FACULTY OF LAW AND CRIMINOLOGY

THE EU BLOCKING REGULATION: LEGAL PROTECTION OR ILLUSION?

ANALYSIS OF THE EU BLOCKING REGULATION'S EFFECTIVENESS IN ACHIEVING ITS OBJECTIVES

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Samenvatting

Deze masterproef onderzoekt of de Europese Blokkeringsverordening (Europese Verordening (EG) nr. 2271/96 van 22 november 1996 zoals geamendeerd door Gedelegeerde Verordening (EU) 2018/1100 van 6 juni 2018) effectief is in het realiseren van haar twee kerndoelstellingen: (i) het neutraliseren van de effecten van extraterritoriale sanctiewetgeving, en (ii) het beschermen van de belangen van EU-actoren en de EU zelf. Er wordt een kwalitatief juridisch-theoretisch onderzoek gevoerd, dat een doctrinaire en normatieve benadering combineert. Aan de hand van een kritische analyse van wetgeving, rechtspraak, institutionele documenten en rechtsleer worden de bepalingen van de Europese Blokkeringsverordening systematisch onderzocht en geëvalueerd.

Hoodstukken een en twee omvatten de inleiding en de methodologie. Hier wordt de aanleiding van het onderzoek besproken en de relevante juridische en geopolitieke achtergrond van de Europese Blokkeringsverordening meegegeven.

In het derde hoofdstuk wordt er onderzocht hoe het begrip secundaire sancties dient te worden verstaan in het kader van de Europese Blokkeringsverordening. Het analyseert de juridische aard van secundaire sancties aan de hand van de Blokkeringsverordening zelf, de rechtspraak van het Hof van Justitie en de rechtsleer. Hieruit wordt geconcludeerd dat secundaire sancties maatregelen zijn met een extraterritoriale toepassing, van de sanctieopleggende Staat ten aanzien van een derde Staat en diens economische actoren zonder dat er enige jurisdictionele connectie bestaat.

Het vierde hoofdstuk onderzoekt de eigenlijke effectiviteit van de Europese Blokkeringsverordening door bij alle relevante bepalingen (artikelen 1, 2, 4 5(1), 5(2), 6, 9, 11) een diepgaande inhoudelijke analyse te doen. Elk artikel wordt eerst inhoudelijk besproken, en vervolgens wordt de effectiviteit geëvalueerd aan de hand van twee vragen: 1) Neutraliseert de bepaling de effecten van de secundaire sancties? 2) Beschermt de bepaling de belangen van de EU-operatoren en de EU? Hierbij wordt tevens de rechtspraak van het Hof van Justitie onderzocht, met name de *Bank Melli Iran* zaak en de *IFIC Holding* zaak, onder de passende bepaling. De analyse toont onder andere aan dat de Bijlage van de Europese Blokkeringsverordening beperkt is en niet alle extraterritoriale wetgevingen omvat (art. 1), dat de mededelingsplicht leidt tot administratieve lasten en terughoudenheid bij EU-operatoren (art. 2), dat het verbod op naleving van de secundaire sanctie wetgevingen in de Bijlage de EU-operatoren voor een juridische keuze plaats met betrekking tot welke wetgevigen deze zal naleven, etc.

Ten slotte, hoewel de EU Blocking Regulation juridisch gericht is op bescherming en neutralisatie, blijft haar praktische effectiviteit vandaag de dag beperkt. De selectieve toepassing, gebrekkige handhaving, en terughoudendheid van actoren ondermijnen de verwezenlijking van de goedbedoelde doelstellingen.

Table of contents

1. Introduction 1

2. Research methodology and limitations 5

2.1. Research methodology 5

2.2. Limitations 7

3. Secondary sanctions under the EU Blocking Regulation 8

4. Analysis of the (in)effectiveness of the EU Blocking Regulation 13

4.1. Introduction 13

4.2. The personal scope (Art. 11) 15

4.3. The material scope (Art. 1) 15

a. Content 15

b. Effectiveness 16

4.4. The notification obligation (Art. 2) 19

a. Content 19

b. Effectiveness 20

4.5. The recognition and enforceability prohibition (Art. 4) 23

a. Content 23

b. Effectiveness 25

4.6. The compliance prohibition (Art. 5(1)) 29

a. Content 29

b. Effectiveness 34

c. Bank Melli Iran case (C-124/20) 39

4.7. The authorisation for compliance (Art. 5(2)) 50

a. Content 50

b. Effectiveness 51

c. IFIC Holding AG (T-8/21) 55

d. Middle East Bank, Munich Branch v Commission (T-518/23) 60

4.8. The compensation right (Art. 6) 62

a. Content 62

b. Effectiveness 64

4.9. The enforcement provision (Art. 9) 66

a. Content 66

b. Effectiveness 68

Conclusion 71

Bibliography 74

Appendix 82

List of abbreviations

AG	Advocate General
Charter	Charter of Fundamental Rights of the European Union (2016) OJ C202, 389-405.
CJEU	Court of Justice of the European Union
Commission	European Commission
Committee	The Committee on Extra-territorial Legislation
CSR policy	Corporate Social-Responsibility policy
EU	European Union
EU Blocking Regulation	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 (1996) OJ L309, 1-6, *as amended by*, 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 (2018) OJ L199I, 1-6.
EU operator(s)	All natural and legal persons listed in Article 11 of the EU Blocking Regulation (personal scope).
FMLC	Financial Markets Law Committee
GC	General Court
Implementing Regulation 2018/1101	Commission Implementing Regulation (EU) 2018/1101 of 3 August 2018 laying down the criteria for the application of the second paragraph of Article 5 of Council Regulation (EC) No 2271/96 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (2018) OJ L199I, 7-10.
JCPOA	Joint Comprehensive Plan of Action
OFAC	Office of Foreign Assets Control
SDN list	Specially Designated Nationals and Blocked Persons List
TEU	Consolidated version of the Treaty on European Union (2012) OJ C326, 13-390.
TFEU	Consolidated version of the Treaty on the Functioning of the European Union (2012) OJ C326, 47-390.
UHRCs	Ultra High Risk Countries
US	United States of America

1. Introduction

1. In recent years, certain third countries, especially the United States (hereinafter: 'US'), have increasingly used extraterritorial sanctions, which impact European persons and undertakings under the jurisdiction of the European Union (hereinafter: 'EU') and its Member States.[1] The current geopolitical landscape demonstrates that global power dynamics are increasingly being exercised through economic means rather than conventional warfare. A manifestation of this is the use of extraterritorial or secondary sanctions targeting third States and third-country nationals.

2. The origin of the Council Regulation No 2271/96[2] (hereinafter: 'EU Blocking Regulation') dates back to 1996. It was adopted in response to the US 'Cuban Liberty and Democratic Solidarity (LIBERTAD) Act'[3] (or the 'Helms-Burton Act') and 'Iran and Libya Sanctions Act'[4] (or the 'D'Amato-Kennedy Act).[5] These US legislative acts imposed sanctions with extraterritorial effect on economic operators from third states, including the EU Member States.[6] Ultimately, a political agreement was reached between the EU and the US not to enforce the Helms-Burton Act against European citizens and undertakings.[7] However, in 2018, when the US withdrew from the Joint Comprehensive Plan of Action (hereinafter: 'JCPOA') and President Trump reintroduced secondary sanctions against Iran, the European Commission (hereinafter: 'Commission') amended the Annex to the EU Blocking Regulation to include the reimposed US secondary sanctions legislation related to Iran.[8] While the EU had partially aligned itself with the Obama Administration (2009–2017), it revised its strategic approach in response to President Trump's Iran policy and the increasingly assertive use of US

[1] Council of the European Union, 'Council Conclusions on the EU's economic and financial strategic autonomy: one year after the Commission's Communication' (2022) 6301/22, para 42.
[2] 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 (1996) OJ L309, 1-6.
[3] Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub L No 104-114 (1996) 110 Stat 785.
[4] Iran and Libya Sanctions Act of 1996, Pub L No 104-172 (1996) 110 Stat 1541.
[5] Huber J., 'The Helms-Burton Blocking Statute of the European Union' (1997) 20 Fordham Int'l LJ 699 and Annex of the Council Regulation (EC) No 2271/96 of 22 November 1996.
[6] Ruys T. and Ryngaert C., 'Secondary Sanctions: A Weapon out of Control? The International Legality of, and European Responses to, US Secondary Sanctions' (2020) 0 BYBIL 24.
[7] Smis S. and van der Borght K., 'The EU–US Compromise on the Helms–Burton and D'Amato Acts' (1999) 93 AJIL 227, 231.
[8] 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 (2018) OJ L199I, 1-6. The consolidated and amended Council Regulation (EC) No 2271/96 of 22 November 1996 will hereinafter be referred to as 'the EU Blocking Regulation'.

secondary sanctions during his first administration (2017–2021).[9] This policy shift is partly attributable to the fact that the EU sees the JCPOA as a significant diplomatic achievement.[10] Consequently, the domestic political context plays a decisive role in shaping the cooperation and convergence of sanctions regimes.[11]

3. With the amendment of the EU Blocking Regulation, the EU sought a unified approach to the extraterritorial application of sanctions.[12] However, critical questions and concerns arose about its use, as well as whether it was the correct response against US sanctions legislation. For instance, it was stated that the EU Blocking Regulation punishes European undertakings and that it is ineffective and dysfunctional.[13] On 21 December 2021, the Court of Justice of the European Union (hereinafter: 'CJEU'), in the case of *Bank Melli Iran v Telekom Deutschland GmbH*[14] (hereinafter: '*Bank Melli Iran* case'), delivered its first judgment interpreting the EU Blocking Regulation, focusing in particular on the prohibition of compliance under Article 5(1). While the CJEU clarified the scope of that provision, ambiguity persisted regarding the legal consequences of a breach of the Regulation.[15] More recently, in a judgment of 12 July 2023, the General Court (hereinafter: 'GC') ruled on an action for annulment of an authorisation decision from the Commission to comply with the US secondary sanctions laws, issued under Article 5(2) of the EU Blocking Regulation.[16] Once again, the ruling gave rise to further questions concerning the Regulation's overall effectiveness. In November 2021, the Commission announced that amendments to the EU Blocking Regulation

[9] Geranmayeh E. and Rapnouil M., 'Meeting the challenge of secondary sanctions' (ECFR 2019) 1-3.
[10] Hufbauer G.C. and Jung E., 'What's new in economic sanctions?' (2020) 130 European Economic Review 2.
[11] Van Elsuwege P. and Szép V., 'The Revival of Transatlantic Partnership? EU-US Coordination in Sanctions Policy' in Fahey E. (ed.), *The Routledge Handbook of Transatlantic Relations* (Routledge 2023) 92.
[12] European Commission, 'Communication from the Commission on the European economic and financial system: fostering openness, strength and resilience' COM (2021) 32 final 19.
[13] E.g. Ryngaert C., 'De Europese 'Blocking Statute': Een probaat middel om het Europese bedrijfsleven te beschermen tegen de Amerikaanse secundaire sancties tegen Iran?' (2019) 4 SEW 157, 166; Terry P.C.R., 'Secondary Sanctions: Why the US Approach Is Unlawful and the EU's Response Is Ineffective' (2022) 17 Global Trade and Customs Journal 376; Hackenbroich J., 'Defending Europe's economic sovereignty: new ways to resist economic coercion' (ECFR 2020) 14; Van Haute C., Nordin S. and Forwood G., 'The Reincarnation of the EU Blocking Regulation: Putting European Companies Between a Rock and a Hard Place' (2018) 13 Global Trade and Customs Journal 496.
[14] Judgement of 21 December 2021, *Bank Melli Iran v Telekom Deutschland GmbH*, C-124/20, EU:C:2021:1035.
[15] Van Elsuwege P. and Szép V. (n 11) 90 and Challet C., 'Op-Ed: Judgment in Bank Melli Iran: The Court of Justice, Too, is Between a Rock and a Hard Place' (*EU Law Live*, 14 January 2022) <https://eulawlive.com/op-ed-judgment-in-bank-melli-iran-the-court-of-justice-too-is-between-a-rock-and-a-hard-place-by-celia-challet/> accessed 16 February 2024.
[16] Judgment of 12 July 2023, *IFIC Holding AG v European Commission*, Case T-8/21, EU:T:2023:387.

were under preparation and that a legislative proposal would be introduced by the end of 2022.[17] However, as of today, no such proposal has been published.

4. Moreover, at the beginning of May 2025, President Trump announced that all persons or undertakings purchasing Iranian oil or petrochemical products would be subject to secondary sanctions.[18] This further underscores that secondary sanctions are frequently employed as instruments of foreign policy in international relations.[19] In response to such secondary sanctions, the Commission maintains that protecting the EU and its economic actors from the extraterritorial application of third-country sanctions enhances the Union's strength and resilience.[20]

5. Despite its longstanding presence in the EU legal order, the EU Blocking Regulation remains the subject of considerable academic and political debate. Much of the existing literature presumes its ineffectiveness, without systematically assessing whether the Regulation achieves its stated objectives. Therefore, considering the developments outlined above, this research aims to evaluate the effectiveness of the EU Blocking Regulation in relation to its two core objectives: (i) neutralising the effects of listed extraterritorial sanctions within the EU, and (ii) protecting the interests of EU operators and the EU itself.[21]

6. The main research question reads as follows: Is the EU Blocking Regulation effective in achieving its objectives?

7. To assist in answering this question, sub-research questions are addressed throughout the different chapters.

- What are the objectives of the EU Blocking Regulation? (Paragraph 8)

[17] European Commission, 'Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union and its Member States from economic coercion by third countries' SWD (2021) 371 final, 24.
[18] Trump D.J., 'ALERT: All purchases of Iranian Oil, or Petrochemical products, must stop, NOW!' (Truth Social, 1 May 2025) <https://truthsocial.com/@realDonaldTrump/posts/114433959082847679> accessed 5 May 2025 and Svirnovskiy G., 'Trump threatens 'secondary sanctions' on importers of Iranian oil' (*Politico*, 1 May 2025) <https://www.politico.com/news/2025/05/01/trump-iran-oil-sanctions-china-00322292> accessed 5 May 2025.
[19] Stoll T., Blockmans S., Hagemejer J., e.a., 'Extraterritorial Sanctions on trade and investments and European responses' (European Parliament DG for external policies 2020) 15.
[20] European Commission, 'Communication from the Commission on the European economic and financial system: fostering openness, strength and resilience' COM (2021) 32 final 3.
[21] Recital 5, recital 6 and Article 1 EU Blocking Regulation.

- How should ‘secondary sanctions’ be understood in the context of the EU Blocking Regulation? (Chapter 3)
- Do the provisions of the EU Blocking Regulation neutralise the extraterritorial effects of secondary sanctions and/or protect the interests of EU operators and the EU? (Chapter 4)
- Has the case law of the CJEU had an impact on the Regulation’s effectiveness, and if so, in what way? (Chapter 4)

8. Effectiveness, as referred to in the research question, is measured by the objectives of the Regulation, in particular whether it succeeds in achieving them. The EU Blocking Regulation aims to protect the interests of natural and legal persons, as well as the EU itself, from the effects of extraterritorial secondary sanctions legislation by neutralising the effects of such measures. [22] Accordingly, the two primary objectives are: (i) the neutralisation of the effects of foreign sanctions legislation; and (ii) the protection of the interests of EU operators and the EU. The wording of Recital six suggests that neutralisation serves as the means to protect the interests. However, for the sake of comprehensiveness, this research examines both objectives independently. Although the two objectives are interconnected and may influence one another, neutralisation does not necessarily guarantee protection. Furthermore, Article 1 of the EU Blocking Regulation explicitly states that its purpose is to provide protection against and counteract the effects of extraterritorial sanctions legislation listed in the Annex. The protection of EU operators includes, *inter alia*, safeguarding their rights and freedoms within the EU, such as the freedom to conduct a business under Article 16 of the Charter of Fundamental Rights of the European Union (hereinafter: ‘Charter’)[23], as well as protecting them from the economic losses which might be associated with secondary sanctions. In addition, the neutralisation of the effects of extraterritorial sanctions legislation refers to the prevention of the application and effects of such legislation within the EU.

[22] Recital 5 and 6 EU Blocking Regulation.
[23] Charter of Fundamental Rights of the European Union (2016) OJ C202, 389-405.

2. Research methodology and limitations

9. Although the EU Blocking Regulation has been the focus of previous legal analysis, existing legal doctrine tends to adopt a limited and often one-sided approach, typically assuming its ineffectiveness and concentrating only on specific provisions.[24] Therefore, this research aims to offer a more comprehensive and balanced examination by assessing the Regulation's effectiveness in light of its two stated objectives. The analysis maintains a neutral stance, carefully assessing both supporting and opposing arguments, while providing a comprehensive evaluation of the Regulation's legal and practical effects through a detailed examination of its provisions and their possible interactions.

2.1. Research methodology

10. A qualitative theoretical legal research methodology is adopted, specifically combining a doctrinal and normative approach,[25] to systematically interpret and evaluate legislative texts, case law, institutional documents, and legal doctrine, to gain legal insight and assess the normative effectiveness of the EU Blocking Regulation. The central aim is to evaluate the effectiveness of the EU Blocking Regulation in light of its two core objectives: (1) to neutralise the extraterritorial effects of listed foreign secondary sanctions within the EU, and (2) to protect the interests of EU operators and the EU. A doctrinal approach is employed, based on the systematic interpretation and evaluation of the EU Blocking Regulation, primary EU legislation such as the Treaty on European Union[26] (hereinafter: 'TEU'), the Treaty on the Functioning of the European Union[27] (hereinafter: 'TFEU') and the Charter, case law at both EU and national levels, documents issued by EU institutions and national authorities, as well as relevant legal doctrine. It is complemented by a "law in context" perspective, which considers the broader historical, political, and socio-economic background. This contextual approach allows for an examination of the EU Blocking Regulation not only as a legal instrument but also as a regulatory response situated within a broader political, historical, and socio-economic framework.

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[24] E.g. Terry P.C.R., 'Secondary Sanctions: Why the US Approach Is Unlawful and the EU's Response Is Ineffective' (2022) 17 Global Trade and Customs Journal 370; Szabados T., 'Building Castles in the Air? The EU Blocking Regulation and the Protection of the Interests of Private Parties' (2023) CYELS 1; Hackenbroich J., 'Defending Europe's economic sovereignty: new ways to resist economic coercion' (ECFR 2020) 14; Van Haute C., Nordin S. and Forwood G., 'The Reincarnation of the EU Blocking Regulation: Putting European Companies Between a Rock and a Hard Place' (2018) 13 Global Trade and Customs Journal 496.
[25] Hardyns W. and Peeraer F., 'Onderzoeksmethoden' (Ghent University 2022) 7.
[26] Consolidated version of the Treaty on European Union (2012) OJ C326, 13-390.
[27] Consolidated version of the Treaty on the Functioning of the European Union (2012) OJ C326, 47-390.

11. The first part examines how secondary sanctions are to be understood within the EU legal order, particularly in relation to the EU Blocking Regulation. This includes a review of the Regulation's text, relevant case law from the CJEU, and legal doctrine. In this context, international definitions of secondary sanctions are also considered, where appropriate, to delineate the scope and legal nature of this concept. The second part evaluates the effectiveness of the EU Blocking Regulation by analysing its substantive provisions. Each relevant provision is first interpreted in terms of legal content, using primary and secondary sources including case law, Commission documents, and academic commentary. The analysis of each provision is then conducted through two consistent questions: (1) does the article or the rights and obligations it contains neutralise the effects of the listed secondary sanctions within the EU? and (2) does it protect the interests of EU operators and the Union itself? These questions serve as a common thread throughout the evaluation, to ensure analytical consistency and coherence.

12. Although the research is situated at an EU level, national case law and legislation are included where relevant to support or illustrate legal arguments, enforcement patterns, or judicial interpretation. However, it is not intended to conduct an in-depth comparative analysis of the Member States' national legal systems. Instead, national sources are used selectively to provide context and examples. International sources are also consulted, primarily US legislation and government documents. These sources help to clarify the nature of the foreign sanctions targeted by the EU Blocking Regulation and the potential risks faced by EU operators. Nevertheless, detailed legal analysis of US law falls outside the scope of the research, as the focus remains firmly on the EU Blocking Regulation. In addition to legislative sources, legal doctrine from journal articles, handbooks, think tanks, conferences, etc, was used. These doctrinal sources are essential for understanding the broader legal debate, assessing the effectiveness of the Regulation, and critically engaging with the perspectives of other scholars and practitioners.

13. Generative AI tools (Open AI Chatgpt and Grammarly Pro) were used to assist in proofreading and editing this thesis. The use of these tools is in accordance with the guidelines of Ghent University[28]. These tools were exclusively used for language support, namely, to verify spelling and grammar, as well as to enhance the overall structure of the text without altering the original content. No content, argumentation, or substantive analysis was generated or altered by these tools.

[28] Ghent University, 'Guidelines on the use of AI tools for (writing) assignments' <https://www.ugent.be/re/en/guidelines_ai.htm> accessed 7 May 2025.

2.2. Limitations

14. First, only secondary sanctions are addressed, as these are the exclusive focus of the EU Blocking Regulation. Primary sanctions are not analysed in substance. They are referred to only insofar as is necessary to distinguish them from secondary sanctions. Similarly, the focus is on foreign legislation currently listed in the Annex to the EU Blocking Regulation. Other types of extraterritorial sanctions, including those not included in the Annex, are not examined. Multilateral sanctions, such as those adopted by the United Nations or other international organisations, are likewise excluded from the analysis. The EU Blocking Regulation only covers unilateral extraterritorial measures in its Annex, which are currently only US laws. This focus is further justified by the growing practice of unilateral sanctions in recent years.[29]

15. Furthermore, the evaluation of the Regulation's effectiveness is limited to its two stated objectives: neutralising the effects of listed foreign sanctions and protecting the interests of EU operators and those of the EU. Broader measures of effectiveness, such as administrative efficiency or geopolitical influence, are not assessed in order to maintain a manageable research scope within the timeframe of an academic year.

16. Finally, national and international sources are incorporated insofar as they are relevant. They are primarily used to illustrate or contextualise the analysis of the EU Blocking Regulation. The aim is not to provide a comprehensive examination of enforcement practices across Member States or third countries. The primary focus remains the EU Blocking Regulation itself, assessed through a structured legal and doctrinal framework.

[29] Moret E., 'Unilateral and Extraterritorial Sanctions in Crisis: Implications of Their Rising Use and Misuse in Contemporary World Politics' in Beaucillon C. (ed.), *Research Handbook on Unilateral and Extraterritorial Sanctions* (Edward Elgar 2021) 23.

3. Secondary sanctions under the EU Blocking Regulation

17. The EU Blocking Regulation emerged as a response to secondary sanctions legislation.[30] For this reason, it is essential to understand what the concept of secondary sanctions means within the context of the EU Blocking Regulation. Secondary sanctions must be differentiated from primary sanctions. Primary sanctions prohibit or restrict economic relations between the sanctioning State and the (primary) sanctioned State. They apply to actors within the territory of the sanctioning State or having its nationality.[31] In addition, secondary or extraterritorial sanctions exist, which target third-country natural or legal persons which do business with State targeted by primary sanctions.[32] They complement and amplify primary sanctions.[33]

18. First, the EU Blocking Regulation does not contain a binding definition of secondary sanctions. The preamble, however, offers some interpretative insight. The third recital reads "[w]hereas a third country has enacted certain laws, regulations, and other legislative instruments which purport to regulate activities of natural and legal persons under the jurisdiction of the Member States". Furthermore, the preamble states that the extraterritorial application of such laws violates international law.[34] Taking into account these two references in the preamble, it may be considered under the EU Blocking Regulation that a third State has enacted extraterritorial legislation where it adopts laws, regulations, or other legislative instruments that claim to govern activities of persons who are under the jurisdiction of EU Member States. However, it is worth noting that, while a preamble plays a crucial role in interpreting the provisions, it is not legally binding.[35]

19. Second, an analysis of the CJEU's case law reveals that references to secondary sanctions arise specifically in the context of cases concerning the EU Blocking Regulation, thereby providing valuable insight into how the concept is understood within that legal framework. In the *Bank Melli*

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[30] See *supra* para 2.
[31] Beaucillon C., 'An Introduction to Unilateral and Extraterritorial Sanctions: Definitions, State of Practice and Contemporary Challenges' in Beaucillon C. (ed.), R*esearch Handbook on Unilateral and Extraterritorial Sanctions* (Edward Elgar 2021) 5 and Moret E. (n 29) 22.
[32] Terry P.C.R., 'Secondary Sanctions: Why the US Approach Is Unlawful and the EU's Response Is Ineffective' (2022) 17 Global Trade and Customs Journal 370, 371.
[33] Ryngaert C., '[Panel Discussion] Secondary Sanctions and the international legal order' (*YouTube* 7 November 2024) 00:02:00 – 00:10:33 <https://www.youtube.com/watch?v=SLDd0MBTlPE> accessed 26 December 2024.
[34] Recital 4 EU Blocking Regulation.
[35] Judgment of 19 November 1998, *Nilsson and Others*, C-162/97, EU:C:1998:554, §54 and judgment of 19 December 2019, *Puppinck and Others v Commission*, C-418/18 P, EU:C:2019:1113, §75-76.

Iran case, Advocate General (hereinafter: 'AG') Hogan distinguishes between primary and secondary sanctions by stating that "while these sanctions apply mainly to US persons and non-US persons within US jurisdiction who trade or invest with the countries concerned (primary sanctions), some of the provisions also target activities outside of the US jurisdictions, primarily by foreign companies (secondary sanctions)".[36] He further explains that US legislation, which implements secondary sanctions, seeks to impose penalties on third-State entities that trade with the target State or prohibit those third-State entities from trading with the US in turn.[37] Thus, the AG outlines what is understood by secondary sanctions, particularly in the context of US legislation with an extraterritorial reach. The CJEU, in *Bank Melli Iran*, does not provide an in-depth explanation of what it understands by secondary sanctions. However, in the headnote, it refers to secondary sanctions as sanctions adopted by a third country preventing persons from engaging, outside its territory, in commercial relationships with certain Iranian undertakings. Furthermore, in its judgment, the CJEU uses 'secondary sanctions' to refer to the sanctions regime established by the US in connection with Iran's nuclear programme, which prevented commercial relationships, outside the territory of the US, with those persons.[38] Moreover, the more recent *IFIC Holding v Commission* case[39] before the GC referred in its headnote to "[s]econdary sanctions preventing natural or legal persons of the European Union from having commercial relationships with undertakings targeted by those measures". This case concerned the annulment of a Commission decision granting an EU operator authorisation under Article 5(2) of the EU Blocking Regulation to comply with US sanctions. Additionally, the judgment described secondary sanctions as those sanctions that prohibit, *inter alia*, persons outside the jurisdiction of the US, such as natural or legal persons of the EU, from doing business with persons on the Specially Designated Nationals and Blocked Persons List (hereinafter: 'the SDN list').[40] To conclude, although the case law of the CJEU has not established explicitly a uniform definition of secondary sanctions, it has provided increasing clarity on what should be understood by it. The recurring elements identified by the CJEU are that secondary sanctions refer to legislation adopted by a third country that seeks to prevent natural or legal persons from the EU from engaging in commercial relationships with certain undertakings targeted by that third country.

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[36] Opinion of Advocate General Hogan of 12 May 2021, *Bank Melli Iran v Telekom Deutschland GmbH*, C-124/20, EU:C:2021:386, §3.
[37] *Ibid*.
[38] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §2.
[39] Judgment of 12 July 2023, *IFIC Holding AG v European Commission*, Case T-8/21, EU:T:2023:387.
[40] *Ibid*., §2.

20. Third, a study by the European Parliament stated that secondary sanctions are restrictive measures applied by the US to legal and natural persons in third countries, to put pressure on the political target of those restrictive measures.[41] The study described secondary sanctions as instances where States seek to apply their laws extraterritorially, in a manner which may lead to conflicts with other States or international organisations (such as the EU).[42] It further distinguished between secondary sanctions and primary sanctions, which are aimed at targets within the sanctioning State's jurisdiction.[43] Moreover, the Commission has observed that other jurisdictions apply their sanctions extraterritorially, meaning they expect citizens and companies of third countries, including EU Member States, to comply with them.[44] Additionally, in a Staff Working Document, the Commission explains that "[e]xtraterritorial sanctions are formal measures imposed to foreclose commercial activities of foreign operators in another third country". [45] They are directed at EU (and other) operators to prevent these operators from undermining the foreign policy of a sanctioning third country by continuing to engage in business activities there, or even by replacing economic operators of that third country in an environment sanctioned by that third country ("backfilling").[46] These extraterritorial sanctions are intended to maximise the effectiveness of the primary sanctions imposed by the third country.[47] In conclusion, these EU documents define secondary or extraterritorial sanctions as measures imposed by third countries, particularly the US, on non-national operators, to enforce their foreign policy objectives beyond their territorial jurisdiction.

21. Fourth, since the EU Blocking Regulation does not provide a clear and binding definition, it is also essential to analyse the legal doctrine, as it offers more in-depth definitions and analyses of secondary sanctions. Whilst scholars such as VAN ELSUWEGE, BEAUCILLON, RUYS, RYNGAERT[48] agree on the political objectives of secondary sanctions, one universally accepted definition

[41] Stoll T., Blockmans S., Hagemejer J., e.a., 'Extraterritorial Sanctions on trade and investments and European responses' (European Parliament DG for external policies 2020) 15.
[42] *Ibid*., 18.
[43] *Ibid*.
[44] Commission, 'Report from the Commission to the European Parliament and the Council relating to Article 7(a) of Council Regulation (EC) No 2271/96 ('Blocking Statute')' COM (2021) 535 final, 1.
[45] Commission, 'Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union and its Member States from economic coercion by third countries' SWD (2021) 371 final, 9.
[46] *Ibid*.
[47] *Ibid*.
[48] Van Elsuwege P. and Szép V. (n 11) 88; Beaucillon C., ''Secondary Sanctions' What's in a Name?' in Ruys T., Ryngaert C. and Silvestre F.R. (eds.), *The Cambridge Handbook of Secondary Sanctions and International Law* (Cambridge University Press 2024) 16-19; Ruys T. and Ryngaert C. (n 6) 8.

remains absent. According to BEAUCILLON secondary sanctions are measures aimed at deterring third-party persons or entities from entering a specific type of relation with the targets (e.g. sectors, activities, persons and/or entities) of the primary sanctions of sanctioning State A against the targeted State B.[49] She distinguishes between two approaches to define secondary sanctions: a narrow and a broad approach. The narrow approach holds that only those measures adopted in connection with primary sanctions should be classified as secondary sanctions.[50] From this perspective, secondary sanctions refer to measures imposed in relation to primary sanctions, aimed at restricting third-party entities that have no jurisdictional connection to the sanctioning State.[51] In contrast, the broader approach defines secondary sanctions as any primary sanctions with an extraterritorial reach that is internationally contested.[52] In other words, a secondary sanction is any measure that exercises undue extraterritorial influence on third-State entities. Under this interpretation, secondary sanctions are considered equivalent to extraterritorial sanctions.[53] The idea that sanctions should be internationally contested to constitute a secondary sanction seems to be part of this broader approach put forward by BEAUCILLON. Secondary sanctions are often considered internationally contested.[54] However, this is more regarded as a characteristic of their extraterritorial impact or reach, and therefore, should not be a criterion for its classification. Otherwise, if such sanctions are deemed no longer to breach international law, they would be excluded from this notion. Moreover, VAN ELSUWEGE and SZÉP mention that secondary sanctions target economic operators outside of the sanctioning State who do business with targeted entities.[55] Secondary sanctions, according to RUYS and RYNGAERT, apply to relations between a third State and its operators on the one hand, and the (foreign) sanctions target on the other.[56] Furthermore, MORET explains that secondary sanctions have an extraterritorial reach, meaning that any country, company or individual trading with the targeted State may face prosecution by the sanctioning State.[57] All these definitions follow the reasoning that secondary sanctions have an extraterritorial influence, beyond the borders of the sanctioning State. Secondary sanctions aim to discourage

[49] Beaucillon C., ''Secondary Sanctions' What's in a Name?' in Ruys T., Ryngaert C. and Silvestre F.R. (eds.), *The Cambridge Handbook of Secondary Sanctions and International Law* (Cambridge University Press 2024) 16 and 19.
[50] *Ibid*., 19-21.
[51] *Ibid*., 22.
[52] *Ibid*.
[53] *Ibid*.
[54] For further elaboration, see Terry P.C.R., 'Secondary Sanctions, Access Restrictions and Customary International Law' in Ruys T., Ryngaert C. and Silvestre F.R. (eds.), *The Cambridge Handbook of Secondary Sanctions and International Law* (Cambridge University Press 2024) 117-144 and Ruys T. and Ryngaert C. (n 6) 9-29 and 29-57.
[55] Van Elsuwege P. and Szép V. (n 11) 88.
[56] Ruys T. and Ryngaert C. (n 6) 7.
[57] Moret E. (n 29) 22.

third-party States and their economic actors from mitigating the impact of primary sanctions on the targeted State by maintaining or expanding trade relations with it. Through secondary sanctions, the sanctioning State seeks to prevent lasting trade relations between the primary and secondary sanctioned State.[58] Both current and potentially new trade relations are targeted.[59] By doing so, the sanctioning State seeks to exert pressure to achieve its political objectives (e.g. stopping human rights violations or nuclear proliferation) in the primary sanctioned State.[60] For example, the US uses secondary sanctions mainly to respond unilaterally to international crises, while also seeking to influence the behaviour of other economies.[61]

22. Considering all the above, it should be inferred that secondary sanctions, under the EU Blocking Regulation, are extraterritorial measures or legislation that target third-country economic operators with no jurisdictional connection to the sanctioning State, but who continue their relations with the primary sanctioned State or its economic operators. Essential is that secondary sanctions, contrary to primary sanctions, have an extraterritorial effect as they impose obligations on persons or entities that do not belong to the jurisdiction of the sanctioning State nor the primary sanctioned State.[62] This definition corresponds with the objectives of the EU Blocking regulation to neutralise the effects of extraterritorial sanctions legislation and to protect both the EU and its operators from these effects.

[58] Ruys T. and Ryngaert C. (n 6) 8.
[59] Stalls J.D., 'Economic Sanctions' (2003) 11 University of Miami International & Comparative Law Review 115, 143.
[60] Fabre C., 'Secondary Economic Sanctions' (2016) 69 Current Legal Problems 259, 260 and Ryngaert C., Ruys T. and Silvestre F.R., 'De EU en secundaire economische sancties' (2024) 1 SEW 3.
[61] Moret E. (n 29) 20.
[62] Ruys T. and Ryngaert C. (n 6) 7 and Tietje C. and Lloyd C., 'Secondary sanctions' in Parrish A. and Ryngaert C. (eds.), *Research Handbook on Extraterritoriality in International Law*, (Edward Elgar 2023) 443.

4. Analysis of the (in)effectiveness of the EU Blocking Regulation

23. As stated above, the effectiveness is measured against the objectives of the EU Blocking Regulation. The objectives of the Regulation are, on the one hand, to protect the interests of the Union and the EU operators and, on the other hand, to neutralise the effects of extraterritorial sanctions legislation in order to remove restrictions on trade. [63]

24. This chapter examines whether the content of the EU Blocking Regulation helps achieve its objectives by addressing two key questions. First, does it neutralise (the effects of) extraterritorial sanctions legislation? Second, does it protect the interests of EU operators and the EU? Both questions are important in determining whether the provisions of the EU Blocking Regulation contribute to its effectiveness. In addition, the relevant case law of the CJEU will be taken into account and analysed under the appropriate provisions.

4.1. Introduction

25. To counter secondary sanctions, States can, *inter alia*, adopt a 'blocking regulation'. It aims to neutralise extraterritorial foreign sanctions legislation by prohibiting domestic economic operators from complying with those foreign laws.[64]

26. On 22 November 1996, the EU adopted the EU Blocking Regulation in response to the US's Helms-Burton Act and Iran and Libya Sanctions Act, both of 1996.[65] These legislative acts had an extraterritorial effect on economic operators from third States, such as EU Member States.[66] In order to further protect its economic operators, the EU also filed a complaint with the World Trade Organisation, assessing the Helms-Burton Act.[67] This resulted in negotiations between the EU and the US and the emergence of a political agreement not to enforce the Helms-Burton Act against EU actors.[68] Former President

[63] Recital 1, 2, 6 and Article 1 EU Blocking Regulation.
[64] Ventura D., 'Contemporary blocking statutes and regulations in the face of unilateral and extraterritorial sanctions' in Beaucillon C. (ed.), *Research handbook on unilateral and extraterritorial sanctions* (Edward Elgar 2021) 221 and 223.
[65] Annex of the EU Blocking Regulation; Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, Pub L No 104-114 (1996) 110 Stat 785; Iran and Libya Sanctions Act of 1996, Pub L No 104-172 (1996) 110 Stat 1541.
[66] Ruys T. and Ryngaert C. (n 6) 24.
[67] World Trade Organization, 'United States – The Cuban Liberty and Democratic Solidarity Act: Request for the Establishment of a Panel by the European Communities' (8 October 1996) WT/DS38/2.
[68] Ruys T. and Ryngaert C. (n 6) 82 and Huber J. (n 5).

Clinton granted waivers for EU undertakings under the Helms-Burton Act and the Iran and Libya Sanctions Act, promised to waive future measures if the US and EU continued cooperation on Iran, and pledged restraint on future extraterritorial legislation.[69] In return, the EU withdrew its complaint and EU economic operators were protected.[70]

27. In 2018, the US withdrew from the JCPOA.[71] This is an agreement signed on 14 July 2015 between Iran, on the one hand, and China, France, the Russian Federation, Germany, the United Kingdom, the US and the EU, on the other hand. It stipulates that Iran will not possess or develop nuclear weapons in exchange for the lifting of all United Nations Security Council sanctions, as well as multilateral and national sanctions against Iran concerning its nuclear programme.[72] After the withdrawal, President Trump re-imposed the secondary sanctions against Iran.[73] In addition, Title III of the Helms–Burton Act of 1996 was activated on 2 May 2019.[74] As a reaction, the EU expanded the Annex of the EU Blocking Regulation, on 6 June 2018, by including the reintroduced US secondary sanctions legislation relating to Iran.[75] Until that point, the EU Blocking Regulation had remained unamended. The preamble of the EU Blocking Regulation indicates that the Regulation opposes the extraterritorial application of third-country laws that aim to regulate the activities of EU operators.[76]

28. The EU Blocking Regulation is under Article 288(2) TFEU, directly applicable in the EU Member States. The legal basis of the amended EU Blocking Regulation is Articles 64, 207 and 352 TFEU.[77]

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[69] Portela C., 'The EU and the Politics of US Secondary Sanctions' in Ruys T., Ryngaert C. and Silvestre F.R. (eds.), *The Cambridge Handbook of Secondary Sanctions and International Law* (Cambridge University Press 2024) 93, 99.

[70] World Trade Organization, 'United States – The Cuban Liberty and Democratic Solidarity Act: Lapse of the Authority for Establishment of the Panel' (24 April 1998) WT/DS38/6.

[71] Trump D.J., 'Ceasing US Participation in the JCPOA and Taking Additional Action to Counter Iran's Malign Influence and Deny Iran All Paths to a Nuclear Weapon' (Presidential Memorandum, Trump White House Archives, 8 May 2018).

[72] Joint Comprehensive Plan of Action (Vienna, 14 July 2015).

[73] Executive Order 13846 of 6 August 2018, Reimposing Certain Sanctions With Respect to Iran (2018) 83(152) Fed Reg 38939; Trump D.J., 'Statement from the President on the Reimposition of United States Sanctions with Respect to Iran' (Statements and Releases, Trump White House Archives, 6 August 2018).

[74] The U.S. Department of State, Secretary of State Michael R. Pompeo remarks to the press on 17 April 2019 that the Trump administration will not renew the suspension of Title III of the Helms–Burton Act on 2 May 2019. Consequently, Tittle III was implemented in full since 2 May 2019. (Michael R. Pompeo, 'Remarks to the press' (17 April 2019) <https://cl.usembassy.gov/secretary-of-state-michael-r-pompeos-remarks/> accessed 16 January 2025)

[75] 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 (2018) OJ L199I, 1-6.

[76] Recital 3 and 4 EU Blocking Regulation.

[77] European Commission, 'Combined evaluation roadmap/inception impact assessment' Ref. Ares(2021)4911405 (2021) 2.

4.2. The personal scope (Art. 11)

29. The EU Blocking Regulation applies to the natural and legal persons listed in Article 11, referred to as EU operators. This provision primarily covers nationals of Member States residing in the EU, as well as legal persons incorporated within the Union. Additionally, subsidiaries of US companies that have their registered office or principal place of business in the EU and are incorporated under the laws of a Member State also fall within the scope *ratione personae*.[78]

4.3. The material scope (Art. 1)

a. Content

30. Article 1 defines the material scope of the EU Blocking Regulation. It specifically aims to protect against and mitigate the effects of the extraterritorial application of the laws listed in its Annex. The Regulation and its provisions only apply to the specific legislations adopted in the Annex.

31. The preamble opposes the extraterritorial application of third-country laws that seek to regulate the activities of EU operators.[79] However, the EU Blocking Regulation does not provide a definition or criteria for determining what constitutes unacceptable extraterritorial legislation. Instead, it establishes an Annex that lists specific extraterritorial sanctions legislations that are covered by the Regulation. In 2018, the Annex was amended by the Commission Delegated Regulation (EU) 2018/1100 to include several US extraterritorial laws concerning Iran.[80] However, the Annex remains limited, as it contains only seven laws and regulations, all of which are from the US. Nonetheless, in practice, these listed US laws are not the only ones with extraterritorial effects on EU operators. For example, the US 'Protecting Europe's Energy Security Act'[81] provided for the imposition of sanctions on vessels of EU companies, such as *Allseas*, which were involved in the construction of Russian energy export pipelines, including the Nord Stream 2 project.[82]

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[78] European Commission, 'Questions and Answers: adoption of update of the Blocking Statute' (Guidance Note) [2018] OJ C277, 4-10, point 21 (hereafter: European Commission, Q&A Guidance Note).
[79] Recital 3 and 4 EU Blocking Regulation.
[80] 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 (2018) OJ L199I, 1-6.
[81] Protecting Europe's Energy Security Act, Title LXXV, National Defense Authorization Act for Fiscal Year 2020, Pub L No 116-92 (2019) 133 Stat 2300.
[82] Russell M., 'The Nord Stream 2 Pipeline: Economic, Environmental and Geopolitical Issues' (EPRS 2021) 5-6; Stoll T., Blockmans S., Hagemejer J., e.a., 'Extraterritorial Sanctions on trade and investments and European responses' (European Parliament DG for external policies 2020) 32.

32. It appears that the EU Blocking Regulation only focuses on countering and neutralising US extraterritorial sanctions that are politically inconvenient.[83] However, the preamble states an intention to address extraterritorial sanctions legislation that is incompatible with international law without reference to a selective approach. Therefore, it can be stated that there is a selectivity in adding extraterritorial sanctions legislation in the Annex. AG Hogan further confirms this in his opinion in the *Bank Melli Iran* case. He stated that when the Commission includes extraterritorial legislation in the Annex, the inclusion must serve the objectives of the EU Blocking Regulation. The Commission must then assess whether the consequences of inclusion are justified and proportionate in light of the Regulation's objectives.[84] This implies that the third-country extraterritorial sanctions legislation may only be added if there are legitimate reasons, namely, that such legislation poses a threat to the objectives and interests protected by the EU Blocking Regulation, and that the inclusion does not exceed what is necessary to achieve its objectives.[85] Consequently, the Commission is hampered from adding all extraterritorial sanctions legislation. In this context, it reinforces the idea that the Commission exercises discretion, potentially also political, in determining which legislation to add to the Annex.

b. Effectiveness

33. The question arises whether this limited Annex of extraterritorial sanctions laws, to which the EU Blocking Regulation applies, serves its effectiveness.

34. Regarding the neutralisation of extraterritorial sanctions legislation, it is necessary to analyse the limited scope of the Annex. According to the preamble, neutralising such foreign legislation is both an objective and a means to protect the interests of the EU and its operators.[86] If only a limited number of extraterritorial sanctions laws are listed in the Annex, the aim to neutralise the adverse effects of such legislation is also restricted. The preamble indicates that there is a general neutralisation objective, given its broad reference to 'foreign legislation concerned', which should be interpreted in light of the preceding recitals referring to legislation with extraterritorial application. However, there appears to be an interpretative tension between the general language of the preamble and

[83] Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 528-529.
[84] Advocate General Hogan (n 36) §135.
[85] Regarding the meaning of the principle of proportionality: judgment of 13 November 1990, *The Queen v Ministry of Agriculture, Fisheries and Food, ex parte FEDESA and Others*, C-331/88, EU:C:1990:391, §13 and K. Lenaerts, 'Proportionality as a matrix principle promoting the effectiveness of EU law and the legitimacy of EU action' (ECB Legal Conference, November 2021).
[86] Recital 6 EU Blocking Regulation.

the more specific wording of Article 1 of the EU Blocking Regulation. Article 1 refers to 'the laws specified in the Annex' and therefore seems to indicate a more limited neutralisation objective. It could be argued that, in principle, the preamble serves to clarify the provisions of a regulation. Still, it cannot be used to interpret the provisions in a manner that is *clearly* contrary to their wording.[87] Therefore, the question arises as to whether interpreting Article 1 as establishing a general neutralisation objective could be regarded as an interpretation that is '*clearly* contrary' to its wording, given that such an interpretation would merely broaden the scope of the neutralisation objective without excluding the laws listed in the Annex. On the other hand, it may be argued that a broad scope is, by definition, contrary to a narrow one. Consequently, it is difficult to assert that the limited scope of the Annex constrains the Regulation's neutralisation objective, particularly as Article 1 appears to indicate a limited objective. Nonetheless, it is essential to note that extraterritorial sanctions legislation, beyond those listed in the Annex, continues to impact EU operators. Respondents also raised this concern in the Commission's public consultation on the review of the EU Blocking Regulation.[88] For example, the *Fondation pour le Droit Continental* and *France Industrie* argued that the scope of the Annex must be expanded to include new legislation, such as the US 'CLOUD Act'[89] and the Chinese Export Control Law.[90] These legislations have an extraterritorial scope, which could harm EU operators and pose a threat to European sovereignty. The proposal to expand the Annex to include other US sanctions legislation and Chinese legal acts was also put forward by BLOCKMANS.[91]

35. Concerning the protection of the interests of the EU operators and the EU itself, there are both supporting and opposing arguments. First, it may be in the EU's interest not to add every US extraterritorial sanctions legislation to the Annex. When the EU and the US share a political consensus on sanctioning specific States, the EU may support US

[87] Judgment of 19 November 1998, *Nilsson and Others*, C-162/97, EU:C:1998:554, §54 and judgment of 19 December 2019, *Puppinck and Others v Commission*, C-418/18 P, EU:C:2019:1113, §75-76.
[88] See the third question on the chart in European Commission, 'Summary of Results of the Open Public Consultation on the Review of the Blocking Statute (Council Regulation (EC) 2271/96)' Ref. Ares(2021)7829130 (2021) 4. (hereafter: European Commission, Results of the Open Public Consultation)
[89] *I.e.* the Clarifying Lawful Overseas Use of Data Act which allows the US enforcement authorities to compel technology companies to provide user data through warrants, even when such data is stored on servers located outside the US (Mignon E., 'The CLOUD Act: Unveiling European Powerlessness' (2021) 1 Revue Européenne du Droit 108 <https://geopolitique.eu/articles/the-cloud-act-unveiling-european-powerlessness/> accessed 2 February 2025).
[90] Fondation pour le Droit Continental, 'Synthese: consultation sur la revision de la loi de blocage [Reglement (CE) N° 2271/96]' Ref. Ares(2021)6840648 (2021) 3-4 and France Industrie, 'France Industrie's contribution for the review of the Blocking Statute' Ref. Ares(2021)6840640 (2021).
[91] Blockmans S., 'Extraterritorial sanctions with a Chinese trademark: European responses to long-arm legal tactics' (CEPS 2021) 15.

extraterritorial sanctions regulations by aligning its own sanctions policy accordingly.[92] Such coordination of sanctions policies serves the EU's interest as it may enable the EU to achieve its political goals due to additional US extraterritorial sanctions, which act as a "force multiplier" (e.g. against Russia or Syria).[93] However, this alignment also limits the EU's sovereignty in formulating its own foreign sanction policy.

36. The limited Annex may not fully serve the interests of EU operators. It remains unclear why the Annex only lists US extraterritorial sanctions legislation relating to Iran and Cuba and not similar measures from other third countries.[94] According to the *VDMA*, the current scope is outdated in light of today's geopolitical landscape, and an expansion is needed.[95] Consequently, tolerating specific secondary sanctions regulations, for example, regarding Syria or Russia, may impose an additional burden on EU operators.[96] It creates uncertainty and ambiguity for EU operators, as they must navigate a fragmented legal landscape where compliance with specific secondary sanctions laws is tolerated, while at the same time, adherence to other foreign legislation violates the EU Blocking Regulation. This inconsistency may be perceived as politically motivated, which undermines the predictability and credibility of the EU's commitment to protect the EU operators' interests. The protection of the latter's interests appears to extend only to the extent that it aligns with the EU's political objectives. For example, the listed US sanctions against Iran are not exhaustive, as other relevant legal acts continue to affect EU operators conducting business with Iran.[97]

37. Furthermore, the Commission states that the Annex of the EU Blocking Regulation is a helpful tool to identify the extraterritorial legislation of third countries.[98] However, this

[92] Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 528.
[93] *Ibid*.
[94] See the chart in European Commission, Results of the Open Public Consultation (n 88) 3; De Vries A.W., 'A citizens view on the Commission Initiative to amend Council Regulation (EC) 2271/96 (the EU Blocking Statute) as laid down in its document Combined Evaluation Roadmap/Inception Impact Assessment and the Questionnaire it launched on the Commission site Have your Say' Ref. Ares(2021)7605798 (2021) 1.
[95] VDMA, 'Non-exhaustive contribution of VDMA to the public consultation of the European Commission on the review of the Blocking Statute' Ref. Ares(2021)6840645 (2021) 2.
[96] Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 528.
[97] E.g. the secondary sanctions of section 104(c) and 104(d) of the Comprehensive Iran Accountability, Investment, and Sanctions Act of 2010 (CISADA), implemented by the Iran Financial Transactions Regulations (IFTR), C.F.R. 31 Part 56112 in Lohmann S., 'Response to Public Consultation Unlawful extra-territorial sanctions – a stronger EU response (amendment of the Blocking Statute)' Ref. Ares(2021)6840647 (2021) 5-6.
[98] European Commission, Q&A Guidance Note (n 78) point 9.

statement is questionable, as the Annex does not fully reflect the sanctions legislation that EU operators experience in real-world business operations.

38. Because of the limited Annex, invoking the EU Blocking Regulation in national courts may be challenging. For example, in a case before the Commercial Court of Antwerp on 23 May 2023, a bank operating in Belgium decided to block the accounts of a customer listed on the US Office of Foreign Assets Control (hereinafter: 'OFAC') SDN-list due to suspicions of money laundering.[99] The applicant submitted documents related to the EU Blocking Regulation as part of her exhibits. However, the Commercial Court of Antwerp stated that "this Regulation does not address measures or sanctions against individuals or companies. Moreover, the applicant's own documents show that even this Regulation has remained a dead letter".[100] Although the case involved the extraterritorial application of US sanctions on EU operators (*in casu* the bank), the material scope of the EU Blocking Regulation was not triggered as the relevant US sanctions law was not listed in the Annex.

39. In conclusion, the Annex does not comprehensively reflect the global extraterritorial sanctions. It aligns more closely with the EU's political sanctions agenda. Therefore, it cannot be upheld that Article 1 of the EU Blocking Regulation, and by extension the Annex, effectively enable the Regulation to achieve all its objectives. At present, it does not adequately protect the interests of the EU operators, nor is it clear whether it effectively neutralises the unwanted effects of extraterritorial legislation. Instead, it merely serves the EU's geopolitical interests.

4.4. The notification obligation (Art. 2)

a. Content

40. Article 2(1) of the EU Blocking Regulation imposes an obligation on EU operators to notify the Commission within 30 days when their economic and/or financial interests are affected by legislation listed in the Annex or by actions based on or resulting from it. Such information can be submitted directly to the Commission or through the competent authorities of the Member States.[101] The Commission can request additional information from the EU operator.[102] Finally, the Article applies to all EU operators, as well as directors,

[99] Commercial Court Antwerp 23 May 2023 BFR/DBF 2023/4 279.
[100] *Ibid*., 281. (translated from Flemish)
[101] Article 2(3) EU Blocking Regulation.
[102] Article 2(2) EU Blocking Regulation.

managers, and other individuals with management responsibilities. This results in a broad scope of application. How the Commission must handle the information shared under Article 2 is described in Article 3 of the EU Blocking Regulation.

b. Effectiveness

41. Regarding the question of whether Article 2 serves the effectiveness of the EU Blocking Regulation, the following observations are made.

42. To start, this provision is of EU interest as it allows the Commission to collect information concerning the extraterritorial application of sanctions on EU operators and on the EU itself.[103] It helps to reveal the effects that EU operators experience and the impact of the listed extraterritorial legislation. Furthermore, it enables the Commission and national authorities to prepare appropriate political, legal and economic reactions.[104] However, according to the wording of Article 2, the notification obligation applies only to effects caused by the legislation listed in the Annex. Consequently, the Commission and national authorities do not receive information on the impact that EU operators experience from extraterritorial legislation outside the scope of the Annex. Therefore, this information is not exhaustive, although it would be beneficial for authorities to gain a broader understanding of which types of foreign extraterritorial legislations affect EU operators in practice and how.[105] Additionally, EU operators may find it easier to report on legislation that is not (yet) covered by the EU Blocking Regulation, as notifying the effects of legislation listed in the Annex could lead to unwanted attention from national prosecution authorities and subject them to increased scrutiny regarding their overall compliance with the regulation.[106]

43. Concerning the protection of EU operators' interests**,** different observations can be made. First, Article 2 does not clarify what information exactly must be shared, so it is conceivable that for EU operators, it is also not clear. Additionally, the Commission does not provide any information on this matter in its Guidance Note or other documents. Therefore, there should be more apparent indications on what the content of the notification must be.[107]

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[103] European Commission, 'Combined evaluation roadmap/inception impact assessment' Ref. Ares(2021)4911405 (2021) 4.
[104] European Commission, Results of the Open Public Consultation (n 88) 4.
[105] This discussion ties back to what is outlined above under para 37.
[106] See *infra* para 45.
[107] European Commission, Results of the Open Public Consultation (n 88) 6.

44. Second, the notification obligation imposes an administrative burden on EU operators. This was noted in the Commission's 2021 public consultation, where respondents moreover emphasised that the EU Blocking Regulation does not effectively compensate this burden.[108] Currently, information on the effects must be shared with the Commission via e-mail.[109] Such a burden and lack of real impact do not protect the EU operator. Instead, it makes fulfilling their notification obligation more difficult. Therefore, to reduce this administrative burden, the centralisation and standardisation of the notification procedure should be pursued, as both measures serve the interests of EU operators and contribute to achieving this objective. It should be clear to EU operators who they must notify and what information and/or documents they must share during the notification process. Firstly, a standardised notification could enhance the procedure under Article 2.[110] For example, introducing a uniform document or set of questions would clarify to EU operators the type and the amount of information that should be submitted. It could also help to explain the meaning of 'economic and/or financial interests' and 'affected' in Article 2, as there exists uncertainty concerning these notions.[111] Secondly, a centralised notification procedure would improve its efficiency as Article 2(3) of the EU Blocking Regulation indicates that EU operators can submit all their information concerning the notification directly to the Commission or through the competent authorities of the Member States.[112] On the one hand, national authorities could serve as the central notification body that would receive the notification itself and all the additional information, as they are closer to EU operators, which facilitates communication and removes language barriers. Moreover, the responsibility to impose sanctions for non-compliance with the EU Blocking Regulation currently lies with national authorities.[113] Receiving the notification could provide them with direct insight into the effects of extraterritorial sanctions legislation, allowing them to assess and enforce sanctions more effectively. However, this approach may also require national authorities to report to the Commission, which may not be efficient. On the other hand, the Commission could serve as the central notification authority, as is already suggested by the wording of Article 2(1). However, this may render

[108] *Ibid*. 4.
[109] European Commission, Q&A Guidance Note (n 78) point 1, fn 1.
[110] VDMA, 'Non-exhaustive contribution of VDMA to the public consultation of the European Commission on the review of the Blocking Statute' Ref. Ares(2021)6840645 (2021) 2; Fondation pour le Droit Continental, 'Synthese: consultation sur la revision de la loi de blocage [Reglement (CE) N° 2271/96]' Ref. Ares(2021)6840648 (2021) 3-4 and Commission, Results of the Open Public Consultation (n 88) 6.
[111] Financial Market Law Committee, 'U.S. Sanctions and the E.U. Blocking Regulation: Issues of Legal Uncertainty' (FMLC 2019) para 3.23 and 3.30.
[112] VDMA, 'Non-exhaustive contribution of VDMA to the public consultation of the European Commission on the review of the Blocking Statute' Ref. Ares(2021)6840645 (2021) 2 and AFEP, 'Public consultation on the review of the EU blocking Statute (Regulation (EC) n°2271/96) – comments by AFEP (French association of large companies)' Ref. Ares(2021)6840659 (2021) 2-3.
[113] Article 9 EU Blocking Regulation and *infra* title 4.9.

the process less accessible to EU operators. Nonetheless, the Commission would obtain a more comprehensive overview of the effects of extraterritorial sanctions legislation and could determine whether further action at the EU level is needed. However, as the Commission does not enforce the EU Blocking Regulation, this role would not support enforcement efforts. Instead, in this situation, the Commission would ideally report its findings to national authorities, allowing them to focus on enforcement.

45. Third, EU operators may be reluctant to notify as it might lead to their actions being more scrutinised by national authorities.[114] An EU operator, which fulfils its notification obligation, may be subject to a sanction by the competent national authorities. For example, an EU operator may decide to cease its business operations in Cuba or Iran as its economic sector is not successful anymore due to the US secondary sanctions.[115] In this situation, he could be required to notify the Commission as the extraterritorial legislation affected its economic and/or financial interests. However, this notification could also carry the risk that the Commission interprets the EU operator's decision as aligning with US sanctions legislation.[116] Therefore, operators may be reluctant to inform the Commission in such situations, particularly as it is required to inform the competent authorities of the Member States in which the operator is resident or incorporated.[117] There are few recorded cases of Member State authorities initiating proceedings against EU operators for non-compliance with the EU Blocking Regulation.[118] Furthermore, no national case law was found regarding actions brought by national authorities for failure to comply with the notification obligation under Article 2. This may give the impression that the risks are, *de facto,* limited. However, it cannot be completely ruled out that EU operators are not concerned about potential repercussions.

46. In addition, there is a tension between the notification obligation and the privilege against self-incrimination.[119] This is a fundamental right of the defence in, *inter alia*, the

[114] Ruys T. and Ryngaert C. (n 6) 83-84.
[115] See European Commission, Q&A Guidance Note (n 78) point 5, which provides that EU operators are free to conduct their business as they please.
[116] Note that the Commission cannot sanction EU operators under the EU Blocking Regulation. This competence belongs to the national authorities (Article 9 EU Blocking Regulation). However, nothing prevents the Commission from informing the national authorities of the non-compliance, it even has the obligation to do so under Article 2(3) EU Blocking Regulation.
[117] Article 2(3) EU Blocking Regulation.
[118] Szabados T., 'Building Castles in the Air? The EU Blocking Regulation and the Protection of the Interests of Private Parties' (2023) CYELS 5.
[119] FMLC (n 111) para 3.28.

context of criminal law[120] and EU competition law proceedings.[121] The question arises whether, in the case of such a notification obligation, the EU operator has the right to avoid self-incrimination and whether this principle can be applied by analogy.

47. Considering all the abovementioned elements, it can be concluded, firstly, that Article 2 of the EU Blocking Regulation does not significantly support the protection of EU operators' interests and, therefore, could be ineffective in achieving this objective. Elements such as the administrative burden, uncertainty about the content and scope of the notification and the possibility of being subject to higher scrutiny may discourage EU operators from complying with the notification obligation. Secondly, non-compliance with the notification obligation hinders the objective of neutralising the effects of extraterritorial sanctions legislation, as it restrains the Commission from obtaining knowledge and information on these effects. However, between 1 August 2018 and 1 March 2021, the Commission received a total of 63 notifications from EU operators based in 12 different Member States. They concerned various type of adverse effects such as relating to banking activities, proceedings in the US or their reluctance to invest in targeted countries.[122]

4.5. The recognition and enforceability prohibition (Art. 4)

a. Content

48. Article 4 of the EU Blocking Regulation establishes the principles of non-recognition and non-enforceability. Judgments and administrative decisions of third countries that give effect to the legislation listed in the Annex, or any actions based on or resulting from such legislation, must not be recognised or enforced within the EU or its Member States. This provision aims to neutralise the effects of foreign judicial or administrative decisions within the EU and against EU operators. It is also known as a 'blocking provision', from which the Regulation takes its name.[123]

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[120] E.g. Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (2016) OJ L65/1.
[121] E.g. Judgement of 18 October 1989, *Orkem v. Commission*, C-374/87, EU:C:1989:387 and judgement of 18 October 1989, *Solvay v Commission*, C-27/88, EU:C:1989:388.
[122] European Commission, 'Report from the Commission to the European Parliament and the Council relating to Article 7(a) of Council Regulation (EC) No 2271/96 ('Blocking Statute')' COM (2021) 535 final, 6-7. More recent documents with information on notifications were not found.
[123] Ryngaert C., 'De Europese 'Blocking Statute': Een probaat middel om het Europese bedrijfsleven te beschermen tegen de Amerikaanse secundaire sancties tegen Iran?' (2019) 4 SEW 157, 161.

49. The prohibition applies specifically to judgments issued by a court or tribunal and decisions made by administrative authorities in States outside the EU. In its Guidance Note, the Commission explained the scope of this prohibition, stating that it covers all decisions, whether administrative, judicial, arbitral, or of any other nature.[124] Similarly, any decision requiring, for example, the seizure or enforcement of an economic penalty against an EU operator based on the listed acts will not be executed within the EU.[125] However, it should be noted that the Guidance Note is not legally binding and merely provides guidance on the application of the EU Blocking Regulation.[126]

50. The principles of non-recognition and non-enforceability established under Article 4 of the EU Blocking Regulation impose a duty on national authorities of EU Member States, including courts and arbitrators, to refrain from giving effect to certain foreign legal measures.[127] For instance, this obligation prevents the recognition or enforcement of an extradition request from the US if it is based, at least in part, on allegations that the individual concerned has violated US extraterritorial sanctions legislation listed in the Annex of the Regulation.[128] Such an extradition request may only be granted by national authorities if it is based on additional legal grounds that are independent of the listed legislation.[129]

51. Moreover, in 2019, before Brexit, the Ministry of Justice of Gibraltar determined that it could not provide the requested mutual legal assistance to the US, based on, among other grounds, the EU Blocking Regulation. Specifically, the request sought additional information to support a US application for the restraint of a vessel's departure from Gibraltar, which was transporting Iranian oil, in anticipation of forfeiture proceedings to be initiated in the US.[130] Therefore, courts in EU Member States are prohibited from complying with US requests for document disclosure or other forms of mutual legal assistance when such requests pertain to the enforcement of US secondary sanctions.[131]

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[124] European Commission, Q&A Guidance Note (n 78) point 4.
[125] *Ibid*.
[126] *Bank Melli Iran v Telekom Deutschland GmbH*, (n 14) §61; European Commission, Q&A Guidance Note (n 78) preamble and Van Dam C., 'Guidance documents of the European Commission: a typology to trace the effects in the national legal order' (2017) 10 Review of European Administrative Law 75.
[127] European Commission, Q&A Guidance Note (n 78) point 4.
[128] Ruys T. and Ryngaert C. (n 6) 84.
[129] *Ibid*. and Court of Cassation 7 April 2020, ECLI:NL:HR:2020:623. In this case the Dutch '*Hoge Raad*' (Court of Cassation) ruled that the EU Blocking Regulation could not be invoked to prevent extradition if the conduct in question, such as the export of dual-use goods to Iran, is also criminalised under the national law of an EU Member State and/or EU sanctions legislation.
[130] HM Government of Gibraltar, 'Further Mutual Legal Assistance Requests from the United States of America – 604/2019' (18 August 2019) <https://www.gibraltar.gov.gi/press-releases/further-mutual-legal-assistance-requests-from-the-united-states-of-america-6042019-5198> accessed 25 March 2025.
[131] Ruys T. and Ryngaert C. (n 6) 84.

b. Effectiveness

52. Regarding the question of whether Article 4 neutralises the effects of extraterritorial sanctions legislation, the following observations can be made. The text of Article 4 is intended to nullify or mitigate the impact of such legislation by prohibiting the recognition and enforcement of foreign judgments and administrative decisions based on it. Furthermore, the previously mentioned example of the Ministry of Justice of Gibraltar shows that there exists an opportunity for EU Member States to invoke their obligation under Article 4 and comply with it.

53. These considerations are also relevant when assessing the extent to which Article 4 protects the interests of EU operators. According to the Commission, Article 4 serves to safeguard EU operators by preventing the legal effects of foreign decisions, including court rulings and arbitration awards, within the EU.[132] However, in the Commission's public consultation, many respondents expressed the concern that the prohibition on recognising and enforcing foreign decisions does not sufficiently protect EU operators from the consequences of third-country extraterritorial sanctions.[133] Various reasons were cited for this, such as the shortcomings in its implementation and the inability to provide protection mechanisms that could be used in proceedings initiated outside the EU, particularly in relation to the protection of assets located outside the EU.[134] Furthermore, respondents state that the EU Blocking Regulation lacks extraterritorial effect. However, it should be noted that, in principle, international law prohibits the exercise of extraterritorial enforcement jurisdiction.[135] Nonetheless, some public authorities, non-governmental organisations, and companies emphasised that Article 4 remains an essential provision.[136]

54. Furthermore, the fact that a US request can be neutralised, as demonstrated in the example of the Ministry of Justice of Gibraltar, also has a positive impact on the protection of EU operators. If Article 4 is applied similarly in other cases, it could serve as a safeguard for EU operators. However, it must be noted that, according to the Dutch *Hoge Raad* (Supreme Court), Article 4 of the EU Blocking Regulation does not protect EU operators against a US extradition request when the alleged offence is also criminalised under

[132] European Commission, Q&A Guidance Note (n 78) point 4.
[133] European Commission, Results of the Open Public Consultation (n 88) 5.
[134] *Ibid*.
[135] Established by S.S. Lotus case (France v Turkey) (1927) PCIJ Series A No 9 (Kamminga M.T., 'Extraterritoriality' (2020) MPEPIL <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1040> accessed 12 May 2025).
[136] European Commission, Results of the Open Public Consultation (n 88) 5.

Member States' national law or EU legislation.[137] Following the Dutch judgement, the scope of the EU Blocking Regulation is limited to the extraterritorial effect of US sanctions laws concerning offences that are not punishable within the EU.

55. The text of Article 4 of the EU Blocking Regulation indicates that all third-country judgments and administrative decisions seeking legal effect in the EU fall under its scope and, therefore, are protected under the EU Blocking Regulation. Moreover, when read together with the preamble, it suggests that the Regulation aims to provide protection against, and prevent the recognition or enforcement of, any extraterritorial legislative instrument that violates international law and seeks to regulate the activities of natural and legal persons under the jurisdiction of the Member States.

56. In addition, the enforcement of US sanctions further emphasises the challenges in ensuring comprehensive protection of the EU operators' interests under Article 4. To start, there is the nature of US sanctions enforcement and the use of settlement mechanisms. The US OFAC[138] does not require foreign judicial assistance to recover fines for non-compliance with its sanctions.[139] Instead, enforcement is facilitated mainly through direct settlement agreements with economic operators, who often comply voluntarily due to the threat of significant punitive measures.[140] Additionally, cooperation with OFAC can lead to significant penalty reductions of between 25% and 50%.[141] As a result, the fines for violating US sanctions legislation are often imposed through settlement agreements between the accused entity and US authorities, rather than through a formal judicial or administrative decision from the US government or judiciary exercising its sovereign authority.[142] Consequently, these settlement penalties do not constitute foreign judicial decisions that EU Member States can refuse to recognise or enforce. This reality creates a lacuna in the applicability of the EU Blocking Regulation. The settlement enforcement method allows the US authorities to exercise extraterritorial influence without recourse to EU judicial or administrative recognition mechanisms, which further reduces the effectiveness of the EU Blocking Regulation in protecting EU operators from sanctions.

[137] Dutch Supreme Court 7 April 2020, ECLI:NL:PHR:2020:156.
[138] The OFAC is responsible for the civil enforcement of US sanctions laws and applies a strict liability standard. This means that for the enforcement actions and the imposition of civil penalties, the OFAC does not need to proof of fault or intent. (Barnes R., Bradshaw A., Feldberg P., Mortlock D., Thoms A. and Wysong W. (eds.), 'The Guide to Sanctions fifth edition' (*Global Investigations Review*, 5 September 2024)).
[139] Tilahun N., 'Resisting (US) Sanctions: A Comparison of Special Purpose Vehicles, Blocking Statutes and Countermeasures' (2022) 17 Global Trade and Customs Journal 8.
[140] Ventura D. (n 64) 234-235.
[141] Tilahun N. (n 139) 8.
[142] Fondation pour le Droit Continental, 'Synthese: consultation sur la revision de la loi de blocage [Reglement (CE) N° 2271/96]' Ref. Ares(2021)6840648 (2021) 6.

Moreover, US law provides for the direct enforcement of penalties through financial mechanisms. For example, Section 319(a) of the USA PATRIOT Act[143] allows US authorities to freeze, seize, and recover penalties from the US correspondent accounts of foreign financial institutions by treating funds deposited in those institutions as if they were held in the US. This legislative framework further circumvents the need for foreign judicial cooperation, thereby reducing the protection of EU operators.

57. Second, the risk of asset seizure exists when an EU-based company has assets in the US. The mere presence of assets in the US may expose European companies to penalties and enforcement measures targeting these assets.[144] This asset seizure does not require recognition or enforcement of US decisions by EU Member State authorities. Therefore, Article 4 of the EU Blocking Regulation does not protect EU operators in this situation.

58. Overall, the principles of non-recognition and non-enforceability may not provide adequate protection for EU entities that have US parent companies engaged in business with sanctioned States (e.g. Iran) or for European companies with subsidiaries or operations in the US.[145] Furthermore, it does not protect EU operators that violate secondary sanctions laws from facing penalties themselves, such as exclusion from the US financial system.[146] In contrast, smaller EU-based companies with no business operations in the US and no or almost no transactions in US dollars face a lower risk of enforcement.[147]

59. Another aspect to consider when determining the protection of EU operators is the interpretation of the concepts "judgment of a court or tribunal" and "decision of an administrative authority". These terms are not explicitly defined in the Regulation itself but are only explained in the Commission's Guidance Note, which, as previously stated, is not legally binding.[148] One could argue that the absence of a formal definition leads to legal uncertainty.[149] However, at the same time, the absence of a strict definition for these

[143] United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub L No 107–56 (2001) 115 Stat 272, 311.
[144] Szabados T. (n 118) 9-10.
[145] Van Haute C., Nordin S. and Forwood G., 'The Reincarnation of the EU Blocking Regulation: Putting European Companies Between a Rock and a Hard Place' (2018) 13 Global Trade and Customs Journal 496, 499-500.
[146] *Ibid*.
[147] *Ibid*.
[148] See *supra* para 49.
[149] X, 'Helms-Burton Act identification of needs and proposed improvements' Ref. Ares(2021)6840644 (2021) point 1(i).

concepts permits flexibility, which can be beneficial, as national judgments and decisions may vary based on the specific legal system of each sanctioning State. The broader these concepts are viewed, the more foreign decisions will fall within the scope of the prohibition on recognition and enforcement under Article 4, thereby enhancing the protection of EU operators. A restrictive interpretation, on the other hand, could raise concerns about whether the EU Blocking Regulation applies solely to final rulings or decisions (e.g. judgments) or whether it also encompasses procedural decisions or rulings that facilitate legal proceedings (e.g. a notice or summons, a request for international court assistance, a request for documentation, a summons to give testimony as a witness, etc.).[150] A broader interpretation would ensure that EU operators are protected from a wider range of foreign legal measures that seek to give effect to extraterritorial sanctions legislation.

60. Lastly, concerning the protection of EU interests, it can be stated that the prohibition under Article 4 is crucial for maintaining sovereignty and ensuring that the secondary sanctions of third countries do not unduly restrict trade relations between EU Member States and third countries.[151] As foreign secondary sanction legislation addresses business conduct abroad or activities by foreign businesses, it affects the sovereignty of the Member States and the EU.[152] Through such legislation, the sanctioning State exerts some power over the Member States' territory.

61. In conclusion, Article 4 of the EU Blocking Regulation is designed to protect EU operators and neutralise the effects of extraterritorial sanctions by prohibiting the recognition and enforcement of foreign judicial and administrative decisions. The example of the Ministry of Justice of Gibraltar demonstrates that national authorities have, in some cases, upheld this obligation in practice. However, significant challenges hinder the full achievement of the Regulation's objectives. The enforcement mechanisms of US sanctions, particularly the use of settlement agreements and direct financial penalties, circumvent the need for judicial recognition, which limits the protection offered by Article 4. Additionally, it leaves EU operators vulnerable to enforcement actions outside the EU, particularly asset seizures in the US. As a result, while Article 4 may have a role in mitigating the impact of extraterritorial sanctions, it does not fully ensure the effectiveness of the EU Blocking Regulation in achieving its broader goals.

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[150] *Ibid*.
[151] Preamble of the EU Blocking Regulation.
[152] Stoll T., Blockmans S., Hagemejer J., e.a., 'Extraterritorial Sanctions on trade and investments and European responses' (European Parliament DG for external policies 2020) 52.

4.6. The compliance prohibition (Art. 5(1))

a. Content

62. According to Article 5(1) of the EU Blocking Regulation, EU operators are not allowed to comply, actively or by deliberate omission, with any requirement or prohibition (including those from foreign courts) that are based on the foreign laws listed in the Annex of the Regulation, or on actions resulting from those laws. This is the basic principle of the EU Blocking Regulation.[153] In effect, there rests an obligation of non-compliance on EU operators not to end their trade with the States targeted by the listed secondary sanctions legislation (*i.e.* Iran and Cuba). If an EU operator decides to comply with these laws in the Annex, it infringes the EU Blocking Regulation.

63. Linked to Article 5(1) is the notification obligation under Article 2 of the EU Blocking Regulation. Due to the latter obligation, the competent authorities could learn about the identity of EU operators and the contracts that are subject to the listed secondary sanctions legislations and the EU Blocking Regulation obligations.[154] Such information enables the enforcement of the non-compliance obligation.[155]

64. The concept of "non-compliance" is defined by the Commission in the Commission Implementing Regulation (EU) 2018/1101[156] as 'non-compliance by direct actions or deliberate omissions with requirements or prohibitions, including requests of foreign courts, based on or resulting, directly or indirectly, from the listed extra-territorial legislation or subsequent actions'.[157] This definition corresponds with the wording of Article 5(1) EU Blocking Regulation and reflects the Commission's broad interpretation of protection under the EU Blocking Regulation.[158] In effect, EU operators are prohibited from relying, either directly or indirectly, on the laws listed in the Annex when making business decisions. However, the prohibition laid down in Article 5(1) does not apply where EU operators merely align their conduct with the extraterritorial sanctions legislation listed in the Annex,

[153] European Commission, Q&A Guidance Note (n 78) point 1.
[154] Szabados T. (n 118) 5.
[155] *Ibid*.
[156] Commission Implementing Regulation (EU) 2018/1101 of 3 August 2018 laying down the criteria for the application of the second paragraph of Article 5 of Council Regulation (EC) No 2271/96 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (2018) OJ L199I, 7-10 (hereafter: Implementing Regulation (EU) 2018/1101).
[157] Article 2(c) Implementing Regulation (EU) 2018/1101.
[158] Rovetta D., Pandey G. and Smiatacz A., 'Don't Wake up the (EU) Bear! The Scope of the EU Blocking Regulation 2271/96 in Light of the Recent Preliminary Ruling Reference in Bank Melli V. Telekom Deutschland Case, C-124/20' (2021) 16 Global Trade and Customs Journal 44, 52.

provided they do not formally comply with it.[159] In other words, alignment without express or intentional compliance does not fall within the scope of the compliance prohibition. The notion of "compliance" in this context can be understood as an EU operator adjusting its activities to align with secondary sanctions laws (e.g. those from the US listed in the Annex) where the extraterritorial application of those laws affects the operator's interests in international trade or finance with a sanctioned third country.[160]

65. Article 5(1) further specifies that such compliance must be undertaken "actively or by deliberate omission" to be prohibited. According to the Financial Markets Law Committee (FMLC), this formulation excludes actions or omissions that are primarily motivated by other factors, such as economic or commercial considerations, from the scope of the EU Blocking regulation.[161] This interpretation raises a significant question: do not EU operators almost always have an economic or commercial incentive when choosing to comply with US secondary sanctions? For example, where such sanctions restrict access to the US market, an EU company might be economically compelled to comply if the US market is more profitable or strategically important than the EU or the sanctioned country's market. In this context, the decision of an EU operator to comply with US sanction laws may be primarily driven by economic considerations, even if it results in adherence to US laws. It is plausible that EU operators choose to comply with extraterritorial sanctions legislation mainly because doing so offers a greater economic advantage or mitigates potential commercial losses, compared to the costs and risks of non-compliance. This leads to a potential tension in the FMLC's interpretation: if nearly all decisions to comply with secondary sanctions can be framed as "primarily economically motivated", could operators argue that they fall outside the scope of Article 5(1) on that basis? A clearer interpretation is that Article 5(1) of the EU Blocking Regulation prohibits intentional compliance (through direct actions or deliberate omissions) with extraterritorial sanctions legislation, but does not cover decisions that are demonstrably driven by, for example, legitimate economic assessments, rather than the secondary sanctions themselves.[162] This approach narrows the scope for circumvention and avoids circular reasoning, whereby every business decision that aligns with extraterritorial sanctions legislation could be excused as commercially motivated.

[159] Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 525.
[160] FMLC (n 111) para 3.7.
[161] FMLC (n 111) para 3.9-11.
[162] Van Haute C., Nordin S. and Forwood G. (n 145) 498.

66. Importantly, EU operators remain free to conduct their business in accordance with EU and national law.[163] The EU Blocking Regulation does not impose an obligation to maintain commercial relationships with parties or countries targeted by the listed extraterritorial legislation.[164] Operators may terminate such relationships for other legitimate reasons, including ethical, strategic, economic, or compliance-related risk concerns. For example, they might justify ending a relationship with an Iranian-linked party due to concerns of Iran's sale of drones to Russia, its human rights reputation, risks such as corruption, money laundering, and terrorist financing or because maintaining the business relationship would be economically unviable, regardless of sanction obligations.[165] This position has opened the door to what may be seen as a form of "lawful circumvention", where EU operators provide alternative justifications for decisions that happen to coincide with US sanctions policy. However, in practice, it is difficult to determine the true motivation behind such decisions. The line between strategic or economic necessity and disguised compliance is often blurred. An illustrative example is provided by ING's Financial Economic Crime Statement,[166] in which the bank classifies countries such as Cuba and Iran as Ultra High Risk Countries (UHRCs) based on "economic, strategic and risk-based perspectives".[167] ING states it has a policy "not to enter into new relationships with customers from these countries and … discontinue existing relationships involving these countries and generally refuses to process any payments involving these countries or regions".[168] While this policy is formally grounded in internal risk management and anti-financial crime considerations,[169] the practical effect is identical to complying with US secondary sanctions legislation. Given ING's prior fine by the US OFAC in 2012 for facilitating concealed dollar transactions involving sanctioned countries, it is plausible that ING's UHRC policy serves, at least in part, to avoid renewed exposure to US sanctions enforcement.

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[163] European Commission Q&A Guidance Note (n 78) point 5.
[164] Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 525.
[165] Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 525 and Van der Aa N.M.D. and Stax S.H., 'Amerikaanse sancties op Iran en de Europese blokkeringsverordening: Europese ondernemingen in een lastige spagaat' (2019) Nederlands tijdschrift voor Europees recht 71, 75.
[166] ING, 'ING Financial Economic Crime Statement' (*ING*, 1 October 2024) <https://www.ing.com/About-us/Compliance/Financial-Economic-Crime-Statement.htm > accessed 12 April 2025.
[167] Title 'V. ING's designation of specific countries as Ultra High Risk (UHRCs)' in ING, 'ING Financial Economic Crime Statement' (*ING*, 1 October 2024) <https://www.ing.com/About-us/Compliance/Financial-Economic-Crime-Statement.htm > accessed 12 April 2025.
[168] *Ibid*.
[169] ING states that it is at risk of being (mis)used for purposes of money laundering, corruption, tax evasion, terrorist financing, and sanctioned activity.

67. This policy has also been applied in practice. In a 2020 preliminary relief case before the Amsterdam District Court, a client challenged ING's termination of its business account, which the bank justified based on its UHRC policy.[170] ING had classified Cuba as a UHRC and adopted a zero-tolerance stance towards any Cuba-related transactions. *In casu*, there were concerns over indirect financial flows associated with Cuba passing through the claimant's business account. The District Court examined whether ING was entitled to terminate the banking relationship based on this policy. Crucially, the judge noted that if the client had no feasible alternative to trade with Cuban parties without the ING account, then ING's policy would effectively force the client to comply with the US Helms-Burton Act.[171] The latter is a US secondary sanctions law which is in the Annex of the EU Blocking Regulation and explicitly criminalised in the Netherlands under *Wet op de economische delicten* (Economic Offences Act). The case illustrates how internal risk policies, when closely aligned with US secondary sanctions, may lead to indirect circumvention of the EU Blocking Regulation by making it practically impossible for EU entities to lawfully conduct business with sanctioned jurisdictions. Although the District Court did not determine whether the client had access to alternative financial channels to trade with Cuba, it confirmed that UHRC designation alone does not justify termination of service if it results in *de facto* enforcement of US sanctions contrary to EU law. [172]

68. Moreover, the Commission has explicitly clarified that requesting an individual licence from the US authorities to obtain a derogation or exemption from the listed extraterritorial legislation qualifies as compliance.[173] However, merely engaging in discussions with the US authorities as an EU operator to determine the scope of the legislation, its potential impact, and the possible consequences of non-compliance, is not considered as compliance with the listed extraterritorial legislation.[174]

69. In addition, it is questioned whether sanctions clauses are compatible with the compliance prohibition set out in Article 5(1) of the EU Blocking Regulation. These are clauses in which the participating company declares that it will not breach sanctions or restrictive measures imposed or administered by a competent body, official institution, or

[170] Court of Amsterdam 6 February 2020, ECLI:NL:RBAMS:2020:893.
[171] Joustra J., 'Kan een bank een zakelijke bankrekening opzeggen vanwege handelen met een UHRC-land? Rechtbank Amsterdam doet uitspraak' (*RWV Advocaten*, 17 April 2020) < https://rwv.nl/kennis/kan-een-bank-een-zakelijke-bankrekening-opzeggen-vanwege-handelen-met-een-uhrc-land-rechtbank-amsterdam-doet-uitspraak> accessed 12 April 2025.
[172] *Ibid*.
[173] European Commission, Q&A Guidance Note (n 78) point 23.
[174] *Ibid*.

agency.[175] Furthermore, it allows a contractual party to suspend contractual performance or terminate a contract with a sanctioned party.[176] The legal status of sanctions clauses under Article 5(1) of the EU Blocking Regulation remains subject to uncertainty and different interpretations.

70. On the one hand, it has been argued that such clauses indirectly enable EU operators to comply with extraterritorial sanctions legislation,[177] thus violating the Regulation's prohibition on compliance with the laws listed in the Annex. From this viewpoint, the inclusion or acceptance of a sanctions clause itself could be interpreted as a "requirement resulting indirectly" from secondary sanctions legislation, thereby constituting a prohibited compliance under Article 5(1).[178] This broad interpretation potentially encompasses instances where an EU operator agrees to a clause without ever intending to do business with a sanctioned third country such as Iran or Cuba.[179] Under this view, the mere act of contractually committing to respect extraterritorial sanctions legislation could be seen as formal compliance.

71. On the other hand, there is a narrower and more nuanced interpretation. This position suggests that prohibited compliance requires more than passive consent with a broadly worded clause.[180] Instead, a subsequent act or omission would be needed with the specific intention of aligning the operator's business conduct with the secondary sanctions law to constitute compliance 'actively or by intentional omission'.[181]

72. Leaving aside the applicability of the EU Blocking Regulation, domestic courts have upheld sanctions clauses as justified legal mechanisms to manage contractual risk under national law, and thus justify compliance with US extraterritorial sanctions.[182] In *Lamesa*[183]

[175] Fi-compass, 'Sanctions clause' (*European Investment Bank*) <https://www.fi-compass.eu/sanctions-clause> accessed 13 April 2024.
[176] Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 526.
[177] *Ibid*., 527.
[178] Van Haute C., Nordin S. and Forwood G. (n 145) 498.
[179] *Ibid*.
[180] *Ibid*.
[181] *Ibid*. and Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 527.
[182] Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 527.
[183] *Lamesa Investments Ltd v. Cynergy Bank Ltd* [2019] EWHC 1877 (Comm). The English High Court accepted that non-performance of contractual obligations based on US sanctions was permissible under a contractually agreed clause.

(United Kingdom, 2019), *Vekselberg*[184] (Switzerland, 2020), and *Staroil*[185] (the Netherlands, 2020), national courts allowed parties to refuse performance or terminate contracts based on such clauses. These cases provide that where sanctions clauses are contractually agreed, compliance with US sanctions is generally permitted under national law.[186] However, this practical acceptance by national courts is completely opposed to Article 5(1) EU Blocking Regulation, which prohibits compliance in situations where the sanctions clause concerns listed secondary sanctions laws. This legal uncertainty underlines the need for more explicit EU guidance.

b. Effectiveness

73. The compliance prohibition under Article 5(1) of the EU Blocking Regulation aims to neutralise the impact of extraterritorial legislation listed in the Annex,[187] as it obliges EU operators to disregard and not comply with such sanctions laws within the EU. However, there are some comments on whether this Article fulfils this objective. First, as mentioned above, EU operators may terminate their trade relations with countries or parties targeted by extraterritorial sanctions legislation, based on other grounds than compliance with such legislation.[188] It is argued that the language of the EU Blocking Regulation and the Guidance Note offered EU operators sufficient flexibility to conceal compliance with the legislation listed in the Annex, by presenting their withdrawal from transactions with sanctioned countries or parties as autonomous commercial decisions.[189] From this perspective, the claim that Article 5(1) of the EU Blocking Regulation neutralises the effect of the listed secondary sanctions legislation is difficult to sustain, as the provision allows for strategic positioning and the invocation of alternative justifications by EU operators or financial institutions seeking to reconcile conflicting legal obligations across different jurisdictions. For instance, ING's UHRC policy enables it to deny the execution of financial actions of its clients with Cuba or Iran,[190] or sanctions clauses in business agreements.[191]

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[184] Tribunal fédéral Suisse 6 August 2021, 4A_659/2020.
[185] Court of Appeal Amsterdam 6 October 2020, ECLI:NL:GHAMS:2020:2621.
[186] Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 527.
[187] De Vries A., 'Council Regulation (EC) No 2271/96 (the EU Blocking Regulation)' (1998) 26 International Business Lawyer 345, 348.
[188] See *supra* para 64-66.
[189] Lohmann S., 'European Strategic Autonomy: The Test Case of Iran' (2021) 8 European Review of International Studies 443, 460.
[190] ING, 'ING Financial Economic Crime Statement' (*ING*, 1 October 2024) <https://www.ing.com/About-us/Compliance/Financial-Economic-Crime-Statement.htm > accessed 12 April 2025.
[191] See *supra* para 73.

74. Secondly, the enforcement of the EU Blocking Regulation appears limited.[192] As a result, questionable terminations of business relationships or potential circumventions of the Regulation often remain unaddressed at the national level. According to Article 9, the enforcement of the EU Blocking Regulation is carried out at the national level of the Member States.[193] However, case law from Member States suggests that compliance with extraterritorial sanctions legislation may be considered compatible with the EU Blocking Regulation by national courts. Member States are not likely to sanction undertakings that comply with extraterritorial sanctions legislations, as they provide economic prosperity and, out of fear of US enforcement on the State itself.[194] As a first example, the *Mamancochet Mining* case[195] involved a contractual sanctions clause. The defendant insurers sought to avoid payment, arguing that they could potentially be subject to sanctions under US law if they paid.[196] The legal question was whether the sanctions clause suspended the payment obligation and whether the applicant could invoke the EU Blocking Regulation to enforce payment.[197] The High Court of England held that the Regulation was inapplicable, as the EU operator (*in casu* an insurer) was not acting in compliance with extraterritorial legislation, but merely relying on a contractual clause to resist payment.[198] As such, no issue of compliance with foreign extraterritorial law arose. A second example is a case from October 2018 before the *Landgericht* (Regional Court) of Hamburg in Germany.[199] In this case, a German bank terminated its contractual relationship with an Iranian company.[200] The Regional Court found that the bank was not in breach of the EU Blocking Regulation by cancelling the transaction.[201] It accepted that the threat of secondary sanctions by the US OFAC had been sufficiently demonstrated, particularly given the risk that correspondent banks, through which the German bank conducted its dollar business, might cease cooperation to avoid exposure to US sanctions.[202] Importantly, the Regional Court stated that the EU Blocking Regulation is

[192] See *infra* title '4.9. The enforcement provision (Art. 9)'.
[193] See *infra* title '4.9. The enforcement provision (Art. 9)'.
[194] See also Ruys T. and Ryngaert C. (n 6) 87-88.
[195] *Mamancochet Mining v Aegis Managing Agency and Others* [2018] EWHC 2643 (Comm).
[196] It is worth noting that the case was heard on 12 October 2018, whereas US sanctions on Iran were reimposed on 5 November 2018. Accordingly, the sanctions clause was deemed inapplicable, as payment of the claim at the time of the hearing would not have breached US sanctions legislation. (Ventura D. (n 64) 227).
[197] Ventura D. (n 64) 228.
[198] *Mamancochet Mining v Aegis Managing Agency and Others* [2018] EWHC 2643 (Comm) and Ventura D. (n 64) 229.
[199] Landgericht Hamburg 15 October 2018, 318 O 330/18.
[200] Note that the contractual relationship ended on 31 August 2018, after the entry into force of the amendment to the EU Blocking Regulation on 8 August 2018 (pursuant to Article 2 of Commission Delegated Regulation (EU) 2018/1100), but before the reintroduction of US secondary sanctions against Iran.
[201] Landgericht Hamburg 15 October 2018, 318 O 330/18, para 54.
[202] *Ibid*. para 52-53.

precisely intended to ensure that business decisions can continue to be made freely, referring to the Commission's Guidance Note.[203]

75. In conclusion, although Article 5(1) of the EU Blocking Regulation is intended to neutralise the effects of extraterritorial sanctions, its practical effectiveness appears constrained. The possibility for EU operators to rely on alternative grounds for terminating business relations, combined with limited enforcement at the national level and differing judicial interpretations, raises questions about the Regulation's ability to achieve its intended objective.

76. In addition to its primary focus on neutralising effects, Article 5(1) also seeks to safeguard the interests of EU operators by attempting to counteract the effects of secondary sanction legislation.[204] However, critical perspectives exist regarding whether this provision truly achieves its intended protection objective.

77. First, there is a tension between Article 5(1) of the EU Blocking Regulation and the aim of protecting EU operators. By obliging EU operators not to comply with foreign secondary sanction laws, specifically those of the US, it marks them as potential targets for secondary sanctions. EU operators that violate US secondary sanctions legislation may face a range of restrictive measures. These include, *inter alia*, (a) the denial of export licences for US military, dual-use, or nuclear-related goods and technologies; (b) exclusion from export assistance provided by the Export-Import Bank of the United States; (c) restrictions on US bank loans exceeding $10 million within 12 months; (d) ineligibility for US government procurement contracts; (e) prohibitions on engaging in foreign exchange and other financial or property-related transactions subject to US jurisdiction; and (f) visa bans for corporate officers of sanctioned entities.[205] This tension has also been noticed within the legal doctrine, which repeatedly upheld that Article 5(1) of the EU Blocking Regulation places EU operators in a dilemma from which there is no escape, due to the mutually conflicting legal obligations imposed by the EU Blocking Regulation and US sanctions legislation.[206] In both situations, there is a possibility for EU operators to be

[203] *Ibid*. para 56.
[204] Recital 6 EU Blocking Regulation.
[205] Iran Sanctions Act of 1996, Pub L No 104–172 (1996) 110 Stat 1541, section 6 <https://www.congress.gov/104/plaws/publ172/PLAW-104publ172.pdf> and US Department of State, 'Fact Sheet: Iran Freedom and Counter-Proliferation Act of 2012', 3-4 <https://2009-2017.state.gov/documents/organization/208111.pdf> accessed 16 April 2025.
[206] *Inter alia* Ruys T. and Ryngaert C. (n 6) 86; Terry P.C.R., 'Secondary Sanctions: Why the US Approach Is Unlawful and the EU's Response Is Ineffective' (2022) 17 Global Trade and Customs Journal 370, 376; Ventura D. (n 64) 222; Hackenbroich J., 'Defending Europe's economic sovereignty: new ways to resist economic coercion' (ECFR 2020) 15 and De Vries A. (n 187) 348.

penalised. Therefore, it is hard to uphold that Article 5(1) protects them when, at the same time, it exposes EU operators to extraterritorial sanctions from third countries, such as those of the US. This concern was also noted in the Commission's public consultation, where a large majority of the respondents indicated that it did not achieve the objective of protecting EU operators from the effects of the extraterritorial application of non-EU sanctions.[207] Furthermore, *Fondation pour le Droit Continental* expressed that Article 5(1) places the responsibility on EU operators and generates contradictory obligations towards them.[208] It upheld that the focus must be put on measures targeting both the sanctioning States and their nationals or economic operators, instead of the EU operators.[209] However, by doing this, the EU would also acknowledge its use of secondary sanctions, which it has consistently condemned in the context of Cuba and Iran, thus creating ambiguity between its words and actions. In addition, exposing EU operators to US secondary sanctions may not be in the EU's interest. This is because, if they adhere to the EU Blocking Regulation and disregard US laws, they could face fines, lose access to the US market, or be added to the SDN list. These sanctions could reasonably result in significant economic losses for EU operators, potentially even leading to bankruptcy. Such a situation is not beneficial for the EU's economic or financial market.

Secondly, Article 5(1) of the EU Blocking Regulation and the Commission's Guidance Note stipulate that EU operators remain free to decide on their business relations and whether to pursue them or not, as long as their decisions are not influenced by the listed extraterritorial sanctions legislations. However, following President Trump's announcement on 8 May 2018 of the withdrawal of the US from the JCPOA and the reimposition of sanctions on Iran, several major companies, such as Siemens and Total, subsequently declared their intention to cease trade relations or investments in Iran.[210] Additionally, the European Investment Bank, of which the Member States are shareholders, chose to halt investments in Iran due to concerns over potential exclusion

[207] European Commission, Results of the Open Public Consultation (n 88) 3.
[208] Fondation pour le Droit Continental, 'Synthese: consultation sur la revision de la loi de blocage [Reglement (CE) N° 2271/96]' Ref. Ares(2021)6840648 (2021) 5.
[209] *Ibid*.
[210] Petroff A., 'Siemens CEO: We can't do new deals with Iran' *CNN* (14 May 2018) <https://money.cnn.com/2018/05/14/investing/iran-sanctions-siemens-europe/> accessed 16 April 2025; Wald E.R., '10 Companies Leaving Iran As Trump's Sanctions Close In' *Forbes* (6 June 2018) <https://www.forbes.com/sites/ellenrwald/2018/06/06/10-companies-leaving-iran-as-trumps-sanctions-close-in/> accessed 16 April 2025; X, 'French energy giant Total officially pulls out of Iran' *Die Welle* (21 August 2018) <https://www.dw.com/en/french-energy-giant-total-officially-pulls-out-of-iran/a-45150849> accessed 16 April 2025.

from the US capital market.[211] Furthermore, based on EU-Iran trade statistics (see Figure 1 and 2 in the Appendix, pages 82 and 83), it is evident that trade has declined significantly since 2018.[212] In particular, the total trade volume (*i.e.* imports and exports) has decreased by approximately 76% between 2017 and 2019.[213] Both the withdrawal of companies and the decline in trade statistics indicate that US secondary sanctions have had a significant impact and that EU operators have refrained from engaging in business relationships with Iran. While it is possible that some companies ceased their activities with Iran prior to the amendment of the EU Blocking Regulation, it cannot be definitively asserted that all decisions made thereafter were independent of the reimposed US sanctions. Nevertheless, these indicators suggest that Article 5(1) of the EU Blocking Regulation has not provided adequate protection for EU operators against the US secondary sanctions. Additionally, this decrease in trade statistics between the EU and Iran may not be in the EU's interest. However, it is worth noting that a trade surplus still exists.

78. Additionally, EU operators have stated that the cost of complying with the EU Blocking Regulation is not appropriate.[214] Respondents of the public consultation noted that the compliance prohibition is not the most efficient to protect EU operators, due to the lack of awareness amongst companies and the judiciary, as well as the general lack of enforcement.[215]

79. Lastly, there is uncertainty regarding whether sanctions clauses fall under the compliance prohibition.[216] The text of Article 5(1) states '*any* requirement or prohibition … based on or resulting, *directly or indirectly*, from the laws specified in the Annex', which indicates that contractual clauses fall under the compliance prohibition, as they could be indirectly based on the laws listed in the EU Blocking Regulation.[217] However, national case law appears to suggest otherwise.[218] This creates a situation in which EU operators remain in a state of uncertainty. They must navigate between conflicting legal obligations,

[211] Emmott R. and De Carbonnel A., 'European Investment Bank casts doubt on EU plan to salvage nuclear deal' *Reuters* (18 July 2018) <https://www.reuters.com/article/us-iran-nuclear-eu/european-investment-bank-casts-doubt-on-eu-plan-to-salvage-nuclear-deal-idUSKBN1K81BD/> accessed on 8 May 2025.
[212] European Commission, 'European Union, Trade in goods with Iran' (DG Trade, updated 2024) 3 <https://webgate.ec.europa.eu/isdb_results/factsheets/country/details_iran_en.pdf> accessed 16 April 2025.
[213] The total trade volume between the EU and Iran decreased from approximately €20.8 billion in 2017 to €4.9 billion in 2019. Imports fell from approximately €10.1 billion to €0.7 billion (a decrease of around 93%), while exports dropped from €10.7 billion to €4.2 billion (a decrease of approximately 61%). Calculations done by ChatGPT, based on data extracted from the European Commission trade chart.
[214] See the chart in European Commission, Results of the Open Public Consultation (n 88) 3.
[215] European Commission, Results of the Open Public Consultation (n 88) 3.
[216] See *supra* para 69 and 74.
[217] Ventura D. (n 64) 229.
[218] See *supra* para 67, 72 and 74.

namely those from the EU Blocking Regulation and those from US sanction laws, where non-compliance with either framework carries potential regulatory consequences. Moreover, given that national case law does not appear to enforce the EU Blocking Regulation strictly against domestic operators, it may create an incentive for EU operators to comply with extraterritorial sanctions legislation. This, in turn, would not contribute effectively to the achievement of the Regulation's objectives.

80. Contrary to the arguments against Article 5(1) of the EU Blocking Regulation, it could be argued that this provision does protect EU operators who do not want to comply with the extraterritorial legislation in the Annex, for instance, because it has no link with the US.[219] However, such an EU operator could still experience indirect adverse effects from the compliance prohibition. For example, an EU operator may face difficulties in carrying out money transactions to partners in Iran or Cuba if financial institutions refuse to execute them out of fear of exposure to extraterritorial US sanctions.[220] This example illustrates that compliance with Article 5(1) does not necessarily provide immediate protection against secondary sanctions. EU operators may still be indirectly affected by the non-compliance of financial institutions or other EU operators. Although they abide by the compliance prohibition, they remain hindered in their activities by secondary sanctions legislation.

c. Bank Melli Iran case (C-124/20)

81. The following part provides an analysis of the *Bank Melli Iran* case to assess whether it affected the (in)effectiveness of the EU Blocking Regulation and, if so, to what extent, as it is crucial to determine whether the CJEU's case law has had an impact on the effectiveness.

i. Background

82. In 2021, the CJEU interpreted the EU Blocking Regulation for the first time in the context of the preliminary ruling procedure in the *Bank Melli Iran* case. The tension between the EU legal regime and the US sanctions regime is at the core of this preliminary ruling reference. In this case, Bank Melli Iran, an Iranian bank with a German branch, had a contract with Telekom Deutschland GmbH (hereinafter: 'Telekom') to provide telecommunication services. Telekom terminated all the agreements with Bank Melli Iran with immediate effect on 16 November 2018, following the US withdrawal from the JCPOA and the reimposition of sanctions since 5 November 2018, including placing Bank Melli

[219] Szabados T. (n 118) 4-5.
[220] See *supra* para 66-67.

Iran on the OFAC's SDN sanctions list.[221] This US measure was based on the Iran Freedom and Counter-Proliferation Act of 2012, listed in the Annex. Bank Melli Iran initiated proceedings before the Regional Court of Hamburg (*Landgericht* Hamburg). The first instance court ordered Telekom to perform the contracts until the expiry of the ordinary notice periods. It held that the ordinary termination of the telecommunication contracts was valid and did not infringe Article 5 of the EU Blocking Regulation.[222] In appeal before the Higher Regional Court of Hamburg (*Hanseatisches Oberlandesgericht* Hamburg), Bank Melli Iran claimed that the notice of ordinary termination infringed Article 5(1) of the EU Blocking Regulation, as the sole reason was to comply with the US secondary sanctions.[223] Telekom defended that Article 5(1) does not interfere with its right to ordinary termination as it remains free to terminate business relations, based on the Commission Guidance Note.[224]

83. The preliminary ruling reference offers an insight into how the referring German court interprets and perceives Article 5(1). For instance, the referring court considers that the mere existence of secondary sanctions is sufficient to establish an infringement of Article 5(1).[225] Furthermore, it observes that the termination of a contract infringes the compliance prohibition if the decisive motive is compliance with US sanctions, but not when it is motivated by pure economic reasons with no link to US sanctions.[226] The preliminary questions align with the referring court's observations. First, it aims to determine whether Article 5(1) of the EU Blocking Regulation applies only when an EU operator receives a formal US order, or whether it is sufficient for the EU operator to comply with the extraterritorial legislation without such an order. Secondly, it asks whether Article 5(1) precludes national law that allows the termination of a contract with an undertaking on the SDN list without explaining and proving in court that the reason for termination was not compliance with US sanctions. Thirdly, where Article 5(1) is breached by terminating a contract, the referring court questions whether the termination automatically has no legal effect or whether other penalties, such as a fine, can also be imposed. Fourthly, it asks whether the EU Blocking Regulation applies even if maintaining a business relationship with a listed contracting party would cause economic losses to the EU operator,

[221] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §§18-20 and Advocate General Hogan (n 36) §§39-40.
[222] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §24 and Advocate General Hogan (n 36) §§40-43.
[223] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §25 and Advocate General Hogan (n 36) §44.
[224] Advocate General Hogan (n 36) §44.
[225] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §27 and Advocate General Hogan (n 36) §45.
[226] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §29 and Advocate General Hogan (n 36) §46.

considering the right to conduct business under Articles 16 and 52 of the Charter and the possibility of authorisation under Article 5(2) of the EU Blocking Statute.

ii. The CJEU's judgement

84. Concerning the first preliminary question on the scope and conditions of Article 5(1), the CJEU concludes, based on both the wording and the context, that it must be interpreted as prohibiting EU operators from complying with the extraterritorial sanctions legislation listed in the Annex, even in the absence of a formal compliance order from a third country.[227] Based on a textual and teleological interpretation, the CJEU reasons that Article 5(1) must be interpreted broadly, and that effects may arise from extraterritorial sanctions legislation through the mere threat of legal consequences in case of a violation.[228] This broad interpretation of "requirement" and "prohibition" is further derived from the context of the Regulation, as other provisions use specific terms to refer exclusively to formal judicial or administrative orders.[229] Notably, the CJEU explicitly states that this interpretation of Article 5(1), namely that it also applies in absence of an order of a foreign authority, is compatible with the other objective of the EU Blocking Regulation to protect the interests of EU operators and their freedom to conduct a business because those interests are protected by Article 5(2) of the Regulation.[230] Article 5(2) sets out an authorisation possibility for EU operators to comply with the listed extraterritorial sanctions legislation.[231]

85. Concerning the second preliminary question on the existence of an obligation of proof on the part of the contracting EU operator, the CJEU first answered that persons subject to primary sanctions may rely on Article 5(1) of the EU Blocking Regulation, as it is drafted in a clear, precise and unconditional manner which indicates that it has horizontal direct effect.[232] Further, it held that Article 5(1) does not prevent an EU operator from terminating a contract with an SDN-listed person without providing reasons, even if they do not have authorisation under Article 5(2).[233] Therefore, national laws that permit such termination of contracts are not in conflict with the EU Blocking Regulation, as the Regulation does not require such reasons for termination in its text.[234] However, if a civil

[227] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §51.
[228] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §§45-46 *jo*. Advocate General Hogan (n 36) §49.
[229] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §§47 *jo*. Advocate General Hogan (n 36) §57.
[230] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §50.
[231] *Infra*, title 4.7.
[232] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §§56-59 and §64.
[233] *Ibid.*, §68.
[234] *Ibid.*, §§62-63.

proceeding arises claiming that the EU operator infringed the prohibition in Article 5(1), and the evidence suggests *prima facie* that the operator complied with the legislation in the Annex, then the EU operator bears the burden of proving that its conduct was not intended to comply with those laws.[235] Since evidence of this compliance is not typically available to private individuals, the CJEU ruled that the burden of proof shifts to the EU operator.[236] Therefore, the EU operator must prove that its conducts were not motivated by an intention to comply with the laws set out in the Annex. By reversing the burden of proof, the CJEU seeks to ensure the effectiveness of Article 5(1) and the EU Blocking Regulation.[237]

86. The CJEU answered the third and the fourth preliminary question together, and examined whether Articles 5 and 9 of the EU Blocking Regulation, read in light of Articles 16 and 52(1) of the Charter, preclude the annulment of a contract termination made to comply with extraterritorial sanctions law, where no authorisation under Article 5(2) was obtained and the person would otherwise face significant economic loss. It acknowledged that the annulment of such termination entails a limitation on the freedom to conduct a business enshrined in Article 16 of the Charter.[238] In addition, the CJEU reaffirms that the freedom to conduct a business is not an absolute right. [239] Therefore, it may be subject to restrictions imposed by public authorities where broader public interests justify such limitations.[240] In accordance with Article 52(1) of the Charter, any limitation must be provided by law, respect the essence of those rights and freedoms, and be necessary and actually meet objectives of general interest.[241] *In casu*, the limitation of the freedom to conduct a business is provided by law, specifically in Article 5(1) of the EU Blocking Regulation.[242] Second, according to the CJEU, this provision contributes to the objectives of the EU Blocking Regulation.[243] The AG explains that Article 5(1) aims to protect the EU, its Member States, and natural and legal persons within the EU from the extraterritorial application of the laws listed in the Annex, and to neutralise their effects.[244] These objectives form part of the EU's general interest, as reflected in Article 21(2)(a), (b), (e), and (h) TEU, which contains the general principles of the Union's external action.[245]

[235] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §68.
[236] *Ibid*., §§65-67.
[237] *Ibid*., §67 and Challet C. (n 15).
[238] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §77.
[239] *Ibid.*, §80.
[240] *Ibid*., §81.
[241] *Ibid*., §83.
[242] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §86.
[243] *Ibid*., §89.
[244] Advocate General Hogan (n 36) §130.
[245] *Ibid*.

Regarding the proportionality, the CJEU finds that the limitation of the freedom to conduct a business is necessary to counteract the effects of extraterritorial sanctions and thus protects the EU legal order and broader interests.[246] Furthermore, the CJEU holds that when the economic activity of an EU operator is exposed to sanctions from a third State for failing to comply with the secondary sanctions legislation, national courts must assess whether secondary sanctions could have disproportionate effects on the undertaking. This assessment must be made in light of the objectives of the EU Blocking Regulation, namely, to protect the EU legal order, the EU interests in general and the aim to ensure free movement of capital between Member States and third countries.[247] In effect, national courts must strike a balance between, on the one hand, pursuing these objectives through the annulment of the termination of a contract which breached the prohibition of 5(1), and, on the other hand, the consideration of the economic losses the EU operator may be exposed to and their extent if that undertaking cannot terminate its commercial relationship with a person included in the SDN list (or any other list of persons covered by the secondary sanctions outlined in the annex).[248] According to the CJEU, it is relevant for the proportionality assessment that Telekom did not request an authorisation from the Commission to comply with the prohibition under Article 5(1). As a result, Telekom deprived itself of the possibility to avoid the limitation on its freedom to conduct a business.[249] Furthermore, the national court may not consider any administrative fine provided for under national law when assessing this proportionality balance.[250] The CJEU does not elaborate on this aspect, nor does it clarify whether the same conclusion could be drawn for other types of fines foreseen by Member States, such as criminal fines.

87. Contrary to the CJEU's judgment, the AG stated, regarding the proportionality, that Article 5(1) is not disproportionate because of the existence of the authorisation mechanism under Article 5(2), which may allow EU operators to derogate from the compliance prohibition.[251]

iii. Analysis of the judgment in light of the effectiveness

88. The CJEU's ruling on the first two questions demonstrates that the CJEU chose a broad interpretation of Article 5(1) to ensure the efficacy of the Regulation. The CJEU regarded the protection of the established legal order and the interests of the EU as the

[246] Advocate General Hogan (n 36) §91.
[247] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §90.
[248] *Ibid*., §92 and §95.
[249] *Ibid.* §93.
[250] *Ibid*., §94.
[251] Advocate General Hogan (n 36) §134.

primary aim, whereas safeguarding the interests of EU economic operators was seen as a complementary objective.[252] Furthermore, the CJEU tried to find a balance between the efficacy of the Regulation and the contractual freedom of EU operators.[253] This is emphasised, *inter alia*, by enabling a sanctioned contractual counterparty to invoke Article 5(1) in private proceedings, the reversal of the burden of proof and the fact that EU operators remain free to terminate their contract without providing reasons, insofar as there is no *prima facie* evidence that the termination was intended to comply with the secondary sanctions. However, regarding the latter, the CJEU does not explicitly explain what may constitute such evidence. The question remains whether, for example, the fact that Telekom terminated its contract alongside four other contracts with businesses having ties to Iran is *prima facie* evidence of compliance with US secondary sanctions. On the other hand, it creates discretion and flexibility for the national courts to establish what constitutes *prima facie* evidence within their national legal order.

89. Regarding the third and fourth questions, it could be argued that the CJEU prioritised the efficacy of the Regulation over the protection of EU operators and did not resolve the EU operators' dilemma.[254] Hence, the inherent tension between the efficacy of the EU Blocking Regulation and the legal protection of EU operators remains.[255] When answering the first preliminary question, the CJEU acknowledges that the broad interpretation of Article 5(1) is compatible with the protection of the EU operators' interests and the freedom to conduct a business. Indeed, they are properly protected under the authorisation possibility of Article 5(2).[256] In addition, AG Hogan stated that the existence of such an exemption mechanism as in Article 5(2) is sufficient to ensure that the prohibition under Article 5(1) does not unduly infringe a substantive freedom.[257] Both reasonings imply the existence of an interplay between the two paragraphs. While Article 5(1) primarily focuses on neutralising the effects of the listed extraterritorial sanctions legislation, Article 5(2) protects the interests of the EU operators that those laws may threaten. This interplay reflects a legislative balance between upholding the EU's strategic autonomy[258] and recognising, to some extent, the practical realities faced by EU operators. It highlights the CJEU's attempt to balance the objective of resisting the extraterritorial effects of third-

[252] Szabados T. (n 118) 6.
[253] Challet C. (n 15).
[254] Challet C. (n 15).
[255] Van Elsuwege P. and Szép V. (n 11) 91.
[256] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §50.
[257] Advocate General Hogan (n 36) §134.
[258] *i.e.* the capacity of the EU to act autonomously, meaning without reliance on other countries, in strategically important policy areas (Damen M., 'EU strategic autonomy 2013-2023: From concept to capacity' (EPRS 2022) 1).

country laws with the economic need of protecting legitimate business activities within the EU.

90. On the one hand, the CJEU's reasoning focuses on neutralising and countering the extraterritorial effects of the secondary sanction legislation in the Annex. First, the Court adopts a broad interpretation of Article 5(1). It recognises that the other party to the contract may invoke this provision in civil proceedings, as the full effect of the EU Blocking Regulation must be ensured.[259] The AG explains that the policy choice reflected in Article 5(1) is 'removing, neutralising, blocking or otherwise countering the effects of the foreign legislation'.[260] Indeed, it may provide a bigger possibility for the non-compliance prohibition to be adhered to by EU operators as it provides an additional way of enforcement, besides the administrative or criminal procedures foreseen in the Member States based on Article 9 of the EU Blocking Regulation.[261] Otherwise, the enforcement of the provision would depend solely on the willingness of the Member States, as they, under Article 9 of the EU Blocking Regulation, must foresee the sanctions for violating the EU Blocking Regulation's provisions.[262] If private parties could not rely on the non-compliance obligation under Article 5(1) in civil proceedings, EU operators could decide to comply with extraterritorial sanctions regimes in the Annex in Member States that are reluctant to enforce the EU Blocking Regulation.[263] Notably, this line of reasoning of AG Hogan implicitly acknowledges the possibility that Member States may fail to enforce the EU Blocking Regulation. It suggests that the AG himself has no confidence in relying solely on national public enforcement, being aware that Member States might be unwilling or reluctant to effectively implement the Regulation in practice. However, on the other hand, it could be argued that the objectives of the EU Blocking Regulation are not to protect third-country undertakings which are directly targeted by sanctions.[264] Rather, the Regulation aims to protect the interests of the EU operators and to counter the effects of the listed extraterritorial sanctions legislation.[265] Furthermore, the authorisation mechanism under Article 5(2) does not require the Commission to take into account the interests of third parties when it decides to grant such an exemption.[266] Therefore, why should Article 5(1) be interpreted as doing so? It leads to the situation where a foreign entity obtains a right

[259] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §59.
[260] Advocate General Hogan (n 36) §§77-78.
[261] For an overview see Rovetta D. e.a. (n 158) 50.
[262] Advocate General Hogan (n 36) §§78.
[263] Advocate General Hogan (n 36) §§79-80.
[264] Advocate General Hogan (n 36), §74.
[265] Article 1 EU Blocking Regulation.
[266] Advocate General Hogan (n 36) §73.

of action at the expense of an EU operator, which would be obliged to remain in the contractual relationship.[267]

91. Second, the burden of proof is reversed from the applicant contractual counterparty to the EU operator when the applicant provides *prima facie* evidence that it was to comply with the extraterritorial sanction legislation.[268] The reasoning behind this was to ensure the effectiveness of the compliance prohibition under Article 5(1) of the EU Blocking Regulation.[269] This may be viewed as a measure that intends to safeguard the neutralisation of the extraterritorial effects of secondary sanctions and the interests of the sanctioned contractual counterparty, rather than one aimed at protecting EU operators. However, it may also be argued that EU operators can relatively easily present their decisions as being driven by business or moral considerations, as they can conceal their true motivations by limiting or manipulating corporate documents.[270] This highlights the difficulty national judges may face in determining the genuine reasons behind the termination of a contract. In addition, AG Hogan provided further guidance about the required level of proof by referring to the company's right to make ethical choices in the conduct of its business activities.[271] To provide a sincere termination ground, an EU operator may demonstrate that they actively engaged in a coherent and systemic corporate social responsibility (hereinafter: 'CSR') policy.[272] However, the question arises when a CSR policy can be viewed as coherent and systemic. For example, as mentioned above, in 2012, ING was fined by the OFAC for violations of US sanctions concerning Cuba and Iran. As result, it installed a Financial Economic Crime Policy where it designates States such as Iran and Cuba as UHRCs to refrain from doing business with them.[273] CSR policies may be regarded as dynamic, as they evolve in response to changing societal expectations regarding corporate behaviour.[274] This raises the question of how the requirement for a CSR policy to be 'coherent and systemic' should be interpreted, given

[267] Advocate General Hogan (n 36) §81
[268] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §64-67.
[269] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §65 and Advocate General Hogan (n 36) §§94-96.
[270] Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 525-526.
[271] Van Elsuwege P. and Szép V. (n 11) 90.
[272] Advocate General Hogan (n 36) §87-88.
[273] ING, 'ING Financial Economic Crime Statement' (*ING*, 1 October 2024) <https://www.ing.com/About-us/Compliance/Financial-Economic-Crime-Statement.htm> accessed 12 April 2025. See also a similar approach by BNP Paribas, which installs a Financial Security and Anti Bribery and Corruption Program (BNP Paribas, 'BNP Paribas Group Financial Security and Anti Bribery & Corruption Program' (*BNP Paribas*, 6 November 2023) <https://cdn-group.bnpparibas.com/uploads/file/bnpp_group_financial_security_and_anti_bribery.pdf>).
[274] Latapí Agudelo M.A., Jóhannsdóttir L. and Davídsdóttir B., 'A Literature Review of the History and Evolution of Corporate Social Responsibility' (2019) 4 International Journal of Corporate Social Responsibility 1, 16.

that such policies may change when new ethical concerns arise in relation to specific countries. Could EU operators, like banks, claim that the US withdrawal from the JCPOA indicated Iran's non-compliance with the agreement, thus renewing nuclear risks and conflicting with the EU operators' CSR policy? In other words, would an EU operator's choice to terminate a business relationship with an entity from a third country, such as one connected to a sanctioned regime, be seen as a legitimate reason for termination, given that the entity no longer aligns with the EU operator's CSR policy? Applied to the *Bank Melli Iran* case, the question raises whether, following the AG Opinion, Telekom could argue that the termination ground was sincere as they engaged within their coherent and systemic CSR policy because the inclusion of Bank Melli Iran on the SDN-list was an indication that it did not correspond with their CSR policy. Or should such evidence be derived from a basis other than the actions of a sanctioning third State, such as the US? Conversely, allowing such reasoning as outlined above creates a circumvention opportunity for EU operators who aim to comply with the secondary sanction legislation if they already have a coherent and systemic CSR policy. Such a scenario would undermine the full effect of the policy objective of Article 5(1), which is to counteract and neutralise the effects of the extraterritorial sanctions legislation.[275]

92. On the other hand, the reasoning of the CJEU focuses on the interests of EU operators. First, the CJEU introduces a proportionality-based balancing test.[276] It states that the expected losses of an EU operator must be taken into account, which reflects an intention to protect their interests when such losses would be disproportionate. By assigning such a balancing assessment to the national courts, there remains a possibility for EU operators to be sanctioned with a fine instead of being required to maintain the contractual relationship with the sanctioned contracting party.[277] The CJEU created a narrow opening for EU operators to comply with extraterritorial sanction legislation in the Annex without breaching the EU Blocking Regulation.[278] However, this opening remains limited, as the CJEU's proportionality test takes into account whether the EU operator has requested an authorisation from the Commission.[279] Following the CJEU's preliminary ruling, the German court ruled in 2022 that Telekom had violated the EU Blocking Regulation by terminating the contract due to fear of US sanctions, since it had not

[275] Reasoning in analogy with Advocate General Hogan (n 36) §110.
[276] Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 523.
[277] Challet C. (n 15).
[278] Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 522 and Ryngaert C., Ruys T. and Silvestre F.R., 'De EU en secundaire economische sancties' (2024) 1 SEW 5.
[279] *Ibid*. and *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §93.

requested an authorisation from the Commission first.[280] It appears to imply that, if an EU operator fails to request an authorisation, the termination of the contract may be considered a violation of the Regulation. A possible reasoning is that such a failure indicates that the operator did not consider its own potential economic losses sufficient to attempt to obtain an authorisation. However, the question arises as to what the consequences are in situations where an EU operator does request an authorisation but is refused by the Commission, and the operator nevertheless terminates the contract. It remains unclear whether the assessment of the losses, carried out by national courts in the balancing exercise, is more lenient than that of the Commission under Article 5(2) and its Implementing Regulation (EU) 2018/1101. Or should the Commission's refusal be interpreted, directly or indirectly, as an indication that the anticipated economic losses are not considered disproportionate under the proportionality test?

93. Furthermore, from the CJEU's judgement, it remains vague as to when the economic losses of EU operators must be perceived as 'disproportionate', balanced with the pursuit of the objectives of Article 5(1) EU Blocking Regulation. Therefore, it can be argued that EU operators remain in a state of uncertainty.[281] Such uncertainty may undermine the interests of EU operators, as it remains unclear according to which criteria their potential economic losses will be assessed to determine whether they are disproportionate in the light of the objectives pursued by Article 5(1). Moreover, the legal significance of a Commission refusal to grant an authorisation under Article 5(2) is equally ambiguous.

94. Second, it is oversimplified to say that the CJEU completely ignores the interests of the EU operators in its ruling by allowing the annulment of the termination of the agreement. Within its reasoning, the CJEU seeks to ensure the protection of EU interests and the free movement of capital between Member States and third countries, alongside the removal of restrictions on international trade.[282] The aim to facilitate free trade includes the interests of EU operators, as they benefit from a predictable and stable access to international markets. Moreover, by providing a proportionality-based assessment, the CJEU implicitly recognises the need to balance the burden and limitation placed on EU operators against the other objectives of the EU Blocking Regulation. It suggests that the CJEU sought to strike a balance between the Union's broader geopolitical and legal objectives and the operational realities faced by EU operators. Furthermore, there remains

[280] Hanseatische Oberlandesgericht Hamburg 14 October 2022, 11 U 116/19, §98.
[281] Challet C. (n 15) and Goldman Z., Horn D.M., Kessler J.I., Kamann H-G., Louis F., Meltzer R.I. and Tzifa G., 'Top EU Court Rules on the EU Blocking Regulation Against U.S. Sanctions for the First Time' (2022) 39 Computer and Internet Lawyer 3, 5.
[282] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §37, §48 and §90 and Challet C. (n 15).

a possibility that national courts may choose not to annul the termination of the contract but instead impose only a financial penalty on the EU operator.[283]

iv. Conclusion

95. The *Bank Melli Iran* case is a significant development in the evolution of the EU Blocking Regulation's interpretation, particularly Article 5(1). Overall, the CJEU's judgment seems to shift the burden of enforcement of the Regulation to the private sector.[284]

96. The CJEU places significant emphasis on protecting the EU legal order and interests, as well as on neutralising the effects of the laws listed in the Annex by confirming that EU operators are prohibited from complying with the listed secondary sanctions legislation, even in the absence of a formal order, and that private parties may invoke this provision in civil proceedings. This objective is also confirmed by the reversal of the burden of proof where there is *prima facie* evidence of compliance by the EU operator. At the same time, the CJEU considers the protection of EU operators' interests by recognising that Article 5(1) does not prevent operators from terminating a contract without providing reasons, in the absence of *prima facie* evidence. Additionally, the proportionality-based balancing test also focuses on safeguarding the operators' interests as it takes into account the anticipated economic losses an EU operator might incur if it is obliged to continue the contract. Lastly, the reasoning of both the CJEU and the AG implies an interplay between Articles 5(1) and 5(2) of the EU Blocking Regulation.

97. While the judgment affirms the CJEU's willingness to enforce compliance with the EU Blocking Regulation, it also illustrates the challenges to balance and uphold both objectives.[285] In this context, it is argued that the protection of the EU operators' interests and their freedom to conduct business appears to be secondary to the broader EU policy aims.[286] In conclusion, although the judgment clarifies the scope of the EU Blocking Regulation, its substantive application and the legal consequences of non-compliance remain disputed.[287]

[283] See *supra* para 92.
[284] Szabados T. (n 118) 2.
[285] Szabados T. (n 118), 4.
[286] *Ibid*., 6 and Challet C. (n 15).
[287] Van Elsuwege P. and Szép V. (n 11) 90.

4.7. The authorisation for compliance (Art. 5(2))

a. Content

98. The authorisation under Article 5(2) of the EU Blocking Regulation is an exemption from the compliance prohibition under Article 5(1). Under the second paragraph of Article 5, EU operators have the right to request from the Commission an authorisation to comply, fully or partially, with the secondary sanctions legislation cited in the Annex. An essential condition for granting this exemption is that non-compliance would seriously damage the interests of the EU operator or those of the Union itself. The notion 'serious damage' is not defined by the EU Blocking Regulation. However, it should not be understood as including every inconvenience or damage suffered by EU operators, since, in principle, the listed extraterritorial sanctions legislation should not be complied with within the EU.[288] The CJEU stated in the *Bank Melli Iran* case that Article 5(2) protects the interests of EU operators and their freedom to conduct, and that this provision must be interpreted in the light of that objective.[289]

99. In accordance with Article 5(2), the Commission adopted the Implementing Regulation 2018/1101 in 2018 to lay down the criteria for applying this provision.[290] Following Article 3 of the Implementing Regulation 2018/1101, EU operators must submit their applications in writing to the Commission. To obtain an authorisation, EU operators must include the exact provision(s) of the listed extraterritorial sanctions legislation they would need to comply with, explain the precise scope of the behaviour they want to engage in and explain the damage that would be caused by non-compliance.[291] Importantly, they must provide sufficient evidence that non-compliance would cause serious harm to at least one of the protected interests, namely the interest of the EU operator or the interest of the EU.[292] The evidence provided must be appropriate, which depends on the specifics of each case.[293] Under Article 4 of the Implementing Regulation 2018/1101, the Commission sets out a non-cumulative list of criteria to consider when assessing whether there are serious damages to the protected interests. *Inter alia*, the Commission must assess whether the protected interest is likely to be specifically at risk, based on the context, the nature and the origin of the damage caused to the protected interest, whether there is a substantial

[288] European Commission, Q&A Guidance Note (n 78) point 16.
[289] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §50.
[290] Preamble and Article 1 Implementing Regulation (EU) 2018/1101.
[291] Article 3(2) Implementing Regulation (EU) 2018/1101 and European Commission Q&A Guidance Note (n 78) point 17, first paragraph.
[292] Article 3(3) jo. Article 2(d) Implementing Regulation (EU) 2018/1101.
[293] European Commission, Q&A Guidance Note (n 78) point 17, first paragraph.

link between the third country behind the listed extraterritorial legislation or actions, whether mitigating measures could be reasonably taken, whether the adverse effect on the conduct of economic activity, specifically economic losses, could threaten the viability or pose a serious risk of bankruptcy, or whether the enjoyment of individual rights of the applicant would be significantly hindered. The criteria list of Article 4 ends with a catch-all or open-ended clause, allowing the list of criteria to be non-exhaustive.[294]

100. The Commission is, in principle, responsible for assessing the authorisation, subject to review by the CJEU.[295] Within this procedure, the Commission is assisted by the Committee on Extra-territorial Legislation (hereinafter: 'the Committee'), which is composed of representatives of the Member States and chaired by the representative of the Commission.[296] When, after the assessment of the application, the Commission finds sufficient evidence that non-compliance would cause serious damage, it submits a draft decision with the appropriate measures to the Committee.[297] This Committee shall deliver its opinion on the draft, and eventually, the Commission will grant the authorisation that is in accordance with the opinion of the Committee.[298] However, if the envisaged measures are not in accordance with the opinion, the Commission will submit a proposal relating to the authorisation to the Council, which shall decide by a qualified majority.[299] If there is no response from the Council, then the Commission may adopt the proposed authorisation measures.[300] On the contrary, if the Commission finds that there is insufficient evidence that the non-compliance would seriously harm the protected interests, it submits a draft decision rejecting the application to the Committee and the final decision will be notified by the Commission to the applicant.[301] The authorisation is granted in the form of a Commission Implementing Decision and takes effect on the date it is notified to the applicant.[302]

b. Effectiveness

101. Regarding the EU Blocking Regulation's objective to neutralise the effects of the secondary sanction legislation listed in the Annex, the possibility to obtain an authorisation for compliance does not directly support this aim. However, Article 5(2) requires sufficient

[294] Article 4 (n) 'any other relevant factor', Implementing Regulation (EU) 2018/1101.
[295] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §84.
[296] Article 8(1) EU Blocking Regulation.
[297] Article 5(1) Implementing Regulation (EU) 2018/1101.
[298] Article 8(2) and (3) EU Blocking Regulation.
[299] Article 8(4) EU Blocking Regulation.
[300] Article 8(5) EU Blocking Regulation.
[301] Article 5(2) and (3) Implementing Regulation (EU) 2018/1101.
[302] European Commission, Q&A Guidance Note (n 78) point 20.

evidence of serious damage before such authorisation can be granted. This condition establishes a threshold to ensure that not all harm to the interests of EU operators qualifies as a ground for an exemption from the obligation not to comply with the listed secondary sanctions legislation. As such, Article 5(2) also reflects, to some extent, the EU Blocking Regulation's objective of neutralising the effects of foreign extraterritorial laws. This evidence requirement reinforces the exceptional nature of the authorisation and supports a proportionate approach, which balances the objectives.[303] Moreover, as noted above, when granting authorisation, the Commission may permit EU operators to comply either fully or partially with the listed extraterritorial laws. The explicit inclusion of "fully or partially" in Article 5(2) suggests that the provision takes into account, at least to some extent, the Regulation's objective to neutralise extraterritorial effects. By allowing only partial compliance, the Commission can limit the authorisation to those aspects where non-compliance would cause serious damage to the interests of the EU or the operator. As a result, any remaining provisions of the foreign sanctions law that are not covered by the authorisation continue to be subject to the prohibition in Article 5(1) and must not be complied with. This textual nuance shows that, although Article 5(2) primarily aims to protect EU operators' interests, it does not entirely overlook the objective of neutralising the effects of foreign extraterritorial legislation. Finally, the Commission also notes that the authorisation procedure should not be used to seek 'letters of comfort' by EU operators or confirmation that their business decisions are in line with the EU Blocking Regulation.[304] This emphasises the exceptional nature of authorisations under Article 5(2) and reinforces that it is not intended as a substitute for legal certainty or to circumvent the Article 5(1) prohibition. The Commission's statement implies that requests for authorisation must be based on evidence of serious damage, rather than on speculative or strategic concerns.

102. Regarding the objective to protect the interests of EU operators and those of the EU, the CJEU has held in the *Bank Melli Iran* case that the interests of EU operators and their freedom to conduct business are protected by Article 5(2).[305] Accordingly, the Commission Guidance Note states that Article 5(2) of the EU Blocking Regulation protects the EU operators because it allows in specific and duly motivated circumstances, as a derogation to the rule under Article 5(1), that EU operators could be authorised by the Commission to comply with the listed extraterritorial legislation.[306] However, there might be certain factors which discourage EU operators from using the authorisation possibility. First, an EU

[303] De Vries A. (n 187) 349.
[304] European Commission, Q&A Guidance Note (n 78) point 16.
[305] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §50.
[306] European Commission, Q&A Guidance Note (n 78) point 4, third paragraph.

operator may refrain from requesting authorisation to avoid attracting unwanted attention from the Commission. EU operators who are unwilling to disregard the listed extraterritorial legislation might consider applying for authorisation. However, if the request is denied, concerns may arise about increased scrutiny. The EU operator may worry that the Commission will notify the responsible Member State authorities to monitor its activities, ensuring it does not circumvent the foreign sanctions regime in another manner.[307]

103. Second, there is legal uncertainty regarding what types of damage qualify as sufficiently serious to justify an authorisation under Article 5(2). Although Article 4 of the Implementing Regulation 2018/1101 offers some clarification, uncertainty remains, particularly concerning the threshold that must be met for damages to be deemed 'serious'.[308] According to EU operators, the criteria for assessing applications are not clear.[309] This is further affected by the lack of transparency concerning the Commission's decision-making process: its authorisation decisions are not made public, nor is there any official communication on the number of applications submitted or approved.[310] As a result, EU operators have no insight into how the Commission interprets or applies the criteria laid out in Article 4 of the Implementing Regulation 2018/1101. Moreover, the procedure itself may deter EU operators, given that it can be lengthy and administratively burdensome, requiring significant investment.[311] Additionally, there is no clarity regarding the time limit within which the Commission should decide on an authorisation application. The deadlines of US court orders (e.g. to provide evidence) can be relatively short, which requires a rapid response from the Commission and the Committee, especially in cases where investigations have already started.[312] The Commission merely states that it will process requests and respond 'as swiftly as possible', without specifying a fixed deadline.[313] It states that the duration of the authorisation procedure depends on various factors, including the complexity and completeness of the application.[314]

[307] Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 524 and Van der Aa N.M.D. and Stax S.H., 'Amerikaanse sancties op Iran en de Europese blokkeringsverordening: Europese ondernemingen in een lastige spagaat' (2019) Nederlands tijdschrift voor Europees recht 71, 75.
[308] Ruys T. and Ryngaert C. (n 6) 86 and Szabados T. (n 118) 11.
[309] European Commission, Results of the Open Public Consultation (n 88) 3.
[310] Ruys T. and Ryngaert C. (n 6) 86.
[311] Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 524 and European Commission, Results of the Open Public Consultation (n 88) 3.
[312] De Vries A. (n 187) 349.
[313] European Commission, Q&A Guidance Note (n 78) point 19.
[314] *Ibid*.

104. Third, the application for an authorisation does not have suspensive effects. Consequently, EU operators are still obliged to comply with the prohibition under Article 5(1) of the EU Blocking Regulation until the Commission issues its authorisation decision. During this period, they may be exposed to penalties imposed by the sanctioning third State, such as the US.[315] This concern was also expressed by respondents of the Commission's public consultation, who suggested that the compliance prohibition should be suspended until the Commission's decision, that automatic authorisation should be granted when specific objective criteria are met, or authorisation should be presumed if the Commission fails to decide within a specified period.[316] On the other hand, introducing suspensive effects or automatic authorisation could create a temporary means for EU operators to comply with extraterritorial legislation. Such mechanisms may be vulnerable to abuse if EU operators repeatedly submit applications, each time claiming new elements, while in reality they use it strategically to circumvent both foreign and Member State sanctions.

105. Lastly, even if an authorisation is granted, the risk remains that the primary sanctioned contracting party of the EU operator will challenge the Commission's decision that permits compliance with foreign sanctions legislation. This is illustrated by the *IFIC Holding AG v Commission*[317] case and the pending *Middle East Bank, Munich Branch v Commission*[318] case, discussed below.

106. In conclusion, although the primary objective of Article 5(2) of the EU Blocking Regulation is not to neutralise the effects, there are elements within the provision which indicate that the EU legislator still took this objective into account to a certain extent by requiring serious damage for the authorisation to be granted and by allowing the Commission to grant partial compliance with the listed laws in the Annex. The main objective of Article 5(2) is to protect the interests of the EU operators and those of the Union. And although this provision should be interpreted in light of this objective, its full effectiveness is limited by several practical and legal constraints. The absence of transparency in the Commission's decision-making process, the legal uncertainty regarding the interpretation of 'serious damage' and the criteria of the Implementing Regulation, the lack of a fixed time limit for decisions, and the non-suspensive effect of the

[315] Szabados T. (n 118) 11.
[316] AFEP, 'Public consultation on the review of the EU blocking Statute (Regulation (EC) n°2271/96) – comments by AFEP (French association of large companies)' Ref. Ares(2021)6840659 (2021) 2 and European Commission, Results of the Open Public Consultation (n 88) 6.
[317] Judgment of 12 July 2023, *IFIC Holding AG v European Commission*, Case T-8/21, EU:T:2023:387.
[318] Action brought on 21 August 2023, *Middle East Bank, Munich Branch v Commission*, T-518/23.

application may deter EU operators from relying on the authorisation procedure. These limitations could undermine the provision's objective of protecting the relevant interests, and consequently also reduce the effectiveness of the EU Blocking Regulation.

c. IFIC Holding AG (T-8/21)

107. The following part analyses the *IFIC Holding* case to evaluate whether it has had an impact on the effectiveness of the EU Blocking Regulation and, if so, to what extent. This is particularly relevant, as the GC sought to rule on the validity of the Commission's authorisation decisions under Article 5(2).

i. Background

108. The applicant, IFIC Holding AG (hereinafter: 'IFIC'), installed an action before the GC seeking the annulment of the Commission Implementing Decision C(2020) 2813 final of 28 April 2020, Commission Implementing Decision C(2021) 3021 final of 27 April 2021 and Commission Implementing Decision C(2022) 2775 final of 26 April 2022, all three granting an authorisation to Clearstream Banking AG (hereinafter: 'Clearstream') under Article 5(2) of the EU Blocking Regulation.

109. IFIC's shares are held indirectly by the Iranian State, and since 5 November 2018, the company has been included in the US OFAC SDN-list.[319] Clearstream Banking AG, a German securities depository, was responsible for transferring dividend payments to IFIC arising from its shareholdings in German companies.[320] However, since November 2018, Clearstream blocked the dividends payable to IFIC on a separate account and has refused to pay them to the company.[321] On 8 November 2018, Clearstream submitted an authorisation request with the Commission under Article 5(2) of the EU Blocking Regulation.[322] In response, the Commission granted Clearstream's application and authorised it to comply with certain US secondary sanction laws concerning IFIC's securities or funds, for 12 months.[323] The following two Commission Decisions, of 2021 and 2022, each renewed the contested authorisation again for a period of 12 months.[324]

110. IFIC contends, first, that the Commission failed to fulfil its duty to state reasons; second, that the Commission infringed Article 5(2) of the EU Blocking Regulation by

[319] *IFIC Holding v Commission* (n 39) §§4-5.
[320] *Ibid.,* §6.
[321] *Ibid.,* §7.
[322] *Ibid.,* §10.
[323] *Ibid.,* §11.
[324] *Ibid.*

granting retroactive authorisation; third, that the Commission failed to exercise its discretion or made an error of assessment; and fourth that the Commission infringed IFIC's right to be heard deriving from Article 41 of the Charter.

ii. The GC's judgment

111. Firstly, IFIC argued that the Commission failed to fulfil its duty to state sufficient reasons in its first contested decision and that the wording of certain provisions in the decision was ambiguous.[325] The GC held that the operative provisions of the decisions were clear as to their material scope, temporal scope, and conditions for applicability.[326] Therefore, there was no failure to state reasons, and the GC dismissed the plea.

112. Secondly, IFIC argued that the Commission infringed Article 5(2) of the EU Blocking Regulation by granting retroactive authorisation, although neither the Implementing Regulation (EU) 2018/1101 nor the Commission's guidelines provide for such a possibility.[327] Furthermore, IFIC claimed that the authorised measures (freezing of assets) had already been carried out prior to the authorisation being granted.[328] The GC rejected this argument, stating that there is no indication in the contested decisions that they have a retroactive effect. On the contrary, the decisions explicitly specify that they are valid from the date of their notification and for one year, thereby excluding any retroactive application.[329] In addition, the question of whether Clearstream violated the EU Blocking Regulation prior to authorisation was irrelevant to the legality of the Commission's decisions.[330]

113. Thirdly, the applicant contended that the Commission failed to exercise its discretion or erred in its assessment by not considering IFIC's specific situation and the severe impact of the first contested decision, which rendered it unable to operate.[331] The Commission also allegedly failed to assess whether less restrictive measures existed or to address the applicant's right to compensation for the damage suffered.[332] The GC reasons that Article 5(2) of the EU Blocking Regulation only requires the Commission to assess the interests of the EU and the EU operators, and not those of third parties such

[325] *IFIC Holding v Commission* (n 39) §24.
[326] *Ibid.,* §§35-37, §§44-46, §§38-42.
[327] *Ibid*., §54.
[328] *Ibid*., §59.
[329] *Ibid*., §§56-57.
[330] *Ibid*., §§59-60.
[331] *Ibid.,* §62.
[332] *Ibid.*

as IFIC.[333] Furthermore, there is no obligation for the Commission to explore alternatives or compensation possibilities for the third party.[334] The Commission's reference to Clearstream's risks, including investigations against its sister company, was valid and constituted sufficient damage under the criteria of Article 4 (c) of the Implementing Regulation 2018/1101.[335] In effect, the GC also dismissed this argument as it did not provide a basis for concluding that the Commission made an error of assessment.[336]

114. Lastly, IFIC claimed that the Commission violated its right to be heard under Article 41 of the Charter because it was adversely affected by the authorisation and the Commission did not provide any opportunity to make its views known before the adoption of the decisions.[337] The GC dismissed IFIC's arguments. It reasoned that the EU Blocking regulation and the Implementing Regulation 2018/1101 did not provide sanctioned third parties, such as IFIC, the right to participate in the authorisation procedure.[338] Therefore, the Commission is not required to consider the interests of third parties to the authorisation procedure.[339] Moreover, allowing such participation could jeopardise the objective to protect the interests of the EU and the EU operators.[340] As a result, there was no limitation on the right to be heard, and the Commission was not required to hear IFIC during the authorisation procedure.[341]

115. In conclusion, the GC dismissed all four pleas brought by IFIC and upheld the legality of the Commission's authorisation decisions under Article 5(2) of the EU Blocking Regulation. There was also no appeal installed against the GC judgment.

iii. Analysis of the judgment in light of the effectiveness

116. To a certain extent, the GC's judgment elaborates the substantive and procedural elements of the authorisation procedure under Article 5(2) of the EU Blocking Regulation. Notably, it clarifies that the Commission is under no obligation to consider the interests of EU persons targeted by the listed foreign legislation, nor to give effect to their right to be heard, nor to examine whether less restrictive alternatives to authorisation are available.[342]

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[333] *IFIC Holding v Commission* (n 39) §§67-75.
[334] *Ibid.*, §§76-81.
[335] *Ibid.*, §§85-89.
[336] *Ibid.*, §§92-93.
[337] *Ibid.*, §94.
[338] *Ibid.*, §§107-109 and §117.
[339] *Ibid.*, §§68-75 and §111.
[340] *Ibid.*, §§113-114.
[341] *Ibid.*, §§118-120.
[342] Kneller E. and Matthaiou A., 'General Court clarifies the application of the EU Blocking Statute (Case T-8/21)' (*EU Law Live*, 11 September 2023) <https://eulawlive.com/analysis-eu-law-live-analysis-general-

117. First, regarding the relevant interests in the authorisation procedure, the GC held that only two sets of interests must be considered by the Commission: those of EU operators and of the Union itself. [343] The GC reasoned that if the EU legislature had wanted to include the interests of third parties sanctioned by foreign restrictive measures, it would have expressly stated so.[344] This interpretation aligns with the CJEU's reasoning in the *Bank Melli Iran* case, where it noted that Article 5(2) must be interpreted in light of its objective to protect those specific interests.[345] However, this interpretation raises concerns, particularly in instances where the sanctioned third party is an EU operator itself.[346] If the contracting party of the EU operator applying for authorisation is also protected under the Regulation, it could be argued that its interests should be considered, given that the protection of EU operators is a core objective of the EU Blocking Regulation and especially of Article 5(2). On the other hand, requiring the Commission to consider third party interests may impose an additional administrative burden, especially in light of the existing criticisms regarding the length and complexity of the authorisation procedure.[347] Importantly, there is a distinction between the *Bank Melli Iran* case and the *IFIC Holding v Commission* case regarding their perspectives on the involvement of third parties. In *Bank Melli Iran*, the CJEU recognised that a sanctioned third party may rely on Article 5(1) of the EU Blocking Regulation in civil proceedings before the national courts.[348] In the case of *IFIC Holding v Commission*, the GC determined that the interests of sanctioned third parties must not be taken into account during the authorisation process under Article 5(2), and that these parties do not possess the right to be heard within this procedure.[349] Thus, the position of EU courts on third parties differs based on the paragraphs of Article 5 and, consequently, on the objectives that these paragraphs prioritise.

118. Second, the GC confirmed that the Commission fulfils its obligation to state reasons by setting out the relevant legal basis in its authorisation decision, identifying the permitted conduct for the EU operator (such as freezing assets or refusing transactions), and specifying the temporal scope of such permission. *In casu*, each decision was limited in

court-clarifies-the-application-of-the-eu-blocking-statute-case-t-8-21-by-elyse-kneller-antigoni-matthaiou/> accessed 16 February 2024.
[343] *IFIC Holding v Commission* (n 39) §68.
[344] *Ibid*.
[345] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §50.
[346] Clarke R., 'Derogation decisions and encouragement for the EUBR: IFIC Holding v. Commission' (2024) 61 CML Rev. 805, 816.
[347] See *supra* para 103.
[348] See *supra* para 85.
[349] See *supra* para 113.

duration, authorising the permitted conduct for 12 months only.[350] Additionally, the decisions explicitly stated that the authorisation would cease to apply if IFIC were to be removed from the SDN list or if Clearstream obtained a waiver from the US for the application of the extraterritorial laws.[351] The GC's reasoning thus indicates that this level of detail is sufficient to satisfy the Commission's duty to explain its decision. However, this raises the question of whether such reasoning would still be adequate in cases where the authorisation decision is not time-limited but merely linked to the continued listing of the sanctioned counterparty on the SDN list or their designation under primary sanctions. The absence of a fixed time frame in such cases may necessitate a more detailed justification from the Commission to ensure compliance with its obligation to state reasons.

119. Third, the GC clarified that the authorisation decisions do not have a retroactive effect. Therefore, although the EU operator received an authorisation, it can still be sanctioned for violating the compliance prohibition under Article 5(1). However, it is conceivable that no enforcement action will be taken against this EU operator, as it has already received authorisation.[352] Furthermore, the GC clarifies that nothing in the EU Blocking Regulation excludes that an EU operator who violated Article 5(1) could obtain a derogation afterwards under Article 5(2).[353] On this aspect, it also states that it is not for the GC to determine if there was a violation of the compliance prohibition by Clearstream, as it constituted an annulment procedure.[354] It implies that before the GC, such factual elements will not be taken into account when evaluating the validity of the Commission decision. This grants the Commission broad discretion.

120. Lastly, it is worth noting that this judgment aims to protect the interests of the EU operators and the EU. To start, it confirms that the GC does not easily annul authorisation decisions. Furthermore, by excluding the interests of third parties in the authorisation procedure, the GC focuses on the interests of the EU operators and the effectiveness of that provision.[355] Additionally, EU operators could seek and obtain such a derogation even if they are already in compliance with extraterritorial sanctions legislation.[356]

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[350] *IFIC Holding v Commission* (n 39) §§44-46.
[351] *Ibid.,* §§49-50.
[352] Clarke R., 'Derogation decisions and encouragement for the EUBR: IFIC Holding v. Commission' (2024) 61 CML Rev. 805, 820.
[353] *IFIC Holding v Commission* (n 39) §129.
[354] *Ibid*.
[355] *IFIC Holding v Commission* (n 39) §§67-81.
[356] *Ibid*., §129.

121. The CG emphasised in its judgment that there is no legal obligation for the Commission to publish its decisions.[357] It implies, on the one hand, that EU operators will not be able to read the decisions to understand better how the Commission applies the authorisation criteria under Article 4 of the Implementing Regulation 2018/1101. On the other hand, it does allow for the authorisation procedure and decision to be private and confidential.[358]

122. In conclusion, the GC's judgment clarifies the scope and procedure of the authorisation process under Article 5(2) of the EU Blocking Regulation. Still, it raises concerns about achieving its core objectives. While the GC affirms that the Commission must protect the interests of EU operators and the EU, the exclusion of third party interests, which could be EU operators themselves, limits the Regulation's protective reach for them. However, at the same time, considering only those two interests serves the EU operator requesting the authorisation. The lack of retroactive effect and the Commission's broad discretion may weaken the protection of EU operators' interests. Additionally, the absence of publication reduces transparency, which complicates both legal certainty and future reliance by EU operators. Overall, the judgment provides some protection but falls short in effectively neutralising the impact of extraterritorial sanctions.

d. Middle East Bank, Munich Branch v Commission (T-518/23)

i. Background

123. On 21 August 2023, the Munich Branch of Middle East Bank, as the applicant, brought an action before the GC to annul the Commission's implementing decision of 27 April 2023 under Article 5(2) of the EU Blocking Regulation in favour of Clearstream Banking AG vis-à-vis the applicant. The case is still pending before the GC, and therefore, the background and factual details have not yet been made public. However, the applicant's legal pleas and main arguments are available for review.

124. First, the applicant argues that the contested decision granted authorisation under Article 5(2) with retroactive effect to the date of the application, 26 February 2021.[359] This order of retroactive effect breaches EU principles, as Article 5(2) does not provide for such

[357] *Ibid*., §137.
[358] Clarke R., 'Derogation decisions and encouragement for the EUBR: IFIC Holding v. Commission' (2024) 61 CML Rev. 805, 823-824.
[359] Action brought on 21 August 2023, *Middle East Bank, Munich Branch v Commission*, T-518/23, first plea in law.

effect. Furthermore, the applicant held that the Commission's Guidance Note confirms the absence of suspensive effect. Therefore, he claimed to have a legitimate expectation that any decision under Article 5(2) would not have retroactive effect. The Commission's deviation from this undermines the legal certainty and violates legitimate expectations.

125. In its second plea, the applicant alleges that the Commission infringed the right to a fair hearing due to a lack of disclosure of the full decision.[360] Consequently, the principle of legitimate expectations and the right to a fair administrative procedure were infringed.

126. Thirdly, the applicant argues that the Commission incorrectly exercised its discretion and failed to apply the principle of proportionality under Article 4 of Implementing Regulation 2018/1101[361]. The applicant contends that the Commission either was unable to exercise its discretion or exercised it improperly by not considering less restrictive means. Specifically, the Commission did not take into account that humanitarian transactions involving the applicant would not have triggered US sanctions under paragraph 11 of Executive Order 13902. By authorising the freezing of all funds without excluding humanitarian transactions, the Commission, according to the applicant, breached its obligation to assess less restrictive alternatives and thus infringed the principle of proportionality.

127. These pleas are similar to the arguments raised in the *IFIC Holding* case. In both instances, applicants challenged the lawfulness of the Commission's authorisation decisions on grounds of retroactivity, procedural fairness, and failure to consider less restrictive alternatives. Regarding the retroactive effects, the plea suggests that in this case, the Commission explicitly ordered such retroactivity. However, unlike in the *IFIC Holding* case, the present case raises additional questions concerning the scope of humanitarian exemptions and the extent of the Commission's discretion when foreign sanctions will not trigger a specific transaction. The pending decision will reveal whether the GC continues the narrow interpretative approach of the *IFIC Holding* case, or whether it acknowledges greater procedural and substantive obligations for the Commission under Article 5(2).

[360] *Ibid*., second plea in law.
[361] *Ibid*., third plea in law.

4.8. The compensation right (Art. 6)

a. Content

128. Article 6 of the EU Blocking Regulation entitles EU operators to bring an action to recover any damages, including the legal costs, caused by the application of the extraterritorial sanction legislation in the Annex or actions based on them. This provision is commonly referred to as the 'clawback' right or the right to private enforcement.[362] The scope of the damages that the EU operator can recover is broad, encompassing any damages, including legal costs. This interpretation aligns with the protective objective of the EU Blocking Regulation.[363] In addition, EU operators can seek compensation from the natural or legal person or any other entity causing the damages, including any person acting on their behalf or any intermediary.[364] The identity of the defendant in such private proceedings will depend on the specific facts of the case and the party responsible for the damage.[365] However, it must be noted that the wording of Article 6 is broad and thereby includes both the responsible entities and their representatives.[366] Therefore, to succeed in such a private claim, the EU operator must prove the damages that it suffered and the act or compliance of a natural or legal person or any other entity or from any other person acting on its behalf or intermediary which caused the damage.[367] The latter necessarily requires a causal link between the suffered damage and the other person's compliance with the relevant sanctions legislation.[368]

129. In support of this compensation right, Article 6(4) of the EU Blocking Regulation provides that, without prejudice to other available remedies, recovery may take the form of seizure and sale of assets held by the relevant persons or entities within the EU, including shares in legal persons incorporated within the Union. DE VRIES clarifies that while assets subject to recovery can include shares in an EU-based subsidiary of a US company, a clawback action cannot be brought directly against the subsidiary (e.g. Opel AG in Germany) for actions taken by its US parent company (e.g. General Motors).[369] This is because the subsidiary is considered a separate legal entity and therefore cannot be

[362] Ruys T. and Ryngaert C. (n 6) 24 and 93.
[363] European Commission, Q&A Guidance Note (n 78) point 12.
[364] Article 6(2) EU Blocking Regulation.
[365] European Commission, Q&A Guidance Note (n 78) point 13, second paragraph.
[366] *Ibid*., third paragraph.
[367] Article 6(1) and (2) EU Blocking Regulation.
[368] Ruys T. and Ryngaert C. (n 6) 95.
[369] De Vries A. (n 187) 350.

held responsible for the actions of its parent company or controlling shareholder based outside the EU.[370]

130. Proceedings brought and judgments given under Article 6 of the EU Blocking Regulation fall within the scope of Regulation (EU) No 1215/2012 of 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[371] (hereinafter: 'Brussels I*bis* Regulation'), which is part of the EU's international private law framework.[372] This regulation applies to civil and commercial matters but excludes actions concerning the liability of a State for acts and omissions in the exercise of State authority.[373] In principle, where the defendant in an action under Article 6 is domiciled in a Member State, the jurisdiction lies with the courts of that Member State.[374] However, if the defendant is not domiciled in an EU Member State, jurisdiction of the courts of each Member State will be determined by the law of that Member State.[375] Additionally, Article 6(3) of the EU Blocking Regulation provides that compensation may also be obtained through judicial proceedings brought in the Courts of any Member State where the person, entity or intermediary causing the damages holds assets.

131. Historically, the compensation right under Article 6 is a response to the private enforcement right that was laid down in Title III of the US Helms-Burton Act, which allowed US persons to start a civil action against every individual or entity 'trafficking' in properties confiscated by the Cuban Government after the Cuban Revolution.[376] The clawback provision is therefore supposed to be a counter-reaction to provide EU operators, who were victims of such civil actions, also to have a claim against the US persons initiating the civil actions.[377] The EU aimed to mitigate the extraterritorial effects of sanctions laws by granting EU operators the right to obtain recovery from the natural or legal person, or any entity, causing the damage.[378]

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[370] *Ibid*.
[371] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (2012) OJ L351, 1-32.
[372] Article 6(3) EU Blocking Regulation *jo*. European Commission, Q&A Guidance Note (n 78) point 15. Note that Article 6(3) has not been amended and still refers to the Brussels Convention of 1968 as the EU Blocking Regulation was adopted in 1996. Since 2012 the Brussels Convention was replaced by the Brussel I*bis* Regulation.
[373] Article 1(1) Brussel I*bis* Regulation.
[374] Article 4(1) Brussel I*bis* Regulation.
[375] Article 6(1) Brussel I*bis* Regulation.
[376] De Vries A. (n 187) 350 and Ruys T. and Ryngaert C. (n 6) 94.
[377] De Vries A. (n 187) 350.
[378] Ruys T. and Ryngaert C. (n 6) 93.

b. Effectiveness

132. The objective of the compensation right is to protect EU operators, as it legally empowers them to seek compensation for losses they have suffered from the application of the listed extraterritorial sanction legislation.[379] Furthermore, it aims to mitigate the application of secondary sanctions by providing a recovery, rather than neutralising or counteracting their effects within the EU.

133. The exact scope of the compensation right under Article 6 is not completely clear. It is uncertain how and especially against whom this right can be exercised.[380] The EU operator who suffered damages cannot claim recovery from the State imposing the sanction or its authorities.[381] This stems, on the one hand, from Article 1(1) of the Brussels I*bis* Regulation, which explicitly excludes from its scope the State liability for acts or omissions carried out in the exercise of public authority (*acta jure imperii*). On the other hand, it also follows from customary international law, which recognises State immunity as a procedural bar that prevents domestic courts from exercising jurisdiction in proceedings brought against a foreign State. [382] In practice, this means that an EU operator who suffered damages due to the US OFAC, which administers and enforces economic and trade sanctions,[383] cannot request compensation. Therefore, the EU Blocking Regulation only foresees that EU operators can initiate a compensation action against other private actors that caused damage by complying with the extraterritorial laws in the Annex.[384]

134. The abovementioned concerns were also noted by respondents of the Commission's public consultation. It was stated that the provision is difficult to trigger because the procedure is unclear, it is difficult to identify the defendant and its assets within the EU, and further, there arise sovereign immunity issues when a foreign public authority caused

[379] European Commission, Q&A Guidance Note (n 78) point 4, second paragraph.
[380] Ruys T. and Ryngaert C., (n 6) 94; Szabados T. (n 118) 10 and Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 525.
[381] Szabados T. (n 118) 10; Ruys T. and Ryngaert C. (n 6) 96; Ryngaert C., 'De Europese 'Blocking Statute': Een probaat middel om het Europese bedrijfsleven te beschermen tegen de Amerikaanse secundaire sancties tegen Iran?' (2019) 4 SEW 157, 164 and Van der Aa N.M.D. and Stax S.H., 'Amerikaanse sancties op Iran en de Europese blokkeringsverordening: Europese ondernemingen in een lastige spagaat' (2019) Nederlands tijdschrift voor Europees recht 71, 75-76.
[382] Ruys T. and Ryngaert C. (n 6) 96.
[383] Office of Foreign Assets Control, 'Basic Information on OFAC and Sanctions' (*US department of treasury*, 21 August 2024) <https://ofac.treasury.gov/faqs/topic/1501#:~:text=The%20U.S.%20Department%20of%20the,international%20narcotics%20traffickers%2C%20weapons%20of> accessed 3 April 2025.
[384] Ryngaert C., 'De Europese 'Blocking Statute': Een probaat middel om het Europese bedrijfsleven te beschermen tegen de Amerikaanse secundaire sancties tegen Iran?' (2019) 4 SEW 157, 164 and Szabados T. (n 118) 10.

the damages.[385] Overall, many respondents indicate that this provision does not protect the interests of the EU operators. Furthermore, other questions arise, for instance, what should be done when the damage is suffered in more than one country.[386]

135. No publicly reported or documented cases of private damages claims brought under Article 6 of the EU Blocking Regulation have been found. Nevertheless, there are conceivable scenarios in which the right to compensation could become relevant. As a first example,[387] a US and EU company may be negotiating an energy project in Iran. The US company withdraws from the project due to concerns about US sanctions. In such a scenario, the European company could file a damage claim against the US company. In a second scenario,[388] two EU-based companies have a contractual agreement to export gold to Iran. One of them has a US-based parent company and fears US sanctions. Therefore, it withdraws from the arrangement. Here, the EU operator, being the contractual counterparty, could rely on Article 6 to seek compensation. A third example[389] involves an EU-based bank that cannot execute a European customer's request to transfer money to Iran because its US correspondent bank refuses the transaction due to US sanctions against Iran. The EU customer could try to obtain compensation from the European bank. In a final scenario, an EU company imports Iranian oil or other sanctioned products through an intermediary vessel shipping company. However, a central issue in each of these scenarios is whether the EU operator must demonstrate that the counterparty complied with the extraterritorial laws listed in the Annex, and, if so, how such conduct can be proven. This also raises the question of whether any form of fault or intent on the part of the counterparty must be proven.

136. Despite its limitations, Article 6 also exhibits characteristics that may protect the interests of EU operators. First, both the types of damages that an EU operator can recover and the private actors against whom such damage can be claimed are broadly defined. Although it could be argued that this creates uncertainty, the wide interpretation aligns with the protective aim of the EU Blocking Regulation and may facilitate a broader scope of

[385] European Commission, Results of the Open Public Consultation (n 88) 4 and Fondation pour le Droit Continental, 'Synthese: consultation sur la revision de la loi de blocage [Reglement (CE) N° 2271/96]' Ref. Ares(2021)6840648 (2021) 6-7.
[386] Szabados T. (n 118) 10.
[387] Ryngaert C., 'De Europese 'Blocking Statute': Een probaat middel om het Europese bedrijfsleven te beschermen tegen de Amerikaanse secundaire sancties tegen Iran?' (2019) 4 SEW 157, 165 and Jones M. and Bailes E., 'US Iran Sanctions and the EU Blocking Regulation – private law claims for damages' (*Lexology*, 31 July 2018) <https://www.lexology.com/library/detail.aspx?g=972bcc34-c050-4982-bd66-85906b55f6a7> accessed 2 April 2025.
[388] *Ibid*.
[389] Ruys T. and Ryngaert C. (n 6) 94.

protection of the EU operators.[390] It creates more possibilities for EU operators to seek redress. This broad interpretation allows flexibility in determining the liable party and the types of recoverable damages, which strengthens the protection and position of EU operators. Second, an EU operator may invoke its compensation right in situations where its contracting party, also an EU operator, has received an authorisation from the Commission to terminate the contract or to freeze assets, as was the case in *IFIC Holding*. In that case, the GC recognised that the third party targeted by foreign restrictive measures could be an EU operator, and that, even in such circumstances, the Commission could still grant an authorisation.[391] Moreover, nothing in the EU Blocking Regulation stipulates that the right under Article 6 disappears when the Commission authorises an EU operator to comply with the listed secondary sanctions laws.[392] This creates an interplay between Article 5(2) and Article 6 of the EU Blocking Regulation. The right to recover damages from a contracting party that is also an EU operator is a remedy for the harm suffered following the authorisation granted to that contracting party. However, it should be noted that this 'clawback' is available exclusively to EU operators.[393] Consequently, if the counterparty of the EU operator receiving the authorisation is a third-country person or entity, they will not be entitled to rely on the compensation right under Article 6.

4.9. The enforcement provision (Art. 9)

a. Content

137. Article 9 of the EU Blocking Regulation provides that each Member State must determine the sanctions to be imposed in case of infringement of the relevant provisions of this Regulation. The sanctions must be effective, proportional and dissuasive, which are the exact requirements as those in the event of a breach of EU law.[394] In other words, they must be capable of ensuring effects, have a deterrent effect and be adequate in relation to the damage.[395]

138. Member States have the discretion to choose penalties that they find appropriate. However, they must still take into account EU law and the general principles, including

[390] European Commission, Q&A Guidance Note (n 78) point 12 and 13.
[391] *IFIC Holding v Commission* (n 39) §71.
[392] Ruys T. and Ryngaert C. (n 6) 95.
[393] Article 6(1) EU Blocking Regulation.
[394] Advocate General Hogan (n 36) fn 63.
[395] Advocate General Hogan (n 36) fn 63 *jo*. judgment of 10 April 1984, *von Colson and Kamann*, C-14/83, EU:C:1984:153, §28.

fundamental rights and freedoms.[396] Furthermore, where national law provides for the imposition of a fine, the national court must take into account the individual circumstances of the person responsible for the infringement when determining the amount.[397] This assessment may also consider other types of sanctions, such as annulment of the contract termination at issue.[398] Ultimately, it is for national courts to assess whether the sanctions applied meet the general EU law principles and are effective, proportionate, and dissuasive in light of all the circumstances.[399]

139. The principle of proportionality requires that the penalties imposed reflect the seriousness of the facts.[400] In the context of the EU Blocking Regulation, the severity of the facts, for example, may depend on the continuous nature of the EU operator's conduct or the nature or severity of the foreign sanctions in question.[401] Secondly, sanctions must also be dissuasive, meaning that they should present a credible threat to EU operators to deter violations.[402] Therefore, penalties that may be imposed under national law must be at least equivalent to the severity of those under the extraterritorial laws listed in the Annex.[403] Otherwise, if the sanctions in the Member States are seen only as an additional compliance cost, EU operators may prefer to comply with the foreign legislation listed in the Annex, rather than adhering to the EU Blocking Regulation.[404] EU operators will likely align their behaviour with the EU Blocking Regulation and disregard the US extraterritorial laws only if they see that the Regulation is enforced as strictly as US sanctions legislation.[405] Nevertheless, this deterrence does not require that the maximum sanction must always be imposed, as the threat itself of such sanctions is sufficient to create a deterrent effect.[406] Moreover, the CJEU has stated that sanctions must reflect the seriousness of the infringement to ensure they have a genuine deterrent effect while also respecting the general principle of proportionality.[407]

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[396] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §72 *jo*. judgment of 11 February 2021, *K.M.*, C-77/20, EU:C:2021:112, §36.
[397] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §94.
[398] *Ibid*.
[399] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §73 *jo*. judgment of 5 March 2020, *OPR-Finance*, C-679/18, EU:C:2020:167, §27
[400] Advocate General Hogan (n 36) fn 62.
[401] *Ibid*.
[402] *Ibid*., §80.
[403] *Ibid*., fn 64.
[404] *Ibid*.
[405] Stoll T., Blockmans S., Hagemejer J., e.a., 'Extraterritorial Sanctions on trade and investments and European responses' (European Parliament DG for external policies 2020) 65.
[406] Advocate General Hogan (n 36) fn 64.
[407] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §73 *jo*. judgment of 5 March 2020, *OPR-Finance*, C-679/18, EU:C:2020:167, §26.

140. According to AG Hogan, the notion 'sanction' within the context of the EU Blocking Regulation should be interpreted broadly to include not only criminal and administrative sanctions, but also civil sanctions.[408] As Article 9 of the EU Blocking Regulation refers to the applicable sanction regimes, it should be derived that these various sanctions must all satisfy the criteria of being effective, proportionate and dissuasive.[409] This interpretation ensures that Member States are not limited to punitive sanctions in the traditional sense but may also use the civil remedies, the compensation claims under Article 6, or private proceedings relying on Article 5(1), to contribute to the deterrent and protective function of the Regulation. Consequently, the EU Blocking Regulation has a multifaceted enforcement regime as it reinforces its objectives through both public and private proceedings, rather than solely prescribing criminal prosecution.

141. In conclusion, by requiring Member States to impose sanctions that are effective, proportional and dissuasive, Article 9 seeks to ensure the effective application of the EU Blocking Regulation's provisions.[410] Such sanctions must therefore be imposed, *inter alia*, when an EU operator violates the prohibition laid down in Article 5(1).

b. Effectiveness

142. To begin, it is essential to note that the Member States' authorities are responsible for implementing the EU Blocking Regulation, including the adoption and enforcement of penalties for potential breaches.

143. The aim of Article 9 of the EU Blocking Regulation is to ensure compliance with the EU Blocking Regulation. A strong and consistent enforcement is crucial for the effectiveness of the Regulation, including the neutralisation of the effects of the listed secondary sanctions legislation.[411] However, the legal doctrine is critical regarding this aspect. For example, RYNGAERT states that public enforcement is one of the weaknesses of the EU Blocking Regulation.[412] In addition, VENTURA held that the EU Blocking regulation resembles the sword of Damocles, which could theoretically strike, but does not do so in practice.[413]

[408] Advocate General Hogan (n 36) §103.
[409] Advocate General Hogan (n 36) fn 64.
[410] *Bank Melli Iran v Telekom Deutschland GmbH* (n 14) §40.
[411] Blockmans S., 'Extraterritorial sanctions with a Chinese trademark: European responses to long-arm legal tactics' (CEPS 2021) 15.
[412] Ryngaert C., 'Interpreting an Unsatisfactory EU Blocking Statute: Bank Melli Iran' (2023) 60 CML Rev. 517, 529.
[413] Ventura D. (n 64) 228.

144. In practice, consistent and deterrent enforcement under public law is difficult to find. This is because, firstly, Member States are not eager to sanction national undertakings for complying with US sanction laws, as these companies also contribute to the national economy.[414] Secondly, national enforcement authorities or public prosecutors may face difficulties in establishing that EU operators terminated specific business relationships, and that such termination was intended to comply with US secondary sanctions.[415] It is not easy for Member States to identify the genuine intention of EU operators why they ceased business relationships. For example, a prosecutor in the Netherlands acknowledged that the EU Blocking Regulation is not enforced because it requires proof that an EU operator has complied with secondary sanctions legislation, which is extremely difficult and does not guarantee a penalty.[416] Thirdly, enforcement has also shifted from the competent Member State authorities to private parties.[417] More specifically, national courts carry out incidental enforcement of the EU Blocking Regulation in contractual disputes, typically initiated by third-country entities targeted by foreign sanctions who seek to force their EU contracting party to comply with the EU Blocking Regulation and disregard US legislation.[418] An example of direct enforcement under public law is the Austrian *BAWAG* case of 2007.[419] Austrian authorities prosecuted BAWAG for closing bank accounts of around a hundred Cubans, which violated the EU Blocking Regulation.[420] However, the authorities ultimately discontinued the investigation after BAWAG obtained an exemption from the US authorities for the application of US legislation.[421] An example of incidental enforcement by a national court in the context of a contractual dispute is the Dutch case before the Court of The Hague in 2019.[422] It concerned an agreement between a Dutch software company Exact and PAM, a Curaçao-based distributor operating in Cuba. Exact terminated the contract with PAM out of concern for the Helms-Burton Act.[423] In response,

[414] Ruys T. and Ryngaert C. (n 6) 87.
[415] Van der Aa N.M.D. and Stax S.H., 'Amerikaanse sancties op Iran en de Europese blokkeringsverordening: Europese ondernemingen in een lastige spagaat' (2019) Nederlands tijdschrift voor Europees recht 71, 75 and Ruys T. and Ryngaert C. (n 6) 88.
[416] Amar Y., '[Panel Discussion] Secondary Sanctions and the international legal order' (*YouTube* 7 November 2024) 1:42:45-1:55:40 <https://www.youtube.com/watch?v=SLDd0MBTlPE> accessed 26 December 2024.
[417] Szabados T. (n 118) 16.
[418] *Ibid*. and Ruys T. and Ryngaert C. (n 6) 89.
[419] Note that this case dates from before the amendment of the EU Blocking Regulation's Annex in 2018.
[420] X, 'Austria charges bank after Cuban accounts cancelled' *Reuters* (9 August 2007) <https://www.reuters.com/article/legal/government/austria-charges-bank-after-cuban-accounts-cancelled-idUSL27114468/> accessed 1 May 2025 and Ryngaert C., 'De Europese 'Blocking Statute': Een probaat middel om het Europese bedrijfsleven te beschermen tegen de Amerikaanse secundaire sancties tegen Iran?' (2019) 4 SEW 157, 163.
[421] Austrian Federal Ministry for European and International Affairs, 'Foreign Ministry Ceases Investigations against BAWAG Bank' (23 April 2007) <https://www.bmeia.gv.at/en/the-ministry/press/news/2007/foreign-ministry-ceases-investigations-against-bawag-bank> accessed 1 May 2025.
[422] Court of The Hague 25 June 2019, ECLI:NL:RBDHA:2019:6301.
[423] *Ibid*., para 2.1–2.10.

PAM initiated private proceedings against Exact for breach of contract and invoked the EU Blocking Regulation.[424] The Dutch court found Exact at fault and ordered it to continue the contract, but did not formally assess or establish a violation of the EU Blocking Regulation.[425] It merely issued a reminder or warning of its potential relevance. Such incidental enforcement, while still a form of enforcement, operates outside the scope of Article 9 and should also be taken into consideration.

145. As illustrated in Figure 3 (Appendix, page 84), the penalties differ across Member States, as they are determined by national legislation of the Member States.[426] Each Member State maintains its own enforcement practice, ranging from administrative fines to criminal fines, including imprisonment in certain Member States. This fragmentation may hinder a consistent and effective enforcement across the EU. Moreover, this could also reduce the deterrent effect. For example, in Austria, violations of the EU Blocking Regulation are sanctioned by an administrative fine up to €72,600, while in the Netherlands, the penalty can include imprisonment for up to two years and a fine of up to €450,000.[427] Such disparities in penalties and amounts of fines may diminish the overall deterrent impact of the EU Blocking Regulation, as the severity of punishment plays a crucial role in preventing violations. Following the commercial logic of EU operators, the risk of exposure to US sanctions outweighs the risk of exposure to European sanctions, as EU operators do not want to face heavy US fines or denial of access to the US market.[428] Therefore, the EU operators' strategic choice to comply with extraterritorial sanction legislation may undermine the effectiveness of the EU Blocking Regulation.[429]

146. Concerning the protection of the interests of EU operators, it is ambiguous that on one hand, the EU Blocking Regulation aims to protect the interests of the EU operators, while on the other hand, it prescribes sanctions against them which must be dissuasive. SZABADOS describes it as the enforcement paradox. This paradox arises because ensuring the *effet utile* of EU law and achieving the Union's foreign and commercial policy objectives requires enforcement of the EU Blocking Regulation, including actions against EU operators who comply with foreign sanctions, while the Regulation's declared aim is to protect those same operators from the extraterritorial effects of such sanctions.[430] As a

[424] *Ibid*., para 3.2.
[425] *Ibid*., para 4.10.
[426] European Commission, Q&A Guidance Note (n 78) point 10.
[427] Rovetta D. e.a. (n 158) 50-51.
[428] Ruys T. and Ryngaert C. (n 6) 92.
[429] *Ibid*.
[430] Szabados T. (n 118) 5.

result, national authorities may be reluctant to pursue enforcement, since penalising EU companies appears to contradict the protective purpose of the EU Blocking Regulation.

147. Regarding the protection of the EU's interests, it can be observed that sanctioning EU operators or their representatives, for example, through imprisonment or fines, may not be beneficial for businesses, which in turn could negatively impact the European economy. Similarly, compliance by EU operators with the EU Blocking Regulation can expose them to US sanctions, which also could have an adverse impact on the European economy, as these businesses may incur significant losses or even face bankruptcy.

148. In conclusion, the analysis demonstrates that Article 9 of the EU Blocking Regulation does not effectively neutralise the impact of foreign sanction laws within the EU, nor does it protect the interests of the EU operators and the EU itself. The fragmented enforcement across Member States, together with inconsistent penalties and the reluctance of national authorities to sanction EU operators, undermines the Regulation's ability to enforce compliance and neutralise the effects of foreign sanctions. Moreover, this situation does not adequately protect the interests of EU operators, who, by Article 9, are even further exposed to penalties, namely those arising from the EU Blocking Regulation. This creates a tension between this provision and the Regulation's intended protective purpose

Conclusion

149. The EU Blocking Regulation is an instrument that cannot be viewed in isolation from the global geopolitical context. It has emerged and been amended in response to secondary sanctions from the US. The growing use of economic sanctions, the Presidency of Trump, which installed the so-called "tariff war", and the threat of imposing secondary sanctions on operators importing Iranian oil show that instruments like the EU Blocking Regulation are necessary, on condition that they are, of course, effective and useful.

150. Throughout this research, it has been proven that the questions and criticisms concerning the EU Blocking Regulation were, to a certain extent, founded. The findings on the effectiveness of the EU Blocking Regulation reveal a mixed picture. Concerning the neutralisation objective, the Regulation falls short in several respects. The Annex is narrow and politically selective, which limits the scope of possible neutralisation to only specific US sanctions. Including more extraterritorial legislation such as the US CLOUD Act in the Annex, especially given its impact on cross-border data access, could help modernise the

EU Blocking Regulation and enhance its relevance in the digital age. This could be pertinent for protecting sensitive data of EU citizens, such as health information stored on US-based cloud platforms. Furthermore, the US's enforcement mechanisms, such as settlement agreements and asset seizures, are often unaffected by EU legal shields, rendering Article 4 *de facto* ineffective. The lack of transparency in the Commission's authorisation decisions under Article 5(2), combined with the absence of retroactive effect, further undermines the capacity of the Regulation to effectively counteract the chilling effect of extraterritorial sanctions.

151. As for the protection objective, it is somewhat more nuanced. The authorisation mechanism under Article 5(2) may provide protection to EU operators, in the situation where such derogation is granted. However, the process itself has legal uncertainties and lacks clarity regarding what qualifies as "serious damage" and the assessment criteria in the Implementing Regulation 2018/1101. As a result, the provision offers only partial and often ineffective protection. Moreover, the *Bank Melli Iran* case and *IFIC Holding* case have clarified the scope and limits of Articles 5(1) and 5(2), but have also reinforced the Regulation's narrow focus on the interests of the authorisation-seeking operator, rather than on broader third-party interests or systemic concerns. In addition, enforcement under Article 9 remains highly fragmented across Member States, resulting in inconsistent application and weak deterrence. Article 6, which provides a right to claim damages, theoretically reinforces the protection objective but has yet to be meaningfully applied in practice. The potential effectiveness of the latter provision is hindered by evidence issues and uncertainties about legal status.

152. However, contrary to the less effective elements of the EU Blocking Regulation, there are also elements which have potential. For example, an interaction between Article 6 and 5(2) exists in the situation where there are two EU operators and one of them requests and receives an authorisation.[431] The other EU operator contracting party will have a right to recover damages, under Article 6, from the EU operator that obtained the authorisation.

153. Taking the abovementioned elements together, it must be concluded that the EU Blocking Regulation does not fully achieve its stated objectives. While it provides a legal framework to signal EU opposition to the extraterritorial application of third-country secondary sanctions, it lacks the operational strength, coherence, and enforcement

[431] See *supra* para 136.

consistency which are essential to neutralise secondary sanction effects and to protect EU operators.

154. In light of the above, I concur with Advocate General Hogan that an amendment to the EU Blocking Regulation would bring much-needed clarity.[432] However, it remains uncertain whether this is still a priority for the Commission, given that a proposal for amendment was announced several years ago but has yet to materialise.[433] Chances exist that the Commission will silently allow the Regulation to fade into obscurity, as it no longer resembles the EU's current sanctions policy, particularly in light of the response to Russia, and in a context where maintaining the US as a friend rather than a foe appears more desirable.[434]

155. Although this research focused on evaluating the effectiveness of the EU Blocking Regulation, rather than proposing concrete reforms, it is hoped that it provides a comprehensive foundation for future research, perhaps on how a potential amendment could be designed to ensure the Regulation's effectiveness in practice.

[432] Advocate General Hogan (n 36) §5.
[433] European Commission, 'Commission Staff Working Document Impact Assessment Report Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union and its Member States from economic coercion by third countries' SWD (2021) 371 final, 24.
[434] Van Elsuwege P. and Szép V. (n 11) 91.

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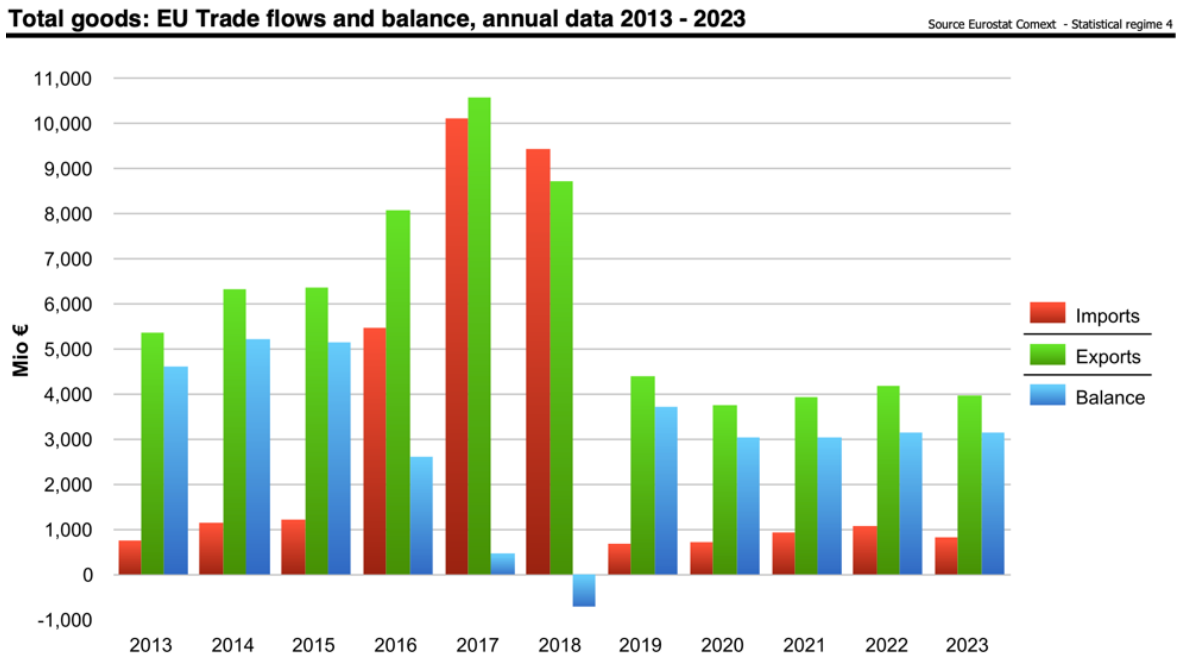
Appendix

Figure 1 – EU Trade in goods with Iran: annual imports, exports, and trade balance (2013–2023).



Source: European Commission, 'European Union, Trade in goods with Iran' (DG Trade and Economic Security, updated 2024) 3.

Figure 2 – Lost Revenue of European Companies due to post-2018 Sanctions on Iran

Company name	Lost revenue	Project/Description
Airbus (EU)	17 billion EUR	Delivering new planes within a contract with Iran Air
A.P. Moller-Maersk (Denmark)	Unknown	Maersk hastily exited the Iranian market upon resumption of sanctions; the firm had been hit with a EUR 3 million fine in 2010 for circumventing US sanctions and was determined to not have a repeat performance
AXA Group (France, Germany)	970,000 EUR	Losses stemming from cancelled insurance premia across Europe and in Iran
Daimler (Germany)	Unknown	Joint venture with Iranian vehicle manufacturer and dealer Iran Khodro Co to produce Mercedes-Benz trucks in Iran, including opening of a representative office in Tehran, called off
Gruppo Ventura (Italy)	2 million EUR	Ended a project for modernization of railroad outside of Tehran
PSA Group (France) and Renault (France)	850 million EUR	Joint deal to build 350,000 cars annually cancelled
Quercus (Great Britain)	550 million EUR	Solar power delivery cancelled as a result of sanctions
Siemens (Germany)	Potentially tens/hundreds of millions of euro	Siemens halted all business in Iran after the termination of JCPOA. In 2012, when sanctions were first in place, the company had a write-down of EUR 347 million, but upon lifting of sanctions in 2015, there was a one-time surge in revenue of EUR 212 million as back-orders were cleared. Total losses after 2018 could thus be between these two points.
Tenova (Italy)	7 million EUR	According to the annual report of parent company Ternium SA, revenue worth approximately USD 7.8 million was collected in Iran in 2019 from previous orders; it is likely that a similar performance would have been seen absent the sanctions.
Total (France)	4.25 billion EUR	Development of Iranian giant South Pars gas field.

Source: Stoll T., Blockmans S., Hagemejer J., e.a., 'Extraterritorial Sanctions on trade and investments and European responses' (European Parliament DG for external policies 2020) 92.

Figure 3 – Overview of the sanctions for breach of the EU Blocking Regulation under the domestic law of the EU Member States.

EU Member State	*Maximum Penalty*	*Legal basis*
Austria	Administrative penalty with maximum fine of EUR 72,600	Regierungsvorlage
Belgium	For legal entities, the administrative fine ranges from EUR 10,000 to 10% of the entity's annual net turnover of the previous business year. For individuals, the fine ranges from EUR 250 to EUR 5,000,000.	Wet van 2 mei 2019 houdende diverse financiële bepalingen, TITEL VII. - Tenuitvoerlegging van verordening EG 2271/96
Cyprus	Section 136 of the Criminal Code, with a maximum fine of EUR 878, or two year sentence. Cyprus' Sanctions Law of 2016, which introduced higher penalties for breaches of EU and UN sanctions, does not extend to the blocking regulation.	Section 136 of the Criminal Code
Denmark	Criminal for companies with fines of up to sixty days' revenue	Lov om Rådets forordning (EF) om beskyttelse mod eksterritorial lovgivning vedtaget af et tredjeland
Estonia	Maximum fine of EUR 32,000	Section 372 of the Penal Code
Finland	Fine or imprisonment of up to six months	Laki tietyn kolmannen maan lainsäädännön soveltamisen ekstraterritoriaalisilta vaikutuksilta sekä siihen perustuvilta tai siitä aiheutuvilta toimilta suojautumisesta annettua neuvoston asetusta (EY) N:o 2271/96 täydentävistä säännöksistä
Germany	EUR 500,000	Article 82 of the German Foreign Trade Ordinance *(Außenwirtschaftsverordnung)*
Italy	EUR 92,962	Decreto Legislativo 26 Agosto 1998, n. 346
Spain	EUR 601,012	Ley 27/1998, de 13 de julio, sobre sanciones aplicables a las infracciones de las normas establecidas en el Reglamento (CE) número 2271/96, del Consejo, de 22 de noviembre, relativo a la protección frente a la aplicación extraterritorial de la legislación de un país tercero
Ireland	Maximum criminal fine of EUR 1,900 and maximum sentence of twelve months	S.I. No. 217/1997 – European Communities (Extraterritorial Application of Legislation Adopted By a Third Country) Regulations, 1997
the Netherlands	Maximum prison sentences amount to two years, with a maximum penalty of just over EUR 450,000	Wet uitvoering antiboycotverordening en Wet economische delicten
Sweden	Unlimited criminal fine, and maximum six months sentence	Lag (1997:825) om EG:s förordning om skydd mot extraterritoriell lagstiftning som antas av ett tredje land
The UK	Unlimited criminal fine, but no custodial sentence available	The Extraterritorial US Legislation (Sanctions against Cuba, Iran and Libya) (Protection of Trading Interests) Order 1996 as amended in February 2019.
Slovenia	Administrative fine of between EUR 400 and EUR 125,000	Uredba o izvajanju Uredbe Sveta (ES) št. 2271/96 z dne 22. novembra 1996 o zaščiti pred učinki ekstrateritorialne uporabe zakonodaje, ki jo sprejme tretja država, in dejanji, ki na tej zakonodaji temeljijo ali iz nje izhajajo
Slovakia	Administrative fine of between EUR 400 and EUR 125,000	U R E D B O o izvajanju Uredbe Sveta (ES) št. 2271/96 z dne 22. novembra 1996 o zaščiti pred učinki ekstrateritorialne uporabe zakonodaje, ki jo sprejme tretja država, in dejanji, ki na tej zakonodaji temeljijo ali iz nje izhajajo
Romania	Implemented into Romanian law, with no available penalty.	Ordinul nr. 501/2006 pentru publicarea Regulamentului Consiliului nr. 2.271/1996 privind protecţia împotriva unor efecte ale sancţiunilor aplicate de S.U.A., modificat prin Regulamentul Consiliului nr. 807/2003
Malta	Criminal fine of between EUR 5,000 and EUR 116,468	Dokument imqiegħed fuq il-Mejda tal-Kamra tad-Deputati fis-Seduta Numru 185 tat-13 ta' Ottubru 2014 mill-Prim Ministru.
Czech Republic	Legislation passed in November 2019, Maximum fine CZK 450,000	Návrh zákona o provádění zvláštních režimů v oblasti zahraničního obchodu

Rovetta D. e.a., 'Don't Wake up the (EU) Bear! The Scope of the EU Blocking Regulation 2271/96 in Light of the Recent Preliminary Ruling Reference in Bank Melli V. Telekom Deutschland Case, C-124/20' (2021) 16 Global Trade and Customs Journal 44, 50-51.