

INSURANCE AND REINSURANCE

*RELATED PROVISION: ARTICLE 3c; ARTICLE 3m; ARTICLE 3n OF COUNCIL
REGULATION 833/2014*

FREQUENTLY ASKED QUESTIONS – AS OF 21 DECEMBER 2022

- 1. A Russian insurance company insures an aircraft or an engine of an EU policy holder and gets reinsurance from an EU reinsurer. Is the reinsurance provided by the EU reinsurer to the Russian insurer prohibited under Article 3c(2)?**

Last update: 3 May 2022

Articles 3c(2) prohibits an EU reinsurance company to provide its services to a Russian person or entity. The EU operators affected must take the necessary measures in light of this situation.

- 2. Do the prohibitions in Article 3c(2) extend to the provision of insurance and reinsurance in respect of coverage of a non-Russian airline which conducts flights into and out of Russia?**

Last update: 3 May 2022

Article 3(c)(2) contains a specific prohibition to provide re/insurance in relation to an aircraft. This is different from the prohibitions on financial assistance in Article 3c(4) as well as Articles 2 and 2a. Insurance in relation to a sale, supply, transfer or export is covered under the prohibition in article 3c(4), since insurance/re-insurance are part of the notion of “financing and financial assistance” as per Art 1(o).

The provision of re/insurance in the context of an international flight in and out of Russia by a non Russian airline which does not have a Russian re/insurance is not covered by the prohibition as it is not for ‘use in Russia’ but part of the normal international services provided by an airline. The wording ‘for use in Russia’ is a standard formulation used to avoid the circumvention of the measures as it ensures that products and services sold/supplied/provided to third country persons, but to be used in the country subject to sanctions, are also prohibited.

- 3. Can these prohibitions affect the provision of insurance and reinsurance by EU insurers/reinsurers to the benefit of other EU parties?**

Last update: 3 May 2022

Nothing in Council Regulation 833/2014 prohibits the provision of insurance and reinsurance by EU insurers/reinsurers to the benefit of other EU parties, even after 26 February 2022, as long as the goods and technology in Annex XI under insurance/reinsurance are not intended for a person in Russia or for use in Russia.

4. When items listed under Annex XI of Council Regulation 833/2014 are being retained in Russia against the will of their non-Russian owner, is it prohibited to provide insurance and reinsurance for them, or to execute an insurance settlement with Russian insurers?

Last update: 21 December 2022

Insurance and reinsurance of the goods and technology in Annex XI are not “for a person in Russia or for use in Russia”, where it is provided for the benefit of the non-Russian owner of those goods and not for the benefit of the actual user or operator of the goods. This applies also when the items remain in Russia against the will of their non-Russian owner and despite the latter’s demand for their return (including ‘lost aircraft’).

In such case, it is not prohibited for the non-Russian owner of the items listed in Annex XI to execute an insurance settlement with a Russian entity leading to the payment of the market value of the lost aircraft by the latter, provided that: (i) the lost aircraft were in Russia before the entry into force of Article 3c of Council Regulation 833/2014, on the basis of a contract predating such entry into force; (ii) the subscription of the applicable insurance policy predates such entry into force; (iii) the owner promptly requested the return of the items after the entry into force of Article 3c and did anything reasonably possible to repossess the relevant items but was unsuccessful; (iv) no additional goods prohibited by Article 3c or any other sanctions provisions will be made available to a natural or legal person, entity or body in Russia or for use in Russia; and (v) no sanctioned person is involved in, or may draw any benefit from, the execution of the settlement.

5. Do these prohibitions extend to the provision of insurance or reinsurance of any parts or components for the purposes of conducting repairs to an aircraft, which conducts flights, if such repair takes place in Russia?

Last update: 3 May 2022

Where the prohibitions applies to the re/insurance of goods and technology, this includes parts or components that fall under the scope of Annex XI.

The provision of re/insurance in the context of an international flight in and out of Russia by a non Russian airline which does not have a Russian re/insurance is not covered by the prohibition as it is not for ‘use in Russia’ but part of the normal international services provided by an airline. This is true also for the re/insurance of any parts or components for the purposes of conducting repairs to an aircraft, where a non-Russian airline conducts flights into and out of Russia.

6. Do these prohibitions extend to an EU company sending an EU vessel to load licit cargo into a Russian port (e.g., normal goods, humanitarian goods, food)?

Last update: 3 May 2022

The prohibitions in Article 3c apply to insurance and reinsurance related to aircrafts (see Annex XI). The prohibitions in Articles 2 and 2a do not prevent airplanes, vessels and trucks from leaving or returning to the Union as part of normal commercial activities, as such movement does not constitute a “sale, supply, transfer or export”. The prohibition on financing and financial assistance in Articles 2 and 2a cover insurance activities (see Article 1(o)) but only in so far as they relate to the sale, supply, transfer or export of the listed goods.

7. Do the prohibitions in Article 3c also apply to the insurance of transshipments of aircrafts and aircraft parts in EU territorial waters and airspace?

Last update: 3 May 2022

Insurance in relation to a sale, supply, transfer or export is covered under the prohibition in Article 3c(4), since insurance/re-insurance are part of the notion of “financing and financial assistance” as per Article 1(o). “Transfer” is a broader concept than “transport”, covering a wide range of operations, not only the movement of goods through customs controls, but also the transport of goods, including the loading, transport, and trans-shipment of goods. Accordingly, the insurance of a transit via the EU territory of goods subject to sanctions is not allowed.

8. How does the wind down period in Article 3c paragraph 5 pertain to insurance services?

Last update: 3 May 2022

The wind down provision applies to subsections 1 and 4 only. Provided an insurance contract was concluded before 26 February 2022, insurance services for the sale, supply, transfer or export of goods and technologies listed in Annex XI are not subject to restrictions until 28 March 2022. On the other hand, the prohibition of insurance and reinsurance in subsection 2 applies as from 26 February 2022.

9. Council Regulation (EU) 2022/328 amended Regulation (EU) 833/2014 and provided a definition of “financial assistance” in Article 1(o), does this apply to all measures in respect to insurance?

Last update: 3 May 2022

Yes, the definition of “financing or financial assistance” contained in Article 1(o) applies throughout Regulation (EU) 833/2014.

10. Article 2 prohibits the provision of financial assistance for the sale, supply, transfer or export of dual-use goods and technology, unless authorised by the national competent authority. By whom the authorisation should be requested: the exporter (i.e. the insured), the insurer or both?

Last update: 3 May 2022

The authorisation should be requested by the insurer after consulting the exporter. For more information, you can consult the dedicated frequently asked questions on financial assistance and exports related matters.

11. Council Regulation (EU) 269/2014 contains individual financial measures against a number of persons and entities. Should EU re/insurance operators cease to provide insurance services to these persons and entities? How should they proceed?

Last update: 26 August 2022

Persons and entities listed under Regulation 269/2014 are subject to financial sanctions that consist of an asset freeze and a prohibition to make funds and economic resources available to them. They are listed in Annex I to the Regulation. These sanctions come into force from the date the person or entity is listed. This is distinct from the sectorial measures provided for in Regulation (EU) 833/2014, which contains certain prohibitions regarding insurance.

The prohibition to make funds and economic resources available to a listed person or entity means that an EU operator cannot put any funds or economic resources at the disposal of a listed person, directly or indirectly, whether by gift, sale, barter or any other means, including the return of the listed person's own resources. The consequence of a listing is that the provision of services to the listed person, including insurance, should cease. It is up to the EU operator to take the measures most appropriate in light of the situation.

Exceptionally, an EU operator could proceed with a payment to the frozen account of a listed person provided such funds are also frozen and provided the payment is due under a contract concluded before the date at which the person was listed (See Article 7).

It should also be noted that, as a derogation from the restrictive measures, Article 4(1)(a) of Regulation 269/2014 enables the NCA to allow the release of frozen funds, or the making available of certain funds or economic resources to the listed person, if these funds/resources are necessary to satisfy the basic needs of listed persons, including insurance premiums.

12. Is it allowed to reinsure the export receivables on the basis of export/insurance contracts, concluded before 26 February 2022 with large companies?

Last update: 1 June 2022

Article 2e paragraph 1(a) exempts all binding financial or financial assistance commitments established prior to 26 February 2022. Provided that the binding commitment has been established prior to that date, it is allowed to provide public financing or financial assistance for trade with, or investment in, Russia, irrespective of the dimension of the company.

13. Can an EU insurer continue to provide insurance to a vessel carrying Russian oil?

Last update: 22 June 2022

After a wind down period of 6 months, during which contracts signed before 4 June 2022 can still be executed until 5 December, EU operators will be prohibited from insuring and financing the maritime transport of goods set out in Annex XXV to third countries.

14. Does the prohibition to provide technical assistance, financing and financial assistance set out in Article 3n apply to all modes of transport of oil to third states?

Last update: 22 June 2022

No, it only applies to maritime transport and does not extend to pipeline transport. This intention is clear from recital 15 of Council Regulation (EU) 2022/879 and the reference to the prohibition to insure transport including through ship-to-ship transfers in paragraph 1 of Article 3n.

15. Can an EU entity provide insurance or reinsurance for a non-EU or EU vessel carrying Russian oil? I.e. could an Indian ship carrying crude from Russia to India get insurance from an EU firm?

Last update: 22 June 2022

No, unless this insurance results from a contract signed before 4 June 2022 and executed until 5 December 2022.

16. Are there any notification requirements which apply to insurers or reinsurers under Article 3m and 3n?

Last update: 22 June 2022

No, the notification requirements, which are set out in Article 3m do not apply to insurers/reinsurers. There are no notification requirements in Article 3n.