EU Expands Restrictive Measures in 13th Russian Sanctions Package and Publishes Guidance

Skadden

March 11, 2024

If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West
New York, NY 10001
212.735.3000

68, rue du Faubourg Saint-Honoré
75008 Paris, France
33.1.55.27.11.00

Taunustor 1
60310 Frankfurt am Main
Germany
49.69.74220.0

On 23 February 2024, the European Union (EU) adopted a 13th package of sanctions against Russia, imposing asset freezes on additional individuals and entities, expanding existing sectoral sanctions and further limiting Russia's access to military technology via entities based outside the EU.[1]

The EU Commission (Commission) has also issued new guidance on the scope of the restrictions on software and on the so-called "no-Russia clause" for export business activities. It also updated the guidance note on enhanced due diligence for EU operators.

Separately, German authorities have also issued a general authorization to German entities, which allows them to provide restricted professional services to Russian subsidiaries of German companies.

In addition, on 20 February 2024, financial intelligence agencies from Canada, Germany and the Netherlands issued a joint advisory with concrete examples regarding illegal procurement of dual-use goods by Russian end-users.

The asset freeze restrictions against the listed persons and entities entered into force on 23 February 2024, and the sectoral sanctions took effect on 24 February 2024.

The key aspects of the 13th sanctions package and new EU guidance are:

- The EU has added 194 additional individuals and entities to Annex I of Council Regulation (EU) 269/2014[2] (Regulation 269), making them subject to an asset freeze in the EU.
- Council Regulation (EU) 833/2014[3] (Regulation 833), which restricts the sale and export of dual-use goods and technology, advanced technological items and goods that could contribute to the enhancement of Russian industrial and defense capacities, was expanded to include some electrical components used to develop and produce drones.
- The EU added 27 entities to Annex IV of Regulation 833, which includes entities connected to Russia's military and industrial complex and 10 companies outside Russia that have assisted in circumventing sanctions, making them subject to tighter export restrictions concerning restricted goods and technologies.
- The EU has added the U.K. to the list of partner countries for the importation of iron and steel.
- The Commission has provided new guidance in the form of FAQs on the restrictions on software and the so-called no-Russia clause. The guidance confirms that software downloaded via the cloud falls within the scope of the restrictive measures. The guidance also states that EU operators should not sell their products to any non-EU operator that is not ready to incorporate the no-Russia clause in contracts involving goods or technology falling within the scope of Article 12g(1).

[1] This client alert is for informational purposes only and does not constitute legal advice. Complex assessments often have to be made as to which sanctions regime applies in any given instance, given the multinational touch points of many entities and individuals. In that regard, given the complex and dynamic nature of these sanctions regimes, there may be developments not captured in this summary. Moreover, while the summary was accurate when written, it may become inaccurate over time given developments. For all of these reasons, you should consult with a qualified attorney before making any judgments relating to sanctions, as there are potentially severe consequences of failing to adhere fully to sanctions restrictions.

[2] *See* Council Implementing Regulation (EU) 2024/753 of 23 February 2024 implementing Regulation (EU) 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

[3] *See* Council Regulation (EU) 2024/745 of 23 February 2024 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

© Skadden, Arps, Slate, Meagher & Flom LLP. All rights reserved.

The EU has also extended its sanctions program against Belarus until 28 February 2025. Like the sanctions against Russia, that includes asset freeze measures and sectoral sanctions under Council Regulation (EC) 765/2006.

Asset Freezes

New Entities and Persons Listed by the EU

The EU has imposed an asset freeze on an additional 106 individuals and 88 entities under the new round of sanctions. More than 2,000 individuals and entities are now subject to an asset freeze in the EU under Regulation 269.

In the 13th package of sanctions, the EU has targeted over 140 companies and individuals associated with the Russian military-industrial complex. Additionally, 10 Russian companies and individuals involved in the shipment of weapons from the Democratic People's Republic of Korea (DPRK) to Russia are now subject to asset freeze restrictions. The Minister of Defense of the DPRK and several Belarusian companies and individuals are also listed in Annex I of Regulation 269.

The EU has stated that the newly targeted entities and individuals are involved in the manufacturing of missiles, drones, anti-aircraft missile systems, military vehicles, high-tech components for weapons and other military equipment.

Trade Measures

Export Controls and Restrictions

Dual-Use Goods and Technology; Advanced Technology Items

The EU further extended the scope of the export restrictions on dual-use goods and technology, advanced technology items and goods that could contribute in particular to the enhancement of Russian industrial capacities.

In particular, Annex XXIII of Regulation 833 was amended to cover every item with the tariff position 8504: electric transformers, static converters (*e.g.*, rectifiers) and inductors. It is reported that these items are commonly found in drones.

Additionally, the list of goods in Annex VII of Regulation 833 was amended to include aluminum capacitors (excluding power capacitors). Per the Commission, such goods have military applications, such as in missiles, drones and communication systems for aircraft and vessels.

Wind-Down Period

Regarding the Article 3k restriction to sell, supply, transfer or export electric transformers, static converters (*e.g.*, rectifiers) and inductors listed in Annex XXIII, Regulation 833 provides a wind-down period for contracts concluded before 24 February 2024 (or ancillary contracts necessary to execute such contracts), until 25 May 2024.[4]

Additional Entities Subject to Stricter Export Restrictions

Twenty-seven entities connected to Russia's military and industrial complex were added to Annex IV of Regulation 833, along them subject to stricter export restrictions with respect to dual-use goods and technology, and advanced technology items. The 27 entities include 17 Russian companies and 10 registered in China, Kazakhstan, India, Serbia, Thailand, Sri Lanka and Turkey.

Since 2023, the EU has emphasized the intent to vigorously combat sanctions circumvention, and imposed asset freeze sanctions against individuals and entities facilitating circumvention. This is the first time, however, since the first sanctions against Russia in February 2022 that it has extended export restrictions against companies from third countries identified as so-called "circumvention hubs."

International Cooperation

The ban on the import of certain iron and steel products processed in non-EU countries that incorporate Russian iron and steel took effect on 30 September 2023. The EU has since introduced an exemption for certain partner countries and a wind-down period for certain specific products.[5]

The new package adds the U.K. to the list of partner countries excluded from the iron and steel imports restriction, in addition to Switzerland and Norway.

Per EU guidance, an EU operator importing iron and steel products into the EU from a partner country is not required to provide evidence of the country of origin of the iron and steel inputs used in a non-EU country to process such iron and steel.[6]

[4] *See* Article 3k (3ac) of Regulation 833. The wind-down period applies to goods falling under CN codes 8504 10, 8504 21, 8504 22, 8504 23, 8504 31, 8504 40, 8504 50, and 8504 90.

[5] The prohibition applies as of 1 April 2024 for CN code 7207 11 and as of 1 October 2028 for CN codes 7207 12 10 and 7224 90.

[6] The restricted iron and steel products are listed in Annex XVII of Regulation 833.

EU Expands Restrictive Measures in 13th Russian Sanctions Package and Publishes Guidance

New Guidance on Sanctions Against Russia

Software Restrictions

The Commission has issued new guidance on the software restrictions under Regulation 833. This confirms that the Article 5n restriction to sell, supply, transfer, export, or provide directly or indirectly software for the management of enterprises and software for industrial design and manufacture covers software in a material form (*e.g.*, saved on a storage medium like a flash drive or an IT support) or in an intangible form (*e.g.*, downloaded from the cloud, transferred by technology or email).

The guidance also states that, despite the software restrictions, an EU operator is allowed to continue providing software to its multinational clients with multiple global subsidiaries and affiliates, even if some of those affiliates are Russian. As a caveat to this guidance, the Commission cautions that, if an EU operator's client seeks to acquire the restricted software for use predominantly by their Russian subsidiary or other persons in Russia, that action would constitute a suspected case of circumvention and EU operators are not allowed to provide software services in such cases. The guidance also raises anti-circumvention and due diligence considerations that EU operators must consider in their business activities.

No-Russia Clause

Article 12g of Regulation 833 imposes a so-called "no-Russia clause" that requires EU exporters to contractually prohibit the re-exportation of certain restricted goods to Russia when dealing with non-EU business partners. The requirement will take effect on 20 March 2024. In our 9 January 2024 client alert "EU Further Strengthens Restrictive Measures Against Russia in 12th Package of Sanctions," we discussed the no-Russia clause and related wind-down period, which runs through 20 December 2024 for contracts that were concluded before 19 December 2023.

The Commission has provided new guidance on this contractual obligation. It states that EU operators should not sell their products to any non-EU operator that is not ready to incorporate the no-Russia clause in contracts involving goods or technology falling within the scope of Article 12g(1) of Regulation 833.

EU exporters must ensure that the contract includes adequate remedies if their counterparty breaches the no-Russia clause. Per the guidance, the remedies should be reasonably strong and aim to deter non-EU operators from any breaches. For instance, the remedies can include termination of the contract and the payment of a penalty in case of a breach. The guidance includes a proposed template for the clause that EU operators may use.

The no-Russia clause does not apply to exports to EU partner countries listed in Annex VIII of Regulation 833: Australia, Canada, the US, Japan, the U.K., South Korea, New Zealand, Norway and Switzerland.

Lastly, the guidance proposes a template no-Russia clause that would meet the obligations of Article 12g in the Commission's opinion. However, the guidance states that the proposed template is non-binding and that operators in scope of Article 12g are free to choose a different appropriate wording.

Due Diligence Guidance for EU operators

The Commission has updated the guidance note for EU businesses on enhanced due diligence to prevent sanctions circumvention. The updated guidance includes new typologies of sanctions circumvention and red flags that should draw the attention of EU companies when they are entering into a business relationship with a new trading partner. See our 28 September 2023 client alert "EU Commission Issues Guidance for EU Companies on Enhanced Due Diligence To Prevent Sanctions Circumvention."

Separately, the EU has updated its list of common high-priority items, highlighting for industry that these items pose a heightened risk of being diverted illegally to Russia because of their importance to Russia's war efforts. EU companies should be particularly vigilant when dealing with these high-priority items, the guidance states, as well as other restricted goods and technology.

Humanitarian Exception

On 19 February 2024, the EU Council (Council) modified the EU framework on restrictive measures to combat terrorism and introduced a humanitarian exception to the asset freeze measures. The humanitarian exception is valid for 12 months.

Per the Council's press release, certain categories of humanitarian actors, including those listed in United Nations Security Council Resolution 2664 (2022), as well as organizations and entities certified as humanitarian partners of the EU or its member states and specialized agencies of member states, may engage in transactions with EU-listed individuals and entities without prior authorization to provide humanitarian assistance or support other activities that meet the basic human needs of people.

EU Expands Restrictive Measures in 13th Russian Sanctions Package and Publishes Guidance

General Authorization Issued by German Authorities for Restricted Professional Services

The German Federal Office for Economic Affairs and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle*, or BAFA) has issued a general authorization permitting German businesses to continue providing certain professional services (and software) in scope of Article 5n, including accounting, auditing, and management consulting services, to Russian subsidiaries of EU and partner-country companies.

This is the first time, BAFA has issued a general authorization related to EU sanctions against Russia. German residents[7] who intend to use the general authorization must register with BAFA. Additionally, German residents must notify the BAFA of the fact that they provide services within the scope of this general authorization. The authorization expires on 31 March 2025.

The background of this general authorization is set out in our 9 January 2024 client alert "EU Further Strengthens Restrictive Measures Against Russia in 12th Package of Sanctions." Prior to the 12th sanctions package, the EU professional services ban did not apply to the provision of services intended for the exclusive use of Russian subsidiaries of EU and partner-country companies (so-called intra-group exemption). The 12th sanctions package amended this exemption to expire on 20 June 2024. As of 21 June 2024, operators in scope of the previous exemption will require an authorization from their national competent authorities to provide services prohibited by the EU professional service ban to Russian subsidiaries.[8] Individuals and entities resident in Germany can now use BAFA's general authorization.

[7] The BAFA general authorization refers to "residents" as (1) natural persons resident or habitually resident in Germany, (2) legal persons and partnerships with legal personality legally established or headquartered in Germany, (3) branches of foreign legal persons or partnerships with legal personality if the management of the branches is in Germany and separate accounts are kept for them, or (4) permanent establishments of foreign legal persons or partnerships with legal personality in Germany if the permanent establishments are administered in Germany.

Joint Financial Intelligence Advisory on Illegal Procurement of Dual-Use Goods

On 20 February 2024, the financial intelligence agencies of Canada (FINTRAC), Germany (FIU-GER) and the Netherlands (FIU-NL) issued a joint advisory regarding illegal procurement of dual-use goods by Russian end-users. The guidance summarizes reports received by FINTRAC, FIU-GER and FIU-NL with respect to illegal exports or related sanctions circumvention activities.

While the guidance is intended for national enforcement agencies the published examples contain helpful indications and enforcement insights for companies operating in the field of dual-use goods.

[8] The provision applies to legal persons, entities or bodies which are incorporated or constituted under the law of an EU member state, a country member of the European Economic Area, Switzerland or a partner country as listed in Annex VIII to Regulation 833.

Contacts

Pascal Bine
Partner / Paris
33.1.55.27.11.01
pascal.bine@skadden.com

Margot Sève
European Counsel / Paris
33.1.55.27.11.51
margot.seve@skadden.com

Philipp Mueller
Associate / Frankfurt
49.69.74220.169
philipp.mueller@skadden.com

Michael Albrecht vom Kolke
Counsel / Frankfurt
49.69.74220.172
michael.albrechtvomkolke@skadden.com

Wesley Lainé
Associate / Paris
33.1.55.27.11.73
wesley.laine@skadden.com

Gregory Vianesi
Associate / Paris
33.1.55.27.61.12
gregory.vianesi@skadden.com

Intern/research assistant **Elsa Benchemhoun** assisted in the preparation of this article.

EU Expands Restrictive Measures in 13th Russian Sanctions Package and Publishes Guidance