

Business relations between Germany and Iran - The current state

13/05/2018

U.S. Sanctions

At a Glance: Relevance of U.S. Sanctions



U.S. Primary Sanctions

Who must comply?

- U.S. Primary Sanctions apply for U.S. Persons
 - Any person within the U.S.
 - U.S. citizens and “Green Card” holders, anywhere in the world
 - Entities organized under U.S. law and their non-U.S. branches
 - Employees of these entities, as long as they act for their employer (regardless of the employee’s nationality)
- Sanctions imposed on Iran (and Cuba)
 - Non-U.S. subsidiaries of U.S. companies
 - Iran: Activities had been permitted by General License H
All activities had to be terminated (“wind-down”) by 5 November 2018



U.S. Primary Sanctions

Long Range Effects of U.S. Primary Sanctions

Whenever a payment is made in US Dollars or a transaction is made via a U.S. bank, (including indirectly), all prohibitions in U.S. primary sanctions apply.

- Applicability of primary sanctions to “Non-Americans”
 - Prohibition to **cause** a violation of primary sanctions by a U.S. Person
 - Extremely broad scope of application, in particular where “causation” meets with “facilitation”
 - Examples:
 - Payments in relation to Iran or a SDN in US Dollars
 - Processing/ forwarding funds from transactions with a connection to Iran to/ via U.S. banks, including indirectly, regardless of the currency
 - IT: Using IT systems/ servers based in the U.S. for transactions with Iran/ SDN (outside the scope of General License H)
 - Ordering products in the US/ from a U.S. Person with the knowledge that these will be re-exported to Iran

U.S. Primary Sanctions

Prohibitions under Primary Sanctions

- **Prohibited transactions**
 - Any dealings with Iran, the Government of Iran and its agencies, companies established in Iran and residents of Iran and SDN
 - Any dealings in which any of the above owns at least 50% of the interest –
Includes companies established outside of Iran
 - Applies to direct and indirect dealings
- **Dealings include:**
 - Supplies, sales, conclusion of any contracts
 - Provision of services
 - Acceptance of payments
- **Prohibition of facilitation**
 - Any activity which would make a prohibited transfer easier or more probable

Violations = U.S. criminal law



U.S. Primary Sanctions

General License „Agri/Med“



- General License
 - Exports and re-exports of Food, agricultural commodities, medicines and medical devices
 - Transactions connected with such exports/ re-exports (transport, insurance etc.)
 - One-year licenses are required for certain pharmaceuticals and medical devices
 - Does not apply to cosmetics
 - Provisions on payment channels/ methods of payment that may be used
 - Transactions with parties on only some US SDN Lists are permitted
- There are no prohibitions for non-U.S. companies to engage in transactions with Iran outside the scope of the General License

What are Secondary Sanctions?

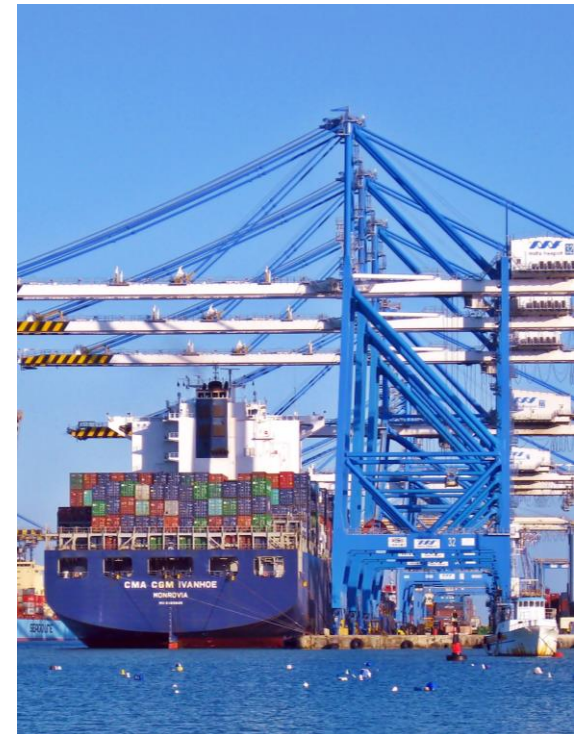
- Threat to non-U.S. companies that measures will be adopted by the U.S. if a company engages in certain activities
 - In the event of “sanctionable conduct”, severe adverse measures can be imposed on a company and/ or its management
 - Includes: listing of the company as SDN
 - Legislation does not provide for individual waivers or individual licenses for companies
 - Severe political pressure for companies not to engage in sectors and transactions concerned
 - No criminal penalties – decision on the imposition of measures is purely political



U.S. Secondary Sanctions

Main Sectors and Transactions that will be Targeted

- Significant Transactions with SDN
 - Ca. 700 new SDNs on 5 November 2018
 - Most major Iranian groups (including e.g. NIOC, Iran Air, IRISL)
 - ALL Iranian banks and financial institutions
- Secondary Sanctions will not apply for transactions with ALL Iranian banks and financial institutions
 - Payments through non-targeted Iranian banks will remain unaffected
 - BUT: Most EU banks have decided to stop forwarding payments connected with Iran, irrespective of the bank from which payments are forwarded



U.S. Secondary Sanctions

Main Sectors and Transactions that will be Targeted

- Oil and gas sector:
 - Investments exceeding USD 20 million in relation to the development of oil and gas resources
 - Transactions with a value of more than USD 1 million in one agreement or more than USD 5 million in a 12 month period:
 - Purchase of oil, diesel, gasoline or kerosene from Iran
 - Supplies/ support for the in-country production of diesel, gasoline or kerosene in Iran
 - Supplies for the support or enhancement of the import of diesel, gasoline or kerosene into Iran
 - Sale, supply or import of diesel, gasoline or kerosene to/ from Iran



U.S. Secondary Sanctions

Main Sectors and Transactions that will be Targeted

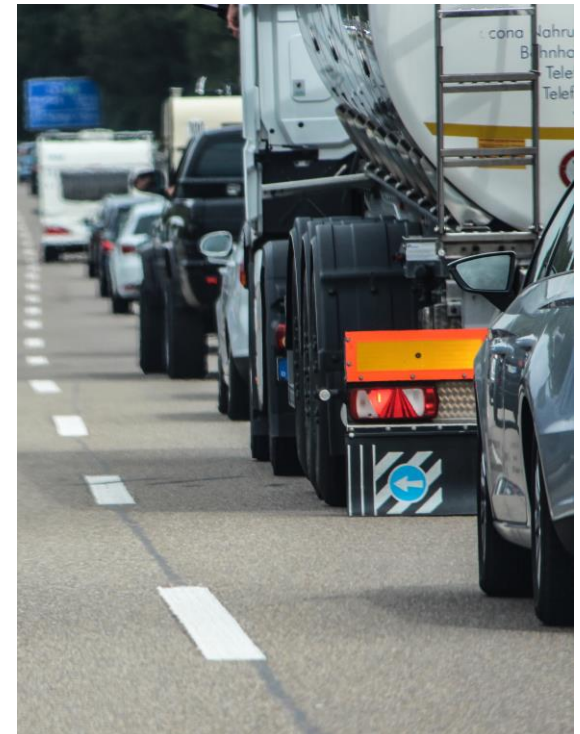
- Petrochemical industry
 - Supplies/ support for the production of petrochemical products in Iran with a value of more than USD 250,000 in one contract or more than USD 1 million in a 12 month period
- Participation in a “significant transaction” related to petroleum or petrochemical products
- Trade (in general)
 - Trade with precious metals, graphites, or raw or semi-finished metals or business software/ enterprise resource planning systems
 - Definition of these items (in OFAC FAQ) is very broad



U.S. Secondary Sanctions

Main Sectors and Transactions that will be Targeted

- Sale, supply or transfer of “significant” goods or services in relation to the following sectors
 - Energy
 - Means the oil and gas sector
 - Shipping and shipbuilding
 - Shipping: Means transport by ships, not transport in general – however, measures against ports and port operators will also be implemented
 - Shipbuilding: Shipyards
 - Automotive
 - Development, manufacturing or production of vehicles
 - Does not apply to:
 - Import of finished vehicles
 - Shipments where it is ensured that items are not supplied to vehicle factories (but e.g. repair shops)



EU and German Measures to Safeguard Business

German Boycott Prohibition (§ 7 AWW)

- **No longer applies to transactions with Iran**
 - Amendment of Statute on Foreign Trade (AWV) of 29 December 2018
- **Prohibitions**
 - Making a declaration which confirms that a company complies with a boycott imposed by one State on a third State
 - Unclear to which extent US sanctions can be considered a “boycott” in this sense at all
 - In foreign trade relations
 - In any event, prohibition only applies to sanctions imposed by other States (than Germany) on countries against which Germany/ the EU have no imposed any measures
- **Scope**
 - Does not apply for contracts/ activities within Germany



EU and German Measures to Safeguard Business

EU Blocking Statute (Regulation (EC) 2271/96)



- Provisions in main part of the Regulation:
 - Prohibition to comply with the US regulations enumerated in the Annex of the Regulation
 - Possibility to apply for exemptions with EU Commission
 - Requirement to notify EU Commission when company is affected by such US Regulations
 - Companies affected by US regulations listed in the Annex can claim damages (very theoretical)
- US Regulations enumerated in the Annex:
 - Prohibition to re-export items with more than 10% controlled (i.e. dual-use) US content to Iran
 - Prohibitions for non-U.S. subsidiaries of US companies (activities formerly permitted under General License H)
 - Certain U.S. Secondary Sanctions, But NOT ALL legal bases for SDN listings

Thank you

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