

**AUGUST 8, 2018**

For more information,
contact:

Iain MacVay

+44 20 7551 2127

imacvay@kslaw.com

Sajid Ahmed

+44 20 7551 2128

sahmed@kslaw.com

Kateryna Frolova

+44 20 7551 7568

kfrolova@kslaw.com

King & Spalding

London

LLP

125 Old Broad Street

London EC2N 1AR

Tel: +44 20 7551 7500

EU Prohibits Compliance With U.S. Iran Sanctions By EU Companies And Nationals

The U.S. withdrawal from the Iran nuclear proliferation deal known as the Joint Comprehensive Plan of Action (“JCPOA”) and the resulting reimposition of sanctions against Iran, especially secondary sanctions, i.e., sanctions against non-U.S. persons conducting Iranian business, poses serious problems for EU and other international companies.

Since the U.S. withdrawal, the EU has made it very clear that it is committed to the JCPOA and has reacted to the U.S. reimposition of secondary sanctions by making compliance with certain identified U.S. sanctions laws by EU companies and EU nationals illegal through the introduction of an amendment to the EU Blocking Regulation. This amendment came into force on August 7, 2018 in the form of (1) Commission Delegated Regulation (EU) 2018/1100 and (2) Commission Implementing Regulation (EU) 2018/1101.

WHAT IS THE EU BLOCKING REGULATION AND WHAT HAS CHANGED?

The Blocking Regulation (Council Regulation (EC) No 2271/96) was first introduced in 1996 in response to the extra-territorial application of U.S. sanctions, which were mainly directed towards Cuba. The substance of that Regulation has not changed as a result of the new EU measures. The new measures add certain identified U.S. sanctions laws targeting Iran to the list of U.S. laws to which the Blocking Regulation applies. It also adds details on how to seek exemptions from the application of the Blocking Regulation.

WHAT DOES THE BLOCKING REGULATION DO?

The Blocking Regulation has four key provisions:

- EU companies and nationals must notify the European Commission if the U.S. sanctions have any impact on their business;
- EU companies and nationals must not comply with the covered U.S. sanctions unless they are authorized to do so by the Commission;



- rulings by foreign courts or administrative bodies which are based on the U.S. sanctions are nullified under EU law; and
- EU operators can recover compensation in EU courts from persons causing damages that result from application of the U.S. sanctions; it has been suggested in some reports that this includes the ability to recover fines imposed by the U.S., but it is unclear whether this would be viable in practice.

HOW HAS THE BLOCKING REGULATION BEEN AMENDED?

The EU made two notable changes to the Blocking Regulation. First, it amended the Annex by adding the list of extra-territorial U.S. sanctions on Iran through the Commission Delegated Regulation (EU) 2018/1100.

Second, Article 5 of the Blocking Regulation sets out that persons may be authorized by the Commission to comply with the extra-territorial legislation if the non-compliance would cause serious damage to their interests or the interests of the Community. Criteria for assessing exemption requests set out in Article 4 of the Commission Implementing Regulation (EU) 2018/1101 include, availability of mitigating options, the adverse effect of non-compliance on the conduct of economic activity, and the consequences for the EU internal market.

STILL TOOTHLESS AFTER ALL THESE YEARS? ENFORCEMENT, PENALTIES AND USE IN COMMERCIAL NEGOTIATIONS

While some commentators have described the new EU measures as the EU's most powerful tool against the U.S. sanctions, the Blocking Regulation has been in force for many years and has rarely been applied. Prior to the EU-U.S. divergence on Iran sanctions, the Regulation was not being enforced by either Member States or the Commission. Penalties for violations of the Regulation are the responsibility of EU Member States, and it remains to be seen what penalties are established and how they are enforced.

The EU position on Iran and the recent encouragement of EU companies to do business in Iran place more pressure on Member States than ever before to take enforcement of the Blocking Regulation more seriously.

The foreign ministers of the UK, France and Germany joined the EU High Representative in issuing a joint statement on continued EU commitment to the JCPOA. That joint statement said “[w]e are determined to protect European economic operators engaged in legitimate business with Iran, in accordance with EU law and with UN Security Council resolution 2231.” That position suggests the EU approach to enforcement of the Blocking Regulation may be different in the future.

Publicity about the priority given to the Blocking Regulation may also encourage companies disadvantaged by business partners, including banks, refusing to implement or complete transactions on grounds of the impact of U.S. sanctions, to use the right to seek compensation from those business partners as set out in the Blocking Regulation. Irrespective of enforcement activity, the use of threatened or actual damages claims by affected companies could have a significant impact on negotiations involving Iran transactions.



ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,000 lawyers in 20 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising."

ABU DHABI	CHICAGO	HOUSTON	NEW YORK	SILICON VALLEY
ATLANTA	DUBAI	LONDON	PARIS	SINGAPORE
AUSTIN	FRANKFURT	LOS ANGELES	RIYADH	TOKYO
CHARLOTTE	GENEVA	MOSCOW	SAN FRANCISCO	WASHINGTON, D.C.
