

July 23, 2018



Author:



Alfredo G. Fernandez
(860) 251-5353
afernandez@goodwin.com



Glenn M. Cunningham
(860) 251-5722
gcunningham@goodwin.com

Picking The Better Bad Option: EU Proposes New Blocking Statute in Response to US Withdrawal from JCPOA

On May 8, 2018, the United States announced its decision to withdraw from the Joint Comprehensive Plan of Action (JCPOA), more commonly referred to as the Iran nuclear deal, reversing much of the U.S. sanctions relief previously implemented by the deal.

United States sanctions that precluded companies from conducting business with Iran prior to the implementation of the JCPOA will soon “snap back” into place on August 6, 2018 (or in some cases, November 4, 2018). The European Union remains committed to the JCPOA and has announced the activation of a “blocking statute” to shield EU companies from the effects of the reactivated US sanctions on Iran.

As a result, the sanctions compliance policies of the United States and the European Union appear to be headed on a collision course, leaving certain companies between a rock and a hard place.

Scenario 1: A French subsidiary of a United States parent company commenced an authorized financing agreement with an Iranian bank in January 2018. Payments for the deal are scheduled to continue into 2019.

Scenario 2: A German parent company with a United States subsidiary has a distribution agreement with an Iranian distributor. The German parent and Iranian distributor contracted to continue their agreement until 2020.

The tension: Continuing the previously authorized business deals beyond August 6, 2018 may lead to violations of U.S. sanctions. Conversely, terminating the agreements beyond August 6, 2018 may lead to violations of the EU’s blocking statute. Companies with a presence in Europe and the United States must take particular care to assess their risks with respect to the two sanctions regimes.

Recent Developments in US and EU Trade Compliance Regimes

As noted in our prior alert [<http://www.shipmangoodwin.com/files/36387InternationalTradeBulletinIran.pdf>], US sanctions on Iran are designed to target both primary and secondary business relationships with Iranian persons. Despite the short-lived relief provided by the JCPOA, the United States’ recent withdrawal will soon result in secondary sanctions once again applying to: (i) certain foreign persons, (ii) all U.S. persons regardless of their physical location; and (iii) any person or company conducting business while physically located in the United States. The United States’ reversal on its JCPOA position most directly impacts the foreign subsidiaries of U.S. parents that saw relief under the JCPOA, which allowed them to undertake certain business activities with Iranian parties.



The EU blocking statute, recently approved by the European Council and Parliament, does not legally recognize US sanctions on Iran, and prohibits persons and companies from complying with US sanctions. The blocking statute will apply to EU citizens wherever located, as well as other persons in the EU, including EU subsidiaries of US companies. EU member states will be responsible for enforcing the blocking statute in their respective countries.

In the wake of reimposed US sanctions, EU leaders recently sent a letter to Treasury Secretary Mnuchin and Secretary of State Pompeo, requesting exemptions from sanctions for European companies who were previously in compliance while in Iran after the JCPOA before the recent change. The U.S. has not publicly responded to this exemption request.

When Will the New Sanctions Go Into Effect?

At the President's direction, the U.S. Office of Foreign Assets Control is implementing two authorized "wind down" periods. August 6 and November 4, 2018 are the last days of the respective wind down periods before significant portions of United States secondary sanctions on Iran "snap back" into place. By coincidence or not, August 6th is also the day that the EU blocking statute will enter into force.

All U.S. companies, especially those with foreign affiliates, are faced with a dynamic compliance environment and will need to think carefully about how they can best avoid incurring penalties in the United States and/or the European Union. Barring qualification for one of the few limited authorizations, companies have only matter of weeks to wind down business engagements with Iranian companies to comply with U.S. sanctions and/or prepare themselves to comply with the blocking statute. Such companies with business and/or affiliates in the United States and Europe will need to make difficult decisions in the coming weeks to find the "better bad option."

Questions or Assistance

Should you have any questions, please contact Alfredo G. Fernandez at (860) 251-5353 or afernandez@goodwin.com or Glenn M. Cunningham at (860) 251-5722 or gcunningham@goodwin.com.

These materials have been prepared by Shipman & Goodwin LLP for informational purposes only. They are not intended as advertising and should not be considered legal advice. This information is not intended to create, and receipt of it does not create, a lawyer-client relationship. Viewers should not act upon this information without seeking professional counsel. © 2018 Shipman & Goodwin LLP. One Constitution Plaza, Hartford, CT 06103.

289 Greenwich Avenue
Greenwich, CT 06830-6595
203-869-5600

One Constitution Plaza
Hartford, CT 06103-1919
860-251-5000

265 Church Street - Suite 1207
New Haven, CT 06510-7013
203-836-2801

400 Park Avenue - Fifth Floor
New York, NY 10022-4406
212-376-3010

300 Atlantic Street
Stamford, CT 06901-3522
203-324-8100

1875 K St., NW - Suite 600
Washington, DC 20006-1251
202-469-7750

www.shipmangoodwin.com