

SOFTWARE

RELATED PROVISION: ARTICLE 5n(2b) OF COUNCIL REGULATION 833/2014
FREQUENTLY ASKED QUESTIONS – AS OF 6 FEBRUARY 2024

1. The EU has prohibited the provision of certain business-relevant services to the Russian government, as well as to legal persons such as companies and other entities or bodies established in Russia. What kind of services are prohibited?

Last update: 6 February 2024

As of 18 December 2023, it is prohibited to sell, supply, transfer, export, or provide, directly or indirectly, software for the management of enterprises and software for design and manufacture, to the Government of Russia or to legal persons, entities or bodies established in Russia.

A wind-down period of three months was introduced for the sale, supply, transfer, export, or provision of software that is strictly necessary for the termination by 20 March 2024 of contracts concluded before 19 December 2023 or of ancillary contracts necessary for the execution of such contracts.

The prohibition covers software in a material form (e.g. saved on a storage medium like a flash drive or printed on an IT support) or in intangible form (e.g. download from a cloud, transferred by technology by email).

The provision of technical assistance, brokering services or other services related to the prohibited software as well as the provision of financing or financial assistance is also prohibited (see Art. 5n (3a)).

2. What types of software are covered by the prohibition in Art. 5n(2b)?

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The prohibition in Article 5n(2b) refers to two types of software – software for the management of enterprises and design and manufacturing software. This prohibition aims to further hamper Russia's capacities in its industrial sector.

Annex XXXIX lists the following types of software:

1. 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.

2. 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.

3. Does the prohibition in Art. 5n(2b) also includes software updates?

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Yes, the prohibition to sale, supply, transfer, export, and the provision of the software listed in Annex XXXIX also covers software updates.

Please note that assistance or advice relating to software updates and upgrade, as well as bespoke software updates and upgrades were already subject to a prohibition to provide IT Consultancy services to the Russian Government or Russian entities, according to Art. 5n(2).

4. Does Article 5n(2b) prevent the provision of software services to entities in third countries, other than Russia?

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Article 5n(2b) concerns software for the management of enterprises and for industrial design and manufacture. It prohibits the sale, supply, transfer, export, and the provision of such software to the Russian Government or Russian entities. The intention is to deprive those recipients of the latest software development.

The prohibition in Article 5n(2b) does not affect the sale, supply, transfer, export, and the provision of the software in question to entities in other third countries, which are not targeted by the provision.

Consequently, the new 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, this is different for cases of suspected circumvention, for instance if the client may in fact seek to acquire the software for a predominant use by a subsidiary established in Russia or any other legal person, entity or body established in Russia.

EU operators must carry out relevant due-diligence to avoid participating in circumvention (see also Article 12 of Regulation 833/2014 which prohibits EU operators to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions).