

CLIENT ALERT

EU Takes Step to Preserve the Joint Comprehensive Plan of Action: The Establishment of INSTEX SAS

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Further to the update of the EU Blocking Statute in August 2018 to cover the United States' secondary sanctions re-imposed against Iran (see our previous update [here](#)), the EU's efforts to preserve the Joint Comprehensive Plan of Action ("JCPOA") continue with the establishment of the first state-owned special purpose vehicle ("SPV") aimed at facilitating trade between European companies and Iran.

On 31 January 2019, France, Germany, and the United Kingdom (the "E3") announced the establishment of INSTEX SAS (Instrument in Support of Trade Exchanges) to facilitate so-called "legitimate" trade with Iran.

A French registered SPV, INSTEX will initially be limited to facilitating trade in the pharmaceutical, medical, and agri-food sectors. Whether it will be used in due course for the trade of goods in other sectors remains to be seen. However, the E3 declared that in the long term, INSTEX aims to be open to businesses from non-EU countries wishing to trade with Iran.

While further steps are needed to make INSTEX fully operational, Federica Mogherini, the EU High Representative for Foreign Affairs, has stated that the EU will support any EU States involved in INSTEX to make it operational as soon as possible, "in close coordination with the Iranian counterparts."

In their announcement, the E3 clarified that their efforts to preserve the economic provisions of the JCPOA are conditional on Iran's full implementation of its nuclear-related commitments, including full and timely cooperation with the IAEA.

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The announcement did not make clear whether INSTEX would engage in any transactions involving Iran that could expose INSTEX or its users to the risk of U.S. secondary sanctions for Iran, or whether the SPV is intended merely as a protection against over de-risking by European financial institutions in light of the compliance risks posed by sanctions.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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