

Sanctions Update: EU Tightens Restrictions on Professional Services and Business-Critical Software for Russia

The EU's 12th and 13th "packages" of sanctions on Russia cancel a significant exemption, ban the provision of certain software systems, and impose multiple other measures.

This Client Alert is published in the context of ongoing developments and should be read in conjunction with Latham's [previous sanctions updates](#). This Client Alert is not intended to take the form of official legal advice. Given the frequency with which different jurisdictions impose new sanctions on Russia and the detailed and nuanced nature of the sanctions updates, businesses exposed to sanctions-related developments in Russia should obtain up-to-date legal advice before taking any steps that may have legal consequences.

On 18 December 2023, the EU released its 12th "package" of sanctions following Russia's 2022 invasion of Ukraine. The EU [press release](#) on the sanctions focuses on widely publicised measures such as restrictions on Russian diamonds. However, the 12th package contains several other significant measures.

Notably, the 12th package terminates an exemption to the "professional services" restrictions on which many EU operators had relied in order to maintain Russia-related intra-group activities. That exemption will now expire on 20 June 2024. As of that date, EU operators wishing to continue providing these services to their Russian subsidiaries will be required to seek an authorisation from the competent authority of the relevant Member State.

The 12th package also expands the professional services restrictions, making it prohibited to "sell, supply, transfer, export or provide, directly or indirectly" a wide range of "software for the management of enterprises and software for industrial design and manufacture". This captures a wide set of software-as-a-service (SaaS) models including enterprise resource planning (ERP) and supply chain management (SCM) software.

This Client Alert addresses these changes in further detail and summarises the main aspects of the 12th package. It also addresses relevant EU updates that post-date the 12th package, including the EU's 13th package, which was released on 23 February 2024.

The 12th Package — Key Changes

As with its previous sanctions packages, the EU's 12th package updates EU [Regulation 269/2014](#) (Regulation 269) and [Regulation 833/2014](#) (Regulation 833), which are the main pieces of EU legislation for Russia-related sanctions.

Updates to Regulation 269

Regulation 269 designates persons, entities, and bodies under the EU's "asset-freeze" sanctions. Such "designated persons" are listed in Annex I of Regulation 269 (and are described below as "Annex I-listed persons"). The 12th package updates Regulation 269 by virtue of [Regulation 2023/2873](#) and [Regulation 2023/2875](#). The headline changes are described below:

Designation criteria expanded

The list of designated persons in Annex I may now include natural or legal persons, entities, or bodies associated with the compulsory takeover or transfer of entities established in Russia that were previously owned or controlled by EU persons. As a result, persons involved in the nationalisation of certain EU assets in Russia may now be designated. There is also a new power to designate natural persons who have been appointed to the governing bodies of compulsorily transferred entities without the consent of the previous EU owners.

Deceased persons

The EU has clarified that deceased persons' names may be retained in Annex I if their delisting poses a risk of undermining EU sanctions "because of a likelihood that the assets concerned would be used to finance Russia's war against Ukraine" or otherwise undermine Ukraine.

Derogations

Regulation 269 grants, by way of derogation, discretion to the national competent authorities (or NCAs) of Member States to authorise the release of frozen funds or economic resources or the making available of funds or economic resources to designated persons in certain circumstances and subject to certain conditions.

The 12th package adds a number of grounds on which derogations may be granted and introduces a derogation relating to properties owned by certain prominent sanctioned Russian businessmen. This derogation permits NCAs to authorise the release of certain frozen funds or economic resources relating to these designated persons in Annex I, but only if: (a) these releases are necessary for "the sale and transfer by 30 June 2024 of proprietary rights directly or indirectly owned by one of these individuals in a legal person, entity or body established in the Union"; and (b) "the proceeds of such sale and transfer are frozen".

The individuals to whose properties this derogation affects are: (i) Arkady Rotenberg; (ii) Petr Aven; (iii) Mikhail Fridman; (iv) Gennady Timchenko; (v) German Khan; (vi) Alexey Kuzmichev; (vii) Igor Kesaev; and (viii) Boris Rotenberg.

New Designations

The 12th package also designates for purposes of asset-freeze sanctions a further 61 individuals and 86 entities (including the AlfaStrakhovanie insurance group), [described](#) by the EU as including "actors from the IT sector, as well as other important economic actors, and individuals and entities involved in the circumvention of EU restrictive measures" as well as individuals "who have orchestrated the recent illegal so-called 'elections' in the territories of Ukraine that Russia has temporarily occupied, and those

responsible for the forced ‘re-education’ of Ukrainian children, as well as actors spreading disinformation/propaganda”.

On 3 January 2024, shortly after the release of the 12th package, the EU released [Council Implementing Regulation \(EU\) 2024/196](#), which designates the Russian diamond-mining company PJSC Alrosa, along with its CEO, Pavel Alekseevich Marinychev. An accompanying [press release](#) described these sanctions as designed to “complement” the import ban on Russian diamonds.

Updates to Regulation 833

Regulation 833 is the main EU regulation setting out the Russia-related trade, finance, and investment sanctions. The 12th package updates Regulation 833 through [Regulation 2023/2878](#). Notable changes are summarised below, by reference to the amended or added articles or annexes of Regulation 833.

Article 3k — amendments to the “export” ban on “industrial” goods

As set out in this [Client Alert](#), Article 3k prohibits the sale, supply, transfer, or export to Russia or for use in Russia of certain goods that contribute to “the enhancement of Russian industrial capacities”. The 12th package clarifies that the restrictions on these goods apply regardless of “whether or not [the goods are] originating in the Union”. There are several amendments to the restriction, including the following:

- The Combined Nomenclature (CN) customs codes used to identify most of the listed products have in some instances been reduced from four- or six-digit codes to shorter classifications. For example, with respect to sales, supplies, transfers, or exports to Russia of iron-and-steel products, the updated list only uses a two-digit CN code (72). As a result, all items with codes beginning with 72 (which covers iron and steel) are covered.
- Annex XXIII (the main annex of goods to which the Article 3k prohibitions apply) has been expanded to include items such as “machine tools (including machines for nailing, stapling, gluing or otherwise assembling) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials” (CN 8465); “tools for working in the hand, pneumatic, hydraulic or with self-contained electric or non-electric motor; parts thereof” (CN 8467); “tugs and pusher craft” (CN 8904); and “light-vessels, fire-floats, dredgers, floating cranes, and other vessels the navigability of which is subsidiary to their main function; floating docks, floating or submersible drilling or production platforms” (CN 8905).
- New Annexes XXIIIA and XXIIIB introduce additional items that are also subject to the Article 3k restrictions — however, these items are subject to grandfathering provisions. For contracts concluded before 19 December 2023, the export restrictions will not apply until 20 March 2024 with respect to items listed under Annex XXIIIA, or until 20 June 2024 with respect to items listed under Annex XXIIIB.
- New Annex XXXVII lists 14 types of goods that are prohibited from transiting to other countries via Russia. These include oil or petrol-filters for internal combustion engines and crane lorries.

Article 3n — amendments to the “attestation” process for the oil price cap

As set out in this [Client Alert](#), the EU is part of the “oil price cap coalition”. Coalition members prohibit the provision of certain services for seaborne Russian oil that is bound for non-coalition countries, unless that oil was purchased at or below a capped price.

The price cap relies on a recordkeeping and attestation process involving various parties in the supply chain, so as to evidence that the oil was purchased at a price below the cap. Recent EU [FAQs](#) highlighted

allegations of “manipulation of shipping and ancillary costs (including shipping, freight, customs, and insurance costs)” in order to circumvent the price cap. These FAQs note that the “bundling of such costs could be used to hide the actual price of the oil”. The EU has accordingly introduced a requirement “that itemised price information for ancillary costs, such as insurance and freight, be shared at request throughout the supply chain of Russian oil trade”. The appropriate Member State authorities will then be able to request this information for the purpose of verifying compliance with the price cap. These new requirements apply to Russian crude oil or petroleum products loaded as of 20 February 2024.

Articles 3na and 3q — additional anti-circumvention measures regarding oil sanctions

The 12th package introduces other measures aimed at restricting circumvention of the oil-related sanctions. Articles 3na and 3q seek to restrict deceptive shipping practices — including those deployed by Russia’s so-called “shadow fleet”. Recent EU [FAQs](#) describe these as “old vessels that are anonymously owned and/or have a corporate structure designed to hide their beneficial owners, and which are deployed in the trade of sanctioned oil and engage in various deceptive shipping practices”.

Under Article 3na, Member States will be required periodically to share information with other Member States and the European Commission to assist in identifying vessels and entities involved in the shadow fleet. Under Article 3q, the sale of “tankers for the transport of crude oil or petroleum products” to Russian legal persons (or for use in Russia) will be prohibited — unless an authorisation is granted by the competent authority of a Member State. Sales of such tankers to any ‘third country’ must henceforth be notified to the NCA of the Member State “where the owner of the tanker is a citizen, a resident or is established”.

Article 3p — “import” ban on Russian diamonds

The 12th package introduces sweeping prohibitions targeting Russian diamonds as part of what the EU has [called](#) a “concerted G7 effort to introduce an internationally coordinated diamond ban ... aimed at depriving Russia of this important revenue stream”, which it estimates to be worth €4 billion per year. The new sanctions prohibit the purchase, import, or transfer of diamonds and products incorporating diamonds if they originate in Russia, have been exported from Russia, or have transited through Russian territory.

From 1 March 2024, these sanctions will include Russian diamonds polished in a third country with a weight equal to or above 1.0 carats, and from 1 September 2024 the ban will cover lab-grown diamonds, jewellery, and watches incorporating diamonds with a weight of at least 0.5 carats that originated in Russia or were exported from Russia.

Importers will also be required to provide evidence of the country of origin of the diamonds or products incorporating diamonds at the moment of importation. Diamonds imported into the EU falling under CN codes 7102 31 00 and 7102 10 00 — unsorted diamonds and non-industrial diamonds, unworked or simply sawn, cleaved or bruted — are to be submitted along with the documentation certifying their origin to the Federal Public Service Economy at the Diamond Office in Belgium without delay for verification. From 1 September 2024, a certificate certifying that the relevant diamonds are not mined, processed, or produced in Russia will be required.

Article 5b(2a) — Russian nationals in the governing bodies of cryptoasset service providers

From 18 January 2024, it is prohibited to allow Russian nationals or natural persons residing in Russia to directly or indirectly own or control, or hold any posts in the governing bodies of EU-based cryptoasset wallet, account, or custody services providers. The ban does not apply to nationals of a Member State, a country member of the European Economic Area (EEA), or Switzerland. Nor does it apply to natural

persons who have a temporary or permanent residence permit in a Member State, a country member of the EEA, or Switzerland.

Article 5n — professional services

As set out in this [Client Alert](#), the EU has banned the provision of certain professional services to the Russian government or Russian legal persons. These services include activities such as “legal advisory services” and “IT consultancy services”.

Significantly, until the 12th package, these restrictions contained an exception if the services were “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”. Other than Switzerland, the “partner countries” listed in Annex VIII are: (i) the United States; (ii) Japan; (iii) the United Kingdom; (iv) South Korea; (v) Australia; (vi) Canada; and (vii) New Zealand. Western businesses have accordingly been able to rely on this provision in order to continue providing intra-group services to their Russian subsidiaries.

As a result of the 12th package, this exception will terminate on 20 June 2024. From that date, persons seeking to provide restricted professional services to Russian legal persons owned or controlled by entities incorporated in the EU, EEA, Switzerland, or a “partner country” must obtain an authorisation from the competent Member State authority.

In addition, the 12th package adds Article 5n(2b), which prohibits the sale, supply, transfer, export, or provision of “software for the management of enterprises and software for industrial design and manufacture as listed in Annex XXXIX”. The types of software listed in Annex XXXIX cover several software systems, including systems for supply chain management. Annex XXXIX covers:

- “Software for the management of enterprises, i.e. systems that digitally represent and steer all processes happening in an enterprise, including:
 - enterprise resource planning (ERP),
 - customer relationship management (CRM),
 - business intelligence (BI),
 - supply chain management (SCM),
 - enterprise data warehouse (EDW),
 - computerized maintenance management system (CMMS),
 - project management software,
 - product lifecycle management (PLM),
 - typical components of the above-mentioned suites, including software for accounting, fleet management, logistics and human resources.”

- “Design and Manufacturing Software used in the areas of architecture, engineering, construction, manufacturing, media, education and entertainment, including:
 - building information modelling (BIM),
 - computer aided design (CAD),
 - computer-aided manufacturing (CAM),
 - engineer to order (ETO),
 - typical components of above-mentioned suites.”

On 6 February 2024, the European Commission released a set of [FAQs](#) regarding Article 5n(2b) and Annex XXXIX. The Commission indicated that this prohibition covers “software updates” but is not intended “to prevent the provision of software services to entities in third countries, other than Russia”. Further, the Commission indicated that the prohibition “allows an EU operator to continue providing software to its multinational clients with multiple global subsidiaries and affiliates, including when some of those affiliates are Russian”. However, as advised by the Commission, this does not apply where it would facilitate circumvention — “for instance if the client may in fact seek to acquire the software for a predominant use by a subsidiary established in Russia to any other legal person, entity or body established in Russia”.

On 20 February 2024, the German export control and trade sanctions authority (BAFA) released a general licence regarding these issues (the [BAFA GL](#)). The BAFA GL covers German nationals and companies with a registered seat in Germany. As of 21 June 2024, the BAFA GL will permit covered persons to continue providing software listed in Annex XXXIX and professional services otherwise banned by Article 5n “provided that it is necessary for the exclusive use by legal persons, entities or bodies established in Russia and owned or controlled solely or jointly by a legal person, entity or body incorporated or established under the law of a Member State, a country that is a member of the European Economic Area, Switzerland or a partner country listed in Annex VIII” (*unofficial translation*). In respect of “technical assistance, brokering services or other services” related to the prohibitions in Article 5n, the BAFA GL is effective as of 21 February 2024. Covered persons seeking to use the BAFA GL must also comply with its notification and recording requirements. The BAFA GL expires on 31 March 2025 (though BAFA may extend the expiration date at a later stage). On 2 April 2024, the European Commission [published an FAQ](#) which appeared to suggest it considered BAFA’s “general authorisation” to be inconsistent with EU sanctions, including case law from the Court of Justice of the EU. At the time of writing, BAFA has not publicly reacted.

Article 5r — restrictions on transfers for EU companies that are more than 40% Russian-owned

As of 1 May 2024, there is a reporting requirement for any cumulative transfer in a single quarter of funds exceeding €100,000 if sent out of the EU by EU entities that are directly or indirectly owned by more than 40% by Russian legal persons, Russian nationals, or natural persons residing in Russia. From 1 July 2024, credit and financial institutions will be required to report any such transfers “that they initiated, directly or indirectly” to the competent authority of the Member State in which they are located.

On 12 April 2024, the European Commission released a series of [FAQs regarding Article 5r](#). The Commission stated that the measure sought to provide “better visibility on the flow of funds related to Russian-owned entities”, so as to “contribute to mapping out Russia’s sources of revenue”. The FAQs further confirmed that the 40% ownership threshold: (i) “should take aggregate ownership into account”; and (ii) includes “Russian nationals with a dual citizenship (including EU citizens)”.

Article 12g — “no Russia” clause for certain goods

The 12th package creates a new Annex XL that identifies common high-priority goods and technology, including components to electronic integrated circuits, transistors, ball bearings, navigational equipment, cameras, and apparatus for the transmission or reception of voice, images, or other data.

As of 20 March 2024, EU exporters will be required to “contractually prohibit re-exportation to Russia and re-exportation for use in Russia” of items on Annex XL when shipped to “third countries” other than the “partner countries” listed in Annex VIII. An EU [press release](#) called this a “no Russia” clause. The contractual requirements also apply as of 20 March 2024 to items in Annexes XI, XX, and XXXV (which

cover aircraft, jet fuel, and certain firearms) as well as common firearms and ammunition listed in other EU legislation.

In light of this, EU businesses engaged in the export of these goods may need to revisit their standard terms and ensure that export contracts contain “adequate remedies” in the event of a breach of the re-export restrictions. Moreover, exporters will be obliged to inform the relevant competent authority as soon as they become aware of a breach of such re-export restrictions. The European Commission released guidance in the form of [FAQs](#) on 22 February 2024. These FAQs contain recommended template wording for the “no Russia” clause.

Annex IV — “military end-users”

As described in this [Client Alert](#), Annex IV contains a list of entities subject to a presumption of denial with respect to export license applications concerning dual-use goods or technology “which might contribute to Russia’s military and technological enhancement or the development of the defence and security sector”. Persons on this list are in effect presumed to be “military end-users”.

Annex IV now contains 29 additional entities. Most but not all of the newly listed entities are Russian. Notably, the list also contains an Uzbekistan entity, Mvizion LLC, and a Singaporean entity, Deflog Technologies PTE LTD.

Annex VII — “high-tech goods”

As described in this [Client Alert](#), Annex VII contains an extensive list of advanced technology or high-tech goods that are subject to stringent export restrictions. The 12th package updates this list, including thermostats, certain DC motors, and ball bearings. The EU [states](#) that these additions relate to items “used by the Russian army and found on the battlefield” — including as parts of unmanned aerial vehicles (UAVs).

Regulation 2024/576 — balance sheet management for the Central Bank of Russia

On 12 February 2024, the EU further updated Regulation 833 by adopting [Council Regulation \(EU\) 2024/576](#), which amended a provision prohibiting transactions “related to the management of reserves as well as of assets of the Central Bank of Russia” (and certain connected entities “such as the Russian National Wealth Fund”).

Following this amendment, certain “central securities depositories” are required to apply a series of rules “regarding cash balances accumulating exclusively due to the restrictive measures”. These include accounting separately for these cash balances and registering separately in the financial accounts any “revenues accruing from or generated by the cash balances”. The relevant central securities depositories are also directed to determine the “net profits” in respect of these revenues and await the possible adoption by the European Council of legislation permitting the “establishment of a financial contribution to the Union budget that shall be raised on those net profits to support Ukraine and its recovery and reconstruction”.

The 13th Package — Key Changes

On 23 February 2024, one day before the second anniversary of Russia’s invasion of Ukraine, the EU released a 13th package of sanctions. Like the 12th package, the 13th package updates Regulation 269 and Regulation 833. The most significant changes are described below.

Updates to Regulation 269

The 13th package contains [Regulation 2024/753](#). This updates Annex I of Regulation 269 to impose asset-freeze sanctions on a further 106 individuals and 88 entities. An EU [press release](#) describes these sanctions as focusing on “the military and defence sectors” as well as “members of the judiciary, local politicians and people responsible for the illegal deportation and military re-education of Ukrainian children”. The EU notes that these additions bring the list of natural and legal persons targeted for asset-freeze designations under Annex I to more than 2,000.

Updates to Regulation 833

The 13th package contains [Regulation 2024/745](#). This updates several annexes in Regulation 833, as summarised below.

Annex IV — “military end-users”

The Annex IV list of persons presumed to be “military end-users” (as described above) now contains a further 27 entities. These include several entities located outside of Russia — notably, in India, China, Sri Lanka, Serbia, Kazakhstan, Thailand, and Türkiye. The EU [press release](#) describes these non-Russian entities as having been involved in “the circumvention of trade restrictions”.

Annex VII — “high-tech goods”

The Annex VII “high-tech goods” list described above now contains “aluminium electrolytic fixed electrical capacitors”. The EU [press release](#) indicates these are targeted for being “components for the development and production of unmanned aerial vehicles (UAV)”.

Annex XXIII — “industrial goods”

Annex XXIII, as noted above, lists goods subject to the Article 3k ban on the sale, supply, transfer, or export to Russia or for use in Russia of certain goods that contribute to “the enhancement of Russian industrial capacities”. Previously, this annex targeted only certain types of “transformers”, and listed them at a six-digit CN code level. The 13th package amends this to a four-digit CN code (8504), which has the effect of targeting a wider range of transformers.

Annex XXXVI — partner countries for the importation of iron and steel

As described in this [Client Alert](#), the EU on 30 September 2023 imposed restrictions on the import of iron or steel products processed in so-called “third countries” (i.e., non-EU countries) if that processing used certain Russian-origin iron or steel inputs. The EU requires importers to provide evidence of the “country of origin of the iron and steel inputs used for the processing of the product in a third country” unless that country is one of a small number of “partner countries” that apply import restrictions “substantially equivalent” to those of the EU. Those partner countries previously included only Switzerland and Norway. The 13th package updates this list to include the United Kingdom.

What’s Next?

Latham & Watkins actively tracks sanctions developments across all regions closely and is well positioned to advise on the legal and practical impacts of these measures.

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