

Unlawful extra-territorial sanctions – a stronger EU response (amendment of the Blocking Statute)

Public Consultation Response:

Außenhandelsvereinigung des deutschen Einzelhandels e.V. (AVE)

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Außenhandelsvereinigung des
Deutschen Einzelhandels e. V.

Am Weidendamm 1A

D - 10117 Berlin

Telefon: +49 (0)30 59 00 99 - 432

Telefax: +49 (0)30 59 00 99 - 429

E-Mail: info@ave-intl.de

Internet: www.ave-international.de

With regard to the intention of the amendment of the Blocking Statute, the Commission is encouraged to consider the results and effects the current Statute (Regulation 2271/96) had and has. Aiming for further deterring and counteraction measures against extra-territorial sanctions beyond the options and instruments of the status quo, European Companies will very likely remain in the dilemma of either not complying with the laws of the country presuming their sanctions to have global validity, respectively not complying with a revised EU-Blocking-Statute; in any way, a compliance risk will remain as an outcome of an amendment aiming for intensification. Hence, one focus of the update of the Blocking-Statute shall value its practicability and feasibility of implication.

This applies also if intermediary solutions are created, e.g. as done with the special purpose vehicle Instex in order to enable economic operators to conduct certain business. By any practical means, this instrument did not reach any substantial or even marginal meaning, whatsoever, in regard to the objectives initially assigned to solve. Given the very example of Instex and US-Sanctions, any amendment should also focus on financial flows: deviating from the Commission's preliminary assessment of the economic impact, (trading) companies of any size, including SMEs, may be affected by US-Sanctions, simply by conducting contracts in US-Currency (e.g. by the use of a letter of credit denominated in US-Dollars during sourcing activities), putting the respective companies in risk of being in breach with such sanctions, just by linking the business to the US Finance System. This is also valid for the time schedule in which such sanctions become valid: a next day implementation (e.g. by the US) leaves, for instance, importing European Companies with no practical possibility to react along their supply chain, if they should be affected by imposed sanctions, even indirectly and to the smallest extent assumable. Collateral damages for industries and sectors, initially off the origin of the sanctions and its countermeasures, need therefore to be highly considered in due course of the amendment and the introduction of new measures, as the Airbus-Boeing-Case has shown.

Following our statement on the initiative on an Anti-Coercion-Instrument, we acknowledge the necessity to update Regulation 2271/96 to encounter the increased use of extra-territorial sanctions to the disadvantage of economic operators in the EU (e.g. by interpreting sanctions of the European Union to have the same validity). Though, we also rather encourage the elaboration of an international agreement with and between all parties, such as the EU, the US or China, on how such sanctions can be handled consensually in the sense of the objectives of the sanctions, and not sanctioning operators of the trading partners for just conducting business

We will gladly remain at European Commission's disposal for any further inquiries, as well as to deliver further input to this initiative.

AVE (Foreign Trade Association of German Retailers) is the voice of retail importers in Germany. Since its foundation in 1952, it has represented the external economic interests of the German retail trade which needs friction-free import of all nature of consumer goods in the framework of its global purchasing policy. In addition, AVE is committed to strict observance of social and environmental standards in supplier countries. Taken together, AVE members have a total annual turnover of around 200 billion Euros.

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