

REPORTING ON OUTGOING TRANSFERS
RELATED ARTICLE: ARTICLE 5r OF COUNCIL REGULATION 833/2014
FREQUENTLY ASKED QUESTIONS – AS OF 12 APRIL 2024

1. What is the purpose of this measure?

Last update: 12 April 2024

The new requirement will give national competent authorities (NCAs) better visibility on the flow of funds related to Russian-owned entities out of the EU, without jeopardising the activities of entities that are (partly) Russian-owned and operating legitimately in the EU. This will allow NCAs to assess better whether certain types of transfers pose a risk of violation of Russia-related sanctions and contribute to mapping out Russia's sources of revenue.

This measure sets out a reporting obligation that applies to:

- [Paragraph 1:] legal persons, entities and bodies established in the Union whose proprietary rights are directly or indirectly owned for more than 40 % by a legal person, entity or body established in Russia; a Russian national; or a natural person residing in Russia.
- [Paragraph 2:] credit and financial institutions.

2. Does Article 5r cover only profit repatriation, or all types of transfers? Does it block/prevent profit repatriation?

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The new measure covers all types of transfers leaving the EU/Member States' jurisdiction to go outside of it, made by the relevant Russian-owned companies, including for the purpose of profit repatriation. It is not meant to stop profit repatriation but to identify flows of funds, including profit repatriation.

3. Does Article 5r concern all types of funds?

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The measure includes all types of funds, regardless of the currency. In accordance with Article 1(zd), "funds" means financial assets and benefits of every kind, including, but not limited to:

- (i) cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
- (iii) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
- (iv) interest, dividends or other income on or value accruing from or generated by assets;
- (v) credit, right of set-off, guarantees, performance bonds or other financial commitments;
- (vi) letters of credit, bills of lading, bills of sale; and
- (vii) documents showing evidence of an interest in funds or financial resources.

4. Does Article 5r cover transfers of funds held in a branch of an EU credit or financial institution or an EU operator located outside the EU?

Last update: 12 April 2024

Yes, Article 5r covers transfers of funds held in a branch of an EU credit or financial institution or an EU operator located outside the EU. The reporting obligations in Article 5r are binding on every legal person, entity or body falling under the scope of Article 13 of Council Regulation 833/2014 (EU operator). First and foremost, this obligation will be relevant for entities incorporated under the law of a Member State and also located in a Member State. However, branches of such entities and institutions do not have a separate legal personality of their own, and thus the responsibility for their actions falls onto their EU main entity or institution. In addition, from an accounting consolidation perspective, the funds ‘held’ by the third country branch are generally considered to be part of the balance sheet of the main credit or financial institution or operator in the EU.

5. Does Article 5r cover transfers of funds held in a subsidiary of an EU bank or an EU operator located outside the EU?

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No, Article 5r would not cover transfers of funds held in a subsidiary of an EU credit or financial institution or an EU operator located outside the EU. However, Article 12 on circumvention will be relevant where subsidiaries outside of the EU are used by the EU entities referred to in Article 5r, including banking and financial institutions, to avoid the application of that Article, for example where the consolidation of accounts mentioned in Question 4 or of other elements allowing to conclude that the subsidiary acts “as one” with the parent EU entity.

6. What does the term “indirect transfer of funds out of the EU” mean?

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A direct transfer of funds goes from an entity established in the EU to a recipient outside the EU. An indirect transfer of funds would go, for instance, from an entity established in the EU, through one or several intermediaries within the EU, and then to a recipient outside the EU.

7. Is there a minimum threshold amount that should be considered when cumulative operations are involved?

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The obligation to report applies for transfers of an amount exceeding, in sum, 100 000 EUR or more made in one or several operations by the same party subject to the relevant reporting requirement. There is no minimum threshold for individual operations that are part of the sum total of all relevant transfers. The cumulative amount of 100 000 EUR applies within the reporting period, which is each quarter, as indicated in paragraph 1 and each semester as indicated in paragraph 2.

8. Which period should the first reporting cover? When should the reports be submitted?

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The first reporting by the obliged operators under paragraph 1 of Article 5r, should cover the period between 1 January and 31 March 2024. The obligation to submit it, however, does not kick in until 1 May 2024. This way, the Regulation allows more time to obliged entities to make this first reporting, to facilitate compliance with this new obligation. Starting with the second quarter (Q2) of 2024, reporting should be done two weeks after the end of each quarter, eg for Q2 by 15 July; for Q3 by 15 October; for Q4 by 15 January 2025, and for Q1 2025 by 15 April 2025.

The obligation to report for credit and financial institutions initiating the funds transfers subject to paragraph 2 of Article 5r kicks in on 1 July, hence the day after the end of the first semester. Therefore, the first report should be submitted by 15 July 2024; and for S2 by 15 January 2025.

9. Should reporting under Article 5r take into account aggregate ownership?

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Yes, reporting should take aggregate ownership into account. The purpose of Article 5r is to capture entities that are owned to more than 40% by Russian persons. Article 5r paragraph 1(a)-(c) refers to: “(a) a legal person, entity or body established in Russia; (b) a Russian national, or; (c) a natural person residing in Russia.” This should be read as a cumulative ‘or’, since the provision does not indicate that it should be the ownership of a **single** legal person etc.

10. Which criteria should be applied to determine indirect ownership? Does this include control?

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Indirect ownership can be understood as not having nominal ownership over the entity, but rather *via* a chain of intermediaries.

Indirect ownership should not be confused with control, which is established as a result of a factual assessment, taking into account all relevant circumstances. Therefore, EU legal entities, which meet one or more of the three 40% direct / indirect ownership criteria, fall within the scope of application of Article 5r. The criterion of control is not relevant for the purposes of Article 5r.

11. Do associations and foundations fall within the scope of Article 5r?

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The obligation applies to legal persons, entities and bodies. NCAs should apply the usual definition they apply to these terms. If more than 40% of an entity’s property rights are ultimately owned by persons falling under Article 5r paragraph 1 (a)–(c), the relevant entity and the relevant institution must report.

12. How shall credit and financial institutions identify a legal person, entity or body referred to in Article 5r paragraph 1 which is owned (for more than 40%) by the relevant Russian party?

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Credit and financial institutions can use for this purpose the client data they have stored in accordance with general legal KYC requirements. If those requirements do not include all of the information referred to in Article 5r para. 1 yet, such information needs to be collected on the basis of the relevant institutions' regular client review.

13. Does Article 5r paragraph 1 (b) of Council Regulation 833/2014 cover also Russian nationals with a dual citizenship (including EU citizens)?

Last update: 12 April 2024

Yes, it does.

14. Will the Commission clarify the expected content of the reporting?

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The Commission has published a reporting template to be used by the entities concerned and by EU banks. The template can be accessed [here](#). This template is a recommendation, the entities concerned and EU banks are not obliged to use this specific template.

15. Who must report – on Group level or per EU legal entity?

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The reporting obligation under Article 5r paragraph 2 is on those credit and financial institutions that have initiated the relevant transfers for the legal persons entities and bodies referred to in paragraph 1. At the same time, the reporting needs to be addressed to the competent authority of the Member State where the institution is located. In other words, the reporting has to be performed on the legal entity level.

16. Do credit and financial institutions referred to in Article 5r paragraph 2 need to report transfers covered by this measure if the entity referred to in Article 5r paragraph 1 has already reported?

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Yes, they do.