BUSINESSEUROPE
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Mr Jean-Claude Juncker
President
European Commission
Rue de la Loi 200
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BELGIUM

31 July 2018

Dear President,

We would like to address the issue of the re-instalment of U.S. sanctions against Iran, following the unilateral withdrawal of the U.S. from the Iran nuclear deal – the Joint and Comprehensive Plan of Action (JCPOA) – which in the view of BusinessEurope risks creating a very challenging environment for European companies operating in Iran.

BusinessEurope reiterates its support for the JCPOA as an agreement that aims to ensure that the nature of Iran's nuclear programme is peaceful, in exchange for the gradual lifting of sanctions. Recalling the positive role business has played in this regard, we urge the EU to effectively protect the interests of EU companies that are active in the Iranian market, either as investors or as exporters.

In this context, we would like to share with you some broader considerations from a business perspective. More specifically:

- With Resolution 2331 (2015), the United Nations Security Council incorporated the JCPOA into international law. Going forward, the EU should strive to continue to cooperate with the international community in trying to keep the JCPOA working. While guaranteeing a framework in which businesses can fairly compete under predefined, internationally recognized rules and the umbrella of international law.

- An ongoing dialogue with Iran is an integral part of this cooperation. Trade and political exchange have strengthened moderate forces in Iran. Closing those channels of communication and collaboration will only play into the hands of those parties in Iran working against the country's reincorporation into the global community.

- For companies to contribute to the JCPOA in the manner mentioned above, it is crucial to ensure that Iranian business partners have access to financial messaging services like SWIFT. Private banks in the EU must not be disincentivised to act as correspondence banks. This is a critical issue for companies of all sizes, big and small, and it is in our global interest not to recklessly endanger the free flow of capital and thereby instrumentalise globalisation's long-term benefits for short term political gains. In this framework, we also welcome measures designed to enable the European Investment Bank (EIB) to play a role. In respect of these issues, we look forward to concrete solutions that are developed in close consultation with business and activated before 5 November.

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- As guardian of the JCPOA, the International Atomic Energy Agency (IAEA) has subjected Iran to a strict and invasive control regime. No breach of Iran's commitment under the JCPOA has been recorded. It should be paramount to European diplomatic efforts to continue working with our American allies and emphasize that the JCPOA was and will continue to be the main legal basis in ensuring a nuclear free Iran.

- More generally, it is imperative to continue working together in the strong transatlantic cooperation that has traditionally connected Europe and the United States. The goal must be to limit the recurrent extraterritorial effects of US sanctions policy.

More concretely:

Companies have worked hard in order to put in place systems that would allow them to fully comply with regulations on sanctions while doing business with Iran. Since the gradual lifting of sanctions in 2016, they have carried significant commitments in order to enter or to increase their involvement in the Iranian market. The fact that once again, they will be caught under the extraterritorial effect of U.S. sanctions, makes their business operations extremely difficult and unpredictable, especially given the strict timelines provided by the U.S. authorities.

BusinessEurope recognises the EU's efforts to establish mechanisms that will support EU companies. However, we are concerned that the political signals the EU is sending to the U.S. government will not be translated into concrete solutions on the ground. In particular, we are referring to the EU Blocking Statute Regulation of 1996. With 7 August approaching fast, it is of utmost importance to have a clear picture of how the EU will design the Blocking Statute's Guidelines to effectively protect European companies from potentially harmful consequences of the Regulation.

Political and economic context

The Blocking Statute was initially adopted in a different political and economic framework and was intended to primarily function as a negotiation tool with the U.S. Today, it is intended to serve as a legal instrument to practically shield EU companies from secondary U.S. sanctions. Furthermore, companies' dependency on the U.S. market and financial system has increased significantly since the 1990s. This needs to be taken into account when the EU assesses the legal and economic impact of the Regulation on EU companies and its use as political leverage vis-à-vis the U.S.

Questions of practical implementation

So far, EU Member States have used the EU Blocking Statute in a limited manner. This also means that there is limited experience and understanding of how it works in practice. This is further accentuated by the current lack of EU Guidelines to national competent authorities and economic operators on how to implement the Regulation, without putting EU companies in a position where they have to comply with contradictory juridical obligations. We understand that the publication of Guidelines is currently foreseen to take place on 7 August, in parallel to the publication of the updated EU Blocking Statute

Regulation and the same day the first wave of U.S. sanctions enters into force. For companies that are engaged in Iran and seek for more clarity as soon as possible this may be too little, too late.

BusinessEurope is particularly concerned with the implementation of three key elements of the Regulation (a) the penalties applied to EU companies in case of a breach of the EU Regulation, (b) the recovery of damages by EU companies against those who have caused them and (c) the waivers not to apply the Regulation to EU companies that prove they will suffer significant damages.

With regards to penalties, we understand that these will be implemented and enforced by Member States, according to their national legislation, which, in some cases, entails criminal liability for economic operators. The different approaches among Member States will lead to a segmented implementation and unequal treatment among companies. The EU should set clear Guidelines that will help Member States implement fair and proportionate penalties for non-compliance.

The Regulation also allows for the recovery of damages, including legal costs, by EU companies against those who have caused them, because of the U.S. sanctions. Such claims can be made through the launch of civil cases in national courts. The Regulation also states that the "Brussels Convention" will be applied in the process of the jurisdiction and enforcement of the judgements in a way that will effectively allow the recovery of damages in any EU Member State. In this framework, we would like to ensure that the guidelines further clarify this point and ensure that courts in one Member State may exert judicial reimbursements in other Member States. To this aim the EU should set up clear Guidelines with the active support of businesses.

Regarding the waivers, we understand that the European Commission will be entitled to issue non-compliance authorisations to EU companies that can demonstrate they will suffer serious damages by complying with the Regulation. The European Commission will be assisted by Member States in setting up the criteria to grant authorisations. The Commission and Member States should communicate clearly the rules and conditions under which companies can claim a waiver from the Blocking Statute and implement a streamlined system that ensures an easy application process for companies and rapid decisions from the part of the Commission. In order to guarantee a seamless implementation, this streamlined system must be operational before the application of U.S. sanctions. In this context, it is important to make sure that companies deciding to leave the Iranian market because of reputational risks, are not punished.

Long-term perspective

Although the objective of the EU Blocking Statute Regulation is to protect EU companies from the extraterritorial application of U.S. sanctions, its limited scope and the fact that its provisions have not been updated since 1996 put into question its effectiveness. It is therefore important that the Regulation is designed and enforced in a way that finds a balance between the EU's interests in upholding the JCPOA and the fundamental right of companies to choose in which markets they would like to operate. Taking these considerations into account, BusinessEurope supports the modernisation of the EU Regulation and stands ready to actively contribute in this process.

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We thank you, Your Excellency, for taking into consideration our concerns in your deliberations with the EU Heads of State and Government and the representatives of the EU Institutions. For your information, a similar letter has been shared with Mr Sebastian Kurz, Federal Chancellor of the Republic of Austria and Mrs Federica Mogherini, High-Representative of the Union for Foreign Affairs and Security Policy and Vice President of the European Commission.

Yours sincerely,

Pierre Gattaz
President

Markus J. Beyrer
Director General