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*How to continue doing business with Iran
despite the re-imposition of US Sanctions?*

Austrian Chamber of Commerce

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INTRODUCTION: *State of the JCPOA and the re-imposed sanctions at a glance*

- 1. Expressly U.S. re-imposed sanctions**
- 2. Remaining non sanctionable activities**
- 3. Exemptions and licenses**
- 4. Limiting the effect of US sanctions and US sanctions' exposure**

State of the JCPOA at a glance





State of the re-imposition of sanctions at a glance

EU/UN/International Level

- UN and EU sanctions against Iran terminated or suspended since the Implementation Day – Not yet re-imposed
- Amended EU Blocking Regulation entered into force on August 7, 2018
- FATF counter-measures still suspended until Feb 2019

US Sanctions

- End of statutory waivers reinstating the waived sanctions provided for in 4 U.S. statutes
- Executive Order 13846 re-imposing the revoked sanctions provided for in 5 Executive Orders
- **Sanctions not lifted by the JCPOA and still in force (mostly “Primary Sanctions”)**



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Expressly targeted sectors of activities

The targeted sectors of activities & corresponding winding down periods:

90 days (i.e. August 6, 2018) for 6 sectors:

- Purchase or acquisition of U.S. dollar banknotes by the Government of Iran
- Trade in gold or precious metals
- Sale, supply, or transfer to or from Iran of graphite, metals, and software for integrating industrial processes
- Significant transactions related to IRR
- Iranian sovereign debt
- Sanctions on Iran's automotive sector.

180 days (i.e. November 4, 2018) for 6 sectors:

- Ports operation, shipping and shipbuilding
- Petroleum-related transactions and purchase of petroleum, petroleum products, or petrochemical products from Iran
- Transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions
- Provision of specialized financial messaging services to the Central Bank of Iran and certain Iranian financial institutions
- Provision of underwriting services, insurance, or reinsurance
- Iran's energy sector.

The sanctions applicable to each of the targeted sector of activities are covered by different US regulations

For each sector the corresponding legal basis shall be checked to understand:

- (i) if the concerned activity is sanctionable; and
- (ii) if so, what sanctions may apply



Expressly re-imposed sanctions by revocation of licenses and listing

Effective revocation of OFAC's licenses	Following August 6, 2018	General licenses under the Iranian Transactions and Sanctions Regulations with regards to the importation in the US of <i>Iranian-origin carpets, foodstuffs and related financial transactions</i>
		Specific licenses issued in connection with the Statement of Licensing Policy (SLP): activities related to the export or re-export to Iran of <i>commercial passenger aircrafts and related parts and services</i>
		General License I relating to <i>contingent contracts</i> for activities eligible for authorization under the <i>SLP licenses</i>
	By November 5, 2018	General License H authorizing U.S.-owned or -controlled foreign entities to undertake certain activities with the Government of Iran or persons subject to the jurisdiction of the Government of Iran
Re-Listing & listing of entities & individuals	OFAC gradually re-listed persons/entities removed from the sanction lists pursuant to the JCPOA's provisions following the same schedule as the sectorial re-imposition of sanctions. By November 5, 2018, all said individuals & entities will be relisted. Other individuals and entities are also being newly listed.	

The sanctions' panel for non-U.S persons with interests in the US

Financial sanctions

- **Part of menu-based sanctions:**
 - Prohibition for U.S. financial institution to grant any loan or credit above 10 000 000 USD over a 12 month period to any sanctioned party.
 - Prohibition for any U.S. person from purchasing a significant amount of equity or debt instruments of a sanctioned person.
 - No issuance of any guarantee, insurance, extension of credit in connection with the export of any goods or services to any sanctioned person by the Exim Bank.
- **Correspondent account sanctions targeting non-US financial institutions:**
 - Prohibition for a sanctioned foreign financial institution to open and maintain a correspondent account or a payable-through account in the U.S.

Administrative & Trade Sanctions

- **Part of menu-based sanctions:**
 - No issuance of US government specific licenses, permission or authority to export of goods & services
 - Banned from being:
 - primary dealer of US Government debt instruments;
 - agent of US Government;
 - repository of US Government funds;
 - contractor of US Government for any goods or services.
 - For any corporate officer or shareholder of sanctioned person:
 - US visa ban;
 - expulsion from the US territory.
 - Prohibition of any transactions in foreign exchange, transfers, credit, or payments subject to the US jurisdiction in which the sanctioned person has any interest or is involved in.

Assets blocking

- **Blocking sanctions:**
 - Blocking of any property that is subject to the jurisdiction of the United States and with respect to which the sanctioned person has any interest.
 - Cut off from all dealing with U.S. Persons



Remaining non-sanctionable activities

Targeted sectors



Depending on the applicable US legal basis, the description of the prohibited activities may help identifying non prohibited activities (e.g. thresholds in the oil & gas sector, importation of CBU in the automotive sector)

Non targeted sectors



« Grey Zone »
Activities not expressly sanctioned while not expressly authorized by U.S. laws and regulations (e.g. construction, electricity sectors)

Expressly authorized activities mainly through licenses
(e.g. humanitarian trade, food, agricultural commodities, medicine, medical devices)



Impact of Primary Sanctions on non-sanctionable activities

Involvement of US Persons and US Financial System / Primary sanctions

- Transactions which are not expressly sanctioned should not involve any US persons or transit through the US financial system (except cases of exemptions and licenses)

Exportation and re-exportation, directly or indirectly, of US-origin goods to Iran

- Goods exported by a US person; or
- Goods which are originally from the United States (U.S.-origin goods); or
- Goods that contain 10% or more of U.S.-origin goods (*de minimis* rule)

Export and re-export of US-origin software and hardware to Iran

- prohibition for certain US-origin software except if incident to personal communication and related services
- prohibition for certain US-origin hardware such as tablets, laptops or mobile phones, except if incident to personal communication and related services



Impact of Secondary Sanctions on non-sanctionable activities

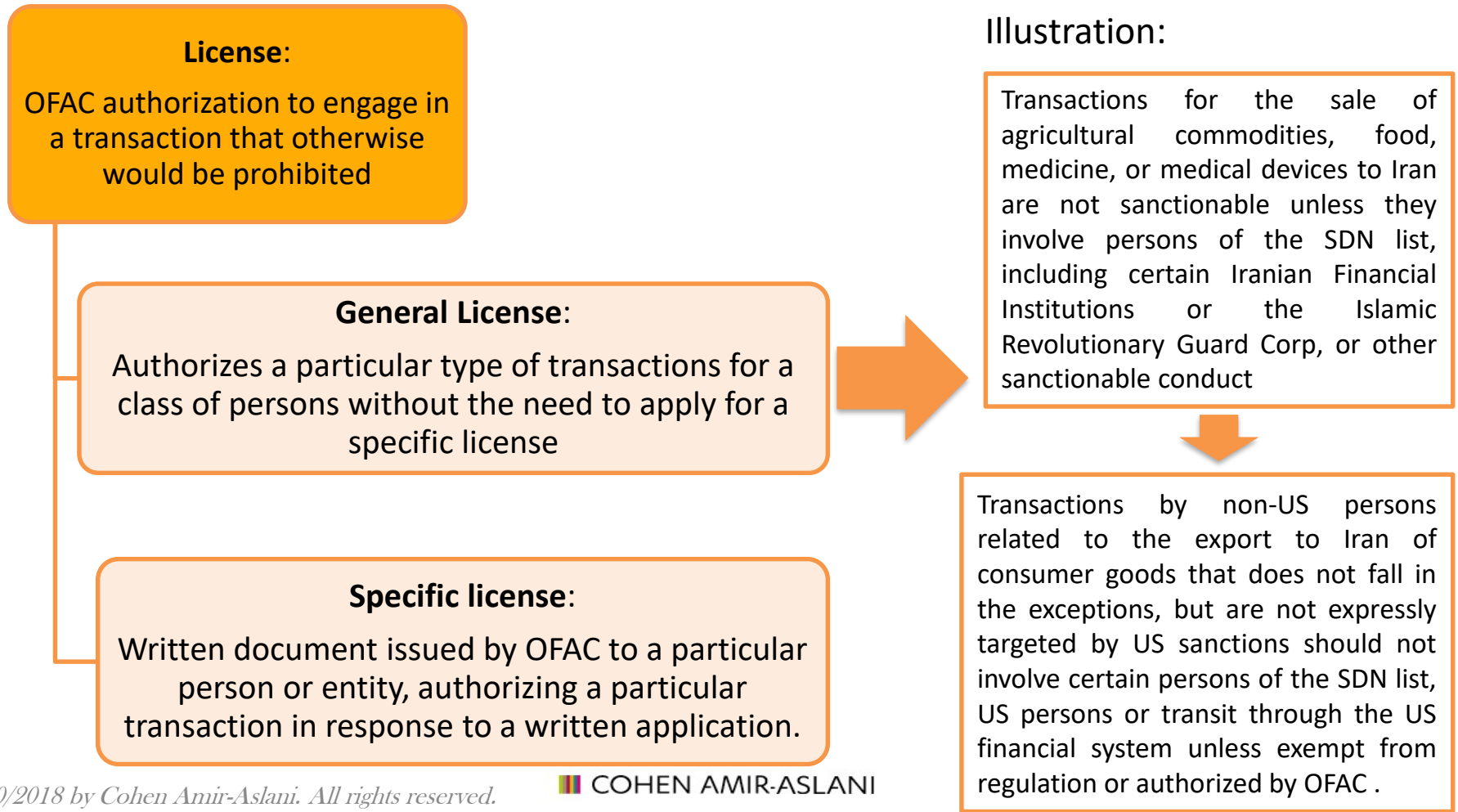
Involvement of persons designated on the Specifically Designated Nationals (SDN) List

- Relisting of entities meeting the definition of “Government of Iran” or “Iranian financial institution” on the SDN List (as of November 5, 2018)
- Transactions of either U.S. or non-U.S. persons in any transactions with such listed persons are widely forbidden and may result in asset freezing in the U.S.

Shipping / Insurance / Financial services

- Difficulties in practice to have the goods shipped to Iran
- Difficulties to be covered by insurances
- Difficulties to find foreign financial institutions which will not be subject to the re-imposed sanctions

Illustration through exempted or licensed activities



Exempted activities through general licenses

General License for export/re-export of agricultural commodities (food items), medicine, medical devices

Scope

- Covered persons: US and non-US persons
- Broad scope of covered items (no interpretation issues)
- Related transactions authorized: shipping, insurance, financing and payment ...

Restrictions

- Excluded items
- Excluded persons designated on the SDN List (e.g. terrorism (IRGC), WMD proliferation, ballistic missile)

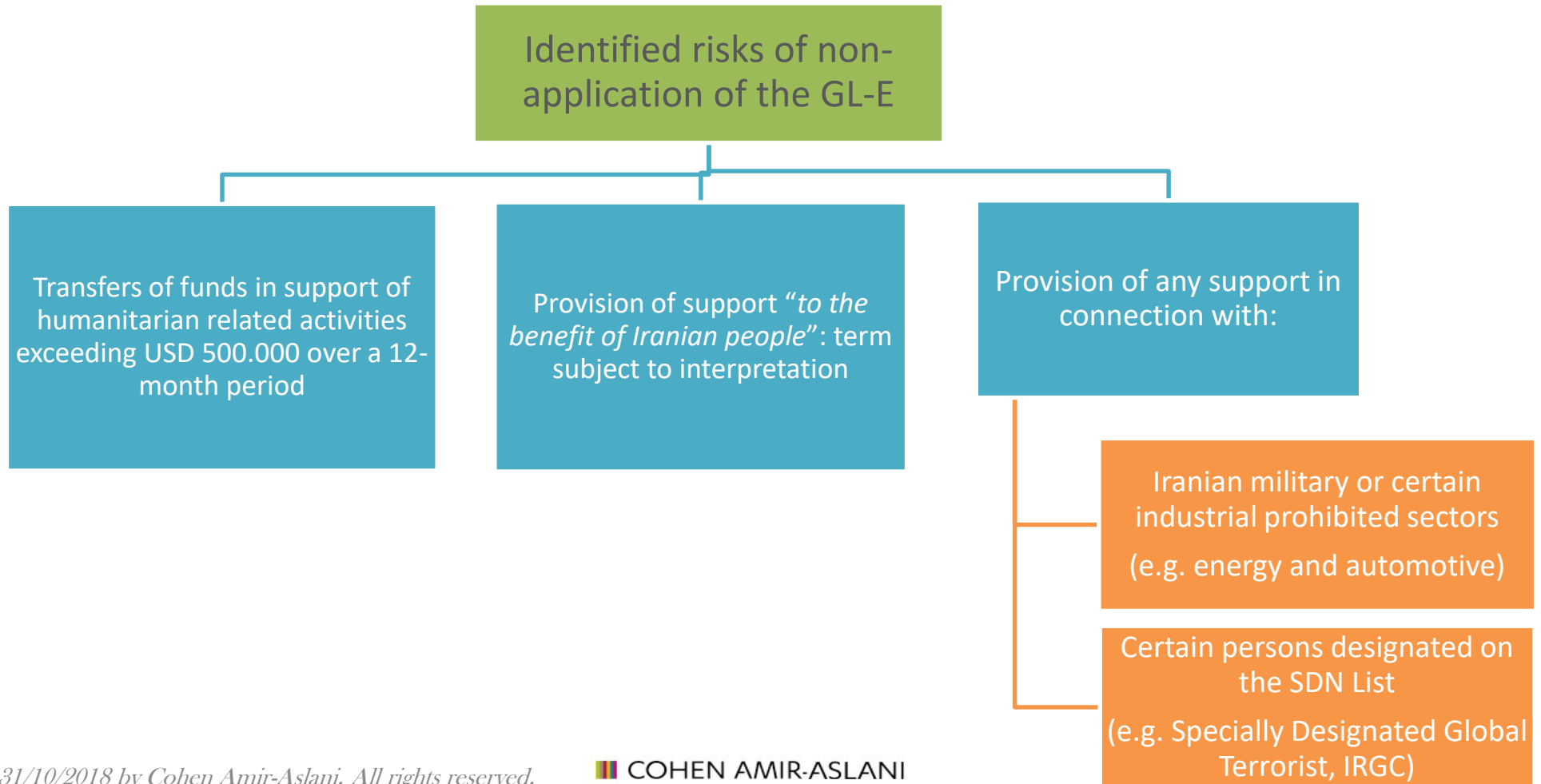
Humanitarian Activities Exemptions: General License E - Scope

General License E authorizing certain services in support of Non-Governmental Organizations' activities in Iran

Scope

- Covered persons: US and non-US persons
- Services (broad interpretation of related transactions) related to non-profit activities:
 - Provision of basic human needs (e.g. health-related services, donations)
 - Reconstruction projects in response to natural disasters
 - Environmental/wildlife conservation projects
 - Human rights and democracy building projects

Humanitarian Activities Exemptions: General License E – Restrictions



Humanitarian Activities' viability at risk

Main impediment: financial transactions necessary for conduct of humanitarian trade and projects

Nuclear Sanctions case (Iran v. USA)
International Court of Justice (03/10/18)

The judge panel issued provisional measures ordering the USA to:

- remove any impediments to the free exportation to Iran of humanitarian goods
- ensure the efficiency of licenses and necessary authorizations to export these goods (notably financial transactions)

Parsian Bank's designation as Specially Designated Global Terrorist (16/10/18)

Iranian banks previously exempt from secondary sanctions and used as financial channels for humanitarian trade now targeted by the US administration



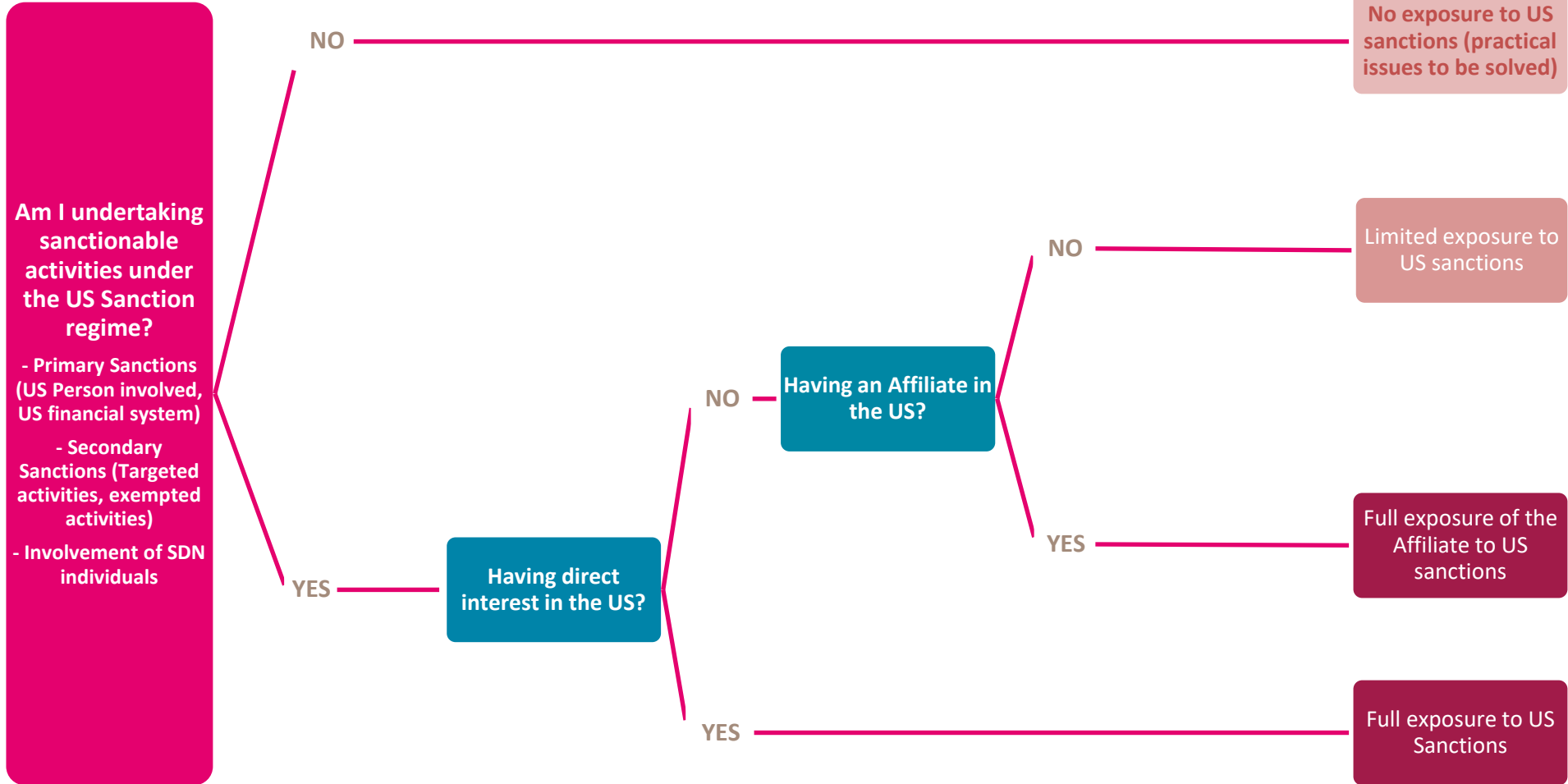
Limiting the effect of US sanctions for non-US Persons


The Blocking Regulation (Council Regulation (EC) No. 2271/96 of November 22nd, 1996)

- Amended annex mentioning US statutes as “Blocked sanctions” - entered into force on August 7, 2018
- With regards to individual resident of an EU Member State or any legal entity-incorporated in an EU Member State:
 - Obligation to inform the European Commission if its economical or financial interests are impaired by a Blocked Sanction;
 - Prohibition from complying with requirement or prohibition resulting from a Blocked Sanction; and
 - Possibility of action against a person that caused damages by complying with the Blocked Sanctions.
- No judgment and no decision of an administrative authority giving effect to a Blocked Sanction will be recognized or enforceable within the EU.
- Rarely enforced in the past – Deterrent effect
- Enforcement at the EU Member State level – To be followed...
- Authorization request to be filed with the Commission to comply with U.S. Sanctions
- EU Guidelines

Possible activation of the WTO settlement of dispute procedure

Limiting the exposure of US sanctions – Key questions





Right by your side

