

Intel Brief: Trump Tosses Iran Policy to Congress

On Thursday, President Trump will make a speech on Iran in which he is expected to not certify that Iran is in compliance with the Nuclear Deal, as required every 90 days. This will give the Congress 60 days to take up the issue of putting sanctions back in place. At this juncture, a return to the status quo ante "the Deal" is impossible given the positions of the other P5+1 countries. But, Congress may take other steps to turn up the heat on Iran.

This week, as part of an October 12 policy speech, President Trump reportedly will not certify that Iran is in compliance with the Joint Comprehensive Plan of Action (JCPOA) or nuclear accord. This failure to certify compliance is related to a U.S. law put in place when the agreement was negotiated, and it would not lead, necessarily, to the U.S. formally pulling out or to the end of the accord. The 2015 Iran Nuclear Agreement Review Act, passed by a Congress that disliked the fact that it was not a formal treaty, requires the President to certify to Congress every ninety (90) days that Iran is complying with the terms of the JCPOA. The way the law is written, a President can choose not to certify at a 90-day point for either a material breach or for other, more nebulous reasons. This latter judgment that Iran is "not in compliance" or that the agreement is not in the national security interests of the United States is different from declaring Iran in "material breach" which would require a report to Congress outlining exactly how Iran was not living up to its obligations. Regardless of whether the Trump administration chooses to not certify due to a "material breach" (less likely as no evidence has been provided) or a "lack of compliance" on Iran's part, the result is that it opens a sixty-day window for Congress to consider re-imposing sanctions on Iran. If Congress decides to put the sanctions back on that were lifted as part of the agreement, then the U.S. would be formally out, and Iran could then be released of its obligations.

It is not at all clear that Congress will put sanctions back on Iran and thereby formally pull the United States out of the deal. First, news reports indicate that the administration might let Congress know that it does not want to go that far at this point. Second, senior administration officials, including Secretary of Defense Mattis, testified to Congress this week that the agreement is in U.S. national security interests. Third, re-imposed sanctions would bite not only Iran; they would also hurt companies in Europe, Russia, and China. The Trump administration is not interested in more sanctions on Russia even though some members of Congress might be. Sanctions on European allies would hurt a major trading partner and could result in retaliation against American firms who do business in or with Europe. Senior European leaders have made their positions very clear to the Trump administration – that the nuclear deal should remain in force and it is in their national security interest. Finally, sanctioning China as Washington is seeking its help with the North Korea crisis would seem to be highly counterproductive.

The main action in this political drama will be the Thursday policy speech and official announcement by the Trump administration. The key question will be whether the President will simply be happy to meet his campaign pledge to disavow the deal or whether the White House will push for a formal severing of the U.S. from the multilateral agreement. The former outcome is more likely.

Yet, even a declaration of non-compliance but no sanctions could be problematic due to Iran's reaction. Iran is not a political monolith, and some elements within the governing bodies could take any action as license to begin bending or openly flouting elements of the agreement. This, in turn, could give Washington cause to fully pull out of the agreement in subsequent months if these transgressions are discovered.