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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION DELEGATED REGULATION (EU) 2018/1100

of 6 June 2018

**amending the Annex to Council Regulation (EC) No 2271/96 protecting against the effects of extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 <sup>(1)</sup>, and in particular the second paragraph of Article 1 thereof,

Whereas:

- (1) Regulation (EC) No 2271/96 counteracts the effects of the extra-territorial application of laws, including regulations and other legislative instruments adopted by third countries, and of actions based thereon or resulting therefrom, where such application affects the interests of natural and legal persons in the Union engaging in international trade and/or the movement of capital and related commercial activities between the Union and third countries.
- (2) The Regulation acknowledges that by their extra-territorial application, such instruments violate international law.
- (3) The third-country instruments to which Regulation (EC) No 2271/96 applies are specified in the Annex to that Regulation.
- (4) On 8 May 2018, the United States announced they will no longer waive their national restrictive measures relating to Iran. Some of those measures have extra-territorial application and cause adverse effects on the interests of the Union and the interests of natural and legal persons exercising rights under the Treaty on the Functioning of the European Union.
- (5) The Annex to the Regulation should therefore be amended to include those restrictive measures,

HAS ADOPTED THIS REGULATION:

*Article 1*

The Annex to Regulation (EC) No 2271/96 is replaced by the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

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<sup>(1)</sup> OJ L 309, 29.11.1996, p. 1.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 6 June 2018.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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## ANNEX

## LAWS, REGULATIONS AND OTHER LEGISLATIVE INSTRUMENTS

Note: The main provisions of the instruments contained in this Annex are summarised only for information purposes. The full overview of provisions and their exact content can be found in the relevant instruments.

COUNTRY: UNITED STATES OF AMERICA

## ACTS

1. **'National Defense Authorization Act for Fiscal Year 1993', Title XVII 'Cuban Democracy Act 1992', sections 1704 and 1706**

Required compliance:

The requirements are consolidated in Title I of the 'Cuban Liberty and Democratic Solidarity Act of 1996', see below.

Possible damages to EU interests:

The liabilities incurred are now incorporated within the 'Cuban Liberty and Democratic Solidarity Act of 1996', see below.

2. **'Cuban Liberty and Democratic Solidarity Act of 1996'**

Title I

Required compliance:

To comply with the economic and financial embargo concerning Cuba by the USA, by, inter alia, not exporting to the USA any goods or services of Cuban origin or containing materials or goods originating in Cuba either directly or through third countries, dealing in merchandise that is or has been located in or transported from or through Cuba, re-exporting to the USA sugar originating in Cuba without notification by the competent national authority of the exporter or importing into the USA sugar products without assurance that those products are not products of Cuba, freezing Cuban assets, and financial dealings with Cuba.

Possible damages to EU interests:

Prohibition to load or unload freight from a vessel in any place in the USA or to enter a USA port; refusal to import any goods or services originating in Cuba and to import into Cuba goods or services originating in the USA, blocking of financial dealings involving Cuba.

Title III and Title IV:

Required compliance:

To terminate 'trafficking' in property, formerly owned by US persons (including Cubans who have obtained US citizenship) and expropriated by the Cuban regime. (Trafficking includes: use, sale, transfer, control, management and other activities to the benefit of a person).

Possible damages to EU interests:

Legal proceedings in the USA, based upon liability already accruing, against EU citizens or companies involved in trafficking, leading to judgments/decisions to pay (multiple) compensation to the USA party. Refusal of entry into the USA for persons involved in trafficking, including the spouses, minor children and agents thereof.

3. **'Iran Sanctions Act of 1996'**

Required compliance:

Not to knowingly:

- (i) invest in Iran at least USD 20 million during a period of 12 months that directly and significantly contributes to the enhancement of the Iranian ability to develop their petroleum resources;

- (ii) provide to Iran goods, services or other types of support any of which is worth USD 1 million or more, or of aggregate value of USD 5 million or more over a period of 12 months, that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products or its ability to develop petroleum resources located in Iran;
- (iii) provide to Iran goods, services or other types of support any of which is worth USD 250 000 or more, or of aggregate value of USD 1 million or more over a period of 12 months, that could directly and significantly contribute to the maintenance or expansion of Iran's domestic production of petrochemical products;
- (iv) provide to Iran (a) refined petroleum products or (b) goods, services or other types of support which could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products, any of which is worth USD 1 million or more, or of aggregate value of USD 5 million or more over a period of 12 months;
- (v) participate in a joint venture for the development of petroleum resources outside of Iran established on or after 1 January 2002 and in which Iran or its Government has particular interests;
- (vi) be involved in the transport of crude oil from Iran or conceal the Iranian origin of cargo consisting in crude oil and refined petroleum products;

Possible damages to EU interests:

Measures to limit imports into USA or procurement to USA, prohibition of designation as primary dealer or as repository of US Government funds, denial of access to loans from US financial institutions or transfers through such institutions, prohibition of transactions in foreign exchange subject to the jurisdiction of the USA, export restrictions by USA, prohibition of property transactions subject to the jurisdiction of the USA, or refusal of assistance by EXIM-Bank, landing and port-calling restrictions for vessels.

#### 4. 'Iran Freedom and Counter-Proliferation Act of 2012'

Required compliance:

Not to knowingly:

- (i) provide significant support, including by facilitating significant financial transactions, or goods or services, to or on behalf of certain persons operating in the ports, energy, shipping, or shipbuilding sectors in Iran, or any Iranian person included in the list of specially designated nationals and blocked persons;
- (ii) trade with Iran in significant goods and services used in connection with the energy, shipping or shipbuilding sectors of Iran;
- (iii) purchase petroleum and petroleum products from Iran and conduct financial transactions related with them, in specific circumstances;
- (iv) conduct or facilitate transactions for the trade in natural gas to or from Iran (applies to foreign financial institutions);
- (v) trade with Iran in precious metals, graphite, raw or semi-finished metals, or software that may be used in specific sectors or involve certain persons; nor facilitate a significant financial transaction in connection with such trade;
- (vi) provide underwriting services, insurance and reinsurance related to specific activities, including but not limited to those under points (i) and (ii) above, or to specific categories of persons;

Certain exceptions apply depending on the nature of the trade or transaction and the level of due diligence applied.

Possible damages to EU interests:

Measures to limit imports into USA or procurement to USA, prohibition of designation as primary dealer or as repository of US Government funds, denial of access to loans from US financial institutions or transfers through such institutions, prohibition of transactions in foreign exchange subject to the jurisdiction of the USA, export restrictions by USA, prohibition of property transactions subject to the jurisdiction of the USA, or refusal of assistance by EXIM-Bank, prohibitions and limitations to the opening and maintenance of correspondent accounts in the USA.

#### 5. 'National Defense Authorization Act for Fiscal Year 2012'

Required compliance:

Not to knowingly conduct or facilitate any significant financial transaction with the Central Bank of Iran or another designated Iranian financial institution (applies to foreign financial institutions).

Exceptions for food and medicine-related transactions and for petroleum-related transactions under specific circumstances.

Possible damages to EU interests:

Civil and criminal penalties; prohibitions and limitations to the opening and maintenance of correspondent accounts in the USA.

#### 6. 'Iran Threat Reduction and Syria Human Rights Act of 2012'

Required compliance:

Not to knowingly:

- (i) provide underwriting services, insurance or reinsurance to certain Iranian persons;
- (ii) facilitate the issuance of Iranian sovereign debt, or of debt of entities controlled by the latter;
- (iii) engage in any transaction directly or indirectly with the Government of Iran or any person subject to the jurisdiction of the Government of Iran prohibited by US law (applies to foreign subsidiaries owned or controlled by US persons);
- (iv) provide specialized financial messaging services to, or enable or facilitate direct or indirect access to such messaging services for the Central Bank of Iran or a financial institution whose interests in property are blocked in connection to Iran's proliferation activities.

With regard to (i), there are exceptions for humanitarian assistance, food and medical products supply, and depending on the level of due diligence applied.

Possible damages to EU interests:

Measures to limit imports into USA or procurement to USA, prohibition of designation as primary dealer or as repository of US Government funds, denial of access to loans from US financial institutions or transfers through such institutions, prohibition of transactions in foreign exchange subject to the jurisdiction of the USA, export restrictions by USA, prohibition of property transactions subject to the jurisdiction of the USA, or refusal of assistance by EXIM-Bank, prohibitions and limitations to the opening and maintenance of correspondent accounts in the USA

#### REGULATIONS

'Iranian Transactions and Sanctions Regulations'

Required compliance:

Not to reexport any goods, technology, or services that (a) have been exported from the USA and (b) are subject to export control rules in the USA, if the export is made knowing or having reason to know that it is specifically intended for Iran or its Government.

Goods substantially transformed into a foreign-made product outside the USA, and goods incorporated into such a product and representing less than 10 % of its value are not subject to the prohibition.

Possible damages to EU interests:

Imposition of civil penalties, fines and imprisonment.

► C1 1. 31 CFR ◀ (Code of Federal Regulations) Ch. V (7-1-95 edition) Part 515 — Cuban Assets Control Regulations, subpart B (Prohibitions), E (Licenses, Authorizations and Statements of Licensing Policy) and G (Penalties)

Required compliance:

The prohibitions are consolidated in Title I of the 'Cuban Liberty and Democratic Solidarity Act of 1996', see above. Furthermore, requires the obtaining of licences and/or authorizations in respect of economic activities concerning Cuba.

Possible damages to EU interests:

Fines, forfeiture, imprisonment in cases of violation.

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**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**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 <sup>(1)</sup>, and in particular the second paragraph of Article 5 thereof,

Whereas:

- (1) Regulation (EC) No 2271/96 provides protection against and counteracts the unlawful effects of the extra-territorial application of some listed laws, including regulations and other legislative instruments adopted by third countries, and of actions based thereon or resulting therefrom, where such application affects the interests of natural and legal persons referred to in Article 11 of that Regulation engaging in international trade and/or the movement of capital and related commercial activities between the Union and third countries.
- (2) Regulation (EC) No 2271/96 acknowledges that by their extra-territorial application, such laws, including regulations and other legislative instruments, violate international law.
- (3) Pursuant to the first paragraph of Article 5 of Regulation (EC) No 2271/96, persons referred to in Article 11 of that Regulation shall not comply whether directly or through a subsidiary or other intermediary person, actively or by deliberate omission, with any requirement or prohibition, including requests of foreign courts, based on or resulting from such laws or from actions based thereon or resulting therefrom.
- (4) However, the second paragraph of Article 5 of Regulation (EC) No 2271/96 allows persons referred to in Article 11 of that Regulation to request from the Commission an authorisation to fully or partially comply with such requirement or prohibition to the extent that non-compliance would seriously damage their interests or those of the Union.
- (5) In order to provide legal certainty as well as to ensure the effective implementation of Regulation (EC) No 2271/96 while taking into account, in specific and duly justified circumstances, the risk of serious damages to the interests of the natural and legal persons referred to in Article 11 of that Regulation, it is necessary to lay down the criteria for the application of the second paragraph of Article 5 of Regulation (EC) No 2271/96.
- (6) In view of the role of the Commission overseeing the uniform implementation of EU law including Regulation (EC) No 2271/96, the Commission will follow closely the application of the present Regulation and adopt any necessary adaptation based on its assessment of the implementation thereof.
- (7) The main steps of the procedure following the submission to the Commission of an application for an authorisation to fully or partially comply with such requirement or prohibition should also be laid down.
- (8) Any processing of personal data of natural persons under this Regulation should respect Regulation (EU) 2016/679 of the European Parliament and of the Council <sup>(2)</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council <sup>(3)</sup>.
- (9) Applications pursuant to this Regulation should concern actions or omissions based on or resulting directly or indirectly from the application of the laws specified in the Annex to Regulation (EC) No 2271/96 or actions based thereon or resulting therefrom.

<sup>(1)</sup> OJ L 309, 29.11.1996, p. 1.

<sup>(2)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>(3)</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

- (10) The handling of an application shall be carried out as soon as possible.
- (11) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Extra-territorial Legislation and have been adopted pursuant to Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(1)</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

##### **Subject-matter**

This Regulation lays down the criteria for the application of the second paragraph of Article 5 of Regulation (EC) No 2271/96.

#### *Article 2*

##### **Definitions**

For the purposes of this Regulation, the following definitions apply:

- (a) 'listed extra-territorial legislation' means the laws, regulations and other legislative instruments specified in the Annex to Regulation (EC) No 2271/96, including regulations and other legislative instruments based thereon or resulting therefrom;
- (b) 'subsequent actions' means actions based on the listed extra-territorial legislation or resulting therefrom;
- (c) 'non-compliance' means 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;
- (d) 'protected interests' means the interest of any person referred to in Article 11 of Regulation (EC) No 2271/96, the interest of the Union or both;
- (e) 'applicant' means any person referred to in Article 11 of Regulation (EC) No 2271/96 who applied for an authorisation referred to in the second paragraph of Article 5 of Regulation (EC) No 2271/96.

#### *Article 3*

##### **Submission of applications**

1. Applications for an authorisation referred to in the second paragraph of Article 5 of Regulation (EC) No 2271/96 shall be submitted in writing to:

European Commission  
Service for Foreign Policy Instruments  
EEAS 07/99  
B-1049 Brussels, Belgium  
EC-AUTHORISATIONS-BLOCKING-REG@ec.europa.eu

2. Applications shall include the name and contact details of the applicants, shall indicate the precise provisions of the listed extra-territorial legislation or the subsequent action at stake, and shall describe the scope of the authorisation that is being requested and the damage that would be caused by non-compliance.

3. The applicants shall provide in their application sufficient evidence that non-compliance would cause serious damage to at least one protected interest.

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<sup>(1)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

4. Where necessary, the Commission may request additional evidence from the applicants, which shall provide it within a reasonable period set by the Commission.
5. The Commission shall inform the Committee on Extra-territorial Legislation as soon as it receives applications.

#### Article 4

##### Assessment of applications

When assessing whether a serious damage to the protected interests as referred to in the second paragraph of Article 5 of Regulation (EC) No 2271/96 would arise, the Commission shall consider, inter alia, the following non-cumulative criteria, where appropriate:

- (a) whether the protected interest is likely to be specifically at risk, based on the context, the nature and the origin of a damage to the protected interest;
- (b) the existence of an ongoing administrative or judicial investigation against the applicant from, or a prior settlement agreement with, the third country which is at the origin of the listed extra-territorial legislation;
- (c) the existence of a substantial connecting link with the third country which is at the origin of the listed extra-territorial legislation or the subsequent actions; for example the applicant has parent companies or subsidiaries, or participation of natural or legal persons subject to the primary jurisdiction of the third country which is at the origin of the listed extra-territorial legislation or the subsequent actions;
- (d) whether measures could be reasonably taken by the applicant to avoid or mitigate the damage;
- (e) the adverse effect on the conduct of economic activity, in particular whether the applicant would face significant economic losses, which could for example threaten its viability or pose a serious risk of bankruptcy;
- (f) whether the applicant's activity would be rendered excessively difficult due to a loss of essential inputs or resources, which cannot be reasonably replaced;
- (g) whether the enjoyment of the individual rights of the applicant would be significantly hindered;
- (h) whether there is a threat to safety, security, the protection of human life and health and the protection of the environment;
- (i) whether there is a threat to the Union's ability to carry out its humanitarian, development and trade policies or the external aspects of its internal policies;
- (j) the security of supply of strategic goods or services within or to the Union or a Member State and the impact of any shortage or disruption therein;
- (k) the consequences for the internal market in terms of free movement of goods, persons, services and capital, as well as financial and economic stability or key Union infrastructures;
- (l) the systemic implications of the damage, in particular as regards its spill over effects into other sectors;
- (m) the impact on the employment market of one or several Member States and its cross-border consequences within the Union;
- (n) any other relevant factor.

#### Article 5

##### Outcome of the application

1. When, after completing the assessment referred to in Article 4, the Commission finds sufficient evidence that non-compliance would cause serious damage to the protected interests, the Commission shall expeditiously submit to the Committee on Extra-territorial Legislation a draft decision containing the appropriate measures to be taken.
2. If, after completing the assessment referred to in Article 4, the Commission does not find sufficient evidence that non-compliance would cause serious damage to the protected interests, the Commission shall submit to the Committee on Extra-territorial Legislation a draft decision rejecting the application.
3. The final decision shall be notified by the Commission to the applicant without delay.

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*Article 6***Data processing**

1. The Commission shall process personal data in order to carry out its tasks under this Regulation.
2. Any processing of personal data shall comply with Regulation (EU) 2016/679 and Regulation (EC) No 45/2001.
3. For the purposes of this Regulation, the Service for Foreign Policy Instruments is designated as 'controller' for the Commission within the meaning of Article 2(d) of Regulation (EC) No 45/2001, in order to ensure that the natural persons concerned can exercise their rights under that Regulation.

*Article 7***Entry into force**

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 3 August 2018.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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# DECISIONS

## COMMISSION DELEGATED DECISION (EU) 2018/1102

of 6 June 2018

### **amending Annex III to Decision No 466/2014/EU of the European Parliament and of the Council granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union, as regards Iran**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Decision No 466/2014/EU of the European Parliament and of the Council of 16 April 2014 granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union <sup>(1)</sup>, and in particular Article 4(2) thereof,

Whereas:

- (1) There has been notable progress in the economic, social, environmental and political situation in Iran since the adoption of Decision No 466/2014/EU.
- (2) In November 2016, the Council welcomed the prospect of extending the European Investment Bank's External Lending Mandate to Iran.
- (3) Decision (EU) 2018/412 of the European Parliament and of the Council <sup>(2)</sup> added Iran to the list of potentially eligible regions and countries in Annex II of that Decision.
- (4) Tangible steps taken by Iran to respect universal fundamental freedoms, rule of law and human rights would remain key for the shaping of the Union's future policy towards Iran.
- (5) The European Investment Bank should continue to apply adequate policies and processes protecting its integrity as well as confidence in the Bank.
- (6) Therefore, the Commission, with the involvement of the European External Action Service, has assessed that the overall economic, social environmental and political situation allows adding Iran to Annex III of Decision No 466/2014/EU, which includes the list of eligible regions and countries for European Investment Bank financing under Union guarantee.
- (7) Decision No 466/2014/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

#### *Article 1*

In point C(2) of Annex III to Decision No 466/2014/EU, the words: 'Bangladesh, Bhutan, Cambodia, China, India, Indonesia, Iraq, Laos, Malaysia, Maldives, Mongolia, Myanmar/Burma, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Vietnam, Yemen' are replaced by the words 'Bangladesh, Bhutan, Cambodia, China, India, Indonesia, Iran, Iraq, Laos, Malaysia, Maldives, Mongolia, Myanmar/Burma, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Vietnam, Yemen'.

<sup>(1)</sup> OJ L 135, 8.5.2014, p. 1.

<sup>(2)</sup> Decision (EU) 2018/412 of the European Parliament and of the Council of 14 March 2018 amending Decision No 466/2014/EU granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union (OJ L 76, 19.3.2018, p. 30).

*Article 2*

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 6 June 2018.

*For the Commission*  
*The President*  
Jean-Claude JUNCKER

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