

EU Trade Law Compliance: Risks for US Companies

Does your company supply customers across the Atlantic? Do you procure items from a transatlantic supplier? Do you employ EU nationals? Do you have a branch, representative office or subsidiary based in the EU? **If so, are you up to speed with your obligations under European trade law?**

For companies based in the US, it is very easy to lose sight of obligations under European trade law. The perception often is that US trade law is broader and more complex than that in the EU and therefore compliance with US regulation is enough to protect your business worldwide. However, confining compliance to a single jurisdiction can carry significant risks for your business.

Risks

Your company may be at risk if:

- Systems and procedures designed to ensure compliance with US trade law are also used, without adaption, to manage regulatory risk in Europe.
- You assume that activities not subject to prohibition or control in the US are permitted in Europe.
- You believe that European regulation does not apply to companies based in the US;
- You consider that extra-territorial application is a unique characteristic of US regulation.

A particular risk is that destinations, individuals and entities subject to EU sanctions, as well as activities prohibited under EU sanctions are not the same as those

covered by US sanctions. The application of sanctions measures also varies between Member States.

With recent EU sanctions against Iran announced this week, this is especially relevant.

Tips

Be aware of EU law's extra-territorial application

European regulators are increasingly focused on the activities of non-European companies. In particular, US companies should be aware that European trade obligations will apply to:

- All European nationals wherever they are located, including in the US. **Does your company employ EU nationals in the US?**
- Any entity incorporated or constituted under EU law. **Does your company have a commercial presence in Europe?**
- Any business carried out in the EU. **Do your employees travel to the EU to do business?**

Know who you are doing business with

Screening your business partners and associated financial institutions against both European and US sanctions lists is vital.

Protect your commercial reputation

The civil and criminal penalties for non-compliance with European law, particularly sanctions measures are significant. Loss of reputation can also have knock on consequences to the way you do business; goods seized at customs, delays to export licensing decisions etc.

Do not rely on the transferability of official determinations

The list of controlled items, software and technology prohibited for export from the US is not identical to that in Europe. Neither are prohibited activities, destinations or entities subject to sanctions. Your company needs to analyse whether its activities are controlled under both European and US Regulations.

Tighten up your contractual protection

Your company should consider working specific clauses and contractual protections into your

contracts that are tailored to protecting you from breaches of European trade law by your suppliers, customers or wider business partners. **Have your contracts been reviewed from a European law perspective?**



Dechert LLP's Trade and EU Government Affairs Practice

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We have wide ranging experience in advising European, US and other companies and financial institutions on transactions involving countries, entities and individuals subject to sanctions regimes. We draw on the first hand experience of ex regulators to provide legal advice and minimise corporate and personal exposure to enforcement proceedings.

Practice group contacts

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