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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	6 June 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 6.6.2018 amending the Annex to Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom

Delegations will find attached document C(2018) 3572 final.

Encl.: C(2018) 3572 final



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COMMISSION DELEGATED REGULATION (EU) .../...

of 6.6.2018

**amending the Annex to Council Regulation (EC) No 2271/96 of 22 November 1996
protecting against the effects of extra-territorial application of legislation adopted by a
third country, and actions based thereon or resulting therefrom**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The conclusion on 14 July 2015 of the Joint Comprehensive Plan of Action (JCPOA) by Iran with the High Representative of the Union for Foreign Affairs and Security Policy, France, Germany, the United Kingdom, the United States, Russia and China on Iran's nuclear programme has opened the way for a renewal of the EU-Iran relations. The subsequent engagement between the Union and Iran has taken place on the basis of the full and continued implementation of the JCPOA, as endorsed by the United Nations Security Council Resolution (UNSCR) 2231(2015) and implemented by the Union in January 2016 through the lifting of numerous nuclear-related sanctions. The International Atomic Energy Agency (IAEA) regularly verifies Iran's compliance with the JCPOA and has issued 10 reports, the last one dated 22 February 2018, confirming Iran's compliance with its nuclear-related commitments.

On 8 May 2018, the President of the United States announced that his country would withdraw from the JCPOA and that the United States would apply the United States legal acts currently subject to waivers in order to reactivate sanctions against Iran which were in place at the time of the conclusion of the JCPOA. In spite of the United States' decision, the Union shall continue to pursue its political and economic interests in Iran, which are based on the full and effective implementation of the JCPOA and UNSCR 2231(2015).

Some of the measures which the United States will reactivate against Iran have extra-territorial effects and, in so far as they unduly affect the interests of natural and legal persons established in the Union and engaging in trade and/or the movement of capital and related commercial activities between the Union and Iran, they violate international law and impede the attainment of the Union's objectives.

In the Union, extra-territorial measures are subject to Council Regulation (EC) No 2271/96¹, which was adopted in reaction to the adoption by the United States of America of restrictive measures concerning Cuba, Libya and Iran which negatively affected the interests of natural and legal persons in the Union engaging in business with those countries which was legitimate under European Community law.

Following unanimous backing on 16 May 2018 by EU Heads of State or Government for the proposals of President Juncker and High Representative/Vice-President Federica Mogherini, on 18 May 2018 the Commission launched the process to add the extra-territorial measures which the United States are going to impose against Iran to Council Regulation (EC) No 2271/96. The first step of that process was to invite Member States to designate experts which the Commission would consult on the preparation of the amendment.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Pursuant to Article 1, second indent of the Regulation, the Commission shall be empowered to adopt delegated acts to add such measures to the Annex to the Regulation.

In accordance with paragraph 4 of the Common Understanding on delegated acts annexed to the Interinstitutional Agreement on Better Law-Making of 13 April 2016², on 28 May 2018

¹ Council Regulation (EC) No 2271/96 of 22 November 1996 [protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom](#). OJ L 309, 29.11.1996, p. 1.

² OJ L 123, 12.5.2016, p. 1.

the Commission met with the experts designated by Member States. The European Parliament and the Council of the European Union were invited to the meeting and took part in it.

The Commission has given due consideration to the comments and suggestions made by the Member States' experts.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This delegated Commission Regulation amends the Annex to Regulation (EC) No 2271/96 so as to take into account the United States' restrictive measures having extra-territorial application and which are in force at the date of its adoption. The measures in question can, immediately or in the future, cause adverse effects on the interests of the Union and the interests of natural and legal persons exercising rights under the Treaty on the Functioning of the European Union.

The references to measures relating to Iran contained in the current Annex of Regulation 2271/96 are to a great extent outdated. In addition, since 1996 when the Annex was drafted, the United States have adopted new restrictive measures regarding Iran. Consequently, in light of the significant amendments required in the Annex, and with a view to ensuring clarity to economic operators, it is appropriate to replace the Annex as a whole.

COMMISSION DELEGATED REGULATION (EU) .../...

of 6.6.2018

amending the Annex to Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom³, and in particular the second paragraph of Article 1 thereof,

Whereas:

- (1) Regulation (EC) No 2271/96 counteracts the effects of the extra-territorial application of laws, including regulations and other legislative instruments adopted by third countries, and of actions based thereon or resulting therefrom, where such application affects the interests of natural and legal persons in the Union engaging in international trade and/or the movement of capital and related commercial activities between the Union and third countries.
- (2) The Regulation acknowledges that by their extra-territorial application, such instruments violate international law.
- (3) The third-country instruments to which Regulation (EC) No 2271/96 applies are specified in the Annex to that Regulation.
- (4) On 8 May 2018, the United States announced they will no longer waive their national restrictive measures relating to Iran. Some of those measures have extra-territorial application and cause adverse effects on the interests of the Union and the interests of natural and legal persons exercising rights under the Treaty on the Functioning of the European Union.
- (5) The Annex to the Regulation should therefore be amended to include those restrictive measures.

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 2271/96 is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

³ OJ L 309, 29.11.1996, p. 1.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 6.6.2018

For the Commission
The President
Jean-Claude JUNCKER