

U.S. and EU sanctions and embargoes on Iran and Russia

The role of board members

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Scenarios

EU citizens as board members in Russia or Iran

Subsidiaries of EU based companies

Typically in Russia

US citizens as board members of EU based companies

Subsidiaries of US companies

But also independent EU companies

Issues typically with respect to Iran business

EU citizens as board members in Russia/Iran

Iran Article 49 EU/267/2012 (consolidated version)

Russia Article 13 EU/833/2014 (consolidated version)

This Regulation shall apply:

- (a) within the territory of the Union, including its airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State
- (c) **to any person inside or outside the territory of the Union who is a national of a Member State;**
- (d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union

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EU citizens (continued)

Basic assumption: A company is acting through the board

Board members are the corporate body of the company rather than individuals

Therefore: it could be argued that an EU citizen, if acting in its capacity as a board member is not acting as an EU citizen but as (part of) the corporate body of the (Russian) company.

When the EU Embargo on Russia was introduced it was almost common understanding that an EU citizen on the board of a Russian company, would not fall under the Regulation.

Recent discussions with BAFA indicate that this view will no longer be supported.

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U.S. citizens as board members in EU companies

The U.S. was always very clear that the embargoes and sanctions regulations apply also to board members in foreign companies.

Problem:

If EU companies want to (re)engage in Iran a U.S. board member can cause problems, since he has to live up to U.S. Regulations (which are stricter than the EU Regulations).

Solution:

„Ring fencing“ the U.S. board member, so that is not involved in any decision regarding the Iran business of the company

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U.S. citizens (continued)

Corporate law requirements

Many (national) corporate laws provide for a principle of collegiality for the board (in particular Germany)

This shall say: it is possible to delegate task to specific board members, however, when it comes to important decisions of strategic issues or substantial company risks all board members need to be involved in the decision making process.

- Doing business in an embargo country
- Critical situations with the partner in the embargo country (insolvency, product liability cases ...)

If a wrong decision is taken and the company suffers a damage the board members can be held liable.

Possible solutions: waivers / statutes of the company

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