

# The updated version of the EU blocking regulation enters into force

8 August 2018

On 7 August 2018, the European Union (EU) published: (1) Commission Delegated Regulation (EU) [2018/1100](#) (amending regulation), which expands the scope of Regulation (EC) No [2271/96](#) (EU blocking regulation) to the extraterritorial effects of certain U.S.-Iran sanctions (covered U.S.-Iran sanctions); (2) Commission Implementing Regulation (EU) [2018/1101](#) (authorization regulation), which sets out the procedure and conditions for EU economic operators to be authorized to comply with the U.S. covered Iran sanctions; and (3) a [guidance note](#) that aims to clarify certain aspects of the EU blocking regulation (as amended by the amending regulation) ([guidance note](#)).

These steps were taken to protect EU economic operators from the reimposition of the U.S.-Iran sanctions following the United States' withdrawal from the Joint Comprehensive Plan of Action (JCPOA) in May 2018 (see previous [alert](#) on the topic).

## How are EU economic operators affected by these new developments?

The amending regulation expands the scope of the EU blocking regulation to the covered U.S.-Iran sanctions (see previous [alert](#) on the topic). This means that the EU blocking regulation now introduces the two following main obligations on EU operators with respect to the covered U.S.-Iran sanctions:

First, EU economic operators cannot comply, whether directly, indirectly, or through a subsidiary or other intermediary person, with the covered U.S. Iran sanctions.

EU economic operators may request an authorization from the European Commission to comply with the covered U.S.-Iran sanctions where they can demonstrate that non-compliance therewith would seriously damage their interests or those of the European Union (see template [request form](#)). The authorization regulation specifies that

- the EU Commission will assess whether such serious damage is likely to arise on the basis of various newly-defined non-cumulative criteria, including inter alia
  - the existence of a substantial connecting link with the United States;

- whether measures could reasonably be taken by the applicant to avoid or mitigate the damage;
  - whether the applicant would face significant economic losses;
  - whether the applicant's activity would be rendered excessively difficult due to a loss of essential inputs or resources that cannot be replaced;
  - the security of supply of strategic goods or services within or to the European Union and the impact of any shortage or disruption therein;
  - the systemic implications of the damage, in particular as regards its spillover effects into other sectors; or
  - the impact on the employment market of one or several member states and its cross-border consequences within the European Union; and
- the EU Commission will grant or reject the authorization request through a decision, which will be adopted unless a qualified majority of member states opposes it (i.e., at least 16 member states representing at least 65 percent of the total EU population).

Furthermore, EU economic operators are entitled to recover damages, including legal costs, caused by the application of the covered U.S.-Iran sanctions or by action based thereon or resulting therefrom (right to damages). The guidance note specifies that

- the right to damages can be exercised against the natural or legal person, any other entity causing the damages through compliance with the U.S. covered Iran sanctions, or from any person acting on its behalf or intermediary;
- the recovery can take the form of seizure and sale of the EU assets of the person causing the damage through compliance with the covered U.S.-Iran sanctions, its representatives, or intermediaries; and
- the action for damages can be brought before any competent member state court.

Second, EU economic operators must inform the EU Commission of any action based on or resulting from compliance with the covered U.S.-Iran sanctions that affects, directly or indirectly, their economic and/or financial interests.

Member states are responsible for enforcing the EU blocking regulation through "decisive, proportionate, and dissuasive penalties." We note, in that regard, that

- the EU blocking regulation has very rarely been enforced by member states in its 22-year existence and
- some member states have – to date – not adopted legislation to enforce the EU blocking regulation. That being said, the current global political climate and the investments made by EU economic operators in Iran since the entry into force of the JCPOA could lead to an enhanced enforcement appetite in the European Union.

## What should EU economic operators do?

EU economic operators doing business in Iran could face conflicting obligations under the EU blocking regulation and the covered U.S.-Iran sanctions. They should therefore consider their potential exposure to both the EU blocking regulation and the covered U.S.-Iran sanctions, which includes

- reviewing whether their activities in Iran are subject to the covered U.S.-Iran sanctions;
- reviewing their contractual obligations with their counterparties and financial institutions vis-a-vis both the EU blocking regulation and the covered U.S.-Iran sanctions; and
- reviewing enforcement/reputational risks under both the EU blocking regulation and the covered U.S.-Iran sanctions.

Depending on the extent of their exposure to either regime, EU economic operators should also consider engaging with the EU Commission and member states to determine whether they could be granted an authorization to comply with the covered U.S.-Iran sanctions (based on the newly-defined criteria set out in the authorization regulation). We note, in that regard, that the guidance note provides that requesting an individual license granting a derogation/exemption from the covered U.S.-Iran sanctions to the U.S. authorities would amount to complying with the said sanctions and would, therefore, constitute a breach of the EU blocking regulation (EU operators could, however, request an authorization from the EU Commission to request such individual licenses).

We will continue to monitor this space closely and provide updates as events warrant. In the meantime, please do not hesitate to contact us should you have any questions on the application of the EU blocking regulation or EU economic sanctions more generally.

## Contacts



**Lourdes Catrain**  
Partner, Brussels  
T +32 2 505 0933  
[lourdes.catrain@hoganlovells.com](mailto:lourdes.catrain@hoganlovells.com)



**Aline Doussin**  
Partner, London  
T +44 20 7296 2961  
[aline.doussin@hoganlovells.com](mailto:aline.doussin@hoganlovells.com)



**Louise Lamb**  
Partner, London  
T +44 20 7296 5770  
[louise.lamb@hoganlovells.com](mailto:louise.lamb@hoganlovells.com)



**Falk Schöning**  
Partner, Brussels  
T +32 2 505 0911  
[falk.schoening@hoganlovells.com](mailto:falk.schoening@hoganlovells.com)



**Jamie Rogers**  
Counsel, London  
T +44 20 7296 5795  
[jamie.rogers@hoganlovells.com](mailto:jamie.rogers@hoganlovells.com)



**Jérémie Charles**  
Senior Associate, Brussels  
T +32 2 505 0944  
[jeremie.charles@hoganlovells.com](mailto:jeremie.charles@hoganlovells.com)



**Jorge Torres**  
Associate, Brussels  
T +32 2 505 0911  
[jorge.torres@hoganlovells.com](mailto:jorge.torres@hoganlovells.com)



**Eleni Theodoropoulou**  
Associate, Brussels  
T +32 2 505 0942  
[eleni.theodoropoulou@hoganlovells.com](mailto:eleni.theodoropoulou@hoganlovells.com)

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