



AUGUST 07, 2018

CIRCULAR NO. 28/18

TO THE MEMBERS OF THE ASSOCIATION

Dear Member:

THE UNITED STATES FORMALLY REIMPOSES SECONDARY SANCTIONS AGAINST IRAN

Introduction

On May 8, 2018, President Trump withdrew the United States from participation in the JCPOA – the nuclear deal between Iran and the six nations referred to as P5+1, being the five permanent members of the UN Security Council plus Germany. In further implementation of his May 8 decision, President Trump yesterday issued an **Executive Order (copy attached)**, formally re-imposing secondary US economic sanctions against Iran.

The May 8, 2018 withdrawal of the United States from the JCPOA was the subject of **Club Circular No. 15/18** of May 10, 2018. The withdrawal resulted in the prohibition of certain transactions and activities by non-US persons involving Iran as of May 8, 2018, but provided for two grace, or wind-down, periods until August 6, 2018 and November 4, 2018 for activities and transactions which were ongoing prior to May 8, 2018.

A summary of the main sanctions under the Executive Order

The main provisions of the sanctions are as follows:

1. Under the Executive Order, as of today, the United States will impose blocking sanctions against non-US persons who support the Government of Iran's purchase or acquisition of US bank notes or precious metals; certain Iranian persons; and Iran's energy, shipping, and shipbuilding sectors and designated port operators.
2. After the 90-day wind down period ends on August 6, 2018, the US government will re-impose the following sanctions which were lifted pursuant to the JCPOA, including sanctions on associated services related to the activities below:
 - i. Sanctions on the purchase or acquisition of US dollar banknotes by the Government of Iran;
 - ii. Sanctions on Iran's trade in gold or precious metal;
 - iii. Sanctions on the direct or indirect sale, supply, or transfer to or from Iran of graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes;



- iv. Sanctions on significant transactions related to the purchase or sale of Iranian rials, or the maintenance of significant funds or accounts outside the territory of Iran denominated in the Iranian rial;
 - v. Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
 - vi. Sanctions on Iran's automotive sector.
3. Following the 180-day wind-down period ending on November 4, 2018, the US government will re-impose the following sanctions which were lifted pursuant to the JCPOA, including sanctions on associated services related to the activities below:
- i. Sanctions on Iran's port operators, and shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines (IRISL), South Shipping Line Iran, or their affiliates;
 - ii. Sanctions on petroleum-related transactions with, among others, the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), and National Iranian Tanker Company (NITC), including the purchase of petroleum, petroleum products, or petrochemical products from Iran;
 - iii. Sanctions on transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions under Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA);
 - iv. Sanctions on the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions described in Section 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions and Divestment Act of 2010 (CISADA);
 - v. Sanctions on the provision of underwriting services, insurance, or reinsurance; and
 - vi. Sanctions on Iran's energy sector.
4. In addition, effective November 5, 2018, the US government will revoke the authorization for US-owned or -controlled foreign entities to wind down certain activities with the Government of Iran or persons subject to the jurisdiction of the Government of Iran that were previously authorized pursuant to General License H.
5. Furthermore, no later than November 5, 2018, the US government will re-impose, as appropriate, the sanctions that applied to persons removed from the List of Specially Designated Nationals and Blocked Persons (the SDN List) and/or other lists maintained by the US government on January 16, 2016.
6. The August 6, 2018 Executive Order also authorizes the imposition of sanctions on foreign financial institutions upon a determination that the foreign financial institution has knowingly conducted or facilitated any significant financial transaction:
- i. on or after August 7, 2018, for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran;



- ii. on or after November 5, 2018, on behalf of any Iranian person included on the SDN List (other than an Iranian depository institution);
 - iii. on or after or after November 5, 2018, with NIOC or NICO, except for a sale or provision to NIOC or NICO of certain products described in the Iran Sanctions Act provided that the fair market value of such products is lower than the applicable dollar threshold;
 - iv. on or after November 5, 2018, for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran; or
 - v. on or after November 5, 2018, for the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran.
7. Sanctions imposed on foreign financial institutions may prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by such foreign financial institution.
 8. Sanctions will not be imposed with respect to a significant financial transaction conducted or facilitated by a foreign financial institution for the sale, supply, or transfer to or from Iran of natural gas only if the financial transaction is solely for trade between the country with primary jurisdiction over the foreign financial institution and Iran, and any funds owed to Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution.
 9. Sanctions will also not be imposed with respect to any person for conducting or facilitating a transaction for the provision (including any sale) of agricultural commodities, food, medicine, or medical devices to Iran.
 10. Additionally, the Executive Order provides for the imposition of menu-based sanctions on or after August 7, 2018, against persons:
 - i. knowingly engaged in a significant transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran;
 - ii. on or after November 5, 2018, knowingly engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran;
 - iii. on or after November 5, 2018, knowingly engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran.

In addition, OFAC yesterday published a revised statement, and updated existing Frequently Asked Questions (FAQs) relating to the Administration's implementation of the President's May 8, 2018 decision to cease the United States' participation in the Joint Comprehensive Plan of Action (JCPOA) and to reimpose all sanctions lifted or waived in connection with the JCPOA.



Specifically, OFAC updated FAQ 1.4 and inserted new FAQs 2.3-2.7. Yesterday marked the last day of the 90-day wind-down of certain sanctions relief specified in the JCPOA and as set out in the FAQs. The new FAQs are available at:

https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#eo_reimposing

Maritime transportation

Maritime transportation and other services in support of or related to the foregoing sanctionable activities is prohibited under the reimposed secondary US sanctions on Iran.

The European Union takes steps to counter the application of US sanctions

Adding further complexity to the sanctions landscape, the European Union has intensified efforts to counteract the reimposed US measures and preserve the Iran nuclear accord. Accordingly, in an attempt to maintain the principles established under the JCPOA framework, to facilitate the continuation of trade activities between European businesses and Iran, and to counteract the extraterritorial effect of US secondary sanctions, the European Union has replaced the annex to Council Regulation (EC) No 2271/96, otherwise known as the Blocking Regulation.

Commission Delegated Regulation (2018/1100) of June 6, 2018 gives effect to the replacement of the Annex from August 7, 2018. The new annex sets out, among others, the United States laws, regulations and other legislative instruments relating to trade with Iran from the Iran Sanctions Act 1996 onwards that have been subject to waivers under the JCPOA since January 16, 2016. However, as explained above, those waivers will cease to have effect on a phased-in basis from August 6, 2018 with a final date of November 4, for certain trade activities, including the transport of oil cargoes, by which date the performance of contracts must be either executed or terminated.

A copy of [Regulation 2018/1100 attaching the new Annex and a Guidance Note](#) issued by the European Commission are attached.

The International Group has engaged extensively with all interested parties in order to explain the potentially complex legal scenario that could arise as a result of EU natural and legal persons complying on the one hand with the reinstatement of US measures, while on the other hand facing a potential exposure to a law suit by virtue of a civil action taken under the Blocking Regulation.

Under the Blocking Regulation, a national of an EU Member State or a legal person incorporated within the European Union who suffers a detriment as a result of another legal person in the European Union complying with the US measures, may seek recovery of damages arising from that legal person. EU Member States are also obliged to uphold the EU measures.

Attention is however drawn to section 1.5 of the Guidance Note which reflects the right of an EU operator, consistent with the provisions of the Blocking Regulation, to make its own assessment of the economic situation and its decision on whether to commence, continue or cease business operations in Iran. The situation is complicated and the way in which the Blocking Regulation is implemented and enforced in the Member States will vary from country to country.



The Blocking Regulation – authorization process

Exemption from the Regulation is permissible under Art. 5, providing a natural or legal person to whom the Regulation applies (Art. 11) can demonstrate that compliance with the Regulation – and non-compliance with the reactivation of US measures – would seriously damage their interests.

Section 3, paragraphs 16 – 20 in the Guidance Note address the process for authorization to comply with the extraterritorial legislation listed under the new Annex in circumstances where non-compliance would seriously damage their interests. The envisaged authorization process permits for applications for individual EU operators, or be several operators jointly where their interests are sufficiently homogenous.

Questions and further guidance

The American Club will continue to closely monitor developments with respect to the implementation of the reimposed sanctions and provide further guidance to Members as necessary. The International Group will also continue to monitor circumstances generally, particularly in regard to the EU position on this subject.

Members are reminded that pursuant to American Club rules there is no cover for unlawful voyages or for voyages where the extension of cover would violate or pose a risk of violating sanctions prohibitions and also that causing a violation could entail the imposition of sanctions or penalties. Members are accordingly reminded to proceed with extreme caution in dealing with or involving Iran and Iranian entities and to conduct additional sanctions compliance due diligence to ensure their own and the American Club's compliance with applicable sanctions prohibitions.

Should Members wish to discuss any questions or need additional guidance regarding any aspect of the foregoing, or other sanctions in general, or for confirmations as to the availability of cover for voyages involving countries (Iran, Syria, Cuba, North Korea, Russia, the Crimea region of Ukraine, Venezuela (presently only SDNs)) or entities or individuals subject to US economic sanctions (e.g., OFAC SDN List), they are asked to contact: Charles J. Cuccia, Senior Vice President - Compliance & Enterprise Risk Management, ph +1 212 847 4539, mob +1 917 215 2883, <mailto:charles.cuccia@american-club.com>.

Yours faithfully,

Joseph E.M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB

EXECUTIVE ORDER

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REIMPOSING CERTAIN SANCTIONS WITH RESPECT TO IRAN

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), the Iran Sanctions Act of 1996 (Public Law 104-172) (50 U.S.C. 1701 note), as amended (ISA), the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195) (22 U.S.C. 8501 *et seq.*), as amended (CISADA), the Iran Threat Reduction and Syria Human Rights Act of 2012 (Public Law 112-158) (TRA), the Iran Freedom and Counter-Proliferation Act of 2012 (subtitle D of title XII of Public Law 112-239) (22 U.S.C. 8801 *et seq.*) (IFCA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code, in order to take additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995,

I, DONALD J. TRUMP, President of the United States of America, in light of my decision on May 8, 2018, to cease the participation of the United States in the Joint Comprehensive Plan of Action of July 14, 2015 (JCPOA), and to re-impose all sanctions lifted or waived in connection with the JCPOA as expeditiously as possible and in no case later than 180 days from May 8, 2018, as outlined in the National Security Presidential Memorandum-11 of May 8, 2018 (Ceasing United States Participation in the Joint Comprehensive Plan of Action and Taking Additional Action to Counter Iran's Malign Influence and Deny Iran All Paths to a Nuclear Weapon), and to advance the

goal of applying financial pressure on the Iranian regime in pursuit of a comprehensive and lasting solution to the full range of the threats posed by Iran, including Iran's proliferation and development of missiles and other asymmetric and conventional weapons capabilities, its network and campaign of regional aggression, its support for terrorist groups, and the malign activities of the Islamic Revolutionary Guard Corps and its surrogates, hereby order as follows:

Section 1. Blocking Sanctions Relating to Support for the Government of Iran's Purchase or Acquisition of U.S. Bank Notes or Precious Metals; Certain Iranian Persons; and Iran's Energy, Shipping, and Shipbuilding Sectors and Port Operators. (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to impose on a person the measures described in subsection (b) of this section upon determining that:

(i) on or after August 7, 2018, the person has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the purchase or acquisition of U.S. bank notes or precious metals by the Government of Iran;

(ii) on or after November 5, 2018, the person has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), or the Central Bank of Iran;

(iii) on or after November 5, 2018, the person has materially assisted, sponsored, or provided financial,

material, or technological support for, or goods or services to or in support of:

(A) any Iranian person included on the list of Specially Designated Nationals and Blocked Persons maintained by the Office of Foreign Assets Control (SDN List) (other than an Iranian depository institution whose property and interests in property are blocked solely pursuant to Executive Order 13599 of February 5, 2012); or

(B) any other person included on the SDN List whose property and interests in property are blocked pursuant to subsection (a) of this section or Executive Order 13599 (other than an Iranian depository institution whose property and interests in property are blocked solely pursuant to Executive Order 13599); or

(iv) pursuant to authority delegated by the President and in accordance with the terms of such delegation, sanctions shall be imposed on such person pursuant to section 1244(c)(1)(A) of IFCA because the person:

(A) is part of the energy, shipping, or shipbuilding sectors of Iran;

(B) operates a port in Iran; or

(C) knowingly provides significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of a person determined under section 1244(c)(2)(A) of IFCA to be a part of the energy, shipping, or shipbuilding sectors of Iran; a person determined under

section 1244(c) (2) (B) of IFCA to operate a port in Iran; or an Iranian person included on the SDN List (other than a person described in section 1244(c) (3) of IFCA).

(b) With respect to any person determined by the Secretary of the Treasury in accordance with this section to meet any of the criteria set forth in subsections (a) (i)-(a) (iv) of this section, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of such person are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(c) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order or, where specifically provided, the effective date of the prohibition.

Sec. 2. Correspondent and Payable-Through Account Sanctions Relating to Iran's Automotive Sector; Certain Iranian Persons; and Trade in Iranian Petroleum, Petroleum Products, and Petrochemical Products. (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to impose on a foreign financial institution the sanctions described in subsection (b) of this section upon determining that the foreign financial institution has knowingly conducted or facilitated any significant financial transaction:

(i) on or after August 7, 2018, for the sale, supply, or transfer to Iran of significant goods or

services used in connection with the automotive sector of Iran;

(ii) on or after November 5, 2018, on behalf of any Iranian person included on the SDN List (other than an Iranian depository institution whose property and interests in property are blocked solely pursuant to Executive Order 13599) or any other person included on the SDN List whose property and interests in property are blocked pursuant to subsection 1(a) of this order or Executive Order 13599 (other than an Iranian depository institution whose property and interests in property are blocked solely pursuant to Executive Order 13599);

(iii) on or after November 5, 2018, with NIOC or NICO, except for a sale or provision to NIOC or NICO of the products described in section 5(a)(3)(A)(i) of ISA provided that the fair market value of such products is lower than the applicable dollar threshold specified in that provision;

(iv) on or after November 5, 2018, for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran; or

(v) on or after November 5, 2018, for the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran.

(b) With respect to any foreign financial institution determined by the Secretary of the Treasury in accordance with this section to meet any of the criteria set forth in subsections (a)(i)-(a)(v) of this section, the Secretary of the Treasury may prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a

correspondent account or a payable-through account by such foreign financial institution.

(c) Subsections (a)(ii)-(a)(iv) of this section shall apply with respect to a significant financial transaction conducted or facilitated by a foreign financial institution for the purchase of petroleum or petroleum products from Iran only if:

- (i) the President determines under subparagraphs (4)(B) and (C) of subsection 1245(d) of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81) (2012 NDAA) (22 U.S.C. 8513a) that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions; and
- (ii) an exception under subparagraph 4(D) of subsection 1245(d) of the 2012 NDAA from the imposition of sanctions under paragraph (1) of that subsection does not apply.

(d) Subsection (a)(ii) of this section shall not apply with respect to a significant financial transaction conducted or facilitated by a foreign financial institution for the sale, supply, or transfer to or from Iran of natural gas only if the financial transaction is solely for trade between the country with primary jurisdiction over the foreign financial institution and Iran, and any funds owed to Iran as a result of such trade are credited to an account located in the country with primary jurisdiction over the foreign financial institution.

(e) Subsections (a)(ii)-(a)(v) of this section shall not apply with respect to any person for conducting or facilitating

a transaction for the provision (including any sale) of agricultural commodities, food, medicine, or medical devices to Iran.

(f) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order or, where specifically provided, the effective date of the prohibition.

Sec. 3. "Menu-based" Sanctions Relating to Iran's Automotive Sector and Trade in Iranian Petroleum, Petroleum Products, and Petrochemical Products. (a) The Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Homeland Security, and the United States Trade Representative, and with the President of the Export-Import Bank, the Chairman of the Board of Governors of the Federal Reserve System, and other agencies and officials as appropriate, is hereby authorized to impose on a person any of the sanctions described in section 4 or 5 of this order upon determining that the person:

- (i) on or after August 7, 2018, knowingly engaged in a significant transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran;
- (ii) on or after November 5, 2018, knowingly engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran;
- (iii) on or after November 5, 2018, knowingly engaged in a significant transaction for the purchase,

acquisition, sale, transport, or marketing of petrochemical products from Iran;

(iv) is a successor entity to a person determined by the Secretary of State in accordance with this section to meet any of the criteria set forth in subsections (a) (i)-(a) (iii) of this section;

(v) owns or controls a person determined by the Secretary of State in accordance with this section to meet any of the criteria set forth in subsections (a) (i)-(a) (iii) of this section, and had knowledge that the person engaged in the activities referred to in those subsections; or

(vi) is owned or controlled by, or under common ownership or control with, a person determined by the Secretary of State in accordance with this section to meet any of the criteria set forth in subsections (a) (i)-(a) (iii) of this section, and knowingly participated in the activities referred to in those subsections.

(b) Subsection (a) (ii) of this section shall apply with respect to a person only if:

(i) the President determines under subparagraphs (4) (B) and (C) of subsection 1245(d) of the 2012 NDAA that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions; and

(ii) an exception under subparagraph 4(D) of subsection 1245(d) of the 2012 NDAA from the

imposition of sanctions under paragraph (1) of that subsection does not apply.

Sec. 4. Agency Implementation Authorities for "Menu-based" Sanctions. When the Secretary of State, in accordance with the terms of section 3 of this order, has determined that a person meets any of the criteria described in subsections (a) (i)-(a) (vi) of that section and has selected any of the sanctions set forth below to impose on that person, the heads of relevant agencies, in consultation with the Secretary of State, as appropriate, shall take the following actions where necessary to implement the sanctions imposed by the Secretary of State:

(a) the Board of Directors of the Export-Import Bank of the United States shall deny approval of the issuance of any guarantee, insurance, extension of credit, or participation in an extension of credit in connection with the export of any goods or services to the sanctioned person;

(b) agencies shall not issue any specific license or grant any other specific permission or authority under any statute or regulation that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or technology to the sanctioned person;

(c) with respect to a sanctioned person that is a financial institution:

(i) the Chairman of the Board of Governors of the Federal Reserve System and the President of the Federal Reserve Bank of New York shall take such actions as they deem appropriate, including denying designation, or terminating the continuation of any prior designation of, the sanctioned person as a

primary dealer in United States Government debt instruments; or

(ii) agencies shall prevent the sanctioned person from serving as an agent of the United States Government or serving as a repository for United States Government funds;

(d) agencies shall not procure, or enter into a contract for the procurement of, any goods or services from the sanctioned person;

(e) the Secretary of State shall deny a visa to, and the Secretary of Homeland Security shall exclude from the United States, any alien that the Secretary of State determines is a corporate officer or principal of, or a shareholder with a controlling interest in, a sanctioned person; or

(f) the heads of the relevant agencies, as appropriate, shall impose on the principal executive officer or officers, or persons performing similar functions and with similar authorities, of a sanctioned person the sanctions described in subsections (a)-(e) of this section, as selected by the Secretary of State.

(g) The prohibitions in subsections (a)-(f) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order or, where specifically provided, the effective date of the prohibition.

Sec. 5. Additional Implementation Authorities for "Menu-based" Sanctions. (a) When the President, or the Secretary of State or the Secretary of the Treasury pursuant to authority delegated by the President and in accordance with the terms of

such delegation, has determined that sanctions described in section 6(a) of ISA shall be imposed on a person pursuant to ISA, CISADA, TRA, or IFCA and has selected one or more of the sanctions set forth below to impose on that person or when the Secretary of State, in accordance with the terms of section 3 of this order, has determined that a person meets any of the criteria described in subsections (a)(i)-(a)(vi) of that section and has selected one or more of the sanctions set forth below to impose on that person, the Secretary of the Treasury, in consultation with the Secretary of State, shall take the following actions where necessary to implement the sanctions selected and maintained by the President, the Secretary of State, or the Secretary of the Treasury:

- (i) prohibit any United States financial institution from making loans or providing credits to the sanctioned person totaling more than \$10,000,000 in any 12-month period, unless such person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities;
- (ii) prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest;
- (iii) prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person;
- (iv) block all property and interests in property that are in the United States, that hereafter come

within the United States, or that are or hereafter come within the possession or control of any United States person of the sanctioned person, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in;

(v) prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person;

(vi) restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from the sanctioned person; or

(vii) impose on the principal executive officer or officers, or persons performing similar functions and with similar authorities, of a sanctioned person the sanctions described in subsections (a) (i)-(a) (vi) of this section, as selected by the President or Secretary of State or the Secretary of the Treasury, as appropriate.

(b) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order or, where specifically provided, the effective date of the prohibition.

Sec. 6. Sanctions Relating to the Iranian Rial. (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to impose on a foreign financial institution the sanctions described in subsection (b) of this

section upon determining that the foreign financial institution has, on or after August 7, 2018:

- (i) knowingly conducted or facilitated any significant transaction related to the purchase or sale of Iranian rials or a derivative, swap, future, forward, or other similar contract whose value is based on the exchange rate of the Iranian rial; or
- (ii) maintained significant funds or accounts outside the territory of Iran denominated in the Iranian rial.

(b) With respect to any foreign financial institution determined by the Secretary of the Treasury in accordance with this section to meet the criteria set forth in subsection (a) (i) or (a) (ii) of this section, the Secretary of the Treasury may:

- (i) prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by such foreign financial institution; or
- (ii) block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of such foreign financial institution, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(c) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective

date of this order or, where specifically provided, the effective date of the prohibition.

Sec. 7. Sanctions with Respect to the Diversion of Goods Intended for the People of Iran, the Transfer of Goods or Technologies to Iran that are Likely to be Used to Commit Human Rights Abuses, and Censorship. (a) The Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State, is hereby authorized to impose on a person the measures described in subsection (b) of this section upon determining that the person:

- (i) has engaged, on or after January 2, 2013, in corruption or other activities relating to the diversion of goods, including agricultural commodities, food, medicine, and medical devices, intended for the people of Iran;
- (ii) has engaged, on or after January 2, 2013, in corruption or other activities relating to the misappropriation of proceeds from the sale or resale of goods described in subsection (a)(i) of this section;
- (iii) has knowingly, on or after August 10, 2012, transferred, or facilitated the transfer of, goods or technologies to Iran, any entity organized under the laws of Iran or otherwise subject to the jurisdiction of the Government of Iran, or any national of Iran, for use in or with respect to Iran, that are likely to be used by the Government of Iran or any of its agencies or instrumentalities, or by any other person on behalf of the Government of Iran or any of such agencies or instrumentalities, to commit serious human rights abuses against the people of Iran;

(iv) has knowingly, on or after August 10, 2012, provided services, including services relating to hardware, software, or specialized information or professional consulting, engineering, or support services, with respect to goods or technologies that have been transferred to Iran and that are likely to be used by the Government of Iran or any of its agencies or instrumentalities, or by any other person on behalf of the Government of Iran or any of such agencies or instrumentalities, to commit serious human rights abuses against the people of Iran;

(v) has engaged in censorship or other activities with respect to Iran on or after June 12, 2009, that prohibit, limit, or penalize the exercise of freedom of expression or assembly by citizens of Iran, or that limit access to print or broadcast media, including the facilitation or support of intentional frequency manipulation by the Government of Iran or an entity owned or controlled by the Government of Iran that would jam or restrict an international signal;

(vi) has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the activities described in subsections (a) (i)-(a) (v) of this section or any person whose property and interests in property are blocked pursuant to this section; or

(vii) is owned or controlled by, or has acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this section.

(b) With respect to any person determined by the Secretary of the Treasury in accordance with this section to meet any of the criteria set forth in subsections (a)(i)-(a)(vii) of this section, all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of such person are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

(c) The prohibitions in subsection (b) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order or, where specifically provided, the effective date of the prohibition.

Sec. 8. Entities Owned or Controlled by a United States Person and Established or Maintained Outside the United States.

(a) No entity owned or controlled by a United States person and established or maintained outside the United States may knowingly engage in any transaction, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran, if that transaction would be prohibited by Executive Order 12957, Executive Order 12959 of May 6, 1995, Executive Order 13059 of August 19, 1997, Executive Order 13599, or sections 1 or 15 of this order, or any regulation issued pursuant to the foregoing, if the transaction were engaged in by a United States person or in the United States.

(b) Penalties assessed for violations of the prohibition in subsection (a) of this section, and any related violations

of section 15 of this order may be assessed against the United States person that owns or controls the entity that engaged in the prohibited transaction.

(c) The prohibitions in subsection (a) of this section apply, except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order or, where specifically provided, the effective date of the prohibition, except to the extent provided in subsection 20(c) of this order.

Sec. 9. Revoking and Superseding Prior Executive Orders.

The following Executive Orders are revoked and superseded:

(a) Executive Order 13628 of October 9, 2012 (Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions With Respect to Iran); and

(b) Executive Order 13716 of January 16, 2016 (Revocation of Executive Orders 13574, 13590, 13622, and 13645 With Respect to Iran, Amendment of Executive Order 13628 With Respect to Iran, and Provision of Implementation Authorities for Aspects of Certain Statutory Sanctions Outside the Scope of U.S. Commitments Under the Joint Comprehensive Plan of Action of July 14, 2015).

Sec. 10. Natural Gas Project Exception. Subsections 1(a), 2(a)(ii)-(a)(v), 3(a)(ii)-(a)(iii), and, with respect to a person determined by the Secretary of State in accordance with section 3 to meet the criteria of 3(a)(ii)-(iii), 3(a)(iv)-(vi) of this order shall not apply with respect to any person for conducting or facilitating a transaction involving a project

described in subsection (a) of section 603 of TRA to which the exception under that section applies.

Sec. 11. Donations. I hereby determine that, to the extent section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) may apply, the making of donations of the types of articles specified in such section by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to deal with the national emergency declared in Executive Order 12957, and I hereby prohibit such donations as provided by subsections 1(b), 5(a)(iv), 6(b)(ii), and 7(b) of this order.

Sec. 12. Prohibitions. The prohibitions in subsections 1(b), 5(a)(iv), 6(b)(ii), and 7(b) of this order include:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 13. Entry into the United States. The unrestricted immigrant and nonimmigrant entry into the United States of aliens determined to meet one or more of the criteria in subsections 1(a), 3(a), and 7(a) of this order would be detrimental to the interests of the United States, and the entry of such persons into the United States, as immigrants or nonimmigrants, is hereby suspended. Such persons shall be treated as persons covered by section 1 of Proclamation 8693 of July 24, 2011 (Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions).

Sec. 14. General Authorities. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including adopting rules and regulations, to employ all powers granted to me by IEEPA and sections 6(a)(6), 6(a)(7), 6(a)(8), 6(a)(9), 6(a)(11), and 6(a)(12) of ISA, and to employ all powers granted to the United States Government by section 6(a)(3) of ISA, as may be necessary to carry out the purposes of this order, other than the purposes described in sections 3, 4, and 13 of this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury. All agencies of the United States shall take all appropriate measures within their authority to implement this order.

Sec. 15. Evasion and Conspiracy. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order or in Executive Order 12957, Executive Order 12959, Executive Order 13059, or Executive Order 13599 is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order or in Executive Order 12957, Executive Order 12959, Executive Order 13059, or Executive Order 13599 is prohibited.

Sec. 16. Definitions. For the purposes of this order:

(a) the term "automotive sector of Iran" means the manufacturing or assembling in Iran of light and heavy vehicles including passenger cars, trucks, buses, minibuses, pick-up trucks, and motorcycles, as well as original equipment manufacturing and after-market parts manufacturing relating to such vehicles;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term "financial institution" includes (i) a depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act) (12 U.S.C. 1813(c)(1)), including a branch or agency of a foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978) (12 U.S.C. 3101(7)); (ii) a credit union; (iii) a securities firm, including a broker or dealer; (iv) an insurance company, including an agency or underwriter; and (v) any other company that provides financial services;

(d) the term "foreign financial institution" means any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes, but is not limited to, depository institutions, banks, savings banks, money service businesses, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and holding companies, affiliates, or subsidiaries of any of the foregoing. The term does not include the international financial institutions identified in 22 U.S.C. 262r(c)(2), the International Fund for Agricultural Development, the North American Development Bank, or any other international financial institution so notified by the Secretary of the Treasury;

(e) the term "Government of Iran" includes the Government of Iran, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Iran, and any person owned or controlled by, or acting for or on behalf of, the Government of Iran;

(f) the term "Iran" means the Government of Iran and the territory of Iran and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Iran claims sovereignty, sovereign rights, or jurisdiction, provided that the Government of Iran exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to international arrangements;

(g) the term "Iranian depository institution" means any entity (including foreign branches), wherever located, organized under the laws of Iran or any jurisdiction within Iran, or owned or controlled by the Government of Iran, or in Iran, or owned or controlled by any of the foregoing, that is engaged primarily in the business of banking (for example, banks, savings banks, savings associations, credit unions, trust companies, and bank holding companies);

(h) the term "Iranian person" means an individual who is a citizen or national of Iran or an entity organized under the laws of Iran or otherwise subject to the jurisdiction of the Government of Iran;

(i) the terms "knowledge" and "knowingly," with respect to conduct, a circumstance, or a result, mean that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result;

(j) the terms "Naftiran Intertrade Company" and "NICO" mean the Naftiran Intertrade Company Ltd. and any entity owned

or controlled by, or operating for or on behalf of, the Naftiran Intertrade Company Ltd.;

(k) the terms "National Iranian Oil Company" and "NIOC" mean the National Iranian Oil Company and any entity owned or controlled by, or operating for or on behalf of, the National Iranian Oil Company;

(l) the term "person" means an individual or entity;

(m) the term "petrochemical products" includes any aromatic, olefin, and synthesis gas, and any of their derivatives, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea;

(n) the term "petroleum" (also known as crude oil) means a mixture of hydrocarbons that exists in liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities;

(o) the term "petroleum products" includes unfinished oils, liquefied petroleum gases, pentanes plus, aviation gasoline, motor gasoline, naphtha-type jet fuel, kerosene-type jet fuel, kerosene, distillate fuel oil, residual fuel oil, petrochemical feedstocks, special naphthas, lubricants, waxes, petroleum coke, asphalt, road oil, still gas, and miscellaneous products obtained from the processing of: crude oil (including lease condensate), natural gas, and other hydrocarbon compounds. The term does not include natural gas, liquefied natural gas, biofuels, methanol, and other non-petroleum fuels;

(p) the term "sanctioned person" means a person that the President, or the Secretary of State or the Secretary of the Treasury pursuant to authority delegated by the President and in accordance with the terms of such delegation, has determined is a person on whom sanctions described in section 6(a) of ISA shall be imposed pursuant to ISA, CISADA, TRA, or IFCA, and on

whom the President, the Secretary of State, or the Secretary of the Treasury has imposed any of the sanctions in section 6(a) of ISA or a person on whom the Secretary of State, in accordance with the terms of section 3 of this order, has decided to impose sanctions pursuant to section 3 of this order;

(q) the term "subject to the jurisdiction of the Government of Iran" means a person organized under the laws of Iran or any jurisdiction within Iran, ordinarily resident in Iran, or in Iran, or owned or controlled by any of the foregoing;

(r) the term "United States financial institution" means a financial institution as defined in subsection (c) of this section (including its foreign branches) organized under the laws of the United States or any jurisdiction within the United States or located in the United States; and

(s) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

Sec. 17. Notice. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 12957, there need be no prior notice of a listing or determination made pursuant to subsections 1(b), 5(a)(iv), 6(b)(ii), and 7(b) of this order.

Sec. 18. Delegation to Implement Section 104A of CISADA.

The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including adopting rules and regulations, and to employ all powers granted to me by IEEPA, as may be necessary to carry out section 104A of CISADA (22 U.S.C. 8513b). The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury.

Sec. 19. Rights. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 20. Effect on Actions or Proceedings, Blocked Property, and Regulations, Orders, Directives, and Licenses. (a) Pursuant to section 202 of the NEA (50 U.S.C. 1622), the revocation of Executive Orders 13716 and 13628 as set forth in section 9 of this order, shall not affect any action taken or proceeding pending not finally concluded or determined as of the effective date of this order, or any action or proceeding based on any act committed prior to the effective date of this order, or any rights or duties that matured or penalties that were incurred prior to the effective date of this order.

(b) Except to the extent provided in statutes or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, the following are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: all property and interests in property that were blocked

pursuant to Executive Order 13628 and remained blocked immediately prior to the effective date of this order.

(c) Except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, all regulations, orders, directives, or licenses that were issued pursuant to Executive Order 13628 and remained in effect immediately prior to the effective date of this order are hereby authorized to remain in effect -- subject to their existing terms and conditions -- pursuant to this order, which continues in effect certain sanctions set forth in Executive Order 13628.

Sec. 21. Relationship to Algiers Accords. The measures taken pursuant to this order are in response to actions of the Government of Iran occurring after the conclusion of the 1981 Algiers Accords, and are intended solely as a response to those later actions.

Sec. 22. Effective Date. This order is effective 12:01 a.m. eastern daylight time on August 7, 2018.

THE WHITE HOUSE,

August 6, 2018.

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 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 ⁽¹⁾, and in particular the second paragraph of Article 1 thereof,

Whereas:

- (1) Regulation (EC) No 2271/96 counteracts the effects of the extra-territorial application of laws, including regulations and other legislative instruments adopted by third countries, and of actions based thereon or resulting therefrom, where such application affects the interests of natural and legal persons in the Union engaging in international trade and/or the movement of capital and related commercial activities between the Union and third countries.
- (2) The Regulation acknowledges that by their extra-territorial application, such instruments violate international law.
- (3) The third-country instruments to which Regulation (EC) No 2271/96 applies are specified in the Annex to that Regulation.
- (4) On 8 May 2018, the United States announced they will no longer waive their national restrictive measures relating to Iran. Some of those measures have extra-territorial application and cause adverse effects on the interests of the Union and the interests of natural and legal persons exercising rights under the Treaty on the Functioning of the European Union.
- (5) The Annex to the Regulation should therefore be amended to include those restrictive measures,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 2271/96 is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

⁽¹⁾ OJ L 309, 29.11.1996, p. 1.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 6 June 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

LAWS, REGULATIONS AND OTHER LEGISLATIVE INSTRUMENTS

Note: The main provisions of the instruments contained in this Annex are summarised only for information purposes. The full overview of provisions and their exact content can be found in the relevant instruments.

COUNTRY: UNITED STATES OF AMERICA

ACTS

1. **'National Defense Authorization Act for Fiscal Year 1993', Title XVII 'Cuban Democracy Act 1992', sections 1704 and 1706**

Required compliance:

The requirements are consolidated in Title I of the 'Cuban Liberty and Democratic Solidarity Act of 1996', see below.

Possible damages to EU interests:

The liabilities incurred are now incorporated within the 'Cuban Liberty and Democratic Solidarity Act of 1996', see below.

2. **'Cuban Liberty and Democratic Solidarity Act of 1996'**

Title I

Required compliance:

To comply with the economic and financial embargo concerning Cuba by the USA, by, inter alia, not exporting to the USA any goods or services of Cuban origin or containing materials or goods originating in Cuba either directly or through third countries, dealing in merchandise that is or has been located in or transported from or through Cuba, re-exporting to the USA sugar originating in Cuba without notification by the competent national authority of the exporter or importing into the USA sugar products without assurance that those products are not products of Cuba, freezing Cuban assets, and financial dealings with Cuba.

Possible damages to EU interests:

Prohibition to load or unload freight from a vessel in any place in the USA or to enter a USA port; refusal to import any goods or services originating in Cuba and to import into Cuba goods or services originating in the USA, blocking of financial dealings involving Cuba.

Title III and Title IV:

Required compliance:

To terminate 'trafficking' in property, formerly owned by US persons (including Cubans who have obtained US citizenship) and expropriated by the Cuban regime. (Trafficking includes: use, sale, transfer, control, management and other activities to the benefit of a person).

Possible damages to EU interests:

Legal proceedings in the USA, based upon liability already accruing, against EU citizens or companies involved in trafficking, leading to judgments/decisions to pay (multiple) compensation to the USA party. Refusal of entry into the USA for persons involved in trafficking, including the spouses, minor children and agents thereof.

3. **'Iran Sanctions Act of 1996'**

Required compliance:

Not to knowingly:

- (i) invest in Iran at least USD 20 million during a period of 12 months that directly and significantly contributes to the enhancement of the Iranian ability to develop their petroleum resources;

- (ii) provide to Iran goods, services or other types of support any of which is worth USD 1 million or more, or of aggregate value of USD 5 million or more over a period of 12 months, that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products or its ability to develop petroleum resources located in Iran;
- (iii) provide to Iran goods, services or other types of support any of which is worth USD 250 000 or more, or of aggregate value of USD 1 million or more over a period of 12 months, that could directly and significantly contribute to the maintenance or expansion of Iran's domestic production of petrochemical products;
- (iv) provide to Iran (a) refined petroleum products or (b) goods, services or other types of support which could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products, any of which is worth USD 1 million or more, or of aggregate value of USD 5 million or more over a period of 12 months;
- (v) participate in a joint venture for the development of petroleum resources outside of Iran established on or after 1 January 2002 and in which Iran or its Government has particular interests;
- (vi) be involved in the transport of crude oil from Iran or conceal the Iranian origin of cargo consisting in crude oil and refined petroleum products;

Possible damages to EU interests:

Measures to limit imports into USA or procurement to USA, prohibition of designation as primary dealer or as repository of US Government funds, denial of access to loans from US financial institutions or transfers through such institutions, prohibition of transactions in foreign exchange subject to the jurisdiction of the USA, export restrictions by USA, prohibition of property transactions subject to the jurisdiction of the USA, or refusal of assistance by EXIM-Bank, landing and port-calling restrictions for vessels.

4. 'Iran Freedom and Counter-Proliferation Act of 2012'

Required compliance:

Not to knowingly:

- (i) provide significant support, including by facilitating significant financial transactions, or goods or services, to or on behalf of certain persons operating in the ports, energy, shipping, or shipbuilding sectors in Iran, or any Iranian person included in the list of specially designated nationals and blocked persons;
- (ii) trade with Iran in significant goods and services used in connection with the energy, shipping or shipbuilding sectors of Iran;
- (iii) purchase petroleum and petroleum products from Iran and conduct financial transactions related with them, in specific circumstances;
- (iv) conduct or facilitate transactions for the trade in natural gas to or from Iran (applies to foreign financial institutions);
- (v) trade with Iran in precious metals, graphite, raw or semi-finished metals, or software that may be used in specific sectors or involve certain persons; nor facilitate a significant financial transaction in connection with such trade;
- (vi) provide underwriting services, insurance and reinsurance related to specific activities, including but not limited to those under points (i) and (ii) above, or to specific categories of persons;

Certain exceptions apply depending on the nature of the trade or transaction and the level of due diligence applied.

Possible damages to EU interests:

Measures to limit imports into USA or procurement to USA, prohibition of designation as primary dealer or as repository of US Government funds, denial of access to loans from US financial institutions or transfers through such institutions, prohibition of transactions in foreign exchange subject to the jurisdiction of the USA, export restrictions by USA, prohibition of property transactions subject to the jurisdiction of the USA, or refusal of assistance by EXIM-Bank, prohibitions and limitations to the opening and maintenance of correspondent accounts in the USA.

5. 'National Defense Authorization Act for Fiscal Year 2012'

Required compliance:

Not to knowingly conduct or facilitate any significant financial transaction with the Central Bank of Iran or another designated Iranian financial institution (applies to foreign financial institutions).

Exceptions for food and medicine-related transactions and for petroleum-related transactions under specific circumstances.

Possible damages to EU interests:

Civil and criminal penalties; prohibitions and limitations to the opening and maintenance of correspondent accounts in the USA.

6. 'Iran Threat Reduction and Syria Human Rights Act of 2012'

Required compliance:

Not to knowingly:

- (i) provide underwriting services, insurance or reinsurance to certain Iranian persons;
- (ii) facilitate the issuance of Iranian sovereign debt, or of debt of entities controlled by the latter;
- (iii) engage in any transaction directly or indirectly with the Government of Iran or any person subject to the jurisdiction of the Government of Iran prohibited by US law (applies to foreign subsidiaries owned or controlled by US persons);
- (iv) provide specialized financial messaging services to, or enable or facilitate direct or indirect access to such messaging services for the Central Bank of Iran or a financial institution whose interests in property are blocked in connection to Iran's proliferation activities.

With regard to (i), there are exceptions for humanitarian assistance, food and medical products supply, and depending on the level of due diligence applied.

Possible damages to EU interests:

Measures to limit imports into USA or procurement to USA, prohibition of designation as primary dealer or as repository of US Government funds, denial of access to loans from US financial institutions or transfers through such institutions, prohibition of transactions in foreign exchange subject to the jurisdiction of the USA, export restrictions by USA, prohibition of property transactions subject to the jurisdiction of the USA, or refusal of assistance by EXIM-Bank, prohibitions and limitations to the opening and maintenance of correspondent accounts in the USA

REGULATIONS

'Iranian Transactions and Sanctions Regulations'

Required compliance:

Not to reexport any goods, technology, or services that (a) have been exported from the USA and (b) are subject to export control rules in the USA, if the export is made knowing or having reason to know that it is specifically intended for Iran or its Government.

Goods substantially transformed into a foreign-made product outside the USA, and goods incorporated into such a product and representing less than 10 % of its value are not subject to the prohibition.

Possible damages to EU interests:

Imposition of civil penalties, fines and imprisonment.

► C1 1. 31 CFR ◀ (Code of Federal Regulations) Ch. V (7-1-95 edition) Part 515 — Cuban Assets Control Regulations, subpart B (Prohibitions), E (Licenses, Authorizations and Statements of Licensing Policy) and G (Penalties)

Required compliance:

The prohibitions are consolidated in Title I of the 'Cuban Liberty and Democratic Solidarity Act of 1996', see above. Furthermore, requires the obtaining of licences and/or authorizations in respect of economic activities concerning Cuba.

Possible damages to EU interests:

Fines, forfeiture, imprisonment in cases of violation.

DECISIONS

COMMISSION DELEGATED DECISION (EU) 2018/1102

of 6 June 2018

amending Annex III to Decision No 466/2014/EU of the European Parliament and of the Council granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union, as regards Iran

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Decision No 466/2014/EU of the European Parliament and of the Council of 16 April 2014 granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union ⁽¹⁾, and in particular Article 4(2) thereof,

Whereas:

- (1) There has been notable progress in the economic, social, environmental and political situation in Iran since the adoption of Decision No 466/2014/EU.
- (2) In November 2016, the Council welcomed the prospect of extending the European Investment Bank's External Lending Mandate to Iran.
- (3) Decision (EU) 2018/412 of the European Parliament and of the Council ⁽²⁾ added Iran to the list of potentially eligible regions and countries in Annex II of that Decision.
- (4) Tangible steps taken by Iran to respect universal fundamental freedoms, rule of law and human rights would remain key for the shaping of the Union's future policy towards Iran.
- (5) The European Investment Bank should continue to apply adequate policies and processes protecting its integrity as well as confidence in the Bank.
- (6) Therefore, the Commission, with the involvement of the European External Action Service, has assessed that the overall economic, social environmental and political situation allows adding Iran to Annex III of Decision No 466/2014/EU, which includes the list of eligible regions and countries for European Investment Bank financing under Union guarantee.
- (7) Decision No 466/2014/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In point C(2) of Annex III to Decision No 466/2014/EU, the words: 'Bangladesh, Bhutan, Cambodia, China, India, Indonesia, Iraq, Laos, Malaysia, Maldives, Mongolia, Myanmar/Burma, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Vietnam, Yemen' are replaced by the words 'Bangladesh, Bhutan, Cambodia, China, India, Indonesia, Iran, Iraq, Laos, Malaysia, Maldives, Mongolia, Myanmar/Burma, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Vietnam, Yemen'.

⁽¹⁾ OJ L 135, 8.5.2014, p. 1.

⁽²⁾ Decision (EU) 2018/412 of the European Parliament and of the Council of 14 March 2018 amending Decision No 466/2014/EU granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union (OJ L 76, 19.3.2018, p. 30).

Article 2

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 6 June 2018.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1101**of 3 August 2018****laying down the criteria for the application of the second paragraph of Article 5 of Council Regulation (EC) No 2271/96 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 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 ⁽¹⁾, and in particular the second paragraph of Article 5 thereof,

Whereas:

- (1) Regulation (EC) No 2271/96 provides protection against and counteracts the unlawful effects of the extra-territorial application of some listed laws, including regulations and other legislative instruments adopted by third countries, and of actions based thereon or resulting therefrom, where such application affects the interests of natural and legal persons referred to in Article 11 of that Regulation engaging in international trade and/or the movement of capital and related commercial activities between the Union and third countries.
- (2) Regulation (EC) No 2271/96 acknowledges that by their extra-territorial application, such laws, including regulations and other legislative instruments, violate international law.
- (3) Pursuant to the first paragraph of Article 5 of Regulation (EC) No 2271/96, persons referred to in Article 11 of that Regulation shall not comply whether directly or through a subsidiary or other intermediary person, actively or by deliberate omission, with any requirement or prohibition, including requests of foreign courts, based on or resulting from such laws or from actions based thereon or resulting therefrom.
- (4) However, the second paragraph of Article 5 of Regulation (EC) No 2271/96 allows persons referred to in Article 11 of that Regulation to request from the Commission an authorisation to fully or partially comply with such requirement or prohibition to the extent that non-compliance would seriously damage their interests or those of the Union.
- (5) In order to provide legal certainty as well as to ensure the effective implementation of Regulation (EC) No 2271/96 while taking into account, in specific and duly justified circumstances, the risk of serious damages to the interests of the natural and legal persons referred to in Article 11 of that Regulation, it is necessary to lay down the criteria for the application of the second paragraph of Article 5 of Regulation (EC) No 2271/96.
- (6) In view of the role of the Commission overseeing the uniform implementation of EU law including Regulation (EC) No 2271/96, the Commission will follow closely the application of the present Regulation and adopt any necessary adaptation based on its assessment of the implementation thereof.
- (7) The main steps of the procedure following the submission to the Commission of an application for an authorisation to fully or partially comply with such requirement or prohibition should also be laid down.
- (8) Any processing of personal data of natural persons under this Regulation should respect Regulation (EU) 2016/679 of the European Parliament and of the Council ⁽²⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽³⁾.
- (9) Applications pursuant to this Regulation should concern actions or omissions based on or resulting directly or indirectly from the application of the laws specified in the Annex to Regulation (EC) No 2271/96 or actions based thereon or resulting therefrom.

⁽¹⁾ OJ L 309, 29.11.1996, p. 1.

⁽²⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽³⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- (10) The handling of an application shall be carried out as soon as possible.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Extra-territorial Legislation and have been adopted pursuant to Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Subject-matter

This Regulation lays down the criteria for the application of the second paragraph of Article 5 of Regulation (EC) No 2271/96.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (a) 'listed extra-territorial legislation' means the laws, regulations and other legislative instruments specified in the Annex to Regulation (EC) No 2271/96, including regulations and other legislative instruments based thereon or resulting therefrom;
- (b) 'subsequent actions' means actions based on the listed extra-territorial legislation or resulting therefrom;
- (c) 'non-compliance' means non-compliance by direct actions or deliberate omissions with requirements or prohibitions, including requests of foreign courts, based on or resulting, directly or indirectly, from the listed extra-territorial legislation or subsequent actions;
- (d) 'protected interests' means the interest of any person referred to in Article 11 of Regulation (EC) No 2271/96, the interest of the Union or both;
- (e) 'applicant' means any person referred to in Article 11 of Regulation (EC) No 2271/96 who applied for an authorisation referred to in the second paragraph of Article 5 of Regulation (EC) No 2271/96.

Article 3

Submission of applications

1. Applications for an authorisation referred to in the second paragraph of Article 5 of Regulation (EC) No 2271/96 shall be submitted in writing to:

European Commission
Service for Foreign Policy Instruments
EEAS 07/99
B-1049 Brussels, Belgium
EC-AUTHORISATIONS-BLOCKING-REG@ec.europa.eu

2. Applications shall include the name and contact details of the applicants, shall indicate the precise provisions of the listed extra-territorial legislation or the subsequent action at stake, and shall describe the scope of the authorisation that is being requested and the damage that would be caused by non-compliance.

3. The applicants shall provide in their application sufficient evidence that non-compliance would cause serious damage to at least one protected interest.

⁽¹⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

4. Where necessary, the Commission may request additional evidence from the applicants, which shall provide it within a reasonable period set by the Commission.
5. The Commission shall inform the Committee on Extra-territorial Legislation as soon as it receives applications.

Article 4

Assessment of applications

When assessing whether a serious damage to the protected interests as referred to in the second paragraph of Article 5 of Regulation (EC) No 2271/96 would arise, the Commission shall consider, inter alia, the following non-cumulative criteria, where appropriate:

- (a) whether the protected interest is likely to be specifically at risk, based on the context, the nature and the origin of a damage to the protected interest;
- (b) the existence of an ongoing administrative or judicial investigation against the applicant from, or a prior settlement agreement with, the third country which is at the origin of the listed extra-territorial legislation;
- (c) the existence of a substantial connecting link with the third country which is at the origin of the listed extra-territorial legislation or the subsequent actions; for example the applicant has parent companies or subsidiaries, or participation of natural or legal persons subject to the primary jurisdiction of the third country which is at the origin of the listed extra-territorial legislation or the subsequent actions;
- (d) whether measures could be reasonably taken by the applicant to avoid or mitigate the damage;
- (e) the adverse effect on the conduct of economic activity, in particular whether the applicant would face significant economic losses, which could for example threaten its viability or pose a serious risk of bankruptcy;
- (f) whether the applicant's activity would be rendered excessively difficult due to a loss of essential inputs or resources, which cannot be reasonably replaced;
- (g) whether the enjoyment of the individual rights of the applicant would be significantly hindered;
- (h) whether there is a threat to safety, security, the protection of human life and health and the protection of the environment;
- (i) whether there is a threat to the Union's ability to carry out its humanitarian, development and trade policies or the external aspects of its internal policies;
- (j) the security of supply of strategic goods or services within or to the Union or a Member State and the impact of any shortage or disruption therein;
- (k) the consequences for the internal market in terms of free movement of goods, persons, services and capital, as well as financial and economic stability or key Union infrastructures;
- (l) the systemic implications of the damage, in particular as regards its spill over effects into other sectors;
- (m) the impact on the employment market of one or several Member States and its cross-border consequences within the Union;
- (n) any other relevant factor.

Article 5

Outcome of the application

1. When, after completing the assessment referred to in Article 4, the Commission finds sufficient evidence that non-compliance would cause serious damage to the protected interests, the Commission shall expeditiously submit to the Committee on Extra-territorial Legislation a draft decision containing the appropriate measures to be taken.
2. If, after completing the assessment referred to in Article 4, the Commission does not find sufficient evidence that non-compliance would cause serious damage to the protected interests, the Commission shall submit to the Committee on Extra-territorial Legislation a draft decision rejecting the application.
3. The final decision shall be notified by the Commission to the applicant without delay.

*Article 6***Data processing**

1. The Commission shall process personal data in order to carry out its tasks under this Regulation.
2. Any processing of personal data shall comply with Regulation (EU) 2016/679 and Regulation (EC) No 45/2001.
3. For the purposes of this Regulation, the Service for Foreign Policy Instruments is designated as 'controller' for the Commission within the meaning of Article 2(d) of Regulation (EC) No 45/2001, in order to ensure that the natural persons concerned can exercise their rights under that Regulation.

*Article 7***Entry into force**

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 3 August 2018.

For the Commission
The President
Jean-Claude JUNCKER

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Guidance Note**Questions and Answers: adoption of update of the Blocking Statute***(2018/C 277 I/03)*

Note: The Commission will review and update this guidance as necessary also in case new questions arise.

On 7 August the Commission Delegated Regulation (EU) 2018/1100 ⁽¹⁾ entered into force. This Delegated Regulation amended the Annex to Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom ⁽²⁾ ('Blocking Statute').

The Regulation as amended, applies immediately to economic operators and shall be implemented and applied by national authorities and courts.

The Blocking Statute aims to protect the established legal order, the interests of the Union and the interests of natural and legal persons exercising rights under the Treaty on the Functioning of the European Union against the unlawful effects of extra-territorial application of such legislation.

The aim of this document is to provide guidance on the application of certain provisions of the Blocking Statute. It does not cover all provisions of that legal act in an exhaustive manner, nor does it create any new rules. Only the legal text of the Blocking Statute as published in the Official Journal is binding.

The Commission oversees the application of Union law under the control of the Court of Justice of the European Union. Pursuant to the Treaties, only the Court of Justice of the European Union can provide legally binding interpretations of acts of the institutions of the Union.

SECTION 1: GENERAL**1. What is the Blocking Statute?**

The EU introduced the Blocking Statute in 1996 in response to United States of America (U.S.) extra-territorial sanctions legislation concerning Cuba, Iran and Libya. It constitutes an important achievement of unified EU action against the unlawful effects of extra-territorial legislation of third countries.

The Blocking Statute aims at countering the unlawful effects of third-country extra-territorial sanctions on the natural and legal persons specified in its Article 11 (hereinafter referred to as 'EU operators'). Its main purpose is thus to protect EU operators engaging in lawful international trade and/or movement of capital as well as related commerce activities with third countries in accordance with EU law.

The Blocking Statute applies with regard to the extra-territorial legislation mentioned in its Annex ('listed extra-territorial legislation'), which currently consists of U.S. measures concerning Cuba and Iran.

⁽¹⁾ OJ L 199 I, 7.8.2018, p. 1.

⁽²⁾ OJ L 309, 29.11.1996, p. 1.

The basic principle of the Blocking Statute is that EU operators shall not comply with the listed extra-territorial legislation, or any decision, ruling or award based thereon, given that the EU does not recognise its applicability to/effects towards EU operators (Article 5, paragraph 1).

The Blocking Statute provides also that EU operators shall also inform the European Commission within 30 days of any events arising from listed extra-territorial legislation or actions based thereon or resulting thereof, that affect, directly or indirectly, their economic or financial interests (Article 2, paragraph 1). They may do so either directly ⁽¹⁾ or through the competent authorities of the Member States. The European Commission informs the competent authorities of the Member State where the operator providing information is a resident or is incorporated about such incoming information (Article 2, paragraph 3).

Concerning legal persons, this obligation applies the directors, managers and other persons with management responsibilities.

2. To whom does the Blocking Statute apply?

Article 11 of the Blocking Statute specifies that the latter applies to what the Commission refers to as 'EU operators' in this document, namely:

1. any natural person being a resident in the Union and a national of a Member State,
2. any legal person incorporated within the Union,
3. any national of a Member State established outside the Union and any shipping company established outside the Union and controlled by nationals of a Member State, if their vessels are registered in that Member State in accordance with its legislation ⁽²⁾,
4. any other natural person being a resident in the Union, unless that person is in the country of which he is a national,
5. any other natural person within the Union, including its territorial waters and air space and in any aircraft or on any vessel under the jurisdiction or control of a Member State, acting in a professional capacity.

Concerning the situation of branches or subsidiaries, please see question 21.

3. As of when does the updated Blocking Statute apply?

The update to the Blocking Statute applies to all EU operators as defined above, from the date of its entry into force, ie 7 August 2018. In the case of contractual obligations, it applies regardless whether they were entered into prior to the above date of entry into force of the updated Blocking Statute.

4. How does the Blocking Statute protect EU operators?

The Blocking Statute:

- **Nullifies the effect in the EU of any foreign decision, including court rulings or arbitration awards, based on the listed extra-territorial legislation or the acts and provisions adopted pursuant to them (Article 4).**

This means that no decision, whether administrative, judicial, arbitral or of any other nature, taken by a third country authority and based on the provisions listed in the Annex to the Blocking Statute or on acts which develop or implement those provisions, will be recognised in the EU. Similarly, no decision requiring, for instance, seizure or enforcement of any economic penalty against an EU operator based on the aforementioned acts will be executed in the EU. This shields EU operators from the effects of such decisions in the Union.

National authorities, including national jurisdictions and arbiters, shall apply and implement the Blocking Statute, and notably ensure full compliance with the above-mentioned obligation directly stemming from it.

⁽¹⁾ By e-mail to: relex-sanctions@ec.europa.eu

⁽²⁾ Article 1(2) of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ L 353, 17.12.1990, p. 16).

- **Allows EU operators to recover damages arising from the application of the listed extra-territorial legislation from the natural or legal persons or entities causing them (Article 6).**

This means that EU operators are legally empowered to seek compensation for the losses they have suffered from whoever has caused them. For further details about this possibility, see questions 12 to 15.

- **Allows EU operators to request an authorisation to comply with the listed extra-territorial legislation, if not doing so would cause serious harm to their interests or the interests of the EU (Article 5, paragraph 2).**

This means that in specific and duly motivated circumstances and as a derogation to the rule, EU operators may be authorised by the Commission to act in accordance with the listed extra-territorial legislation. For further details about this possibility, see questions 16 to 20.

5. Does the Blocking Statute oblige EU operators to do business with Iran or Cuba? How are they expected to position themselves between the listed extra-territorial legislation and the Blocking Statute?

EU operators are free to conduct their business as they see fit in accordance with EU law and national applicable laws. This means that they are free to choose whether to start working, continue, or cease business operations in Iran or Cuba, and whether to engage or not in an economic sector on the basis of their assessment of the economic situation. The purpose of the Blocking Statute is exactly to ensure that such business decisions remain free, i.e., are not forced upon EU operators by the listed extra-territorial legislation, which the Union law does not recognise as applicable to them.

6. Why is the Blocking Statute being updated?

The update was triggered by the U.S.' unilateral decision on 8 May 2018 to re-impose extra-territorial sanctions against Iran simultaneously with its withdrawal from the Joint Comprehensive Plan of Action (JCPOA), signed in 2015 between Iran, on the one hand, and China, France, Russia, the United Kingdom, Germany, the U.S. and the European Union, on the other. The lifting of certain Iran-related sanctions is an essential component of the agreement. The re-imposition by the U.S. of extra-territorial sanctions could potentially affect EU operators doing legitimate business with Iran. Such legislation will be re-imposed as of 7 August 2018 and 5 November 2018.

7. What has changed in the Blocking Statute?

The European Commission has updated the Annex to the Blocking Statute to expand the scope of the listed extra-territorial legislation to which the protective measures in the Blocking Statute apply. The Annex now includes the extra-territorial US sanctions that were either lifted or waived by U.S. under the JCPOA and which have been or will be re-imposed. It is important to note that this also includes any actions based thereon or resulting therefrom.

Concretely, the listed extra-territorial legislation which is being added in the Annex can be found in:

- The 'Iran Sanctions Act of 1996' ⁽¹⁾;
- The 'Iran Freedom and Counter-Proliferation Act of 2012';
- The 'National Defense Authorization Act for Fiscal Year 2012';
- The 'Iran Threat Reduction and Syria Human Rights Act of 2012'; and
- The 'Iran Transactions and Sanctions Regulations'.

The provisions of the above acts and regulations having unlawful extra-territorial effects have been summarised in the Annex for ease of reference. For a complete overview, it is necessary to consult the relevant provisions.

⁽¹⁾ This Act already formed part of the Annex since 1996. However, the Annex will now reflect its current content, as amended over the years.

8. Has the Blocking Statute been used so far?

Since 1996, the Blocking Statute has mainly applied to extra-territorial sanctions of the U.S. related to Cuba. In 1998, the Union and the U.S. signed a Memorandum of Understanding by which the U.S. administration suspended the application of certain provisions of the Cuba extra-territorial sanctions 'as long as the EU and other allies continue their stepped up efforts to promote democracy in Cuba'.

9. How else can the Blocking Statute help EU operators?

The Blocking Statute applies to all EU operators, regardless of their size and the field they are active in.

In addition to the protective measures listed in question 4, the Blocking Statute is also helpful as a tool to identify the extra-territorial legislation of third countries and its main provisions, whose application can have unlawful effects on EU operators. Those provisions are summarised in the Annex. This can prove particularly helpful for small and medium enterprises (SMEs), given that they have more limited resources to ascertain which listed extra-territorial legislation might have an impact on their activities and, for instance, be in a position to provide the Commission with the relevant information pursuant to Article 2, paragraph 1 (see question 1).

10. Who is responsible for the implementation of the Blocking Statute? Are Member States obliged to prosecute any possible breaches of the Blocking Statute?

Member States' authorities are responsible for the implementation of the Blocking Statute, including for the adoption and implementation in their respective legal orders of penalties for possible breaches. Such penalties are laid down in national legislation and may hence vary by Member State. However, in spite of their differences, all the penalties must be effective, proportionate and dissuasive (Article 9).

It is also for Member States to ensure that the Blocking Statute regime is enforced, including through the application of those penalties, where needed and appropriate, in accordance with their national procedures.

11. What is the role of the European Commission?

In the context of the Blocking Statute, the main roles of the European Commission are the following:

- Amending the list of extra-territorial sanctions in the Annex to the Blocking Statute via delegated acts (paragraph 2 of Article 1);
- Gathering information from EU operators on possible cases of application of the listed extra-territorial legislation (Article 2);
- Granting authorisations to EU operators in specific and duly motivated circumstances, when there is a need to fully or partially comply with the listed extra-territorial sanctions in order to avoid serious damage to their interests or those of the Union; and adopting the criteria on the basis of which requests will be assessed (second paragraph of Article 5, in conjunction with Article 7(b) ⁽¹⁾, via implementing acts;

Further procedural roles are mentioned in Article 7(a), (d), (e) and Article 10.

Moreover, in its capacity as Guardian of the Treaties, the Commission oversees the correct and uniform implementation of EU law, under the control of the European Court of Justice.

For further information about the role of the European Commission, please contact: relex-sanctions@ec.europa.eu

⁽¹⁾ In exercising these tasks, the Commission shall be assisted by the Committee on Extra-territorial Legislation foreseen in Article 8(1) of the Blocking Statute. This Committee is composed of representatives of Member States.

SECTION 2: DAMAGE RECOVERY

12. What kind of damages can EU operators recover?

According to Article 6, EU operators can recover ‘any damages, including legal costs, caused by the application of the laws specified in its Annex or by actions based thereon or resulting therefrom’. The scope of damages that can be claimed is thus very broad, in line with the protective aim of the Blocking Statute.

13. From whom can EU operators claim compensation for those damages? Can EU operators sue the U.S. authorities in order to recover damages?

EU operators can recover damages from ‘the natural or legal person or any other entity causing the damages or from any person acting on its behalf or intermediary’.

Who exactly will be the defendant in each case will depend on the specifics of the case, on the kind of damage caused, the person or entity actually causing it, the possible shared responsibility in causing such damage, etc. Deciding on this issue is a matter for the competent court (see question 14). It is not possible to determine ex ante and with general character from whom damages will be claimed.

However, the wording of Article 6 is very broad, in that it includes not only the responsible persons and entities, but also their representatives, thus allowing a broader scope of protection to EU operators.

14. How can damages be claimed? Will the Commission or national authorities intervene in favour of EU operators?

According to the third paragraph of Article 6, damages can be recovered before the courts. Which court will be competent will depend on the specifics of the case, on the applicable rules on jurisdiction, the national civil procedure etc. As general rule, the third paragraph of Article 6 refers to the rules enshrined in the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters ⁽¹⁾ (‘Brussels Convention’).

Moreover, the last paragraph of Article 6 specifies that recovery could take the form of seizure and sale of assets which the natural or legal person or entity causing the damages, or its intermediaries, or any person acting on its behalf, holds in the Union, including shares that they may hold in companies incorporated within the Union. Recovery will be without prejudice to other means available and in accordance with applicable law.

15. What does the Brussels Convention foresee?

The Blocking Statute was adopted in 1996. The reference it provides for, in its Article 6, to the Brussels Convention, shall now be read as a reference to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ⁽²⁾.

Under its Article 68, this Regulation, as between the Member States, supersedes the 1968 Brussels Convention, except as regards the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from the Regulation pursuant to Article 355 of the TFEU.

This Regulation applies in civil and commercial matters whatever the nature of the court or tribunal, but it does not extend to the liability of the State for acts and omissions in the exercise of State authority.

SECTION 3: AUTHORISATIONS

16. When can EU operators request an authorisation under Article 5, second paragraph of the Blocking Statute?

Paragraph 2 of Article 5 of the Blocking Statute allows EU operators to ask for an authorisation to comply with the listed extra-territorial legislation if not doing so would seriously damage their interests or those of the Union.

⁽¹⁾ The text refers to the 1968 Convention; however, the reference should be understood to the 2007 Convention which replaced it: [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22007A1221\(03\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22007A1221(03))

⁽²⁾ OJ L 351, 20.12.2012, p. 1.

While the Blocking Statute does not determine what ‘serious damage’ means, it is clear that not every nuisance or damage suffered by EU operators will entitle them to obtain an authorisation. This is a consequence of the fact that the Union does not accept that the listed extra-territorial legislation should govern the conduct of EU operators in its territory, and the possibility to do so remains an exception.

As explained in recital 9 of Commission Implementing Regulation (EU) 2018/1101 ⁽¹⁾, authorisation requests are appropriate when the behaviour that the applicant wishes to adopt is based on, or determined by, the listed extra-territorial legislation. It will be for the applicant to determine whether this is the case. The authorisation procedure should not be used in order for EU operators to seek so-called ‘letters of comfort’ from the Commission or confirmation that their business decisions are in line with the Blocking Statute. For further details about business decisions in the context of the Blocking Statute, see Question 5.

17. What do EU operators need to prove in order to obtain an authorisation?

According to Article 3(2) and 3(3) of Implementing Regulation (EU) 2018/1101, EU operators requesting the authorisation must as a minimum explain which provisions of the listed extra-territorial legislation they would need to comply with and what exactly the behaviour is they would seek to engage in. It is up to them also to demonstrate why and in which way not complying with the listed extra-territorial legislation would cause serious damage to their interests or the interests of the Union, which would justify the need to derogate in specific and duly motivated circumstances to the rule imposed by the Blocking Statute. Appropriate evidence must be provided. It will depend on the specifics of each case what is appropriate. However, the Commission will consider, based on the experience gained, whether it is appropriate to develop templates or check-lists for submitting evidence to support the most frequently used justifications.

The request for authorisation can be submitted individually or by several EU operators jointly, provided that their interests are sufficiently homogenous. Group submissions, however, need to enable a case by case assessment by the Commission whether a serious damage would occur to the individual interests of each applicant or the Union by not complying with the listed extra-territorial legislation.

18. Who can authorise EU operators to comply with the listed extra-territorial legislation? How are Member States involved?

According to Article 5, second paragraph, Article 7(b) and Article 8, the Commission shall grant such authorisations assisted by the Committee on Extra-territorial Legislation. The authorisations shall be granted on the basis of criteria established the same way. Those criteria are laid down in the Implementing Regulation (EU) 2018/1101. The Commission will maintain the criteria under review. If, based on the experience gained in handling requests for authorisation, the Commission considers that amendments are necessary, it will take the appropriate measures.

The Committee on Extra-territorial Legislation is composed of representatives of every Member State and assists the Commission in complying with its tasks related to authorisations through the procedure known as ‘comitology’.

According to Article 3(5) of Implementing Regulation (EU) 2018/1101, the Commission shall inform the Committee on Extra-territorial Legislation as soon as it receives an application for authorisation.

19. How can EU operators apply for an authorisation and how long will it take to obtain a reply from the European Commission?

Applications for authorisations should be submitted to the Commission in writing, either by post (European Commission, Service for Foreign Policy Instruments EEAS 07/99, 1049 Brussels, Belgium) or by e-mail (EC-AUTHORISATIONS-BLOCKING-REG@ec.europa.eu).

While the Commission will endeavour to process requests and reply to the applicant as swiftly as possible, the time needed to do so will depend on several factors, such as the complexity of the case, the completeness of the application and evidence provided, the applicant’s timely reaction to the Commission’s additional requests, the volume of applications received, the time needed by the Committee on Extra-territorial Legislation to give its opinion on the case, or the need for translations.

20. What are the effects of the authorisation?

The request for an authorisation does not have suspensive effect. The authorisation in the form of a Commission Implementing Decision becomes effective as of the date when it is notified to the applicant. In the meanwhile, EU operators are under obligation to apply the Blocking Statute.

⁽¹⁾ OJ L 199 I, 7.8.2018, p. 7.

SECTION 4: OTHER**21. What is the situation of EU subsidiaries of U.S. companies and subsidiaries of EU companies in the U.S.?**

There are basically three situations to be considered separately:

When EU subsidiaries of U.S. companies are formed in accordance with the law of a Member State and have their registered office, central administration or principal place of business within the Union, they are considered EU operators. This implies that they enjoy all the rights and are subject to all the obligations under Union law, including the Blocking Statute.

Branches of U.S. companies in the Union do not fall under the previous paragraph as they do not have distinct legal personality from their parent company. They are not considered EU operators. Therefore, they are not subject to the Blocking Statute.

Subsidiaries of EU companies in the U.S. are subject to the law under which they are incorporated, which is generally that of the U.S. Therefore, they are not considered to be EU operators and are not subject to the Blocking Statute. Nevertheless, their parent company incorporated in the Union is an EU operator and, as such, it is subject to the provisions of the Blocking Statute.

22. Are the EU nationals residents outside of the EU, including in the US, subject to the Blocking Statute?

Yes, a national of a Member State established outside the Union remains subject to the Blocking Statute (see question 2).

23. Can EU operators request a license from the U.S. in order to be exempt from the application of the listed extra-territorial sanctions?

No. Requesting from the U.S. authorities an individual license granting a derogation/exemption from the listed extra-territorial legislation would amount to complying with the latter. Indeed, this would necessarily imply recognising the U.S.' jurisdiction over EU operators which should be subject to the jurisdiction of the EU/Member States.

EU operators may, nevertheless, request the Commission to authorise them to apply for such a license with the U.S. authorities, pursuant to Article 5, second paragraph of the Blocking Statute.

However, the Commission does not regard as compliance with the listed extra-territorial legislation the simple pursuit of conversations with the U.S. authorities in order for EU operators to ascertain its exact extent, how it might impact on them and whether not complying with it might entail serious damage on their interests in the sense of Article 5, second paragraph. Such conversations could precede the EU operators' request of an authorisation to the Commission, in accordance with the aforementioned Article, but would not require an authorisation in order to be carried out.
