

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of:

SAP SE  
Dietmar-Hopp-Allee 16  
69190 Walldorf  
Germany

Respondent

ORDER RELATING TO  
SAP SE

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified SAP SE, of Walldorf, Germany (“SAP”), of its intention to initiate an administrative proceeding against SAP pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),<sup>1</sup> through the issuance of a Proposed Charging Letter to SAP that alleges that SAP committed one violation of the Regulations.<sup>2</sup> Specifically, the charge is:

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<sup>1</sup> The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2021). The charged violation occurred in 2009-2019. The Regulations governing the violation at issue are found in the 2009-2019 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2021 Regulations set forth the procedures that apply to this matter.

**Charge 1                      15 C.F.R. § 764.2(a): Engaging in Prohibited Conduct**

1. From in or about December 2009 through in or about September 2019, SAP engaged in continuing conduct prohibited by and contrary to the Regulations, in violation of 15 CFR § 764.2(a).

2. Section 746.7(e) of the Regulations prohibited a person<sup>3</sup> from exporting or reexporting any item that was subject to the Regulations if such transaction was prohibited by the Iranian Transactions Regulations (“ITR”) (31 CFR part 560)<sup>4</sup> and not authorized by the Office of Foreign Assets Control (“OFAC”).

3. To avoid duplication, exporters and reexporters were not required to seek separate authorization from the Bureau of Industry and Security (“BIS”) for an export or reexport subject both to the Regulations and to the ITR. If OFAC authorized an export or reexport, such authorization was considered authorization for purposes of the Regulations as well.

4. Section 560.204(a) of the ITR prohibited the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran, including the exportation, reexportation, sale, or supply of any goods, technology, or services to a person in a third country undertaken with knowledge or reason to know that such goods, technology, or services were intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran.

5. As described in further detail below, SAP engaged in continuing conduct that caused the export and re-export of SAP software<sup>5</sup> to Iran in violation of section 746.7(e) of the Regulations. The SAP software was U.S. origin and designated Export Control Classification Number (ECCN) 5D002.c.1 and EAR99 under the Regulations.<sup>6</sup> The export and re-export of the SAP software was prohibited by section 560.204(a) of the ITR and ITSR and not authorized by OFAC or BIS.

6. During the relevant time period, SAP was a global software company that sold products and services to customers. SAP also utilized independent third-party resellers, known as SAP Partners, to sell products and services.

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<sup>3</sup> A “person” included a citizen or national of any foreign country, any firm, and any association or organization. 15 C.F.R. § 772.1.

<sup>4</sup> On October 22, 2012, OFAC renamed and reissued the ITR as the Iranian Transactions and Sanctions Regulations (“ITSR”). The relevant provisions in 31 C.F.R. part 560 remained the same.

<sup>5</sup> Software is an “item” under the Regulations. 15 CFR § 772.1.

<sup>6</sup> EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR § 734.3(c).

7. SAP and SAP Partners sold licenses for software products and maintenance agreements. The maintenance agreements gave customers the ability to download SAP's patches and upgrades required for the proper functioning of the software product.

8. SAP customers accessed certain software products, upgrades, and patches through downloads from online SAP portals. These downloads were delivered to customers either through an SAP server or a server hosted by a third-party vendor headquartered in the United States ("Company A").

9. SAP and SAP Partners, located in Turkey, United Arab Emirates, Germany, and Malaysia, sold SAP software licenses and maintenance agreements to 14 foreign-registered pass-through entities. These pass-through entities were shell corporations located outside of Iran that conducted business in Iran and were directly affiliated with Iranian companies.

10. The licenses and maintenance agreements sold to the pass-through entities were for on-premise software, which means software installed and running on the premises of the person or organization using the software.

11. End users in Iran utilized the pass-through entities to make 24,634 downloads of SAP software products, upgrades, and patches from SAP's servers and Company A's servers.

12. From December 2009 to September 2019, SAP and SAP Partners engaged in transactions with the pass-through entities, covering both the sale of software licenses and maintenance agreements.

13. SAP conducted several internal audits of its export controls processes. A 2006 audit reported that SAP was not identifying the country to which on-premise software and support products were being downloaded. The audit warned that SAP risked breaching applicable U.S. export controls and sanctions. It recommended implementing tools to identify the location of the user making the download requests.

14. Subsequent audits in 2007, 2010, and 2014 continued to identify gaps in SAP's export controls processes. The 2014 audit reported that SAP did not screen customers' IP addresses to prevent users with IP addresses in U.S.-embargoed countries, such as Iran, from downloading SAP products. The 2014 audit again recommended that SAP implement geo-location IP address screening.

15. These audit reports were provided to senior SAP managers, including SAP Board members, the Legal Counsel in the United States responsible for export controls, and the Head of Logistics.

16. SAP did not implement geo-location IP address blocking for its on-premise download delivery portal until July 2015. In July 2015, SAP also requested that Company

A activate its geo-location IP address screening for all transactions. Company A had possessed the ability to conduct this screening for many years but had only been doing so intermittently.

17. Some of the pass-through entities were able to evade SAP's geo-location blocking controls to make it appear that downloads were occurring in a non-sanctioned country.

18. SAP received various whistleblower complaints, including as early as 2011, alleging sales by SAP Partners to foreign-registered affiliates of Iranian companies. SAP failed to adequately investigate those reports. It was not until late 2017 that SAP conducted on-site examinations of SAP Partners and confirmed that certain SAP Partners sold SAP products to the pass-through entities.

19. These examinations revealed that certain SAP Partners had failed to conduct an adequate level of due diligence prior to making sales to the pass-through entities. Certain SAP and SAP Partner executives, including senior leaders at the SAP Partner located in United Arab Emirates, knew that the pass-through entities had purchased the SAP software with the intent of using the software in Iran. Publicly available information posted on certain SAP Partners' websites touted their business ties to Iranian companies.

WHEREAS, I have taken into consideration the Non-Prosecution Agreement (NPA) between SAP and the United States Department of Justice's National Security Division and the United States Attorney's Office for the District of Massachusetts, and the Settlement Agreement between SAP and the Treasury's Office of Foreign Assets Control (OFAC);

WHEREAS, BIS and SAP have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, SAP shall be assessed a civil penalty in the amount of \$3,290,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due date specified herein, SAP will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, SAP shall complete three internal audits of its export controls compliance program. The results of the internal audits, including any relevant supporting materials, shall be submitted to the Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, 10 Causeway St. #253, Boston, MA 02222 (“BIS Boston Field Office”). The first audit shall cover the period of the twelve (12) consecutive months immediately preceding the date of this Order, and the related report shall be due to the BIS Boston Field Office no later than six months from the date of this Order. The second audit shall cover a period of the 12 consecutive months immediately following the date of this Order, and the related report shall be due to the BIS Boston Field Office no later than one year and six months from the date of this Order. The third audit shall cover a period of the 12 consecutive months immediately following the period of the audit period of the second audit, and the related report shall be due to the BIS Boston Field Office no later than two years and six months from the date of this Order. Said audits shall be in substantial compliance with the Export Compliance Program (ECP) sample audit module, and each audit shall include a comprehensive assessment of SAP compliance with the Regulations. The ECP sample audit module is available on the BIS web site at <https://www.bis.doc.gov/index.php/documents/pdfs/1641-ecp/file>. In addition, where said

audits identify actual or potential violations of the Regulations, SAP must promptly provide a detailed plan of corrective actions to be taken, and copies of the pertinent air waybills and other export control documents and supporting documentation related to the identified compliance concerns, to the BIS Boston Field Office.

FOURTH, that the full and timely payment of the civil penalty in accordance with the payment schedule set forth above, and the completion and submission of the audits as set forth above, are hereby made conditions to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to SAP.

FIFTH, SAP shall comply with all of the terms in the above-referenced NPA between SAP and the United States Department of Justice's National Security Division and the United States Attorney's Office for the District of Massachusetts, and the Settlement Agreement between SAP and OFAC.

SIXTH, SAP shall not dispute or deny, directly or indirectly, the allegations contained in the Proposed Charging Letter or this Order or take any position contrary thereto in any public statement. The foregoing does not affect SAP's testimonial obligations in any administrative or judicial proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

SEVENTH, the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

KEVIN  
KURLAND



Digitally signed by KEVIN KURLAND  
Date: 2021.04.29 07:50:11 -04'00'

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Kevin J. Kurland  
Acting Assistant Secretary of Commerce  
for Export Enforcement

Issued this 29th day of April, 2021.

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY  
WASHINGTON, D.C. 20230

In the Matter of:

SAP SE  
Dietmar-Hopp-Allee 16  
69190 Walldorf  
Germany

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between SAP SE, of Walldorf, Germany (“SAP”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (the “Regulations”).<sup>1</sup>

WHEREAS, SAP filed a voluntary self-disclosure with BIS’s Office of Export Enforcement in accordance with Section 764.5 of the Regulations concerning the transactions at issue herein;

WHEREAS, BIS has notified SAP of its intention to initiate an administrative proceeding against SAP, pursuant to the Regulations;<sup>2</sup>

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<sup>1</sup> The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“the EAA”), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) (“IEEPA”). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2021). The charged violation occurred in 2009-2019. The Regulations governing the violation at issue are found in the 2009-2019 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2021 Regulations set forth the procedures that apply to this matter.

WHEREAS, BIS has issued a Proposed Charging Letter to SAP that alleges that SAP has committed one violation of the Regulations, specifically:

**Charge 1 15 CFR. § 764.2(a) – Engaging in Prohibited Conduct**

1. From in or about December 2009 through in or about September 2019, SAP engaged in continuing conduct prohibited by and contrary to the Regulations, in violation of 15 CFR § 764.2(a).

2. Section 746.7(e) of the Regulations prohibited a person<sup>3</sup> from exporting or reexporting any item that was subject to the Regulations if such transaction was prohibited by the Iranian Transactions Regulations (“ITR”) (31 CFR part 560)<sup>4</sup> and not authorized by the Office of Foreign Assets Control (“OFAC”).

3. To avoid duplication, exporters and reexporters were not required to seek separate authorization from the Bureau of Industry and Security (“BIS”) for an export or reexport subject both to the Regulations and to the ITR. If OFAC authorized an export or reexport, such authorization was considered authorization for purposes of the Regulations as well.

4. Section 560.204(a) of the ITR prohibited the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran, including the exportation, reexportation, sale, or supply of any goods, technology, or services to a person in a third country undertaken with knowledge or reason to know that such goods, technology, or services were intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran.

5. As described in further detail below, SAP engaged in continuing conduct that caused the export and re-export of SAP software<sup>5</sup> to Iran in violation of section 746.7(e) of the Regulations. The SAP software was U.S. origin and designated Export Control Classification Number (ECCN) 5D002.c.1 and EAR99 under the Regulations.<sup>6</sup> The export and re-export of the SAP software was prohibited by section 560.204(a) of the ITR and ITSR and not authorized by OFAC or BIS.

6. During the relevant time period, SAP was a global software company that sold products and services to customers. SAP also utilized independent third-party resellers, known as SAP Partners, to sell products and services.

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<sup>3</sup> A “person” included a citizen or national of any foreign country, any firm, and any association or organization. 15 C.F.R. § 772.1.

<sup>4</sup> On October 22, 2012, OFAC renamed and reissued the ITR as the Iranian Transactions and Sanctions Regulations (“ITSR”). The relevant provisions in 31 C.F.R. part 560 remained the same.

<sup>5</sup> Software is an “item” under the Regulations. 15 CFR § 772.1.

<sup>6</sup> EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR § 734.3(c).

7. SAP and SAP Partners sold licenses for software products and maintenance agreements. The maintenance agreements gave customers the ability to download SAP's patches and upgrades required for the proper functioning of the software product.

8. SAP customers accessed certain software products, upgrades, and patches through downloads from online SAP portals. These downloads were delivered to customers either through an SAP server or a server hosted by a third-party vendor headquartered in the United States ("Company A").

9. SAP and SAP Partners, located in Turkey, United Arab Emirates, Germany, and Malaysia, sold SAP software licenses and maintenance agreements to 14 foreign-registered pass-through entities. These pass-through entities were shell corporations located outside of Iran that conducted business in Iran and were directly affiliated with Iranian companies.

10. The licenses and maintenance agreements sold to the pass-through entities were for on-premise software, which means software installed and running on the premises of the person or organization using the software.

11. End users in Iran utilized the pass-through entities to make 24,634 downloads of SAP software products, upgrades, and patches from SAP's servers and Company A's servers.

12. From December 2009 to September 2019, SAP and SAP Partners engaged in transactions with the pass-through entities, covering both the sale of software licenses and maintenance agreements.

13. SAP conducted several internal audits of its export controls processes. A 2006 audit reported that SAP was not identifying the country to which on-premise software and support products were being downloaded. The audit warned that SAP risked breaching applicable U.S. export controls and sanctions. It recommended implementing tools to identify the location of the user making the download requests.

14. Subsequent audits in 2007, 2010, and 2014 continued to identify gaps in SAP's export controls processes. The 2014 audit reported that SAP did not screen customers' IP addresses to prevent users with IP addresses in U.S.-embargoed countries, such as Iran, from downloading SAP products. The 2014 audit again recommended that SAP implement geo-location IP address screening.

15. These audit reports were provided to senior SAP managers, including SAP Board members, the Legal Counsel in the United States responsible for export controls, and the Head of Logistics.

16. SAP did not implement geo-location IP address blocking for its on-premise download delivery portal until July 2015. In July 2015, SAP also requested that Company A activate its geo-location IP address screening for all transactions. Company A had possessed the ability to conduct this screening for many years but had only been doing so intermittently.

17. Some of the pass-through entities were able to evade SAP's geo-location blocking controls to make it appear that downloads were occurring in a non-sanctioned country.

18. SAP received various whistleblower complaints, including as early as 2011, alleging sales by SAP Partners to foreign-registered affiliates of Iranian companies. SAP failed to adequately investigate those reports. It was not until late 2017 that SAP conducted on-site examinations of SAP Partners and confirmed that certain SAP Partners sold SAP products to the pass-through entities.

19. These examinations revealed that certain SAP Partners had failed to conduct an adequate level of due diligence prior to making sales to the pass-through entities. Certain SAP and SAP Partner executives, including senior leaders at the SAP Partner located in United Arab Emirates, knew that the pass-through entities had purchased the SAP software with the intent of using the software in Iran. Publicly available information posted on certain SAP Partners' websites touted their business ties to Iranian companies.

WHEREAS, SAP has reviewed the Proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions that could be imposed against it if the allegations are found to be true;

WHEREAS, SAP fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement, or appropriate designee, will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, SAP enters into this Agreement voluntarily and with full knowledge of its rights, after having consulted with counsel;

WHEREAS, the Parties enter into this Agreement having taken into consideration the Non-Prosecution Agreement (NPA) between SAP and the United States Department of Justice's National Security Division and the United States Attorney's Office for the District of Massachusetts, and the Settlement Agreement between SAP and the Treasury's Office of Foreign Assets Control (OFAC);

WHEREAS, SAP states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, SAP admits the allegations contained in the Proposed Charging Letter; and

WHEREAS, SAP agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over SAP, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.
2. The following sanctions shall be imposed against SAP:
  - a. SAP shall be assessed a civil penalty in the amount of \$3,290,000, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of the Order. Payment shall be made in the manner specified in the attached instructions.
  - b. SAP shall complete three internal audits of its export controls compliance program. The results of the internal audits, including any relevant supporting materials, shall be submitted to the Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, 10 Causeway St. #253, Boston, MA 02222 ("BIS Boston Field Office"). The first audit shall cover the period of the twelve (12) consecutive months immediately preceding the date of this Order, and the related report shall be due to the BIS Boston Field Office no later than six months from the date of this Order. The second audit shall cover a period of the 12 consecutive months immediately following the date of this Order, and the related report shall be due to the BIS Boston Field Office no later than one year and six months from the date of this Order. The third audit shall cover a period of the 12 consecutive months immediately following the period of the audit period of the second audit, and the related report shall be due to the BIS Boston Field Office no later than two years and six months from the date of this Order. Said audits shall be in substantial compliance with the Export Compliance Program (ECP) sample audit module, and shall include a comprehensive

assessment of SAP's compliance with the Regulations. The ECP sample audit module is available on the BIS web site at <https://www.bis.doc.gov/index.php/documents/pdfs/1641-ecp/file>. In addition, where said audits identify actual or potential violations of the Regulations, SAP shall promptly provide a detailed plan of corrective actions to be taken, and copies of the pertinent air waybills and other export control documents and supporting documentation related to the identified compliance concerns, to the BIS Boston Field Office.

c. The full and timely payment of the civil penalty agreed to in Paragraph 2.a, above, and the timely completion of the audits and submission of the audit results in Paragraph 2.b, are hereby made conditions to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to SAP.

3. Subject to the approval of this Agreement pursuant to Paragraph 10 hereof, SAP hereby waives all rights to further procedural steps in this matter, including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued. SAP also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the Regulations arising out of the transactions identified in the Proposed Charging Letter or in connection with collection of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date of the Order until the later of the date SAP pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement, or has completed the audit and submitted the audit results in Paragraph 2.b.

4. SAP shall not dispute or deny, directly or indirectly, the allegations contained in the Proposed Charging Letter or the Order or take any position contrary thereto in any public statement. The foregoing does not affect SAP's testimonial obligations in any administrative or judicial proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

5. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a above, and completion and submission of the audits in Paragraph 2.b, BIS will not initiate any further administrative proceeding against SAP in connection with any violation of the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter.

6. SAP shall comply with all of the terms in the NPA and the Settlement Agreement between SAP and OFAC.

7. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement, or appropriate designee, pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

8. This Agreement constitutes and contains the entire agreement and understanding among the parties, and the terms of this Agreement or the Order, if issued, may not be varied or otherwise altered or affected by any agreement, understanding, representation, or interpretation not contained in this Agreement; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

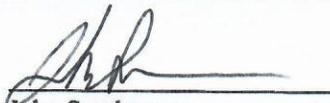
9. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement, or appropriate designee, approves it by issuing the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

10. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.

11. Each signatory affirms that he/she has authority to enter into this Settlement Agreement and to bind his/her respective party to the terms and conditions set forth herein.

12. If any provision of this Settlement Agreement is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

BUREAU OF INDUSTRY AND SECURITY  
U.S. DEPARTMENT OF COMMERCE

  
\_\_\_\_\_  
John Sonderman  
Director of Export Enforcement

Date: 4/27/2021

SAP SE

  
\_\_\_\_\_  
Christian Klein  
Chief Executive Officer

Date: April 28, 2021

  
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Luka Mucic  
Chief Export Controls Officer  
Chief Financial Officer

Date: April 28, 2021

Reviewed and approved by:



Kwame Manley, Esq.  
Paul Hastings LLP  
Counsel for SAP

Date: April 28, 2021

PROPOSED CHARGING LETTER

VIA EMAIL

SAP SE  
Dietmar-Hopp-Allee 16  
Walldorf, 69190 Germany  
Attention: Christian Klein, Chief Executive Officer

Dear Mr. Klein,

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that SAP SE (SAP) of Walldorf, Germany, has committed one violation of the Export Administration Regulations (the “Regulations”).<sup>1</sup> Specifically, BIS alleges that SAP committed the following violation:

**Charge 1      15 CFR. § 764.2(a) – Engaging in Prohibited Conduct**

1. From in or about December 2009 through in or about September 2019, SAP engaged in continuing conduct prohibited by and contrary to the Regulations, in violation of 15 CFR § 764.2(a).

2. Section 746.7(e) of the Regulations prohibited a person<sup>2</sup> from exporting or reexporting any item that was subject to the Regulations if such transaction was prohibited by the Iranian Transactions Regulations (“ITR”) (31 CFR part 560)<sup>3</sup> and not authorized by the Office of Foreign Assets Control (“OFAC”).

3. To avoid duplication, exporters and reexporters were not required to seek separate authorization from the Bureau of Industry and Security (“BIS”) for an export or reexport subject both to the Regulations and to the ITR. If OFAC authorized an export or

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<sup>1</sup> The Regulations originally issued under the Export Administration Act of 1979, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (“EAA”), which lapsed on August 21, 2001. The President continued the Regulations under the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1708 (2012) (“IEEPA”), including during the time period of the violations at issue here. On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (“ECRA”). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA’s date of enactment, shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. The 2021 Regulations govern the procedural aspects of this case.

<sup>2</sup> A “person” included a citizen or national of any foreign country, any firm, and any association or organization. 15 C.F.R. § 772.1.

<sup>3</sup> On October 22, 2012, OFAC renamed and reissued the ITR as the Iranian Transactions and Sanctions Regulations (“ITSR”). The relevant provisions in 31 C.F.R. part 560 remained the same.

reexport, such authorization was considered authorization for purposes of the Regulations as well.

4. Section 560.204(a) of the ITR prohibited the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran, including the exportation, reexportation, sale, or supply of any goods, technology, or services to a person in a third country undertaken with knowledge or reason to know that such goods, technology, or services were intended specifically for supply, transshipment, or reexportation, directly or indirectly, to Iran.

5. As described in further detail below, SAP engaged in continuing conduct that caused the export and re-export of SAP software<sup>4</sup> to Iran in violation of section 746.7(e) of the Regulations. The SAP software was U.S. origin and designated Export Control Classification Number (ECCN) 5D002.c.1 and EAR99 under the Regulations.<sup>5</sup> The export and re-export of the SAP software was prohibited by section 560.204(a) of the ITR and ITSR and not authorized by OFAC or BIS.

6. During the relevant time period, SAP was a global software company that sold products and services to customers. SAP also utilized independent third-party resellers, known as SAP Partners, to sell products and services.

7. SAP and SAP Partners sold licenses for software products and maintenance agreements. The maintenance agreements gave customers the ability to download SAP's patches and upgrades required for the proper functioning of the software product.

8. SAP customers accessed certain software products, upgrades, and patches through downloads from online SAP portals. These downloads were delivered to customers either through an SAP server or a server hosted by a third-party vendor headquartered in the United States ("Company A").

9. SAP and SAP Partners, located in Turkey, United Arab Emirates, Germany, and Malaysia, sold SAP software licenses and maintenance agreements to 14 foreign-registered pass-through entities. These pass-through entities were shell corporations located outside of Iran that conducted business in Iran and were directly affiliated with Iranian companies.

10. The licenses and maintenance agreements sold to the pass-through entities were for on-premise software, which means software installed and running on the premises of the person or organization using the software.

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<sup>4</sup> Software is an "item" under the Regulations. 15 CFR § 772.1.

<sup>5</sup> EAR99 is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 CFR § 734.3(c).

11. End users in Iran utilized the pass-through entities to make 24,634 downloads of SAP software products, upgrades, and patches from SAP’s servers and Company A’s servers.

12. SAP and SAP Partners engaged in the following transactions with the pass-through entities. The listed transactions cover both the sale of software licenses and maintenance agreements.

<b>Customer</b>	<b>Transaction</b>	<b>Date Range</b>	<b>Payment Amount</b>	<b>Downloads</b>
Pass-Through Entity # 1	Software License	August 2011	\$131,181.81	4,471
	Maintenance Agreement	August 2011-September 2017	\$149,977.85	
	Software License	March 2015	\$267,122.04	
	Maintenance Agreement	March 2015-September 2017	\$153,704.52	
	Software License	June 2016	\$39,841.46	
	Maintenance Agreement	June 2016-September 2017	\$10,610.67	
Pass-Through Entity # 2	Software License	December 2009	\$77,903.77	2,133
	Maintenance Agreement	December 2009-December 2013	\$63,836.53	
Pass-Through Entity # 3	Software License	October 2015	\$14,850.00	325
	Maintenance Agreement	October 2015-December 2017	\$7,150.00	
	Software License	May 2016	\$206.25	
	Maintenance Agreement	May 2016-December 2017	\$59.38	
	Software License	June 2016	\$5,500.00	
	Maintenance Agreement	June 2016-December 2017	\$1,500.00	
Pass-Through Entity # 4	Software License	June 2013	\$64,511.38	733
	Maintenance Agreement	June 2013-December 2016	\$46,411.00	
	Software License	July 2016	\$302.84	

<b>Customer</b>	<b>Transaction</b>	<b>Date Range</b>	<b>Payment Amount</b>	<b>Downloads</b>
Pass-Through Entity # 5	Software License	June 2011	\$41,503.64	3,936
	Maintenance Agreement	June 2011-September 2017	\$49,218.89	
Pass-Through Entity # 6	Software License	June 2017	\$43,182.82	222
	Maintenance Agreement	June 2017-June 2018	\$7,445.01	
	Software License	December 2017	\$20,166.21	
	Maintenance Agreement	December 2017-June 2018	\$2,535.70	
Pass-Through Entity # 7	Software License	December 2009	\$231,371.35	945
	Maintenance Agreement	May 2013-September 2017	\$202,455.53	
Pass-Through Entity # 8	Software License	May 2013	\$231,371.35	2,631
	Maintenance Agreement	May 2013-September 2017	\$202,455.53	
Pass-Through Entity # 9	Software License	June 2011	\$152,289.35	35
	Maintenance Agreement	June 2011-December 2013	\$72,949.65	
Pass-Through Entity # 10	Software License	October 2010	\$62,048.29	1,019
	Maintenance Agreement	October 2010-September 2017	\$85,451.82	
Pass-Through Entity # 11	Software License	October 2013	\$125,314.94	1,272
	Maintenance Agreement	October 2013-December 2015	\$71,680.17	
Pass-Through Entity # 12	Software License	November 2012	\$16,522.11	5,783
	Maintenance Agreement	November 2012-September 2017	\$18,333.44	
Pass-Through Entity # 13	Software License	August 2014	\$420,579.92	848
	Maintenance Agreement	August 2014-September 2017	\$237,489.68	
	Software License	September 2016	\$1,352,384.27	

<b>Customer</b>	<b>Transaction</b>	<b>Date Range</b>	<b>Payment Amount</b>	<b>Downloads</b>
	Maintenance Agreement	September 2016-September 2017	\$297,524.52	
Pass-Through Entity # 14	Software License	August 2017	\$5,779.72	281
	Maintenance Agreement	August 2017-September 2019	\$2,536.73	

13. SAP conducted several internal audits of its export controls processes. A 2006 audit reported that SAP was not identifying the country to which on-premise software and support products were being downloaded. The audit warned that SAP risked breaching applicable U.S. export controls and sanctions. It recommended implementing tools to identify the location of the user making the download requests.

14. Subsequent audits in 2007, 2010, and 2014 continued to identify gaps in SAP's export controls processes. The 2014 audit reported that SAP did not screen customers' IP addresses to prevent users with IP addresses in U.S.-embargoed countries, such as Iran, from downloading SAP products. The 2014 audit again recommended that SAP implement geo-location IP address screening.

15. These audit reports were provided to senior SAP managers, including SAP Board members, the Legal Counsel in the United States responsible for export controls, and the Head of Logistics.

16. SAP did not implement geo-location IP address blocking for its on-premise download delivery portal until July 2015. In July 2015, SAP also requested that Company A activate its geo-location IP address screening for all transactions. Company A had possessed the ability to conduct this screening for many years but had only been doing so intermittently.

17. Some of the pass-through entities were able to evade SAP's geo-location blocking controls to make it appear that downloads were occurring in a non-sanctioned country.

18. SAP received various whistleblower complaints, including as early as 2011, alleging sales by SAP Partners to foreign-registered affiliates of Iranian companies. SAP failed to adequately investigate those reports. It was not until late 2017 that SAP conducted on-site examinations of SAP Partners and confirmed that certain SAP Partners sold SAP products to the pass-through entities.

19. These examinations revealed that certain SAP Partners had failed to conduct an adequate level of due diligence prior to making sales to the pass-through entities. Certain SAP and SAP Partner executives, including senior leaders at the SAP Partner located in United Arab Emirates, knew that the pass-through entities had purchased the

SAP software with the intent of using the software in Iran. Publicly available information posted on certain SAP Partners' websites touted their business ties to Iranian companies.

\* \* \* \* \*

Accordingly, SAP is hereby notified that an administrative proceeding is instituted against it pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including, but not limited to any or all of the following:

- The maximum civil penalty of an amount not to exceed the greater of \$311,562 per violation or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed;<sup>6</sup>
- Denial of export privileges;
- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

If SAP fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If SAP defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to SAP. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

SAP is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. SAP is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should SAP have a proposal to settle this case, SAP should transmit it to the attorney representing BIS named below.

SAP is further notified that under the Small Business Regulatory Enforcement Flexibility Act, SAP may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

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<sup>6</sup> *See* 50 U.S.C. § 1705(b) (prescribing civil monetary penalty amount for IEEPA violation); 15 C.F.R. §§ 6.3(c)(4), 6.4 (adjusting civil monetary penalty amount for inflation). *See also* 86 Fed. Reg. 1,764 (Jan. 10, 2021) (Adjusting for inflation the maximum civil monetary penalty under IEEPA from \$307,922 to \$311,562, effective Jan. 15, 2021).

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The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, SAP's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center  
40 S. Gay Street  
Baltimore, Maryland 21202-4022

In addition, a copy of SAP's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security  
Attention: Kimberly Hsu and Anthony Saler  
Room H-3839  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230

Kimberly Hsu and Anthony Saler are the attorneys representing BIS in this case; any communications that SAP may wish to have concerning this matter should occur through them. Ms. Hsu may be contacted by email at [KHsu@doc.gov](mailto:KHsu@doc.gov). Mr. Saler may be contacted by email at [ASaler@doc.gov](mailto:ASaler@doc.gov).

Sincerely,

John Sonderman  
Director  
Office of Export Enforcement