

CIRCUMVENTION AND DUE DILIGENCE

RELATED ARTICLES: ARTICLE 12 OF COUNCIL REGULATION 833/2014; ARTICLE 9 OF COUNCIL REGULATION 269/2014; ARTICLES 2c AND 5 OF COUNCIL REGULATION 692/2014; and ARTICLES 5 AND 8 OF COUNCIL REGULATION 2022/263
FREQUENTLY ASKED QUESTIONS – AS OF 11 DECEMBER 2024

1. What standard of due diligence do EU operators have to observe to comply with the obligation to freeze assets and the prohibition to make resources available to listed persons and entities?

Last update: 5 April 2022

The applicable EU Regulations lay down on EU operators (and operators conducting business in the EU) an obligation of result regarding the obligation to freeze assets and the prohibition to make funds and economic resources directly or indirectly available. The underlying means (due diligence) used by the operators to ensure compliance with the above-mentioned obligations and prohibitions are not further specified in EU legislation. EU operators have to perform appropriate due diligence calibrated according to the specificities of their business and the related risk exposure. It is for each operator to develop, implement, and routinely update an EU sanctions compliance programme that reflects their individual business models, geographic areas of operations and specificities and related risk-assessment regarding customers and staff.

2. What do you recommend in terms of due diligence to EU operators?

Last update: 5 April 2022

In our [Q&A on due diligence for business with Iran](#), we have recommended a risk-based approach that consists of risk assessment, multi-level due diligence and ongoing monitoring.

Due diligence may in particular consist in screening of beneficiaries of funds or economic resources against sanctions lists & adverse media investigations. Adverse media investigations refer to searches on the internet and news (media investigations) to find evidence that a contractual counterpart, even if not designated (so it passes the screening against the sanctions list), is actually controlled by a designated persons (e.g. news on local press that a company is controlled by a Syrian businessperson) (adverse).

3. The risk of circumvention of export bans via countries that have not joined the efforts of the EU and its partners is elevated. What is the European Commission doing to ensure that Russia does not evade sanctions in this way?

Last update: 5 April 2022

Article 12 of [Council Regulation \(EU\) No 833/2014](#) provides that it is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions in the Regulation. Enforcing such provisions is first and foremost a matter for the national enforcement authorities and any tips or information regarding possible circumvention should be actively reported to them.

In line with this national enforcement competence, the Commission will liaise with the National Competent Authorities of the Member States if it receives information regarding possible circumvention. Finally, the Commission has recently launched an [EU whistleblower tool](#) enabling the anonymous reporting of possible sanctions violations, including circumvention.

- 4. It can be very tricky for companies/investors to identify owners of companies in order to check whether any of these are sanctioned. This is especially relevant for Russian companies or funds as ownership is often hidden in holding companies, owned by other holding companies etc. Will the Commission provide guidance on what constitutes reasonable efforts on part of companies to identify sanctioned parties in a company structure?**

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Assessing the beneficial ownership of a business counterpart is a due diligence duty. There is no one-size-fits-all model of due diligence. It may depend – and be calibrated accordingly – on the business specificities and the related risk exposure. It is for each operator to develop, implement, and routinely update an EU sanctions compliance programme that reflects their individual business models, geographic and sectoral areas of operations and related risk assessment. Such sanctions compliance programmes can assist in detecting red flag transactions that can be indicative of a circumvention pattern.

- 5. Is an EU bank required to screen its open account transactions for possible infringement of EU trade restrictions? If so, how must this screening be organised operationally?**

Last update: 11 December 2024

Compliance with trade-related sanctions (e.g. dual-use exports, oil exploration equipment, high tech goods and technology) is not limited to the operators initiating such trade (e.g. exporters, brokers...), but is also a responsibility of the banks processing the related payments. Banks can tailor their compliance programmes to specific risks identified in relation to certain transactions or parties involved, such calibration being then more risk-based than systematic.

- 6. If the assets of a person listed under [Council Regulation \(EU\) No 269/2014](#) were transferred to an EU operator before that person's listing, can the operator be held**

accountable for having accepted them?

Last update: 11 December 2024

If a certain structure was created in order to assist a person to evade the effects of its possible future listing, then current, ongoing participation in that structure can amount to circumvention of the restrictive measures, if done knowingly and intentionally. Circumvention is prohibited under Article 9 of Council Regulation (EU) No 269/2014. Article 9 can be breached even if the freezing of assets is not discontinued and no assets reach or benefit the now-listed person; mere participation in a structure created for that purpose can be considered as a breach. For clarifications on the cumulative requirements of knowledge and intent, see question 9.

7. Could you clarify how the violations of articles 12 of Council Regulation 833/2014 and 1m of Council Regulation 765/2006, both concerning circumvention, are being determined in practice and which authority is responsible for undertaking such a task?

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Articles 12 of Council Regulation (EU) No 833/2014 and Article 1m of Council Regulation (EU) No 765/2006 prohibit to, knowingly and intentionally, participate in activities the object or effect of which is to circumvent prohibitions in the Regulations. Thus, the threshold is acting with knowledge and intent to circumvent a prohibition included in the Regulations. This provision applies on the territory of the EU and to all EU persons. For clarifications on the cumulative requirements of knowledge and intent, see question 9.

It falls within the competencies of the national competent authority of the EU Member State in question to decide on possible cases of circumventions within their jurisdiction. In addition, enforcing sanctions provisions is first and foremost a matter for the national enforcement authorities and any tips or information regarding possible circumvention should be actively reported to them.

For specific questions, we advise to contact the relevant national competent authority. You find a list of national competent authorities for each EU Member State here: https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/national-competent-authorities-sanctions-implementation_en.pdf.

8. Can a national competent authority reject a request for an authorisation envisaged under one of the derogations in Council Regulation (EU) No 269/2014 or Council Regulation (EU) No 833/2014 on the basis of reasonable grounds to suspect that the authorisation will be used to circumvent sanctions?

Last update: 30 June 2023

Yes, national competent authorities must take into account credible indications of circumvention when assessing and deciding on a request for authorisation envisaged under the derogations in Council Regulation (EU) No 269/2014 or Council Regulation (EU) No 833/2014.

Therefore, a national competent authority may decide to reject a request for authorization for a variety of reasons, including on the basis of reasonable grounds to suspect that the authorization will be used to circumvent sanctions.

This could be the case, for example, when the national competent authority holds information (acquired through confidential or public sources) suggesting that a party in a transaction subject to authorisation is engaged in the circumvention of sanctions or that certain elements of the transactions are suspicious (e.g. the price is abnormally low or one or more of the parties cannot be identified).

9. In the context of the anti-circumvention clauses, what is the meaning of “knowingly and intentionally”?

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Article 9 of Council Regulation (EU) No 269/2014 and Article 12 of Council Regulation (EU) No 833/2014, commonly known as 'anti-circumvention clauses', prohibit EU operators from participating, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions set out in each Regulation.

In the judgment it rendered on 21 December 2011 in Case C-72/11¹, the Court of Justice of the European Union clarified that, in the context of EU sanctions law, the requirements of knowledge and intent are met not only where a person deliberately seeks the object or effect of circumventing sanctions but also where a person participating in an activity having that object or effect is aware that such participation may have that object or that effect, and accepts that possibility.

The interpretations given by the Court of Justice to the standard anti-circumvention clause is to be applied in all sanctions regimes and from their adoption.

However, on 24 June 2024, as part of the 14th sanctions package on Russia, the Court's interpretation was codified into the sanctions regimes concerning Ukraine's territorial integrity, sovereignty and independence, thereby ensuring that the existing anti-circumvention clauses in Council Regulation (EU) No 269/2014 and Council Regulation (EU) No 833/2014 are textually aligned with it.

10. How does the non-liability clause apply? What does it mean in terms of due diligence standards?

Last update: 11 December 2024

¹ Case C-72/11 Criminal proceedings against Mohsen Afrasiabi and Others, EU:C:2011:874.

Paragraph 2 of Article 10 of Council Regulation (EU) No 269/2014 and Article 10 of Council Regulation (EU) No 833/2014, commonly known as ‘non-liability clauses’, indicate that actions by EU operators do not give rise to any liability of any kind on their part if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in each Regulation.

On 24 June 2024, as part of the 14th sanctions package on Russia, recital 3 of Council Regulation (EU) 2024/1739 and recital 36 of Council Regulation (EU) 2024/1745 clarified that the protection against liability cannot be invoked where the EU operator has failed to carry out appropriate due diligence. The two provisions moreover add that publicly or readily available information should be duly taken into account when carrying out such due diligence. Therefore, for example, an EU operator should not be able to successfully invoke such protection when it is accused of breaching the relevant sanctions because it has failed to carry out simple checks or inspections.

Due diligence should be proportionate and include various controls at several levels of the transaction. At a minimum, it should include:

- Screening of all parties to the transaction: the beneficial owner (customer) and also indirect parties (suppliers, service providers, transporters, banks);
- Control of the goods and services, including whether the goods – finished product or components – are subject to other control regulations (dual-use, military);
- Risk analysis of the transaction: on the contractual documentation; rationale for the transaction; financial flows; shipment route; end-use of the goods; risk of diversion of the goods.

These checks and inspections are part of the ‘strategic risk assessment’ that operators should implement. For more information, please see the Commission's guidance on due diligence:

[Guidance for EU operators: Implementing enhanced due diligence to shield against Russia sanctions circumvention - guidance-eu-operators-russia-sanctions-circumvention_en.pdf](#)