

Phasing out the Iran sanctions – feasibility and challenges for the EU

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The sanctions package on Iran which is still in force today constitutes a transatlantic sanctions 'operation'. While the transatlantic partners originally followed different approaches, since 2010 the EU adopted many of the sanctions the US had in place against Tehran.

Indeed, the constellation constitutes a hybrid example between UN measures and autonomous EU measures partly modelled on those of the US, because the EU is neither 'merely' implementing UN sanctions nor imposing genuinely autonomous sanctions in the absence of UN mandate.

While the sanctions adopted by the EU never achieved the level of severity of those of the US, they had a magnifying effect on account of the strong trade ties it had entertained with Iran up to that point. After some sanctions relief was offered of November 2013, drafting a plan towards the termination of sanctions is part of the deal that is about to be struck between and the EU3+3.

Brussels and Washington have often imposed sanctions jointly. However, what is peculiar in the present case is that they must co-ordinate lifting as part of a deal with the target.

My presentation is in three parts:

- First, I will outline key differences in sanctions lifting between the US and the EU:
- Secondly, I will focus on the challenges associated with the easing of sanctions on Iran.
- Finally, I will draw some lessons as to how we could better prepare for joint transatlantic lifting in future.

I. How easy is it to co-ordinate lifting for the transatlantic partners?

a) Difference in decision-making procedures

- For the EU, terminating sanctions is technically less difficult than popularly believed. About a decade ago, the EU moved from enacting open-ended sanctions to adopting so-called 'sunset clauses' foreseeing a date for the expiration of the measures. CFSP sanctions acts routinely stipulate that they 'shall be kept under constant review'.

- While open-ended sanctions regimes made continuation ostensibly easier than termination, sunset clauses reverse this situation. In theory, each member state can veto the renewal of sanctions on account of the unanimity requirement. But, in practice, efforts at consensus-building are made within the Council, which testifies to member states' commitment to a unified CFSP.

- Yet, terminating a sanctions regime is easier for the EU than for the US. In the EU, no parliamentary approval is required. In the complex US system, certain sanctions can be lifted by the President, while other sanctions – typically the most severe – can only be lifted by Congress. The winding down of sanctions regimes is often initiated by the President's lifting of some restrictions, but Congressional approval remains necessary for the complete termination of the sanctions regime (Myanmar, Cuba).

b) Difference in Approaches to sanctions

- Beyond decision-making procedures, diverging approaches to the use of sanctions exist on each side of the Atlantic: the US Congress is normally reluctant to lift sanctions before full compliance has been achieved for fear that the target will stop progress in the absence of sanctions pressure.
- By contrast, the EU is ready to terminate sanctions in the face of visible progress made by the targeted leadership, despite the absence of full compliance. In contrast to the US approach, the EU often consider that once the target has taken steps towards compliance, further progress can be best incentivised through co-operation.
- This divergence is reflected in the duration of sanctions regimes: US sanctions sometimes remain in place for decades. Indeed, when the current crises in Iran or Syria erupted, the US had had sanctions in place since the late 1970s. By contrast, the EU sees sanctions as a way of providing an impulse and an incentive to initiate a process of negotiation with the target, but it does not consider it as a long-term policy.
- EU sanctions lifting are often terminated in several rounds, which normally last from two to three years. They tend to go through several stages: First partial suspension- then full suspension- then full lifting.
- In the context of its Partnership agreement with Sub-Saharan Africa, it even developed what was called the gradual and conditional approach, which is meant to do exactly what the current phasing out of sanctions intends to do: **lifting sanctions gradually while monitoring compliance and making further easing conditional upon continued progress by the target.**

II. Challenges of the phasing out Iran sanctions

When phasing out the sanctions regime currently in place on Tehran, the EU is facing a twofold challenge:

a/ The phasing out of measures should allow the Iranian economy to soon display signs of recovery while ensuring that the progress made towards compliance cannot easily be reversed.

b/ At the same time, the lifting strategy must be co-ordinated with the US.

- Why does the sequencing of EU and US sanctions relief be coordinated?
 - Not simply to demonstrate that Brussels and Washington build a common front.
 - Given that many of the sanctions imposed by the transatlantic partners coincide, the impact of solely lifting EU measures would be limited due to the phenomenon of 'over-compliance'. In the absence of a parallel lifting of US sanctions, EU businesses (in particular banks with branches operating in the US) would be reticent to enter the

Iranian market for fear of penalties deriving from the extra-territorial nature of US sanctions.

III. What can be done to improve transatlantic co-ordination on liftings ?

- Washington and Brussels have a long record of imposing sanctions in tandem: particularly on the European continent, in Africa and Asia, less so in Latin America. However, their sanctions strategies are not always co-ordinated. Sanctions measures often do not coincide and discrepancies in sanctions policies have been a matter of controversy in the past.
- Exit strategies are easier to frame when the sanctions regime pursues clearly defined goals. While CFSP sanctions regimes routinely spell out the reasons for imposition, the exit strategies could be optimised with the help of concrete demands.
- The EU has a rich practice of specifying goals in the suspension of its agreement with individual countries from the African, Caribbean and Pacific (ACP) group in response to breaches of human rights, democratic processes or rule of law. Under article 96 of the Cotonou Agreement, consultations are held with the leadership at fault with the aim of agreeing on a 'roadmap'.
- The formulation of concrete objectives provides them with clear parameters against which progress can be measured, thereby making the reversibility of the measures more credible and facilitating the re-establishment of co-operation. The process is accompanied by regular monitoring missions by the EU to verify progress and help address possible deficits.

In sum, the termination of the Iran sanctions is a test case not only for the EU, but also for transatlantic co-operation on sanctions matters.

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