

CIRCUMVENTION AND DUE DILIGENCE

FREQUENTLY ASKED QUESTIONS – AS OF 31 MAY 2022

1. What standard of due diligence do EU operators have to observe to comply with the obligation to freeze assets and the prohibition to make resources available to listed persons and entities?

Last update: 5 April 2022

The applicable EU Regulations lay down on EU operators (and operators conducting business in the EU) an obligation of result regarding the obligation to freeze assets and the prohibition to make funds and economic resources directly or indirectly available. The underlying means (due diligence) used by the operators to ensure compliance with the above-mentioned obligations and prohibitions are not further specified in EU legislation. EU operators have to perform appropriate due diligence calibrated according to the specificities of their business and the related risk exposure. It is for each operator to develop, implement, and routinely update an EU sanctions compliance programme that reflects their individual business models, geographic areas of operations and specificities and related risk-assessment regarding customers and staff.

2. What do you recommended in terms of due diligence to EU operators?

Last update: 5 April 2022

In our [Q&A on due diligence for business with Iran](#), we have recommended a risk-based approach that consists of risk assessment, multi-level due diligence and ongoing monitoring.

Due diligence may in particular consist in screening of beneficiaries of funds or economic resources against sanctions lists & adverse media investigations. Adverse media investigations refer to searches on the internet and news (media investigations) to find evidence that a contractual counterpart, even if not designated (so it passes the screening against the sanctions list), is actually controlled by a designated persons (e.g. news on local press that a company is controlled by a Syrian businessperson) (adverse).

3. The risk of circumvention of export bans via countries that have not joined the efforts of the EU and its partners is elevated. What is the European Commission doing to ensure that Russia does not evade sanctions in this way?

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Article 12 of [Council Regulation \(EU\) No 833/2014](#) provides that it is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions in the Regulation. Enforcing such provisions is first and foremost a matter for the national enforcement authorities and any tips or information regarding possible circumvention should be actively reported to them.

In line with this national enforcement competence, the Commission will liaise with the National Competent Authorities of the Member States if it receives information regarding possible circumvention. Finally, the Commission has recently launched an [EU whistle-blower tool](#) enabling the anonymous reporting of possible sanctions violations, including circumvention.

- 4. It can be very tricky for companies/investors to identify owners of companies in order to check whether any of these are sanctioned. This is especially relevant for Russian companies or funds as ownership is often hidden in holding companies, owned by other holding companies etc. Will the Commission provide guidance on what constitutes reasonable efforts on part of companies to identify sanctioned parties in a company structure?**

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Assessing the beneficial ownership of a business counterpart is a due diligence duty. There is no one-size-fits-all model of due diligence. It may depend – and be calibrated accordingly – on the business specificities and the related risk exposure. It is for each operator to develop, implement, and routinely update an EU sanctions compliance programme that reflects their individual business models, geographic and sectoral areas of operations and related risk assessment. Such sanctions compliance programmes can assist in detecting red flag transactions that can be indicative of a circumvention pattern.

- 5. Is an EU bank required to screen its open account transactions for possible infringement of EU trade restrictions? If so, how must this screening be organised operationally?**

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Compliance with trade-related sanctions (e.g. dual-use exports, oil exploration equipment, high tech goods and technology) is not limited to banks processing the related payments but is also the responsibility of operators initiating such trade (e.g. exporters, brokers...). Banks can tailor their compliance programmes to specific risks identified in relation to certain transactions or parties involved, such calibration being then more risk-based than systematic.

- 6. If the assets of a person listed under [Council Regulation \(EU\) No 269/2014](#) were**

transferred to an EU operator before that person’s listing, can the operator be held accountable for having accepted them?

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If a certain structure was created in order to assist a person to evade the effects of its possible future listing, then current, ongoing participation in that structure can amount to circumvention of the restrictive measures, if done knowingly and intentionally. Circumvention is prohibited under Article 9 of [Council Regulation \(EU\) No 269/2014](#). Article 9 can be breached even if the freezing of assets is not discontinued and no assets reach or benefit the now-listed person; mere participation in a structure created for that purpose can be considered as a breach. In what regards the cumulative requirements of knowledge and intent, see also the jurisprudence in [Case C-72/11](#), Afrasiabi and Others, in particular that these requirements are met where the operator “deliberately seeks that object or effect or is at least aware that its participation may have that object or that effect and accepts that possibility”.

7. Could you clarify how the violations of articles 12 of Council Regulation 833/2014 and 1m of Council Regulation 765/2006, both concerning circumvention, are being determined in practice and which authority is responsible for undertaking such a task?

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Regarding the topic of circumvention, both Articles 12 of Council Regulation (EU) No. 833/2014 and Art. 1m of Council Regulation (EU) No. 765/2006 prohibit to, knowingly and intentionally, participate in activities the object or effect of which is to circumvent prohibitions in the Regulations. Thus, the threshold is acting with knowledge and intent to circumvent a prohibition included in the Regulations. This provision applies on the territory of the EU and to all EU persons.

It falls within the competencies of the national competent authority of the EU Member State in question to decide on possible cases of circumventions within their jurisdiction. In addition, enforcing sanctions provisions is first and foremost a matter for the national enforcement authorities and any tips or information regarding possible circumvention should be actively reported to them.

For specific questions, we advise to contact the relevant national competent authority. You find a list of national competent authorities for each EU Member State here: https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/national-competent-authorities-sanctions-implementation_en.pdf.