

# Between a Rock and a Hard Place: EU & Russia Move Forward with “Blocking Statutes” in Response to U.S. Exit from Iran Nuclear Deal

Eric McClafferty

May 18, 2018

Sanctions blocking statutes being prepared by the European Commission (EC) and Russia could put companies in the middle of conflicting legal requirements, raising difficult and complex sanctions compliance decisions.

Today, the EC [announced](#) that it is moving forward with a package of measures to blunt the impact of [renewed U.S. sanctions](#) on Iran following the U.S. exit from the Joint Comprehensive Plan of Action (JCPOA). Included in those measures is the planned activation of the EU [blocking statute](#), which would bar EU companies from complying with the extraterritorial effects of U.S. sanctions requirements on Iran. The statute is also intended to insulate EU companies from certain U.S. sanctions penalties. Implementation of blocking statutes can create a situation in which companies must decide which country’s law they are going to violate – if they cannot find an approach that avoids the conflict.

It is not yet clear what effect this initiative will have on EU companies. The current language in the blocking statute allows each EU member state to “determine the sanctions to be imposed in the event of breach of any relevant provisions” as long as such sanctions are “effective, proportional and dissuasive.” This could mean dealing with multiple different approaches in Europe.

In addition to the EU blocking action, on May 14, 2018, the Russian Parliament also introduced new legislation in retaliation for U.S. Sanctions against Russia. The proposed law would function like a blocking statute, imposing criminal liability for compliance with U.S. and other foreign sanctions against Russian parties. So far, the Duma (the lower house of Russia's parliament) approved the first of three readings of the proposed law. It will also need to be endorsed by the Federation Council (the upper house of parliament) and signed by President Vladimir Putin before publication.

While OFAC sometimes works with companies when blocking statutes are in place, the agency also has enforced U.S. sanctions irrespective of another country’s blocking statute. In 1985, Canada enacted a blocking statute titled the Foreign Extraterritorial Measures Act (FEMA). Like the 1996 EU blocking statute, FEMA blocks the extra-territorial application of certain sanctions to Canadian businesses. FEMA was put to the test in 2017 when Honda Canada Finance, Inc. (HCFI), a majority-owned subsidiary of American Honda Finance Corporation (AHFC), approved and financed 13 lease agreements between an unaffiliated Honda dealership in Ottawa, Canada, and the Embassy of Cuba in connection with the Cuban Embassy’s leasing of several Honda vehicles. The Office of Foreign

Assets Control (OFAC) responded by ordering the payment of \$87,255 to settle 13 apparent violations of the U.S. embargo on Cuba. OFAC also fined American Express over \$5 million for apparent violations of the U.S. embargo on Cuba because its foreign branch offices and subsidiaries issued 14,487 tickets for travel between Cuba and countries other than the United States. OFAC noted in its decision that many of the tickets issued were to countries in the EU which had adopted “antidote” measures, otherwise known as blocking statutes, prohibiting compliance with the U.S. embargo on Cuba.

According to a press release from the EC, the current aim is for the blocking statute to come into force before August 6, 2018 – the date on which the first set of U.S. secondary sanctions on Iran are scheduled to be re-imposed. If the EC implements legislation on this timeline, EU companies will face a difficult choice between complying with local law and risking significant penalties from OFAC. Given the significant uncertainty regarding the snapback of U.S. sanctions and the potential legislation in the EU and Russia, companies with a significant presence in Europe and Russia should monitor developments carefully and develop a plan to deal with potential conflicts, or use techniques to avoid conflicts altogether.