The EU Blocking Regulation – Issues and Considerations for the Financial Services Sector

11th July 2018

The aim of this paper is to offer an overview for discussion with EU Member States and the European Commission on practical aspects related to the implementation of the updated EU Blocking Regulation.

Specifically, we aim to set out:

- Challenges of complying with divergent and conflicting cross-border sanctions obligations as it relates to the updated Blocking Regulation;
- Key areas of concern for natural and legal persons of complying with the Blocking Regulation; and
- Priority aspects that should be included within forthcoming European Commission guidance which will accompany the introduction of the updated Blocking Regulation.

A. The Role of UK Finance

UK Finance is a trade association representing 300 of the leading firms providing finance, banking and payments-related services in or from the UK. We have been created by combining the activities of the Asset Based Finance Association, the British Bankers' Association, the Council of Mortgage Lenders, Financial Fraud Action UK, Payments UK and the UK Cards Association.

Our members are large and small, national and regional, domestic and international, corporate and mutual, retail and wholesale, physical and virtual, banks and non-banks.

UK Finance has a well-established sanctions panel of European and international banks which undertakes extensive work and liaises with EU and US counterparts. At an international level, we have been working closely with the United Nations, the EU and UK Government officials on a range of sanctions implementation matters, such as: the impact of the US withdrawal from the Joint Comprehensive Plan of Action (JCPOA), the US Russia sectoral sanctions, and humanitarian issues. UK Finance is the UK representative on a number of international trade associations including the European Banking Federation and the International Banking Federation.

B. Background and Scope of the Blocking Regulation

On 18th May 2018, the European Commission launched a formal process to update the 1996 EU Blocking Regulation (also referred to as the Blocking Statute) to include certain US sanctions on Iran. We understand that the driving force for the update is to protect Iran-related business interests of European companies and individuals following the US JCPOA withdrawal.

The update process is following a rapid implementation timeframe. Unless there is an unexpected delay, the new Regulation will enter into force by 6th August 2018, or anytime sooner should both the European Parliament and the Council signal their non-objection to the Commission.

The proposed update to the Annex of the EU Blocking Regulation covers the following US sanctions ("US Iran Sanctions"), which have extra-territorial application with regard to Iran:

- Iran Sanctions Act of 1996
- Iran Freedom and Counter-Proliferation Act of 2012
- National Defense Authorization Act for Fiscal Year 2012
- Iran Threat Reduction and Syria Human Rights Act of 2012
- Iranian Transactions and Sanctions Regulations

The EU Blocking Regulation applies to all EU persons. This is a very broad definition and among other categories includes all EU incorporated entities, EU residents/nationals and non-EU nationals resident in the EU in respect of their acts in a professional capacity. EU incorporated subsidiaries and registered branches of US companies, and US natural persons located in the EU, as well as EU nationals who are staff of US companies in the EU are all clearly included within the scope of the Blocking Regulation.

The potential consequences of failing to comply with the Blocking Regulation vary significantly between EU Member States. In some EU Member States, violations incur relatively small fines. Whereas at the other end of the spectrum, they include criminal prosecution and unlimited fines upon indictment. For example, in the UK, it is a criminal offence to breach the EU Blocking Regulation; this carries a penalty of an unlimited fine. Ireland, the Netherlands, and Sweden have also created criminal offences for non-compliance. Criminal offences, in some instances, include the possibility of a custodial prison sentence. Germany, Italy and Spain have implemented administrative penalties for non-compliance. Importantly, some Member States have not implemented the blocking statute and it is unclear whether they would do so now.

EU persons may be exposed to liability under the Blocking Regulation regardless of whether they have a direct connection with Iran. Article 6 of the Blocking Regulation further exposes the EU financial sector to the possibility of private claims for damages. For example, any person who suffers losses because of the EU person's compliance with US sanctions in breach of the Regulation is entitled to claim damages against the EU person. Our members view the risk of civil litigation as significant.

C. Efficiency of the Current Blocking Regulation

Whilst the old EU Blocking Regulation has been in place for over two decades, it has rarely been enforced and to date has not been considered by the financial sector (and indeed other sectors) to offer any real protection against US secondary sanctions. Our members have repeatedly expressed the view that updating the Regulation along its current format will offer no real protection against US secondary sanctions. The impact it will have, however, is to add a further dimension of legal complexity and cross-border compliance challenges. To help articulate these challenges we set out a range of case study scenarios in Annex I.

Alongside updating the Blocking Regulation, the E3 and EU High Representative have written to the US Treasury Secretary and Secretary of State for certain exemptions. The letter stresses the EU commitment to preserving the JCPOA, including maintaining and expanding economic ties with Iran, and presents a series of requests for exemptions from US secondary sanctions. These cover areas such as:

- grandfathering clauses;
- extension of the winding-down periods;
- confirmation that secondary sanctions will not apply to pharmaceuticals and healthcare;
- exemptions for key sectors (energy, automotive, civil aviation and infrastructure); and
- enabling appropriate banking and financing channels.

<u>The US response to current and future EU exemption requests will be an important factor in how the financial services sector can realistically meet their US and EU compliance obligations</u>.

D. How the application of Secondary Sanctions could impact EU Banks

In the context of the US Iran Sanctions cited above, any EU or other non-US person could be targeted by US secondary sanctions if they have been assessed to have:

- knowingly facilitated certain significant transactions for or on behalf of, or otherwise provided material support to, natural or legal persons on the SDN list designated under US Iran Sanctions (as well as any property owned 50% or more by an Iranian SDN) ; or
- determined to be conducting certain activities that are targeted by US secondary sanctions as defined by the US Iran Sanctions.

Secondary sanctions are sanctions that may be imposed on non-US persons for conduct that occurs entirely outside US jurisdiction, i.e. the sanctionable conduct need not involve any US person. Secondary sanctions do not purport to prohibit any conduct or impose any mandatory compliance requirements, but instead put pressure on third parties (i.e. EU banks and corporates) to stop their activities with the persons or countries targeted by US sanctions. They are enforced through US Persons, for example by prohibiting US financial institutions from transacting with any third party designated under the secondary sanctions.

Although rarely used, the mere threat of the imposition of secondary sanctions was an effective tool under the US Iran-related sanctions prior to the JCPOA. EU financial institutions experience numerous touchpoints with the US and could include:

- A commercial EU bank must be able to offer its customers access to US dollar transactions and must therefore have access to a US correspondent bank, either its own US subsidiary or a third-party US financial institution.
- Many EU banks will employ US natural persons and those employees are required to comply with US sanctions. In some EU jurisdictions, such as the UK, the Senior Managers Regime makes it very difficult for US persons in senior positions to recuse themselves from certain classes of transactions, such as those with an Iranian nexus.
- Many EU banks will be listed, either directly or indirectly, for example through a depository receipt programme on US exchanges. Such banks will face SEC filing requirements that mean they must disclose activity throughout the corporate group with certain targets of US sanctions, including Iran.
- Many EU banks will have shareholders and investors that are US persons and will face pressure from such investors and shareholders if the EU bank is active in trade with sanctioned countries. For instance, many US municipal and state pension funds have investment policies that prohibit them from investing in such circumstances.
- Many EU banks will raise capital through US dollar-denominated bonds listed in the EU or receive financing from US financial institutions.
- Many EU banks will engage in transactions (such as commodity trading) denominated and settled in US dollars. They might also operate, manage and invest in funds and securities that are denominated in US dollars or are listed in the US, which requires the EU bank to have a US custodian.
- EU banks will have counterparties in many transactions in the EU and globally that are US persons or non-US incorporated subsidiaries of US entities.
- EU banks that utilise US systems and US software will be at risk of having access to that technology removed if it becomes targeted by secondary sanctions.
- Some EU banks utilise US domiciled data centres and/or services which OFAC claim jurisdiction over.
- Many credit ratings agencies and providers of financial information to investors are US persons.

Consequently, the threat of a ban from the US financial system is a critical consideration for any European entity. Additionally, in the years leading up to the JCPOA the EU and US worked towards a harmonised sanctions policy approach towards Iran. As a result, many regulators both within the US and EU either explicitly, or implicitly, encouraged financial institutions to adopt global sanctions policies towards Iran.

E. The Impact of the EU Blocking Regulation on US Persons

Under the JCPOA the US maintained its primary sanctions, including those applying to non-US incorporated subsidiaries of US entities, but removed the threat of secondary sanctions for non-US persons wishing to trade with Iran. The US also introduced a General License – 'GL H' – which permitted non-US subsidiaries of US entities to trade with Iran. However, this was permitted under strict conditions (including

a prohibition on any touchpoint with the US financial system) which many non-US subsidiaries could not meet. Even when the US was party to the JCPOA, it was always the case that US natural and legal persons, including non-US incorporated subsidiaries, were prohibited by primary sanctions from engaging with Iran unless licenced by OFAC under very stringent conditions. It would appear disproportionate to require US natural and legal persons operating in the EU or EU incorporated subsidiaries of US entities to support trade relationships with Iran when they were prevented from doing so even when the US was an active partner in the JCPOA.

F. Grounds for Obtaining a Licence or an Authorisation to Comply with US Sanctions Targeted by the EU Blocking Regulation

Under the current Blocking Regulation, a little-known procedure exists for an EU person to apply to the European Commission for authorisation to comply with US sanctions. We are unsure whether this mechanism has ever been utilised but understand the applicant would need to provide evidence that non-compliance with relevant US sanctions would cause serious damage to a person's (legal or natural) interests or the interests of the EU.

Our members stress the importance of urgent dialogue with both the Commission and Member State competent authorities on how they envisage this authorisation process will be structured following the Regulation's update. We offer in this paper some key areas which should be considered and would advise the Commission and Member States that our expectation is that many of our members may wish to seek authorisation to comply with relevant US sanctions.

G. Heightened Risk of Civil Litigation against EU Entities

The Blocking Regulation offers a route for EU persons to recover damages, including legal costs, caused to that person by the application of the specified US Iran Sanctions. For example, an EU bank withdrawing from an Iranian exposed joint venture or closing an account due to US sanctions. Our assessment is that in comparison to pre-JCPOA days the risk of civil litigation under the updated Blocking Regulation has significantly increased.

Annex 1 – Case Study Scenarios on Divergent Cross Border Sanctions Compliance

The practical impact of the updates to the Blocking Regulation will be broad. To help articulate the specific tensions between US secondary sanctions and the Blocking Regulation we offer the following scenarios:

Scenario 1 – Customer Exports to Iran and receives funds from Iran
A customer currently exports products to Iran and has entered into a legal agreement with a European bank (e.g. a facility letter for credit) which contains a representation from the customer that any monies/assets pertaining to transactions with Iran will not touch the bank. The bank has sought such a commitment to ensure compliance with US sanctions. How does the Blocking Regulation impact the enforceability of that clause of the agreement?

- If the bank refuses to process incoming funds transfers from Iran, could it be sued by its customer? By the 'Iranian' remitter?
- This can be considered within varying contexts: 1) where the underlying product is expressly not permitted under US sanctions (e.g. aircraft parts) and 2) where there is a US General License in place (e.g. humanitarian needs).

Scenario 2 – Withdrawing from relationships with an Iranian Nexus
A European bank is approached by a customer wishing to employ IT contractors in Iran to develop software or Artificial Intelligence. This will require a new contract between the parties. If the bank refuses to support transactions or provides notice of termination of relationship, is the bank at risk of civil action from its customer or enforcement action via a Member State for refusing to undertake this business in order to comply with US sanctions? Could it be sued by the Iranians?

Scenario 3 – Syndicated lending

European banks may be involved in lending syndicates whose facility agreement incorporates references to compliance with US sanctions in its representations and warranties section and in its use of proceeds section. Would such language be a potential violation of the Blocking Regulation? Would a junior member of the syndicate have to withdraw if the lead member was a US bank that requires such language to protect against directly applicable primary US sanctions? Could a junior syndicate member that is a branch of a US bank face litigation if it withdraws from the syndicate on the grounds of Iran exposure? How would enforcement jurisdiction over such a syndicate be determined – would different competent authorities pursue potential violations, each building the case against the bank(s) incorporated in its territory? This could result in differentiated enforcement of the same violation pursuant to the same lending agreement.

Scenario 4 – Application of Global Group Policies

Due to their US exposure, many European banks have set global group sanctions policies that may include external statements on willingness to undertake business in Iran. Such statements are particularly common for banks who have been subject to US enforcement action, or under a US deferred prosecution agreement. Would such global policies be subject to enforcement action under the Blocking Regulation, or open the bank to civil legal action?

Equally, in reflection of such global policies, and for US owned or controlled subsidiary companies, in order to ensure compliance with primary US sanctions, it is standard practice to seek sanctions representations and undertakings in facility agreements, providing the lenders with comfort that, amongst other things, the borrower won't use the funds under the facility in furtherance of business with particular jurisdictions i.e. Iran. These clauses do not seek to restrict the borrower's ability to do business in or with these jurisdictions as a general matter, but are limited to the use by the borrower of the funds under the facility. Would such provisions be enforceable by an EU lender? Can an EU borrower agree to such terms?

Scenario 5– Personal Customer Considerations

Banks are aware of situations whereby personal customers are noted to have transferred funds, either indirectly from Iranian banks (which will again become subject to US sanctions) or via other EU/non-EU banks or money transfer agents. Such situations regularly include:

- Iranian Students who receive funding from parents based in Iran.
- Mortgage Customers who receive their deposit from family in Iran.
- Individuals who receive income from property sales from property based in Iran.
- Individuals who receive inheritance from family based in Iran.
- Individuals who receive money from their family member who owns a pistachio farm in Iran
- Individuals who are based in the UK and work in the UK however they have positions on the board of companies based in Iran.
- Individuals who are based in the UK, but temporarily working Iran and remitting funds from Iran to their UK accounts.

Scenario 6 – Selling an EU company to a US Buyer

The EU owner of a company incorporated within the Community agrees to sell such company to a US buyer. As a pre-condition to the sale, the US buyer contractually requires the EU seller to cause the company to divest or terminate its business activities involving Iran or Cuba as a pre-condition to the sale. Both the seller and the company could be in breach of the Blocking Regulation for agreeing to such pre-condition. However, if the seller refuses to agree to the pre-condition, it could suffer economic and/or financial losses as a result of forfeiting the opportunity to complete the sale. If the sale completes and the company continues to conduct business activities in Iran in order to avoid a breach of the Blocking Regulation, it could cause the US buyer to incur significant civil monetary penalties for breaching the Iranian Transactions and Sanctions Regulations, and if it continues to conduct business activities in Cuba, the company could be directly liable to US authorities for significant civil monetary penalties under the Cuban Assets Control Regulations.

Scenario 7 – Travel Agent Payments

Payment to travel agents based outside of Iran, for travel in Iran. In some cases the accommodation in Iran is owned by Government of Iran (identified through checking the customer's invoice). Would non-processing of such payments trigger a blocking regulation violation?

Scenario 8 - Legal Proceeds for the Purpose of Recovering Funds

A financial institution within the EU (the "Bank") is the lender of record to an Iranian bank. At the time the loan was made it was consistent with the US sanctions relief provided for under the JCPOA. The Bank sold the debt to a non-US person, non-Iranian third party fund (the "Fund"). The Iranian borrower defaulted on the loan, and the Fund requested the Bank to sue the Iranian counterparty for defaulting on its loan. Under the terms of the agreement with the Fund, the Bank is obligated to initiate legal proceedings against the Iranian defaulting party.

- With the re-imposition of US sanctions against Iran, the Iranian bank has been placed on the SDN list
- If the Bank does not pursue the suit against the Iranian government, the Fund will sue the Bank for the value of the loan which will be significant.
- Under EU blocking legislation, the Bank cannot refuse to litigate on US sanctions grounds.
- By not taking litigation action against the Iranian government the Bank is left open to litigation from the Fund.
- Would legal proceedings against or negotiations with an Iranian financial institution for the purpose of recovering funds owed expose the Bank to sanctions or an enforcement action by US authorities? Would OFAC consider granting a specific license for the litigation?

Scenario 9 – Iranian Sourced Oil related Activities

A UK bank (Bank) is considering on-boarding a non-US, non-Iranian oil refinery (Refinery). Prior to May 8, 2018, the Refinery has been sourcing some of its oil from Iran and such activities were consistent with US sanctions in effect at the time. In response to the US re-imposition of sanctions relating to Iran, the Refinery restricted its activities to comply with US provisions for wind-down activity. The Refinery has said that the country in which it is based (Third Country) is in the process of working with the US government to obtain a significant reduction exception.

- Even in the event the Third Country is successful in obtaining an exception to continue lifting Iranian oil, the Bank may expose itself to sanctions or an enforcement action by US authorities if it provided financing for the Refinery's Iranian-sourced oil related activities in the Third Country. If it refused on the grounds of US sanctions would the Bank be subject to enforcement or civil action under the Blocking Regulation?

Scenario 10 – Base Metal Trading with certain Iranian Counterparties

A UK Bank (the "Bank") has a Belgian Client (the "Client"). Client due diligence revealed no indicators that the client was doing business in sanctioned countries. The Client has asked the Bank to process a payment to Iran because it is engaging in base metals trading with certain Iranian counterparties who are not sanctioned by EU sanctions regimes. The Client indicates it will be making approximately $5 million worth of payments in the next 12 months. The Bank has not engaged in any business with Iran in the past and does not have any clients with significant business in Iran or with UBOs from Iran. If the bank refuses to process the transactions on the grounds of its risk appetite, would it be exposed to enforcement actions and civil litigation under the Blocking Regulation?

Scenario 11 – Branch of a US bank in the EU Letter of Credit Issues

A branch of a US bank in the EU issues a letter of credit. The initial credit did not indicate any Iranian involvement. Documents are presented which indicate that the goods were shipped on an Iranian vessel. Under US law, absent an OFAC license, the US bank would be required to block the documents

and report it to OFAC. The bank could take no further action on the credit without authorization from OFAC.

- If the bank blocks the documents, it is likely that that would be a violation of the Blocking Statute.
- If it processes the documents and makes any required payments, it would be in violation of US law.
- If it returns the documents (absent commercial discrepancies) it is in violation of both US and EU law.

Scenario 12 - Target 2 / SEPA Payment

An EU incorporated company instructs a EUR payment through Target2 (the real-time gross payment settlement platform in the Eurozone) or the SEPA (Single Euro Payments Area) Credit Transfer scheme destined for an account of another EU incorporated company held at a Iranian HQ / origin bank operating within the EU. There are several Iranian HQ or Iranian origin banks which are Target 2 and/or SEPA participants: (Europaeisch-Iranische Handelsbank AG in Germany; Bank Melli in Germany, France and UK; Bank Saderat in France and Germany; Bank Sepah in Germany, France, UK and Italy; Persia International bank in UK; and Bank Tejarat in France).

Consider the various implications where the remitter holds an account at the following:

- EU HQ bank: Transaction appears permissible for all the parties under EU law, but risks secondary US sanctions by engaging in or facilitating the transaction
- EU branch of a US incorporated bank: Transaction appears permissible for all the parties under EU law, but the remitting bank is a US person so would be required to block under ITSR in conflict with EU anti boycotting regulations.
- EU incorporated subsidiary of a US incorporated bank: Transaction appears permissible for all the parties under EU law, but the remitting bank would not be able to support and may be required to block under ITSR in conflict with EU anti boycotting regulations.

Scenario 13 - SEPA Direct Debit

An EU incorporated insurance company uses the SEPA direct debit scheme to collect regular premium subscriptions from its consumer customers across the Eurozone. It sends a batch file to its bank, which is also located in EU, to collect all the monthly subscriptions due from its customer base of 500K consumers. Under the SEPA direct debit scheme its bank is required to send these instructions through the SEPA clearing to the various SEPA participant banks across Europe where the consumers hold their account. These banks may include several Iran HQ or Iranian origin banks which are SEPA participants: (Europaeisch-Iranische Handelsbank AG, Bank Melli, Bank Saderat and Bank Sepah)

Consider the various implications where the EU incorporated insurance company holds an account at the following:

i) EU HQ bank - Permissible for all the parties under EU law, but risks secondary US sanctions by engaging in or facilitating the transaction

ii) EU branch of a US incorporated bank – Permissible for all the parties under EU law, but the account holding bank could not facilitate the transaction under ITSR. There are no funds attached to the direct debit collection instruction, so does not appear to be a blocking requirement, but refusing to process could be contrary to EU anti boycotting measures. The bank faces potential liability if the consumer suffers loss (e.g. the insurance policy could be invalidated if the premium was not paid)

iii) EU incorporated subsidiary of a US incorporated bank – Permissible for all the parties under EU law, same as (ii)

Scenario 14 - SEC Reporting Issues

Companies that are publicly traded in the US are required by law to report their Iranian dealings in their SEC public filings. Are EU companies which are traded on US exchanges in violation of the Blocking Order if they report their Iranian dealings in these filings as required by US law?

Scenario 15 - Iranian Pension Scheme Deficits (Potential Blocking Regulation and Pension Regulatory Violations)

As with some UK and EU pensions schemes, there are Iranian companies, based in the EU, whose pensions schemes have a deficit and are looking to transfer funds to meet or reduce the deficit. Given the nature of these types of deficits, the funds involved are not insignificant. Some of these companies were designated by the US and then had their designation under US Executive Order 13599 partially lifted as part of the US actions under the JCPOA. According to President Trump's announcement on 8th May 2018, these entities will revert to full US SDNs on or before 5th November 2018 and therefore any EU Person transacting with the SDN could be targeted by US Secondary Sanctions.

Many of these schemes are held and/or managed by UK/EU FIs who are also listed on the US Stock Exchange. Such listings mean that the FI has to submit an annual report (SEC20f) to the US SEC providing details of all dealings with Iran as a US listed State Sponsor of Terrorism and a report under Section 219 of CISADA (Sec219 report) detailing any dealings with certain entities designated by the US.

Issue **-** Should such a transfer take place, it will be required to be included in the FIs SEC20f and Sec219 report, both of which are public documents. In terms of the Sec219 report, these reports are also passed to the US Congress and to the US President to decide whether sanctions should be imposed. This puts the financial institution in a difficult position where it can accept the funds and risk Secondary Sanctions by the US or refuse to accept these funds and risk fines from the UK Pension Regulator.

Possible solution - The EU seeks and gains an exemption from the US to allow a payment(s) for the sole purpose of reducing a deficit in the pension scheme of a UK based, US Designated Iranian company.

Annex 2 – European Commission Blocking Regulation Guidance

We understand that the European Commission will issue implementing guidance to accompany the introduction of the updated Blocking Regulation. The banking sector strongly urge that this guidance is subject to careful scrutiny and consultation.

We offer the following initial areas for inclusion;

Statement of Overarching EU Enforcement Approach

Given enforcement of the Blocking Regulation will be undertaken at EU Member State level we urge that an overarching EU wide policy statement on enforcement is agreed. This policy statement should clearly define each individual Member State competent authority and related enforcement approach, including penalties.

We strongly urge that the EU enforcement approach includes a clear and concise statement which does not compel any EU person to facilitate activity which would fall outside assessed risk-based criteria. For instance, on the grounds of compliance with anti-money laundering, counter-terrorist financing, credit risk and other factors deemed appropriate.

Our members view the inclusion of such a statement as critical to ensuring transparency of enforcement expectations and procedures.

Authorisation to comply with US Sanctions

Question 1: Article 5 of Council Regulation (EC) No 2271/96, as amended, provides for authorization by the Commission for persons to comply fully or partially with the instruments specified in the Annex to the extent that non-compliance would seriously damage their interests or those of the Community. What is

the process to apply for such authorisation? To what extent is such an authorisation needed when an EU person is choosing to refrain from conduct that is sanctionable under US secondary sanctions, given that US secondary sanctions are not a “requirement” or “prohibition” under Article 5?

Proposed Answer: [Commission to provide explanation of process.]

Question 2: In what circumstances would an applicant be likely to receive such an authorization?

Proposed Answer: The enforcement of extraterritorial US sanctions implemented under the Iranian Transactions and Sanctions Regulations or Cuban Assets Control Regulations could cause particularly serious damage to the interests of a legal person incorporated within the Community that is owned or controlled by a US entity, or that has significant business interests in the US. A legal person organised in the Community, which demonstrates that it cannot practically avoid the risk of such damage if it fails to comply with a specified instrument would have a strong likelihood of receiving an authorisation to comply fully or partially with such instrument.

Additionally, a legal person within the Community that is able to demonstrate that compliance with the Blocking Regulation would result in non-compliance by US persons with US primary sanctions would have a strong likelihood of receiving an authorisation to comply fully or partially with such an instrument.

Question 3: Are there any circumstances where compliance with the specified instruments would not constitute a breach of Council Regulation (EC) No. 2271/96, as amended?

Proposed Answer*:* US Persons are required to comply with the primary US sanctions laws and regulations administered and enforced by the US Treasury’s Office of Foreign Assets Control (“OFAC”). The scope of US Persons under OFAC regulations includes all US citizens and permanent resident aliens, regardless of where they are located, any natural person located in the United States and all US incorporated entities, including their branches located outside the US. OFAC regulations, including the Iranian Transactions and Sanctions Regulations or Cuban Assets Control Regulations, impose a strict liability standard for violations and non-compliance may lead to civil and/or criminal penalties for US persons. Failure to comply with the instruments specified in the Annex would risk serious damage to the interests of the following categories of US Persons, whose compliance with US primary sanctions laws cannot be characterized as extra-territorial, since US laws and regulations apply directly to US Persons

- Branches of US incorporated entities located in EU member states, together with their employees, and others acting for or on their behalf;
- Overseas Subsidiaries in the EU of US entities;
- Nationals of EU member states who hold dual US nationality;
- Nationals of EU member states who hold US permanent resident alien status;
- Nationals of EU member states present in the US
- US citizens located in any EU member state;
- US citizens employed by, or acting for or on behalf of, companies or organizations incorporated under the law of any EU member state.

Question 4: Do the provisions of Council Regulation (EC) No 2271/96, as amended, apply retrospectively to agreements in place on or before the date of implementation of the amendments to the annex?

Proposed Answer: Commission to provide answer

Reporting to the Commission if economic and/or financial interests are affected

Question 5: Article 2 of the Council Regulation (EC) No 2271/96, as amended, requires legal persons incorporated within the Community (and their directors and managers) to inform the Commission if their economic and/or financial interests are affected, directly or indirectly, by the specified instruments. What kinds of events or occurrences should be reported to the Commission under Article 2?

Proposed Answer: A legal person incorporated within the Community should inform the Commission if it suffers any reasonably quantifiable economic and/or financial losses as a result of the US extraterritorial sanctions in the specified instruments, or as a result of actions taken by third parties that it can reasonably demonstrate were taken in order for such third party to comply with the US extraterritorial sanctions in the referenced instruments.

Application of Global Group Policies

Question 5: Do the provisions of Council Regulation (EC) No 2271/96, as amended, apply where an EU person has chosen on risk grounds to adopt a restrictive policy position towards Iran? This policy may include the presence of internal policies, procedures and risk appetite statement.

Proposed Answer: The intention of the regulation is not to prevent EU persons adopting a risk-based approach towards their business dealings with Iran. Factors that may influence commercial decisions may include a range of assessed risk factors, including credit risk, anti-money laundering factors and wider compliance and business transparency considerations.

Utilisation of Sanctions Clauses

Question 6: Do the provisions of Council Regulation (EC) No 2271/96, as amended, restrict the ability for an EU person to request, or comply with, standard sanctions covenants, representations and warranties in financing agreements in respect of compliance with US law?

Proposed Answer: Commission to provide answer.

NB: It should be noted that such sanctions clauses are common practice, and in some instances have been encouraged by regulatory and enforcement bodies.

Payment Pathways

Question 7: Under the provisions of Council Regulation (EC) No 2271/96, would a bank be held liable to civil action if it was unable to process an EU permissible payment to Iran. For example, a European bank has been approached by a customer to send monies to Iran and it finds that its Correspondent bank will not process the transaction.

Proposed Answer: As the customers bank has been willing to do this business but does not have a pathway where it is certain that the transaction will be executed and there is no European Pathway the customers bank is not liable for civil action.

In conclusion, our members wish to stress the absolute importance of ensuring measures implemented to protect the Iran-related business interests of European companies and individuals following the US JCPOA withdrawal should be carefully consulted upon.

We welcome the opportunity to work with the Commission and individual Member States on how their political aspirations for continued and enhanced trade with Iran can be effectively implemented in a manner which does not create further legal and regulatory risk to the wider European financial sector

Dr Justine Walker | Head of Sanctions Policy | justine.walker@ukfinance.org.uk |

+44 20 3934 0631 or +44 7590 711198