



ALERT

JUNE 2018 - No 1

THE EUROPEAN UNION FACING THE INCREASING TENSION BETWEEN US AND IRAN

On May 28, 2018, the High Representative of the European Union for Foreign Affairs and Security Policy (the “HR”), Federica Mogherini, has reaffirmed the intention of the European Union not to follow the United States of America decision to reintroduce the economic sanctions that were withdrawn after the adoption of a common **Joint Comprehensive Plan of Action (JCPOA)** *i.e.* the agreement reached by USA, EU and the other international players with Iran (so called “**Iran Nuclear Deal**”). This declaration follows unanimous decision of EU Heads of State or Government to respect the Iranian Deal, taken at their meeting held in Sofia on May 16, 2018

It is worth to recall that, on May 8, 2018 US President, Donald Trump, issued a National Security Presidential Memorandum (**NSPM**) requiring the Secretary of State and the Secretary of Treasury to impose, again, the commercial and financial sanctions lifted by the US in January 2016, after the subscription of the JCPOA. As a consequence, the Department of Treasury issued specific **guidelines** summarizing the restrictions that will be reintroduced in the coming months.

Such guidelines highlight that, **as of August 6, 2018** (*i.e.* 90 days after the NSPM), the US government will reimpose sanctions:

- on the purchase or acquisition of US dollar banknotes by the Government of Iran;
- on Iran’s trade in gold or precious metals;
- 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;
- 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 rials;
- on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
- on the Iranian automotive sector.

Subsequently, **as of November 4, 2018** (*i.e.* 180 days after the NSPM), the US government will reimpose 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;
- on petroleum-related transactions with, among others, the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), and National Iranian Tanker Company (NITC), including the purchase of petroleum, petroleum products, or petrochemical products from Iran;

ALERT / JUNE 2018

- on transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions under Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA);
- on the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions described in Section 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions and Divestment Act of 2010 (CISADA);
- on the provision of underwriting services, insurance, or reinsurance and sanctions on Iran's energy sector.

In addition, the US government will revoke the following JCPOA authorizations, including for instance those related to the import into the US of Iranian-origin carpets and foodstuffs and certain related financial transactions pursuant to general licenses under the Iranian Transactions and Sanctions Regulations, 31 C.F.R. part 560 (ITSR). Given the extraterritoriality effect of these sanctions, the guidelines also specifically indicate that non-US and non-Iranian persons are advised to use the time-periods mentioned above to wind-down their activities with or involving Iran that will become sanctionable after August 6 and November 4, 2018.

On the consequences of the US withdrawal from the JCPOA on the investments made by EU companies in Iran, the HR declared that *“The European Union decisions are taken by Europeans, are not exposed to decisions taken elsewhere and we have the instruments to accompany and protect our economic investments, especially when they match our security interests”*.

The declaration of the HR seems to refer to the fact that the European Commission is considering to add the US sanctions to the measures listed in the Annex of the **Regulation (EC) 2271/96** - so called **“EU Blocking Regulation”** - in order to provide protection against the consequences of US sanctions to EU natural or legal persons dealing with Iran.

Indeed, the EU Blocking Regulation provides that EU persons whose economic and/or financial interests are affected, directly or indirectly, by the extra-territorial application of the laws specified in the Annex of said regulation, shall inform the European Commission. These EU persons will be prohibited to *“comply, whether directly or through a subsidiary or other intermediary person, actively or by deliberate omission, with any requirement or prohibition, including requests of foreign courts, based on or resulting, directly or indirectly, from the laws specified in the Annex or from actions based thereon or resulting therefrom”*.

Moreover, the EU Blocking Regulation deprives of effects the judgments of a court as well as the decisions of administrative authorities located outside the EU giving effect, directly or indirectly, to the laws specified in the Annex, which therefore will not be enforceable.

Eventually, the EU persons shall be entitled to recover the damages caused to them by the application of the laws indicated in the Annex of said regulation or by any action based thereon or resulting therefrom. That recovery may be obtained from any natural or legal person causing the damages or from any person acting on its behalf or intermediary.

Should this instrument be actually used, EU companies will be put in the practical, difficult position to choose whether to comply with US sanctions or with the provisions of the EU Blocking Regulation. Given

ALERT / JUNE 2018

the severe consequences of US sanctions as well as the importance of the business opportunities offered by US compared to Iran, it is reasonable to assume that the practical impact of the European Blocking Regulation could be limited. However, the threat to use the EU Blocking Regulation could also be used as mean of pressure on the US to find a political solution to the Iranian Deal. Indeed, the Blocking Regulation could constitute a “signaling tool” that the EU is ready to safeguard the interests of EU citizens and companies, therefore forcing the U.S. to reconsider their position by mitigating the effects of the announced sanctions.

For further questions on this matter, please refer to

Francesca Torricelli

francesca.torricelli@santalex.com

tel. + 39 02 771971

Milan, June 5, 2018