

# The EU's 14<sup>th</sup> Package of Sanctions Against Russia

1 July 2024

The 14<sup>th</sup> package of EU sanctions against Russia, aimed at further increasing economic pressure and tackling sanctions circumvention in response to Russia's continued aggression towards Ukraine, entered into force on 24 June 2024. The new amendments to [Regulation \(EU\) No 833/2014](#) can be found in [Regulation \(EU\) 2024/1745](#). In this briefing, we outline the most significant changes.

## 'Best Efforts' Obligation

Entities shall undertake their best efforts to ensure that entities that they own or control do not participate in activities that undermine the restrictive measures provided for in Regulation (EU) 833/2014 (Article 8a). The wording of this provision is notably vague at the outset, and it will be necessary to monitor how this is interpreted by the relevant authorities. We expect clarifications from the Commission or national authorities soon. What is clear, however, is that the provision will create a new obligation for EU companies controlling subsidiaries in third countries. We see three issues that are of particular importance in that regard:

### Scope of application

This obligation only applies to companies that own or control a legal person, entity or body established outside the EU. This covers subsidiaries of which the EU company holds more than 50 % of the shares or which is controlled in another way by the EU entity. However, unlike some other sanction provisions, no reference is made to *indirect* subsidiaries. This indicates that only direct subsidiaries are covered – yet this remains uncertain. Nevertheless, the parent company certainly is required to direct its owned or controlled subsidiary not to undermine sanctions through the latter's own subsidiaries.

### Scope of duties

Even though this issue is also unclear, companies are in our opinion not required to completely prevent any breach of sanctions by its subsidiaries. EU companies would then have to ensure that the subsidiaries do not engage in any sanctions-relevant business. Rather, we are of the view that the specific actions to be taken depend on a risk-based approach and are only required up to a reasonable limit (suitable and necessary). The regulation lists, for example, the implementation of appropriate guidelines, controls and procedures for effective risk minimisation and management. The higher the risk that the

subsidiary will circumvent sanctions, the higher the intensity of measures is to be expected.

## What actions to be taken?

Lastly, it also remains unclear whether an EU company would also be in breach if its subsidiaries were operating in full compliance with EU sanctions, but the EU company had not taken any "best efforts" actions. We recommend that you fulfil the obligation to show best efforts with regard to all subsidiaries and also document this until further clarification has been provided. The safest legal course would be to instruct the controlled or owned legal entities to refrain from any further action that could lead to a breach of sanctions. However, and following a risk analysis, it may also be reasonable to wait for the expected clarification before taking any harmful short-term actions.

## Voluntary Self-Disclosure

Member States are required to introduce penalties for breaches of the sanctions. These may include criminal penalties but may also, and this is a novelty, include voluntary self-disclosure as a mitigating factor. See also our recent [briefing](#) on the directive on penalties for the violation of Union restrictive measures.

## Intention to Circumvent Sanction Prohibitions

Circumvention of sanctions is now also intentional if the person acting is aware that the participation may have the object or effect of circumventing sanctions prohibitions and accepting that possibility. This is the equivalent to *dolus eventualis*.

## 'No-Russia'-Clause in IP and New Exemptions

The 'No-Russia' clause obligation in Article 12g has been extended by Article 12ga, which now extends the obligation to the sale, licensing, or transfer of IP rights and trade secrets related to Annex XL goods. This rule parallels Article 12g, as far as Annex XL goods are concerned, but does not incorporate the new exemptions introduced to Article 12g.

New exemptions to the 'No-Russia' clause in Article 12g have been established for public contracts concluded with public authorities in third countries or with international organisations. Exporters must notify the competent authority in their Member State of any public contract covered by the exemption within two weeks of its conclusion. Additionally, the obligation no longer applies to contracts related to goods under certain CN codes (namely 8457 10, 8458 11, 8458 91, 8459 61, and 8466 93).

## Due Diligence for 'Common High Priority Items Operators'

The newly introduced Article 12gb requires operators dealing with high priority items listed in Annex XL to conduct risk assessments. Operators must identify and evaluate risks associated with exporting these items, document these assessments, and keep

them updated. Additionally, appropriate compliance systems must be implemented. This requirement does not apply to operators transferring these items solely within the EU or to partner countries listed in Annex VIII. Companies must also ensure that any legal entity they own or control outside the Union, which deal with high priority items listed in Annex XL, comply with these requirements (in this regard, the same issues regarding the control over subsidiaries described above regarding Article 8a apply). However, this obligation does not apply if the company cannot exercise control over its subsidiary due to reasons beyond its control.

## **New Export, Import and Transaction Bans**

New goods and technology were added to Annex XXIII (Article 3k). Most (but not all) of them can be found in Annex XXIIIC. This list includes various organic and inorganic chemicals, chemical products, plastics and articles thereof, manganese and articles thereof, machinery and mechanical appliances, electrical equipment, vehicles, aircraft, vessels, and associated transport equipment. Regulation (EU) 833/2014 contains grandfathering clauses that permit the execution of contracts concluded before 25 June 2024 (cf. Article 3k paras. 3ad, 3ae, and 3af) until different dates.

## **Targeting Russian LNG**

All future investments and exports to LNG projects under construction in Russia will be prohibited. After a transitional phase, the use of EU ports for the transshipment of Russian LNG to third countries will be banned. Imports of Russian LNG into specific terminals not connected to the EU gas pipeline network will be prohibited.

## **Ban on the use of the Russian central bank's financial messaging system**

European companies operating outside Russia are no longer allowed to use the Russian central bank's financial messaging system (SFPS), with very few exceptions. In addition, transactions with credit and financial institutions and crypto service providers outside Russia are prohibited if these institutions are involved in transactions that facilitate the export or sale of goods to Russia.

## **Ban of road transport business and of non-scheduled flights in EU territory**

Entities owned 25% or more by Russian natural or legal persons are barred from becoming road transport undertakings operating in the EU. Such existing road transport undertakings established after 8 April 2022, will be prohibited from operating after 26 July 2024. In addition, non-scheduled flights initiated by Russian individuals are now also banned. This restriction applies to Russian airlines and to aircraft owned or controlled by Russian individuals or companies.

## No import of Helium

Helium (CN code 2804 29 10) as well as Helium-3 (CN code 2845 40) were added to Annex XXI. As a result, the purchase, import, or transfer, directly or indirectly, of these goods is prohibited if they originate in Russia or are exported from Russia. However, the grandfathering clause in Article 3i para. 3f permits the execution until 26 September 2024 of contracts concluded before 25 June 2024.

## No more patents for Russians

Russian companies as well as Russian nationals or residents in Russia can no longer apply for the registration of trademarks, patents, industrial designs, utility models, protected designations of origin, and geographical indications with the Intellectual Property Offices and other competent institutions of the EU or its Member States (Article 5s). As is the case with other prohibitions concerning natural persons, the provision contains exceptions for nationals of an EU Member State or to natural persons having a temporary or permanent residence permit in an EU Member State.

## Extended exception to provide privileged Russian entities with specific services and software

Article 5n prohibits transactions related to specific services and enterprise management software (EMS). However, paragraph 7 constitutes an exception for clearly defined transactions with privileged Russian entities (subsidiaries of EU and allied parent companies). This exception was extended by three months until 30 September 2024. Moreover, EU nationals that are employees of privileged Russian companies and lived in Russia before the full-scale invasion of Ukraine may also provide services covered by Article 5n (but no EMS) to these companies under certain circumstances.

## Divestment Authorisations

An important new provision can be found in Article 11 para. 4. While this article previously completely prohibited satisfying certain claims by Russian companies in connection with contracts affected by the sanctions, there is now an exception to this. The competent Member State authorities may now authorise, until 31 December 2024, the satisfaction of such claims. The authority's decision must be based on a specific and case-by-case assessment, and after having determined that the satisfaction of the claim is strictly necessary for the divestment from Russia or the wind-down of business activities in Russia. Such authorisations may reduce the pressure for EU operators that are stuck between a rock and a hard place when leaving or divesting in Russia.

The EU has also extended the option in Article 12b to obtain authorisation for specific sanctioned transactions in order to withdraw from Russia. This authorisation possibility has been extended by six months until 31 December 2024.

## **Recovery of Damages Before the Courts of the Member States**

The business of many EU companies with Russian business partners was affected by the EU sanctions. In order to reduce the effect of EU sanctions on Russian companies, Russia took various measures. *Inter alia*, Russia allowed Russian companies to sue EU companies before Russian state courts even if they had to take recourse to arbitration proceedings (Decree of the President of the Russian Federation No. 302 of 25 April 2023). Pursuant to new Article 11b, EU companies are now entitled to recover, in judicial proceedings before the competent courts of the Member State, any damages resulting from a decision made based on the aforementioned Decree (if these decisions are considered illegal under customary international law or bilateral investment treaties).

Until now, EU companies were protected from certain claims by Russian companies according to Article 11, as claims in connection with any transaction affected by EU sanctions were not allowed to be satisfied in the EU. Now, new Article 11a extends this protection. If Russian companies lodge claims with courts in third countries in connection with such transactions, EU companies are entitled to recover damages resulting from these claims (provided that the EU company does not have effective access to the remedies under the relevant jurisdiction).

## **New Listings in Regulation (EU) 269/2014**

In addition, the EU has added various natural and legal persons, entities and bodies to the sanctions list in Annex I to Regulation (EU) 269/2014. EU companies should therefore carefully consider whether the Russian entities they are dealing with are directly or indirectly sanctioned through these listed individuals.

We continue to follow developments in EU sanctions against Russia closely. BLOMSTEIN is at your disposal at any time to answer questions on the practical implementation as well as on the scope of application of these measures. Please do not hesitate to contact [Pascal Friton](#), [Roland M. Stein](#), [Florian Wolf](#), [Leonard von Rummel](#), [Christopher Wolters](#), or [Tobias Ackermann](#).