

# EU sanctions law: The prohibitions to purchase, import, and transfer goods from Russia in focus

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Since the Russian invasion began in February 2022, the EU has repeatedly expanded its key legal instrument when it comes to trade and sector-specific sanctions against Russia: [Regulation \(EU\) No 833/2014 \(Regulation\)](#). Among the various restrictions, several provisions of the Regulation sanction the flow of goods from Russia, prohibiting not only the import but also the purchase and transfer of a wide variety of goods. In its extensive [FAQs](#), the EU Commission has attempted to explain these bans in more detail. As helpful as these interpretations are in principle, however, they have created considerable uncertainty relating to the scope of these prohibitions.

This briefing analyses two questions that arise in this context: First, is it prohibited for EU persons to purchase listed goods even when they are not destined for the EU? And second, may EU persons in any event transfer (or transport) listed goods into a third country? After giving an overview of the relevant prohibitions and briefly commenting on the prohibition to import, we address these two issues in turn and critically reflect on the EU Commission's standpoints on these matters.

## Overview of the relevant prohibitions

As of today, the Regulation contains five provisions that establish import bans on certain Russian goods:

- Article 3g concerning certain iron and steel products,
- Article 3i dealing with a variety of goods deemed to generate significant revenues for Russia,
- Article 3j restricting the trade with Russian coal and other products,
- Article 3m concerning crude oil and petroleum products, and
- Article 3o pertaining to gold.

Despite their similarities, the respective wording of these provisions is not identical. Article 3g (1) prohibits to import listed products into the Union, to purchase them, and to

transport them from Russia to any other third country. In comparison, the other prohibitions establish prohibitions on the import, the purchase, and the transfer – rather than the transport – of listed goods. Articles 3i (1), 3j (1), and 3o (1) and (3) each state:

*“It shall be prohibited to purchase, import, or transfer, directly or indirectly, [listed goods] into the Union if they originate in Russia or are exported from Russia.”*

Articles 3m (1) and 3o (2), in contrast, omit the words “into the Union”.

All these prohibitions are flanked by prohibitions to provide technical assistance, brokering services or other services as well as financing and financial assistance related to said prohibitions (Articles 3g (1) (e) and 3m (2)) or listed goods (Articles 3i (2), 3j (2), 3m (2), and 3o (4)). In addition to Article 3m (2), Article 3n (1) further prohibits to provide services related to the transport of listed goods to third countries.

## **The import prohibitions**

Despite the differences in the wording of these provision, it is clear that the import element of each of these prohibitions concerns the movement of goods into the territory of the EU. While the Regulation does not define this notion, other EU legal acts, such as Article 2 (e) of the [Anti-Torture Regulation \(EU\) No 2019/125](#), understand import as

*“any entry of goods into the customs territory of the Union.”*

As the import prohibitions further apply to listed goods originating in Russia or which have been exported from Russia, it is also clear that the import restrictions do not only apply to the movement of goods directly from Russia to any EU country, but also to the delivery from other third states.

## **The purchase prohibitions**

It appears also settled that purchase prohibition applies to the conclusion of sales contracts relating to listed goods, at least, if these goods are destined for the EU. Another question is whether this purchase prohibition also applies if these goods are to be delivered to other countries. Doubts arise in this respect from the wording of some of the prohibitions relating to the purchase, import, or transfer of listed goods “into the Union.”

The presence of this geographic reference begs the question whether it also connects to the purchase of goods, that is, whether the prohibition only applies to the purchase of goods “into the Union”. Linguistics rather speak against such an interpretation since one does not usually speak of the purchase of goods “into” a place. While many other language versions, such as the French, Italian or Spanish ones, pose the same problem and position the phrase “into the Union” closest to the verb “transfer”, the German provision states:

*„Es ist verboten, die [gelisteten Güter] unmittelbar oder mittelbar zu kaufen, in die Union einzuführen oder zu verbringen [...]“*

According to the German version, the qualifier “*in die Union*” (“*into the Union*”) thus only relates to the verb “*einführen*” (“*to import*”). The purchase as well as the transfer, on the other hand, is not concerned by the geographical reference.

While a different interpretation based on the English and other language versions remains conceivable, the European Commission’s FAQs have established a clear position in this regard. They note:

*“The prohibition on purchase applies irrespective of the final destination of the goods. Provided the purchase falls within the scope of Article 13 of Regulation 833/2014, it is not relevant whether the goods are destined for the EU or not.”* ([FAQs](#), last updated 18 October 2022, Section D.7.1., p. 193)

Although these FAQs have no binding legal authority, they are meant to provide guidance to economic operators as well as national authorities. Without a ruling by the European Court of Justice finding otherwise, Member States’ authorities will likely adhere to the Commission’s guidance, which prohibits an EU person to purchase listed Russian products irrespective of the goods’ destination.

## **The transfer prohibitions**

The transfer prohibitions similarly raise the question of their geographic reach, namely whether an EU person could transfer listed Russian products to a third country provided that the goods do not transit through the EU. In its FAQs, the EU Commission employs with respect to the transfer prohibition the same interpretation as in the case of the purchase prohibition, stating that

*“[t]he transfer prohibition applies not only in relation to an actual import or export (e.g. with the goods entering or exiting the EU customs territory), but also when those products do not enter the EU, but are transferred between Russia and a third country (and vice-versa)”* ([FAQs](#), last updated 24 October 2022, Section A.1.16, p. 11).

Subsequently, the EU clarified that the prohibitions in Articles 3g, 3i and 3j equally apply to the movement of listed goods irrespective of their final destination of the goods (see [FAQs](#), last updated 24 October 2022, Section D.7.2., p. 193). At the same time, the Commission has also proposed unwritten exceptions to these prohibitions. Relying on recitals of the relevant amending Regulation, the Commission held that, under certain conditions, the transfer of specific listed goods “*should be allowed*” to combat food and energy insecurity ([FAQs](#), last updated 24 October 2022, Section D.7.2., p. 194). However, since the wording of the relevant provisions does not even hint at this exception, the impression is created at this point that the Commission is no longer interpreting but

modifying the Regulation. This, however, exceeds the Commission's competences and is reserved for the legislator.

In contrast to the expansive reading of the aforementioned prohibitions, the Commission adopted a different approach with respect to Article 3m (1), noting:

*“Contrary to Articles 3g, 3i and 3j of Council Regulation 833/2014, Article 3m of Council Regulation 833/2014 prohibits only the purchase, import, transfer of Russian seaborne crude oil that is destined for import into Member States, as highlighted in recital 15 by Council Regulation 2022/879 of 3 June 2022 amending Council Regulation 833/2014. An EU company is still allowed to transport Russian crude oil to a third country.”* ([FAQs](#), last updated 24 October 2022, Section E.1.15, p. 204.)

Accordingly, in the Commission's view, the delivery of listed goods from Russia to third states is prohibited when it comes to Articles 3g, 3i and 3j (as well as presumably 3o), whereas such delivery was held to be permitted under Article 3m of the Regulation. In the course of the 8th sanctions package and the introduction of a price cap for crude oil, however, Article 3n (4) was inserted to prohibit, subject to the detailed rules in Article 3n (5) to (7), also the transport of crude oil and certain petroleum products to third countries (beginning 5 December 2022 and 5 February 2023, respectively).

This understanding is problematic, since the Commission interprets the notion of “*transfer*” inconsistently. In fact, the Commission denies any relevance to the usual understanding of the term “*transfer*”, which normally means the intra-EU movement of goods, as well as to the different terminology of “*transfer*” and “*transport*”, as used in Article 3g (1) (c). This expansion of the restrictions' scope is troublesome since a violation can, depending on the domestic legal situation, constitute a criminal or administrative offense. Under the principle of legality and legal certainty, criminal statutory provisions must be drafted clearly and unequivocally and, therefore, should not be interpreted in the broadest way possible and in deviation from common understandings.

The Commission's FAQs have no binding effect but certainly impact the interpretation of the Regulation by the competent national authorities and possibly by the courts. Although, with respect to the transfer prohibition, there are good arguments to counter the Commission's broad view, we note that there is a risk that national authorities could abide by the Commission's guidance. Because of this potential impact of the FAQs, it can only be hoped that the Commission will reconsider this issue rather sooner than later.

We are continuing to monitor developments in EU sanctions against Russia. BLOMSTEIN is at your disposal at any time to answer questions on the practical implementation as well as on the scope of application of the above-described restrictions.