

## Article 12g of EU Council Regulation 833/2014 'No Russia' Clauses

Last Thursday, 22 February 2024, the European Commission issued its eagerly awaited [FAQ Guidance on the 'No Russia' clause obligation that has been in effect since 19 December 2023](#).

Article 12g of EU Council Regulation [833/2014 \(Article 12g\)](#) was introduced as part of the anti-circumvention measures in the 12th wave of EU sanctions published on 18 December 2023, and took effect the following day. Article 12g is very broadly drafted and open to interpretation in a number of respects. While the guidance is to be welcomed, it appears that the inclusion of a 'No Russia' clause will continue to have to be considered specifically in respect of every sale/supply/transfer/export of aircraft or aircraft parts (or indeed any of the other listed sensitive items) that fall within the scope of Article 12g.

### The 'No Russia' Clause

From 19 December 2023, Article 12g introduced a new obligation on EU entities to:

- Contractually prohibit the re-export to Russia or re-export for use in Russia of certain sensitive items, including aircraft and aircraft parts, when selling, supplying, transferring, or exporting these items to third countries. A third country is a non-EU Member State, excluding "partner countries" as listed in Annex VIII of Regulation 833/2014 - namely the USA, Japan, the UK, South Korea, Australia, Canada, New Zealand, Norway and Switzerland.
- Ensure "adequate remedies" are contained within these contracts in the event of a breach of the 'No Russia' clause by a contracting party, and

- In the event of a breach, notify their local national competent authority as soon as they become aware of the breach.

### Timing

The application of the obligation to include a 'No Russia' clause in the contract depends on the point in time at which the contract was concluded/entered into. It appears from the text of Article 12g and the FAQ guidance that there are three operative time periods as follows:

#### *i. Contracts concluded pre-19 December 2023*

Where contracts were concluded/entered into prior to 19 December 2023, the requirement to include the 'No Russia' clause does not apply until 20 December 2024 or until the contract's expiry, whichever is earlier. Where execution/implementation of the contract is ongoing as of 20 December 2024, the 'No Russia' clause must be included.

This transitional period indicates that contracts entered into prior to 19 December 2023 that will continue to be performed beyond 20 December 2024 will need to be renegotiated to include provisions to comply with Article 12g.

## **ii. Contracts concluded on or after 19 December 2023 – 19 March 2024**

The inclusion of a 'No Russia' clause is mandatory for contracts governing exports of aircraft/aircraft parts as of 20 March 2024.

- Where contracts are concluded after 19 December 2023 and have been executed/implemented before 20 March 2024, it is not clear that it is required to include the 'No Russia' clause. From a compliance perspective, it may still be advisable to do so as the European Commission clearly regards the inclusion of a 'No Russia' clause as best practice from a due diligence perspective.
- However, where a contract is concluded after 19 December 2023 and execution/implementation is ongoing as of 20 March

2024, the requirement to include the 'No Russia' clause certainly applies.

## **iii. 20 March 2024 onwards**

Where contracts are concluded and executed/implemented on or after 20 March 2024, these contracts must contain the 'No Russia' clause.

## **FAQ Guidance and Model Clause**

The recent FAQ guidance has addressed some points of ambiguity that had been identified in the 'No Russia' clause, although it arguably seeks to extend the obligations in Article 12g in some respects. Careful consideration will be required to understand how parties can address the requirements of Article 12g in their contracts.

## **Analysis/next steps**

There are a number of recommended action points in light of the 'No Russia' clause requirements and the FAQ guidance:

- A 'No Russia' clause as envisaged in Article 12g must be incorporated into every contract for the supply of aircraft/aircraft parts outside of the EU/ the listed 'friendly' countries as of 20 March 2024, save for those that were entered into prior to 19 December 2023 and that will have been executed/implemented by 20 December 2024. This includes but is not limited to sale and lease agreements for aircraft and engines. General sanctions compliance clauses may not be considered adequate to satisfy the requirements of Article 12g.
- Existing contracts should be reviewed to identify any contracts which provide for the sale /supply/transfer or export of aircraft/aircraft parts outside of the EU/ the listed 'friendly' countries from 20 March 2024 (or post 20 December 2024 for contracts entered into prior to 19 December 2023). The specific sanctions provisions and potential mechanisms to cater for the 'No Russia' clause would then need to be considered. Consideration needs to be given to

leases where sublease agreements are contemplated as they may fall within the parameters of Article 12g.

- Where contracts are concluded after 19 December 2023 and are also executed/implemented before 20 March 2024, it is not clear that it is required to include the 'No Russia' clause, albeit it may still be advisable to do so from a 'best practice' due diligence perspective.
- Article 12g may now be seen as best practice, even in circumstances where it does not strictly apply. It may be worth reviewing all other on-going contracts to form a view on whether the risk profile of the transactions concerned (e.g. counterparties/ items being exported) would merit the inclusion of a 'No Russia' clause.

We are assisting a large number of clients in the aviation industry with the application of Article 12g to their business. Please do not hesitate to contact us should you have any queries.



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