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How to Proceed: EU Blocking Statute Conflicts with US Sanctions on Iran (1/2)

Signatories of the Joint Comprehensive Plan of Action ("JCPOA" or "the Iran deal") are exploring options for reinforcing the deal with Iran while circumventing the re-imposed US sanctions, creating a new risk environment for businesses. RANE shares insights from Tobias Caspary, Partner of International Trade and Investment at Fried Frank, and John Pisa-Reli, Managing Director of Global Trade Compliance at Accenture, who presented at the Fried Frank International Corporate Compliance Executive Seminar in October 2018.

The EU has expanded a 1990s Blocking Statute, that imposes penalties on European companies who break off business activities with Iran as a direct result of US extra-territorial Iran sanctions. However, complying with the EU Blocking Statute may violate US sanctions and could prompt financial penalties or even freeze businesses out of the global US-dollar payments system.

- The revision was triggered by the US unilateral decision to withdraw from the JCPOA, signed in 2015 between Iran, China, France, Russia, the UK, Germany, the US, and the EU; and by the 6 August US Executive Order "Re-imposing Certain Sanctions with Respect to Iran" which reinstated previously lifted sanctions under the JCPOA agreement, beginning on 4 November.
- Under the Statute, EU firms and EU subsidiaries of US companies are prohibited from "complying" with US sanctions in that they cannot cease operations with Iran due to pressure from the United States. Decisions to pull out of the Iranian market must be a commercial business decision, though the European Commission admits this rationale is difficult to prove and enforce.
- Theoretically, the Statute will also allow EU firms to sue the US Treasury in the event they are found to be in violation of the new US sanctions, though this has not yet been tried in court.

Few companies are expected to take advantage of the Blocking Statute, according to our experts, as it provides only limited protection and compensation, while the penalties for violating US sanctions could be material risks to multinational businesses.

- Airbus, Maersk, Peugeot, Siemens, and Total, have already announced that they intend to break off business with Iran, and the preeminent British banking association, UK Finance, has cast doubt on the utility of the Statute, saying it presents significant risks and legal complexity.

In September, Federica Mogherini, the EU high representative for foreign affairs and security policy, outlined plans by Germany, France, and the UK to establish a multi-national Special Purpose Vehicle (SPV), a non-bank financial institution, which would process transactions with Iran and its international trading partners (presumably in euros and pounds sterling), not be transparent to US authorities, and could be made available to China and Russia.

- The EU's External Action Service says the measure is being created to "ensure the full and effective implementation of the Iran deal," and that the payment system will "assist and provide reassurance to European businesses wishing to continue trading with Iran, mitigating the effect of re-imposed US sanctions, in accordance with European Law."
- Few firms are expected to take immediate advantage of the SPV, which cannot protect the companies that use it from US secondary sanctions, nor the banks that serve as the gateways between the SPV and the formal financial system from sanctions.
- The US could sanction the SPV itself if it hosts activities prohibited by US sanctions law.
- Moreover, there is little chance that the SPV will displace the Belgium-based global payments system SWIFT, a pillar of the world's financial system.

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- No European country has yet agreed to host the vehicle, for fear of American retaliation.

However, to underestimate the initiatives would be short-sighted. According to **Caspary**, with the EU, Russia, and China backing the SPV, the possibility that the model is successful and is replicated by other countries is a very real risk for the US.

- The EU economy is too big to sanction: it comprises 22 percent of global GDP, conducts one-sixth of global trade, and its predominant currencies — the euro and the pound — are the second and third most used for global payments, respectively.
- China fully supports the EU's SPV proposal, a move experts say will reduce reliance on the US dollar in global trade and further isolate it from the international community.
- China's ambitions could make it particularly useful to the EU's efforts. It seeks to elevate its currency while investing in projects around the world, developing its own unique national standards in sectors where there is already international guidance, and establishing its own courts to settle commercial disputes for countries involved in China's strategic Belt and Road Initiative.

Penalties for violating US sanctions — directly or indirectly — can result in legal, business, and reputational risk. Pisa-Reli recommends the following best practices**:**

- Review whether doing business with Iran presents a viable business case. European trade with Iran amounted to $787 million in 2017, less than three percent of total EU trade. By comparison, nearly $5 trillion passes through the SWIFT system every day.
- Incorporate clauses into client contracts that stipulate your firm will not provide goods or perform services for clients doing business in specified countries (such as Iran).
- Renew your Know Your Customer (KYC) checks for all existing clients to ensure they are not doing business with Iran. **Pisa-Reli** emphasized the importance of also knowing your clients' clients, as conducting business on behalf of a client who has secondary exposure to Iran or a sanctioned entity could also implicate your firm in sanctions charges.
- Understand the beneficial ownership structure of your clients and partners. This is another key pillar in the KYC process, and could expose latent areas of vulnerability and risk.

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