

AVIATION

RELATED PROVISIONS: ARTICLE 3c; ARTICLE 3d OF COUNCIL REGULATION 833/2014
FREQUENTLY ASKED QUESTIONS – AS OF 3 MARCH 2023

1. Is a non-Russian operator that operates a Russian registered aircraft affected by the measures?

Last update: 21 March 2022

Yes – the measures prohibits flights of not just Russian air carriers, but also of all Russian registered aircraft, regardless of operator.

2. Does this ban concern also private (i.e. non-commercial) flights of aircraft owned or rented by Russian citizens or Russian companies?

Last update: 21 March 2022

Yes, also private aircraft are included in the ban. This means that also e.g. private business jets are banned.

3. Does this ban concern EU or third-country registered aircraft which are rented by Russian citizens?

Last update: 21 March 2022

Yes.

4. Our company has been requested to provide a service but we are not sure whether it is covered by the new measures. What are our responsibilities?

Last update: 21 March 2022

In case of doubt, you can always contact the competent authorities of the MSs or the European Commission.

But, it is important to keep in mind that Article 12 of Council Regulation (EU) No 833/2014, as amended by Council Regulation (EU) 2022/334, on 28 February 2022, states that it is prohibited to participate in activities the object or effect of which is to circumvent prohibitions in this Regulation.

Moreover, companies are also recommended to report attempts of circumvention to the local authorities. Anyone can report sanctions violations to national authorities or the European Commission.

5. We have leased a non-Russian registered aircraft to a Russian operator. Can we fly the aircraft back from Russia?

Last update: 21 March 2022

If the leasing contract is cancelled to the effect that the aircraft is no longer operated or controlled by a Russian entity, it is not covered by the EU Sanctions and may return to the EU without problems.

It may also be returned under the exceptions provided for the Regulation with the specific and duly justified permission of the relevant Member State(s) even if the contract has not been cancelled.

6. How can we enforce the rules as regards “non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian natural or legal person, entity or body” since we do not know about the parties behind e.g. an EU registered private aircraft?

Last update: 21 March 2022

It is correct that in particular for overflights, immediate control and enforcement will be difficult. However, the States should brief their ramp check personnel to pay particular attention to this regulation, when checking aircraft that have landed on their territory. In addition to checking documents, the crew should be asked questions about passengers etc. It should also be kept in mind, and communicated to stakeholders, that any entity that is found to have breached the sanctions or participated or assisted in circumventing them may face legal consequences.

7. Does the ban cover just Member States own airspace, or also high-seas airspace controlled by the said Member State?

Last update: 21 March 2022

The Regulation applies to the territory of the Union.

High seas airspace is therefore not covered by the regulation. Only Member States own airspace is covered.

8. NOTAM text: We do not expect Russian Search & Rescue aircraft to operate in our airspace. Do we need to include this mention in the NOTAM?

Last update: 21 March 2022

It is better that each State publishes an identical NOTAM, to avoid any confusion about whether the EU MS are acting in a coordinated manner, or whether some MS might have different rules. If there are no SAR flights in one States airspace, then this mention remains a dead letter, but at

least it avoids confusion about having a common line in the EU.

9. What is the point of mentioning one-way returns? Is this not contradicting the legal text?

Last update: 21 March 2022

The mention aims to facilitate the return flights for aircraft owned by the EU leasing companies. Once the leasing contract is terminated by the leasing company, the aircraft is no longer affected by the ban and may be flown back but States may also authorise a return in accordance with Article 3d(3) of Council Regulation (EU) No 833/2014, as amended by Council Regulation (EU) 2022/334, on 28 February 2022, even if the contract has not been terminated yet.

10. Do we need to specifically authorise also humanitarian or SAR flights, or does this requirement apply only to leased flights?

Last update: 21 March 2022

The requirement for carrying a specific authorisation applies to all these flights. Otherwise an overflight might be able to circumvent the rules by simply claiming to be humanitarian flight.

11. Does the ban apply also in case of a person who is a dual citizen (e.g. has both Russian and EU passports)?

Last update: 21 March 2022

Yes, they remain citizens of Russia, even if they also hold a second passport from elsewhere.

Article 3d: (1) It shall be prohibited for any aircraft operated by Russian air carriers, including as a marketing carrier in code-sharing or blocked-space arrangements, or for any Russian registered aircraft, or for any non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian natural or legal person, entity or body, to land in, take off from or overfly the territory of the Union.

If a person holds RU passport (as well as any other passports /dual/multi citizenship), this person is to be treated as RU citizen for the purpose of Article 3d of this Regulation, for all cases of an ownership, chartering and control of aircraft, also when having the EU Member States residency.

It is up to the national authorities/operators to assess whether the operation is in line with the Regulation. All stakeholders should bear in mind a liability for the circumvention of the prohibition as foreseen in Article 12 of the Regulation.

12. Do these restrictions apply to Russian citizens having a permanent stay permit within the EU Member State as well?

Last update: 21 March 2022

Yes, they do.

13. Are repatriation flights carrying Russian citizens back to Russia allowed with aircraft that would be otherwise banned?

Last update: 21 March 2022

Genuine repatriation flights could be considered in the context of the Regulation. Measures to ensure that repatriation flights are genuine could be the following:

- The operator must demonstrate that the flight is genuinely a repatriation, and not just a regular scheduled flight that happens to have missed the start of the ban. E.g. a plane flying in empty to pick up pax;
- Passengers should be identified by the local consulate;
- The plane must only carry Russian citizens and residents without return flight or connecting flight outside Russia;
- Authorities must check every pax to determine genuine repatriation;
- A flight with just a handful of pax on board could be an indication that the flight is not genuinely a repatriation flight; same goes for a flight operated by private or business jet;
- Repatriation flights usually take place soon after the event in question; additional checks may be required when this is not the case.
- Authorities should also consider that repatriation could also take place through other flight connections and other modes of transport.

14. Do these restrictions apply also to Russian citizens owning EU legal persons that registered the aircraft in the EU Member State?

Last update: 21 March 2022

Yes they do.

Please note the wording in Article 3d, which says “or for any non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian natural or legal person”. The intention of this wording is to avoid the possibility of circumventing the rules by some legal construct.

15. Do these restrictions apply also to an aircraft that has been in maintenance in the EU and would now return to Russia?

Last update: 21 March 2022

Yes. A maintenance return flight would not qualify as a humanitarian flight or one that is

compatible with the objectives of this Regulation.

16. What is the process to coordinate with the Network Manager for flights to which derogations are issued?

Last update: 21 March 2022

To ensure that the Network Manager can handle all information related to derogations, the following process should be used until further notice:

- Operators need to seek derogation (including humanitarian¹) from the competent authority of each State they wish to fly to/over/from. This is applicable for flights intended in any EU State, as well as for flights intended in any additional State that has banned flights via NOTAM. An overview of the NOTAMs issued for the Eurocontrol Network Manager (NM) area in relation to the Ukraine crisis can be found in the NM NOP portal
<https://www.public.nm.eurocontrol.int/PUBPORTAL/gateway/spec/index.html>
- Once all necessary approvals have been received, and minimum 1 hour before the flight plan is filed, contact the NM Operations Centre (NMOC) Operations Manager (OM) via email to inform of the flight for which the necessary authorisations have been received. Please include c/s, ADEP, ADES and EOBT in the email (to: nm.om@eurocontrol.int; cc: nm.ifps.spvr@eurocontrol.int). The NMOC OM will then ensure that the flight plan is not rejected by the NM system.
- The flight plan must be filed with a remark: Authorisation received from ... (listing all the relevant/approving States within the NM area)

17. Can request for diplomatic flights be authorised?

Last update: 21 March 2022

Yes.

Authorisations for diplomatic flights would not be contrary to the objectives of the Regulation, so they could in principle be authorised. However, in order for this exception not to be abused such authorisation should be granted at the request of the State (MS or third State) organising the meeting, or the State of the seat of the international organisation (e.g. CH for UN meetings in Geneva, FR for meetings of the Council of Europe in Strasbourg), and not of Russia itself. In this way, it will be possible to confirm the purpose, duration and other conditions of the diplomatic flight.

¹ Humanitarian flight; repatriation flight, other derogation – see Q18.

18. What exemptions can be granted by MSs in accordance with the Regulation?

Last update: 21 March 2022

The sanctions Regulation provides in its article 3d(3) that Member States can authorise the landing, take-off or overfly of Russian aircrafts if necessary for humanitarian purposes or for any other purpose consistent with the objectives of the Regulation.

This provision, being a derogation from the general prohibition should be read strictly and therefore not invoked beyond those two limited grounds. This is an assessment that has to be done by the national competent authority on a case-by-case basis and taking into account all available evidence.

Humanitarian flights are those operated for purely humanitarian purposes such as delivering or facilitating the delivery of assistance, including medicine, medical supplies or food. Transport of humanitarian workers as well as evacuations, including medical evacuations and ambulance flights, would also fall in this category. We invite MSs to make sure that they refer to humanitarian flights authorisations only when those flights fall under the situations described above.

In previous replies, it has already been clarified that repatriation flights and diplomatic flights can be considered as falling in the scope of the derogation under certain conditions.

Other circumstances, like transporting essential materials that can only be transported by a particular type of planes, might fall within the scope of the exception.

However, it will be important that these other flights are not labelled as ‘humanitarian’ and the MSs provide the necessary information to dully justify the granting of an authorisation.

19. What about overfly authorisation to repatriate passengers stranded in third countries?

Last update: 21 March 2022

Flights for the repatriation of passengers stranded in the EU have no option but to overfly the EU territory to get back to Russia.

However, in the case of passengers stranded in third countries (like Caribbean Islands) there is the possibility to fly back to Russia without overflying the EU territory. They will just have to follow a longer route. EU airlines will also have to fly longer routes to go to Asia. Therefore, we do not consider that an authorisation should be granted for so-called repatriation flights from third countries were alternative – although longer - routes exist.

20. Russian passengers:

Last update: 21 March 2022

To be clarified that a RU national (regardless of any other citizenship), who is not covered by any personal sanctions can freely use any scheduled flight offered by any EU airline.

21. Stakeholders /national authorities responsibility:

Last update: 21 March 2022

In the following cases:

- the private charter flight done via brokers where the nationality is not checked
- flight goes via airport/ business aviation sector where inspections or checks are incidental
- flight operated on the basis of a self-declaration that is in line with the Regulation

We advise that all involved in the booking need to do proper “due diligence” and actively question potential customers, as normal practices do not suffice under this exceptional circumstances. Therefore, if asked to provide an aircraft, your members need to actively question every customer to verify that they are not either themselves Russians or acting on behalf of a Russian entity. They also need to go beyond just asking the passenger to state or sign something and see for example what languages the customers use, how their luggage looks (i.e. signs of frequent Russian travel etc.) or other elements that could help determine what the actual truth is.

If the operator has any doubts then should check with the national authorities. It is important to keep in mind Article 12 of the Regulation concerning the liability for the circumvention of the measures.

In our opinion, the self-declaration is not enough, as may lead to the circumvention of the sanctions. For example, a dual citizenship (RU not declared) should be taken into account.

22. Does Article 3c(5) of Council Regulation 833/2014 applies to the provision of insurance and reinsurance to leasing contracts for aircraft and engines?

Last update: 21 March 2022

Article 3c(5) of Council Regulation (EU) No 833/2014, read in conjunction with Articles 3c(4)(b) and 1(o) of the same Regulation, allows, until 28 March 2022, the provision of insurance or reinsurance to leasing companies for aircraft and engines subject to operating or finance lease arrangements signed before 26 February 2022, including when such aircraft or engine is used in Russia or leased to a Russian person.

23. What is meant by “for use in Russia” in the context of Article 3c of Regulation 833/2014?

Last update: 2 June 2022

The term “for use in Russia” should be understood as covering the sale/supply/transfer/export of goods/services which would be used in Russia, including operations between two points in Russia.

For example, this applies to flights between two points in Russia, whether in connection or not with an international service. Strictly speaking, in-and-out types of operations are not covered by the sanctions. However, as soon as the in-and-out operation is complemented with a service inside Russia (e.g. Istanbul-Moscow-Saint Petersburg-Istanbul), it falls within the scope of the sanctions.

The interpretation of “for use in Russia” is the same for all the paragraphs of Article 3c (on maintenance, repair, insurance, financing...).

The wording ‘for use in Russia’ is a 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.

24. What does the exemption for the sharing of technical information in the framework of International Civil Aviation Organisation entail?

Last update: 27 July 2022

Article 3c(4)(a) provides for a prohibition to provide technical assistance for aviation goods and technology, as listed in Annexes XI and XX, directly or indirectly to any natural or legal person, entity or body in Russia or for use in Russia. Per Article 1(c), technical assistance means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services, including verbal forms of assistance.

With the exemption for the sharing of technical information in the context of the International Civil Aviation Organization (ICAO), technical data pertaining to EU manufactured products and components listed in Annexes XI and XX can be shared to contribute to the technical standard setting work within ICAO groups and panels even in cases where Russia is, among other countries, a member of these groups and panels.

This measure does not amount to technical assistance to Russia. The provision of direct or indirect technical assistance to any natural or legal person, entity or body in Russia or for use in Russia remains otherwise prohibited.

25. Will Russia benefit from this exemption?

Last update: 27 July 2022

No. The sharing of information in the framework of the International Civil Aviation Organization is necessary to enable the global standard setting for air transport. Such information sharing does not amount to technical assistance to Russia. The provision of direct or indirect technical assistance to any natural or legal person, entity or body in Russia or for use in Russia remains otherwise prohibited.

26. Does the derogation under Article 12b(1) of Council Regulation (EU) No 833/2014 allow the sale to Russian entities of leased aircraft lost in Russia?

Last update: 3 March 2023

Inter alia, Article 12b(1) of Council Regulation (EU) No 833/2014 allows the competent authorities to authorise, by way of derogation from Article 3c, the sale, supply or transfer of goods and technologies listed in Annex XX (including aircraft), until 30 September 2023. Such authorisation can only be granted where such sale, supply or transfer is strictly necessary for: (i) the divestment from Russia or (ii) the wind-down of business activities in Russia.

The aim of such derogation is to facilitate an expeditious exit from the Russian market by EU operators.

This derogation does not allow the competent authorities to authorise the sale to Russian entities of leased aircraft lost in Russia, i.e. aircraft that remain in Russia against the will of their non-Russian owner and despite the latter's demand for their return.

The leasing of aircraft to a Russian person does not qualify as investment in Russia. Consequently, the owners/lessors of the aircraft cannot be considered as divesting from Russia for the mere fact that they discontinued the supply of aircraft to that country as a consequence of sanctions imposing them to do so since 26 February 2022, for new contracts, and since 28 March, for pre-existing contracts. Similarly, they should not be considered as winding-down business activities in Russia, to the extent that they have already discontinued the supply of the aircraft to Russia for the same reason and from the same dates onwards.

In any event, the sale of the aircraft would not be strictly necessary for the owners of the aircraft to exit the Russian market, as this exit is possible even if the lessors retain ownership of the aircraft.