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## US SANCTIONS AGAINST IRAN ARE BACK

The US government has recently decided to re-impose a great number of sanctions previously relieved under the Joint Comprehensive Plan of Action. Basically, the sanctions are aimed at deterring any trade relations with Iran on a global level.

**Brief overview:** In a nutshell, the sanctions are combined into two groups and are meant to take effect upon the expiration of certain wind-down periods, namely 90 days for the first group and 180 days for the second group. The first group of sanctions already took effect on 7 August and will affect *inter alia* the automotive sector as well as any imports involving technology, supplies and sales. The second group of sanctions will enter into force in a few months, i.e., on 5 November 2018, and will affect, among others, operators partnering with Iran and involved in sectors such as energy, shipping, petroleum, etc.

A distinctive characteristic of the US sanctions is their extra-territorial applicability, i.e., covering not only US entities, but also non-US ones. With such a broad spectrum, all US and non-US entities (both individuals and companies) will be discouraged from performing a great scope of activities under the threat of one or several (when cumulatively imposed) sanctions (e.g., an absolute prohibition of the import of goods into the US by the sanctioned entity, blocking any property interests the latter may have in the US; a ban from participation in procurements with US agencies, and the newly adopted denial of visas to shareholders and corporate officers of the sanctioned entity). It seems that in terms of defining the sanctionable activities, the US rules aim to cover (depending on the type of prohibited activities) any engagement in the diversion of goods, facilitation of transfer of such, etc.

**Amongst the potential complications:** We assume that certain complications might be expected in terms of payments resulting from transactions entered into prior to 8 May 2018, since generally payments can be made by a non-US entity and received by the latter only when services or goods have been fully provided or delivered to an Iranian entity during the wind-down period and only when these do not involve the US financial system and do not correspond to an entity included in the Specially Designated Nationals and Blocked Persons List.

**EU reaction:** As a response to the extra-territorial US sanctions, the EU has decided to re-activate the Blocking Statute from 1996 in order to prevent the applicability of US law on its territory. Basically, EU operators shall not be subject to the US rules and may simply continue performing activities in Iran as long as these are compliant with national and EU regulations. EU national authorities are obliged to not enforce any decisions, rulings and awards issued by US authorities.

As we see it, it is not excluded for the above to in some occasions have a controversial effect as some of the US requirements and prohibitions may be overruled by specific authorization (e.g., for payment related matters). However, EU operators need specific allowances to comply with US rules including when they are beneficial for the operator. It is to be evaluated on a case-by-case basis when non-compliance with the US rules would cause substantial harm to the EU entity and if authorization may be granted.

**Amongst the main concerns:** The main trigger of global concern is the extra-territorial scope of the US legislation. It is highly disputable how sanctions would affect EU-based operators. As previously mentioned, US sanctions are applicable to US companies, to their EU branches, as well as to companies owned or controlled by US persons. Their subsidiaries in the EU, however (as long as they have a distinct legal personality), should be protected by the EU Blocking Statute. This should work both ways, and thus,

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EU-based companies' subsidiaries in the US could be expected to be subject to US law, i.e., to US sanctions against Iran.

**In conclusion:** In the bundle of rules one thing is clear – multinational companies will need to consider any future investments carefully.

For US companies and their branches, it would be extremely difficult, if not impossible (save for cases when specific authorization is granted) to maintain any business relationships with Iran. The same applies to the US subsidiaries of EU-based companies.

A similar effect may be expected for any third countries' persons (not under EU protection) if they wish to do business with the US.

On the other hand, at least in theory, EU companies may rely on protection, although the impact on more complicated cross-border scenarios involving establishment matters, location, and control over companies remains to be seen.

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