

8 August 2018

US sanctions against Iran: European Union Regulation 2271/96 (Blocking Regulation)

Background

The Club's Circular issued on 29 May 2018 outlined the potential repercussions for shipowners and insurers that will arise from the US Administration's decision to withdraw from the Joint Comprehensive Plan of Action (JCPOA) agreement signed by China, France, Germany, Russia, the United Kingdom, the United States, the European Union (EU) and Iran.

As previously advised, the US withdrawal from the JCPOA and the decision to reactivate the nuclear-related laws that were waived in order to implement the JCPOA will have significant ramifications for maritime trade with Iran and the insurance of such trade.

Action taken by the European Union to preserve the JCPOA

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 EU has replaced the annex to Council Regulation (EC) No 2271/96, otherwise known as the Blocking Regulation. Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018 gives effect to the replacement of the annex from 7 August 2018.

The new annex sets out, among other things, the US 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 16 January 2016. Those waivers cease to have effect on a phased-in basis from 6 August 2018 with a final date of 4 November 2018 by which date the performance of contracts for certain trade activities, including the transport of oil cargoes, must be either executed or terminated.

Here are the links to the various documents:

1. Commission Delegated Regulation (EU) 2018/1100 which includes the new annex <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018R1100>
2. Commission Implementing Regulation (EU) 2018/1101 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.LI.2018.199.01.0007.01.ENG&toc=OJ:L:2018:199:TOC>
3. Commission Delegated Decision (EU) 2018/1102 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.LI.2018.199.01.0011.01.ENG&toc=OJ:L:2018:199:TOC>
4. Template for Applications for Authorisations under the Regulation <https://britanniapandi.com/wp-content/uploads/2018/08/TEMPLATE-FOR-APPLICATIONS-FOR-AUTHORISATIONS-08-2018a.pdf>
5. Guidance Note issued by the European Commission <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CI.2018.277.01.0004.01.ENG&toc=OJ:C:2018:277:TOC>

See also the following link to the EU website http://ec.europa.eu/dgs/fpi/what-we-do/blocking_statute_en.htm

The International Group has engaged extensively with the Office of Foreign Asset Control (OFAC) in the US, the European Union External Action Service, the European Commission, the UK Treasury and Foreign Office and EU Member States in order to explain some of the practical effects of the reactivation of US secondary sanctions on shipowners and insurers and 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 that Regulation, a national of an EU Member State or a legal person incorporated within the EU which suffers a detriment as a result of another legal person in the EU complying with the US measures may claim damages from that legal person. EU Member States are also obliged to uphold the EU measures.

However, attention is drawn to section 1 paragraph 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 own 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 – Authorisation Process

Exemption from the Regulation is permissible under Art. 5, provided a natural or legal person to whom the Regulation applies can demonstrate that compliance with the Regulation – and non-compliance with the reactivated US measures - would seriously damage their interests. Section 3 paragraphs 16 – 20 of the Guidance Note addresses the procedure for authorisation to comply with the US extraterritorial legislation listed under the new annex in circumstances where non-compliance would seriously damage the person's interests. The envisaged authorisation process permits applications by individual EU operators or by several operators jointly where their interests are sufficiently homogenous.

Following release of this Guidance, the Group is following up with the European Commission and European Union External Action Service on the need for authorisation and the possibility of a collective application on behalf of the Group Clubs. Shipowners incorporated within the EU who believe that they might face a claim for damages from another entity incorporated within the EU for failure to perform under a contract involving activity subject to US sanctions may also wish to consider seeking an authorisation under the Blocking Regulation to protect their business interests from the risk of enforcement action by OFAC for breach of US sanctions.

The International Group will continue to monitor and assess the situation.

All clubs in the International Group have issued a similar Circular.