

United States re-imposes certain Iran-related sanctions after 90-day wind-down period; EU responds with updated EU Blocking Regulation

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On August 6, 2018, the United States introduced Executive Order 13846 to re-impose mainly secondary sanctions targeting Iran. In response to the US action, on August 7, 2018, the European Union issued an updated Blocking Regulation – aiming to counter the effects of these re-imposed US sanctions on EU companies. The EU also reaffirmed its position (along with some other third countries) supporting the continued lifting of nuclear-related sanctions against Iran under the international nuclear deal. We explain these key US and EU developments in relation to Iran sanctions below.

Re-imposition of US sanctions against Iran

On August 6, 2018, President Donald Trump issued Executive Order 13846 (EO 13846)¹ entitled “Reimposing Certain Sanctions with Respect to Iran,” consistent with the President’s May 8, 2018, announcement of the withdrawal of the United States from the Joint Comprehensive Plan of Action (JCPOA).² EO 13846 provides for the re-imposition at 12:01 a.m. Eastern Daylight Time (EDT) on August 7, 2018, of certain sanctions that were subject to a 90-day wind-down period, and for the re-imposition on November 5, 2018, of sanctions that are subject to a 180-day wind-down period. The re-imposed sanctions are largely secondary sanctions targeting activities of non-US persons with no connection to the United States. General licenses (GLs) issued by the US Department of the Treasury, Office of Foreign Assets Control (OFAC) to authorize certain wind-down activities

¹ Available [here](#).

² Please see our past client alerts regarding the JCPOA substance and implementation [here](#) and [here](#), and please see our past client alert regarding the United States’ withdrawal from the Iran nuclear deal [here](#).

related to limited activities involving US persons³ that were permitted under the JCPOA⁴ expired at 11:59 p.m. EDT on August 6, 2018.

OFAC published additional guidance regarding the re-imposition of sanctions, including (1) Frequently Asked Questions (FAQs) relating to EO 13846;⁵ (2) amendments to existing FAQs relating to the Iran Freedom and Counter-Proliferation Act of 2012 (IFCA);⁶ and (3) a revised statement⁷ and updates to existing FAQs relating to the decision to cease participation in the JCPOA.⁸ OFAC announced that it will publish additional guidance with respect to the end of the 180-day wind-down period no later than November 4, 2018.

Executive Order 13846

EO 13846 provides for the re-imposition of specified sanctions relating to Iran following the relevant wind-down periods, i.e., on or after August 7, 2018 or November 5, 2018, depending on the activity involved. It provides for re-imposing relevant blocking sanctions, correspondent and payable-through account sanctions and menu-based sanctions contained in the following four Executive Orders (EOs) that had been revoked (by EO 13716 of January 16, 2016), to give effect to JCPOA sanctions relief:

- (1) EO 13574 of May 23, 2011;
- (2) EO 13590 of November 20, 2011;
- (3) EO 13622 of July 30, 2012; and
- (4) EO 13645 of June 3, 2013.

The relevant provisions from the four EOs are consolidated into EO 13846 and the scope of certain provisions contained in the EOs is broadened. In addition, to provide clarity and consolidate authorities into a single document, EO 13846 revokes and supersedes EO 13716, which revoked relevant provisions of the four EOs, and EO 13628 of October 9, 2012, which authorized the implementation of certain sanctions set forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 (TRA) and additional sanctions with respect to Iran.

Pursuant to EO 13846 and relevant statutory authorities, the following secondary sanctions are re-imposed on or after August 7, 2018:

- Sanctions on the purchase or acquisition of US dollar banknotes by the Government of Iran (Subsection 1(a)(i));⁹
- Sanctions on Iran's trade in gold or precious metals (Subsection 1(a)(i));
- 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 (Section 5);
- 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 (Section 6);
- Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt (Section 5); and
- Sanctions on Iran's automotive sector (Subsections 2(a)(i) and (3)(a)(i)).

³ US persons are defined to include US citizens and permanent residents, wherever located; entities organized under US law, including foreign branches; and any person located in the United States.

⁴ US primary sanctions generally prohibit transactions involving US persons and Iran.

⁵ Available [here](#).

⁶ Available [here](#).

⁷ Available [here](#).

⁸ Available [here](#).

⁹ References in parentheses are to provisions in EO 13846.

Pursuant to EO 13846 and relevant statutory authorities, the following secondary sanctions will be re-imposed on or after November 5, 2018:

- 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 (Subsection 1(a)(iv) and Section 5);
- Sanctions on petroleum-related transactions with, among others, the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), and the National Iranian Tanker Company (NITC), including the purchase of petroleum, petroleum products, or petrochemical products from Iran (Subsections 1(a)(ii), 1(a)(iv), 2(a)(iii)-(a)(v), and 3(a)(ii)-(a)(iii) and Sections 4 and 5);
- Sanctions on transactions by foreign financial institutions (FFIs) with the Central Bank of Iran (CBI) and designated Iranian financial institutions under section 1245 of the National Defense Authorization Act for FY 2012 (NDAA 2012)(Section 5);
- Sanctions on the provision of specialized financial messaging services to the CBI and Iranian financial institutions described in Subsection 104(c)(2)(E)(ii) of CISADA (Section 5);
- Sanctions on the provision of underwriting services, insurance, or reinsurance (Section 5); and
- Sanctions on Iran's energy sector (Subsection 1(a)(iv) and Section 5).

EO 13846 broadens the scope of sanctions in effect prior to January 16, 2016, in two respects. First, Sections 4 and 5 expand the menu of sanctions that can be imposed on or after November 5, 2018, on persons who have knowingly engaged in certain transactions involving petroleum, petroleum products, or petrochemicals from Iran. These sections add the following sanctions: the denial of visas to corporate officers, principals, or controlling shareholders of a sanctioned person; the application of a menu of sanctions to principal executive officers of a sanctioned person; or prohibitions on US persons investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person.

In addition, Section 8 expands the prohibitions on entities owned or controlled by a US person and established or maintained outside the United States that were previously contained in Section 4 of EO 13628 by making the following activity sanctionable: providing material support for, or goods and services in support of, Iranian persons on the List of Specially Designated Nationals and Blocked Persons (SDN List) and certain other designated persons; or for being part of the energy, shipping, or shipbuilding sectors of Iran or a port operator in Iran or knowingly providing significant support to certain other persons blocked pursuant to Section 1244(c)(1) of IFCA or to an Iranian person on the SDN List. The civil penalties for violating this provision may be assessed against the US person that owns or controls the entity that engaged in the prohibited transaction.

EO 13846 also continues in effect sanctions authorities provided for in EOs 13628 and 13716. These measures include authority for the heads of relevant US government agencies to implement the sanctions and additional tools related to the Iran Sanctions Act of 1996, as amended (ISA), the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, as amended (CISADA), TRA, and IFCA. EO 13846 incorporates exceptions to the sanctions in these measures to the extent the exceptions applied under prior EOs, such as for transactions involving the provision of agricultural commodities, food, medicine, or medical devices to Iran.

Revocation of JCPOA-related authorizations

Certain wind-down GLs previously issued by OFAC expired at the end of the 90-day wind-down period at 11:59 p.m. EDT on August 6, 2018. These licenses authorized the wind-down of limited activities involving US persons that were permitted under the JCPOA. Specifically, the US government revoked the following JCPOA-related authorizations applicable to US persons:

- The importation into the United States of Iranian-origin carpets and foodstuffs and certain related financial transactions pursuant to GLs under the Iranian Transactions and Sanctions Regulations (31 CFR part 560);
- Activities undertaken pursuant to specific licenses issued in connection with the *Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services* (JCPOA SLP); and

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- Activities undertaken pursuant to GL I, which authorized US persons to enter into, and to engage in transactions that are ordinarily incident to the negotiation of and entry into, contingent contracts for activities eligible for authorization under the JCPOA SLP.

The sanctions re-imposed on August 7, 2018 include the primary and secondary sanctions described above. OFAC has indicated that it will publish further guidance with respect to the end of the 180-day wind-down period no later than November 4, 2018.

Updated EU Blocking Regulation and related measures

On August 7, 2018, the updated list of foreign sanctions falling within the scope of the EU Blocking Regulation – which has been revised in order to include the re-imposed US sanctions on Iran described above – was published and entered into force.¹⁰ Related EU guidance, rules and decisions were issued at the same time. This expected development is part of the EU's response to the US decision to withdraw from the JCPOA and to re-impose certain US sanctions against Iran that target (among others) activities of EU companies in Iran, and is in line with draft revisions to the EU Blocking Regulation proposed on June 6, 2018.¹¹

Updated Regulation and related Guidance Note

Under the updated Regulation, EU nationals (including those located outside the EU), residents and companies (“EU parties”) are now generally prohibited from complying with, actively or by deliberate omission, *inter alia*, the sanctions re-imposed by the United States on August 7 (described above).¹² (This would also cover the sanctions expected to be re-imposed by the United States on or after November 5, 2018, as described above.)

The European Commission has issued a Guidance Note,¹³ which confirms that the main objective of the updated EU Blocking Regulation is to protect EU parties engaging in “lawful international trade and/or movement of capital as well as related commerce activities with third countries in accordance with EU law”. At the same time, it recognizes that EU parties are still free to choose whether to conduct business activities in Iran, for example, “on the basis of their assessment of the economic situation”. It also confirms that the updated EU Blocking Regulation applies as of August 7, even if relevant contracts were signed prior to that date.

Other notable clarifications in the updated Blocking Regulation and related Guidance Note in relation to the re-imposed US sanctions are as follows:

- Any foreign judgment or administrative decision based on the listed US sanctions is unenforceable in the EU. The Guidance Note confirms that Member State authorities must shield EU parties from any decision requiring, for example, seizure or enforcement of a penalty in the EU in this context.
- EU parties may claim compensation before the courts of the EU Member States for any damages caused by application of the listed US sanctions. The Guidance Note recognizes that the potential defendants will depend on the precise circumstances, and provides that this is decided by the competent court. The Guidance Note suggests that the Blocking Regulation does not extend to the liability of States, i.e., the US government, but may potentially cover a broad range of counterparties and their representatives. This could potentially entail the seizure and sale of EU assets (including shares held in EU companies) held by defendants or persons acting on their behalf.
- The Guidance Note confirms that while EU subsidiaries of US companies must comply with the Blocking Regulation (and may enjoy the rights thereunder), EU branches of US companies do not, as they do not have distinct legal personality from the parent company. (It should be noted, however, that EU employees of such EU branches of US companies are subject to the Blocking Regulation.) In contrast, US subsidiaries of EU

¹⁰ See Commission Delegated Regulation 2018/1100, available [here](#).

¹¹ For more information on the updated EU Blocking Regulation and related EU measures, see our recent Client Alerts, available [here](#) and [here](#).

¹² A consolidated version of the EU Blocking Regulation (i.e. Council Regulation (EC) No 2271/96), not featuring today's update but including the substantive provisions (which remain unchanged), is available [here](#).

¹³ See Guidance Note – Questions and Answers: adoption of update of the Blocking Statute, available [here](#).

companies are also not obliged to comply with the Blocking Regulation, but their parent company (if incorporated in an EU Member State) would be.

- In addition, EU parties should report to the Commission (or through their Member State authority) within 30 days of any event resulting in an impact on their economic or financial interests, directly or indirectly, due to the specified US sanctions.
- The Commission can exceptionally authorize compliance with the listed US sanctions if non-compliance would “seriously damage” the interests of EU parties or the EU as a whole. The Guidance Note clarifies that such authorization will not be granted in relation to “every nuisance or damage suffered” as a result of the listed US sanctions, and that this procedure cannot be used to obtain confirmation that business decisions are generally consistent with the Blocking Regulation.

Potential EU authorization of compliance with US sanctions

The Commission has also set out the criteria that it will apply when considering requests for authorizations to comply with US sanctions.¹⁴ As noted above, the Commission can exceptionally authorize compliance with the listed US sanctions if non-compliance would cause serious damage to the interests of EU parties or the EU. Such authorizations would be in the form of Commission Implementing Decisions, adopted after consulting a committee of Member State representatives while following general EU comitology procedures.¹⁵

While considering applications, the Commission and Committee would follow the criteria set out in the Implementing Regulation issued on August 7. This includes a non-exhaustive list of non-cumulative factors, including whether the applicant is subject to an ongoing investigation, if there is a substantial connecting link with the relevant country (including parent company links), the risk of significant economic loss, or any threat to safety, security, or protection of human life, health or the environment.

The EU has also issued a template for authorization applications, aiming to help EU parties include required basic elements.¹⁶ This template and the Guidance Note confirm that EU parties will need to provide detailed support for an authorization, and may submit the request individually or jointly with several EU parties (provided their interests are sufficiently homogeneous and it is possible for the Commission to assess the damage for each individual applicant). The Guidance Note does not provide a precise timeline for authorization decisions (although the applicant will still be obliged to comply with the Blocking Regulation as the request is pending), but indicates that it will take a decision as soon as possible, having in mind a number of factors.

Possible US authorization

Notably, the Guidance Note specifies that seeking an individual US license granting a derogation or exemption from the listed US sanctions would be considered ‘compliance’ with such US sanctions, and thus prohibited under the Blocking Regulation, unless a prior authorization is obtained from the Commission through the above described procedure. However, the Guidance Note states that engaging in conversations with the US authorities in order to confirm the precise scope and impact of relevant US sanctions would be permitted without an EU authorization.

On a related note, in response to a joint request sent in June from the finance and foreign ministers of the UK, France and Germany, together with the EU’s High Representative, for general exemptions from certain US sanctions impacting EU companies,¹⁷ US Secretary of State Mike Pompeo and Treasury Secretary Steven Mnuchin reportedly issued a formal rejection letter in mid-July, highlighting the US objective to maximize financial pressure on Iran.

¹⁴ See Commission Implementing Regulation 2018/1101, available [here](#).

¹⁵ The committee is called The Committee on Extra-Territorial Legislation, and the so-called “examination procedure” will apply, as set out in Article 5 of Regulation 182/2011, available [here](#).

¹⁶ Available [here](#).

¹⁷ Available [here](#) (but the US response is not publicly available).

EIB guarantee

Also on August 7, the Commission published a Decision adding Iran to the list of countries eligible for European Investment Bank (EIB) financing under EU guarantee.¹⁸ This means that EIB loans, loan guarantees and debt capital market instruments for the benefit of investment projects in Iran are eligible for such EU guarantee, subject to a signed agreement and further conditions and ceilings. The EU guarantee at present covers EIB financing for operations signed before end-2020.

JCPOA-related developments

On August 6, 2018, participants of the Joint Commission of the JCPOA (featuring Iran, China, Russia, France, Germany, the UK, and the EU High Representative) reaffirmed their commitment to full and effective JCPOA implementation, and recognized that the lifting of sanctions in exchange for Iran's implementation of its nuclear-related commitments remains an essential part of it.¹⁹ They also committed to certain good-faith objectives, including, *inter alia*, the continuation of Iran's oil and gas exports, and the general protection of companies from extra-territorial effects of US sanctions.

Also on August 6, 2018, the EU's High Representative and the "E3" (i.e., French, German and UK) Foreign Ministers issued a statement expressing their deep regret regarding the re-imposition of US sanctions against Iran.²⁰ The statement confirms that EU efforts to engage with third countries to ensure JCPOA support and to maintain economic relations with Iran (including with respect to continuation of Iran's oil and gas exports) will intensify in the coming weeks.

Conclusion

Companies involved in business activities related to Iran should carefully consider their obligations under both US and EU law, as the ramifications of these conflicting rules can vary depending on the company's particular circumstances. It will also be important to monitor how these various provisions are enforced and implemented in practice, both in the United States and the EU.

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¹⁸ See Commission Delegated Decision 2018/1102, available [here](#), amending Decision 466/2014, available [here](#).

¹⁹ See *Statement from the Joint Commission of the Joint Comprehensive Plan of Action*, August 6, 2018, available [here](#).

²⁰ See *Joint statement on the re-imposition of US sanctions due to its withdrawal from the Joint Comprehensive Plan of Action (JCPOA)*, August 6, 2018, available [here](#).