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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Public International Law - International Criminal Court (COJUR-ICC)
Subject:	Non-Paper on the Blocking Statute prepared by the European Commission

Please find attached the Non-Paper on the Blocking Statute prepared by the European Commission for the discussion at the Informal VTC of COJUR-ICC on 28 November 2024.

Non-Paper on the Blocking Statute

1. Political context

As a matter of principle, the EU considers the extra-territorial application of unilateral sanctions to be contrary to international law. The Blocking Statute (Council Regulation (EC) No 2271/96), adopted in 1996, gives effect to this principle.

The extra-territorial application of sanctions might have a direct impact on EU operators' ability to do business, which is legitimate under EU law. This was seen most clearly:

- In the context of relations with Cuba or Iran back in 1996 which led to the adoption of the Blocking Statute; or
- following the unilateral United States' withdrawal from the Joint Comprehensive Plan of Action (JCPOA) in 2018.

2. Description of the overall purpose of the Blocking Statute and its consequences

The purpose of the Blocking Statute is to protect EU operators engaged in lawful international trade and/or movement of capital, as well as related commercial activities, from the extra-territorial application of third country laws listed in its Annex. The Blocking Statute currently applies to US measures concerning Cuba and Iran (for which legals acts with extra-territorial provisions are listed in the Annex of the Blocking Statute). The Commission updated the Blocking Statute in 2018 following the US withdrawal from the JCPOA.[1]

The Blocking Statute:

- prohibits compliance by EU persons with those acts and actions, unless they are exceptionally authorised to do so by the Commission to avoid irreparable damage to their interests or those of the EU;
- nullifies the effect in the EU of any foreign decision based on the foreign acts set out in its Annex;
- allows EU persons to recover in court losses suffered as a result of those acts and actions;
- obliges anyone whose economic or financial interests are affected by the extra-territorial application of those acts and actions to inform the Commission.

[1] Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018 amending the Annex to Council Regulation (EC) No 2271/96 protecting against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom. The Commission Delegated Regulation entered into force on 7 August 2018.

3. ***Possible reform of the Blocking Statute***

In 2021, DG FISMA started a full review process of the Blocking Statute following the experience of its reactivation after the U.S. withdrawal from the nuclear deal with Iran. The aim was to (i) include additional deterrence and counteracting mechanisms and (ii) streamline the application of the Regulation, including by reducing compliance costs for EU persons and businesses.

On 2 August 2021, the Commission published an inception impact assessment in view of the amendment of this initiative. On 9 September 2021, the Commission launched a public consultation to collect feedback on a possible amendment of the Blocking Statute. The consultation period ran until 4 November 2021.[2] However, work on a possible amendment following the review was put on hold, as the Russian aggression against Ukraine shifted the focus to the preparation and implementation of the EU's Russia sanctions packages.

An amendment to the Blocking Statute requires the ordinary legislative procedure (Co-decision).

4. *Amendment of the annex of the Blocking Statute*

The Commission can modify the annex of the Blocking Statute via a delegated act to add further laws, regulations or other legislative instruments of third countries having extra-territorial application. The delegated act is considered adopted if neither the Parliament (simple majority) nor the Council (QMV) opposes it within two months (possibly extended for another four months if requested by either institution) after its adoption by the Commission.

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[2] The feedback received on the inception impact assessment and during the public consultation can be found here and here respectively.