

SALE OF SECURITIES

FREQUENTLY ASKED QUESTIONS – AS OF 14 JUNE 2022

- 1. Does the prohibition in Article 5f of [Council Regulation 833/2014](#) apply to transferable securities issued by private companies as well or should it should be interpreted as only referring to transferable securities issued by public companies?**

Last update: 2 May 2022

Issued on: 2 May 2022

The prohibition laid down in Article 5f of [Council Regulation 833/2014](#) applies to transferable securities issued by both public and private companies after 12 April 2022. The purpose of this provision is to avoid the circumvention of other refinancing prohibitions laid down in the Regulation by limiting the access of any natural or legal person, entity or body in Russia to securities denominated in the official currency of a Member State.

- 2. Does the prohibition in Article 5f of [Council Regulation 833/2014](#) cover the sale of transferable securities to non-Russian entities that are owned by a Russian national or natural person residing in Russia?**

Last update: 2 May 2022

Issued on: 21 March 2022¹

The prohibition in Article 5f only applies to the sale of transferable securities to Russian nationals or natural person residing in Russia or any legal person, entity or body established in Russia. Strictly speaking, it does 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, 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

¹ Previous version (21 March 2022) stated : “The prohibition set out in Article 5f only applies to the sale of such transferable securities to Russian nationals or natural person residing in Russia or any legal person, entity or body established in Russia. It does not apply to an entity established in the EU owned by Russian citizens but registered in a country other than Russia. However, the provision should be read in conjunction with article 12 which prohibits EU operators from knowingly and intentionally circumventing the measures in the Regulation. The purpose of the measure is to limit access to Russian entities and persons in Russia and to avoid circumvention of other refinancing prohibitions which are set out in the same Regulation.”

diligence to make sure that they are not selling securities denominated in the official currency of a Member State to an entity owned by a Russian national or a natural person residing in Russia.

- 3. Does the prohibition in Article 5b of [Council Regulation 833/2014](#) apply to the sale of units in collective investment undertakings whose portfolio includes, after 12 April 2022, newly issued transferable securities denominated in an official currency of a Member State, regardless of the percentage they represent of the fund's assets?**

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This prohibition applies irrespective of the percentage of transferable securities issued after 12 April 2022 denominated in an official currency of a Member State. In other terms, any ownership, investment or "exposure" to transferable securities issued after 12 April 2022 by units in collective investment undertakings brings such units in collective investment undertakings within the scope of the prohibition.

- 4. Where a unit-holder owns units in a collective investment undertaking with exposure to transferable securities within the scope of Article 5f(1), does the prohibition in Article 5f(1) cover the situation where the unit-holder sells its units to persons in scope of the prohibition, i.e. where the units are already pre-existing?**

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Yes, it covers this situation, if the units provide exposure to transferable securities denominated in any official currency of a Member State issued after 12 April 2022.

- 5. Does the prohibition in Article 5f(1) also cover the sale of shares of collective investment undertakings, which could be the case for alternative investment funds?**

Last update: 2 May 2022

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Yes, it does.

6. Is the allocation of free shares by EU banks to their Russian employees as part of variable remuneration schemes prohibited under Article 5f of Council Regulation 833/2014?

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As part of a compensation scheme, the transaction does not amount to a sale of the securities. As such, it would not fall within the scope of Article 5f.

7. Do members' shares of mutualist or cooperative banks fall under the scope of Article 5f of Council Regulation 833/2014?

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Insofar as members' shares of mutualist or cooperative banks are not negotiable on capital markets, they do not qualify as 'transferable securities' in the meaning of Article 1(f) of 833/2014. Therefore, they are not within the scope of Article 5f of Council Regulation 833/2014.

8. Is there sufficient legal basis for refusing to approve a prospectus if an NCA discovers a prohibited relationship and suspects a possible infringement of the sanctions' legislation?

Last update: 23 May 2022

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Issuing a prospectus is a way of making funds and economic resources available. It is considered that an infringement of EU sanctions, in particular pursuant to Council Regulation (EU) No 833/2014, Council Regulation (EC) No 765/2006 and Council Regulation (EU) No 269/2014, can constitute sufficient legal basis for the relevant national competent authority to refuse the approval of a prospectus. It is for the national competent authority, as enforcement authority, to decide whether that decision is appropriate in order to implement the regulations on sanctions.

In the event of a suspicion of infringement, it is considered that the relevant national competent authority should request further information from and ask written confirmation by the issuer of the securities, which are the subject matter of the prospectus, that no infringement of the sanctions' legislation is taking place, in order to be satisfied that it can approve the prospectus.

9. To what extent are NCAs required to supervise sanctions relating to the indirect flow of funds to sanctioned entities and persons arising from transactions involving an approved prospectus?

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The Council Decision is binding on all Member States and the Council Regulations on sanctions are directly binding in their entirety and directly applicable in all Member States. They apply to all persons subject to the jurisdiction of a Member State. That includes individuals, legal persons incorporated under the law of a Member State, and persons doing business in the EU.

The Council Regulations give effect in EU law to the measures laid down in the Decision. Pursuant to Articles 8 and 9 of Regulation 833/2014, Articles 9 and 9a of Council Regulation (EC) No 765/2006 and Articles 15 and 16 of Council Regulation (EU) No 269/2014, Member States shall lay down the rules on penalties applicable to infringements of the provisions of those Regulations, take all measures necessary to ensure that they are implemented and designate the competent authorities for the purposes of those Regulations.

It is therefore considered that where the relevant competent authorities believe that any infringement or circumvention of the sanctions occurs, they should take appropriate action.

10. In case of factoring financing, is a bank that bought a business invoice from a listed person (the creditor) allowed to receive the payment of the invoice from the EU debtor?

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In case of factoring financing, there are 3 potential scenarios to consider:

- The EU bank bought the invoices before the listing: it is possibly acting in good faith, but national competent authorities shall pay attention to a possible risk of circumvention, which is prohibited according to Article 9 of Council Regulation 269/2014 and Article 12 of Council Regulation 833/2014. That would be the case if the bank bought the invoices acting knowingly and intentionally, in tandem with the listed person. Also, if not all formalities of the factoring transaction were concluded before the listing, the EU bank would be prevented from concluding the remaining formalities and consequently from recovering from the debtor
- The EU bank bought the invoices after the listing: there is then a direct breach of Article

2(2) of Council Regulation 269/2014 by the bank and, when it comes to the EU debtor, a higher likelihood of breach (indirectly making funds available to the listed person) or circumvention.

- The Non-EU bank bought the invoices before or after the listing: there is no jurisdiction against the bank if it is not subject to EU sanctions (see jurisdiction clauses). However, where the invoices were bought by the non-EU bank after the listing, the EU debtor would be prevented from paying the non-EU bank if that would make available, directly or indirectly, funds to the listed person.