

LUXURY GOODS

RELATED PROVISION: ARTICLE 3h OF COUNCIL REGULATION 833/2014 FREQUENTLY ASKED QUESTIONS – AS OF 26 JULY 2023

1. How is the EUR 300 value to be assessed?

Last update: 2 May 2022

The EUR 300 value is to be assessed based on the statistical value of the goods in the export declaration (data element 99 06 000 000 or 8/6 or Box 46 of the Single Administrative Document (SAD)). The statistical value is defined in section 10 of Annex V of Commission Implementing Regulation (EU) 2020/1197 as the price actually paid or payable for the exported goods, excluding arbitrary or fictitious values. It must be adjusted, where necessary, in such a way that the statistical value contains solely and entirely the incidental expenses, such as transport and insurance costs, incurred to deliver the goods from the place of their departure to the border of the Member State of export. VAT is not to be included in the statistical value.

The calculation of statistical value and its indication in the export customs declaration is the same as already used and required, and is not affected by the Sanctions Regulations, but only used as a basis to decide whether the sanction is applicable or not.

2. What is to be understood by “item”?

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Item is to be understood as the “supplementary unit” in the export declaration (data element 18 02 000 000 or 6/2 or Box 41 of the SAD). Customs legislation defines the supplementary unit as the quantity of the item in question, expressed in the unit laid down in Union legislation, as published in TARIC.

For goods that do not have a supplementary unit in TARIC, the information on “number of packages” (data element 18 06 004 000 or 6/10 or Box 31 of the SAD) could be used to check the threshold. Customs legislation defines packages as the smallest external packing unit. The number of packages to be stated in an export declaration refers to the individual items packaged in such a way that they cannot be divided without first undoing the packing, or the number of pieces, if unpackaged. The codes to be stated follow the UNECE recommendation on the matter. The UNECE recommends recording the “immediate wrapping or receptacle of the goods, which the purchaser normally acquires with them in retail sales”.

Accordingly, an item means usual packaging for retail sale, e.g. a package of 3 bottles of perfume if they are sold together, or a bottle of perfume if it is meant to be sold separately.

Pursuant to Article 15 of the Union Customs Code, the persons providing information to the customs authorities are responsible for the accuracy and completeness of the information provided. If necessary, the customs authorities may require additional information (invoices, physical controls) to verify the information stated in the customs declaration and whether or not the threshold is reached.

3. Does the ban apply to goods that originate from non-EU countries and transit via the EU towards Russia, including when the originating countries have not decided similar sanctions themselves?

Last update: 2 May 2022

Yes, the prohibition on the transfer of luxury goods to any natural or legal person, entity or body in Russia or for use in Russia applies to the transit via the EU territory of those luxury goods. Often, the transfer would involve the transportation of the goods, which is itself prohibited by the transfer prohibition.

4. Does the ban apply to goods originating in the EU transiting through Russia towards further destinations such as Central Asia?

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In principle, the ban would not apply here. However, the goods must be genuinely destined to a third country and for use outside Russia. Therefore, EU operators should have in place adequate due diligence procedures to ensure that their exports are not diverted to Russia – especially in case of transshipments via Russia. This could include, for instance, contractual clauses with their third-country business partners giving rise to liability in case the latter re-export the items to Russia, as well as ex post verifications. Please also note that under Article 12, EU operators cannot willingly or intentionally circumvent the prohibitions in place.

5. Can goods of over 300€ already imported in Russia be sold?

Last update: 2 May 2022

Article 3h of Regulation (EU) No 833/2014 as amended by Regulation (EU) 2022/428 prohibits the sale, supply, transfer or export, directly or indirectly, of luxury goods. The prohibition is therefore broader than exports. Article 13, which sets out the jurisdictional scope of the restrictive measures laid down in Regulation (EU) No 833/2014 provides that these do not only apply in the territory of the Union but also to any national of a Member State, and to any legal person incorporated or constituted under the law of a Member State, irrespective of where that person or legal person is.

Accordingly:

- EU nationals or EU companies are prohibited from providing luxury goods as defined in Article 3h of Regulation (EU) No 833/2014 to a person in Russia or for use in Russia even if the goods have already been imported in the country.
- EU operators are furthermore prohibited from participating, knowingly and intentionally, in activities the object or effect of which is to circumvent these export restrictions.
- However, EU sanctions do not apply extra-territorially. Therefore, if the bottles have been imported by a Russian person or company before the imposition of sanctions and are now being sold in Russia by these companies, the prohibition would not apply.
- Note that there is also an exception applying to goods which are necessary for the official purposes of diplomatic or consular missions of Member States or partner countries in Russia, or of international organisations enjoying immunities in accordance with international law. The exception also applies to the personal effects of their staff.

6. What is the purpose of the derogation introduced for the transfer and export of cultural goods (Article 3h(4))?

Last update: 2 May 2022

The EU sanctions on luxury goods transferred or exported from the EU to Russia are not meant to hamper cultural cooperation with Russia. A clarification is introduced for the safe and prompt return to Russia of cultural goods, such as works of art, which are on loan in the EU in the context of formal cultural cooperation with Russia.

7. How will national authorities grant the derogation in Article 3h(4)?

Last update: 2 May 2022

In order to allow for the swift return of cultural goods to Russia, an authorisation must be granted by the national competent authority. This authorisation can be granted at any moment, but at the latest before the goods leave the Union's territory. This will allow the national customs authorities at the Russian border to verify that the export is duly authorised.

8. Point 17) of Annex XVIII refers to a list of vehicles and appliances and “accessories and spare parts” of those. What is the scope of “accessories and spare parts”? Does it apply to accessories and spare parts of vehicles of a value of EUR 50 000 or below? What is the value threshold applicable to these accessories and spare parts?

Last update: 2 May 2022

Article 3h of Council Regulation (EU) No 833/2014 as amended by Council Regulation (EU) 2022/428 of 15 March 2022 provides for the prohibition to sell, supply, transfer or export goods listed in Annex XVIII of the same Regulation to any natural or legal person, entity or body in Russia or for use in Russia. The same article establishes that such a prohibition shall apply to the goods listed insofar as their value exceeds EUR 300 per item unless otherwise specified in the Annex.

Point 17) of Annex XVIII refers to vehicles, except ambulances, for the transport of persons on earth, air or sea of a value exceeding EUR 50 000 each, teleferics, chairlifts, ski-draglines, traction mechanisms for funiculars, motorbikes of a value exceeding EUR 5 000 each, as well as their accessories and spare parts.

In relation to the accessories and spare parts, the above mentioned provision and annex should be applied as follows:

- accessories and spare parts of a value of or below EUR 300 per item are not subject to the restrictions provided for in Article 3h
- accessories and spare parts listed in point 17 of Annex XVIII of a value exceeding EUR 300 that are not intended for the use of the vehicles and appliances also listed there are not subject to the restrictions provided for in Article 3h. This means, i.e. that the prohibition does not apply to accessories and spare parts of vehicles of a value of EUR 50 000 or below.
- accessories and spare parts listed in point 17 of Annex XVIII of a value exceeding EUR 300 that are intended for the use of the vehicles and appliances listed there are subject to the restrictions provided for in Article 3h.

9. Has the 11th sanctions package removed products from the ban on luxury goods?

Last update: 26 July 2023

Regulation 1214/2023 of 23 June 2023 (“11th sanctions package”) made changes to Annex XVIII by removing certain products which are covered by different annexes (Annex VII and Annex XXIII). In other words, while certain products have been removed from the Annex XVIII on luxury goods, trade in them continues to be restricted under Council Regulation (EU) No 833/2014 under a different annex.

10. What did the 11th sanctions package change to the export ban on luxury cars?

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Most luxury cars bans have been moved from Annex XVIII to Annex XXIII and continue to be subject to an export ban. Car parts under tariff lines that were previously subject to a luxury ban under Annex XVIII (if they were integrate a vehicle above EUR 50 000) continue to be banned.

However, the new notion for the luxury vehicles included in Annex XXIII uses the size of the engine as a threshold, rather than the declared customs value (which was prone to fraud/under valuation in the customs declaration), in the case of internal combustion engines. This was done to improve compliance by making the definition of the sanctioned good dependent on a verifiable physical characteristic of the good.

The threshold of cylinder capacity ‘above 1 900 cm³’ on internal combustion engines approximates as closely as possible the previous EUR 50 000 threshold. This engine size covers internal combustion motor cars exported above EUR 50 000. It does not create a full ban on less powerful middle-value or low value cars which typically have a value below EUR 50 000: CN 870321 (petrol cars with engines below 1 000 cm³) and 870331 (diesel cars with engines below 1 500 cm³) are not included in Annex XXIII.

In addition, there is a full ban for exports of electric and hybrid vehicles, regardless of power specifications.

However, not all vehicles are moved from Annex XVIII to Annex XXIII. For example, code 8702 00 00 (Motor vehicles for the transport of ten or more persons, including the driver, i.e. buses and mini-buses) continues to be listed in Annex XVIII.

11. What happened to codes CN 401130 and CN 84110000 in the 11th sanctions package?

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Regulation 1214/2023 of 23 June 2023 (“11th sanctions package”) removed codes CN 401130 (tyres for aircrafts) and CN 84110000 (Turbojets, turbopropellers and other gas turbines) from Annex XVIII as they are banned under Annex XI (List of goods and technologies referred to in Article 3c(1)), irrespective of their value.

12. Why is there a ban on technical assistance, brokering services, financing and financial

assistance?

Last update: 26 July 2023

Article 3h of Council Regulation (EU) No 833/2014 provides for the prohibition to sell, supply, transfer or export goods listed in Annex XVIII of the same Regulation to any natural or legal person, entity or body in Russia or for use in Russia. Council Regulation (EU) 1214/2023 of 23 June 2023 (“11th sanctions package”) adds to this export ban prohibitions to provide technical assistance, brokering services, financing and financial assistance. These provisions are meant to avoid that EU operators who cannot export the goods subject to an export ban support a third country in obtaining, manufacturing, repairing, maintaining etc. the goods on its own.