

August 9, 2018

## THE “NEW” IRAN E.O. AND THE “NEW” EU BLOCKING SANCTIONS – NAVIGATING THE DIVIDE FOR INTERNATIONAL BUSINESS

To Our Clients and Friends:

On August 6, 2018, President Donald Trump issued a new executive order (the “New Iran E.O.”) authorizing the re-imposition of certain Iran-related sanctions.<sup>[1]</sup> As previously announced on May 8, 2018, and discussed in detail by Gibson Dunn [here](#), the Trump administration opted to abandon the 2015 Iran nuclear deal—the Joint Comprehensive Plan of Action (the “JCPOA”)—and re-impose U.S. nuclear-related sanctions on the Iranian regime over the course of several months. The re-imposition of sanctions was subject to 90- and 180-day “wind-down” periods, the first of which expired on August 6, 2018. Accordingly, the New Iran E.O. authorizes the roll-back of certain types of sanctions relief provided under the JCPOA by terminating several Obama-era executive orders and formally effectuates the U.S. withdrawal from the JCPOA. In the words of President Trump, from here on out anyone doing business with Iran “will NOT be doing business with the United States.”<sup>[2]</sup>

Simultaneous with the New Iran E.O., as foreshadowed in our [May 21, 2018 client alert](#), the EU enacted Commission Delegated Regulation (EU) 2018/1100 (the “**Re-imposed Iran Sanctions Blocking Regulation**”), which supplements Council Regulation (EC) No 2271/96 (as amended, the “**EU General Blocking Regulation**”). The combined effect of the EU General Blocking Regulation and the Re-imposed Iran Sanctions Blocking Regulation is to prohibit compliance by EU entities with U.S. sanctions on Iran which have been re-imposed following the U.S. withdrawal from the JCPOA. The EU matched President Trump’s strident language with one senior EU official stating that “if EU companies abide by U.S. . . . sanctions they will, in turn, be sanctioned by the EU.”<sup>[3]</sup>

These two actions appear to place multinational companies in an impossible bind between the inconsistent demands (and rhetoric) of powerful regulators. However, depending upon how Washington and EU Member States choose actually to implement their respective authorities this bind may prove navigable.

As we have discussed in [May](#) and [July](#) of this year, the sanctions relief the United States offered under the JCPOA was limited. The “primary sanctions” that limit U.S. companies and persons from engaging with Iran have on the whole never been lifted. The principal sanctions relief provided by the United States have been of “secondary sanctions” that focus on non-U.S. companies’ transactions with Iran. These measures are designed to force non-U.S. firms to choose to either engage with Iran or the United States. In most cases, pursuant to the August 6 announcements these measures have or soon will return to the level they were prior to the implementation of JCPOA in January 2016. In some cases, the new regulations will broaden the scope of those sanctions to levels beyond those that existed prior to the JCPOA.

In both the U.S. and European cases the language of the new regulations is broad and the statements from political leaders absolute. However, much as it was prior to the JCPOA the true impact of the U.S. sanctions and the EU counter-measures will be a function of the political and diplomatic appetite regulators on both sides of the Atlantic have for actually enforcing these measures. All of the sanctions and counter-sanctions are in large part discretionary. In pre-JCPOA times, the Obama Administration had similarly broad authorities to impose “secondary sanctions” on companies around the world for transactions with Iran – however, with the Administration’s clear goal of compelling Iran to the negotiating table and its concern about maintaining core diplomatic alliances, the Obama Administration actually imposed such sanctions only very sparingly. Similarly, the EU’s Blocking Statute has been in place in some form for nearly twenty years. In that time the EU and its member states – concerned about maintaining its relationships with Washington and not wanting to impose a lose-lose choice on its major corporations – have actually enforced these rules infrequently.

The question going forward is whether the Trump Administration, the EU, and its various Member States will more forcefully and consistently enforce these discretionary and contradictory authorities. Early indications are that despite the language of the new regulations and the rhetoric of senior officials, there may be more flexibility on both sides of the Atlantic than it may seem. This does not remove the challenges from multinational companies eager to avoid angering either European or U.S. regulators, but it may provide a way forward.

## **Background to the New Iran E.O.**

The publication of the New Iran E.O. is the latest in a series of steps the Trump administration has taken to fulfill President Trump’s campaign promise to withdraw from the JCPOA and re-impose sanctions on Iran. Following the administration’s announcement on May 8, 2018 that the U.S. would abandon the JCPOA, OFAC issued guidance indicating that the administration would allow certain activities authorized under the JCPOA to continue for specified “wind-down” periods, rather than immediately re-impose sanctions.[4] Further to this guidance, on June 27, 2018, OFAC announced that it was terminating authorizations issued pursuant to the JCPOA that had permitted limited engagement by U.S. persons and their foreign subsidiaries to undertake certain Iran-related activities.[5] As we noted in prior guidance, these authorizations were replaced with limited licenses permitting only the wind-down of previously permissible activities.

The issuance of the New Iran E.O. marks the termination of the first wind-down period provided by these earlier actions. Pursuant to its provisions, OFAC is authorized to begin re-imposing the first tranche of secondary sanctions on or after August 7, 2018. In addition, as of August 7, 2018, the authorizations issued on June 28, 2018 permitting U.S. persons to wind-down their participation in contingent contracts for Iranian commercial passenger aviation and transactions involving Iranian-origin foodstuffs and carpets have been terminated.[6] U.S. persons are again prohibited from engaging in these activities.

## **U.S. Sanctions Authorized for Re-imposition**

The New Iran E.O. authorizes the re-imposition of secondary sanctions previously rolled back under the JCPOA. This is a uniquely omnibus Executive Order and includes the framework for the reimposed sanctions that were reinstated as of August 7 as well as those that will be reinstated as of November 5.

Applicable exceptions and conditions to these sanctions are also incorporated in the E.O. Sections of the New Iran E.O. implement provisions of various Iran-related legislation passed by Congress and revoke other executive orders from which the relevant sanctions-related provisions have been incorporated. In this regard, the New Iran E.O. attempts to consolidate the relevant secondary sanctions authorities into a single legal source, creating an unusually comprehensive executive order.

The secondary sanctions available for imposition for these activities and for those sanctionable activities undertaken on or after November 5 include three general types of sanctions to be discretionarily imposed against entities for different activities and behaviors. First, the Order provides for **blocking sanctions**, such as those imposed against persons placed on the List of Specially Designated Nationals and Blocking Persons (the “SDN List”). Second, the Order provides for **correspondent and payable-through account sanctions** which prohibit or restrict U.S. banks from opening or maintaining U.S. accounts for designated foreign financial institutions, effectively cutting these foreign banks off from the U.S. financial system (and in some cases ostracizing them from U.S. dollar-based trade in general). Finally, the Order provides for **menu-based sanctions** permitting OFAC to select from several sanctions—from visa limitations to blocking sanctions—to impose against designated entities.

### ***Sanctions Applicable on or after August 7, 2018***

The New Iran E.O. authorizes the imposition of secondary sanctions against foreign persons engaged in the activities described below on or after August 7, 2018:

- Blocking sanctions on non-U.S. persons who materially assist, sponsor, or provide support for or goods or services in support of the purchase or acquisition of **U.S. dollars** or **precious metals** by the Government of Iran;<sup>[7]</sup>
- Correspondent and payable-through account sanctions on foreign financial institutions that engage in 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;<sup>[8]</sup>
- Menu-based sanctions on non-U.S. persons who knowingly engage in:
  - significant transactions to provide significant goods or services to **Iran’s automotive sector**;<sup>[9]</sup>
  - the sale, supply, or transfer to or from Iran of **certain materials**, including graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes;<sup>[10]</sup> or

- the purchase, subscription to, or facilitation of the issuance of **Iranian sovereign debt**;<sup>[11]</sup>
- Correspondent and payable-through account sanctions on foreign financial institutions that conduct or facilitate significant transactions related to the provision of significant goods or services to **Iran’s automotive sector**.<sup>[12]</sup> Depending upon the seriousness of the conduct these sanctions could prohibit the opening of such accounts, strictly condition the maintenance of such accounts, or even require that such accounts be closed.

## *Sanctions Applicable on or after November 5, 2018*

The New Iran E.O. also authorizes the imposition of several types of secondary sanctions against foreign persons who engage in the activities described below on or after November 5, 2018:

- Blocking sanctions on non-U.S. persons who materially assist, sponsor, or provide support for or goods or services in support of:
  - the **National Iranian Oil Company** (“NIOC”), **Naftiran Intertrade Company** (“NICO”), or the **Central Bank of Iran**;<sup>[13]</sup>
  - **Iranian SDNs**;<sup>[14]</sup> or
  - any **other person** included on the **SDN List** pursuant to Section 1(a) of the New Iran E.O. or Executive Order 13599 (i.e., the **Government of Iran** and certain **Iranian financial entities**);<sup>[15]</sup>
- Blocking sanctions on non-U.S. persons who:
  - are part of the **Iranian energy, shipping, or shipbuilding sectors**;<sup>[16]</sup>
  - operate **Iranian ports**;<sup>[17]</sup> or
  - provide significant support to or goods or service in support of persons that are part of Iran’s energy, shipping, or shipbuilding sectors; Iranian port operators; or Iranian SDNs (excluding certain Iranian financial institutions);<sup>[18]</sup>
- Menu-based sanctions on non-U.S. persons who:
  - knowingly engage in significant transactions in **Iranian petroleum, petroleum products, or petrochemical products**;<sup>[19]</sup>
  - are successors, subsidiaries, parents, or affiliates of persons who have knowingly engaged in significant transactions in **Iranian petroleum, petroleum products, or petrochemical products** or in **Iran’s automotive sector**;<sup>[20]</sup>

- provide **underwriting** services, **insurance**, or **reinsurance** for sanctionable activities with or involving Iran;[21]or
- provide **specialized financial messaging services** to the Central Bank of Iran;[22]
- Correspondent and payable-through account sanctions on foreign financial institutions that conduct or facilitate significant transactions
  - on behalf of **Iranian SDNs** or **other SDNs** (as described above);[23]
  - with **NIOC** or **NICO**;[24] or
  - for transactions in **Iranian petroleum, petroleum products, or petrochemical products**. [25]

As above, depending upon the seriousness of the conduct these correspondent and payable-through account sanctions could prohibit the opening of such accounts, strictly condition the maintenance of such accounts, or even require that such accounts be closed.

On November 5, in addition to the imposition of these sanctions provided in the New Iran E.O., OFAC will again prohibit non-U.S. entities owned or controlled by U.S. persons (e.g., foreign subsidiaries of U.S. companies) from generally engaging in business operations in and with respect to Iran. As we have noted in [prior guidance](#), on June 28, 2018, OFAC revoked General License H, which permitted such activity, and replaced it with narrower authorizations permitting only the wind-down of the previously authorized transactions. This wind-down authority expires on November 5, 2018.

### ***Broader Scope of Sanctions Authorities with Continued Discretion and Exemptions***

Included among the provisions described above are new or expanded sanctions authorities. OFAC indicates that these changes are designed to provide “greater consistency in the administration of Iran-related sanctions.”[26] The broadened scope of these provisions is also consistent with the Trump administration’s promise to impose the “strongest sanctions in history” on Iran and indicates that the administration *may* go beyond the comparatively narrower application of these authorities by the Obama administration.[27]

Specifically, new authorities, listed above, allow the imposition of blocking sanctions or correspondent and payable-through account sanctions on foreign persons engaging on or after November 5 in transactions with persons sanctioned under the New Iran E.O.[28] Other sections of the E.O. expand the menu of sanctions available for imposition against persons designated for engaging in transactions involving Iranian petroleum, petroleum products, or petrochemical products. Potential sanctions now include, among other restrictions, blocking sanctions and visa restrictions on the executive officers of entities sanctioned for engaging in such transactions.[29]

The New Iran E.O. also expands the restrictions applicable to U.S.-owned or –controlled foreign entities. Among other applicable restrictions, such entities are also prohibited from engaging in

transactions with persons blocked for providing material support to Iranian SDNs or for being part of Iran’s energy, shipping, or shipbuilding sectors or an Iranian port operator.[30] As noted above, U.S.-owned or –controlled foreign entities continue to be generally permitted to wind-down their business operations with or involving Iran, notwithstanding these new restrictions.

Importantly, these expanded sanctions authorities and the broad re-authorization of secondary sanctions provided in the New Iran E.O. do not immediately result in the designation of additional persons or otherwise necessarily expand the sanctions imposed. As we have seen in the context of the secondary sanctions authorized in the Countering America’s Adversaries Through Sanctions Act (“CAATSA”), expansive secondary sanctions authorities that are not imposed may have limited direct impact.

Moreover, lost in the midst of the rhetoric and the regulations is that the Trump Administration appears willing to continue certain, arguably forgiving policies and exemptions that the Obama Administration supported. The Administration could have, but did not, revoke certain exemptions that shaped Obama-era policy. For instance, according to the terms of the New Iran E.O., the sanctions listed above targeting transactions in Iranian petroleum and petroleum products will not apply to entities in countries that the President determines have “significantly reduced their Iranian crude oil imports.”[31] The Trump Administration had initially stated that the Administration would only apply this exception if countries eliminated their Iranian oil imports.[32] However, officials later indicated that the U.S. government may work on a “case-by-case” basis with certain countries committed to reducing their imports from Iran and may consider whether to grant this exception.[33]

Other exceptions, including for transactions related to the Shah Deniz gas field (which is partly owned by the Government of Iran) and for transactions involving the export of agricultural commodities, food, medicine, or medical devices to Iran, continue to apply.[34] Additionally, General License D-1 – which allows for the export of certain telecommunications goods and services to Iran remains in force, as does General License J – which permits temporary visits to Iran by U.S.-origin aircraft (thus allowing international carriers to continue flying to Iran).

The Trump Administration has even kept some of the even more explicitly lenient regulatory interpretations that the Obama team had. For instance, OFAC FAQ 613 notes that despite the secondary sanctions on Iran’s automotive sector, the shipment by non-U.S. parties of after-market parts for use in maintaining finished cars (rather than building new cars) would not generally be viewed as prohibited.[35] Moreover, OFAC FAQ 315 provides that rather than shutting down the entire Iranian port sector (and thus eliminating all shipments to the country) by imposing sanctions on any non-U.S. person who calls at an Iranian port, “to the extent that a shipping company transacts with port operators in Iran” that are not sanctioned, the payment of “routine fees” and the loading and unloading of cargo would not generally be prohibited.[36] Neither of these allowances were required by legislation.

Despite this flexibility – which will be very helpful to certain industries active in the implicated sectors (such as telecommunications, auto parts, airlines, and shipping) – it is important to remember that these exceptions are on the margin. In the main, the secondary sanctions in the New Iran E.O. were issued by an Administration eager to robustly and clearly fulfill a key campaign pledge in an election year and an Administration that appears comfortable engaging in unilateral action even at the cost of potentially



weakening relationships with key allies. Administration officials have already signaled plans for strict enforcement<sup>[37]</sup> and the broadening of the sanctions authorities described above may be the first steps towards doing so.

## *The European Response*

Almost immediately after President Trump announced his intention to withdraw from the JCPOA on May 8, 2018, the European Union and senior leaders in several major EU Member States announced their intention to remain compliant with the JCPOA and to reinvigorate the “EU Blocking Statute” so as to continue to promote the sanctions relief that the bloc views as central to the JCPOA. While some Member States moved to update their domestic legislation in this regard prior to the end of the first wind-down period, the EU had not formalized any changes until August 7.

The EU General Blocking Regulation was designed as a counter-measure to what the EU considers to be the unlawful effects of third-country (primarily, but not exclusively, U.S.) extra-territorial sanctions on “EU operators.” Its purpose is first and foremost to protect EU operators engaging in international trade, in a manner wholly compliant with EU law, but in breach of sanctions imposed by other countries. At a political level, it is also designed to display the EU’s disapproval of sanctions regimes implemented by third countries which the EU considers to be abusive or unreasonable. The EU General Blocking Regulation sets out a series of requirements relating to offending overseas sanctions (explained below), and then lists the overseas sanctions regimes to which it applies in an Annex.

The Re-imposed Iran Sanctions Blocking Regulation is accompanied by an Implementing Regulation (EU) 2018/1101 (the “**Implementing Regulation**”), relating to the process for EU operators to apply for authorization from the European Commission to comply with Blocked U.S. Sanctions (as defined below). The European Commission has also prepared a *Guidance Note Questions and Answers: adoption of update of the Blocking Statute* (the “**Guidance**”) to help EU operators understand these various instruments.

The EU Blocking Statute applies to a wide range of actors including:

- any natural person being a resident in the EU and a national of an EU Member State;
- any legal person incorporated within the EU;
- any national of an EU Member State established outside the EU and any shipping company established outside the EU and controlled by nationals of an EU member state, if their vessels are registered in that EU member state in accordance with its legislation;
- any other natural person being a resident in the EU, unless that person is in the country of which he is a national; and
- any other natural person within the EU, including its territorial waters and air space and in any aircraft or on any vessel under the jurisdiction or control of an EU member state, acting in a professional capacity.<sup>[38]</sup>

The EU's guidance note emphasizes that when EU subsidiaries of U.S. companies are formed in accordance with the law of an EU Member State and have their registered office, central administration or principal place of business within the EU they are subject to the EU Blocking Statute. However, branches of U.S. companies in the EU are not subject to the EU Blocking Statute.

## **From Rhetoric and Regulation...**

The Blocking Statute prohibits EU operators from complying with a set of specific extra-territorial laws or any decisions, rulings or awards based on those laws.[39] The laws are explicitly listed and include six different U.S. sanctions laws and one set of U.S. regulations (OFAC's Iranian Transactions and Sanctions Regulations). The Blocking Statute applies to all EU operators from August 7, 2018 and does not allow for any grandfathering of pre-existing contracts or agreements.

Notably, the EU Guidance indicates that EU operators are prohibited from even requesting a license from the United States to maintain compliance with U.S. sanctions. Requesting such permission—without first gaining authorization from the EU or a competent authority in a Member State to do so—is tantamount to complying with U.S. sanctions.[40]

In addition to prohibiting compliance with the various U.S. laws and regulations, the Blocking Statute requires EU operators to report to the European Commission within 30 days of any circumstances arising from the extraterritorial laws that affect their economic or financial interests.[40a] The Blocking Statute also holds that any decision rendered in the United States or elsewhere made due to the extraterritorial measures cannot be implemented in the European Union.[40b] This means, for instance, that any court decision made in light of the extraterritorial measures cannot be executed in the European Union, presumably even under existing mutual recognition agreements.

Finally, the Blocking Statute allows EU operators to recover damages arising from the application of the extraterritorial measures. Though it is unclear how this would work in practice, it appears to allow an EU operator to exercise a private right of action and to be indemnified by companies that do comply with the U.S. laws if in so doing those companies injure the EU operator. For instance, if a European company has a contract to provide certain goods to Iran the European company is not allowed to break that contract due to their desire to comply with U.S. sanctions. However, if some of those goods are derived in part from other companies that have decided to comply with U.S. measures and to cease supplying any material destined for Iran the European company may be compelled to cease its transactions with Iran. In such case the Iranian company could sue the European company for breach of contract – the European operator could in turn sue its supplier for the damages caused due to the supplier's compliance with the extra-territorial U.S. sanctions.

Similarly, this provision allows Member States to sue companies who comply with the U.S. rules to the detriment of an EU operator (which has been done once before under the existing Blocking Statute).

[40c]



## ...To Reality

As noted in our [May 21, 2018 client alert](#) , the competent authorities of the EU Member States are responsible for the implementation at national level of the EU General Blocking Regulation, including the adoption and implementation in national legal orders of penalties for possible breaches. Such penalties are laid down in national legislation and vary by Member State.

The United Kingdom has in place a law, the Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996, which broadly makes compliance with Blocked U.S. Sanctions a criminal offence. That Order does not provide for custodial sentences, but it does provide for a potentially unlimited fine.

Certain other Member States have also opted for the creation of criminal offences, including Ireland, the Netherlands and Sweden. Other Member States, including Germany, Italy and Spain, have devised administrative penalties for non-compliance. Meanwhile some Member States, including France, Belgium and Luxembourg, do not appear ever to have even implemented the EU General Blocking Regulation, notwithstanding the obligation on them as a matter of general EU law to prescribe penalties for breach of EU law which are effective, proportionate and dissuasive.

Despite the breadth of the Blocking Statute language, the enforcement language and posture noted above, and the absolute nature of some of the rhetoric emanating from Brussels and certain Member State capitals as indicated by the lack of universal implementation of the existing Blocking Statute by Member States there has clearly been uneven application of existing rules. We expect the same going forward with the updated Blocking Statute.

Additionally, the Blocking Statute appears to include sufficient flexibility to provide multinational companies a potential path to navigate between Washington and Brussels. (This is even before assessing the potentially low likelihood of enforcement. We recognize that given the political and diplomatic environment in 2018 the past's limited enforcement environment may not be prologue).

In this regard, there are two key flexibilities written into the EU regulations. First, the Guidance allows EU operators to request authorization to comply with U.S. sanctions if not doing so would cause “serious harm to their interests or the interests of the European Union.” [40d] The European Commission has an existing template for making such a request which includes thirteen potential criteria that applicants can call upon when making their application.[41]These include whether there exists “a substantial connecting link” between the EU operator and the United States, whether not complying with U.S. measures could have “adverse effect on the conduct of [a company’s] economic activity,” or whether the “applicant’s activity would be rendered excessively difficult due to a loss of essential inputs or resources, which cannot be reasonably replaced.”

Given the centrality of the U.S. financial system, and in some cases U.S. supply chains, many European companies could likely be able to make such claims. Under Article 3(2) and 3(3) of the Implementing Regulation, EU operators requesting an authorization must, at a minimum, explain with which provisions of the Blocked U.S. Sanctions they wish to be authorized to comply, and the acts they would be required to carry out. EU operators seeking an authorization must also demonstrate how non-

compliance with the Blocked U.S. Sanctions would cause serious damage to their interests or to the interests of the EU. While potentially broad, it is uncertain what standard Brussels or the Member States will use in assessing whether to grant such authorizations.

The second element of flexibility in the Blocking Statute is that EU operators will not be forced to continue business with Iran. Rather, the Guidance notes that EU operators are still free to conduct their business as they see fit – including “whether to engage or not in an economic sector on the basis of their assessment of the economic situation.”<sup>[42]</sup> As such, we expect to see an increasing number of European firms to cease engaging in Iran, following in the wake of dozens of major European companies and financial institutions who have already announced their departure (and an even larger number who chose never to enter even under the JCPOA).

This is a key flexibility as there are many reasons—apart from sanctions—that could cause a company in the prudent exercise of its fiduciary duties to decide to suspend Iranian operations and remain compliant with the Blocking Statute. Indeed there is significant momentum behind European companies leaving Iran or otherwise indicating their plans to limit engagement. Notably, this activity has included not just major private European companies leaving or announcing their intention to do so, but also actions by publicly-owned firms and even regulators. For instance, the President of the European Investment Bank (an institution owned by the EU’s Member States) has publicly stated that the institution’s global operations would be put at risk if it continued its Iranian activities in light of U.S. sanctions.<sup>[43]</sup> Though the EIB’s President has not indicated what this means for the EIB’s future Iran-related business it suggests a potential way out of engaging in Iran consistent with the EU regulations.

Similarly – though not formally related to the new EU measures – the German Bundesbank recently quietly decided to revise its terms and conditions on cash withdrawals applicable to German financial institutions to include a provision that allowed the Bundesbank to reject a request from Tehran to withdraw EUR 300 million in cash from the German-regulated Europäisch-Iranische Handelsbank, an Iranian-owned bank based in Hamburg, Germany. The Bundesbank’s terms and conditions now *inter alia* state that such transactions could be refused in cases in which the transaction would threaten the Bundesbank’s relationships with other central banks or financial institutions in third countries.<sup>[44]</sup> The principal “third country” in question is likely the United States.

## **Next Steps and the Way Ahead**

We expect that the next steps in either enhancing sanctions on Iran (from the U.S. side) or protecting trade with Iran (from the EU side) will be regulatory. In line with past practices we think it possible that U.S. regulators will provide further guidance in the form of FAQs or even General Licenses to calibrate their policies. EU regulators, and Member States could do the same. Actual enforcement on either side of the Atlantic is likely to be slow in coming.

The Trump Administration has followed the Obama Administration’s playbook and sent senior officials to major foreign companies and countries thought to be the most likely source of non-compliance with U.S. measures. In the Obama era such outreach led to significant compliance enhancements in the

companies and countries visited and thereby reduced the Obama Administration's need to actually impose extra-territorial measures (secondary sanctions).

In the current circumstance, the diplomatic situation for the United States is more uncertain. European governments, stung by the Administration's withdrawal from the JCPOA and the continuing trade war, will clearly be unwilling to publicly go along with U.S. measures even if European companies choose to comply (either explicitly or implicitly in order to stay compliant with the EU Blocking Statute). The Turkish government, still smarting from recent U.S. sanctions unrelated to Iran imposed on their Ministers of Justice and Interior<sup>[45]</sup> (and the recent Iran sanctions-related conviction in U.S. federal court of a senior bank executive from Turkey's Halk Bank<sup>[46]</sup>) may also prove less willing to assist. Moreover, while the UAE may be more able and willing to tamp down the traditional flows to Iran out of Dubai than was the case during the Bush and Obama Administrations, major Iranian oil importers such as India and China remain potential wildcards. Provided they receive substantial reduction exemptions to allow continued purchase of Iranian crude, we assess that other major Iranian oil importers such as South Korea, Japan, and Taiwan will likely on the whole opt to comply with U.S. measures. Seoul, Tokyo, and Taipei would be unlikely to risk angering Washington given their broader needs for U.S. support in the region and their financial institutions will be similarly loathe to alienate their U.S. partners and risk their access to the American market and the U.S. dollar.

There is much that remains unknown about the way ahead. The Trump Administration has not clearly articulated its goals with respect to the reimposed sanctions and in the lead up to the U.S. midterm elections in November could decide to become even more aggressive so as to gain support from its base. Similarly, as the Iranian government deals with the reimposed sanctions alongside mounting domestic protests it may also lash out aggressively, perhaps going as far as fulfilling its pledge to block the Straits of Hormuz or otherwise interfere with global trade or other core regional security interests. If either of these external factors come to bear, the situation would quickly become more challenging and the sanctions realities faced by global companies and governments could change radically.

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[1] Executive Order, "Reimposing Certain Sanctions with Respect to Iran," (Aug. 6, 2017), *available at* [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/08062018\\_iran\\_eo.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/08062018_iran_eo.pdf).

[2] Babak Dehghanpisheh and Peter Graff, "Trump Says Firms doing Business in Iran to be Barred from U.S as Sanctions Hit," Reuters (Aug. 7, 2018), *available at* <https://www.reuters.com/article/us-iran-nuclear/trump-says-firms-doing-business-in-iran-to-be-barred-from-us-as-sanctions-hit-idUSKBN1KS131>.

[3] Nathalie Tocci, Aide to Federica Mogherini, quoted in Jacqueline Thomsen, "EU Issues Warning to European Companies that Comply with new U.S. Sanctions on Iran," *The Hill*, (Aug. 7, 2018), *available at* <http://thehill.com/policy/international/europe/400704-eu-threatens-to-sanction-european-companies-that-comply-with-new>.

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[4] Press Release, White House, *Remarks by President Trump on the Joint Comprehensive Plan of Action* (May 8, 2018), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-joint-comprehensive-plan-action>; U.S. Dep't of Treasury, *Frequently Asked Questions Regarding the Re-Imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action (JCPOA)* (May 8, 2018).

[5] U.S. Dep't of the Treasury, *Revocation of JCPOA-Related General Licenses; Amendment of the Iranian Transactions and Sanctions Regulations; Publication of Updated FAQs* (Jun. 27, 2018), available at <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20180627.aspx>.

[6] 31 C.F.R. §§ 560.534-356.

[7] Section 1(a)(i).

[8] Section 6.

[9] Section 3(a)(i).

[10] Section 5.

[11] *Id.*

[12] Section 2(a)(i).

[13] Section 1(a)(ii).

[14] Section 1(a)(iii).

[15] *Id.*

[16] Section 1(a)(iv).

[17] *Id.*

[18] *Id.*

[19] Section 3(a)(ii)-(iii).

[20] Section 3(a)(iv)-(vi).

[21] Section 5.

[22] *Id.* This provision refers to the electronic messaging provided principally by the SWIFT inter-bank messaging system.

[23] Section 2(a)(ii).

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[24] Section 2(a)(iii).

[25] Section 2(a)(iv)-(v).

[26] OFAC FAQ No. 601.

[27] See, e.g., Press Release, U.S. Dep't. of State, *After the Iran Deal: A New Iran Strategy* (May 21, 2018), available at <https://www.state.gov/secretary/remarks/2018/05/282301.htm>.

[28] Including, *inter alia*, persons sanctioned for engaging in transactions involving U.S. bank notes or precious metals, NIOC, NICO, the Central Bank of Iran, Iran's energy, shipping, or shipbuilding sectors, Iranian port operators, or Iranian SDNs. See OFAC FAQ 601 for a complete list.

[29] Sections 4(e) and 5(a)(vii).

[30] Section 8(a).

[31] Sections 2(c)(i) and 3(b)(i)

[32] Special Briefing, U.S. Dep't. of State, *Senior State Department Official on U.S. Efforts to Discuss the Re-Imposition of Sanctions on Iran With Partners Around The World* (Jun. 26, 2018), available at <https://www.state.gov/r/pa/prs/ps/2018/06/283512.htm>.

[33] Brian Hook, Director of Policy Planning, U.S. State Department, Press Briefing, July 2, 2018.

[34] See, e.g., Section 2(d)-(e)

[35] OFAC FAQ No. 613.

[36] OFAC FAQ No. 315.

[37] See, e.g., Press Release, U.S. Dep't. of State, *After the Iran Deal: A New Iran Strategy* (May 21, 2018), available at <https://www.state.gov/secretary/remarks/2018/05/282301.htm>.

[38] We note that the scope of the Blocking Statute slightly differs from EU financial and economic sanctions, specifically as in that "business done in part or in whole in the EU" is not automatically covered.

[39] The listed extra-territorial legislation are the: National Defense Authorization Act for Fiscal Year 1993, Title XVII "Cuban Democracy Act 1992", sections 1704 and 1706; Cuban Liberty and Democratic Solidarity Act of 1996; 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; and the Iran Transactions and Sanctions Regulations (31 CFR Part 560).

[40] Guidance Note – Questions and Answers: Adoption of Update of the Blocking Statute (2018/C 277I/03) (hereinafter "Guidance Note"), Question 23.

[40a] Article 2, paragraph 1 of the EU General Blocking Regulation

[40b] Article 4 of the EU General Blocking Regulation

[40c] In 2007, Austria brought charges for breach of Regulation (EC) 2271/96 against BAWAG, at the time the fifth-largest Austrian bank. The charges were based on the Austrian Federal Law on the Punishment of Offences against the Provisions of EC Regulation (EC) No 2271/96. BAWAG had closed the accounts of 100 Cuban nationals. Having Cuban clients would have prevented the acquisition of BAWAG by a US investor, Cerberus Capital, at a time when US Cuban sanctions made it illegal for US companies to deal with Cuba. Following a public uproar, and after US authorities agreed to grant BAWAG an exemption, BAWAG reinstated the accounts held by Cuban nationals. Cerberus Capital's acquisition of BAWAG went ahead as planned and the investigation against BAWAG for breach of Regulation (EC) 2271/96 was discontinued, available online at <https://www.bmeia.gv.at/en/the-ministry/press/announcements/2007/foreign-ministry-ceases-investigations-against-bawag-bank/>, last checked August 9, 2018.

[40d] Article 5, paragraph 2 of the EU General Blocking Regulation

[41] Template for Applications for Authorisations under Article 5 paragraph 2 of Council Regulation (EC) No 2271/96 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting thereon ('Regulation').

[42] Guidance Note, Question 5.

[43] Robin Emmott and Alissa de Carbonnel, "European Investment Bank Casts Doubt on EU Plan to Salvage Nuclear Deal," *Reuters*, (July 18, 2018), available at <https://www.reuters.com/article/us-iran-nuclear-eu/european-investment-bank-casts-doubt-on-eu-plan-to-salvage-nuclear-deal-idUSKBN1K81BD>.

[44] Claire Jones and Guy Chazan, "Bundesbank Rule Change hits €300m Iran Bank Transfer," *Financial Times*, (August 6, 2018).

[45] Adam Goldman and Gardiner Harris, "U.S. Imposes Sanctions on Turkish Officials over Detained American Pastor," *N.Y. Times* (Aug. 1, 2018).

[46] Benjamin Weiser, "Turkish Banker in Iran Sanctions-Busting Case Sentenced to 21 Months," *N.Y. Times* (May 16, 2018).



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