

## EU SANCTIONS QUESTIONS

❖ General questions arisen among notaries as regards sanctions:

1. Is it still possible to form a limited liability company with a Russian citizen as shareholder?

Yes, unless that person is listed (e.g. in Annex I to Council Regulation (EU) No 269/2014). In that case, joining an LLC could be considered as making funds or economic resources available to a listed person, contrary to the express prohibition in Article 2 of the Regulation 269/2014.

2. Are there restrictions for Russian citizens to participate in contracts concerning real estate (such as purchase agreements, donations, division of real estate)? Or do the sanctions apply only to legal entities and physical persons IN THE LIST exclusively?

In the context of Council Regulation (EU) No 269/2014, only the persons (individuals and entities) listed in Annex I are directly targeted by asset freezes and the prohibition to make funds and economic resources available.

However, if the listed person is deemed to own or control a non-listed entity, it can be presumed that the control also extends to the assets of that entity, and that any funds or economic resources made available to that entity would reach the listed person. This presumption can be rebutted on a case-by-case basis by the entity concerned, if it can be demonstrated that some or all of its assets are outside the control of the listed person, and/or that funds or economic resources made available to it would in fact not reach the listed person.

For further details on 'control', please see the [Commission opinion of 19 June 2020](#) and [Commission opinion 8 June 2021](#).

It is also prohibited for EU operators to take part in any activities seeking to circumvent EU restrictive measures, for instance by acting as a substitute for a listed person.

3. Can an EU bank refuse the receipt of money when it is transferred to the bank account of a Russian citizen (and if it exceeds a certain amount)? Does it make a difference if the Russian citizen has no residence permit in the EU?

Deposits above the limit of EUR 100 000 should not be accepted (or frozen), but rejected.

The restriction on deposits does not apply to Russian nationals who have a temporary or permanent residence permit in the EU, in a country member of the European Economic Area or in Switzerland. If the Russian national does not hold such a permit (and no other exception is applicable), the restriction applies.

4. Is it safe to deposit the purchase price in a notarial trust account if the buyer/seller is a Russian citizen?

There is no direct prohibition to deposit the purchase price in a notarial trust account. However, such accounts should not be used to circumvent the restrictive measures in any way.

Generally speaking, notaries must conduct due diligence for every transaction. There is no one-size-fits-all model of due diligence, which may depend – and be calibrated accordingly – on the business specificities and the related risk exposure. It is for each EU operator to develop, implement, and routinely update an EU sanctions compliance programme that reflects their individual business models, geographic and sectoral areas of operations and related risk-assessment. Note however that the obligations in EU restrictive measures are normally obligations of result, and the mere performance of due diligence does not shield the operator from responsibility in case of sanctions violations.

5. Does the involvement of a Russian citizen in an authentication procedure need to be reported to the FIU?

If the Russian citizen is present on the EU sanctions list, then the authentication procedure cannot result in any funds or economic resources being made available to him/her, whether directly or indirectly.

If red flags appear during the due diligence checks (in particular, presence on the EU sanctions list or links with a listed person), the Russian citizen's involvement should be reported to the FIU in line with national requirements.

6. If a Russian citizen sells immovable property, in order to receive the purchase price, can they refer to an EU bank account? Can they refer to a bank account in a third country?

The restriction in Article 5b(1) of Council Regulation (EU) No 833/2014 concerns deposits from Russian nationals or natural persons residing in Russia or legal persons, entities and bodies established in Russia. It follows that EU operators are not prohibited from making payments into the accounts held by these persons in the EU or in third countries.

If the buyer fits one of the criteria in Article 5b(1), EU credit institutions would in principle not be able to receive the purchase price if the amount threshold was reached. According to Article 5b(4), the restriction does not apply to deposits which are necessary for non-prohibited cross-border trade in goods and services between the Union and Russia (though it is doubtful that real estate purchases could fall under "cross-border trade").

It should be noted that it is prohibited for EU operators to take part in any activities seeking to circumvent EU restrictive measures, for instance by acting as a substitute for a person referred to in Article 5b(1).

7. Is it possible for a Russian citizen to acquire immovable property in the EU and transfer the purchase price from a bank account situated in the EU or in a third country, such as Switzerland or Russia?

The restrictive measures in force do not prohibit the acquisition of real estate in the EU (unless it is done by a person listed under Council Regulation (EU) No 269/2014).

The restriction in Article 5b(1) of Council Regulation (EU) No 833/2014 concerns any deposits from Russian citizens or natural persons residing in Russia or legal persons, entities and bodies established in Russia. According to Article 5b(4), however, this does not apply to deposits which are necessary for non-prohibited cross-border trade in goods and services between the Union and Russia (though it is doubtful that real estate purchases could fall under “cross-border trade”).

It should be noted that it is prohibited for EU operators to take part in any activities seeking to circumvent EU restrictive measures, for instance by acting as a substitute for a person referred to in Article 5b(1).

8. Does it make a difference in any of these cases, if the Russian citizen also has another citizenship (EU or non EU)?

If the Russian citizen has EU citizenship or the citizenship of a country member of the EEA or of Switzerland, then the restriction in Article 5b(1) does not apply – as per Article 5b(3).

Note also that, if the Russian citizen has EU citizenship, he/she will be personally bound by all obligations in the Regulation, including the prohibition to take part in activities that seek to circumvent EU restrictive measures.

9. And if the Russian citizen has permanent or temporary residence in the country?

As above, if the Russian citizen has a residence in an EU Member State, a country member of the EEA or Switzerland.

10. As regards company law: What to consider if the company’s registered office is in the EU or Switzerland and the shareholder and/or director is a Russian citizen?

In the context of Council Regulation 269/2014, only the persons (individuals and entities) listed in Annex I are directly targeted by asset freezes and the prohibition to make funds and economic resources available.

However, if the listed person is deemed to own or control a non-listed entity (be it in the EU or elsewhere), it can be presumed that the control also extends to the assets of that entity, and that any funds or economic resources made available to that entity would reach the listed person. This presumption can be rebutted on a case-by-case basis by the entity concerned, if it can be demonstrated that some or all of its assets are outside the control of the listed person, and/or that funds or economic resources made available to it would in fact not reach the listed person.

For further details on ‘control’ and how this assessment can be performed, please see the [Commission opinion of 19 June 2020](#) and [Commission opinion 8 June 2021](#).

11. If a notary shall authenticate the formation of a EU limited liability company including two Russian shareholders who are not on the sanctions list, can the notary authenticate the formation of a company even if the purpose of the company is the development of goods which might be considered as “dual use” items falling under the Sanctions Regulation?

In principle, yes, provided that there is no circumvention.

However, the notary should point the shareholders to the restrictions on the export of dual-use goods, as any such exports can activate the liability of the company and of the persons involved in the export.

In parallel, the FIU should be alerted about the creation of the company and its likely business activities.

12. How does the notary handle cases in which a Russian citizen who appears on the sanctions list is involved in a transaction through a multi-level holding structure? Does any involvement at any level of the structure result in the sanctions provided for in Article 2 of Regulation (EU) 269/2014 and the mandatory reporting under Article 8 of Regulation (EU) 269/2014?

Any involvement by a listed person or a person associated with a listed person must be treated as an immediate red flag. The notary must carry out appropriate due diligence in that regard.

For example, the notary should verify whether the potential transaction would result in funds or economic resources being made available (in this case, indirectly) to the listed person. The notary should also assess whether the listed person has ownership or control over the entities or other assets directly involved in the transaction can be a useful tool in this regard. For further details on ‘control’ and how this assessment can be performed, please see the [Commission opinion of 19 June 2020](#) and [Commission opinion 8 June 2021](#).

If the notary concludes that the potential transaction would in fact result in funds or economic resources being made indirectly available to a listed person, in breach of EU restrictive measures, it should refuse to authenticate the transaction and report this to the national competent authorities and freeze any assets of the listed person already in possession of the notary (e.g. as proxy)

Even if the transaction is not concluded, authorities may still investigate EU business partners of the listed person. EU operators who are knowingly and intentionally involved in activities the **purpose** or effect of which is to circumvent EU restrictive measures (therefore, also in potential transactions) would be in breach of EU law.

- ❖ Questions concerning the interpretation of Council Regulation (EU) 2022/328 of 25 February 2022, namely the following articles:

*Article 5b*

- 1. It shall be prohibited to accept any deposits from Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia, if the total value of deposits of the natural or legal person, entity or body per credit institution exceeds 100 000 EUR.*
- 2. Paragraph 1 shall not apply to nationals of a Member State or natural persons having a temporary or permanent residence permit in a Member State,*
- 3. Paragraph 1 shall not apply to deposits which are necessary for non-prohibited cross-border trade in goods and services between the Union and Russia.*

Regarding Art 5b, the Estonian FIU seems to be on the opinion that it should be interpreted widely and thus if a Russian citizen (who does not fall under the exception of para. 2) wants to sell his/her real estate in Estonia – the value of which is more than 100 000 euros – he/she should be prohibited from making this transaction. In this situation the sum is not deposited by a Russian national, but for a Russian national. Another question is, of course, the transfer of the sum after the transaction, but if she/he has, for example, a Swiss bank account, it would be possible.

The restriction in Article 5b(1) concerns any deposits **from Russian citizens or natural persons residing in Russia**. It follows that EU operators are not prohibited from making payments into the accounts held by these persons in the EU or in third countries. However, buyers who are Russian nationals or persons residing in Russia would not be able to deposit the sale price with EU credit institutions.

At the same time, EU operators are prohibited from taking part in any circumvention of the Regulation, including by acting as a substitute for the persons referred to in Article 5b(1).

The Russian national is entitled to withdraw funds or leave them in his/her account. He/she can transfer them to EU persons if any of the exceptions apply, including those in Article 5b(3).

#### *Article 5d*

*1. By way of derogation from Article 5b(1), the competent authorities may authorise the acceptance of such a deposit, under such conditions as they deem appropriate, after having determined that the acceptance of such a deposit is:*

*(a) necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations; or*

*(b) necessary for civil society activities that directly promote democracy, human rights or the rule of law in Russia.*

*2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1 within two weeks of the authorisation.*

Regarding Article 5d, need to clarify the derogations provided for, in particular that of basic need: can the acquisition of a real estate property fall into this category of basic need?

Article 5d makes no reference to basic needs.

Article 5c does make such a reference. It is for the national competent authority to determine whether the acquisition of real estate property would constitute a 'basic need' that enables a deposit that exceeds 100 000 EUR. However, given the list of examples provided in Article 5c ("payments for food, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges"), it is doubtful that real estate acquisitions could fall in this category.

Note that payments by Russian persons (directly) into the account of an EU buyer are not prohibited, if they are necessary for non-prohibited cross-border trade in goods and services between the Union and Russia.

#### *Article 5f*

*1. It shall be prohibited to sell euro denominated transferable securities issued after 12 April 2022 or units in collective investment undertakings providing exposure to such securities, to any Russian national or natural person residing in Russia or any legal person, entity or body established in Russia.*

*2. Paragraph 1 shall not apply to nationals of a Member State or natural persons having a temporary or permanent residence permit in a Member State.*

Regarding Article 5f, on the other hand, the Estonian FIU has a narrower interpretation concerning the notion of 'securities'. Under a broad definition in Estonian law, the shares of a private limited company are also securities. Thus, we have raised the question, if it should be possible to create companies by Russian nationals now (before 12 April), which could be sold to another Russian national after that date. Our FIU has answered that this article is supposed to cover only stock market companies and thus should not affect any transactions concerning Estonian limited liability companies. However, a limited liability company is the most common business form in Estonia, and they own a lot of property, which makes it then possible to do transactions the value of which is much more than 100 000 euros, and this does not seem to align with the broad interpretation of Art 5b.

For the purposes of applying the measures in Council Regulation (EU) No 833/2014, "transferable securities" are defined in Article 1(f) thereof. According to point (i), the definition covers all securities **which are negotiable on the capital market**, including "shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares". This definition does not seem to apply to shares of private limited companies.