think multinationals have been slow to trade with and invest in Iran?

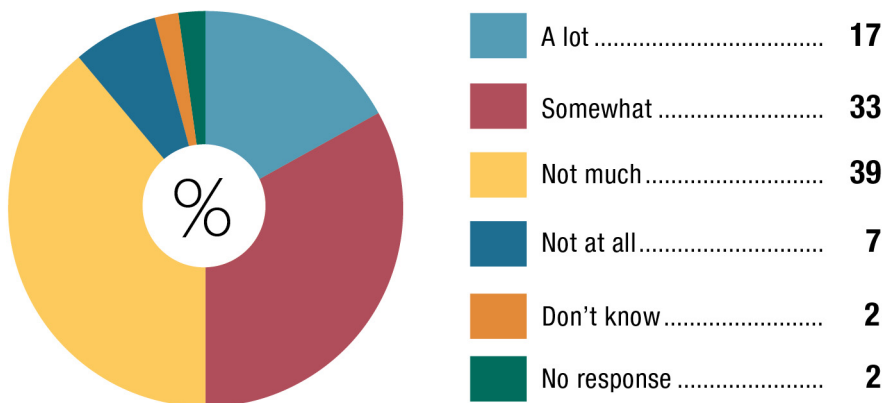


- 57 Fear of the U.S., including sanctions snapback.
- 11 Iran's weak regulatory environment and legal protections.
- 6 Reputational risks associated with doing business with Iran.
- 4 Lack of suitable business opportunities.
- 2 Regional turmoil or concerns over losing business with Iran's regional rivals.
- 2 Tensions around Iran's ballistic missile program.
- 2 Difficulties in convincing financial actors to fund joint business ventures.
- 2 A lack of willingness among the company's senior executives to explore new market opportunities in Iran.
- 12 Other.
- 2 No response.

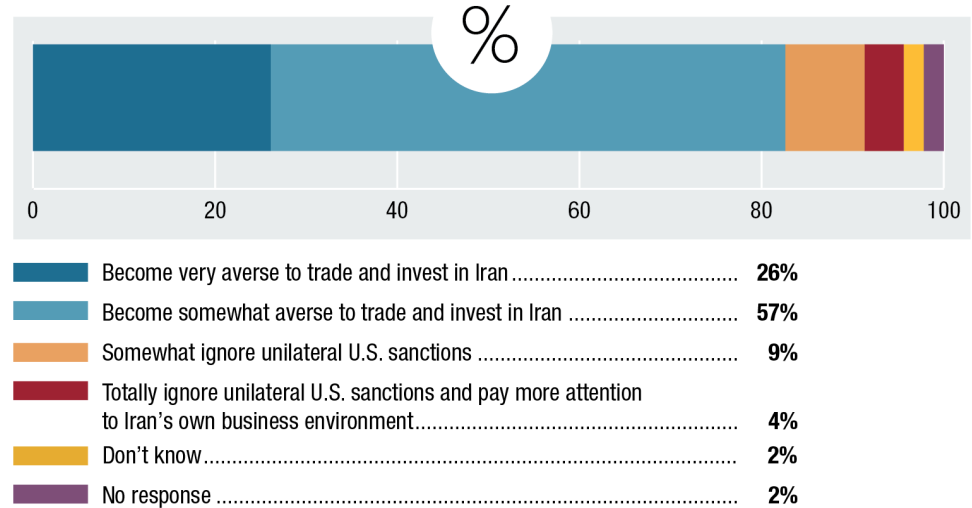
**Graph 4.** How confident are you that Iran would live up to its obligations under the nuclear deal?



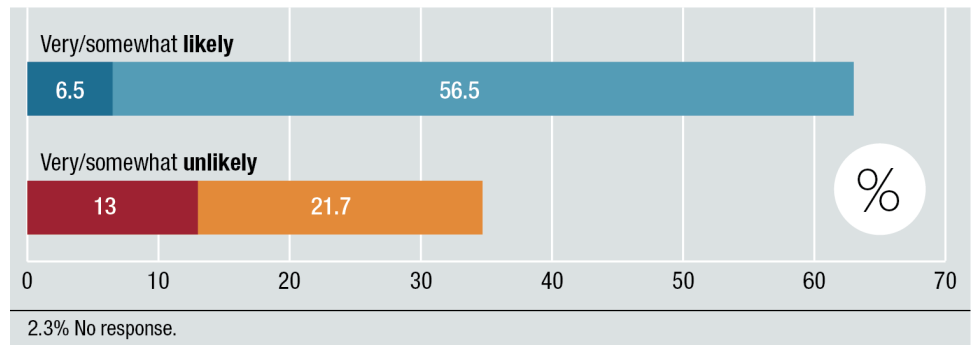
**Graph 5.** To what extent did President Trump's decision in October not to certify the nuclear deal negatively affected your company's plans to engage the Iranian market in the coming year?



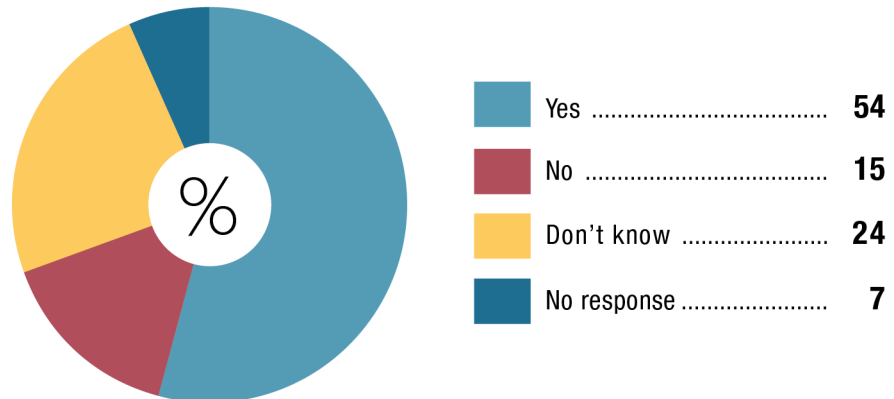
**Graph 6.** If the U.S. unilaterally reimposes some of the sanctions that were lifted under the nuclear agreement on Iran and/or decides to unilaterally impose new ones, do you think European and Asian companies would:



**Graph 7.** How likely do you think it is that the nuclear deal will survive, if the U.S. withdraws from it?



**Graph 8.** Assuming Iran remains committed to the nuclear deal, would so-called blocking regulations introduced by European governments in order to prevent U.S. authorities from penalizing your company over Iran business, positively affect your decision to invest in Iran?



## Appendix B: About the International Crisis Group

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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.

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**January 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).

### 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).

### 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).

### 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).



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