



COMMISSION

CONSOLIDATED

FAQs

on the implementation of
Council Regulation No 833/2014 and
Council Regulation No 269/2014

11. Which activities are covered by the prohibition of ‘legal advisory services’ according to Art 5n (2) of Council Regulation (EU) No. 833/2014? Is the guarantee of the right of defence affected?

Last update: 24 October 2022

The sanctions on ‘legal advisory services’ have been designed so as to preserve access to justice and the right of defence. ‘Legal advisory services’ include:

- the provision of legal advice to customers in non-contentious matters, including commercial transactions, involving the application or interpretation of law;
- participation with or on behalf of clients in commercial transactions, negotiations and other dealings with third parties; and
- preparation, execution and verification of legal documents.

Article 5n of Council Regulation (EU) No. 833/2014 explicitly excludes from the ban the provision of services that are strictly necessary:

- for the termination by 8 January 2023 of contracts which are not compliant with this Article concluded before 7 October 2022, or of ancillary contracts necessary for the execution of such contracts;
- for the exercise of the right of defence in judicial proceedings and the right to an effective legal remedy; or
- to ensure access to judicial, administrative or arbitral proceedings in a Member State, or for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State, provided that such provision of services is consistent with the objectives of this Regulation and of Council Regulation (EU) No 269/2014.

12. What is the meaning of “entities or bodies established in Russia”? In particular, do the restrictions in Article 5n(1), (2) and (2a) apply to services provided to (a) non-Russian branches of Russian entities; (b) non-Russian related parties of Russian companies / non-Russian affiliated parties of Russian companies / non-Russian companies belonging to the same group as Russian companies; (c) non-Russian companies owned by Russian residents?

Last update: 21 December 2022

The restrictions under Article 5n(1), (2) and (2a) apply to services provided to entities or bodies established in Russia.

As a result, the prohibition:

- Applies to services provided to non-Russian branches of Russian entities, which have no legal personality and are therefore considered to be established in Russia;
- Does not apply to services provided to companies incorporated under the law of a country different from Russia, which are not established in Russia, even if they are subsidiaries of Russian companies or are owned by Russian residents, provided that the services are not for the benefit of the parent company established in Russia.

13. Are services provided to natural persons in Russia covered by the prohibitions under Article 5n(1), (2) and (2a) of Council Regulation 833/2014?

Last update: 21 December 2022

No, the prohibitions under Article 5n(1), (2) and (2a) of Council Regulation 833/2014 only cover services provided to the Russian government and to legal persons, entities or bodies established in Russia.

14. Does the prohibition apply to EU individuals providing restricted services to Russian entities?

Last update: 21 December 2022

Yes. The prohibitions in Article 5n(1), (2) and (2a) have general application, including on individuals.

15. Does the provision of services to EU established but Russian tax residents companies fall under the prohibitions of Article 5n?

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Under Article 5n(1), lett. b, (2), lett. b, and (2a), lett. b of Council Regulation (EU) No. 833/2014, it is prohibited to provide the restricted services to legal persons, entities or bodies established in Russia (as well as to the Government of Russia). As a result, it is not prohibited to provide the restricted services to companies that are not established in Russia (including EU subsidiaries of entities established in Russia).

In principle, for the purpose of applying the prohibitions contained in Article 5n, it is not relevant that the EU established company is tax resident (also) in Russia. However, Article 5n prohibits both the direct and the indirect provision of the restricted services to entities established in Russia. As a result, it is possible to provide those services to the EU subsidiary of a Russian company, provided that they are not actually for the benefit of the company established in Russia.

On the contrary, it is prohibited to provide restricted services to the EU branches of Russian companies because they do not have legal personality and are considered as entities established in Russia.

It must be ensured that the rules described above are not used as a means to circumvent the application of the EU restrictive measures.

16. Does the exemption under Article 5n(7) apply only when the Russian entity receiving the services is owned or controlled exclusively by legal persons, entities or bodies incorporated or constituted under the law of a Member State, a country member of the European Economic Area, Switzerland or a partner country as listed in Annex VIII?

Last update: 21 December 2022

No, it is sufficient that the Russian entity is at least partly owned or controlled by a legal person,

entity or body incorporated or constituted under the law of a Member State, a country member of the European Economic Area, Switzerland or a partner country as listed in Annex VIII.

The exemption under Article 5n(7) may for instance apply when a Russian company is jointly controlled by an EU company and a company that is neither from the EU nor from a partner country as listed in Annex VIII.

17. Does the exemption under Article 5n(7) of Regulation 833/2014 apply if the legal persons, entities or bodies established in Russia are indirectly owned by, or solely or jointly controlled by, a legal person, entity or body which is incorporated or constituted under the law of a Member State, the EEA, Switzerland or a partner country?

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The exemption under Article 5n(7) applies when the provision of services is intended for the exclusive use of entities established in Russia that are ultimately owned or controlled by an entity from a country of the EU or EEA, from Switzerland or from one of the listed partner countries (U.S., Japan, UK, South Korea).

In view of the above:

- the exemption applies if for example the Russian entity receiving the services is owned by an entity (which is neither Russian nor from the EU, EEA, Switzerland or partner country as listed in Annex VIII), which is in turn ultimately owned or controlled by a company from the EU, EEA, Switzerland or partner country as listed in Annex VIII;
- the exemption does not apply if for example the Russian entity receiving the services is owned or controlled by a company from the EU, EEA, Switzerland or partner country as listed in Annex VIII, which is in turn owned or controlled by a Russian company or by a company from another jurisdiction (a company not from the EU, EEA, Switzerland or partner country as listed in Annex VIII).

It must be ensured that the rules outlined above are not used as a means to circumvent the application of the EU restrictive measures.

18. Does the exemption under Article 5n(7) apply when the Russian legal person is owned or controlled by a natural person who is the citizen of a Member State, of a country member of the European Economic Area, of Switzerland or of a partner country as listed in Annex VIII?

Last update: 21 December 2022

No. The exemption under Article 5n(7) is meant to apply only to subsidiaries of EU companies (or of companies incorporated in EEA, Switzerland or a partner country as listed in Annex VIII). It does not apply to services provided to Russian companies owned or controlled by individuals, including when those individuals are from the EU, EEA, Switzerland or from one of the partner countries as listed in Annex VIII.

19. Do the prohibitions in Article 5n restrict the possibility to provide the relevant services to Russian entities controlled by foreign companies not being from the EU, EEA, Switzerland or from one of the partner countries as listed in Annex VIII?

Last update: 21 December 2022

Yes. The exemption under Article 5n(7) applies only with respect to entities owned or controlled by EU companies, companies incorporated in the EU, EEA, Switzerland or from one of the partner countries as listed in Annex VIII.

20. When are legal advisory services indirectly provided for the purposes of Article 5n(2) of the Council Regulation 833/2014?

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An indirect provision of legal advisory services is constituted when another operator than the recipient of services is (also) benefitting from them. This could be the case when e.g. an EU subsidiary is receiving legal consultation, which indirectly benefits the Russian parent company. Although a case-by-case assessment is required, certain legal services are more likely than others to be (also) for the benefit of the parent company: legal consultation regarding a local issue, e.g. car lease for local staff in a EU Member State, is less likely to constitute an indirect provision of prohibited legal advisory services as this typically benefits largely the EU subsidiary. However, e.g. the legal consultation to set up a new globally operating corporate structure probably would.

21. Are notarial services covered by the prohibition under Article 5n(2) of Council Regulation 833/2014? Does the prohibition also apply in cases where notaries are state-appointed public officers and exercise public authority when performing their activities on behalf of the participants? Is the exercise of public authority through notaries covered by the prohibition of “legal advisory services” within the meaning of the Council Regulation?

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Yes, notarial services are covered by the prohibition under Article 5n(2) of Council Regulation 833/2014 if they are provided to an entity established in Russia or to the Government of Russia and do not fall within any of the applicable exemptions provided in Article 5n.

The status of the provider of the services is not relevant, only the provision of certain services itself is prohibited. The fact that seeking a certain service is mandated or even just recognised by the law does not mean that the provision of this service is somehow exempted from the prohibition set out by Art 5n(2) of Council Regulation 833/2014.

The prohibition applies for example to the authentication of contracts and other declarations directed at the performance of legal transactions, as well as the certification of signatures and the establishment of deeds regarding factual circumstances (these activities would be covered by the notion of “preparation, execution and verification of legal documents”; see recital 19 of Council Regulation 1904/2022).

22. Does the exemption for court and administrative procedures pursuant to Art. 5n(6) also apply to official notarial authentication procedures?

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According to Article 5n(6), only those legal advisory services are exempted which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in the EU or which are needed for the recognition or enforcement of a judgment or an arbitration award rendered in the EU. If notarial authentication services are strictly necessary in those circumstances and meet the conditions, they are exempted from the prohibition.

23. Are pro bono legal services covered by the prohibition under Article 5n(2) of the Council Regulation 833/2014?

Last update: 21 December 2022

No specific exemptions or derogations are provided for pro bono legal advisory services as such. As a result, it is in general prohibited to provide those services to the Government of Russia and to any legal person, entity or body established in Russia.

However, as with remunerated services, pro-bono services are not prohibited if they fall outside the scope of that prohibition or fall within the scope of application of the general exemptions provided under Article 5n (e.g. they are provided to a natural person, they are covered by the exemptions in paragraphs 5 or 6). The same services may also be authorized if they fall within the scope of application of one of the derogations provided in Article 5n (for example if their provision is necessary for humanitarian purposes or for civil society activities that directly promote democracy, human rights or the rule of law in Russia).

24. Are law firms and lawyers subject to EU jurisdiction authorized to represent the Government of Russia or legal entities established in Russia in judicial, arbitral or administrative proceedings outside the EU?

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The exemption under Article 5n(6) only applies to the provision of services which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a Member State, or for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State.

However, the provision of the legal advisory services may still be allowed (even outside of the EU) if it falls within the scope of Article 5n(5), i.e. if the services are strictly necessary for the exercise of the right of defense in judicial proceedings and the right to an effective legal remedy.

25. Does the prohibition also cover legal advisory services under the Russian laws (or any other laws, non-EU) provided by the Russian representative office of an EU based legal entity?

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The prohibition to provide legal advisory services applies regardless of the type of law (EU law,

Russian law or other) to which it refers. The representative offices of EU legal entities are bound to comply with EU restrictive measures and it is therefore prohibited for them to provide the restricted services to the Government of Russia or to companies in Russia (unless any of the exemptions or derogations in Article 5n apply).

26. Is it prohibited to provide sanctions compliance advice to Russian entities and the Government of Russia?

Last update: 21 December 2022

Russian companies are generally not bound to comply with EU sanctions, which typically only apply to EU companies and companies doing business in the EU. As a result, they should not in principle need to seek legal advice regarding the application of EU sanctions.

EU companies (not their Russian counterparties) are typically the entities applying for the authorizations to be issued by the national competent authorities of the EU Member States, under the derogations contained in the EU sanctions regulations. It is not prohibited to provide services to non-Russian entities (i.e., entities not established in Russia), even if they are subsidiaries of entities established in Russia. However, it is for example prohibited to provide services to EU or other non-Russian entities that are subsidiaries of entities established in Russia if those services would actually be for the benefit of the parent company established in Russia.

EU restrictive measures do not contain a specific exception for the provision of sanctions compliance advice as such.

However, the prohibition under Article 5n does not apply *inter alia* to the provision of:

- Services that are strictly necessary for the exercise of the right of defence in judicial proceedings and the right to an effective legal remedy (paragraph 5); and
- Services which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a Member State, or for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State, provided that such provision of services is consistent with the objectives of this Regulation and of Council Regulation (EU) No 269/2014 (paragraph 6). As explained in Recital 19 of Council Regulation (EU) 2022/1904, the prohibition of legal services does not apply to representation, advice, preparation of documents or verification of documents in the context of legal representation services.

In view of the above, the provision of sanctions compliance advice may not be prohibited if it falls in one or more of the cases explicitly allowed under the provisions above. In any event, legal services providers must pay particular attention that their services to Russian entities do not entail any legal advice which might be considered as a form of evasion of EU sanctions by those Russian entities and/or circumvention of those sanctions by EU companies.