Association des Banques et Banquiers, Luxembourg
The Luxembourg Bankers' Association
Luxemburger Bankenvereinigung

Q&As – Russian sanctions

Contact: Julien LEROY (Julien.leroy@abbl.lu)
Date : 27 April 2022

The purpose of these questions & answers (Q&As) consists in providing some guidance to professionals related to the latest (EU) Regulations mostly amending (EU) Regulation **N°833/2014** concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine. The Q&As are neither intended to provide legal advice nor have a normative value, solely aiming to guide professionals on some core issues/provisions gathered by the ABBL working group on Russian sanctions, with the assistance of the Ministry of Finance and the CSSF.

As a preliminary remark, it is worth noting that professionals taking "assets related actions" not falling in the scope of application of the (EU) Regulations linked with the Russian sanctions are not expected to declare them to the Ministry of Finance. Conversely, any financial restrictive measures falling in scope of the (EU) Regulations shall be accounted for and reported to the Ministry of Finance with a copy to the CSSF, by using the reporting template of frozen funds available on the website of the Ministry of Justice.
(https://mfin.gouvernement.lu/en/dossiers/2018/sanctions-financiaires-internationales.html)

The Q&As raised below mostly pertain to (EU) Regulation N°2022/328 of 25 February which modified (EU) Regulation n°833/2014.

1- PROHIBITIONS ON FINANCIAL INSTRUMENTS ISSUED BY RUSSIAN GOVERNMENT CENTRAL BANK *(Art. 5a introduced by (EU) Regulation 2022/262)*

- Art. 5a introduced by (EU) Regulation 2022/262 foresees to prohibit the purchase/sale of certain financial instruments issued by Russia/its central bank after 9 March 2022. What about Russian sovereign bonds **issued before** 9th March 2022?

  If the transferable securities and money market instruments are issued before 9 March 2022, there is no obligation to perform any action related to these securities. Accordingly, the latter shall not be reported/frozen, meaning that it is also possible to sell those on the secondary market or transfer them to other counterparties, bearing in mind that the counterparties shall not themselves be subject to sanctions. One shall nonetheless bear in mind the circumvention prohibition laid down in art. 12 of (EU) Regulation N°833/2014.

2- PROHIBITIONS ON DEPOSITS (Art. 5b)

- Should it be understood that the prohibition on deposits shall not apply to Russian nationals having also a EU nationality (e.g. RU/LU)?

  In its *"Frequently asked questions"* ("FaQs"), the European Commission ("EC") confirms that "*the prohibition does not apply to EU nationals"* (applying here Art.5b, para.(2) of (EU) Regulation N°2022/328). The EC clearly adds that "*those dual nationals would fall under the exemption as set out under Art. 5b(2)",* which would mean that Russian nationals also having an EU citizenship would fall out of the scope of the prohibition.

  Additionally, the EC emphasises that "*in the case an EU national **co-holds** a deposit with a targeted nationality, the prohibition does not apply. However, if the co-holding account is used to circumvent the rules, the prohibition applies to them as well (Article 12)".*

- Is it mandatory to be in possession of a valid residence permit to apply the exception as per Art.5b, para.(2) of (EU) Regulation N°2022/328)?

  Shall a professional not be in possession of a valid residence permit to apply the exception, s/he shall seek guidance both from the CSSF as well as the Ministry of Finance, having duly noted that the professional should firstly seek to clarify the matter with the client concerned (*ask for the residence permit*).

- How is the EUR 100 000 to be understood, is it a **cumulated one or one-off threshold**?

  The threshold is not to be understood by account held, but overall, by credit institution (i.e., cumulated threshold). This means that if a Russian national/natural person residing in Russia, falling in the scope of the (EU) Regulation, has two accounts with a total value of EUR 80 000, s/he will only be entitled to deposit EUR 20 000 on top of the aggregate value of both accounts to not fall in the scope of application. The EC likewise affirms that "*the total value should take into account all deposits, irrespective of the currency in which they are denominated*".

  The EC further explains that "*as regards existing deposits, if a Russian national or natural person residing in Russia had more than EUR 100 000 in a deposit on the day of entry into force of the amended Regulation (26 February 2022), the relevant deposit is grandfathered. This means that the Russian national or natural person residing in Russia is entitled to keep the money and do whatever it wants (e.g., withdraw, leave in the account), but it cannot increase the balance in a way that would exceed EUR 100 000*".

- Does the deposits' prohibition only concern current accounts or **are securities' accounts to be here also considered**?

  In light of the definition of deposits provided for in Art. 1, point k) of (EU) Regulation N°2022/328, securities accounts do not fall within the scope of application of Art. 5b re. the deposits' prohibition. This is also true for precious metals.

  Professionals must nevertheless pay due attention on the circumstances surrounding transfers of financial instruments, hence apply a prudent approach in this regard, bearing in mind the investment/risk profile of their clients.

- Quid in case of **sale of securities accounts** hold by Russian citizens whose "cash" value would exceed the EUR 100.000 limit?

  The EC comments on the cash flows resulting from transactions (linked or not linked to financial instruments as defined in Annex I to Directive 2014/65 EU), stating that "*if the transaction (…) results in a positive cash flow, and thereby becomes a deposit as defined under Article 1(k), into an account held by a Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia, this would fall within the prohibition and is prohibited".*

- Banks may receive sums following the **payment of dividends, coupons/other remuneration** of financial instruments re. their customers' accounts, without being able to oppose them. What should banks do with the funds received?

  The EC says[1] that "*the payment of interest or dividend should (…) not be accepted" if* the EUR 100 000 limit is already exceeded. ***"Where and how the interest or dividend payment should be made to, would need to be decided by the parties involved".***

[1] *See point 27 of the EC FAQs re. Deposits (as at 26 April 2022)*

Additionally, the EC states[2] *"Council Regulation (EU) No 833/2014 prohibits the acceptance of deposits, but does not prescribe how credit institutions should do this. This will be left to the individual institution to decide, possibly in dialogue with the relevant customer."*

- Would a **wire transfer** amounting to EUR 100 000 (made by persons est./residing in Russia) fall into the scope of application of Art. 5b, hence not be accepted?

  Yes, given the definition of deposits in Art. 1, point k) of (EU) Regulation N°2022/328.

- What about incoming payments made to a Luxembourg commercial company by a client company established in Russia?

  Unless the incoming payment stems from a sanctioned legal entity, the payment shall proceed to the Luxembourg entity. It is indeed not the purpose of (EU) Regulation N°833/2014 to sanction a company established in Luxembourg. The cash shall be deposited in the bank account of the Luxembourg company (not of the Russian company).

- Can a bank accept funds in the accounts of customers concerned by the deposit restrictions, if these new funds are exclusively intended for the **repayment of loans** granted by the bank or intended to increase the collateral to secure the loan?

  The aim of the transaction here is not related as such to deposits, solely aiming to proceed to the repayment of a loan whose beneficiary is the credit institution. The latter acting as lender may hence accept the repayment made by the customer, always being conscious that there is no attempt on the side of the customer to circumvent the prohibitions of (EU) Regulation N°833/2014.

- Does the EUR 100 000 threshold also take into consideration funds deposited for **collateral purposes?**

  The EC believes that "*collateral would fall within the exemption of the definition of deposit as set out in Article 1(k)(iii). However, if accounts used to hold collateral have excess collateral, EU operators should ensure, via their due diligence, that this excess collateral is not held in the account with the purpose of circumventing the prohibition in Article 5b*".

  In light of the above, one may note that credit institutions could consent to be provided with more financial instruments to secure a loan for collateral purposes.

- What if a sale of financial instruments generates a temporary flow exceeding EUR 100.000, given that the exclusive purpose of such transaction is immediate reinvestment?

  It shall not be permitted to allow a sale of financial instruments exceeding the EUR 100 000 threshold, even temporarily, given that the proceeds of the sale will trigger the limit foreseen for deposits. The purpose of reinvestment will be disregarded.

[2] *See point 26 of the EC FAQs re. Deposits (Portion of credit entry in excess to the EUR 100.000 aggregated limit) (as at 26 April 2022)*

3- DEPOSITS, BENEFICIAL OWNERS & ALIKE *(Art. 5b)*

- The restrictions focus on Russian nationals or natural persons residing in Russia, but no mention is made of the "**beneficial owners**" (BOs) within (EU) Regulation N°833/2014. How shall beneficial owners be considered in this regard?

  The FaQs of the EC focus by the way on legal persons registered/established outside Russia with beneficial owners not falling in the exceptions provided for in art. 5b, para. (2) & (3) and maintain that that "i*f the ultimate beneficial owner falls within the scope of Article 5b(1), so would the legal person owned*". It is nonetheless not made any reference to beneficial ownership within the (EU) Regulation N°833/2014, as amended.

  On the one hand, the Ministry of Finance underlines that Luxembourg companies whose BOs are Russian nationals/Russian residents shall not be used to circumvent the prohibition laid down in art. 5b (1), while reminding on the other hand that BOs are indeed not explicitly stated in this provision.

  While the purpose of the (EU) Regulation is not to target such Luxembourg companies ("LuxCos"), a prudent approach should be contemplated and the Ministry of Finance should be contacted for an assessment on a case by case basis.

  It is expected that the European Commission develops its stance on the specific issue of the beneficial owners, the European Banking Federation having expressly demanded clarifications in this regard.

- Would **Russian nationals acting as settlor of a discretionary & irrevocable trust** be in scope of the obligations related to deposits and euro securities/UCIs (i.*e., Art. 5b and 5f)*

  In this case, professionals shall apply the same reasoning as emphasised beforehand with the BOs. It shall likewise be extended to the protector and the beneficiaries of the trust.

  Kindly note that Council Regulation (EU) 2022/576 of 8 April 2022 introduced a new article 5m prohibiting professionals to register and provide management services to trusts/similar legal arrangements having as trustor/beneficiary Russian nationals/legal persons est. in Russia. Furthermore, it shall be prohibited as at 10 May 2022 to act as trustee, nominee shareholder, director or secretary for such trusts.

4- FINANCIAL INSTRUMENTS/TRANSFERABLE SECURITIES *(Art. 5f)*

- Is it a ban on the sale of transferable securities denominated in any official currency of a Member State after **12 April 2022** regardless of their date of issuance or the ban on selling these securities if their date of issuance comes after 12 April 2022?

  This shall be understood as a ban on selling transferable securities denominated in any official currency of a Member State/units in collective investment undertakings providing exposure to such securities if their date of issuance comes after 12 April 2022.

Are **transfer operations** of these securities between non-designated entities possible?

- If the transferable securities denominated in euro have been issued before 12 April 2022, they can then be transferred between two non-designated entities.

- What actions shall be taken in case of the identification of **"ISINs"** held in custody by a Luxembourg professional and corresponding to shares or bonds issued by designated entities or held, directly or indirectly, by designated persons?

As "ISINs" are not designated *per se* in (EU) Regulation N°833/2014, professionals would indeed need to check if the issuer is a designated entity. If the issuer is designated, professionals will have to check which restrictions apply (e.g. prohibition to buy/sell securities issued after a certain date etc.)
If professionals come to the conclusion that the securities are not targeted by the restrictive measures (e.g. securities issued before the date mentioned in the Regulation), there is no need to report to the Ministry of Finance.
If the securities are targeted (e.g. securities issued by a designated issuer and after the date mentioned in the Regulation), professionals should fill in the report of frozen funds and submit it to the Ministry of Finance without delay.

5- LOANS' RESTRICTIONS

- Is it correct to assume that the loans' restriction applies to **any new loans**, granted to natural persons that are targeted? (*Art. 5, para (6))*

  Yes, the logic is the same as for the transferable securities denominated in euros, professionals shall apply the restrictions for any new loans granted after 26 February 2022.

  One shall not forget the previous restriction for "new loans or credit with a maturity exceeding 30 days to any legal person, entity or body referred to in paragraph 1 or 3, after 12 September 2014 to 26 February 2022; or" as this restrictive measure is not new (only extended).

- Is there an **obligation to report a loan** which has not yet come to maturity, if concluded with an entity (designated under Council Regulation (EU) No 833/2014 of 31 July 2014) before the latter appeared on the sanctions' list, taken also into account the exceptions provided for in Art. 5, para. (6) & (7) of the Regulation?

  In the context of the Council Regulation (EU) No 833/2014 of 31 July 2014, if the loan was concluded before 26 February 2022 or before the debtor was sanctioned, it will not be in the scope of application of the sanctions. There will be no need to report it to the Ministry of Finance. Kindly follow the same logic as the question above.

  Note also that the above relates only to a specific provision of Council Regulation (EU) No 833/2014 of 31 July 2014 and that other restrictive measures can apply to loans (e.g. Council Regulation (EU) No 269/2014 of 17 March 2014 - making funds available to designated persons).

6- REPORTING OF DEPOSITS (Art. 5g)

- Which would be the authority professionals would have to report?

  For the time being, professionals should report the deposits to the Ministry of Finance.

- Russian nationals also having an EU nationality should fall in the exemption foreseen for deposits (*Art. 5b, para (2))* but do not seem to be exempted from the reporting to the competent authority as per *Art. 5g, 1 (a)?* Should they be exempt from the reporting?

  No, Russian nationals also having an EU nationality should not be exempt from reporting.

- Should subsidiaries of Luxembourg companies be reported?

  Yes, if these subsidiaries are established in Russia.

7- GOLDEN VISAS

- Given that credit institutions do not know how their customers/prospects have obtained their nationality, it might prove hard for them to abide to the reporting obligations foreseen for Russians who have acquired an EU citizenship through an investor citizenship scheme. What would you recommend?

  Art. 5g, para. (1) b of (EU) Regulation N°833/2014 serves as legal basis for professionals to adapt their procedures and be able to demand to their Russian customers/prospects how they acquired their EU citizenship or residence rights.

- Should individuals who have always had an EU nationality but residing in Russia be reported?

  Yes, EU individuals residing in Russia shall be reported in view of Art. 5g, para (1), a) of (EU) Regulation N°833/2014. Important to mention that the reporting scope pertains to deposits above EUR 100,000 and that this does not amount to an asset freeze.

8- REGULATION (EU) 2022/345 (Art. 5i re. the prohibition to sell euro denominated bank notes)

- Can it be assumed that **withdrawals of money at a Russian ATM using a LU debit/credit card drawn** on a LU current account is "out of scope"?

  Based on the wording of Art. 5i, withdrawals of money at a Russian ATM using a LU debit/credit card drawn on a LU current account falls out of scope of the sale prohibition.

9- TRANSACTIONS ENERGY SECTOR (***Art. 3a*** introduced by Regulation (EU) 2022/428)

Art. 3a prohibits to acquire any new or extend any existing participation in any legal person, entity or body incorporated or constituted under the law of Russia or any other third country and operating in the energy sector in Russia. Exceptions apply.

- Is it to be understood that current funds' securities' positions can be sold (no extension of participations), however meaning that purchases/increases of current positions **cannot** be accepted, **unless** (here applying the derogations of *art. 3a, para.(2))* this company (energy sector) is owned by a legal person incorporated under the Law of a Member State ?

  This understanding is correct.

- "*Acquire any new or extend any existing participation*": How can "participation" in art. 3a be interpreted?

  As there is indeed no definition of "participation" in (EU) Regulation N°833/2014, the term should be interpreted broadly, eventually referring to owning securities in a legal entity.