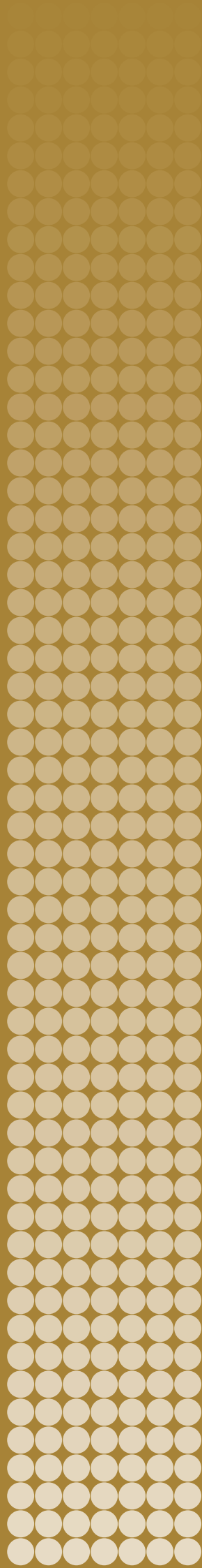


# MITIGATING HUMANITARIAN IMPACT IN A COMPLEX SANCTIONS ENVIRONMENT

The European Union and the Sanctions  
Regimes against Iran

KOLJA BROCKMANN AND KEITH A. PREBLE



**STOCKHOLM INTERNATIONAL  
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September 2021



# Contents

|   |    |
|---|----|
| <i>Acknowledgements</i>   | iv |
| <i>Abbreviations</i>  | v  |
| <i>Executive summary</i>  | vi |
| <b>1. Introduction</b>  | 1  |
| <b>2. The complex sanctions regime on Iran</b>  | 4  |
| I. United States sanctions on Iran  | 4  |
| II. United Nations Security Council sanctions on Iran   | 6  |
| III. European Union sanctions on and policy towards Iran  | 7  |
| Box 2.1. Primary and secondary sanctions  | 5  |
| <b>3. The humanitarian impact of international sanctions on Iran</b>  | 10 |
| I. Impact on the economic and humanitarian situation in Iran  | 10 |
| Oil trade   | 11 |
| Trade in medical goods  | 12 |
| Food prices   | 13 |
| II. Impact on international humanitarian aid  | 14 |
| Regulatory burdens  | 14 |
| Restrictions on humanitarian trade and financial services   | 14 |
| Limitations to and restrictions on the operation of humanitarian actors   | 15 |
| Figure 3.1. Iranian crude oil imports to the European Union, 2000–20  | 11 |
| Figure 3.2. European Union trade exports in medical goods to Iran, 2000–20                                      | 12 |
| Figure 3.3. Tehran market price of key food commodities, 2012–21  | 13 |
| <b>4. Mechanisms to mitigate the humanitarian impact of sanctions</b>   | 17 |
| I. Exceptions and exemptions  | 17 |
| II. Special-purpose vehicles and humanitarian trade channels  | 19 |
| III. Dialogue and outreach to humanitarian aid organizations  | 21 |
| Box 4.1. Overcompliance as a strain on legitimate trade and humanitarian assistance                             | 18 |
| Box 4.2. The Swiss Humanitarian Trade Arrangement   | 19 |
| <b>5. Strengthening the EU’s sanctions toolkit and ability to mitigate the humanitarian impact of sanctions</b> | 22 |
| I. Effectiveness of autonomous EU sanctions   | 22 |
| II. The EU as a credible and responsible sanctions power  | 23 |
| III. The future of EU sanctions policy towards Iran   | 24 |
| IV. Recommendations   | 24 |
| <i>About the authors</i>  | 27 |

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Kolja Brockmann and Keith A. Preble  
September 2021

## Abbreviations

|        |   |
|--------|---|
| CFSP   | Common Foreign and Security Policy                          |
| EU     | European Union  |
| IAEA   | International Atomic Energy Agency                          |
| INSTEX | Instrument in Support of Trade Exchanges                    |
| IRGC   | Iranian Revolutionary Guard Corps                           |
| JCPOA  | Joint Comprehensive Plan of Action                          |
| NPT    | Treaty on the Non-Proliferation of Nuclear Weapons          |
| SWIFT  | Society for Worldwide Interbank Financial Telecommunication |

## Executive summary

Iran is one of the most heavily sanctioned countries in the world, with sanctions regimes imposed by the United States, United Nations and the European Union (EU). The combination of sanctions on Iran in response to human rights violations, support for terrorist organizations, and nuclear and ballistic missile activities provides for a sanctions environment that is highly complex and difficult to navigate. The comprehensive US primary and secondary sanctions imposed prior to the agreement on the Joint Comprehensive Plan of Action (JCPOA), and after the US withdrawal from the agreement in particular, have resulted in humanitarian consequences for the Iranian population. The EU's move to impose more comprehensive sanctions in the years prior to the JCPOA also presented a significant policy shift and reinvigorated European debates on the possible limitations and humanitarian impact of EU sanctions.

The sanctions on Iran have impacted the Iranian economy, the welfare of its people, and the work of humanitarian actors who seek to provide disaster-related emergency relief, help manage the refugee situation and fight the Covid-19 pandemic in Iran. The impacts of oil sanctions, financial sanctions and secondary sanctions on the Iranian economy and the trade in medical goods demonstrate the direct and indirect economic and humanitarian consequences of sanctions. Humanitarian actors shoulder additional burdens to comply with sanctions, face restrictions on transfers of goods and access to financial services, and experience the chilling effect of US secondary sanctions.

The sanctions on Iran provide for exemption procedures that seek to mitigate their impact on legal trade in humanitarian goods and other exempt items, and states have set up several dedicated humanitarian trade channels. The EU also applies its blocking statute and has introduced a special trade mechanism, the Instrument in Support of Trade Exchanges, better known by its acronym, INSTEX, to counter the impacts of the extraterritorial application of US sanctions. However, the uncertain compliance environment and chilling effect caused by US secondary sanctions have exposed serious limitations in the effectiveness of the mechanisms put in place to limit humanitarian impact and protect legitimate EU trade with Iran.

The EU needs to act as a responsible and credible sanctions power when implementing autonomous sanctions and related mechanisms. The use of autonomous sanctions should rely upon a principled and value-based foreign policy toolkit. The humanitarian consequences of sanctions are an important issue, which require renewed efforts to ensure their mitigation. Nevertheless, sanctions are just one of many foreign policy tools available and must operate in conjunction with diplomacy and the provision of humanitarian assistance.

Sanctions will continue to play an important role in relations with Iran, including during the ongoing negotiations on a possible return of the USA and Iran to full compliance with the JCPOA. The EU will need to improve the enforcement of its sanctions and combine them with dialogue and diplomacy for the foreseeable future. The EU should further strengthen its humanitarian impact assessment procedures; national implementation guidance; dialogue and coordination with the USA; coordination within the EU; and engagement with humanitarian organizations.



# 1. Introduction

Sanctions impose limits on economic, financial and diplomatic relations between states to achieve foreign policy objectives.<sup>1</sup> However, the term ‘sanctions’ lacks an agreed definition and is used differently in various contexts. Sanctions imposed by international and regional organizations (multilateral sanctions) and by individual states (unilateral sanctions) vary in scope. Economic sanctions can take many forms, some of which include restrictions on trade, sectoral and commodity sanctions (targeting trade, transactions and related services in specific sectors of an economy or related to a specific commodity), financial measures (i.e. asset freezes and investment bans), and arms embargoes.<sup>2</sup> Diplomatic sanctions include withholding customary diplomatic relations and travel restrictions for designated persons and entities. The main goal of sanctions is coercing states or non-state actors to alter their behaviour in line with international norms of behaviour, particularly in contexts related to chemical, biological and nuclear weapons proliferation activities, armed conflict, human rights violations, counterterrorism and cyberattacks.<sup>3</sup> Beyond their coercive role, sanctions are also used for signalling (i.e. in support of international non-proliferation norms) and constraining (i.e. to limit the acquisition of weapons and specific goods and technologies) purposes.<sup>4</sup>

Sanctions are usually described as ‘comprehensive’—meaning that they seek to affect an entire country—or ‘targeted’ in terms of being more discriminatory; that is, limited to specific individuals or entities. However, there is no dichotomy between the two but rather a continuum from very targeted sanctions such as designations of individuals, to more comprehensive (but still targeted) sanctions on specific sectors or commodities, to the most comprehensive sanctions in the form of total embargoes.<sup>5</sup>

Comprehensive sanctions have long been controversial, leading to a debate over their humanitarian consequences, particularly in the 1990s and in the context of the United Nations sanctions regime on Iraq, which led to a move to a ‘targeted’ sanctions approach by the United Nations and the European Union (EU).<sup>6</sup> However, since the mid-2000s a growing number of sanctions regimes have again moved further along the continuum towards more comprehensive sanctions—including in the case of Iran.<sup>7</sup>

Iran is one of the most heavily sanctioned countries in the world. Unilateral sanctions imposed on Iran by the USA date back to the Iranian revolution in 1979. The focus of this paper is on the array of overlapping sanctions imposed on Iran following the revelation to the public in 2002 of Iran’s nuclear programme, leading up to the negotiated sanctions reductions under the Joint Comprehensive Plan of Action (JCPOA), the subsequent withdrawal and reimposition of sanctions and the ‘maximum pressure campaign’ by the USA, and efforts to uphold and return to the

<sup>1</sup> Hufbauer, G. C. et al., *Economic Sanctions Reconsidered*, 3rd ed. (Peterson Institute for International Economics: Washington, DC, 2009).

<sup>2</sup> The list of types and subsets provided here is by no means comprehensive but seeks to illustrate the most common sanctions measures discussed in this paper. See e.g. Biersteker, T. et al., *The Effectiveness of United Nations Targeted Sanctions: Findings from the Targeted Sanctions Consortium* (Graduate Institute for International Studies: Geneva, 2013).

<sup>3</sup> Masters, J., ‘What are economic sanctions?’, Council on Foreign Relations, 12 Aug. 2019; and European Commission, ‘Restrictive measures (sanctions)’, [n.d.].

<sup>4</sup> Giumelli, F., ‘How EU sanctions work: A new narrative’, Chaillot Paper no. 129 (EU Institute for Security Studies: Brussels, May 2013).

<sup>5</sup> Biersteker et al. (note 2), p. 16.

<sup>6</sup> Wallensteen, P. and Staibano, C., eds, *International Sanctions: Between Words and Wars in the Global System* (Frank Cass: London, 2005).

<sup>7</sup> Mallard, G., Sabet, F. and Sun, J., ‘The humanitarian gap in the global sanctions regime’, *Global Governance*, vol. 26, no. 1 (2020), p. 122–23.

JCPOA since.<sup>8</sup> The different sanctions measures imposed on Iran seek to address separate issues, including human rights violations, support for terrorist organizations, and Iran’s nuclear activities and ballistic missile programmes. The combination of these measures provides for a highly complex sanctions environment and it is their combined impact that Iran and the Iranian people experience. It is difficult—perhaps impossible—to distinguish and attribute individual effects of sanctions measures. Nevertheless, it is important that the components and development of the sanctions regimes on Iran are better understood. The shift to imposing more comprehensive EU sanctions on Iran represents a policy shift that warrants analysis, including in the context of US and UN sanctions.

Since the establishment of the Common Foreign and Security Policy (CFSP) in 1993 the EU has had the legal power to impose sanctions—officially referred to as ‘restrictive measures’—which have since become a key EU foreign policy instrument.<sup>9</sup> In recent years, the EU has become one of the main global sanctions actors, expanding both the use of sanctions and the range of behaviours in response to which it applies sanctions. Sanctions are perhaps the strongest non-military EU policy instrument, wielding the considerable economic power of the EU’s common market. The EU transposes sanctions issued by the UN Security Council into binding EU law, which is implemented and enforced by the EU member states. The EU also imposes independent multilateral sanctions—commonly referred to as ‘autonomous’ sanctions—in pursuit of common EU policies.<sup>10</sup> The development of the EU’s sanctions regime on Iran serves as an important case study on the utility, impact and limitations of EU sanctions, particularly as they relate to the ongoing dispute over Iranian nuclear activities, US secondary sanctions, and the humanitarian impact of sanctions.

The Covid-19 pandemic has again focused attention on the humanitarian impact of sanctions, especially in the case of Iran which became one of the flashpoints of the pandemic early on.<sup>11</sup> Wide-ranging sanctions—including the extraterritorial application of US sanctions—impact the ability of national authorities and humanitarian actors to procure medicines and medical equipment required to fight the pandemic while also obstructing wider humanitarian aid.<sup>12</sup> The humanitarian consequences of EU sanctions in a complex sanctions environment call for analysis of existing policies and good practices to mitigate humanitarian impact. Such endeavours need to go hand in hand with improvements to the effectiveness of EU sanctions to enable the EU to pursue a credible and responsible sanctions policy.

Chapter 2 of this paper explores key milestones and phases in the imposition of sanctions on Iran by the three main sanctioning actors, the USA, the UN and the EU, thus demonstrating the complexity and the at times coordinated or contradictory nature of the different sanctions. Chapter 3 explores the humanitarian impact of sanctions on Iran by discussing several illustrative indicators that show the impact of sanctions

<sup>8</sup> International Atomic Energy Agency (IAEA), ‘IAEA and Iran: Chronology of key events’, [n.d.]; United Nations Security Council Resolution 2231, 14 July 2015, Annex A; Lynch, C., ‘Iran: Maximum pressure, minimum gain’, *Foreign Policy*, 23 Dec. 2020; and Nuclear Threat Initiative, ‘Iran: Nuclear’, June 2020.

<sup>9</sup> The European Union (EU) uses the terms ‘restrictive measures’ and ‘sanctions’ interchangeably to refer to measures including ‘arms embargoes’, ‘restrictions on admission (travel bans)’, ‘asset freezes’ and ‘other economic measures such as restrictions on imports and exports’. European Commission, ‘Restrictive measures (sanctions)’, [n.d.].

<sup>10</sup> For a more detailed discussion of the EU’s sanctions-making process see Helwig, N. and Pesu, M., ‘EU decision-making on sanctions regimes’, eds N. Helwig, J. Jokela and C. Portela, *Sharpening EU Sanctions Policy: Challenges and Responses in a Geopolitical Era*, Finnish Institute of International Affairs (FIIA) Report no. 63 (FIIA: Helsinki, May 2020), pp. 87–98.

<sup>11</sup> Salehi-Isfahani, D., ‘Iran: The double jeopardy of sanctions and Covid-19’, *Pandemic Discourses Blog*, 19 Sep. 2020.

<sup>12</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), ‘Special rapporteur on Iran: Sanctions and the government’s “inadequate and opaque” response have exacerbated Covid-19’s impact in Iran’, OHCHR News, 9 Mar. 2021.

on trade in items that are key to overall economic performance, public health and ensuring access to food. It also explores the impact of sanctions on the provision of international humanitarian aid. Chapter 4 explores existing mechanisms to mitigate the humanitarian impact of sanctions and how they could be improved. Chapter 5 begins by reflecting on the need to further strengthen compliance, enforcement and coordination of EU sanctions, and on their future role in the context of the JCPOA. It then concludes by providing specific recommendations for the EU and member states on improving effective use of sanctions and reducing their humanitarian impact, including through better coordination with the USA and wider international efforts.

## 2. The complex sanctions regime on Iran

This chapter explores key milestones and phases in the imposition of sanctions on Iran by the three main sanctioning actors—the USA, the UN and the EU—in chronological order.

### I. United States sanctions on Iran

The USA has a longstanding sanctions regime imposed on Iran that began in response to the Islamic revolution and the Iran hostage crisis in 1979.<sup>13</sup> The expansive US economic sanctions since have targeted Iran based on various grounds, including support of terrorism, human rights violations, activities destabilizing the region, and nuclear and missile activities; and, depending on the specific administration and majorities in US Congress, emphasized a desire for regime change and support for democratic reforms.

In 1992, the US Congress passed the Iran–Iraq Arms Nonproliferation Act which, along with the subsequent regulations that followed, sought to prevent Iran from developing weapons of mass destruction.<sup>14</sup> It also imposed limitations on the transfer of dual-use goods and technology that could aid Iran in developing more advanced conventional weapons. By 1995, the USA had also imposed a trade and oil embargo on Iran, which sought to deprive Iran of funds that could be diverted to sponsor terrorism or advance Iran’s weapons of mass destruction and conventional weapons programmes.<sup>15</sup>

The 1996 Iran and Libya Sanctions Act for the first time introduced secondary sanctions into the set of US sanctions on Iran (see box 2.1).<sup>16</sup> The imposition of US secondary sanctions against third parties trading with Iran aimed to further limit the trade and investment of other countries with Iran. The later expansion of secondary sanctions and strengthening of capacities in the responsible US authorities—primarily the US Department of the Treasury’s Office for Foreign Asset Control and Financial Crimes Enforcement Network—along with a more stringent enforcement against European companies, particularly financial institutions, led to the strong ‘chilling effect’ associated with contemporary US secondary sanctions. Because of the perceived risks, companies and financial institutions opt for very risk-averse behaviour, including avoiding business with Iranian persons and entities altogether.<sup>17</sup>

During the first term of President Barack Obama, the USA worked both unilaterally and multilaterally with the UN and its European partners to negotiate with Iran and secure the eventual adoption of the JCPOA. The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and several executive orders between 2010 and 2013 further targeted Iran for its refusal to cease uranium enrichment and reprocessing activities, its support to terrorist organizations in the wider Middle

<sup>13</sup> Maloney, S., ‘America and Iran: from containment to coexistence’, Policy Brief no. 87 (Brookings Institution: Washington DC, Aug. 2001).

<sup>14</sup> Iran–Iraq Arms Non-Proliferation Act of 1992, US Public Law 102–484, signed into law 23 Oct. 1992.

<sup>15</sup> US Government, Executive Order 12957, Prohibiting certain transactions with respect to the development of Iranian petroleum resources, *Federal Register*, vol. 60, no. 52 (15 Mar. 1995), pp. 14615–16; and US Government, Executive Order 12959, Prohibiting certain transactions with respect to Iran, *Federal Register*, vol. 60, no. 89 (7 May 1995).

<sup>16</sup> Iran and Libyan Sanctions Act of 1996, US Public Law 104–172, signed into law 5 Aug. 1996.

<sup>17</sup> Early, B. R. and Preble, K. A., ‘Going fishing versus hunting whales: Explaining changes in how the US enforces economic sanctions’, *Security Studies*, vol. 29, no. 2 (2020); Early, B. R. and Preble, K. A., ‘Enforcing US economic sanctions: Why whale hunting works’, *Washington Quarterly*, vol. 43, no. 1 (2020); and Nephew, R., ‘Sanctions 4: The “chilling effect” of US sanctions on Iran’, *Iran Primer*, 11 Oct. 2020.

**Box 2.1. Primary and secondary sanctions**

Economic sanctions come in two forms: *primary* and *secondary* sanctions. *Primary sanctions* prohibit or restrict economic relations and economic activities of individuals and entities located in, or of the nationality of, the state issuing sanctions and the state targeted by the sanctions. *Secondary sanctions* disrupt and impede economic relations between the targeted state and third parties in an effort to improve the efficacy of primary sanctions. United States secondary sanctions restrict US persons and entities from engaging in business with companies in third-party states and banks that do business in or with sanctioned states. When secondary sanctions impose fines on or involve legal remedies against a third state's citizens or businesses of the sanctions-imposing state, they become extraterritorial in nature.<sup>a</sup> The use of secondary sanctions is contentious, with many researchers and policy-makers seeing their combination with primary sanctions (along with the extraterritorial application of secondary sanctions) as increasing the economic and humanitarian impacts of economic sanctions. Most states and the EU consider secondary sanctions and their extraterritorial use to be illegal under international law.<sup>b</sup>

The USA is the only country that explicitly employs secondary sanctions (with or without their extraterritorial application) as part of its economic sanctions regimes. The USA began to employ secondary sanctions in 1996 with the passage of the Helms–Burton Act, which imposed secondary sanctions against third parties undermining the US embargo of Cuba.<sup>c</sup> The USA also imposes secondary sanctions when adding individuals and entities to its list of specially designated nationals (SDN) when those nationals reside in third countries. The USA imposes significant penalties against third parties that violate US economic sanctions. During the Obama administration, the US Department of the Treasury's Office of Foreign Assets Control, which is responsible for civil enforcement actions, imposed some of its highest fines ever against several European banks for violating secondary sanctions.<sup>d</sup>

<sup>a</sup> Rennack, D. E. and Nelson, R. M., 'Economic sanctions: Overview for the 117th Congress', Congressional Research Service, In Focus report no. 11730, 15 Jan. 2021.

<sup>b</sup> Ruys, T. and Ryngaert, C., 'Secondary sanctions: A weapon out of control? The international legality of, and European responses to, US secondary sanctions', *British Yearbook of International Law* (2020), online 22 Sep. 2020.

<sup>c</sup> The Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996 (Helms–Burton Act), US Public Law 104–114, signed into law 12 Mar. 1996.

<sup>d</sup> Early, B. R. and Preble, K. A., 'Enforcing US economic sanctions: Why whale hunting works', *Washington Quarterly*, vol. 43, no. 1 (2020); and Early, B. R. and Preble, K. A., 'Going fishing versus hunting whales: Explaining changes in how the US enforces economic sanctions', *Security Studies*, vol. 29, no. 2 (2020).

East, and human rights violations against its own people.<sup>18</sup> These sanctions blocked Iranian property and interests in property in the USA, limited investment in Iran's oil sector and imposed financial sanctions. In addition, in 2012 the USA designated Iran a 'primary jurisdiction of money laundering concern' and the Financial Action Task Force urged its members to 'take active countermeasures against Iranian-linked transactions'.<sup>19</sup>

Under the JCPOA, the USA ceased applying economic sanctions against Iran's oil and banking sectors, removed certain individuals and entities from the US list of specially designated nationals, permitted entities to apply for licences to import Iranian goods and agricultural products into the USA, permitted the sale of commercial aircraft to Iran, and relaxed secondary sanctions. However, US sanctions related to human rights violations, state sponsorship of terrorism and Iran's ballistic missile programme continued to apply to Iran.<sup>20</sup> Despite the signing of the JCPOA, there was no sufficient majority in US Congress for lifting US secondary sanctions. Instead, the president

<sup>18</sup> President Obama issued three executive orders—13553, 13574, and 13590—under the International Emergency Powers Act, the National Emergencies Act, and the Comprehensive Iran Sanctions, Accountability, and Divestment Act. Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. See US Government, Executive Order 13553, Blocking Property of Certain Persons with Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions, *Federal Register*, vol. 75, no. 190 (1 Oct. 2010), pp. 60567–71; US Government, Executive Order 13574, Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Sanctions Act of 1996, *Federal Register*, vol. 76, no. 101 (25 May 2011), pp. 30505–507; US Government, Executive Order 13590, Authorizing the Imposition of Certain Sanctions With Respect to the Provision of Goods, Services, Technology, or Support for Iran's Energy and Petrochemical Sectors, *Federal Register*, vol. 76, no. 226 (23 Nov. 2011), pp. 72609–612. See also US Public Law 111–195, signed into law 1 July 2010; and US Department of State, Bureau of Economic, Energy and Business Affairs, 'Fact Sheet: Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA)', Fact sheet, 23 May 2011.

<sup>19</sup> Arnold, A., 'A financial sanctions dilemma', *Washington Quarterly*, vol. 42, no. 3 (2019).

<sup>20</sup> Davenport, K., 'The Joint Comprehensive Plan of Action (JCPOA) at a glance', Arms Control Association Fact Sheet, July 2021.

opted for issuing executive waivers every 90 or 180 days to prevent the secondary sanctions from taking effect. This led to significant uncertainty in the business climate for both US and non-US businesses, and impeded trade with and investment in Iran.

The USA's withdrawal from the JCPOA in May 2018 under President Donald J. Trump saw a barrage of executive orders and listings of specially designated nationals as the US government sought to impose a 'sanctions wall' around Iran.<sup>21</sup> What followed was termed by the Trump administration as a 'maximum pressure campaign' that saw increased enforcement actions on the reimposed US sanctions and placed political pressure on allies and partners to cease engagement with and reimpose coercive sanctions on Iran.<sup>22</sup> Although the administration under President Joe Biden—who assumed office in January 2021—has expressed a desire to reverse the USA's position on the JCPOA, US sanctions policy towards Iran remains largely unchanged. However, a lifting of US non-proliferation sanctions is a key subject of the indirect negotiations between the USA and Iran that have been taking place in Vienna since May 2021, on a possible return to full compliance with the JCPOA.<sup>23</sup>

## II. United Nations Security Council sanctions on Iran

The UN Security Council began to take steps towards imposing sanctions on Iran in 2006 after the International Atomic Energy Agency (IAEA) concluded that Iran had failed to comply with the safeguards agreement in the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT).<sup>24</sup> UN Security Council Resolution 1696 threatened the imposition of sanctions and demanded that Iran suspend all enrichment-related and reprocessing activities taking place within the country.<sup>25</sup> By the end of 2006, the IAEA had certified that Iran had failed to suspend its enrichment activities.<sup>26</sup> The UN Security Council then unanimously passed Resolution 1737 which imposed a range of sanctions targeting Iranian nuclear activities, including a ban on the supply of nuclear-related material to Iran by all UN member states and the freezing of assets of key companies and individuals in Iran's nuclear programme, and again demanded the suspension of enrichment-related and reprocessing activities.<sup>27</sup>

In March 2007, UN Security Council Resolution 1747 expanded the UN sanctions regime to include an embargo on arms exports from Iran and further asset freezes on key individuals and entities in Iran for failing to suspend uranium enrichment and reprocessing activities.<sup>28</sup> In June 2010, Resolution 1929 further expanded the UN sanctions to target ballistic missile-related activities, tightened the arms embargo to include exports of most major conventional weapons to Iran, imposed a travel ban on additional individuals involved in Iran's nuclear or ballistic missile activities, and also introduced a variety of sanctions targeting Iran's financial sector.<sup>29</sup>

These UN Security Council sanctions remained in place until July 2015 when the five permanent members of the UN Security Council along with the EU endorsed the JCPOA. The UN sanctions were largely lifted on 'Implementation Day' (16 January 2016) once Iran was deemed compliant with the agreement. However, under Resolution

<sup>21</sup> Ghaffari, S., 'Dismantling the "sanctions wall" myth', *Responsible Statecraft*, 12 Feb. 2021.

<sup>22</sup> McGraw, M., 'Trump's "maximum pressure" peaks just before election', *Politico*, 19 Sep. 2020.

<sup>23</sup> Brewer, E., 'Salvaging the Iran nuclear deal: Round one in Vienna, and what comes next', *Royal United Services Institute Commentary*, 13 Apr. 2021.

<sup>24</sup> IAEA (note 8).

<sup>25</sup> UN Security Council Resolution 1696, S/RES/1696 (2006), 31 July 2006.

<sup>26</sup> IAEA, 'IAEA director general's introductory statement to the board of governors', 23 Nov. 2006.

<sup>27</sup> UN Security Council Resolution 1737, S/RES/1737 (2006), 23 Dec. 2006.

<sup>28</sup> UN Security Council Resolution 1747, S/RES/1747 (2007), 24 Mar. 2007.

<sup>29</sup> UN Security Council Resolution 1929, S/RES/1929 (2010), 9 June 2010.

2231, Annex B, the arms embargo and sanctions related to nuclear and ballistic missile activities established by Resolution 1929 remained in place.<sup>30</sup> The UN embargoes on transfers to and from Iran of most types of major arms (as covered by the UN Register of Conventional Arms) remained in place until October 2020. Resolution 2231 also left in place sanctions that prohibit Iran from developing, testing, and launching ballistic missiles with the capability of carrying nuclear weapons until October 2023 and sanctions targeting Iran's nuclear enrichment and reprocessing capabilities until October 2025.<sup>31</sup> Notably, the UN Security Council can decide on a case-by-case basis to approve transfers of dual-use goods required for humanitarian efforts that would otherwise be covered by the arms embargo, ballistic missile and nuclear-related sanctions.

In 2020, the USA sought a 'snapback' of UN sanctions, but this initiative was unsuccessful because the USA was no longer a party to the JCPOA, Iran continued to comply with the agreement, and the remaining permanent members of the UN Security Council—all parties to the JCPOA—opposed it.<sup>32</sup> The UN Security Council has not reimposed the UN sanctions.

### III. European Union sanctions on and policy towards Iran

The EU has long been an important trading partner to Iran. Several member states have maintained strong diplomatic contacts following the 1979 revolution, in spite of US sanctions. Following the revelations about the Iranian nuclear programme in 2002, the E3 group of France, Germany and the United Kingdom began to engage and negotiate with Iran.<sup>33</sup> The objective of the E3 and the EU, represented by the High Representative of the Union for Foreign Affairs and Security Policy, was to find a diplomatic solution that would rein in Iran's nuclear ambitions in line with the NPT while also avoiding military action against Iran—as advocated at times by Israel and the USA.<sup>34</sup> When Iran reopened key nuclear facilities in 2006, in response to which the UN Security Council imposed sanctions, the EU not only transposed and implemented the UN sanctions but initiated additional targeted measures that went beyond those required by the UN Security Council.<sup>35</sup>

In 2007, the EU designated additional Iranian persons and entities that were not already designated by UN Security Council resolutions. This list of persons and entities designated by the EU was continuously expanded up until the conclusion of the interim agreement—the Joint Plan of Action—and eventually the conclusion of the JCPOA.<sup>36</sup> In 2007 the EU also imposed a full arms embargo on Iran, which preceded and is more comprehensive than the UN arms embargo imposed in 2010.<sup>37</sup> The EU continued its participation in diplomatic activities, including through the involvement of then High

<sup>30</sup> UN (note 8), Annex B.

<sup>31</sup> UN (note 8) Annex B.

<sup>32</sup> Jakes, L., 'USA heads to United Nations to demand "snapback" of sanctions against Iran', *New York Times*, 19 Aug. 2020.

<sup>33</sup> Cronberg, T., 'No EU, no Iran deal: The EU's choice between multilateralism and the transatlantic link', *Nonproliferation Review*, vol. 24, no. 3–4 (2017), pp. 246–47; and Nuclear Threat Initiative (note 8).

<sup>34</sup> Esfandiary, D., 'Assessing the European Union's sanctions policy: Iran as a case study', EU Non-Proliferation Consortium, Non-proliferation Paper no. 34 (Dec. 2013), p. 8; and Cronberg (note 33), pp. 245–46.

<sup>35</sup> Portela, C., 'The EU's evolving responses to nuclear proliferation crises: From incentives to sanctions', EU Non-Proliferation Consortium, Non-proliferation Paper no. 46 (July 2015), pp. 2–3, 7–8.

<sup>36</sup> Council Common Position 2007/140/CFSP of 27 Feb. 2007 concerning restrictive measures against Iran, *Official Journal of the European Union*, L61, 28 Feb. 2007; and United States Institute of Peace, 'The interim nuclear deal', *Iran Primer*, 11 June 2015.

<sup>37</sup> Council Common Position 2007/246/CFSP of 23 Apr. 2007 amending Common Position 2007/140/CFSP concerning restrictive measures against Iran, *Official Journal of the European Union*, L106, 24 Apr. 2007; see also the SIPRI Arms Embargo Database, 'EU arms embargo on Iran', 7 Apr. 2021.

Representative of the Union for Foreign Affairs and Security Policy, Catherine Ashton, and the assumption of a coordinating role in the so-called P5+1 format.<sup>38</sup>

A significant—and controversial—shift in the EU’s sanctions policy occurred in 2010 when the EU aligned its approach to sanctioning Iran with that of the USA by pursuing stronger sanctions measures and enforcement, while the USA also engaged more strongly in diplomacy, in a ‘dual track’ effort.<sup>39</sup> The EU’s sanctions measures broadened, leading to the imposition of sectoral sanctions and significant financial sanctions targeting the Iranian financial system. On 26 July 2010, the EU passed Council Decision 2010/413/CFSP imposing restrictions on Iran’s financial and transport sectors, asset freezes, trade finance restrictions, and restrictions on investments in Iran’s oil and gas sectors.<sup>40</sup> In coordination with the USA, the EU further expanded its sanctions on Iran by passing Council Decision 2012/35/CFSP 2012, which imposed an embargo on oil and petroleum products, and related equipment and technology, and restricted investment in Iran’s energy sectors. The decision also imposed sanctions on the Central Bank of Iran and other Iranian financial institutions; imposed restrictions on trade in gold, diamonds and precious metals; and further restricted trade in dual-use items that could contribute to Iranian nuclear and ballistic missile activities.<sup>41</sup> Most significantly among the financial sanctions, the EU decision forced the Belgium-based Society for Worldwide Interbank Financial Telecommunication (SWIFT)—the main secure financial messaging provider—to disconnect all EU-sanctioned Iranian banks.<sup>42</sup> The EU’s decision to impose an oil embargo was particularly impactful and initially controversial among member states, because Greece, Spain and Italy in particular had until then been importing significant quantities of Iranian crude oil.<sup>43</sup> The imposition of these sectoral and financial sanctions—which approached the character of comprehensive sanctions—also raised serious concerns over their potential humanitarian impact.<sup>44</sup>

Since 2011, the EU has also imposed additional sanctions in response to serious human rights violations in Iran. These measures impose travel restrictions and asset freezes on a list of designated persons and entities that has since expanded and adjusted over time. The EU’s human rights sanctions on Iran also include an embargo on transfers of and assistance related to items that might be used for internal repression, such as cybersurveillance items.<sup>45</sup>

Following the conclusion of the interim Joint Plan of Action in November 2013, the EU suspended some autonomous sanctions on Iran in January 2014.<sup>46</sup> On Implementation Day, the EU lifted all its nuclear-related economic and financial sanctions on Iran.<sup>47</sup> The EU arms embargo that forms part of the proliferation-related sanctions and the EU’s missile technology-related sanctions continue to be in place but are set to

<sup>38</sup> The so-called P5+1 format, alternatively referred to as the E3+3, comprises the five permanent members of the UN Security Council—China, France, Russia, the United Kingdom and the USA—and Germany. See Cronberg (note 33), pp. 248–49, 252–53.

<sup>39</sup> Moret, E., ‘Humanitarian impacts of economic sanctions on Iran and Syria’, *European Security*, vol. 24, no. 1 (2015), p. 125; Portela (note 35), p. 8; and Cronberg, ‘No EU, no Iran deal’ (note 33), pp. 249–50.

<sup>40</sup> Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP, *Official Journal of the European Union*, L195, 27 July 2010.

<sup>41</sup> Council Decision 2012/35/CFSP of 23 Jan. 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran, *Official Journal of the European Union*, L19, 24 Jan. 2012.

<sup>42</sup> Society for Worldwide Interbank Financial Telecommunication (SWIFT), ‘SWIFT instructed to disconnect sanctioned Iranian banks following EU Council decision’, Press release, 15 Mar. 2012.

<sup>43</sup> Esfandiary (note 34), p. 7.

<sup>44</sup> Moret (note 39), pp. 125, 127–28.

<sup>45</sup> Council Regulation 359/2011 of 12 Apr. 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran, *Official Journal of the European Union*, L 100, 14 Apr. 2011.

<sup>46</sup> Council of the EU, ‘Iran: EU suspends certain sanctions as Joint Plan of Action enters into force’, Press Release 5321/14, 20 Jan. 2014.

<sup>47</sup> Council of the EU, ‘Iran: Council lifts all nuclear-related economic and financial EU sanctions’, Press Release 12/16, 16 Jan. 2016; see also Council of the EU, ‘EU restrictive measures against Iran’, 9 Apr. 2019.



be lifted in October 2023. EU human rights–related sanctions also remain in place, having since been expanded and adjusted in reaction to the developing human rights situation in Iran. Most recently, in April 2021, the EU designated several persons and entities—including the commander of the Iranian Revolutionary Guard Corps (IRGC)—in connection with the crackdown on popular protests in November 2019.<sup>48</sup>

Despite mounting pressure after the US withdrawal from the JCPOA in 2018, the EU doubled down on its commitment to uphold the agreement and to ensure continuation of legitimate trade between the EU and Iran. The EU authorized the European Investment Bank to work in Iran and included US (secondary) sanctions on Iran in the EU’s ‘blocking statute’.<sup>49</sup> The blocking statute, originally created in 1996 in response to the USA’s 1996 Iran and Libya Sanctions Act, prohibits EU companies from complying with extraterritorial sanctions and allows them to recover damages incurred from sanctions included in the statute.<sup>50</sup>

Nevertheless, the EU has failed to stand firm against US pressure in key areas. The European Investment Bank deemed the risk of facilitating transactions with Iran too high. The blocking statute has lacked credibility and has not been enforced as European companies and banks have largely abstained from engagement with Iran to avoid US enforcement action.<sup>51</sup> The EU also caved to US pressure when it accepted the re-exclusion of Iran from SWIFT.<sup>52</sup> The EU has nevertheless worked to keep the JCPOA alive, including by setting up the Instrument in Support of Trade Exchanges (INSTEX), albeit with very limited success.<sup>53</sup> It also kept the door open to negotiations despite Iranian steps to reduce compliance with limitations on enrichment set by the JCPOA. Since April 2021, the EU has facilitated ongoing indirect negotiations in Vienna, with the aim of a return to full compliance with the terms of the JCPOA by all parties.<sup>54</sup>

<sup>48</sup> United States Institute of Peace, ‘EU sanctions Iran on human rights’, *Iran Primer*, 13 Apr. 2021.

<sup>49</sup> European Commission delegated regulation 2018/1100 of 6 June 2018, amending the Annex to Council Regulation (EC) No 2271/96 protecting against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, *Official Journal of the European Union*, L 199 I, 7 Aug. 2018.

<sup>50</sup> European Commission, Guidance note, ‘Questions and answers: adoption of update of the blocking statute’, *Official Journal of the European Union*, C1 277, 7 Aug. 2018.

<sup>51</sup> Erästö, T., ‘Implementation of the Joint Comprehensive Plan of Action’, *SIPRI Yearbook 2019: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2019), pp. 378–86.

<sup>52</sup> Reuters, ‘SWIFT says suspending some Iranian banks’ access to messaging system’, 5 Nov. 2018.

<sup>53</sup> European Union External Action Service, ‘Implementation of the Joint Comprehensive Plan of Action: Joint ministerial statement’, Joint Statements, 24 Sep. 2018.

<sup>54</sup> Jenne, P., and Grieshaber, K., ‘Diplomats: Progress made in Vienna at Iran nuclear talks’, *AP News*, 20 June 2021.

### 3. The humanitarian impact of international sanctions on Iran

#### I. Impact on the economic and humanitarian situation in Iran

Iran faces a difficult economic situation that has been exacerbated by the impact of economic sanctions. Several natural disasters, including major earthquakes and floods, have also impacted Iran and its economy over the last several years. Iran has therefore required humanitarian assistance for immediate disaster relief and to meet the needs of the protracted refugee situation in the country with 800 000 primarily Afghan refugees currently living in Iran.<sup>55</sup> It is in this context that the impact of economic sanctions needs to be understood.

The effects of economic sanctions on public health and human security have been documented in the literature on economic sanctions, especially the effects of US economic sanctions on negative health outcomes in target states.<sup>56</sup> Sanctions on Iran impact the overall economic situation by targeting the energy sector—one of the key income-generating sectors—and by impeding trade and therefore access to specific groups of goods that are important for public health and basic needs, particularly if these are in dire need as part of disaster relief. The economic effects of sanctions therefore contribute to the negative humanitarian consequences that Iranians experience and frequently create further societal and environmental knock-on effects.<sup>57</sup>

On 21 March 2021, the UN Human Rights Council released a report that highlighted significant economic, political and social challenges experienced by Iran in confronting the Covid-19 pandemic.<sup>58</sup> When presenting the report to the Human Rights Council, Special Rapporteur Javaid Rehman highlighted how ‘sanctions had in part hindered the Government’s efforts to counter the pandemic’, but also criticized the Iranian Government’s response as ‘inadequate and opaque’ and linked its poor pandemic response to the human rights situation in the country.<sup>59</sup> While stopping short of calling for their removal, the Special Rapporteur instead called for sanctions to be eased to allow the Iranian government to reduce humanitarian impacts while working to contain the Covid-19 pandemic.

Untangling the negative impacts generated by sanctions from those created by other causes—such as a decline of state and bureaucratic capacity in Iran since 2005—is difficult: many other considerations affect public health, job markets, what goods are traded, or what impacts the price of food commodities.<sup>60</sup> This is especially the case in the context of the global Covid-19 pandemic, which continues to hit Iran particularly hard and reportedly has its health care system ‘on the verge of collapse’ and struggling to fix its drug distribution system.<sup>61</sup> Nevertheless, trade in commodities that play a significant role in the overall economic performance of a country, trade in humanitarian goods, and food prices provide helpful indicators that allow a better

<sup>55</sup> United Nations High Commissioner for Refugees (UNHCR), ‘Refugees in Iran’, [n.d.].

<sup>56</sup> Peksen, D., ‘Economic sanctions and human security: The public health effect of economic sanctions’, *Foreign Policy Analysis*, vol. 7, no. 3 (July 2011). See also Garfield, R., Devin, J. and Fausey, J., ‘The health impact of economic sanctions’, *Bulletin of the New York Academy of Medicine*, vol. 72, no. 2 (Winter 1995).

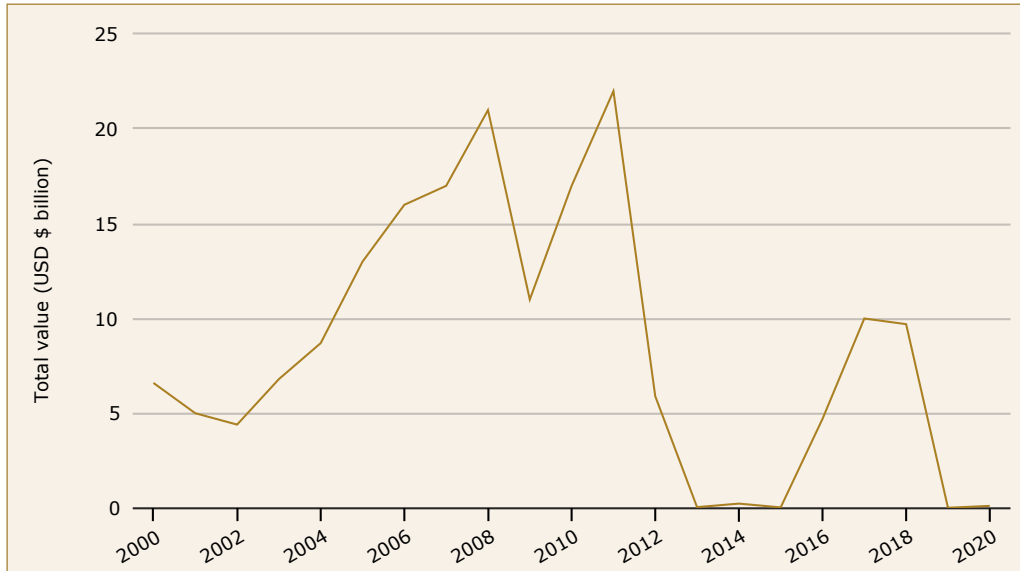
<sup>57</sup> For examples of literature on societal and environmental effects of sanctions see Adam, A. and Tsarsitalidou, S., ‘Do sanctions lead to a decline in civil liberties?’, *Public Choice*, vol. 180 (2019); and Madani, K., ‘How international economic sanctions harm the environment’, *Earth’s Future*, vol. 8, no. 12 (Dec. 2020).

<sup>58</sup> United Nations, General Assembly, Human Rights Council, ‘Situation of human rights in the Islamic Republic of Iran’, A/HRC/46/50, 11 Jan. 2021.

<sup>59</sup> OHCHR (note 12).

<sup>60</sup> Azadi, P., ‘Governance and development in Iran’, Stanford Iran 2040 Project, Working Paper no. 8 (June 2019), p. 11.

<sup>61</sup> Fassihi, F., ‘Iran’s health system “beyond disastrous” from Covid surge’, *New York Times*, 13 Aug. 2021; and ‘Leader urges officials to do whatever necessary to contain new wave of Covid-19’, *Tehran Times*, 11 Aug. 2021.



**Figure 3.1.** Iranian crude oil imports to the European Union, 2000–20

Source: UN Comtrade Database, 14 Apr. 2021, <<https://comtrade.un.org>>.

understanding of the consequences of economic sanctions, including, to some extent, their humanitarian impact. A comprehensive assessment of the humanitarian situation in Iran and the specific humanitarian impact of individual sanctions measures is beyond the scope of this paper.

### Oil trade

Iran's embattled energy sector has been the focus of economic sanctions imposed by the EU, the UN and the USA. Oil and gas are key revenue-generating sectors of the Iranian economy, the performance of which impacts Iran's ability to purchase medical supplies and import agricultural products. The petroleum sector contributes roughly 18 per cent of Iran's annual gross domestic product and is one of the most important sectors for earning foreign currency.<sup>62</sup> A decline in its ability to export crude oil, among other factors, has caused Iran's economy to contract, impacting on its ability to recover economically and hindering improvements to welfare and standards of living.<sup>63</sup> Between 2010 and 2015, official figures on Iranian transfers of crude oil dropped to insignificant levels after the imposition of EU sectoral sanctions (figure 3.1). Once the signatories affirmed the JCPOA in 2015–16, exports of Iranian crude oil to EU member states began to recover. However, the US departure from the JCPOA and its 'maximum pressure campaign' again reduced trade to pre-JCPOA levels.<sup>64</sup>

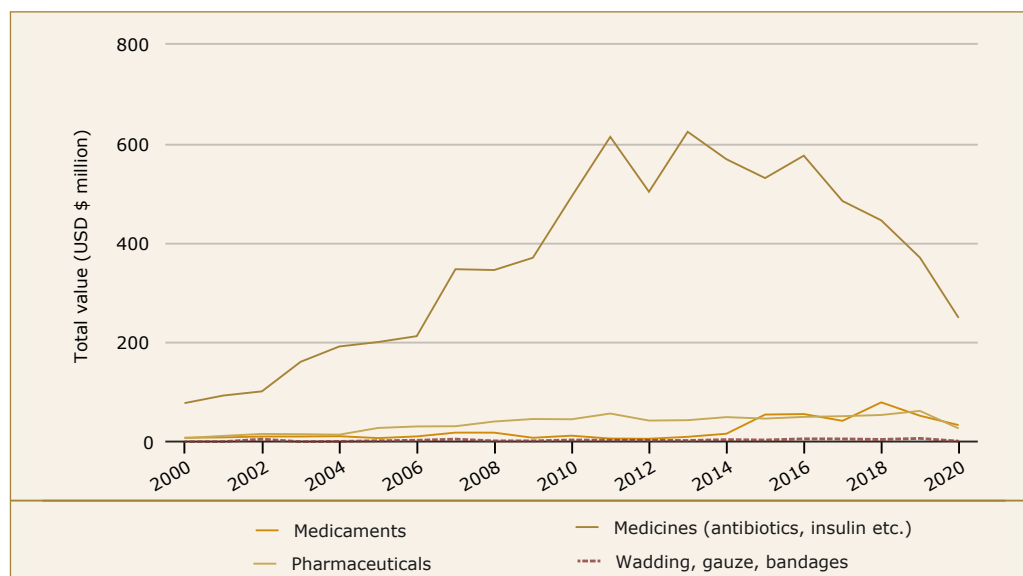
Notably, Iran has sought to trade oil through alternative mechanisms, such as oil for gold deals with Turkey, and has likely engaged in some trade that circumvents sanctions, which has not been recorded in official trade statistics—softening some of the economic impact.<sup>65</sup>

<sup>62</sup> Khajehpour, B., *Anatomy of the Iranian Economy* (Swedish Institute of International Affairs: Stockholm, 2020), p. 6.

<sup>63</sup> Azodi, S. 'How US sanctions hinder Iranians' access to medicine', *Atlantic Council*, 31 May 2019.

<sup>64</sup> Lee, M., 'AP sources: US to sanctions nations for importing Iranian oil', *AP News*, 21 Apr. 2019; and Regan, J. and Vera, M., 'EU "concerned" by US decision on Iran oil, nuclear waivers', *Bloomberg*, 4 May 2019.

<sup>65</sup> Early, B. R., *Busted Sanctions: Explaining Why Economic Sanctions Fail* (Stanford University Press: Stanford, 2015); Schanzer, J., 'The biggest sanctions-evasion scheme in recent history', *The Atlantic*, 4 Jan. 2018; and Khasawneh, R., 'Uncovering Iran's sanctions-busting sale of fuel oil on the high seas', *Reuters*, 27 Mar. 2019.



**Figure 3.2.** European Union trade exports in medical goods to Iran, 2000–20

Source: UN Comtrade Database, 14 Apr. 2021, <<https://comtrade.un.org>>.

### Trade in medical goods

The effects of economic sanctions on Iran’s ability to procure and provide medicines has long been an issue.<sup>66</sup> As early as 2013, drug companies sounded the alarm regarding medical drug shipments to Iran. While Iran has a robust drug and vaccine industry, and can produce roughly 90 per cent of its own medicines, these medical drugs are mostly generics. Newer and more sophisticated treatments, especially for cancer, have difficulty making it to Iran due to the effects of US primary and secondary sanctions.<sup>67</sup>

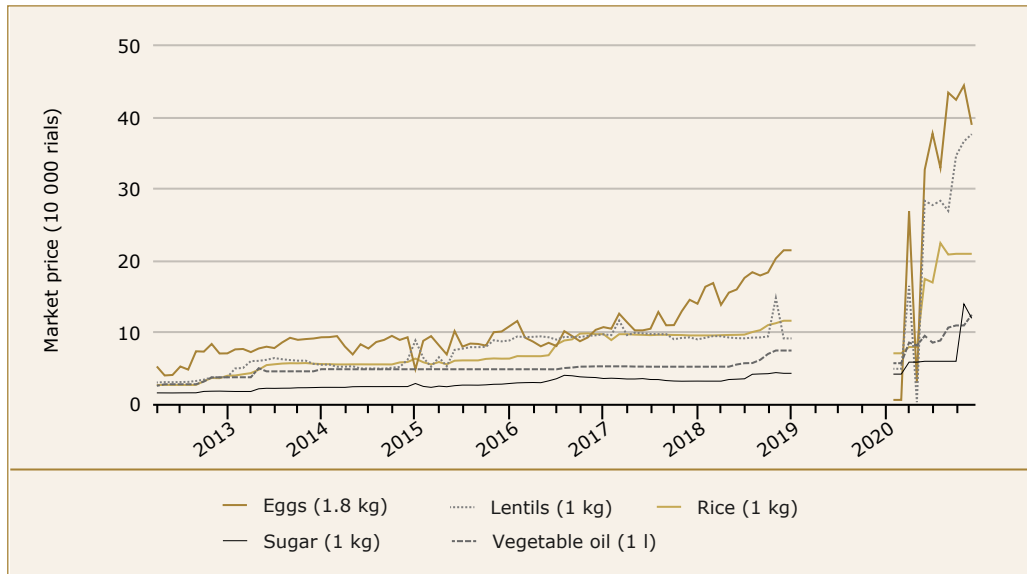
Trade in medical goods from the EU correlates with the imposition of trade sanctions and the impact of US secondary sanctions (figure 3.2). Until 2016, the flow of trade in medical goods grew from year to year despite the imposition of sanctions. Even though sanctions were lifted under the JCPOA, the uncertainty created during the 2016 US presidential campaign, when then candidate Trump signalled a dislike for the Iran deal, coupled with extensive efforts during the Obama administration to punish companies for trading with Iran, created an environment of risk aversion and overcompliance.

By 2016, even with the JCPOA in force, EU exports of medical goods to Iran begin to decline (figure 3.2). The uncertainty of the outcome of the US presidential election in 2016 coupled with then candidate Donald Trump’s disdain for the JCPOA negotiated by President Barack Obama and the ‘maximum pressure campaign’ of the Trump administration that followed brought about a slow decline in the trade of medicines, in particular. As banks and insurance providers cut their exposure to Iran by ceasing to provide trade finance, insurance and reinsurance, trade in these vital supplies began to drop as the risks of potentially violating US secondary sanctions on manufacturers grew.<sup>68</sup>

<sup>66</sup> Murphy, A. et al., ‘Economic sanctions and Iran’s capacity to respond to Covid-19’, *The Lancet*, vol. 5, no. 5 (May 2020); Danaei, G. et al., ‘The harsh effects of sanctions on Iranian health’, *The Lancet*, vol. 394, no. 10197 (Aug. 2019).

<sup>67</sup> Butler, D., ‘Iran hit by drug shortage’, *Nature*, vol. 504, 5 Dec. 2013, p. 16.

<sup>68</sup> See Iran Watch, ‘Why companies around the world are reversing course on Iran business’, 18 May 2021; and ‘US rejects French request for Iran exemptions as reinsurer Scor pulls out’, Reuters, 13 July 2018.



**Figure 3.3.** Tehran market price of key food commodities, 2012–21

Note: Iran did not report food price data to the United Nations World Food Programme for the Tehran market between Feb. 2019 and Jan. 2020.

Source: United Nations, World Food Programme, ‘Food prices: Iran (Islamic Republic of)’, 10 May 2021.

### Food prices

Food prices are an often-quoted metric for the impact of economic sanctions.<sup>69</sup> However, they are a complicated metric for understanding their impact, and price volatility can be attributed to a number of factors besides the impact of economic sanctions. Figure 3.3 shows the average monthly price of key food commodities—eggs, lentils, cooking oil, rice and sugar—between 2012 and 2021. The price of key food commodities remained relatively stable until 2018. Following the 2018 maximum pressure campaign, for example, the price of eggs and lentils rose sharply. By 2020, the price of the profiled commodities increased with significant volatility—after Iran did not report food prices to the World Food Programme during most of 2019.

While the impact of economic sanctions has affected Iran’s ability to import food, the devastating floods that hit Iran’s farming regions also led to shortfalls in domestic food production and resulting food shortages.<sup>70</sup> Iran’s land and water have also been subjected to ‘unsustainable exploitation’, making it particularly vulnerable to sustained economic sanctions and long-term environmental effects.<sup>71</sup> Food producers, especially, have had an impact on the price of common staples by pursuing higher profits available from exporting to neighbouring countries rather than from sale in the domestic market.<sup>72</sup> Many businesses have direct and indirect connections to the IRGC, further nudging businesses to target lucrative export markets over the domestic Iranian market.<sup>73</sup> Under these circumstances, economic sanctions likely played a significant role in making it more difficult for Iran to replace lost domestic production with imports.

<sup>69</sup> ‘Food prices rise up to 250 percent in Iran amid economic crisis’, *Iran International*, 2 Sep. 2021.

<sup>70</sup> Bodetti, A., ‘Iran is building a stockpile—of potatoes’, *OZY*, 2 Sep. 2009.

<sup>71</sup> Azadi (note 60).

<sup>72</sup> Bodetti (note 70).

<sup>73</sup> Talley, I. and Faucon, B., ‘Iranian military-owned conglomerate sets up shop in Venezuela’, *Wall Street Journal*, 5 July 2020.

## II. Impact on international humanitarian aid

The international sanctions on Iran have had a direct and indirect impact on the work of humanitarian aid organizations that seek to provide disaster-related emergency relief, help manage the refugee situation and fight the Covid-19 pandemic in Iran. International calls, including by the UN Secretary-General and the UN High Commissioner for Human Rights, to lift sanctions on Iran and other heavily sanctioned destinations have largely been ignored.<sup>74</sup> The EU and other sanctions-imposing countries have mainly emphasized the exemptions in place and offered to step up their own ad hoc assistance and provision of aid in the face of US primary and secondary sanctions.<sup>75</sup>

Humanitarian actors must shoulder additional burdens to comply with sanctions provisions, face restrictions on transfers of goods and use of financial services, and experience an overall ‘chilling effect’ of sanctions.<sup>76</sup> Conditionalities applied by donors to the use of funds and restrictions imposed by sanctioned governments also pose constraints for humanitarian actors.<sup>77</sup>

### Regulatory burdens

Sanctions legislation creates additional regulatory burdens for humanitarian aid organizations and relevant providers of required goods and services. Applying for exemptions and access to special humanitarian trade channels, and fulfilling information and reporting requirements, can often be a time- and resource-consuming process. Many humanitarian actors, particularly smaller ones, lack the required human and financial resources, including because donor funding can rarely be expended for these purposes. Application procedures often also require specific expertise on sanctions and export control law, such that humanitarian actors, particularly smaller organizations, may have to obtain expensive outside legal assistance. Under the looming threat of punitive US enforcement action, humanitarian aid organizations and companies supplying humanitarian goods must allocate considerable resources to safeguard against potential inadvertent violations and consequences, including possible fines and sanctions on persons or entities.<sup>78</sup>

### Restrictions on humanitarian trade and financial services

Economic sanctions impose restrictions on trade, and financial sanctions affect the ability of the sanctioned state to access and use global financial markets. Despite exceptions and exemptions for humanitarian trade, in practice sanctions often curtail humanitarian actors’ ability to procure and transfer humanitarian goods and distribute financial assistance.<sup>79</sup> Humanitarian aid organizations report that they also face limitations where companies are outright unwilling to supply goods for humanitarian work in heavily sanctioned countries like Iran and the Democratic People’s Republic

<sup>74</sup> Lynch, C., ‘UN calls for rolling back sanctions to battle pandemic: Secretary-General Guterres says it’s time for “solidarity not exclusion”’, 20 Mar. 2020; and OHCHR, ‘Bachelet calls for easing of sanctions to enable medical systems to fight Covid-19 and limit global contagion’, Press release, 24 Mar. 2020.

<sup>75</sup> European Commission, ‘EU-level contact point for humanitarian aid in environments subject to EU sanctions’, [n.d.].

<sup>76</sup> Nephew (note 17); and Norwegian Refugee Council, ‘Future of aid work at risk in Iran due to US sanctions’, 5 Aug. 2019. For a more elaborate general discussion of effects of sanctions experienced by humanitarian actors see Debarre, A., ‘Safeguarding humanitarian action in sanctions regimes’, International Peace Institute Issue Brief, June 2019.

<sup>77</sup> Debarre, A., *Making Sanctions Smarter: Safeguarding Humanitarian Action* (International Peace Institute: New York, Dec. 2019), p. 5.

<sup>78</sup> Debarre, *Making Sanctions Smarter* (note 77), p. 33.

<sup>79</sup> Debarre, *Making Sanctions Smarter* (note 77), p. 1.

of Korea. These limitations on supply often reduce the product range and quality of medical products that can be procured and drives up their prices.<sup>80</sup>

Broad financial sanctions and the de-risking practised by most financial institutions mean that aid organizations often cannot transfer donations to the target country, process payments for the procurement of required humanitarian goods, or pay local staff engaged in relief efforts. In early 2020, the Norwegian Refugee Council reported that for most of 2018–19 it ‘could not find a single international bank able to transmit Western donor money to aid Afghan refugee communities across Iran and natural disaster victims in most affected provinces’.<sup>81</sup>

EU, UN and US sanctions commonly require humanitarian actors to ensure that economic resources they provide do not benefit, and are not diverted by or to, any sanctioned persons or entities.<sup>82</sup> In the case of Iran, the IRGC—which has been designated a terrorist organization by the USA, and many members of which have been sanctioned by the EU due to their involvement in human rights violations and Iranian nuclear and missile activities—permeates the Iranian economy and public services, including in the public health sector. The results of these limitations and the emphasis on outside humanitarian aid over the strengthening of sustainable local capabilities can increase sanctioned states’ dependence on external humanitarian aid for their pandemic response.<sup>83</sup> While the lack of such local capacities is also caused by mismanagement and a lack of bureaucratic capacity in the sanctioned country, sanctions can also make it more difficult for sanctioned states to adjust relevant policies, which could be seen as admitting responsibility rather than simply blaming the sanctions.<sup>84</sup>

### **Limitations to and restrictions on the operation of humanitarian actors**

Large humanitarian organizations possess considerable experience and have developed good practices for monitoring and safeguarding the provision of humanitarian assistance to ensure that it benefits the most vulnerable and in need, and is not diverted to or seized by state actors. However, an overarching issue for humanitarian organizations is linked to their need to be neutral and impartial. The use of exemptions and special humanitarian channels often means that donors and channel operators make the selections of who can use the channels and impose restrictions on who can benefit from the aid provided using donors’ funds.<sup>85</sup> Humanitarian organizations may therefore be perceived as biased and partial by the authorities of the recipient country, which can have a negative impact on their willingness to accept aid or on the security of aid workers on the ground. Proposals to introduce ‘white lists’ of humanitarian organizations that have been specifically vetted, which would then be automatically authorized to make use of exemptions and humanitarian channels, could have a similar impact on perceptions of neutrality and that other organizations are on an implied ‘black list’.<sup>86</sup>

In addition to the effects from sanctions, in many cases sanctioned countries apply specific restrictions to humanitarian organizations that limit their ability to operate in the country. For example, in early 2020 Iran suddenly rescinded the authorization for

<sup>80</sup> Representative of the Swedish Red Cross, Interviews with authors, Dec. 2020 and Sep. 2021.

<sup>81</sup> Norwegian Refugee Council, ‘US–Iran tension threatens lifeline to millions across the Middle East’, 8 Jan. 2020.

<sup>82</sup> European Commission, ‘Commission Guidance note on the provision of humanitarian aid to fight the Covid-19 pandemic in certain environments subject to EU restrictive measures’, Commission Notice C(2020) 7983 final, 16 Nov. 2020, p. 7.

<sup>83</sup> United Nations, General Assembly, Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, A/75/209, 21 July 2020, p. 20.

<sup>84</sup> Azadi (note 60), p. 11; and Tajbakhsh, K., ‘Authoritarian state building through political decentralization and local government law: Evidence from the Islamic Republic of Iran’, *Oriati Socio-Legal Series*, vol. 10, no. 5 (2020).

<sup>85</sup> Debarre, *Making Sanctions Smarter* (note 77), p. 34.

<sup>86</sup> Debarre, *Making Sanctions Smarter* (note 77), p. 19.

the Covid-19 relief effort in Isfahan initiated by Médecins Sans Frontières.<sup>87</sup> As only a small number of organizations are approved by both the US and Iranian authorities, the imposition of such restrictions can have a significant impact on relief efforts.

<sup>87</sup> Médecins Sans Frontières, 'MSF "deeply surprised" that Iranian authorities put a stop to our Covid-19 response', Press release, 25 Mar. 2020.



## 4. Mechanisms to mitigate the humanitarian impact of sanctions

Economic sanctions routinely provide for mechanisms that seek to mitigate their impact on legal trade in humanitarian goods and other exempt items. Sanctions legislation usually includes explicit exemptions for trade in humanitarian goods, including foods, agricultural goods, medicines and medical equipment. National export control legislation may also provide for general or global licences that allow for the licensing of multiple transfers, for example of humanitarian goods under one licence.<sup>88</sup> However, the international sanctions regime on Iran is complex and includes US secondary sanctions with extraterritorial effects that have compelled most banks and companies to exercise overcompliance (box 4.1) to avoid being penalized or targeted by US political and enforcement actions.<sup>89</sup>

The EU and some states have therefore set up specific legislation, including the EU's blocking statute, to prevent compliance with US secondary sanctions, as well as special payment channels and trade arrangements to facilitate and enable humanitarian trade. For example, the E3 established INSTEX in response to the US withdrawal from the JCPOA and the subsequent 'maximum pressure campaign'.<sup>90</sup> Secondary sanctions and the uncertain compliance environment they generate have exposed serious limitations to the effectiveness of most mechanisms that seek to limit humanitarian impacts and protect independence of EU trade—and consequent limitations to the effects of lifting EU sanctions.

### I. Exceptions and exemptions

The EU, UN and US sanctions can each provide for exceptions and exemptions that exclude transfers of medical and humanitarian goods from prohibitions imposed as part of targeted sanctions.<sup>91</sup> Exceptions provide a general approval for transfers of certain goods while exemptions usually put in place specific approval or licensing procedures for a subset of transfers to be excluded from restrictions. These exemptions are often formulated broadly so as to encompass a considerable range of potential transfers. EU sanctions regulations routinely exempt transfers of 'items or assistance' for medical and humanitarian purposes and exempt most trade in foods, agricultural goods, medical goods and other items for humanitarian purposes. Humanitarian transfers are nevertheless heavily affected by overcompliance, particularly because all trade requires financial transactions and using any payment channels linked to an exchange via the US dollar—virtually all transactions—exposes the exporter to US sanctions and enforcement actions.<sup>92</sup>

<sup>88</sup> See e.g. General License 31 C.F.R. 560.530(a)(3) in US Department of the Treasury, Office of Foreign Assets Control, 'Iranian transactions and sanctions regulations, 31 CFR Part 560', *Federal Register*, vol. 81, no. 247, 23 Dec. 2016.

<sup>89</sup> Cunningham, E., 'As coronavirus cases explode in Iran, U.S. sanctions hinder its access to drugs and medical equipment', *Washington Post*, 29 Mar. 2020.

<sup>90</sup> French Ministry for Europe and Foreign Affairs, 'Joint statement on the creation of INSTEX, the special purpose vehicle aimed at facilitating legitimate trade with Iran in the framework of the efforts to preserve the Joint Comprehensive Plan of Action (JCPOA)', Joint statement by the E3 foreign ministers, Le Drian, J.-Y., Maas H. and Hunt, J., 31 Jan. 2019.

<sup>91</sup> Council of the EU, 'Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy', doc. no. 5664/18, 4 May 2018, p. 12; US Department of the Treasury, 'Guidance on the sale of food, agricultural commodities, medicine, and medical devices by non-US persons to Iran', 25 July 2013.

<sup>92</sup> Early, B. R. and Peterson, T. M., 'Does punishing sanctions busters work? Sanctions enforcement and U.S. trade with sanctioned States', *Political Research Quarterly* (June 2021), pp. 5–6.

**Box 4.1.** Overcompliance as a strain on legitimate trade and humanitarian assistance

A side effect of sanctions, primarily of United States secondary sanctions, is the increased perception of risk that persons and entities face when deciding whether to engage in trade with heavily sanctioned countries, such as Iran and the Democratic People's Republic of Korea. The result is strongly risk-averse behaviour (also referred to as 'overcompliance' or 'de-risking') among most large and international companies, but also among small and medium-sized enterprises. Almost all financial institutions are extremely sensitive to the extraterritorial application of US sanctions because they are dependent on access to the US financial system.

US and European companies face significant consequences for evading sanctions on Iran, particularly through US enforcement actions but also to a lesser extent through European states' enforcement of European Union and United Nations sanctions. Foreign companies that do business in the USA, have US subsidiaries, are themselves subsidiaries of US companies, or use the US dollar for their transactions, face not only potential imposition of civil penalties but also the possibility of criminal penalties. Individuals and entities that are listed as specially designated nationals (SDN) and blocked persons are unable to do business in the USA; they can also be affected in their ability to engage in international banking and business or to travel internationally, and may end up having any worldwide assets frozen.<sup>a</sup>

The immediate and potential consequences of violating US sanctions often cause companies and financial institutions to refrain from engaging in any transactions with Iran out of an abundance of caution. While the likelihood of being singled out by the US authorities remains relatively small given the hundreds of thousands of entities that engage in such transactions each year, the fear of potential damage to a company's reputation and its ability to continue its business activities often becomes a deciding factor for companies against such transactions.<sup>b</sup> While this approach to sanctions enforcement can increase compliance, it has a severe effect on legitimate trade, including on exempted humanitarian transactions.

<sup>a</sup> McVey, T. B., 'US sanctions laws: Dangers ahead for foreign companies, Part I', Williams Mullen, 21 Feb. 2019.

<sup>b</sup> Early, B. R. and Preble, K. A., 'Enforcing US economic sanctions: Why whale hunting works', *Washington Quarterly*, vol. 43, no. 1 (2020).

Using exemptions with confidence, without fear of exposing parties to the transaction to potential fines, can be difficult, particularly for humanitarian aid organizations, because they rarely have large compliance departments and they deal with transfers that have a different character than commercial supplier-to-end-user transactions.<sup>93</sup> When it comes to restricting the persons and entities benefiting from a transfer, humanitarian organizations face additional difficulties. For example, the IRGC being a designated entity poses many challenges because it is 'seamlessly integrated in the Iranian economy', including the agricultural and medical sectors, and therefore hard to avoid when providing aid.<sup>94</sup>

The decision-making processes for sanctions are centralized at the EU level—albeit through different legislative processes depending on the type of sanctions—but implementation and enforcement remains a responsibility of the member states.<sup>95</sup> While the European Commission (Commission) maintains an 'EU-level contact point for humanitarian aid in environments subject to EU sanctions', the competence to assess and grant exemptions rests with the member states. As such, the contact point only helps humanitarian organizations identify and contact the relevant national authorities.<sup>96</sup> There are also notable differences in how EU member states implement exemptions provisions, and how quickly they handle applications and respond to inquiries and requests for clarification.<sup>97</sup> As the implementation is decentralized

<sup>93</sup> Daher, J. and Moret, E., *Invisible Sanctions: How Over-compliance Limits Humanitarian Work on Syria* (IMPACT—Civil Society Research and Development: Berlin, 2020); and Walker, J., 'Risk management principles guide for sending humanitarian funds into Syria and similar high-risk jurisdictions', May 2020.

<sup>94</sup> Cronberg, T., *Nuclear Multilateralism and Iran: Inside EU Negotiations* (Routledge: Abingdon, 2017), p. 81.

<sup>95</sup> For a more detailed discussion of the EU's sanctions-making process see Helwig, N. and Pesu, M., 'EU decision-making on sanctions regimes', eds N. Helwig, J. Jokela and C. Portela, *Sharpening EU Sanctions Policy: Challenges and Responses in a Geopolitical Era*, Finnish Institute of International Affairs (FIIA) Report no. 63 (FIIA: Helsinki, May 2020), pp. 87–98, 107–109.

<sup>96</sup> European Commission, 'EU-level contact point for humanitarian aid in environments subject to EU sanctions', [n.d.].

<sup>97</sup> Portela C., 'Implementation and enforcement', eds N. Helwig, J. Jokela and C. Portela, *Sharpening EU Sanctions Policy: Challenges and Responses in a Geopolitical Era*, Finnish Institute of International Affairs (FIIA) Report no. 63 (FIIA: Helsinki, May 2020), pp. 107–109.

**Box 4.2.** The Swiss Humanitarian Trade Arrangement

In February 2020, Switzerland introduced a special trade arrangement for deliveries of humanitarian goods to Iran by Swiss companies in the ‘food, pharmaceutical and medical sectors’.<sup>a</sup> To ensure the functionality of the Swiss Humanitarian Trade Arrangement (SHTA), Switzerland cooperated directly with US and Iranian authorities in setting up the arrangement, and selects and approves Swiss banks and companies who participate in it.<sup>a</sup> The SHTA is open only to Swiss companies and does not facilitate transactions for humanitarian aid organizations.

As part of the agreement, Swiss exporters and banks using the SHTA are required to provide ‘detailed information about their business activities and business partners in Iran, and the transactions they carry out’, to the Swiss State Secretariat for Economic Affairs (SECO).<sup>a</sup> SECO verifies the provided information, ensures due diligence is carried out on transactions, and approves transactions. The US Department of the Treasury provides the participating banks ‘with the necessary assurances that financial transactions can be processed in accordance with US legislation’.<sup>a</sup> SECO shares the information it receives with the US Treasury Department, but decisions on selection of participants and approval of transactions lies exclusively with SECO.

A pilot transaction, completed in January 2020, authorized payment for the shipment of medications for cancer and transplant patients, reportedly worth 2.3 million euros.<sup>b</sup> The impact of the COVID-19 disease pandemic and incidental prioritization by companies of other, less complicated and less cost-intensive business has slowed putting the arrangement into operation.<sup>c</sup> However, SECO has approved the participation of additional Swiss companies in the arrangement and additional transactions have been set up through the SHTA.<sup>b</sup>

<sup>a</sup> Swiss State Secretariat for Economic Affairs (SECO), ‘Payment mechanism for humanitarian supplies to Iran in effect’, Press release, 27 Feb. 2020.

<sup>b</sup> Shields, M., ‘First Swiss deal with Iran via humanitarian channel has gone through: Swiss government’, Reuters, 27 July 2020; and SECO (note <sup>a</sup>).

<sup>c</sup> Crawford, J., ‘Swiss humanitarian trade deal with Iran faces delay, questions’, SWI swissinfo.ch, 22 July 2020.

across the member states and may additionally involve UN bodies if the exemptions pertain to UN sanctions and require certain approvals, the additional burden and delay can often make timely assistance difficult.

The Commission’s guidance note regarding the provision of humanitarian aid to fight the Covid-19 pandemic in Iran clarifies that according to the applicable EU sanctions, ‘violations of EU sanctions do not give rise to any liability if the violator did not know, and had no reasonable cause to suspect, that its actions would infringe the prohibitions at hand.’<sup>98</sup> Therefore, EU sanctions in isolation should—in theory—not cause overcompliance or require aid organizations ‘to carry out unrealistic efforts to collect evidence or prove the negative’.<sup>99</sup> The reality experienced by humanitarian actors, however, is that of a complex and overlapping array of EU, UN and US sanctions.<sup>100</sup> Even after the lifting of large portions of the EU and UN sanctions in line with the JCPOA, the effects of US primary and secondary sanctions with the associated risk of incurring harsh penalties still dominate behaviour and cancel out opportunities that the lifting aimed to provide. The ability to use the exemptions provided is therefore considerably limited given the current sanctions landscape.

## II. Special-purpose vehicles and humanitarian trade channels

A range of financial mechanisms, including special-purpose vehicles and special trade channels, seek to facilitate trade in specific goods, counter extraterritorial effects of sanctions by avoiding international transactions using the US dollar and US-linked financial institutions, and provide additional due diligence and safeguards for transfers to sanctioned destinations. The EU, the USA and Switzerland, among others, have set up several special-purpose vehicles and humanitarian trade arrangements in the context of the sanctions regimes on Iran.

<sup>98</sup> European Commission (note 82), p. 8.

<sup>99</sup> European Commission (note 82), p. 8.

<sup>100</sup> Daher and Moret (note 93), p. 15.

Founded by the E3 in 2019, INSTEX seeks to counter the extraterritorial effect of US sanctions where they hinder the resumption of economic cooperation and prevent Iran from reaping the benefits that sanctions lifting sought to provide. INSTEX provides an alternative payment mechanism which enables EU-based economic operators to avoid transactions using the US dollar and thus US jurisdiction.<sup>101</sup> While primarily designed for the specific case of Iran, INSTEX became seen as a mechanism to strengthen EU economic autonomy more generally. However, while INSTEX was originally envisioned as a mechanism to facilitate broad trade with Iran, under pressure exerted by the USA, its mandate was narrowed to focus solely on humanitarian trade between Europe and Iran.<sup>102</sup> The more limited humanitarian trade mandate broadly encompasses food, agricultural equipment, medicine, and medical supplies as well as some related items for the shipping and delivery of such goods.<sup>103</sup> While INSTEX always included a certain humanitarian rationale, it was only after the narrowing of its focus that it became more akin to a humanitarian trade channel.

INSTEX is intended to function as a clearing house where EU exporters' claims are settled against EU importers' liabilities, and the Special Trade and Finance Instrument—the Iranian counterpart to INSTEX—does the same between importers and exporters in Iran. As part of the conditions for using the mechanism, companies also need to meet additional due diligence and reporting requirements. INSTEX and the Special Trade and Finance Instrument both conduct Know-Your-Customer procedures as well as sanctions and anti-money laundering screening of clients and third parties.<sup>104</sup> The first transaction through INSTEX occurred in March 2020, a year after its creation, when a German company exported blood treatment equipment to Iran. Despite considerable efforts by the EU, particularly the E3, INSTEX has largely failed to deliver on its promises as no other transactions using INSTEX have since occurred.<sup>105</sup>

INSTEX faces two main challenges. One is the reduced interest in using the mechanism, as a result of overcompliance in the face of the threat of US secondary sanctions and an overall chilling effect on the willingness of companies and organizations to engage in transactions with Iran. The other is a significant trade deficit between the EU and Iran which limits INSTEX's effectiveness as EU exports far exceed Iranian imports to the EU.<sup>106</sup> Unless there are significant changes to US sanctions or the scope of INSTEX widens to other types of goods, the imbalance of trade will continue to threaten the sustainability of the mechanism.<sup>107</sup> Iran's lack of effective anti-money laundering policies and compliance with Financial Action Task Force guidelines, in combination with the US designation of Iran for money laundering concern, add to obstacles to accessing loans, for example from the International Monetary Fund.

The EU has since seemingly moved from strengthening INSTEX—which would be particularly important to ensure humanitarian transactions and as a mechanism to counter secondary sanctions—to hoping that the USA will return to the JCPOA and readjust its sanctions policies toward Iran. There is also a lack of political will in the EU and among its member states. When it comes to considering the unfreezing of

<sup>101</sup> Erästö, T., 'European non-proliferation diplomacy in the shadow of secondary sanctions', SIPRI Policy Brief, Aug. 2020; Geranmayeh, E. and Batmanghelidj, E., 'Trading with Iran via the special purpose vehicle: How it can work', European Council on Foreign Relations, 7 Feb. 2019.

<sup>102</sup> European Union External Action Service, 'Implementation of the Joint Comprehensive Plan of Action: Joint ministerial statement', Joint Statements, 24 Sep. 2018, para. 10.

<sup>103</sup> Stearns, J. and Fouquet, H., 'US warns Europe that its Iran workaround could face sanctions', Bloomberg, 29 May 2019; and French Ministry for Europe and Foreign Affairs (note 90).

<sup>104</sup> INSTEX, 'About us', [n.d.].

<sup>105</sup> Sauerbrey, A., 'The failure of Europe's feeble muscle flexing', *New York Times*, 10 Feb. 2020.

<sup>106</sup> Geranmayeh and Batmanghelidj (note 101).

<sup>107</sup> Mallard, Sabet and Sun (note 7), pp. 134–38.

Iranian assets to finance humanitarian transactions through INSTEX, EU member states have often been unwilling to enforce European companies' compliance with the blocking statute. While this has held the door open for dialogue and coordination with the USA, it has also demonstrated the unwillingness of the EU and its member states to pay the economic and political price of pursuing a truly autonomous policy.

In October 2019, the USA announced the creation of its own humanitarian mechanism, aimed at both US-based and foreign persons and entities that wish to engage in legitimate trade with Iran.<sup>108</sup> However, the intrusive and cumbersome information and reporting requirements in particular have failed to convince companies to start using the US mechanism.<sup>109</sup> Switzerland also set up its own humanitarian trade arrangement in February 2020 (box 4.2)—albeit choosing a middle way—by engaging with US and Iranian authorities. The Swiss authorities share extensive information with the USA in exchange for assurances that the arrangement will not be targeted, while retaining control over which Swiss companies participate and which transactions get authorized. Slow uptake by Swiss companies and limited Iranian foreign currency holdings mean that even the Swiss channel has failed to meet initial expectations, but the number of companies approved and additional transfers lined up is increasing.

### III. Dialogue and outreach to humanitarian aid organizations

International and regional organizations and governments—particularly those providing funding for humanitarian and development assistance programmes—engage in dialogue with and sometimes actively reach out to humanitarian aid organizations to discuss the humanitarian impact of specific sanctions regimes, challenges faced by humanitarian actors, and the use of exemptions and humanitarian trade channels.<sup>110</sup> For example, the International Committee of the Red Cross provided a briefing to a joint meeting in May 2019 between the EU's Council Working Party on Humanitarian Aid and Food Aid and the Working Party of Foreign Relations Counsellors.<sup>111</sup>

There continues to be a need for additional awareness-raising and sharing of experiences, including among small and local aid organizations that may lack awareness of compliance requirements and rationale behind risk-reduction approaches. Banks and other financial institutions can often benefit from better understanding the nature and needs of humanitarian action. Improving availability of national authorities for direct engagement on specific issues encountered could also help organizations meet compliance and due-diligence requirements better and enable them to provide feedback on their experiences. Moreover, there is still a lack of dialogue within the EU and within member states between the relevant bodies responsible for sanctions and those responsible for humanitarian and development aid.<sup>112</sup>

<sup>108</sup> US Department of the Treasury, 'Treasury and State announce new humanitarian mechanism to increase transparency of permissible trade supporting the Iranian people', Press release, 25 Oct. 2019.

<sup>109</sup> Batmanghelidh, E. and Shah, S., 'As Iran faces virus, Trump admin fails to use Swiss channel to ease medical exports', European Leadership Network, 25 Feb. 2020.

<sup>110</sup> Debarre (note 77), pp. 21–23.

<sup>111</sup> Debarre (note 77), p. 22.

<sup>112</sup> Debarre (note 77), pp. 21–22.

## 5. Strengthening the EU's sanctions toolkit and ability to mitigate the humanitarian impact of sanctions

The Iran sanctions case provides an opportunity to study when and how the EU uses economic sanctions to advance EU policy goals, interests and values.<sup>113</sup> The EU's use of sanctions in the complex environment of multiple sanctions regimes also provides an illuminating case of mechanisms deployed to mitigate humanitarian impacts of sanctions and counter US secondary sanctions. The analysis of these aspects provides findings on the effectiveness of autonomous EU sanctions in the case of Iran and beyond, while helping to identify priorities and future steps for EU sanctions and policy on Iran. It also highlights important areas that need strengthening to help the EU be the credible and responsible sanctions power it sets out to be.

### I. Effectiveness of autonomous EU sanctions

EU sanctions can—in certain circumstances—be an effective tool to convince a state to change its behaviour and work toward a negotiated solution on an issue, rather than remain confrontational and irresolute. The autonomous sanctions imposed by the EU on Iran were credible and impactful, as they were backed by the EU's economic leverage via its market power, coordinated with US sanctions and reinforced diplomatic efforts—which offered key concessions on enrichment that made the JCPOA more acceptable to Iran. Therefore, the lifting of EU autonomous sectoral sanctions contributed as one of the bargaining chips leveraged in the negotiation of the JCPOA and put weight behind the E3 and EU High Representative's role in the negotiations.<sup>114</sup> The convergence of US and European sanctions policy on Iran, and the EU's imposition of its own autonomous, strong, targeted measures, imposed significant costs on Iran. These steps provided important additional economic leverage, given that the United States had long exhausted its leverage when it had previously moved to comprehensive sanctions on Iran. The EU's energy embargo in 2012 harmed Iran's economy, as the sharp decline in EU imports of Iranian crude oil illustrates (figure 3.1).<sup>115</sup> The EU's use of sanctions and the cutting off of Iran's banks from SWIFT in 2012 proved to be a critical step in putting further pressure on Iran.<sup>116</sup>

Sanctions continue to play an important role, including during the negotiations on a possible return to the JCPOA by all parties. However, based only on this case, the ability of sanctions to reach policy objectives or bring about change in target behaviour should also not be overestimated, but assessed mindful of their being embedded in a wider diplomatic and strategic approach.

The tough sectoral and financial sanctions imposed on Iran by the EU provide an example of its economic power and the ways in which the EU can wield it. The US withdrawal from the JCPOA and adversarial US policies toward Iran have also shown that the economic incentives the EU can offer, made possible by the economic power it wields, are much more limited when faced with comprehensive US secondary sanctions and 'maximum pressure'. This experience also demonstrates that the EU is vulnerable to US economic coercion, which was illustrated by the inability of EU

<sup>113</sup> See Cronberg (note 33); and Cronberg (note 94).

<sup>114</sup> Cronberg (note 33), p. 254.

<sup>115</sup> Jung, E., 'Iran sanctions: A successful episode', Peterson Institute for International Economics, 29 Jan. 2016.

<sup>116</sup> SWIFT (note 45); and Cronberg (note 33), p. 251.

firms to benefit from economic opportunities that had been expected to result from the implementation period of the JCPOA.

The imposition of sectoral sanctions, such as the energy embargo along with strong financial sanctions, has had a significant impact on the general population, which was reinforced by US primary and secondary sanctions, including their hampering of the work of humanitarian organizations. Despite the contribution of EU sanctions to the negotiations, the humanitarian consequences are critical issues to consider when employing economic sanctions. They need to be addressed with the utmost care, particularly as the EU seeks to act as a principled sanctions power that attempts to minimize the humanitarian impact of sanctions to the best of its ability.

## II. The EU as a credible and responsible sanctions power

The EU needs to act as a responsible and credible sanctions power to be able to use sanctions as an effective instrument in pursuit of a principled and value-based CFSP—including on non-proliferation—while simultaneously engaging in diplomacy and providing humanitarian and development assistance. The analysis of the Iran sanctions case raises several important points for the future use of EU sanctions on Iran and in general. Efforts to mitigate humanitarian consequences of sanctions should be at the core of pursuing such an approach to ensure that sanctions continue to be a viable and effective instrument.<sup>117</sup> This is particularly the case because civilian suffering caused by sanctions has been shown to often limit or even outweigh political gain.<sup>118</sup> The EU is particularly sensitive to negative backlash connected to humanitarian impact of its sanctions, as it sees itself as a principled and value-driven sanctions actor.

For sanctions to be effective, they must be credible. The economic power wielded by EU sanctions is demonstrably stronger when purposefully coordinated with the USA. The Iran case clearly shows how dependent the EU is on US policy and how strong the economic impact of coordinated sanctions between the USA and the EU can be, as demonstrated by the coordinated sanctions on Iran in 2010–13. Despite the cooling of relations under the Trump administration, and additional caution that may characterize European approaches to coordination with the USA based on this experience, it is key that the EU reinvigorates this relationship to put it on a stronger footing with the USA. The recent engagement with the new US administration provides an important opportunity in this respect. The outcomes from the recent EU–US summit in June 2021 included a commitment ‘to enhance cooperation on the use of sanctions to pursue shared foreign policy and security objectives, while avoiding possible unintended consequences for European and US interests’.<sup>119</sup>

With increased use of autonomous sanctions in its foreign policy ‘toolkit’, the EU has sought to couple the use of economic sanctions with measures to minimize the humanitarian impacts that sanctions cause. Some previous analyses have pointed to a lack of recognition of EU responsibility for humanitarian consequences of EU sanctions in the past.<sup>120</sup> In response to the Covid-19 pandemic and efforts by several leading humanitarian organizations to draw additional attention to the issue of the humanitarian impact of sanctions, the EU has initiated some steps towards addressing these consequences. This paper has identified a range of areas where improvements to EU sanctions policy-making and procedures could help strengthen EU sanctions while enabling the EU to act as a responsible and credible sanctions power.

<sup>117</sup> Biersteker, T. J. et al., ‘Consensus from the bottom up? Assessing the influence of the sanctions reform processes’, eds Wallensteen and Staibano (note 6).

<sup>118</sup> Moret (note 39), p. 123.

<sup>119</sup> White House, ‘US–EU summit statement’, Briefing Room Statement, 15 June 2021.

<sup>120</sup> Moret (note 39), p. 134.

### III. The future of EU sanctions policy towards Iran

Going forward it is important to manage expectations and communicate clearly with respect to sanctions and economic relations between the EU and Iran, especially after a potential return to compliance with the JCPOA by the USA and Iran. While the indirect negotiations are a positive sign, the situation remains fragile, and the EU needs to reinvigorate efforts to speed up operation of INSTEX while also strengthening the use and application of the mechanism. However, the experience of the reimposition of US (secondary) sanctions also shows that the EU's power to soften their effects is limited. Demonstrable efforts towards sanctions relief and provision of humanitarian assistance—particularly in the context of the Covid-19 pandemic—while facilitating and engaging in diplomacy with Iran, are all key to an effective EU policy towards Iran. Nevertheless, a success of the negotiations and return to full implementation of the JCPOA is far from certain: collapse and failure of the negotiations is a contingency for which the EU needs to be prepared.

Sanctions will continue to play a significant role in EU–Iran relations as restrictive measures in response to Iran's ballistic missile programme and human rights violations remain in place and contribute to the chilling effect on business with Iran and impact on future economic relations. The EU's recent focus on human rights sanctions—based on the EU Global Human Rights Sanctions Regime established in December 2020—resulting in further designations of Iranian entities, despite the simultaneous negotiations on the JCPOA, speaks to the continued complexity of the situation.<sup>121</sup> However, the sanctions toolkit is just one set of instruments the EU has deployed. The EU will have to use sanctions in parallel with other measures and in coordination with international partners—as is the case for the EU's policy regarding Iran's nuclear programme. It is questionable whether the remaining sanctions have a coercive effect on Iran's actions concerning missiles and human rights. While they serve an important signalling and to some extent constraining function, they will need to be enforced properly and complemented by dialogue and diplomacy for the foreseeable future.

### IV. Recommendations

#### 1. Strengthen EU assessment procedures on humanitarian impacts of sanctions

The EU should set up clear standards for the assessment of the humanitarian impacts of its sanctions regimes and processes to ensure that such assessments are sufficiently taken into account in decision-making. Many previous analyses have recommended pre-assessment procedures on likely humanitarian consequences, continuous monitoring during the implementation of sanctions, and reporting and information-sharing on issues encountered by humanitarian organizations.<sup>122</sup> As most of the competences for such assessments and related tasks will continue to be with the member states, guidance on meeting EU-wide standards on such assessments—beyond the existing guidelines and EU best practices—could lead to a wider adoption of and help strengthen such measures.<sup>123</sup> For EU sanctions regimes that include sectoral sanctions and energy embargoes, there should be a mandatory assessment process by a panel or committee that continuously monitors, reviews and regularly reports on the humanitarian impact

<sup>121</sup> Council of the EU, 'EU imposes further sanctions over serious violations of human rights around the world', Press release, 22 Mar. 2021.

<sup>122</sup> Debarre (note 77), p. 17; Schaar, J., *The Burden of the Unintended: The Humanitarian Consequences of Sanctions and the Role of the Red Cross Red Crescent* (forthcoming); and Mallard, Sabet and Sun (note 7).

<sup>123</sup> Council of the EU 5664/18 (note 91); and Council of the EU, 'EU best practices for the effective implementation of restrictive measures', doc. no. 8519/18, 4 May 2018, pp. 44–45.



of the sanctions regime in question. Such a panel or committee could further test and strengthen assessment methodologies for evaluating the humanitarian impacts of sanctions beyond the EU.

## **2. Expand and improve EU and national implementation guidance**

The Commission has recently demonstrated an increasing awareness of and commitment to addressing the issue of humanitarian consequences, particularly in the context of the Covid-19 pandemic, through the issuing of specific guidance concerning humanitarian and medical assistance provided in sanctioned countries.<sup>124</sup> This guidance should be strengthened and expanded, particularly based on feedback from humanitarian organizations. Beyond specific country cases, detailed guidance on the use of exemptions and exceptions to EU sanctions could also be a helpful measure that specifically targets humanitarian actors. The availability of national guidance varies considerably among EU member states; such guidance could be improved and strengthened, with a particular focus on applicable national procedures.

## **3. Strengthen engagement and coordination with the USA on sanctions**

The EU should take the opportunity provided by the commitments reached at the EU–US summit to strengthen and set up regular dialogue and coordination forums on sanctions. This could help reduce uncertainties, improve coordination and provide a forum for sharing experiences and good practices on sanctions enforcement and mitigation of humanitarian impacts.

## **4. Strengthen and expand the INSTEX mechanism**

The EU needs to safeguard its ability to pursue autonomous policies, even when such policies are contrary to those of other major powers and allies, in an effort to ensure that humanitarian consequences arising from use of autonomous sanctions are minimized. For this purpose, the EU should seek to strengthen the INSTEX mechanism by exploring its institutionalization, broadening the scope of goods that can be traded through the mechanism, and allowing it to be used with other target states. As INSTEX develops, other EU member states could ostensibly become shareholders in INSTEX. The EU could also guarantee loans made to temporarily bridge payment imbalances and expedite procedures for accessing frozen funds to facilitate humanitarian transactions.

## **5. Increase resources for licensing and enforcement**

While the EU's ability to impose targeted sanctions both autonomously and in concert with US sanctions may have contributed to the success of the JCPOA negotiations, the EU's autonomous use of economic sanctions has highlighted the need for the EU to strengthen enforcement and compliance of its own economic sanctions regimes. As the EU continues to expand its use of sanctions, the EU and the member states need to allocate appropriate resources to meet this higher demand on national licensing and enforcement agencies and on EU departments and working groups. This could include resources for in-reach and collaborative training for licensing and enforcement officers from EU member states.

<sup>124</sup> European Commission, C(2020) 7983 final (note 82).

**6. Increase EU engagement with humanitarian aid organizations**

Pursuing a policy that combines the imposition of autonomous sanctions and provision of humanitarian aid demands regular coordination and information sharing among officials in both policy areas, along with input from other relevant stakeholders. The EU should consider setting up a forum for regular meetings to bring together humanitarian aid organizations, suppliers of humanitarian goods, national sanctions coordinators and licensing officers, and relevant personnel from the directorates-general for International Partnerships, Financial Stability, Financial Services and Capital Markets Union, European Civil Protection and Humanitarian Aid Operations and the European External Action Service. Such a forum could enable the EU to gather important insights on the humanitarian impact of EU sanctions, the effectiveness of mitigation mechanisms and the persisting differences in national implementation, including before sanctions are implemented. The EU should also continue to be a key convenor of exchanges on the issue of humanitarian impact of sanctions, provide input to and drive international processes on addressing the humanitarian impact of sanctions, and strive to be a global leader on responsible use of sanctions.

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