

Trading

FREQUENTLY ASKED QUESTIONS – AS OF 23 MARCH 2022

1. Is secondary trading of instruments between EU counterparties of sanctioned entities also suspended?

Yes it is, but with the following caveats: (1) for securities issued by Russia or sanctioned entities, we distinguish between trade with securities issued before the dates indicated in Article 5(1) to 5(4) of [Council Regulation \(EU\) 833/2014](#) (allowed) and trade with securities issued thereafter (prohibited). (2) on the other hand, the secondary trading of any instrument of the Russian State or the Central Bank of Russia is prohibited under Article 5a of Council Regulation (EU) 833/2014.

2. Does the currency-denomination in which instruments are traded make a difference for the prohibition enshrined in Article 5 of Council Regulation (EU) 833/2014?

No, it does not. The prohibition covers all new securities or money market instruments, irrespective of the currency in which they are traded.

3. Is there a list of the ownership percentages of firms owned by people on the sanctions' list?

No, this is a task for EU credit institution's compliance and due diligence departments. Some guidance on ownership/control can be found in [EU Best Practices](#). On that basis, it is possible to know which other (listed) firms than the banks, government owned entities or other entities in the Council Annexes I-VI are suspended. We would also recall here the prohibition to finance listed entities both directly or indirectly.

4. Is the dealing of derivative instruments with Russian investments suspended?

The restrictions under Article 5(1) to 5(4) apply also for derivative products where the underlying instrument/security falls under the scope of Article 1(f) of [Council Regulation 833/2014](#). The restrictions apply for financial instruments issued after the dates indicated in Article 5(1) to 5(4) of Council Regulation (EU) 833/2014.

5. Is the dealing of derived instruments listed on the Moscow stock exchange suspended?

The listing venue as such is not relevant, since the restrictions imposed by Council Regulation (EU) 833/2014 apply to all Member State nationals and Member State-incorporated or constituted companies, irrespective of where they are operating.

6. Can securities of private Russian entities not subject to the restrictions envisaged by Article 5 of Council Regulation (EU) 833/2014 still be traded?

If the entity is otherwise not designated under [Council Regulation \(EU\) 269/2014](#) (i.e. it is not subject to an asset freeze and a prohibition to make funds or economic resources available to, or for the benefit of it) and it is not controlled or owned by a designated person, its securities can be traded.

7. Are EU firms still allowed to trade (non-prohibited instruments) on Russian exchanges?

EU firms are still allowed to trade on Russian exchanges as long as the trading does not concern securities or derivatives issued by the Russian State, the Russian Central Bank, the banks or state-owned enterprises subject to a financing ban pursuant to Article 5(1) to Article 5(4) of Council Regulation 833/2014, as amended by [Council Regulation 2022/328](#) of 25 February 2022. Trading in financial instruments issued before the relevant dates indicated in Article 5(1) to Article 5(4) are possible.

8. Are new admissions to trading/official listings of financial instruments of companies indicated in Article 5(5) of [Council Regulation \(EU\) 833/2014](#) allowed on EU trading venues?

New admissions to trading/official listings on EU trading venues are not allowed.

9. Should existing financial instruments of companies indicated in Article 5(5) of [Council Regulation \(EU\) 833/2014](#) be suspended or delisted from EU trading venues?

Article 5(5) of Council Regulation (EU) 833/2014 provides that as of 12 April 2022, the EU trading venues can no longer list and provide services in relation to transferable securities of any legal person, entity or body established in Russia and with over 50% of public ownership. As of 12 April 2022 they cannot provide any services in relation to them, irrespective of their date of issuance.

10. Do the prohibitions on providing brokering services or providing financing for the provision of brokering services, e.g. in Articles 2(2), 2a(2), 3b(2) and 3c(4) of [Council Regulation \(EU\) No 833/2014](#), and the prohibitions on providing brokering services in point (a) of Article 4(2) and Article 5(1) apply to management companies, alternative investment fund managers or investment firms?

According to its Article 13, Council Regulation (EU) 833/2014 applies (i) within the territory of the Union; (ii) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State; (iii) to any legal person, entity or body in respect of any business done in whole or in part within the Union. For example, if the manager of an alternative investment fund is an EU citizen working in a fund incorporated under the law of a third country, (s)he is subject to the restrictive measures enshrined in the Regulation.

11. Does the prohibition in Article 5(5) of [Regulation \(EU\) No 833/2014](#) apply to management companies, alternative investment fund managers or investment firms?

Article 5(5) of Council Regulation (EU) No 833/2014 concerns trading venues and their services. Other investment services are already covered under the general prohibition to provide investment services under Article 5(1) to 5(4).

12. The Regulation prohibits the provision of a range of services with respect to the dealing of transferable securities and money-market instruments. What activities does this include? Are the provisions addressed to the operators of trading venues or eventually to the investment firms who provide services and perform activities related to securities?

Investment services and instruments covered by restrictions are specified in [Regulation 883/2014](#).

Addressees are market participants, e.g. investment firms. As for trading venues, they may be impacted by the prohibition to admit new instruments to be traded or indirectly, by not suspending trading in prohibited instruments, which would enable their members to continue illegal trading.

13. What are the criteria to identify legal persons, entities or bodies acting on “behalf or at the direction of” pursuant to Article 5(1)(c) of a [Council Regulation \(EU\) 833/2014](#) ?

The [Commission Opinion of 17 October 2019](#) provides guidance on how to determine whether an entity is acting on behalf or at the direction of an entity listed in Annex III to Council Regulation (EU) 833/2014. Generally speaking, ‘acting on behalf or at the direction of an entity’ is distinct from the notions of ownership and control. While ownership of or control over an entity is an element that can be considered to increase the likelihood of such conduct, they cannot suffice in determining whether an entity is acting on behalf or at the direction of another entity. EU operators should take into account all the relevant circumstances in order to assess the situation at hand.

14. Should index providers exclude from the index the securities of those subject to the trading restrictions pursuant to Article 5(5) of [Council Regulation \(EU\) Regulation \(EU\) No 833/2014](#), as amended by [Council Regulation 2022/328](#) of 25 February 2022?

Article 5(5) of Council Regulation (EU) No 833/2014 does not require EU benchmark administrators to withdraw or exclude securities from their indices. Nonetheless, product manufacturers making available products tracking such benchmarks will be subject to restrictions on the underlying securities which are themselves subject to sanctions. Benchmark administrators should adapt their benchmark compositions accordingly.

15. Are derivative products in scope of restrictive measures envisaged by [Council Regulation \(EU\) 833/2014](#)?

Derivatives are subject to the restrictions under Article 5(1) to 5(4) of Council Regulation (EU) 833/2014 in case the underlying financial instrument falls within the scope of the same restriction. The restrictions apply for financial instruments issued after the dates indicated in Article 5(1) to 5(4) of Council Regulation (EU) 833/2014.

16. Do “investment services” include settlement services and corporate services provided by Central Securities Depositories (CSDs) and International Central Security Depositories?

Although the definition of “investment services” in [Directive 2014/65](#) does not expressly refer to settlement and corporate services provided by CSDs, the latter fall within the scope of Article 5e of [Regulation \(EU\) No 833/2014](#) which prohibits Union’s Central Securities Depositories to provide any services for transferable securities issued after 12 April 2022 to any Russian national or natural person residing in Russia or any legal person, entity or body established in Russia. Furthermore, Article 5 covers the provision of investment services as well as the purchase, sale, assistance in the issuance of, or otherwise deal with transferable securities.

17. Does Article 5 1. [Regulation \(EU\) 2022/328](#) of 25 February 2022 amending [Regulation \(EU\) No 833/2014](#) cover existing securities or does the Article apply only to the new securities (12 April 2022)?

It depends on whether the security was subject to previous sanctions or not. Please see the conditions set out under Article 5(1):

“It shall be prohibited to directly or indirectly purchase, sell, provide investment services for or assistance in the issuance of, or otherwise deal with transferable securities and money-market instruments with a maturity exceeding 90 days, issued after 1 August 2014 to 12 September 2014, or with a maturity exceeding 30 days, issued after 12 September 2014 to 12 April 2022 or any transferable securities and money market instruments issued after 12 April 2022”.

18. Are American Depositary Receipts (ADRs) covered by the restriction envisaged by [Council Regulation 833/2014](#)? If so, could they be cash settled?

Depository receipts should be treated like any other transferable securities, as defined in [Directive 2014/65](#). In the context of Article 5 of Council Regulation (EU) No 833/2014, transactions in ADRs should be considered as a way to indirectly purchase or sell transferable securities. Hence, any settlement of transactions on ADRs for which the underlying transferable security is subject to the provision of Article 5 or Article 5e, and irrespective of whether it is settled against cash or not, can be subject to the provisions of Articles 5 and 5e of Regulation (EU) No 833/2014 if it fulfils the conditions specified therein.

19. What percentage of the affected shares must a multi-asset product (e.g. ETF) contain to fall under the restriction pursuant to Article 5 of [Council Regulation 833/2014](#)?

None (zero percent) of the affected shares issued after 9 March 2022 or 12 April 2002 (depending on the share) may be traded via multi-asset products such as ETFs.

20. Does the definition and interpretation of transferable securities in the Regulation include bonds?

Yes, the definition of transferable securities under Article 1(f) of [Council Regulation \(EU\) 833/2014](#) includes bonds.

21. Does the ban enshrined in Article 5 also apply to transferable securities denominated in a virtual currency?

Yes, transferable securities in the form of crypto-assets are also subject to the prohibition.

22. For an existing derivative contract (e.g. an interest rate swap) subject to daily margining requirements, are non-designated entities entitled to receive collateral that is contractually due even if the counterparty is a designated entity?

In this situation, a designated entity is fulfilling a non-listed entity's margin call by making payments to that entity linked to an already concluded derivative contract with a non-listed entity. Forbidding such payments would result in the absence of transfer of funds owed by the designated entity to the non-designated entity, which would amount to a transfer of economic resources to the designated entity. Considering the wide interpretation of the notion of ‘making economic resources available’ to listed entities by

the Court of Justice, this situation is not compatible with the restrictive measures taken vis-à-vis those designated entities. Non-designated entities can therefore receive collateral.

23. Can the Russian State pay coupons on its Eurobonds?

EU sanctions do not impose any impediments to receive income payments, dividend payments or principal repayments of existing securities from Russian issuers. The restrictive measures imposed by the EU in [Council Regulation 833/2014](#) in relation to purchases of the securities issued by the Russian State, certain banks and corporations apply to purchases of securities issued after a certain date (i.e. 9 March 2022 for securities issued by the Russian State or the Russian Central bank).