

SPECIALISED FINANCIAL MESSAGING SERVICES

RELEVANT PROVISION: ARTICLE 5h OF COUNCIL REGULATION (EU) NO 833/2014

FREQUENTLY ASKED QUESTIONS – AS OF 28 FEBRUARY 2023

1. What are the banks subject to the prohibition to provide specialized financial messaging services ?

Last update: 28 February 2023

Article 5h of Council Regulation 833/2014 prohibits the provision of specialised financial messaging services, which are used to exchange financial data, to the legal persons, entities or bodies listed in Annex XIV or to any legal person, entity or body established in Russia whose proprietary rights are directly or indirectly owned for more than 50 % by an entity listed in Annex XIV.

2. Some Russian banks are prohibited from using specialized financial messaging services of EU providers (also mentioned as ‘the SWIFT prohibition’). Would it qualify as a breach or circumvention of that prohibition if these banks resort to other means of communication to compensate for their decoupling from specialized messaging services network, such as the ‘SWIFT’ network?

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Prohibitions contained in EU sanctions Regulations must be complied with by EU operators – both within and outside of the territory of the Union – or by any operator for any business done in whole or in part within the Union. In this particular case, the direct prohibition to provide financial messaging services to those banks is on EU financial messaging service providers or providers operating in the EU, such as S.W.I.F.T. SC (SWIFT), and not on the decoupled Russian banks. This means that transactions for non-sanctioned trade are still allowed with banks disconnected from the SWIFT network (‘de-SWIFTed’), not subject to the asset freeze under Council Regulation (EU) 269/2014, if they are relying on other means (i.e. non specialized financial messaging service), such as paper, fax and email, for confirming payment orders.

However, pursuant to Article 12 of Council Regulation 833/2014 any financial messaging service provider required to comply with EU sanctions cannot circumvent this prohibition, (i.e. setting up a system that, under the cover of a formal appearance of legality, enables the relevant bank to avoid the elements of an infringement of the restriction at hand).

3. Does the prohibition to provide specialised financial messaging services to certain Russian banks also extend to subsidiaries and branches of those banks located outside Russia?

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bodies listed in Annex XIV or to any legal person, entity or body established in Russia whose proprietary rights are directly or indirectly owned for more than 50 % by an entity listed in Annex XIV.

Therefore, banks in Russia whose proprietary rights are directly or indirectly owned for more than 50 % by an entity listed in Annex XIV are also covered by this prohibition.

Subsidiaries of those banks in the EU or in other countries outside Russia have separate legal personality from the Russian parent company. Those subsidiaries are considered established under the law of the relevant Member State or third country. Hence they are not subject to the restriction.

Branches of a Russian parent company do not have legal personality on its own and are considered as entities established in Russia. Hence, the prohibition applies to branches of the credit institutions listed in Annex XIV that are located outside Russia. Providers required to comply with EU sanctions should therefore not offer specialised financial messaging service to them.

4. Are margin calls exempted from the prohibition to provide specialised financial messaging services ?

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No, there are no exemptions from the prohibition to provide specialised financial messaging services. It is therefore also prohibited to use it for margin call messages exchanged with the Russian banks subject to this prohibition.