

CENTRAL SECURITIES DEPOSITORIES

RELATED PROVISION: ARTICLE 5e, ARTICLE 5f OF COUNCIL REGULATION 833/2014
FREQUENTLY ASKED QUESTIONS – AS OF 27 OCTOBER 2022

- 1. A central securities depository (CSD) is contacted after 12 April 2022 by the issuer of a new security. That issuer submits a list of investors. In the process of verification of the issuance, the CSD determines that one or more of the investors is a person to whom the CSD is not allowed to provide services under the prohibition in Article 5e of [Council Regulation \(EU\) no. 833/2014](#). In order to successfully register the entire issuance in the depository, the CSD would also have to enter all the securities, including the securities purchased by a person to whom it is not allowed to provide the service. How should the CSD handle the situation in order to comply with Article 5e of [Regulation \(EU\) no. 833/2014](#)?**

Last update: 26 April 2022

The CSD should coordinate with the issuer in order to ensure that it will not register the securities purchased by a person to whom it is not allowed to provide services.

- 2. Is this correct that the prohibition in Article 5e of [Council Regulation \(EU\) no. 833/2014](#) does not apply to existing securities for which, until 12 April 2022, the central securities depository provided services to Russian citizens or natural persons residing in Russia or to all legal persons, entities or bodies established in Russia?**

Last update: 26 April 2022

It is correct. The prohibition only applies in respect of transferable securities issued after 12 April 2022. The prohibitions set out in other articles of [Council Regulation \(EU\) no. 833/2014](#) should however be considered on a case by case basis, for instance those in Articles 5 and 5b. Practical issues relating to the fungibility of securities which are outside the prohibition with securities subject to the prohibition may arise. Market participants bear the onus of ensuring that any trade they enter into do not involve the banned securities.

- 3. Is it correct that the prohibition in Article 5e of [Council Regulation \(EU\) no. 833/2014](#) does not apply to a situation in which, after 12 April 2022, a Russian citizen or natural person residing in Russia or a legal person, entity or body established in Russia would request the CSD to provide new services for existing securities issued before 12 April 2022?**

Last update: 26 April 2022

It is correct. The prohibition only applies in respect of transferable securities issued after 12 April 2022. The prohibitions set out in other articles of [Council Regulation \(EU\) no. 833/2014](#) should however be considered on a case by case basis, for instance those in Articles 5 and 5b. Practical issues relating to the fungibility of securities which are outside the prohibition with securities subject to the prohibition may arise. Market participants bear the onus of ensuring that any trade they enter into do not involve the banned securities.

- 4. How can a CSD apply Article 5e of [Council Regulation 833/2014](#) where the securities accounts opened with the CSD do not identify the underlying clients but only the custodian?**

Last update: 26 April 2022

The CSDs shall use all relevant information that is available to them to ensure they can identify whether the underlying clients are Russian nationals or natural persons residing in Russia or legal persons, entities or bodies established in Russia. To the extent possible, CSDs shall also cooperate with their participants in that respect.

- 5. On what basis should CSDs performing initial recording of securities (notary service) verify on whose behalf the securities were issued? Can CSDs base their verification on the issuer's declaration/statement?**

Last update: 26 April 2022

The CSDs shall use all relevant information that is available to them to ensure they can identify whether the underlying clients are Russian nationals or natural persons residing in Russia or legal persons, entities or bodies established in Russia. To the extent possible, CSDs shall also cooperate with their participants in that respect.

6. **For CSDs with end-investor accounts, i.e., where the beneficial holder of securities may hold securities account directly with the CSD, will the restrictive measures apply to the CSDs provision of services to such securities account holders even though they are not participants?**

Last update: 26 April 2022

Yes, the restrictive measures will apply. Article 5e does not limit to the provision of services to participants.

7. **For CSDs with end-investor accounts, will the restrictive measures prohibit the CSD from opening a new beneficial holder securities account after 12 April 2022 in respect of a person or entity covered by the prohibition laid down in Article 5e of [Council Regulation 833/2014](#)?**

Last update: 26 April 2022

Yes, since this would amount to providing a service mentioned in the Annex of [Regulation \(EU\) No 909/2014](#) to a person covered by the prohibition laid down in Article 5e of [Council Regulation 833/2014](#).

8. **For CSDs with end-investor accounts, will the restrictive measures prohibit the CSD from opening a new nominee (omnibus) securities account after 12 April 2022 in respect of a person covered by the prohibition laid down in Article 5e of [Council Regulation 833/2014](#)?**

Last update: 26 April 2022

Yes, since this would amount to providing a service mentioned in the Annex of [Regulation \(EU\) No 909/2014](#) to a person covered by the prohibition laid down in Article 5e of [Council Regulation 833/2014](#).

9. **Does the term "any services" in Article 5e of [Council Regulation 833/2014](#) relate to core services only or also to ancillary services? Does Article 5e of [Council Regulation 833/2014](#) also apply to ancillary services provided by CSDs under separate Regulations, for instance as trade repositories under [Regulation \(EU\) No 648/2012](#) or [Regulation \(EU\) 2015/2365](#), providing services as an ARM or issuing LEI codes?**

Last update: 26 April 2022

As long as the service is defined in the Annex of [Regulation \(EU\) No 909/2014](#), it falls under the prohibition laid down in Article 5e of [Council Regulation 833/2014](#). This may go beyond 'core services'.

10. May CSDs provide services to persons covered by the restrictions laid down in Article 5e of [Council Regulation 833/2014](#) in respect of corporate actions, such as the issuance of new shares in a security that was issued in the CSD before 12 April 2022?

Last update: 26 April 2022

Providing services related to the issuance of new shares would amount to providing services in respect of new transferable securities. After 12 April 2022, CSDs shall not provide such services.

11. Does Article 5e of [Council Regulation 833/2014](#) prohibit the CSD from granting access to a new participant, if this participant is a person or entity covered by the prohibition laid down in Article 5e of [Council Regulation 833/2014](#)?

Last update: 26 April 2022

Article 5e does not *per se* prohibit this to the extent that the CSD provides services only in respect of transferable securities issued before 12 April 2022. However, note that Article 5 of [Council Regulation \(EU\) No 833/2014](#) may prohibit this in respect of certain designated persons and entities in Annexes III, V, VI, XII, XIII. By granting access to a new participant, a CSD would indeed be considered as, directly or indirectly, providing investment services for or assistance in the issuance of, or otherwise deal with transferable securities.

12. Do the restrictive measures in Article 5e of [Council Regulation 833/2014](#) apply to nationals of a member state having a temporary or permanent residence permit in Russia?

Last update: 26 April 2022

No, they do not. Paragraph 2 of Article 5e expressly provides that paragraph 1 shall not apply to nationals of a Member State.

13. Is the Russian National Securities Depository (NSD) considered to be subject to the EU Sanction regime?

Last update: 16 June 2022

The National Settlement Depository has been included in the list of entities which need to have their funds and economic resources frozen, in Annex I of Council Regulation 269/2014.

14. Should we apply a different approach to instructions to transfer securities with no cash exchange (i.e. free of payment) compared to instructions to transfer securities against payment? Would there be a difference if the Russian party would be receiving securities or cash (depending on whether the instructions is to buy or to sell securities)?

Last update: 26 April 2022

The only difference regarding instructions to transfer securities with no cash exchange (i.e. free of payment) compared to instructions to transfer securities against payment is the application of Article 5b of [Council Regulation \(EU\) No 833/2014](#) in the context of instructions to transfer securities against payment.

However, payments made by participants to a CSD for the settlement of transactions that are not affected by the restrictive measures laid down in [Council Regulation \(EU\) No 833/2014](#) should be considered as benefiting from the exemption set out in Article 5b(3). If the counterparty to the transaction who receives the cash payment is a Russian national or natural persons residing in Russia, or legal persons, entities or bodies established in Russia, the provision in Article 5b of [Council Regulation \(EU\) No 833/2014](#) shall apply to any transfer of the cash out of the account where it was credited further to the settlement of the transaction.

15. Is the acceptance of deposits from Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia allowed for CSDs, if the total value of deposits of the natural or legal person, entity or body receiving the deposit exceed exceeds 100 000 EUR per credit institution (Article 5b)? Does the prohibition in Article 5b of [Council Regulation 833/2014](#) cover income payments linked to non-sanctioned securities above the value of EUR 100 000 collected/received on behalf of sanctioned customers?

Last update: 26 April 2022

The prohibition laid down in Article 5b applies to CSDs as well. If the counterparty to the transaction is a Russian national or natural persons residing in Russia, or legal persons, entities or bodies established in Russia, Article 5b shall apply to any transfer of the cash out of the account where it was credited further to the settlement of the transaction. Note that payments made by participants to a CSD for the settlement of non-prohibited cross-border trade in goods and services under [Council Regulation \(EU\) No 833/2014](#) should nonetheless be considered as benefiting from the exemption laid down in Article 5b(3).

The prohibition also covers income-payment linked to non-sanctioned securities like dividends.

16. Is the settlement of transactions executed on securities targeted by Articles 5(1) to 5(4) of [Council Regulation \(EU\) No 833/2014](#) allowed? Are securities that have been issued between the 1st of August 2014 and 12 of April 2022 covered?

Last update: 26 April 2022

CSDs must comply with the restrictions laid down in Articles 5(1) to 5(4). The settlement of securities issued before 26 February 2022 is prohibited for securities issued by entities listed in the Annexes, when they have a maturity exceeding 90 days and were issued between 1 August 2014 and 12 September 2014, as well as for securities with a maturity exceeding 30 days if issued between 12 September 2014 and 12 April 2022. The settlement of these transactions would indeed constitute investment services.

17. Does Article 5e of [Council Regulation \(EU\) No 833/2014](#) only cover transactions on the primary market or also on the secondary market?

Last update: 26 April 2022

Transactions on both the primary and secondary markets are covered by Article 5e.

18. While the prohibition on listing in Article 5(5) of [Council Regulation \(EU\) No 833/2014](#) apply in respect of any legal person, entity or body established in Russia and with over 50 % public ownership, Article 5(e) on the provision of services by Union central securities depositories apply in respect of any issuer who is a Russian national or natural person residing in Russia or any legal person, entity or body established in Russia. A practical consequence is that while nonstate-owned Russian companies could apply for being listed on a trading venue as per Article 5(5), this is in fact rendered impossible by the fact that they may not have their securities registered in a CSD. Is this a correct interpretation?

Last update: 26 April 2022

The prohibition in Article 5e indeed applies to services provided by CSDs to any Russian national or natural person residing in Russia or any legal person, entity or body established in Russia in relation to transferable securities issued after 12 April 2022.

CSDs are therefore prohibited from providing services to Russian issuers in relation to securities issued after 12 April 2022. This limits de facto the possibility for Russian issuers to proceed with the initial recording of securities in the EU.

19. Under Article 5e of Regulation 833/2014, is our understanding correct that an EU person majority owned or controlled by a person incorporated in Russia is not subject to a general restriction on services by central securities depositories (CSDs) in relation to any transferable securities issued after 12 April 2022? More specifically, would a special purpose vehicle (SPV) established in an EU Member State but owned by a Russian corporate be subject to the restriction under Article 5e?

Last update: 26 April 2022

Strictly speaking, EU persons are indeed not the target of the prohibition to provide CSD services under Article 5e of Council Regulation 833/2014. However, in the present case, it is highly likely that the provision of services by the CSD would in fact benefit the Russian entity, as it owns the SPV established in the EU. This would be the case for instance if the SPV would issue securities on behalf of its Russian parent. As a result, such a scheme would have the effect of circumventing the restriction under Article 5e, something that it is prohibited under Article 12 of Council Regulation 833/2014.

20. In a situation where a European investment firm owns equities of non-Russian issuers that are currently held in the Russian National Securities Depository (NSD), is the transfer of such equities from the NSD to an EU-based central securities depository allowed under Council Regulation 833/2014?

Last update: 30 August 2022

According to Articles 5e and 5f, it is prohibited for EU CSDs to provide any services for transferable securities issued after 12 April 2022, to sell transferable securities denominated in any official currency of a Member State issued after 12 April 2022 or units in collective investment undertakings providing exposure to such securities, to any Russian national or natural person residing in Russia or any legal person, entity or body established in Russia.

Articles 5e applying to all transferable securities issued after 12 April 2022 and Article 5f applying to all transferable securities denominated in any official currency of a Member State issued after 12 April 2022, the fact that the equities at stake are issued by non-Russian nationals does not affect the application of these Articles.

However, EU CSDs should assess if, in practice, the transfer of such equities would characterise the provision of CSD services (either core or ancillary) or the sale of transferable securities to Russian national or natural person residing in Russia or any legal person, entity or body established in Russia. In particular, EU CSDs must assess if the NSD is only acting as a custodian in respect of these securities, or if it is providing some services like central maintenance services or operating securities accounts in relation to the settlement service, as

mentioned in Sections A and B of the Annex to CSDR, which could imply that after the transfer, EU CSDs would also provide such services to the clients.

In that case, EU CSDs must use all relevant information that is available to them to ensure they can identify whether the underlying clients are Russian nationals or natural persons residing in Russia or legal persons, entities or bodies established in Russia. To the extent possible, CSDs must also cooperate with their participants in that respect.

In parallel, NSD is subject to an asset freeze and a prohibition to make funds or economic resources available to it or for its benefit, under Council Regulation (EU) 269/2014. Therefore, please also refer to FAQ 21.

Please also note that Article 5b, prohibiting to accept any deposits exceeding EUR 100 000 from Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia or legal persons, entities or bodies 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 not applicable in that situation because Article 1k excludes securities from the definition of deposits.

21. Is it possible to make a transaction through the Russian National Securities Depository (NSD)?

Last update: 12 August 2022

The inclusion of the NSD in Annex I to Council Regulation (EU) No 269/2014, coupled with Article 2(2) of that legal act, implies it is not possible anymore to instruct any transaction which may, directly or indirectly, result in any charge payable to the NSD or any other funds or economic resources to or for the benefit of NSD. Therefore, all activities which involve, directly or indirectly, to pay a fee to NSD or to make available to or for its benefit any other funds or economic resources, are prohibited. Under Article 2(2) of Council Regulation (EU) No 269/2014, activities may continue that are not otherwise subject to sanctions and where NSD does not receive or benefit from fees or other funds or economic resources as a direct or indirect consequence. Note that ‘funds’ and ‘economic resources’ are defined broadly in Council Regulation (EU) No 269/2014.

In parallel, all assets belonging to, owned, held or controlled by NSD must be frozen, as per Article 2(1) of Council Regulation (EU) No 269/2014. That includes funds as well as economic resources coming from it. See in this regard the Commission opinion of 4 July 2019 which states, in a similar scenario, that funds of a non-listed person that are deposited in or even just transferred to a listed bank can be considered to be “held”, albeit temporarily, by the listed bank in question. Article 2(1) does not require a minimum duration for the possession of the funds by the listed entity. This means that, in respect of incoming transfers from NSD, it will be possible to request from the relevant national competent authority an authorisation to release of those

funds, under such conditions as they deem appropriate, under the derogation envisaged in Article 6 of Council Regulation (EU) No 269/2014 concerning a payment by a listed person under a contract concluded before the date on which that person was listed.

22. Is it possible to convert Depositary Receipts (DR) of Russian issuers into the underlying shares?

Last update: 27 October 2022

The Commission is aware that Russia is likely to require the termination of DR programs and the conversion of DRs. Such conversion implies that DR holders are required to become the direct holders of the underlying stock, thus forcing direct participation of foreign investors in the Russian market and exposing them to the application of Russian law. The conversion is automatic if the DRs are held in Russian custodians, and forced as of 24 November 2022 if the DRs are held in non-Russian custodians.

The conversion of DRs would likely involve NSD, an entity listed in Annex I to Council Regulation (EU) No 269/2014. As a result of this listing, all funds and economic resources belonging to, owned, held or controlled by NSD must be frozen, and no funds or economic resources can be made available to it, whether directly or indirectly. See also FAQ 21.

When NSD is involved in the conversion of DRs, even if certain fees are formally waived, it is possible that the conversion results in directly or indirectly making available funds and economic resources to or for the benefit of NSD (e.g. from settlement fees charged to third parties) – which is prohibited.

Nevertheless, it should be noted that Article 6b(5) of Council Regulation (EU) No 269/2014 enables NCAs to authorise the release of certain frozen funds belonging to NSD, or the making available of certain funds or economic resources to NSD, if these funds or economic resources are necessary for the wind-down by 7 January 2023 of operations involving NSD.

Either way, for conversion to take place, Russian law requires the opening of a bank account in Russia. Even if Russian banks accept this operation, the funds would likely remain blocked on a type C account. At the same time, a number of Russian banks are listed in Annex I to Council Regulation (EU) No 269/2014, or affected by the measures in Council Regulation (EU) No 833/2014. Altogether, this means that in practice it might be impossible for EU investors to comply with Russian requirements for conversion and subsequently access their securities.