DEPOSITS

RELATED PROVISION: ARTICLE 5b; ARTICLE 5c; ARTICLE 5g OF COUNCIL REGULATION 833/2014

FREQUENTLY ASKED QUESTIONS – AS OF 12 OCTOBER 2022

1. **How should an authorisation in accordance with Article 5c(1)(a)-(f) of Council Regulation 833/2014 take place?**
   Last update: 12 October 2022

Procedures for granting derogations are established at Member State level by national administrative law. The national competent authorities (NCA) to which the applicant should lodge its request for authorisation are indicated here. Member States are then free to distribute the work internally to assess the request as they sees fit. Member States legislation and procedures must not be in contradiction with the provisions set out in EU law. According to the case law of the Court of Justice of the European Union, NCAs must exercise their powers in a manner that upholds the rights provided for in Article 47 of the Charter of Fundamental Rights of the EU.

2. **Are there any formal requirements as to how the authorisation should be designed?**
   Last update: 12 October 2022

The process and design of the authorisation is to be decided upon by the national competent authority in line with national practice. For instance, it is up to the national competent authority to decide whether to provide a form for the application or not.

3. **Which information and documentation should be obtained by the national competent authority for assessments made under Article 5c(1) of Council Regulation 833/2014? Whom should the national competent authority obtain the information and documentation from: natural or legal persons?**
   Last update: 12 October 2022

It is for the national competent authority to decide on what evidence is required. The national competent authority will need to ascertain that the deposits are indeed required for the purposes providing the grounds for an exemption under Article 5c. Which documents are needed for this needs to be decided on a case by case basis. In particular, the national competent authority will assess whether the information provided by credit institution applying for the authorisation is sufficient, or whether additional documentation from the natural and legal persons is needed. In particular, the applicant should provide solid evidence to demonstrate that the deposit will be used for the purposes required under the derogation (e.g. basic needs in case of Article 5c(1)(a)). The national competent authority should assess if the deposit is proportionate with those purposes and may impose ex post reporting obligations.

4. **What may be considered "*necessary to satisfy the basic needs*" in accordance with Article 5c(1)(a), and "*necessary for official purposes*" in accordance with Article 5c(1)(e)? Which elements should be included in the assessment?**
   Last update: 12 October 2022

For basic needs, please refer to page 27 of the Best Practices for the implementation of Sanctions (payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges). For official purposes, the national competent authority should assess on a case-by-case basis if the deposit falls within the scope of the derogation. Regarding a diplomatic mission or consular post or international organisation, the derogation under Article 5c(1)(e) shall be interpreted as covering all deposits needed to finance the office purposes of such a mission. In general, money transfers by the Russian State to its embassy in one Member State would qualify for this derogation. Nevertheless, it remains up to the national competent authority in to ascertain in the authorisation application process the necessary nature for official purposes of a transfer to the embassy. The national competent authority should assess if the entity qualifies as 'international' organisation; that would be the case for instance when three or more countries[1] recognised by all EU Member States are members, shareholders or are part of the governance body of that organisation or the parent organisation. The national competent authority should not base its assessment on the 'size' of the organization, its role, tasks or activities. See also question 3 regarding the fact that the national competent authority may assess if the deposit is proportionate to the intended purposes and impose ex post reporting obligations.

5. **Does the reporting obligation under Article 5g(1)(b) of Council Regulation 833/2014 only take effect on 27 May 2022 or is it already in effect?**
   Last update: 3 May 2022

The information to be reported under Article 5g(1)(b) shall be provided as soon as possible. This means that credit institutions should take proper action to swiftly collect the information. The deadline of 27 May 2022 envisaged in Article 5g(1)(a) provides, by analogy, a reasonable timeframe for the transmission of the information to be provided under 5g(1)(b). Where credit institutions are not able to provide this information by the set deadline because the information is still being collected, they shall inform the respective competent authorities of the delay and its reasons, and agree on a reasonable deadline with the competent authorities.

6. **Art 5g of Council Regulation 833/2014refers to credit institutions. Is the reporting obligation also applicable to other institutions, e.g., payment institutions, financial institutions and/or electronic money institutes?**
   Last update: 3 May 2022

Article 5g imposes reporting obligations on credit institutions as defined in Article 1(h) and which hold deposits as defined in Article 1(k). In case of doubt, the institution should seek information from its NCA for an assessment on a case-by-case basis. In this respect, it must be recalled that it

[1] This can also be the successor countries of the original organisation's members.

is prohibited to participate in activities that would circumvent the restrictions in Council Regulation 833/2014.

7. **For the purpose of complying with the obligation under Article 5g(1)(b) of Council Regulation 833/2014, how can a credit institution verify whether a deposit holder is a Russian national or natural person residing in Russia who has acquired the citizenship of a Member State or residence rights in a Member State through an investor citizenship scheme or an investor residence scheme?**
   Last update: 3 May 2022

Investor citizenship schemes and investor residence schemes are defined in Articles 1(l) and 1(m) of Council Regulation 833/2014. A credit institution should first assess the documents that have been submitted to it by the deposit holder. Should it need further assistance, the credit institution can contact its national competent authority.

8. **Are EU parent companies obliged to report deposits from Russian persons or entities for the entire group on a consolidated basis (including deposits at their non-EU subsidiaries)?**
   Last update: 3 May 2022

EU sanctions do not apply extra-territorially. Third-country subsidiaries of EU parent companies are incorporated under third-country law, not under the law of a Member State. They are therefore not expected to comply with Article 5g of Council Regulation 833/2014.

9. **Should the prohibition in Article 5b of Council Regulation 833/2014 also be complied with by branches of EU banks outside the EU?**
   Last update: 3 May 2022

EU sanctions must be complied with by all EU persons – both natural and legal – and therefore by all EU incorporated companies. Branches of EU companies outside the EU remain EU persons, and as such are bound by Council Regulation 833/2014, including Article 5b.

10. **Should the prohibition to accept deposits exceeding a total of EUR 100 000 from Russian nationals in Article 5b of Council Regulation 833/2014 apply to deposits made by Russian nationals residing in a third country (e.g. the US)?**
    Last update: 12 October 2022

The prohibition in Article 5b applies to deposits made by Russian nationals wherever they reside, unless they have a temporary or permanent residence permit in a Member State, a country member of the European Economic Area or Switzerland, or the nationality of one of these States.

11. **Does the prohibition in Article 5b apply for all types of account (e.g. savings and current accounts)?**
Last update: 3 May 2022

The prohibition applies to all deposits as defined in Article 1(k), irrespective of the type of account they are being held in. The limit of EUR 100 000 should be understood as the sum of all accounts being held at a credit institution.

12. **What does the term "Russian national" mean in the context of Article 5b of Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine? Does it include all holders of the Russian nationality or Russian residents only? What about holders of dual EU-Russia citizenship?**
Last update: 12 October 2022

Article 5(b)(1) of Council Regulation (EU) No 833/2014 provides that: "*It shall be prohibited to accept any deposits from Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia or a legal person, entity or body established outside the Union and whose proprietary rights are directly or indirectly owned for more than 50 % by Russian nationals or natural persons residing in Russia,, if the total value of deposits of the natural or legal person, entity or body per credit institution exceeds 100 000 EUR.*"

The prohibition applies to deposits from Russian nationals or natural persons residing in Russia.

However, pursuant to the exception in Article 5b(3), the prohibition does not apply to nationals of a Member State, a country Member of the European Economic Area or Switzerland, or natural persons having a temporary or permanent residence permit in one of these countries.

This means that the accounts of Russian nationals who also have the nationality of one the above countries can be credited above EUR 100 000.

13. **Should the broad term "entities" in Article 5b(1) be interpreted as including subsidiaries of European financial institutions in Russia and could it therefore stop them from conducting ordinary business operations, including moving money to nostro accounts or conducting business with other EU banks with which they hold accounts?**
Last update: 12 October 2022

The term 'entities' in Article 5b of Council Regulation (EU) No 833/2014 comprises all entities established in Russia, including subsidiaries of EU operators which are incorporated in Russia.

Pursuant to Article 5b(1), deposits of a subsidiary in Russia cannot in principle be accepted. However, pursuant to Article 5c(1)(f), competent authorities can authorise deposits that are necessary for non-prohibited cross-border trade in goods and services. Moreover, Article 5c and

5d enable the competent authorities of the Member States to authorise the acceptance of such deposits in other limited and well-defined circumstances.

14. Does the prohibition for EU credit institutions to accept deposits from Russian legal and natural persons, or from a legal person, entity or body established outside the Union and whose proprietary rights are directly or indirectly owned for more than 50 % by Russian nationals or natural persons residing in Russia) above EUR 100 000 refer only to new or also to existing deposits?
Last update: 12 October 2022

The prohibition is to accept any new deposits if the total value of deposits of the natural or legal person, entity or body per credit institutions exceeds EUR 100 000. Implicitly this means that those deposits that are already in EU banks can remain there but their value cannot be further increased above EUR 100 000. The reporting obligation applies to all deposits that exceed the specified value. In practice, this means that:

1. <u>For new deposits:</u>

   EU operators must not accept (new) deposits if the total value of deposits of the natural person or legal person, entity or body per credit institution exceeds EUR 100 000.

2. <u>For existing deposits:</u>

   - If the natural person or legal person, entity or body had more than EUR 100 000 in deposit on the day of entry into force of the Regulation (26 February 2022; or 21 July 2022 for a legal person, entity or body established outside the Union and whose proprietary rights are directly or indirectly owned for more than 50 % by Russian nationals or natural persons residing in Russia), the relevant deposit is grandfathered. This means that the natural person or legal person, entity or body is entitled to keep the money and do whatever he/she/it wants (e.g. withdraw, leave in the account), but he/she/it cannot increase the balance in a way that would exceed EUR 100 000 (unless the competent authority of a Member State grants an authorisation under Article 5c or 5d)

- If the natural person or legal person, entity or body had less than EUR 100 000, it is entitled to increase the account balance up to EUR 100 000 (but not more) per credit institution.

15. **Russian nationals and persons residing in Russia, or legal persons, entities or bodies established in Russia or a legal person, entity or body established outside the Union and whose proprietary rights are directly or indirectly owned for more than 50 % by Russian nationals or natural persons residing in Russia, could have various accounts outside of Russia. If the deposit being received at our bank is generated outside of Russia, does this transaction fall under the EUR 100 000 limitation?**
Last update: 12 October 2022

Yes, it does. If the deposit belongs to a Russian national or natural person residing in Russia, or legal persons, entities or bodies established in Russia or a legal person, entity or body established outside the Union and whose proprietary rights are directly or indirectly owned for more than 50 % by Russian nationals or natural persons residing in Russia, the transaction would fall under the EUR 100 000 limitation. Banks that have to comply with Council Regulation 833/2014 need to monitor incoming deposits from Russian nationals and natural persons residing in Russia, or legal persons, entities or bodies established in Russia or a legal person, entity or body established outside the Union and whose proprietary rights are directly or indirectly owned for more than 50 % by Russian nationals or natural persons residing in Russia, to ensure that the EUR 100 000 limit is not exceeded. Banks also have a reporting obligation under Article 5g(1)(a) regarding the accounts of Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia that they operate and whose balance exceeds EUR 100 000.

16. **With regard to legal persons, is there a prohibition on deposits per legal entity or should the group structure be considered?**
Last update: 12 October 2022

The prohibition in Art. 5b applies per legal entity.

17. **Are limits targeting new deposits received from 26 February 2022 (or from 21 July 2022 in case of a legal person, entity or body established outside the Union and whose proprietary rights are directly or indirectly owned for more than 50 % by Russian nationals or natural persons residing in Russia)? Does any account balance held for Russian nationals and residents fall into the targeted categories? If yes, what action would be required on balances held at the bank that are over EUR 100 000?**
Last update: 12 October 2022

The deposit shall not be accepted if it is from a Russian national, a natural person residing in Russia, or legal persons, entities or bodies established in Russia or a legal person, entity or body established outside the Union and whose proprietary rights are directly or indirectly owned for more than 50 % by Russian nationals or natural persons residing in Russia

As regards existing deposits of persons whose account cannot be credited in excess of EUR 100 000, if the account holder had more than EUR 100 000 in deposit on the day of entry into force of the provision (26 February 2022 or 21 July 2022), the relevant deposit is grandfathered. This

means that the account holder is entitled to keep the money and do whatever he/she/it wants (e.g. withdraw, leave in the account), but they cannot increase the balance so it exceeds EUR 100 000 (unless the competent authority of a Member State grants an authorisation under Article 5c or 5d).

As regards new deposits, EU operators must not accept them if the total value of deposits of the natural person or legal person, entity or body per credit institution exceeds EUR 100 000.

18. **Financial instruments, as defined in Section C of Annex I to Directive 2014/65/EU, are not qualified as deposits. Should other financial assets than financial securities be qualified as deposits? For example, do they include express trusts and similar legal entities or arrangements; a legal entity or special structure whose object is to manage wealth of its legal representative or Ultimate Beneficial Owner?**
Last update: 3 May 2022

Article 1(k) of Council Regulation (EU) No 833/2014 (the Sanctions Regulation) provides the following definition of deposit:

(k) "deposit" means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed term deposit and a savings deposit, but excluding a credit balance where:

1. *its existence can only be proven by a financial instrument as defined in Article 4(1)(15) of Directive 2014/65/EU of the European Parliament and of the Council, unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which exists in a Member State on 2 July 2014*

2. *its principal is not repayable at par*

3. *its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party*

It would be up to the credit institution to assess whether the individual product/circumstance therefore falls within this definition of 'deposit'.

19. **Is it correct that "deposit" does not include any credit/debit entry or cash flow resulting from transactions or corporate events, whether linked or not with financial instruments, as defined in Annex I to Directive 2014/65/EU?**
Last update: 12 October 2022

The prohibition provides that: "*It shall be prohibited to accept any deposits from Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia or a legal person, entity or body established outside the Union and whose proprietary rights are directly or indirectly owned for more than 50 % by Russian nationals or natural persons residing*

in Russia, if the total value of deposits of the natural or legal person, entity or body per credit institution exceeds EUR 100 000." Therefore, if the transaction or corporate event results in a positive cash flow, and thereby becomes a deposit as defined under Article 1(k), into an account which cannot be credited above EUR 100 000, the incoming cash flow should be rejected.

Note: payments made by CSD participants for the settlement of transactions that are not affected by the sanctions set out in Council Regulation (EU) No 833/2014 may benefit from a derogation if authorised by the competent authority under Article 5c(1)(f) where the acceptance of such a deposit is considered to be "*necessary for non-prohibited cross-border trade in goods and services between the Union and Russia.*" Then, if the counterparty to the transaction who receives the cash payment is a Russian person, the provisions in Article 5b applies to any further transfer of the cash out of the account where it was credited in the context of the settlement of the transaction.

20. What should a bank do if it has already received the deposit?
Last update: 12 October 2022

The bank should not accept the deposit. If the deposit was received before the sanction entered into force on 26 February 2022, the deposit can however be kept in the account. Violations of the prohibition will be treated according to national law, and that NCAs can advise on that.

21. Is it correct that the concept of "total value" must be calculated taking into account customers' positions with the bank in current accounts and deposits at the point in time when the restrictions entered into force?
Last update: 3 May 2022

This is correct.

22. Does the concept of "total value" have to be calculated taking into account customers' accounts in currencies different from the euro?
Last update: 3 May 2022

Yes, the total value should take into account all deposits per credit institution, irrespective of the currency in which they are denominated.

23. Does the meaning of "deposit" also include (i) accounts opened to hold collateral for financing arrangements (ii) shared accounts, for example accounts of spouses?
Last update: 3 May 2022

i. Collateral would fall within the exemption of the definition of deposit as set out in Article 1(k)(iii). However, if accounts used to hold collateral have excess collateral, EU operators should ensure, via their due diligence, that this excess collateral is not held in the account with the purpose of circumventing the prohibition in Article 5b.

ii. In case the person with whom the account is shared falls within the scope of the prohibition (i.e. being a Russian national or a natural person residing in Russia, or a legal person, entity

or body established in Russia), then these deposits fall within the scope of the prohibition. As the prohibition applies per natural or legal person, entity or body, the total value of the deposits can be split over two persons to calculate whether the individual value of the deposits exceeds EUR 100 000. In this case, for an account shared by two persons both subject to the prohibition, the maximum value of deposits which can be held per credit institution would be EUR 200 000.

The prohibition does not apply to EU nationals, nationals of a European Economic Area country or of Switzerland, or natural persons having a temporary or permanent residence permit in a Member State, in a country member of the European Economic Area or in Switzerland. (Article 5b(3)). In case any of those persons jointly holds the account, the prohibition does not apply. However, the joint account cannot be used to circumvent the rules (Article 12).

24. **Does the meaning of "deposit" also include correspondent accounts for Russian banks, especially of Russian bank subsidiaries of banks headquartered in the EU?**
Last update: 12 October 2022

The prohibition applies to deposits from "legal persons, entities or bodies established in Russia". Russian banks, including subsidiaries of banks headquartered in the EU, would fall under that definition and would therefore be subject to the prohibition. However, the deposit may benefit from a derogation if authorised by the competent authority under Article 5c(1)(f) where the acceptance of such a deposit is considered to be necessary for non-prohibited cross-border trade in goods and services between the European Union and Russia. Whether the deposit issued from the correspondent account qualifies for this derogation would need to be assessed on a case-by-case basis.

25. **Is it correct that any portion of a credit entry in excess to the EUR 100 000 aggregated limit should not be blocked but returned to the remitting bank or wired outward according to our customer instructions?**
Last update: 3 May 2022

Council Regulation (EU) No 833/2014 prohibits the acceptance of deposits, but does not prescribe how credit institutions should do this. This will be left to the individual institution to decide, possibly in dialogue with the relevant customer.

26. **Should interest, dividend payments or coupon payments be booked if the EUR 100 000 limit is already exceeded?**
Last update: 3 May 2022

The payment of interest or dividend should in this case not be accepted. Where and how the interest or dividend payment should be made to would need to be decided by the parties involved.

27. Do legal persons, registered or established outside Russia, whose ultimate beneficial owner meets the criteria laid down in Article 5b(1), but not the exception criteria in Article 5b(2) or 5b(3), fall within the scope of the Regulation?
Last update: 12 October 2022

The prohibition in Article 5b of Regulation 833/2014 initially only applied to Russian nationals or natural person residing in Russia or any legal person, entity or body established in Russia. Strictly speaking, it did not apply to entities owned by Russian/ nationals or natural persons residing in Russia when the entities are registered in a country other than Russia.

However, with the amendment of Council Regulation 833/2014, which entered into force on 21 July 2022, from that date Article 5b also applies to a legal person, entity or body established outside the Union and whose proprietary rights are directly or indirectly owned for more than 50 % by Russian nationals or natural persons residing in Russia.

In addition, the provision should be read in conjunction with Article 12 of Council Regulation 833/2014 which prohibits to participate knowingly and intentionally in activities the object or effect of which is to circumvent prohibitions in the Regulation. EU operators should therefore exert enhanced due diligence when the deposit is made to an account of an entity owned by a Russian/Belarussian national or a natural person residing in Russia.

28. Does Article 5b(3) exclude dual nationals (having Russian nationality and the nationality of an EU Member State) as well as persons of Russian nationality who have a temporary or permanent residence permit in another Member State?
Last update: 3 May 2022

Yes, it does.

29. How is the term "temporary or permanent residence permit in a Member State, in a country member of the European Economic Area or in Switzerland" in Article 5b(3) of Council Regulation (EU) 833/2014 defined?
Last update: 3 May 2022

Each State defines its own national rules thereon. However, it is worth recalling that pursuant to Article 12, it is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions in the Regulation.

30. Does the term "Russian nationals" in Article 5b of Council Regulation (EU) No 833/2014 also include refugees from Russia who might not be able to easily discard their nationality and who might have found refuge in a non-EU country (such as Switzerland or Norway)?
Last update: 3 May 2022

Dual nationals whose one nationality would be that of a Member State or a country that is a member of the European Economic Area or Switzerland, or otherwise natural persons having a

temporary or permanent residence permit in a Member State or a country that is a member of the European Economic Area or Switzerland, fall under the exception laid down in Article 5b(3). If the dual nationality falls outside the scope of this exception (i.e. a dual national having both a Russian nationality and a nationality of a country other than that of a member of the European Union, the European Economic Area or Switzerland), the prohibition in Article 5b would apply.

31. Does the restriction apply per banking licence or to a combination of EU banks?
Last update: 3 May 2022

The restriction applies per banking license.

32. What are the criteria for joint account holders to deposit euros into bank accounts?
Last update: 12 October 2022

In cases where the two persons who share the account both fall within the scope of the prohibition to have deposits in excess of EUR 100 000, then the joint account falls within the scope of the prohibition. As the prohibition applies per natural or legal person, entity or body, the total value of the deposits can be split over the two persons. For an account shared by two in-scope persons, the maximum value of deposits allowed to be held per credit institution would therefore be EUR 200 000.

In cases where one of the joint-account holders benefit from the exemption laid down in Article 5b(3), the prohibition to have deposits in excess of EUR 100 000 does not apply. However, pursuant to Article 12, the joint account shall not be used to circumvent the rules.

33. Can currency exchange transactions be processed on behalf of a Russian national without account opening?
Last update: 3 May 2022

This would be permissible as long as it does not result in deposits being accepted if the total value of deposits of the natural person or legal person, entity or body per credit institution exceeds EUR 100 000.

34. How are basic accounts requested by refugees treated?
Last update: 3 May 2022

Basic accounts are treated no differently from other accounts. The prohibition as set out in Article 5b, including the derogations for example set out in Article 5c(1)(a) for the basic needs of those in scope of the prohibition, would apply.

35. How should the bank proceed if a deposit of a Russian national with temporary or permanent residence in a Member State exceeds EUR 100 000 and his/her residence permit later on expires or get revoked? Is there an obligation to reduce or block the amount of deposits exceeding EUR 100 000?

Last update: 3 May 2022

When the residence permit is revoked, the Russian national no longer benefits from the exception to the prohibition in Article 5b(3). As the prohibition would start applying from that point in time, there would be no obligation to retrospectively reduce or block deposits exceeding EUR 100 000. From the point of revocation of the residence permit, it shall however be prohibited to accept any new deposit if the account balance is in excess of EUR 100 000.

36. How should a Russian person who acts on behalf of an EU account holder and also carries out transactions including cash deposits on the account be treated regarding the prohibition in Article 5b?

Last update: 12 October 2022

The prohibition in Article 5b applies to the deposits from Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia or a legal person, entity or body established outside the Union and whose proprietary rights are directly or indirectly owned for more than 50 % by Russian nationals or natural persons residing in Russia. Managing an account is not per se prohibited under the Regulation, however making deposits into it may fall under the prohibition if the other conditions are met. Note also that, EU operators should ensure, via their due diligence, and pursuant to Article 12 of Council Regulation 833/2014, that prohibitions are not circumvented.

37. If a Russian national sells a property, in order to receive the purchase price, can he or she refer to a bank account in the EU or in a third country?

Last update: 17 May 2022

Yes. The restriction in Article 5b(1) of Council Regulation (EU) No 833/2014 concerns deposits from Russian nationals or natural persons residing in Russia or legal persons, entities and bodies established in Russia. It follows that EU operators are not prohibited from making payments into the accounts held by these persons in the EU or in third countries.

If the buyer fit one of the criteria in Article 5b(1), EU credit institutions would in principle not be able to receive the purchase price if the amount threshold was reached. However, according to Article 5b(4), the restriction does not apply to deposits which are necessary for non-prohibited cross-border trade in goods and services between the Union and Russia. It should be noted that it is prohibited for EU operators to take part in any activities seeking to circumvent EU restrictive measures, for instance by acting as a substitute for a person referred to in Article 5b(1).

38. If a Russian national acquires a property in the EU, can he or she transfer the purchase price from a bank account in the EU or in a third country?
Last update: 17 May 2022

The restrictions in Article 5b(1) of Council Regulation (EU) No 833/2014 concern the acceptance of deposits, not the use of them. A Russian national holding deposits in a bank account in the EU is therefore entitled to keep the money and do whatever The restriction in Article 5b(1) of Council Regulation (EU) No 833/2014 concerns any deposits from Russian nationals or natural persons residing in Russia or legal persons, entities and bodies established in Russia. However, according to Article 5b(4), this does not apply to deposits which are necessary for non-prohibited cross-border trade in goods and services between the Union and Russia. It should be noted that it is prohibited for EU operators to take part in any activities seeking to circumvent EU restrictive measures, for instance by acting as a substitute for a person referred to in Article 5b(1).

39. According to Article 5g imposing reporting obligations, could you please clarify to which Member State credit institutions shall report?
Last update: 23 May 2022

The reporting instructions from the EBA template stipulate that: "*Credit institutions shall provide to the national competent authority of the Member State where they are located or to the Commission information regarding deposits as specified in Article 5g(1) of RSR and Article 1z of BSR. […] The underlying data shall be reported by credit institutions on an individual basis, including data for their branches in the EU or third countries (data for branches to be included in the institution's report)*."

Examples:

- Parent credit institution in Member State X: Parent credit institution reports its deposits to the NCA for sanctions in Member State X;
- Branch in Member State Y of the parent credit institution in Member State X: Parent credit institution in Member State X reports deposits of its branch in Member State Y to the NCA for sanctions in Member State X;
- Subsidiary in Member State Y of the parent credit institution in Member State X: Subsidiary reports its deposits to NCA in Member State Y;
- Branch in Russia of its subsidiary in Member State Y of the parent credit institution in Member State X: Subsidiary reports deposit of the Russia branch to NCA in Member State Y.

40. Can a Russian national, a natural person residing in Russia or a legal person established in Russia re-pay a loan obtained from an EU credit institution?
Last update: 12 October 2022

In principle, it is possible for a Russian national, a resident or a legal persons established in Russia to re-pay a loan obtained from an EU credit institution, provided that such re-payment does not fall within the scope of the prohibition laid down in Article 5b(1) of Council Regulation (EU)

833/2014 (i.e. cumulatively, the total value of deposit of the natural or legal person, entity or body per credit institution does *not* exceed EUR 100 000).

In that case, subject to a case-by-case assessment, the loan re-payment could nevertheless benefit from the exemption laid down in Article 5c(1)(f) regarding deposits necessary for non-prohibited cross-border trade in goods and services between the Union and Russia.

Nonetheless, EU credit institutions should recall that engaging in any type of activity aimed at circumventing sanctions is prohibited under Article 12 of that Regulation.

41. Can national competent authorities grant bundled authorisations for 'non-prohibited cross-border trade in goods and services between the Union and Russia under Article 5c, paragraph 1, point (f)?
Last update: 12 October 2022

Yes. National competent authority could grant bundled authorisations for similar operations and transactions. By way of example, a national competent authority could grant an individual authorisation to a specific bank for a number of similar or identical operations to be carried out during a specific timeframe (e.g. weekly). That authorisation could be coupled with reporting obligations at the end of said period to ensure that the authorisation has been used properly.

42. Can a company established in a third country that is majority owned for more than 50% by Russian nationals or natural persons residing in Russia benefit from the derogation under Article 5c, paragraph 1, letter f) (non-prohibited cross-border trade), even if trade is between the EU and the third country where that company is established?
Last update: 12 October 2022

Yes. Article 5b of Council Regulation (EU) No 833/2014, as amended by Council Regulation (EU) 2022/1269, entails the prohibition to accept any deposits from Russian nationals or natural persons residing in Russia, legal persons, entities or bodies established in Russia or a legal person, entity or body established outside the Union and whose proprietary rights are directly or indirectly owned for more than 50% by Russian nationals or natural persons residing in Russia, if the total value of deposits of that natural or legal person, entity or body per credit institution exceeds EUR 100 000. Therefore, such prohibition also extends to non-EU companies that are majority owned by Russian for more than 50 % by Russian nationals or natural persons residing in Russia.

According to Article 5c, paragraph 1, letter (f), national competent authorities may authorise the acceptance of a deposit after having deemed that it is necessary for non-prohibited cross-border trade in goods and services between the Union and Russia. Companies established in a third country that are majority owned for more than 50 % by Russian nationals or natural persons residing in Russia may also benefit from such a derogation, as far as they are subject to EU sanctions and, in such a case, like EU operators, under the specific condition that such trade

involves Russia. It is for the company or companies required to comply with EU sanctions to provide sufficient evidence for that purpose to the NCA.

43. **Article 5b(1) now also applies to a legal person, entity or body established outside the Union and whose proprietary rights are directly or indirectly owned for more than 50 % by Russian nationals or natural persons residing in Russia. Is this also the case if the Russian national or natural person residing in Russia directly or indirectly owning the proprietary rights for more than 50% benefits from the exemption in Article 5b(3)?**
Last update: 12 October 2022

If the Russian national or natural person residing in Russia also has a citizenship or residence rights of an EU/EEA member state or Switzerland, the legal person, entity or body majority, owned by this person, that is established outside the Union can benefit from that exemption, with the exception of those established in Russia. In this case, the fact that the owner is a Russian national or natural person residing in Russia that also has citizenship or residence rights of an EU/EEA member state or Switzerland does not render the legal person, entity or body eligible for the exemption.

44. **Can profits generated from collateral be considered as excess collateral for these purposes and exempt from the definition of "deposit" set out in Article 1(k)(iii) and therefore can these profits remain/be deposited in the account?**
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If the profits generated from the collateral are held in the account with the intention of continuing to use them as collateral, they could fall within the exemption of the definition of deposits. If the intention is to accumulate them as regular deposits and not use them as collateral in the future, this should qualify as a regular deposit. So the holder of the collateral and the credit institution facilitating the account in which the collateral is held, should consider the intended use of the profits generated.

45. **Can profits generated from collateral be remitted to credit institutions outside of the European Union?**
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In principle, there is no restriction on crediting profits to credit institutions outside the European Union. However, a case by case assessment is necessary to verify if the action qualifies as a scheme to circumvent sanctions. Circumvention can occur for instance if the operation is set up to carry out an operation that, apparently legitimate, it has the sole purpose of neutralizing the effect of sanctions.