Sanctions

Update 6 October 2022

Background

On 22 July 2022 the revised Council Regulation (EU) No 833/2014 (as published in the Official Journal on 22 July 2022) introduced the prohibition on the provision of certain business-relevant services (accounting, auditing, including statutory audit, bookkeeping and tax consulting services, as well as business and management consulting or public relations services).

Article 5n (3) excluded from the scope of the above-mentioned services *"(ii) any service that is strictly necessary for the exercise of the right of defence in judicial proceedings and the right to an effective legal remedy;"*

> *"Article 5n*
>
> *1. It shall be prohibited to provide, directly or indirectly, accounting, auditing, including statutory audit, bookkeeping or tax consulting services, or business and management consulting or public relations services to:*
>
> *(a) the Government of Russia; or*
>
> *(b) legal persons, entities or bodies established in Russia.*
>
> *2. Paragraph 1 shall not apply to the provision of services that are strictly necessary for the termination by 5 July 2022 of contracts which are not compliant with this Article concluded before 4 June 2022, or of ancillary contracts necessary for the execution of such contracts.*
>
> *3. Paragraph 1 shall not apply 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*."

New development – legal advisory services

On 6th October 2022 the Council agreed to extend the prohibition of various services to include architectural and engineering services as well as IT consultancy services and legal advisory services.

It is now prohibited to provide, directly or indirectly, legal advisory services to:

(a) the Government of Russia; or
(b) legal persons, entities or bodies established in Russia.

- 'Legal advisory services' covers: 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.

- 'Legal advisory services' does not include any representation, advice, preparation of documents or verification of documents in the context of legal representation services, namely in matters or proceedings before administrative agencies, courts or other duly constituted official tribunals, or in arbitral or mediation proceedings.

The prohibition does not apply 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.

The prohibition does not apply 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, provided that such provision of services is consistent with the objectives of this Regulation and of Council Regulation (EU) No 269/2014 (*).

The prohibition does not apply to the provision of services intended for the exclusive use of legal persons, entities or bodies established in Russia that are 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, a country member of the European Economic Area, Switzerland or a partner country as listed in Annex VIII.

The prohibition shall not apply to the provision of services that are strictly necessary for the termination by 8 January 2023 of contracts concluded before 7 October 2022, or of ancillary contracts necessary for the execution of such contracts.

Legal Basis

The legal basis which imposes the new sanctions are:

A: COUNCIL REGULATION (EU) 2022/1904 of 6 October 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, and

B: COUNCIL DECISION (CFSP) 2022/1909 of 6 October 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

See: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2022:259I:FULL&from=EN

The relevant parts which impact on legal advisory services are highlighted **(in bold)**:

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A: COUNCIL REGULATION (EU) 2022/1904 of 6 October 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

Whereas:

(1) On 31 July 2014, the Council adopted Regulation (EU) No 833/2014.

(2) Regulation (EU) No 833/2014 gives effect to certain measures provided for in Council Decision 2014/512/CFSP.

(3) In response to the Russian Federation's further aggression against Ukraine, the organisation of illegal sham 'referenda' in the parts of the Donetsk, Kherson, Luhansk and Zaporizhzhia regions that are currently illegally occupied by the Russian Federation, the illegal annexation of those Ukrainian regions by the Russian Federation, as well as the mobilisation in the Russian Federation and its repeated threat to use weapons of mass destruction, **on 6 October 2022 the Council adopted Decision (CFSP) 2022/1909 amending Decision 2014/512/CFSP.**

(19) **Furthermore, Decision (CFSP) 2022/1909 extends the existing prohibition on the provision of certain services to the Russian Federation by banning the provision** of architectural and engineering services as well as of IT consultancy services and **legal advisory services**. In line with the Central Products Classification as set out in Statistical Office of the United Nations, Statistical Papers, Series M, No 77, CPC prov., 1991, 'architectural and engineering services' covers both architectural and engineering services as well as integrated engineering services, urban planning and landscape architectural services and engineering-related scientific and technical consulting services. The provision of technical assistance related to goods exported to Russia remains allowed, provided that the sale, supply, transfer or export of such goods is not prohibited under this Regulation at the time at which such technical assistance is provided. 'IT consultancy services' covers consultancy services related to the installation of computer hardware, including assistance services to the clients in the installation of computer hardware (i.e. physical equipment) and computer networks, and software implementation services, including all services involving consultancy services on, development of and implementation of software. **'Legal advisory services' covers: 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. 'Legal advisory services' does not include any representation, advice, preparation of documents or verification of documents in the context of legal representation services, namely in matters or proceedings before administrative agencies, courts or other duly constituted official tribunals, or in arbitral or mediation proceedings.**

…

(12) Article 5n is replaced by the following:

'Article 5n

1. It shall be prohibited to provide, directly or indirectly, accounting, auditing, including statutory audit, bookkeeping or tax consulting services, or business and management consulting or public relations services to: (a) the Government of Russia; or (b) legal persons, entities or bodies established in Russia.

2. It shall be prohibited to provide, directly or indirectly, architectural and engineering services, **legal advisory services** and IT consultancy services to**: (a) the Government of Russia; or (b) legal persons, entities or bodies established in Russia.**

3. Paragraph 1 shall not apply to the provision of services that are strictly necessary for the termination by 5 July 2022 of contracts which are not compliant with this Article concluded before 4 June 2022, or of ancillary contracts necessary for the execution of such contracts.

4. Paragraph 2 shall not apply to 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.

5. Paragraphs 1 and 2 shall not apply 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.

6. Paragraphs 1 and 2 shall not apply 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, provided that such provision of services is consistent with the objectives of this Regulation and of Council Regulation (EU) No 269/2014 (*).

7. Paragraphs 1 and 2 shall not apply to the provision of services intended for the exclusive use of legal persons, entities or bodies established in Russia that are 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, a country member of the European Economic Area, Switzerland or a partner country as listed in Annex VIII.

8. Paragraph 2 shall not apply to the provision of services necessary for public health emergencies, the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment, or as a response to natural disasters.

9. Paragraph 2 shall not apply to the provision of services necessary for software updates for non-military use and for a non-military end user, permitted by Articles 2(3)(d) and 2a(3)(d) in relation to goods listed in Annex VII.

10. By way of derogation from paragraphs 1 and 2, the competent authorities may authorise the services referred to therein, under such conditions as they deem appropriate, after having determined that this is necessary for: (a) 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; (b) civil society activities that directly promote democracy, human rights or the rule of law in Russia; or (c) the functioning of diplomatic and consular representations of the Union and of the Member States or partner countries in Russia, including delegations, embassies and missions, or international organisations in Russia enjoying immunities in accordance with international law.

11. By way of derogation from paragraphs 1 and 2, the competent authorities may authorise the services referred to therein, under such conditions as they deem appropriate, after having determined that this is necessary for: (a) ensuring critical energy supply within the Union and the purchase, import or transport into the Union of titanium, aluminium, copper, nickel, palladium and iron ore; (b) ensuring the continuous operation of infrastructures, hardware and software which are critical for human health and safety, or the safety of the environment; (c) the establishment, operation, maintenance, fuel supply and retreatment and safety of civil nuclear capabilities, and the continuation of design, construction and commissioning required for the completion of civil nuclear facilities, the supply of precursor material for the production of medical radioisotopes and similar medical applications, or critical technology for environmental radiation monitoring, as well as for civil nuclear cooperation, in particular in the field of research and development; or (d) the provision of electronic communication services by Union telecommunication operators necessary for the operation, maintenance and security, including cybersecurity, of electronic communication services, in Russia, in Ukraine, in the Union, between Russia and the Union, and between Ukraine and the Union, and for data centre services in the Union.

12. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraphs 10 and 11 within two weeks of the authorisation

B: COUNCIL DECISION (CFSP) 2022/1909 of 6 October 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

(Recitals)

…

(12) It is also appropriate to extend the existing prohibition on the provision of certain services to the Russian Federation by banning the provision of architectural and engineering services as well as of IT consultancy services and **legal advisory services**. In line with the Central Products Classification as set out in Statistical Office of the United Nations, Statistical Papers, Series M, No 77, CPC prov., 1991, 'architectural and engineering services' covers both architectural and engineering services as well as integrated engineering services, urban planning and landscape architectural services and engineering-related scientific and technical consulting services. 'Engineering services' does not cover technical assistance related to goods exported to Russia where their sale, supply, transfer or export is not prohibited at the time at which such technical assistance is provided. 'IT consultancy services' covers consultancy

(13) 'Legal advisory services' covers: 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. 'Legal advisory services' does not include any representation, advice, preparation of documents or verification of documents in the context of legal representation services, namely in matters or proceedings before administrative agencies, courts or other duly constituted official tribunals, or in arbitral or mediation proceedings.

Article 1k is replaced by the following:

'Article 1k

1. It shall be prohibited to provide, directly or indirectly, accounting, auditing, including statutory audit, bookkeeping or tax consulting services, or business and management consulting or public relations services to: (a) the Government of Russia; or (b) legal persons, entities or bodies established in Russia.

2. It shall be prohibited, directly or indirectly, to provide architectural and engineering services, **legal advisory services** and IT consultancy services to: **(a) the Government of Russia; or (b) legal persons, entities or bodies established in Russia.**

3. Paragraph 1 shall not apply to the provision of services that are strictly necessary for the termination by 5 July 2022 of contracts which are not compliant with this Article concluded before 4 June 2022, or of ancillary contracts necessary for the execution of such contracts.

4. Paragraph 2 shall not apply to 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.

5. Paragraphs 1 and 2 shall not apply 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

6. Paragraphs 1 and 2 shall not apply 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, provided that such provision of services is consistent with the objectives of this Decision and of Decision 2014/145/CFSP.

7. Paragraphs 1 and 2 shall not apply to the provision of services intended for the exclusive use of legal persons, entities or bodies established in Russia that are 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, a country member of the European Economic Area, Switzerland or a partner country as listed in Annex VII.

8. Paragraph 2 shall not apply to the provision of services necessary for public health emergencies, the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment, or as a response to natural disasters.

9. Paragraph 2 shall not apply to the provision of services necessary for software updates for non-military use and for a non-military end user, permitted by Articles 3(3)(d) and 3a(3)(d).

10. By way of derogation from paragraphs 1 and 2, the competent authorities may authorise the services referred to therein, under such conditions as they deem appropriate, after having determined that this is necessary for: (a) 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; (b) civil society activities that directly promote democracy, human rights or the rule of law in Russia; or (c) the functioning of diplomatic and consular representations of the Union and of the Member States or partner countries in Russia, including delegations, embassies and missions, or international organisations in Russia enjoying immunities in accordance with international law.

11. By way of derogation from paragraphs 1 and 2, the competent authorities may authorise the services referred to therein, under such conditions as they deem appropriate, after having determined that this is necessary for: (a) ensuring critical energy supply within the Union and the purchase, import or transport into the Union of titanium, aluminium, copper, nickel, palladium and iron ore; (b) ensuring the continuous operation of infrastructures, hardware and software which are critical for human health and safety, or the safety of the environment; (c) the establishment, operation, maintenance, fuel supply and retreatment and safety of civil nuclear capabilities, and the continuation of design, construction and commissioning required for the completion of civil nuclear facilities, the supply of precursor material for the production of medical radioisotopes and similar medical applications, or critical technology for environmental radiation monitoring, as well as for civil nuclear cooperation, in particular in the field of research and development; or (d) the provision of electronic communication services by Union telecommunication operators necessary for the operation, maintenance and security, including cybersecurity, of electronic communication services, in Russia, in Ukraine, in the Union, between Russia and the Union, and between Ukraine and the Union, and for data centre services in the Union.

12. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraphs 10 and 11 within two weeks of the authorisation.';
