

JCPOA – US sanctions and EU update to the Blocking Statute

As previously reported, the US has now withdrawn from the Joint Comprehensive Plan of Action (“**JCPOA**”). On Monday 6 June 2018, President Donald Trump issued an Executive Order re-imposing some of the so-called secondary sanctions against Iran (see [OFAC notice](#)). These sanctions took effect on 7 August 2018, following a 90-days winding down period. The second re-imposition of secondary sanctions is expected to come into effect on 4 November 2018. In short, these secondary sanctions have extra-territorial application in that they extend the application of some US sanctions to persons and companies outside the US, including European companies and persons.

In response, the EU has updated its so-called Blocking Statute by listing the re-imposed US secondary sanctions laws in the annex to the Statute.¹ To note is that the annex already includes certain US sanctions against Cuba.

The intended purpose of the update is to shield EU persons and companies from the effects of the US secondary sanctions, for example by nullifying the effects of any foreign decisions, e.g. court orders or administrative decisions, which are based on the listed secondary sanctions. Further, the Blocking Statute prohibits EU companies and persons from complying with the US laws listed in the annex. It also provides a legal basis for claiming damages, if such damage arises from the application of the laws listed in the annex, from whoever has caused such damage. According to the European Commission, the right to recover damages shall be interpreted broadly, both in terms of the scope of damages that may be recovered and against whom the claims may be directed, including representatives of the persons responsible for the damage. An EU company that has suffered damages, for example through an EU supplier’s failure to deliver under a contract, could potentially direct such claims for damages, including legal costs, against the supplier or its representative, if the supplier’s actions are based on or resulting from, the application of the US secondary sanctions.

The update to the Blocking Statute was published and entered into force on 7 August 2018 through Commission Delegated Regulation (EU) 2018/1100, see [link](#).

Further guidance

To further explain the purpose and application of the Blocking Statute and to help EU companies comply with the new rules, the European Commission has made available the following:

- Press release and joint statement: [link](#) and [link](#)
- Fact sheet (Q&A): [link](#)
- Guidance Note (Q&A): [link](#)

¹ Council Regulation (EC) 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom. Previously consolidated version available [here](#).

Reporting obligations

Alongside the prohibition of complying with US secondary sanctions against Iran, the Blocking Statute obliges EU persons and companies to inform the European Commission if their economic and/or financial interests are affected, directly or indirectly, by the provisions listed in the Blocking Statute. Failure to inform the European Commission within 30 days is considered a violation of the Blocking Statute.

Possibility to apply for an authorisation to comply with US secondary sanctions

The Blocking Statute allows the European Commission to authorise companies and persons to comply, fully or partially, with the laws listed in the annex to the Statute, if such non-compliance would seriously damage their interest or the interest of the EU.

Up until now, the procedure and criteria for granting such authorisations have been left largely unregulated. The European Commission has therefore adopted a separate regulation that sets out further details of the procedure as well as a number of criteria for assessing if an authorisation should be granted. A template application has also been made available.

- The Commission Implementing Regulation (EU) 2018/1101: [link](#)
- Template application: [link](#)

Potential consequences of violations and enforcement

The penalties for violating the Blocking Statute are to be set by each EU Member State's national legislator and may therefore vary between Member States. Under Swedish law, the failure to comply with the Blocking Statute is a criminal offence which carries fines against the individuals responsible (Sw. *dagsböter*) and/or company fines (Sw. *företagsbot*).

In the past, enforcement of the Blocking Statute has been very rare. However, because it is a key part of the EU's response to the US's unilateral move to withdraw from the JCPOA, the Blocking Statute is now becoming a high profile political tool. In view of the importance that the EU now attaches to the Blocking Statute, we may see efforts by the EU to ensure that the Member States enforce compliance with the Statute's provisions. Significant uncertainty remains however as to how the situation will evolve.

Summary and recommendations

Companies with operations in Iran may now find themselves in between two conflicting applicable laws, and compliance assessments may prove to be complex.

From an EU perspective, dealing with Iran raises several questions. On the one hand, the US secondary sanctions do not, at present, cover all business operations with Iran, which means many EU business operations will not be covered by, or face the risk of, US secondary sanctions. Nonetheless, even in these cases, some operators are taking an approach of withdrawing from business dealings with Iran; a decision which may be based on several different reasons. In relation hereto, the European Commission's Guidance Note states that EU companies "are free to choose to start working, continue, or cease business operations in Iran ... on the basis of their assessment of the economic situation." Although this statement supports the principle of contractual freedom, companies which decide to withdraw from business with Iran need to ensure that their decision cannot be construed as violating the Blocking Statute.

Companies whose operations are subject to the scope of the US secondary sanctions have the option of applying for an authorisation from the European Commission. But until there is an established practice of how the European Commission grants such authorisations, companies may find it difficult to assess the risk exposure if for example, they apply for, but are denied, such an authorisation.

To summarise, under the new rules, a company in the EU should apply with the Commission for authorisation to wind down operations in Iran if it is doing so to comply with US secondary sanctions, but not if it is a business decision – a distinction that, in our view, may be difficult to make and needs to be assessed on a case-by-case basis.

This memorandum provides a brief overview of some of the key aspects of the Blocking Statute that we believe will be of interest to our clients. We will continue to monitor developments in relation to the JCPOA, the EU Blocking Statute, and US foreign policy and sanctions laws, in particular with regard to Iran. Should you have any further questions or wish to discuss any of these issues, please feel free to contact any of our colleagues working with trade compliance listed below.

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