



AL-HAQ

LEGAL BRIEF:

DEFENDING JUSTICE: HOW THE EU CAN PUSH BACK AGAINST US SANCTIONS ON THE ICC

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Introduction

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’ – as amended by Council Regulation (EC) No. 807/2003 of 14 April 2003; Regulation (EU) No. 37/2014 of the European Parliament and of the Council of 15 January 2014; and by Commission Delegated Regulation (EU) 2018/1100 of 6 June 2018 – also known as the Blocking Statute, prohibits European Union (EU) persons from complying, directly or indirectly, with certain sanctions listed in its Annex.¹

The Blocking Statute is an important achievement of unified EU action to shield the bloc’s operators from the extra-territorial application of third country laws which it considers to be contrary to international law. In so doing, the Blocking Statute aims to protect the established legal order, EU interests and the interests of natural and legal persons exercising rights under the Treaty on the Functioning of the European Union (TFEU) against the unlawful effects of the extra-territorial application of such legislation.²

As an EU Regulation, the Blocking Statute is directly applicable in all Member States. The supremacy of EU law among its Member States consequently ensures that EU operators are prevented from being forced to comply with foreign laws, such as United States (US) sanctions, that undermine EU sovereignty and economic policy.

Notwithstanding its objectives and scope, however, there has been limited implementation, application, and interpretation of the Blocking Statute, with EU Member States taking diverging approaches. Yet, at a time of unprecedented attacks against the International Criminal Court (ICC) and its very ability to function, the Blocking Statute represents a means to offer additional protection to the Court and those dealing with the institution.

1 See Council Regulation (EC) No. 2271/96 (Blocking Statute), Article 1

2 EUR-Lex, ‘Guidance Note - Questions and Answers: adoption of update of the Blocking Statute (2018/C 277 I/03)’ Official Journal of the European Union <[<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018XC0807\(01\)>](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018XC0807(01))>



Executive Order 14203, signed by US President Trump on 5 February 2025, imposes sanctions against anyone who assists the ICC, and Chief Prosecutor Khan specifically, in investigations of the US or its allies, namely Israel.³ Given the EU's strong, and allegedly unwavering, support for the ICC, the rule of law and human rights worldwide, it has the possibility to add Executive Order 14203 to the Annex listing the laws, regulations and other legislative instruments to which the Blocking Statute applies.

This Legal Brief will first outline the content, purpose and scope of the Blocking Statute in order to comprehensively understand its core provisions and manner of application, before analysing its potential role in protecting ICC proceedings related to Israel's system of apartheid, unlawful occupation and genocidal, settler-colonial regime.

3 Federal Register, 'Imposing Sanctions on the International Criminal Court' <<https://www.federalregister.gov/documents/2025/02/12/2025-02612/imposing-sanctions-on-the-international-criminal-court#page->>>

I.

Content and Purpose of the Blocking Statute

The Blocking Statute came into force in 1996 in response to US measures against Cuba, Iran and Libya. From the outset, its aim was to protect EU economic operators engaged in lawful international trade and/or movement of capital, as well as related commercial activities, from the effects of such extraterritorial sanctions.

While the sectors most negatively affected by the extra-territorial application of third-country sanctions are the banking and financial sectors, trade in goods or services, investments (including foreign direct investments), tourism and transport are also heavily impacted.⁴ In addition, extra-territorial sanctions have the unwanted impact of discrediting the EU and its Member States' foreign policy.

On 8 May 2018, during President Trump's previous presidential term, the US unilaterally decided to withdraw from the Joint Comprehensive Plan of Action (JCPOA), also known as the 'Iran nuclear deal' and re-impose sanctions on Iran. This led the EU to reconsider the Blocking Statute as a means to counter these new sanctions. Soon after, on 7 August 2018, the Commission Delegated Regulation (EU) 2018/1100 entered into force, which amended the Annex to the Blocking Statute. This was followed by the Commission Implementing Regulation (EU) 2018/1101 which allowed EU companies to request an authorisation to fully or partially comply with specified foreign laws in circumstances where non-compliance would seriously damage their interests or the interests of the EU, as well as the Commission Delegated Decision (EU) 2018/1102, stating that Iran was added to the list of countries eligible for European Investment Bank financing, which is now covered by an EU guarantee.

Three years later, in 2021, the Commission announced that it would consider amending the blocking statute to further deter and counteract the unlawful extra-

⁴ European Commission, *Amendment of the EU Blocking Statute: Summary of Results of the Open Public Consultation on the review of the Blocking Statute* <https://finance.ec.europa.eu/document/download/c4ab6d05-2663-477f-a680-91163ecc5aa3_en?filename=2021-blocking-statute-review-summary-of-responses_en.pdf> 3

territorial application of sanctions to EU operators by countries outside the EU. This amendment would also streamline the application of the current EU rules, including by reducing compliance costs for EU citizens and businesses, but has not been adopted as of yet.

The EU Blocking Statute protects EU operators (regardless of size or field of activity) in a number of ways:

1. First, it nullifies the effect in the EU of any foreign decision, including administrative, judicial, arbitral or of any other nature, taken by a third country authority regarding extra-territorial legislation listed in the Annex or the acts and provisions adopted pursuant to them.⁵ Likewise, no decision requiring, for instance, seizure or enforcement of any economic penalty against an EU operator based on the aforementioned acts can be executed in the EU.⁶
2. Second, EU operators may recover damages resulting from the application of the listed extra-territorial foreign laws by natural or legal persons or entities, or any person acting on their behalf or as an intermediary.⁷ In line with the protective aim of the Blocking Statute, the scope of damages that can be claimed before a court is very broad, and even includes legal costs. The same is true for who damages can be claimed from, with various factors being considered such as the kind of damage caused, the person or entity causing it, or the possible shared responsibility in causing such damage.⁸ As outlined in the last paragraph of Article 6, recovery of damages could take the form of seizure and sale of assets which the natural or legal person or entity causing the damages, or its intermediaries, or any person acting on its behalf, holds in the EU, including shares that they may hold in companies incorporated within the EU.

5 Blocking Statute, Article 4

6 EUR-Lex, 'Guidance Note - Questions and Answers: adoption of update of the Blocking Statute (2018/C 277 I/03)' Official Journal of the European Union <[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018XC0807\(01\)>](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018XC0807(01)>)

7 Blocking Statute, Article 6

8 EUR-Lex, 'Guidance Note - Questions and Answers: adoption of update of the Blocking Statute (2018/C 277 I/03)' Official Journal of the European Union <[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018XC0807\(01\)>](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52018XC0807(01)>)



3. Third, pursuant to Article 5(2), EU operators may request an authorisation to comply with the listed extra-territorial legislation, if not doing so would cause serious harm to their interests or the interests of the EU.⁹ Since the basic principle of the Blocking Statute is that EU operators shall not comply with the listed extra-territorial legislation, or any decision, ruling or award based thereon, given that the EU does not recognise its applicability to or effects towards EU operators,¹⁰ this provision represents a derogation to the general rule of non-compliance with foreign laws included in the Annex to the Blocking Statute.

⁹ Blocking Statute, Article 5 (2)

¹⁰ Blocking Statute, Article 5 (1)

II.

Scope of Application

The Blocking Statute automatically applies to all foreign laws with extra-territorial effect listed in the Annex to the regulation. As previously mentioned, currently these include US sanctions targeting Iran and Cuba.

As per Article 2 of the Blocking Statute, where the economic and/or financial interests of any person referred to in Article 11 are affected,¹¹ directly or indirectly, by the laws specified in the Annex or by actions based thereon or resulting therefrom, they shall inform the European Commission within 30 days from the date on which it obtained such information.¹²

On 21 December 2021, the Court of Justice of the European Union (CJEU) released its long-awaited judgment in Case C-124/20.¹³ Case C-124/20 addressed questions that had arisen in legal proceedings between Bank Melli Iran (Bank Melli) and Telekom Deutschland GmbH (Telekom) and has helped clarify the scope and nature of the Blocking Statute. As confirmed by the Court, according to settled case-law, “it is necessary, when interpreting a provision of EU law, to consider not only its wording but also its context and the objectives of the legislation of which it forms part”.¹⁴ With this understanding, the Court found that even in the absence of an order directing compliance issued by US administrative or judicial authorities, the Blocking Statute was interpreted as prohibiting EU operators from

11 According to Article 11, “person” includes any natural person being a resident in the Community and a national of an EU Member State; any legal person incorporated within the Community; any natural or legal person referred to in Article 1 (2) of Regulation (EEC) No 4055/86 (2); any other natural person being a resident in the Community, unless that person is in the country of which he is a national; and any other natural person within the Community, including its territorial waters and air space and in any aircraft or on any vessel under the jurisdiction or control of a Member State, acting in a professional capacity.

12 Blocking Statute, Article 2 (1)

13 See *Bank Melli Iran v. Telekom Deutschland GmbH* (Case C-124/20) Judgment (21 December 2021) <<https://curia.europa.eu/juris/document/document.jsf?text=&docid=251507&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=574404>>

14 *Bank Melli Iran v. Telekom Deutschland GmbH* (Case C-124/20) Judgment (21 December 2021) <<https://curia.europa.eu/juris/document/document.jsf?text=&docid=251507&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=574404>> para. 43

complying with the listed foreign laws.¹⁵ This interpretation is supported by the aims of Regulation No 2271/96, which include protecting the established legal order as well as the interests of the EU and those of natural and legal persons exercising rights under the TFEU system.¹⁶ Therefore, the CJEU's judgment, which is binding on EU Member States, offers clear confirmation that the Blocking Statute represents a legal bar to EU persons intending to take action to comply with US sanctions.

If an EU operator terminates a contract in order to comply with certain US sanctions, the affected person may initiate civil proceedings for penalties that could include nullifying the termination or obtaining damages. If the national court accepts that an EU operator terminated a contract because it sought to comply with relevant US sanctions laws, a national court can “weigh in the balance” whether the EU operator would suffer disproportionate economic loss if the contract had to be reinstated. An important factor for this assessment will be whether the EU operator applied to the European Commission for an authorisation to derogate from the Blocking Statute.

As a final note, pursuant to Article 4, any judgment of a foreign court or tribunal imposing penalties or restrictions on an EU entity for violating extraterritorial sanctions included in a listed law is considered null and void in the EU.

15 *Bank Melli Iran v. Telekom Deutschland GmbH* (Case C-124/20) Judgment (21 December 2021) <<https://curia.europa.eu/juris/document/document.jsf?text=&docid=251507&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=574404>> paras. 42-51

16 *Bank Melli Iran v. Telekom Deutschland GmbH* (Case C-124/20) Judgment (21 December 2021) <<https://curia.europa.eu/juris/document/document.jsf?text=&docid=251507&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=574404>> para. 48



Responsibility for Implementation

EU Member States' authorities are responsible for the implementation of the Blocking Statute, which includes the adoption and implementation in their respective legal orders of penalties for possible breaches. Since such penalties are laid down in national legislation, they will inevitably vary between Member States. Still, all penalties must be "effective, proportionate and dissuasive".¹⁷ It is also for Member States to ensure that the Blocking Statute regime is enforced, including through the application of those penalties, where needed and appropriate, in accordance with their national procedures. In doing so, States should raise awareness of the Blocking Statute amongst companies and the judiciary, to ensure full enforcement.¹⁸ During open consultations on a suggested amendment in 2021, respondents recommended that to ensure maximum enforcement the adoption of an EU-level of the Blocking Statute would be more efficient.¹⁹

17 Blocking Statute, Article 9

18 European Commission, *Amendment of the EU Blocking Statute: Summary of Results of the Open Public Consultation on the review of the Blocking Statute* <https://finance.ec.europa.eu/document/download/c4ab6d05-2663-477f-a680-91163ecc5aa3_en?filename=2021-blocking-statute-review-summary-of-responses_en.pdf> 4

19 European Commission, *Amendment of the EU Blocking Statute: Summary of Results of the Open Public Consultation on the review of the Blocking Statute* <https://finance.ec.europa.eu/document/download/c4ab6d05-2663-477f-a680-91163ecc5aa3_en?filename=2021-blocking-statute-review-summary-of-responses_en.pdf> 6

IV.

Role in Promoting Accountability

The Blocking Statute's primary purpose is to protect EU individuals and entities engaging in international trade in a manner that is compliant with EU law, but in violation of unlawful, unreasonable or abusive sanctions with extra-territorial effect imposed by countries outside the EU.²⁰ As discussed, thus far, the Blocking Statute has only prohibited EU operators from complying with the US sanctions on Iran and Cuba and has not been vigorously enforced.

Following Executive Order 13928 of June 11, 2020, on 'Blocking Property of Certain Persons Associated with the International Criminal Court',²¹ the EU was swift to condemn the Order and express its "grave concern" and "unwavering support" for the ICC.²² A statement issued by the High Representative in response to Executive Order 13928 noted:

At a time when the rules-based international order is facing increased pressure, the strengthening of the international criminal justice system is more important than ever.²³

Four years on, the situation has deteriorated beyond imagination. The world has been forced to watch in horror as Israel commits genocide against Palestinians in Gaza and amps up its preparations for its *de jure* annexation of the West Bank, which is currently subject to levels of military activity by the Israeli Occupying

20 See Human Rights Watch, 'US Sanctions on the International Criminal Court' (14 December 2020) <https://www.hrw.org/news/2020/12/14/us-sanctions-international-criminal-court#_The_European_Union>

21 Federal Register, 'Blocking Property of Certain Persons Associated With the International Criminal Court' <<https://www.federalregister.gov/documents/2020/06/15/2020-12953/blocking-property-of-certain-persons-associated-with-the-international-criminal-court>>

22 European Union External Action, 'International Criminal Justice: Statement by the High Representative following the US decision on possible sanctions related to the International Criminal Court' (16 June 2020) <https://www.eeas.europa.eu/eeas/international-criminal-justice-statement-high-representative-following-us-decision-possible_en>

23 European Union External Action, 'International Criminal Justice: Statement by the High Representative following the US decision on possible sanctions related to the International Criminal Court' (16 June 2020) <https://www.eeas.europa.eu/eeas/international-criminal-justice-statement-high-representative-following-us-decision-possible_en>

Forces (IOF) not witnessed for over two decades. Despite the severity and lasting consequences of Israel's acts, which breach the most fundamental provisions of international law, it is yet to face legal, financial, or political consequences. Rather, the complete lack of accountability enjoyed by Israel since its creation in 1948 is now being cemented by the Trump administration through Executive Order 14203.

As emphasised by almost 80 States Parties to the ICC (including the vast majority of EU Member States)²⁴, the Court plays an “indispensable role in ending impunity, promoting the rule of law, and fostering lasting respect for international law and human rights” and represents a “vital pillar of the international justice system by ensuring accountability for the most serious international crimes”.²⁵ The unprecedented challenges faced by the Court – as a result of continuous rhetorical attacks by Israel and its closest allies and the sanctions recently imposed by Executive Order 14203 on the ICC, its personnel and individuals or entities who cooperate with it – put the entire institution, and the ideals it represents, at risk.

As noted by the CJEU when examining the Blocking Statute in 2021:

[T]he laws specified in the annex to the regulation are included there because they seek to govern activities of natural and legal persons which fall within the jurisdiction of the Member States and have extraterritorial application. In so doing, they adversely affect the established legal order and harm the interests of the [EU] as well as those of the persons referred to, in violating international law and compromising the realisation of the [EU]'s objectives.

Listed among its ‘priorities and actions’,²⁶ the EU bases itself “on a strong commitment to promote and protect human rights, democracy and the rule

24 Austria, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden – as well as EU candidates Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Moldova

25 Government of the Netherlands, ‘Joint Statement - Sanctions International Criminal Court (ICC)’ (7 February 2025) <<https://www.government.nl/documents/diplomatic-statements/2025/02/07/joint-statement---sanctions-international-criminal-court-icc>>

26 See EU, ‘Priorities and Actions – Actions by topic’ <https://european-union.europa.eu/priorities-and-actions/actions-topic_en>

of law both within the EU and worldwide”.²⁷ This includes EU relations with international organisations. In direct contradiction of this aim, Executive Order 14203 imposes sanctions against anyone who assists the ICC, and Chief Prosecutor Khan specifically, in investigations of the US or its allies,²⁸ in a blatant attempt to shield Israel – and itself – from accountability for the multitude of international crimes that continue to be committed.

Considering the Blocking Statute is designed to counteract the extraterritorial application of certain foreign laws that adversely affect the established legal order and the realisation of the EU’s objectives, which includes the promotion of human rights worldwide, there is no apparent reason as to why Executive Order 14203 could not be included in the Annex of Council Regulation 2271/96. It has both extraterritorial effect and imposes penalties on any operators that have made “any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1”.²⁹

If the Annex is amended, the EU Blocking Statute would assure EU-based service providers that their transactions with the ICC are protected. This would not only provide peace of mind to those working with the institution and its staff, it would ensure the Court’s ability to function at a time when it is needed most.

27 EU, ‘Human rights and democracy’ <https://european-union.europa.eu/priorities-and-actions/actions-topic/human-rights-and-democracy_en>

28 Federal Register, ‘Imposing Sanctions on the International Criminal Court’ <<https://www.federalregister.gov/documents/2025/02/12/2025-02612/imposing-sanctions-on-the-international-criminal-court#page->>>

29 Federal Register, ‘Imposing Sanctions on the International Criminal Court’, Section 3 <<https://www.federalregister.gov/documents/2025/02/12/2025-02612/imposing-sanctions-on-the-international-criminal-court#page->>>

II.

Conclusion

In the immediate aftermath of Executive Order 14203, President of the European Commission, Ursula von der Leyen, highlighted the importance of the ICC, stating it “guarantees accountability for international crimes and gives a voice to victims worldwide” and must be able to freely pursue its fight against global impunity – adding “Europe will always stand for justice and the respect of international law”.³⁰

The EU Blocking Statute is a crucial tool in maintaining and promoting accountability efforts for the most serious human rights violations. Amidst an ongoing genocide, levels of forcible displacement in the West Bank unmatched since the Naksa in 1967, and the unprecedented expansion of illegal Israeli settlements and outposts, the Blocking Statute can provide essential protection and send a powerful message that the EU and its members will not tolerate efforts to undermine the Court in its fight for justice nor will it ignore the plight of Palestinians who continue to suffer at the ends of a brutal, settler-colonial regime.

As alleged defenders of the rule of law, human rights, and democracy, the EU must employ all means at its disposal to shield EU operators – including individuals and enterprises – from the extraterritorial effects of US sanctions against the ICC. This includes amending the Annex of the Blocking Statute to include Executive Order 14203 in the list of laws, regulations and other legislative instruments to which the regulation applies. Failure to do so is to acquiesce to an administration of a third country that seeks to destroy the EU’s core values and the few multilateral tools we have in place to address serious human rights violations.

EU Member States’ representatives must immediately:

1. Demand the European Commission to amend the Annex to the Blocking Statute to include US Executive Order 14203;
2. Ensure the necessary preparatory work is carried out to be able to swiftly implement the Blocking Statute upon its amendment;

³⁰ Ursula von der Leyen (@vonderleyen) on X (7 February 2025) <<https://x.com/vonderleyen/status/1887802247033045301>>

3. Reflect on the results of Public Consultation period between September and November 2021 with a view to addressing current challenges to effective implementation;
4. Explore other avenues to protect the ICC, its officials, and those cooperating with it from the effects of current and potential future sanctions, including by adopting protective measures at the national level;
5. Consider the establishment of a counter-sanction financial system that would allow the Court's staff to function irrespective of any Executive Orders issued by the Trump administration.³¹

31 See Middle East Eye, 'Unpacking Trump's sanctions on the ICC' (7 February 2025) <<https://www.middleeasteye.net/news/unpacking-trumps-sanctions-icc>>