European Commission

AMENDMENT OF THE EU BLOCKING STATUTE

SUMMARY OF RESULTS
OF THE OPEN PUBLIC CONSULTATION
on the review of the Blocking Statute

(Council Regulation (EC) No. 2271/96)

Banking and Finance

Introduction

The open public consultation has been the central consultation activity in the impact assessment process for this initiative[1]. It was open to all stakeholders and citizens and lasted for 8 weeks, starting on 9 September 2021 and closing on 4 November 2021. It was available via EUSurvey, in all EU official languages. The online questionnaire contained 31 questions, with the possibility for open remarks for each question and to submit a report or position paper.

The report relies on citations that are edited for presentational purposes only. The report and the contributions received cannot be regarded as the official position of the European Commission and its services and thus do not bind the European Commission.

Respondents' Profile

86 contributions to the public consultation were recorded via EUSurvey with **25** position papers.

The contributors to the responses were companies (23), business associations (21), EU citizens (13), NGOs (11), non-EU citizens (8), public authorities (3), trade unions (2), academic/research institutions (1), and others such as legal professionals and reflexion groups (4).

The position papers submitted through EUSurvey came from business associations (10), companies (5), NGOs (5), an EU citizen (1), non-EU citizens (2), an academic/research institution (1), and a reflexion group (1).

The geographical spread of the responses was wide, covering EU and non-EU countries: Austria (2); Belgium (7); Cuba (1); Cyprus (1); Denmark (1); Finland (1); France (21); Germany (12); Hungary (2); Iran (1); Italy (4); Lithuania (1); Netherlands (4); Poland (1); Romania (1); Russia (1); Slovenia (1); Spain (5); Switzerland (2); United Kingdom (16); United States (1).

The following industries participated (in and outside of EUSurvey): banking; insurance; market infrastructure operation (e.g. central clearing counterparties, central securities depositories, stock exchanges); petrochemical; energy; space, defence and aeronautics; IT equipment; medical equipment; hospitality; transportation; construction; chemicals; mining; other manufacturing; other (research, retail, humanitarian aid, legal, culture, tourism, agriculture, consultancy, health, charity, education).

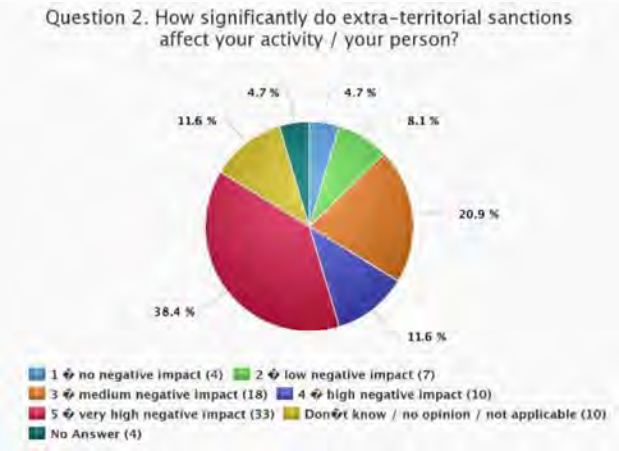
The size of the participating organisations was evenly divided. It is of note that SMEs (micro, small and medium companies) are also represented by business associations.

[1] The other consultation activities included a stakeholder meeting and targeted consultations throughout the period September-November 2021. The consultation strategy is available here.

Results of the public consultation

1. Problem definition: Extra-territorial sanctions

From a general perspective, respondents indicated that the extra-territorial application of third-country sanctions has had a **negative impact on the EU and its operators**. The most prominent effects include the hampering of EU operators' economic activity, the hindering of exports to third countries, the discrediting of the EU and its Member States' foreign policy, and the effect on the EU's Open Strategic Autonomy. The overall result is the reduction of trade and investment flows with third countries that are subject to extra-territorial non-EU sanctions (but not to EU restrictions). Respondents also reported restrictions on individuals (such as travel bans).



A large number of respondents noted that extra-territorial sanctions have **significantly affected their activities or person**. In particular, financial institutions indicated that US extra-territorial laws put them in the uncomfortable position of choosing between carrying out a transaction subject to non-EU restrictions or risk losing access to the non-EU financial market. Business associations reported a general loss of business opportunities, as well as an increase of compliance costs. NGOs and citizens deplored the negative impact on people-to-people contacts and on humanitarian activities.

Many respondents (business associations, companies, NGOs, public authorities) submitted that extra-territorial sanctions affect a **large swath of sectors and industries** of the EU economy. Nevertheless, all stakeholders generally indicated that the sectors most negatively affected are the **banking and financial sectors** (including payment services and insurance). Trade in goods/services, investments (including foreign direct investments), tourism and transport were also mentioned as being heavily impacted.

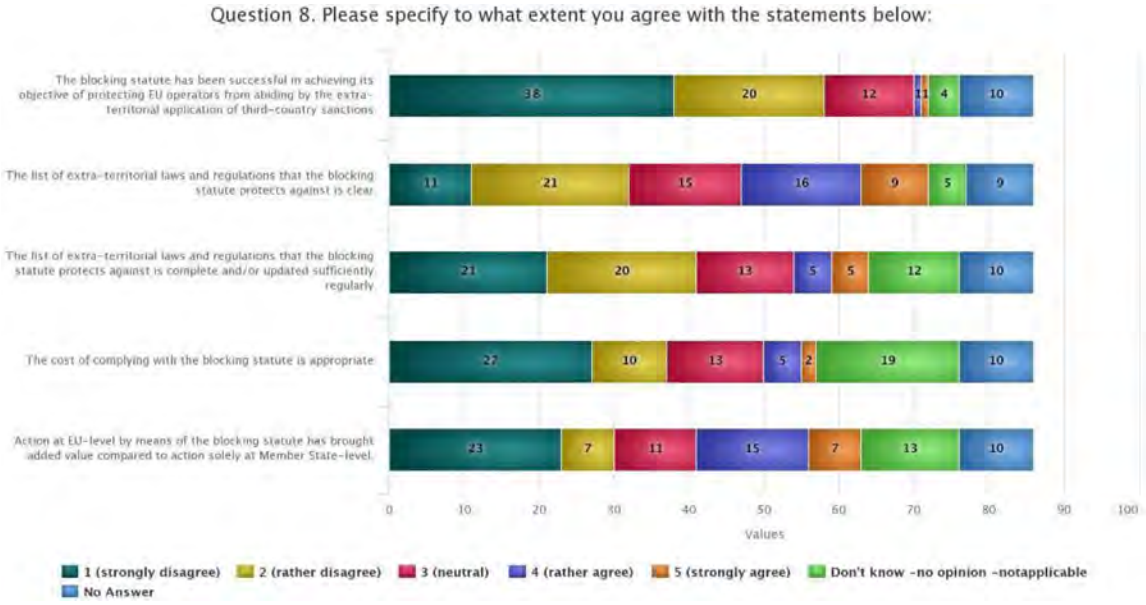
When it comes to the **categories of stakeholders**, respondents indicated that large corporations/groups, SMEs, businesses engaged in international trade (especially exporters) and operators providing network activities are experiencing the most acute negative effects.

According to respondents, the main **comparative advantages** allowing third countries to apply sanctions extra-territorially to the EU are their strong political position, the importance of their currency, and/or their position on financial markets. The existence of a strong technological advantage or a monopoly on the import/export market was also stated as playing a role, but to a lesser extent. In their comments, respondents particularly emphasised the **United States' control over international financial flows** and the **importance of the US dollar**. Several respondents also mentioned **China's predominance in technology markets**, which the country can leverage, in particular with regard to certain software or technical components that are needed by EU manufacturers.

When it comes to the **evolution of extra-territorial sanctions over time**, a majority of respondents noticed a significant increase of the negative effects of extra-territorial sanctions in the past 5 to 10 years, both on the EU as a whole and on their own activities. Finally, respondents listed a large number of **examples of extra-territorial sanctions** that have an impact on them or on the EU economy in general. They mostly cited legislation of the United States, but also legislation recently adopted by China.

2. Evaluation of existing EU legislation

Overall, the majority of respondents indicated that the Blocking Statute has been **unsuccessful in achieving its objective** of protecting EU operators from abiding by the extra-territorial application of third-country sanctions. Various respondents highlighted the conflicting obligations that EU operators face. They also highlighted that the vagueness of the language used, lack of operational framework as well as the lack of proper implementation are hindering the effectiveness of the regulation.



Regarding the **prohibition to comply**, a large majority of respondents indicated that it did not achieve the objective of protecting EU operators from the effects of the extra-territorial application of non-EU sanctions. A large majority of respondents also noted that the prohibition is not the most efficient mean of achieving such objective. Respondents from across the board suggested this prohibition is essentially undermined by the **lack of awareness** amongst companies and the judiciary, as well as the general **lack of enforcement**.

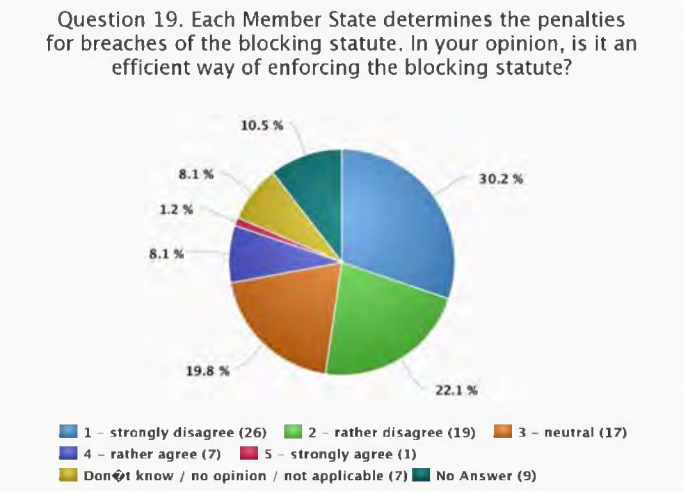
Regarding the **authorisation procedure**, the few respondents that provided a reply considered that the procedure and the criteria for the assessment of applications are **not sufficiently clear**. Several respondents, in particular in the banking sector, shared that the current procedure was **too lengthy** and not adapted to the fast execution of payments due to digitalisation. Finally, a few respondents recalled that requesting an authorisation requires a lot of time and workforce (in-house counsels and external lawyers).

Regarding the **prohibition to recognise and enforce foreign decisions,** even though several public authorities, NGOs and companies stressed that it is an **essential provision,** a large number of respondents indicated that it did not achieve the objective of protecting EU operators from the effects of the extra-territorial application of third-country sanctions. The reasons stated were manifold: inability of the provision to block service from abroad, lack of implementation, need for an advisory system for EU operators facing legal proceedings abroad, and lack of protection of assets located abroad due to the inability of the provision to deploy its effects outside of the EU.

Regarding the **possibility to recover damages**, a vast majority of respondents indicated that it did not achieve the objective of protecting EU operators. In particular, they stated that court proceedings are a lengthy, time-consuming and expensive process, which is especially problematic for SMEs who have limited resources available. The provision is also perceived as **difficult to trigger** because the procedure is unclear, it risks undermining business relationships, and it may prove difficult to **identify the defendant and its assets in the EU**. Respondents also pointed out that sovereign immunity issues arise if a foreign public authority is found to have caused the damage.

Regarding the **obligation to notify the European Commission of economic effects caused by extra-territorial sanctions**, respondents had mixed opinions on its **relevance** to protect EU operators from extra-territorial sanctions. Respondents that expressed a negative opinion cited the lack of real impact on EU operators, the creation of an administrative burden, the infringement on their freedom to establish their own business policy, and the risk of retaliatory measures or negative publicity. Conversely, other respondents indicated that receiving information about the effects of extra-territorial sanctions on EU operators increases transparency and is useful for the European Commission and national authorities to understand the breadth of the impact, and therefore to prepare adequate political, legal and economic reactions. Regarding **the administrative burden** resulting from this obligation, many highlighted that the burden is relatively high and is not compensated by effective protection by the Blocking Statute.

Regarding **penalties for breaches of the Blocking Statute**, a majority of respondents indicated that their determination by Member States is not efficient. A non-negligible part of the respondents commented that penalties should be harmonised at EU level. They cited different reasons: avoiding differentiated treatment for EU companies operating cross-border, ensuring efficiency, consistency and an easier access to information. Conversely, respondents who were of the opposite opinion stated that penalties should be adapted to a country's economic situation and the level of other penalties in force.

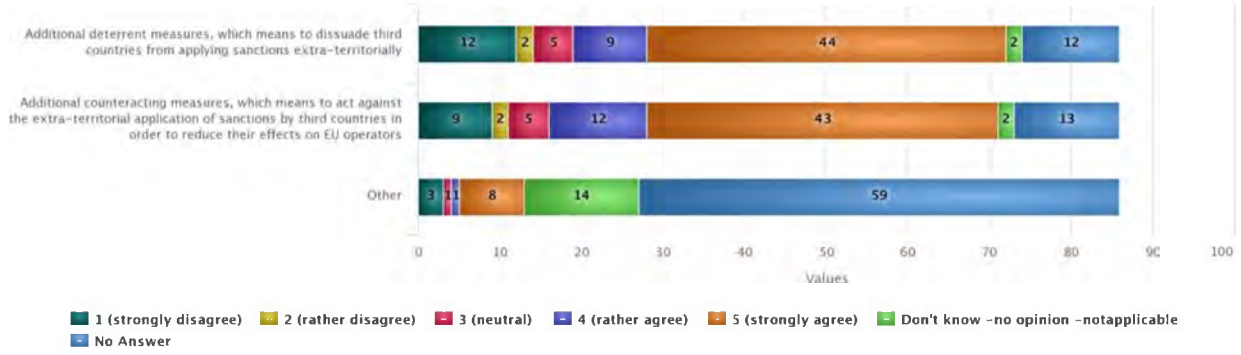


Regarding the **role of national competent authorities**, a relative majority of respondents indicated that enforcement **at EU-level** of the Blocking Statute is more efficient. Several respondents even called for the creation of an EU body dedicated to the uniform implementation of the Blocking Statute, or at least for the allocation of more resources and dedicated staff to reporting and monitoring tasks. Respondents in favour of enforcement at Member States-level, mostly public authorities, argued on the contrary that Member States have closer contacts with companies.

3. Additional measures to further deter and counteract extra-territorial sanctions

A vast majority of respondents indicated that the European Commission should add to the Blocking Statute **measures to both further deter and counteract** extra-territorial sanctions. Some respondents also suggested finding political solutions with third countries imposing extra-territorial sanctions, strengthening international organisations such as the WTO, reinforcing the Capital Markets Union and the Economic and Monetary Union, expanding INSTEX, and supporting EU operators by offering guidance and by creating an EU-wide compensation fund to mitigate compliance costs.

Question 21. Do you think that the European Commission should introduce additional measures aimed to further deter and counteract extra-territorial sanctions?



The **most popular measures** to be added to the Blocking Statute were: the provision of legal support for operators entangled in foreign legal proceedings, targeted commercial restrictions (including limitations for accessing the EU market or for EU certifications), the possibility to claim punitive damages (including against foreign sovereign assets), and financial compensation to defray the cost of operating in a sanctioned environment. Respondents also suggested having "cooperation" measures, such as permanent working bodies with third countries particularly affected by extra-territorial sanctions. It was however stressed that all new measures should be carefully calibrated, reactive (rather than proactive), and compliant with WTO law and public international law.

Respondents had rather mixed opinions on who should be the **target** of additional deterrent or counteracting measures. They generally believed that the measures should target certain sectors and additionally specific operators, but always stressed that the measures should remain targeted, proportionate, and applied within a balanced yet flexible approach to avoid unintended consequences on EU operators.

Respondents generally indicated that potential new measures should be taken **both at EU and Member State level**, or at the EU-level only. In their opinion, measures that could be taken at both the EU- and

Member State-level include visa restrictions, the provision of financial compensation or legal assistance, and the exclusion of an operator from the EU financial market. Conversely, respondents deemed that a response at EU-level would be more appropriate for targeted commercial restrictions and exclusion from the EU public procurement market, mostly due to competence, increased impact and efficiency, as well as the need to ensure harmonised implementation and to avoid circumvention.

When it comes to the manner in which additional deterrent or counteracting measures should be imposed, respondents had mixed opinions, with some supporting measures that would be primarily **complaint-driven** or at the **initiative of the European Commission**, or at the **request of Member State.** Respondents largely disagreed with automatic imposition.

Finally, when it comes to the **timing** of the imposition of deterrent or counteracting measures, a large number of respondents indicated that they should be imposed **immediately**. With regard to the **duration** of additional deterrent or counteracting measures, a relative majority of respondents indicated that they should be imposed **as long as the third country applies those sanctions extra-territorially**, and would only be lifted when it is certain that the effects have ceased. Many other respondents linked the duration of the measures with that of specific situations causing breaches of the Blocking Statute.

4. Streamlining of the application of the Blocking Statute and reduction the administrative burden

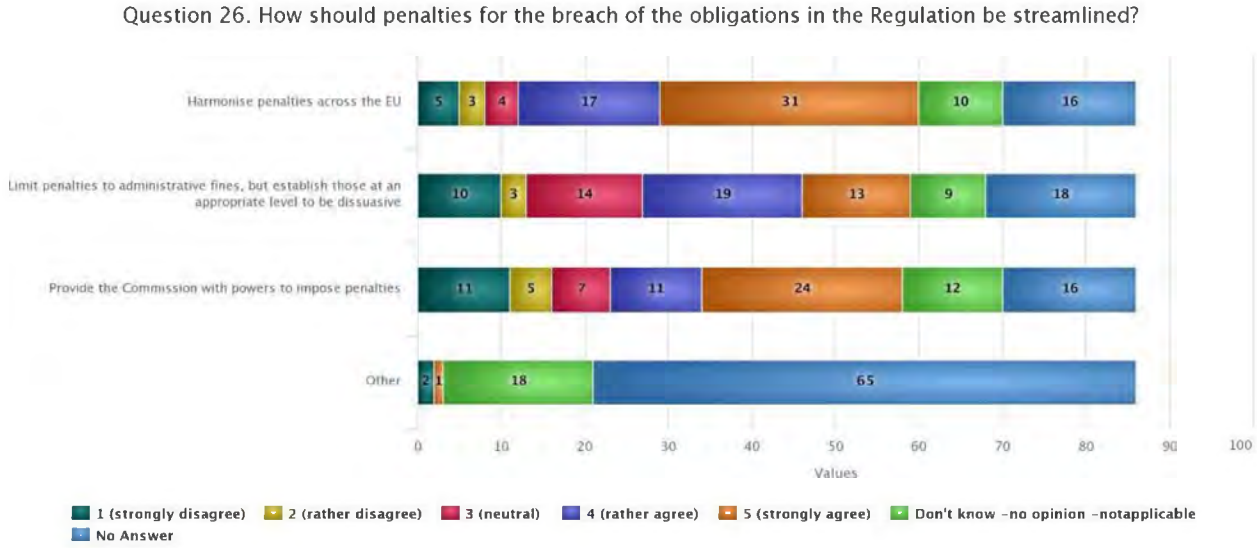
Regarding the streamlining of the application of the Blocking Statute and the reduction of the administrative burden, respondents indicated that policy action could be considered **in all areas/provisions of the regulation**. However, they noted that it is most needed for the prohibition to comply with extra-territorial sanctions, the exchange of information between the European Commission and the Member States, the damages ('clawback') clause, penalties, and the authorisation procedure.

When it comes to the **prohibition to comply**, respondents indicated that it should be streamlined mainly by further clarifying the scope of the Blocking Statute, i.e. the foreign laws and regulations listed in the Annex. In addition, several respondents called for the exclusion of specific sectors from the prohibition, for instance the financial sector, in particular payments.

With regard to the **authorisation procedure**, a large group of respondents indicated being in favour of having an automatic authorisation if certain objective criteria are met, or if a time limit has expired from the time the application was submitted. Respondents also called for more detailed criteria for the assessment of authorisation requests. Respondents were mostly opposed to having more stringent conditions to the granting of authorisations. Other suggestions included having authorisations for broad categories of transactions, clarifying the procedure, and leaving the procedure to Member States' authorities.

When it comes to the **obligation to notify**, respondents generally favoured greater automation of notifications (including by digitalisation), and clear indications on the expected content of notifications, such as the minimum amount of information to be submitted. One public authority also suggested having a standard template for reporting. In addition, many respondents were in favour of combining notifications and authorisations, or supported the idea that notifications could automatically become authorisation requests. However, a number of respondents indicated that notifications should not become a precondition for authorisation.

When it comes to **penalties**, a vast majority of respondents indicated that they should be harmonised across the EU. Many noted that the European Commission should be provided with powers to impose penalties, but some public authorities commented that Member States remain best placed to determine their level. A large number of respondents is in favour of limiting penalties to administrative fines (while remaining dissuasive enough).



Finally, some respondents proposed the **additional streamlining measures,** including creating an agency in charge of the application of the Blocking Statute.

5. Likely impact of a policy intervention or no intervention

Stakeholders generally indicated that **no policy intervention** by the EU would most likely lead to a reduction of the effectiveness of the EU's foreign policy and of its Open Strategic Autonomy, to more extra-territorial application of sanctions by third countries (failing deterrence measures), or to EU values not being defended sufficiently. Other effects were also stated as likely, including direct and indirect costs, difficulties in accessing foreign markets, hampering humanitarian activity and development aid. Citizens, NGOs, companies and public authorities alike expressed views largely in favour of a policy intervention, whereas business associations provided somewhat mixed responses.

A majority of stakeholders indicated that **policy intervention** in the form of a revision of the Blocking Statute will most likely have **positive effects**, such as a better protection of EU economic interests, further counteracting extra-territorial sanctions, projection of the EU as a credible geopolitical actor, dissuasive effects vis-à-vis third countries applying sanctions extra-territorially, increased resilience of EU operators, and enhancing the EU's Open Strategic Autonomy. Other potential benefits include a strengthening of the EU's sovereignty, the fostering of political and economic relations with the countries concerned, as well as a general promotion of multilateral dialogue and cooperation. Respondents nevertheless insisted on the fact that the measures need to be credible for positive outcomes to materialise.

As for the possible **negative effects** of a revision of the Blocking Statute, respondents had mixed opinions. They tended to agree that an increase of direct and indirect costs for EU operators is more likely than not to

occur if a third country were to take countermeasures. Several business associations mentioned that a hasty use of the Blocking Statute could lead to an unnecessary escalation of political and diplomatic tension instead of deterrence. Nevertheless, several citizens, NGOs and public authorities expressed the belief that the benefits ultimately outweigh the risks and that the EU should take action.

6. Compatibility with other instruments

On the specific question of the compatibility of the revised Blocking Statute with the **Anti-Coercion Instrument (ACI)**, a large number of respondents indicated that both instruments should be triggered **in parallel**. Respondents across all groups considered that using both instruments would achieve the best results, since they are complementary. They acknowledged nevertheless that there is a need for coordination and for a clear definition regarding the cases for which each tool is going to be used.

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