



Council of the European Union  
General Secretariat

**Brussels, 18 October 2018**

**WK 12474/2018 INIT**

**LIMITE**

**COJUR**

**WORKING PAPER**

*This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.*

**MEETING DOCUMENT**

---

From:	Presidency
To:	Working Party on Public International Law
Subject:	Input on the Blocking Statute in view of the dialogue between the European Union and the United States

---

Please find attached a note from the Commission.

COJUR Secretariat



17 October 2018

**Input on the Blocking Statute in view of the dialogue between the European Union and the United States**

1) General International law principles on extraterritoriality

Under the general principle of jurisdiction in international law, States have jurisdiction to legislate and enforce laws within their territory with regard to: (i) their nationals and entities established under their legislation; (ii) activities carried out within their territory; (iii) in limited circumstances, activities which can have a damaging impact on the national interest of the State, where a sufficient connection (nexus) exists between that activity and the State's national interest. Within the above-mentioned limits, International law does not prevent national legislations from having certain extraterritorial effects.

European Union sanctions have an extraterritorial effect, in that they are intended to change the behaviour of third countries, and therefore affect the targeted third countries. However, European Union sanctions are applied within the territory of the European Union and/or to European Union persons and entities. For example, while the European Union lists persons and entities in third countries, the sanctions (asset-freeze and travel ban) are only applied within the territory of the European Union and to European Union nationals and entities. In that sense, European Union sanctions are consistent with international law.

2) US sanctions: nature and impact on EU companies

Following its unilateral decision on 8 May 2018 to withdraw from the Joint Comprehensive Plan of Action (JCPOA), the United States decided to reactivate the extra-territorial sanctions against Iran, which were in place at the time of the conclusion of the JCPOA.

The European Union considers that some of the sanctions that the United States has reactivated, or will reactivate, have unlawful extraterritorial effects as they go beyond the limits defined by the above-mentioned principles of International law.

Some of the United States sanctions not only affect the targeted third country, but also the relationship between that targeted third country and other third countries. The United States retains a broad interpretation of what the general principle of jurisdiction requires under international law. The distinction made by the United States between lawful extraterritorial effects and unlawful extraterritorial effects of their sanctions is blurred by the use of the terms "primary sanctions" and "secondary sanctions". The latter seem to be an attempt to hide their unlawful extraterritorial effects behind the justification of damage to the US vital interests, while they apply to foreign persons and entities for activities carried out outside its territory without a sufficient nexus between the activity triggering sanctions and its national interest.

For example, under the Iran Sanctions Act 1996, the United States imposes sanctions with respect to any person or entity whose investments in Iran over a certain value contribute to the enhancement of the Iranian ability to develop their petroleum resources. Under the National Defense Authorization Act for Fiscal Year 2012, foreign financial institutions may not knowingly conduct or facilitate any significant financial transaction with the Central Bank of Iran or another designated Iranian financial institution. Foreign financial institutions are prohibited from opening and prohibited – or allowed under strict limitations – from maintaining correspondent accounts in the United States. In light of the wide use of USD in payments and of the US banking system, the scope of those sanctions is considerable. "Primary sanctions" may also have unlawful extraterritorial effects because of the broad view that the US takes of the concept of US person or entity to which its sanctions apply.

For the European Union, such extraterritorial effects unduly affect the interests of natural and legal persons established in the Union engaging in lawful international trade and/or movement of capital and related commercial activities with Iran. They violate international law and impede the attainment of the Union's objectives to contribute to the harmonious development of world trade and to the progressive abolition of restrictions on international trade and to achieve the objective of free movement of capital between Member States and third countries<sup>1</sup>.

### 3) The Blocking Statute

The EU introduced the Blocking Statute in 1996 in response to United States extra-territorial sanctions legislation concerning Cuba, Iran and Libya (its current scope is limited to US measures concerning Cuba and Iran)<sup>2</sup>.

The Blocking Statute aims at countering the unlawful effects of third-country extra-territorial sanctions on EU operators. Its main purpose is to protect EU operators engaging in lawful international trade and/or movement of capital as well as related commerce activities with third countries in accordance with EU law.

The Blocking Statute was updated on 6 June 2018<sup>3</sup> and is part of the European Union's support for the continued full and effective implementation of the JCPOA, including by sustaining trade and economic relations between the EU and Iran.

The basic principle of the Blocking Statute is that EU operators shall not comply with the listed extra-territorial legislation, or any decision, ruling or award based thereon, given that the EU does not recognise its applicability to/effects towards EU operators. Exceptionally, compliance can be authorised by the Commission in case non-compliance seriously damages the interests of the operators or of the Union. To date, the Commission has received five requests for authorisation under Article 5, paragraph 2, of the Blocking Statute.

---

<sup>1</sup> See the preamble of Commission Delegated Regulation (EU) 2018/1100 amending the Annex to Council Regulation (EC) No 2271/96

<sup>2</sup> See Council Regulation (EC) No 2271/96 protecting against the effects of extraterritorial application of legislation adopted by a third country, and actions based thereon or resulted therefrom.

<sup>3</sup> See Commission Delegated Regulation (EU) 2018/1100, with entry into force on 7 August 2018.

The Blocking Statute bans the recognition and the enforcement of any foreign decision, including court rulings or arbitration awards, based on the listed extraterritorial legislation or on actions based thereon or resulting therefrom (see Article 4 of the Blocking Statute).

It also allows European Union persons to recover damages arising from the application of the listed extraterritorial legislation from any person or entity causing the damages (see Article 6 of the Blocking Statute).

EU operators shall inform the European Commission within 30 days of any events arising from listed extra-territorial legislation or actions based thereon or resulting thereof, that affect, directly or indirectly, their economic or financial interests. They may do so either directly or through the competent authorities of the Member States.

The Blocking Statute allows EU operators to recover damages arising from the extra-territorial sanctions within its scope from the persons causing them.

Information relating to the Blocking Statute may be found on the following website:  
[http://ec.europa.eu/dgs/fpi/what-we-do/blocking\\_statute\\_en.htm](http://ec.europa.eu/dgs/fpi/what-we-do/blocking_statute_en.htm)