

Beyond the Vote (Part 4): Challenges for the Sanctions Regime

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Brief Analysis

Three experts discuss the need to better inform U.S. and European companies about the continued risks of doing business with Iran, including the particulars of how secondary sanctions will be enforced once the nuclear deal is implemented.

On September 16, The Washington Institute held a special one-day conference on the ramifications of the Iran nuclear agreement. The following is a rapporteur's summary of remarks by former Treasury Department official Chip Poncy, Institute research director Patrick Clawson, and Institute counterterrorism director Matthew Levitt, made in response to a [keynote address by Adam Szubin](#)

(<http://www.washingtoninstitute.org/uploads/Documents/other/SzubinTranscript20150916-v2.pdf>), the Treasury's acting under secretary for terrorism and financial intelligence. To read summaries of other panels, [visit the event hub page \(http://www.washingtoninstitute.org/policy-analysis/view/beyond-the-vote-implications-of-the-iran-nuclear-agreement\)](#).

CHIP PONCY

Unequivocal commitment to enforcement is critical as the United States implements the Iran nuclear deal. There is no question that Washington possesses the tools, relationships, and leverage to hold Iran accountable; the question is whether it will use them. Adam Szubin's remarks underscore the administration's strong commitment to not only enforce the deal, but also maintain additional sanctions that target the Iranian regime's many destabilizing activities, from terrorism to human rights abuses.

Another key challenge is the trust deficit that has emerged both globally and nationally. Although this lack of trust often manifests itself along partisan lines, there is a legitimate difference of views within the administration, within specific agencies, and within each party about how the Iranian issue should be addressed. One thing most people can agree on, however, is that the risks associated with Iran will expand going forward. The increase in exchange and traffic with the Islamic Republic, combined with the lack of clarity, mean that a commitment to enforcement is a crucial signpost for those in the business of risk management. Even when doing business with Iran is not legally prohibited, it could still be prohibitive from a risk management perspective.

As for the question of Europeans looking to engage Iran, it is instructive to break the answer down into banks, governments, businesses, and the general public. The major global banks understand that risk management is different from sanctions law, and that transactions with Iran entail significant risk. For that reason, they are unlikely to go rushing back into the country. Similarly, the manner in which governments think about combating terrorism financing and sanctions has changed dramatically in the past ten years, with a much greater culture of compliance.

Even so, businesses will be putting a lot of pressure on banks to conduct transactions with Iranian institutions, so banks will need to educate these firms about risk management. Ultimately, these challenges will grow more acute over the next several years, as G-7 economies become more invested in Iran and the cost of enforcing sanctions increases.

Informing the debate within political and popular circles is a major challenge as well. On the political front, the nuclear deal's legitimacy will depend on forgoing tit-for-tat responses and focusing on effectively enforcing global norms that affect everyone's security. And on the popular front, the public seems more concerned about data protection and privacy issues than the risks of money laundering and terrorism financing. This calls for greater efforts to educate them on why financial restrictions are an important and appropriate government tool. The administration also needs to be clear and consistent with the public about what the nuclear deal ultimately means. Thus far, U.S. officials have stated that the accord is exclusively about nuclear proliferation, and that all nonproliferation restrictions remain in place. For Iran's leaders, however, the deal seems to be about economic integration and the removal of all sanctions. The question is whose narrative will prevail.

Finally, if penalties need to be applied for Iranian violations of the agreement, Washington and its partners could start by instituting limited sanctions via peripheral players such as Belarus and Ukraine. This would send a message with relatively low risk of political repercussions from Tehran. Enforcing sanctions is not only about penalties, but about who is targeted and how.

PATRICK CLAWSON

Adam Szubin's remarks made clear that if foreign banks facilitate significant transactions with Khatam al-Anbia (the Iranian construction company owned by the Islamic Revolutionary Guards Corps, or IRGC), they will be barred from U.S. markets. That raises several issues, one of which is how European governments will react. Two decades ago, President Clinton expressed enthusiasm for the Iran and Libya Sanctions Act when signing it, but his administration promptly backed off from what Europeans perceived as extraterritorial enforcement of U.S. law on foreign companies investing in Iran's oil and gas industry.

Another issue is that European businesses are very enthusiastic about the prospect of rushing back into Iran to invest after the nuclear deal is implemented, with little understanding of the significant secondary U.S. sanctions that will remain in place. European governments are not adequately conveying to businesses that they should remain cautious about such investments. And Szubin's remarks were arguably the first time that an Obama administration official has clearly laid out the fact that secondary sanctions will remain on foreign companies who engage with blacklisted Iranian firms.

Indeed, major European banks are worried about the lack of clarity regarding U.S. enforcement, and the IRGC's extensive involvement in Iran's economy only exacerbates the problem. Much business in Iran is done via large consortiums, most of which likely contain at least one IRGC-linked company. This could mean that secondary sanctions will apply to all of the companies in these consortiums. Banks are also concerned that even if the current administration does not fine them for dubious activities, the next one might. This is what seemed to happen with BNP Paribas: the French bank likely believed that the U.S. government was turning a blind eye to the prohibited transactions it began conducting with Iran as early as 2002, only to be hit with a \$9 billion fine in 2014.

The inconsistency of Europe and Washington's stances and the complexity of the enforcement challenge have given Iran an advantage in the battle of public opinion. If the Obama administration does in fact impede European businesses from re-engaging with the Iranian economy, Tehran will no doubt exploit the situation to argue that the United States is violating the nuclear deal by implementing more sanctions. This would validate the position of Ayatollah Ali Khamenei and other hardliners, who have argued that the deal is a smokescreen and that America will find any excuse to punish the Iranian people.

MATTHEW LEVITT

Overcoming the numerous obstacles to enforcement is essential to repairing Washington's trust deficit with regional allies, many of whom question the administration's commitment. Focusing sanctions on Iranian proxies such as Hezbollah and Hamas while excluding Iranian entities themselves might send the dangerous message that the main actors in the regime's destabilizing behavior -- the IRGC and Qods Force -- are immune.

Enforcement also rests on European cooperation. Currently, European businesses and the general public do not fully understand the significant ongoing risks of investing in Iran. This is a result of the nuclear deal's complex legalistic nature and significant grey areas. For example, while most designated organizations will be coming off the European list right away or over the next few years, some will remain on the U.S. sanctions list indefinitely.

In light of these complexities, more effort must be dedicated to illuminating the grey areas. Under the deal, the Treasury Department can no longer prevent a company from doing all business with Iran, but it should still convey the remaining risks of such action, whether reputational or bottom-line business risks. At this stage, education is of critical importance. The Treasury and State Departments should engage with business communities and public forums to elucidate what types of transactions can and cannot be done with Iran, focusing on specific illicit conduct and the particular entities that will remain blacklisted. They should also highlight the Financial Action Task Force's call for "proactive countermeasures" to contend with Iranian money laundering and terrorism financing. For the education campaign to be effective, the administration will have to engage more often and in more places to lay out clear guidelines for what the deal means. Fortunately, the fact that the financial industry is largely aware of the existing risks means that its move into Iran will be slowed, so the administration has time.

Finally, challenges remain in escalating enforcement via calibrated penalties. As it stands, the United States can only promise to enforce these penalties in a unilateral fashion, but they will not be fully effective unless they are at least somewhat multilateral. Although administration officials have expressed reluctance to put their cards on the table about how the calibrated penalties will work, this information is essential for convincing the public that they are a

viable enforcement tool.

This summary was prepared by Eric Rosen. ❖

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