



# EU's nine sanction packages against Russia



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In 2022, EU adopted nine sanction packages against Russia. These packages introduced additional, more comprehensive and tightened sanctions against Russia. The ninth package was adopted on 16 December 2022.

### Former rules on the sale, supply or transfer of sanctioned goods and technologies in Russia in the event of the sale or wind-down of Russian subsidiaries, assets and activities

The sanction rules have, to some extent, been interpreted and applied differently by the EU Commission and the competent authorities of EU Member States as regards EU companies' options for the sale, supply and transfer of sanctioned goods and technologies in Russia, when these companies sell or wind down their Russian subsidiaries, assets and activities.

The EU Commission and the competent authorities of some EU Member States have interpreted the rules to the effect that EU companies must not sell, supply or transfer sanctioned goods and technologies to Russia if, at the same time, they sell or wind down their Russian subsidiaries, assets and activities. This interpretation applies even though the goods and technologies had been imported into Russia without being subject to sanctions, and even though the subsidiaries of these companies can freely sell those goods to non-sanctioned Russian buyers.

However, German and Swedish authorities interpreted the rules to the effect that EU companies may sell, supply and transfer sanctioned goods and technologies in Russia when, at the same time, they sell or wind down their Russian subsidiaries, assets and activities. These national authorities thereby supported their national

companies in connection with the sale or wind-down of their Russian subsidiaries, assets and activities. In that connection, the companies could sell, supply and transfer their sanctioned goods and technologies in Russia.

Meanwhile, companies in a number of other EU Member States, which interpreted the rules differently, have been unable to sell, supply and transfer their sanctioned goods and technologies in Russia when wishing to sell or wind down their Russian subsidiaries, assets and activities. Companies in those EU Member States, including Denmark, have, thereby, been unable to sell or wind down their Russian subsidiaries, assets and activities without the risk of breaching the sanction rules. So far, a large number of the companies have, therefore, been unable to complete any sale or wind-down of their Russian subsidiaries, assets and activities.

## New rules on the sale, supply or transfer of sanctioned goods and technologies in Russia in the event of the sale or wind-down of Russian subsidiaries, assets and activities

The different interpretations as well as unclear points and uncertainty in this relation should now to a large extent have been clarified by the new rules on the issues contained in EU's ninth sanction package. The new rules solve some of the fundamental problems and answer some of the fundamental issues; however, they also raise new questions and potential challenges to EU companies.

The new sanction rules are laid down in Regulation no. 2022/2472 of 16 December 2022 amending Regulation no. 833/2014 on restrictive measures in view of Russia's actions destabilising the situation in Ukraine, ("Regulation 2022/2472"). The new sanctions rules entered into force on 17 December 2022. The rules are laid down in EU's ninth sanction package against Russia.

The sanction package expands the impact of several sanctions against Russia and also introduces some new sanctions.

The sanction package also contains some new rules, providing Danish companies and other EU companies with better opportunities to sell or wind down their Russian subsidiaries, assets and activities. In the following, Danish companies will be dealt with only. The rules referred to apply similarly to other EU companies.

Article 1(14) of Regulation 2022/2472 lays down the new rules. Article 1(14) provides that the new rules are inserted as new Articles 12b and 12c in Regulation 833/2014.

Annex III to Regulation 2022/2472 provides that in Annex IX to Regulation 833/2014, a new Part C will be added with a model form of a national authority's "export authorisation" (interpreted as any authorisation according to the new Article 12b(1) but not (2)) and a few provisions thereon. Furthermore, Article 12b(4) of Regulation 833/2014 provides that all "authorisations" granted subject to Article 12b(1) (but not Article 12b(2)) must, whenever possible, be issued by electronic means on forms containing at least all the elements set out in Annex IX, Part C, and in the order provided for therein. The rules in Article 12b (1) and (2) are dealt with below.

Danish companies can now be granted authorisation to the sale, supply or transfer of their sanctioned goods and technologies in Russia if this is strictly necessary for the sale or wind-down of their subsidiaries, assets or activities in Russia. Authorisation must be granted by the Danish competent authorities no later than by

30 September 2023. The new rules apply only to the goods and technologies that are subject to specific sanction rules, were already physically in Russia at the time when they became subject to these rules and owned by Danish natural persons or companies or their Russian owned or controlled companies or subsidiaries.

According to Article 12b(1), the sanction rules are stated in i.a. Articles 2, 2a, 3, 3b, 3c, 3f, 3h and 3k and in Regulation 833/2014 amended by Regulation 2022/2472. The rules extend to prohibitions against the sale, supply or transfer of certain goods and technologies to Russia. The goods and technologies are listed in Annexes II, VII, X, XI, XVI, XVIII, XX and XXIII to Regulation 833/2014, as amended by Regulation 2022/2472, and in Annex I to Regulation 2021/821 on dual-use goods and technologies) (military or civil use). The goods and technologies listed are dual-use as well as several other goods and technologies.

Danish companies may obtain authorisation to the sale, supply and transfer of those sanctioned goods and technologies only if the Danish competent authorities have no reasonable grounds to believe that the goods might be for a military end-user or have a military end-use in Russia. This condition is provided for in Article 12b(1), para. b, in Regulation 833/2014, as amended by Regulation 2022/2472. The provision provides that the condition concerns goods. The provision is silent as to whether the condition also concerns technologies.

According to Article 12b(2), the sanction rules are also the rules listed in Articles 3g and 3i in Regulation 833/2014, as amended by Regulation 2022/2472. The rules contain prohibitions against the purchase, import and transfer of certain iron and steel goods to the EU, which will give Russia considerable income and thereby enable Russia's actions, which destabilise the situation in Ukraine. The goods are listed in Annexes XVII and XXI to Regulation 833/2014, as amended by Regulation 2022/2472. Danish companies may obtain authorisation to the import and transfer to the EU of these sanctioned goods.

Danish companies must issue a declaration to the Danish competent authorities that the above-mentioned factors have been complied with or prove that they have been fulfilled. The Danish competent authorities have not yet stated whether a solemn declaration or a similar declaration will be sufficient or whether proof must be provided otherwise, for instance by the use of general export or import authorisations or applications for export or import.

A solemn declaration or similar or an authorisation application must generally specify the details that are relevant for a competent authority when it makes its assessment and decision concerning the granting of an authorisation. The relevant information is listed in Article 12b and Annex IX, Part C of Regulation 833/2014 as inserted by Regulation 2022/2472 in its Article 1 (14) and Annex III.

## Efforts by the companies in connection with selling or winding down their subsidiaries, assets or activities in Russia

The Danish companies in question must have obtained their authorisations from the Danish competent authorities no later than by 30 September 2023. This is listed in Article 12b(1) and (2) in Regulation 833/2014, as inserted by Regulation 2022/2472 in its Article 1(14).

As a result, Danish companies should soon begin negotiating and concluding relevant contracts in connection with the sale or wind-down of their subsidiaries, assets or activities in Russia.

The competent Danish authorities have yet to confirm whether, in order for them to grant authorisations, it will be a condition that the relevant companies have already concluded or reached an agreement with the buyer in question concerning the relevant contracts in connection with the sale or wind-down of their subsidiaries, assets or activities in Russia, or whether authorisations can be granted without such contracts having been concluded or without an agreement thereon having been obtained. It seems unlikely that any condition will be made to the effect that the contracts or transactions are to be approved by the Russian authorities. Thus, authorisations from both Danish and Russian authorities can be applied for at the same time. Please see the mention thereof below.

The last mentioned second interpretation will imply that companies will enjoy more time and be under less time constraints when applying for authorisations and dealing with the authority procedures in this connection.

A third possible interpretation is that, as regards the granting of authorisations, it would be sufficient for companies to have concluded non-binding declarations of intention or framework agreements concerning the general terms or conditional agreements concerning the subsequent conclusion of more comprehensive contracts.

A possible interpretation of EU's model form of a national authority's "export authorisation" (interpreted as any authorisation subject to the new Article 12b(1), but not (2)) could provide that the other possible interpretation mentioned above is to be applied. EU's model form of a national authority's export authorisation is in the new Part C in Annex IX to Regulation 833/2014, as inserted by Annex III to Regulation 2022/2472 and laid down in Article 12b (4). In box 20 of the model form, the following text is to be indicated: "Order/contract date (where relevant)". This could possibly provide that an export authorisation may be granted to a company, even though the company in question has not concluded any relevant contract in connection with its sale, wind-down of its subsidiary, assets or activities in Russia.

This as well as other interpretation issues will probably be answered by the EU Commission in some new questions and answers by its documents containing questions and answers concerning the sanction rules and their interpretation and application (documents containing Frequently Asked Questions (FAQs)). To some extent, the Danish competent authorities may probably be awaiting some clarification from the EU Commission before publishing additional information on their interpretation of the new rules.

Similarly, companies should soon initiate the process of preparing and filing applications for export authorisations, discussions in this regard with the competent authorities and of completing other work to obtain export authorisations from the competent authorities.

All the above-mentioned work must be completed so that the companies can be granted export authorisations from the Danish competent authorities no later than by 30 September 2023.

Danish companies are also to carry out other work and may face several challenges relating to their sale or wind-down of subsidiaries, assets or activities in Russia.

Danish companies will have to find relevant potential buyers of their subsidiaries, assets or activities in Russia and negotiate and conclude contracts with some of them. This work is likely to be difficult and may require substantial time and resources. This may in particular be the case if the potential buyers know that the Danish

companies and all other EU companies may potentially need to have concluded or obtained agreement on the contacts well before 30 September 2023 in order for the export authorisations to be granted no later than by 30 September 2023.

## Authorisation conditions and authorisations under Russian law

The Danish companies also need to draft and submit applications for relevant authorisations and to obtain prior authorisations from the Russian authorities. The relevant authorisations particularly concern those regarding the sale of Russian subsidiaries.

The Russian rules introduced in response to the Western sanctions provide that any sale of subsidiaries requires prior authorisation from the Russian authorities. Detailed rules, procedures and terms for a company to prepare and file applications for authorisations and the competent authorities' administration of those applications and the granting thereof are a bit unclear. Furthermore, it is also unclear how long it will take to complete the authorisation processes and be granted authorisations. There might be a risk that it can be difficult, if not impossible, to complete the authorisation processes and be granted the relevant authorisations before 30 September 2023, and this, as stated above, is not deemed to be an EU condition.

The new rules in Articles 12b and 12c of Regulation 833/2014, as inserted by Regulation 2022/2472 in its Article 1(14) that the relevant Russian authorisations must have been granted before a national authority of an EU Member State grants an export authorisation. As a result, it seems to be of no importance to the granting of an export authorisation whether the relevant Russian authorisations have been or have not been granted at the time when the relevant export authorisation is to be granted.

This potential interpretation will perhaps also be clarified by the EU Commission in its documents containing questions and answers regarding how the sanction rules are to be interpreted and applied.

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Services	Internationale koncernomstruktureringer, Virksomhedsoverdragelser (M&A), Selskabsret og corporate governance, Kommercielle kontrakter, Corporate M&A, International handel, investeringer, reguleringer og compliance, International handel, investeringer, reguleringer og compliance, Regulatoriske forhold i den finansielle sektor, Eksportkredit, Finans, Akkvistionsfinansiering, Finansiering af aktiver (fly, skibe, vindmøller mv.), Strukturert finansiering og securitisering, Infrastruktur, Energi og infrastruktur, Shipping og transport, Employment, International virksomhedsledelse og compliance, Internationale virksomhedsomstruktureringer
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