

European Union Regulation 2271/96 (Blocking Regulation)

Background

Circular 2635/2018 issued on 28 May 2018 outlined the potential repercussions for shipowners and insurers that will arise from the U.S. Administration's decision to withdraw from the Joint Comprehensive Plan of Action (JCPOA) agreement signed by China, France, Germany, Russia, the United Kingdom, the United States, the European Union (EU) and Iran.

As previously advised, the U.S. withdrawal from the JCPOA, and its decision to reactivate the nuclear-related laws that were waived in order to implement the JCPOA, will have significant ramifications for maritime trade with Iran and the insurance of such trade.

Action taken by the European Union to preserve the JCPOA

In an attempt to maintain the principles established under the JCPOA framework, to facilitate the continuation of trade activities between European businesses and Iran, and to counteract the extraterritorial effect of U.S. secondary sanctions, the European Union has replaced the annex to Council Regulation (EC) No 2271/96, otherwise known as the Blocking Regulation. Commission Delegated Regulation (2018/1100) of 6 June 2018 gives effect to the replacement of the Annex from 7 August 2018. The new annex sets out amongst others the United States laws, regulations and other legislative instruments relating to trade with Iran from the Iran Sanctions Act 1996 onwards that have been subject to waivers under the JCPOA since 16 January 2016. However, those waivers will cease to have effect on a phased-in basis from 6 August 2018 with a final date of 4 November for certain trade activities, including the transport of oil cargoes, by which date the performance of contracts must be either executed or terminated.

A copy of Regulation 2018/1100 attaching the new Annex and a Guidance Note issued by the European Commission are attached.

The International Group has engaged extensively with the Office of Foreign Assets Control (OFAC) in the U.S., the European Union External Action Service, European Commission, the UK Treasury and Foreign Office and EU Member States in order to explain some of the practical effects arising from the reactivation of U.S. secondary sanctions on shipowners and insurers, and the potentially complex legal scenario that could arise as a result of EU natural and legal persons complying on the one hand with the reinstatement of U.S. measures, while on the other hand facing a potential exposure to a law suit by virtue of a civil action taken under the Blocking Regulation. Under the Blocking Regulation, a national of an EU Member State or a legal person incorporated within the European Union who suffers a detriment as a result of another legal person in the European Union complying with the U.S. measures, may seek recovery of damages arising from that legal person. EU Member

States are also obliged to uphold the EU measures. Attention is however drawn to section 1.5 of the Guidance Note which reflects the right of an EU operator, consistent with the provisions of the Blocking Regulation, to make its own assessment of the economic situation and its decision on whether to commence, continue or cease business operations in Iran.

The situation is complicated and the way in which the Blocking Regulation is implemented and enforced in the Member States will vary from country to country.

The Blocking Regulation – Authorisation Process

Exemption from the Regulation is permissible under Art. 5, providing a natural or legal person to whom the Regulation applies (Art. 11) can demonstrate that compliance with the Regulation – and non-compliance with the reactivation of U.S. measures - would seriously damage their interests. Section 3, paragraphs 16 – 20 of the Guidance Note address the process for authorisation to comply with the extraterritorial legislation listed under the new Annex in circumstances where non-compliance would seriously damage their interests. The envisaged authorisation process permits for applications for individual EU operators, or by several operators jointly, where their interests are sufficiently homogenous. Following release of this Guidance, the Group is following up with the European Commission and European External Action Service on the necessity for authorisation, and the possibilities for a collective application on behalf of the Group Clubs. Shipowners incorporated within the European Union who believe that they might face a claim for damages from another entity incorporated within the European Union for failure to perform under a contract involving activity subject to U.S. sanctions may also wish to give consideration to seeking an authorisation under the Blocking Regulation in order to protect their business interests from the risk of enforcement action by OFAC for breach of U.S. sanctions.

The International Group will continue to monitor and assess the situation.

All clubs in the International Group have issued a similar Circular.