

COUNCIL REGULATION 833/2014: BROADENING THE SCOPE OF EU SANCTIONS



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The 14th package of EU restrictive measures against Russia was issued on the 24th of June 2024. As it seems, the primary aim of the EU was to broaden the coverage of EU sanction. This is evident by the fact that the new provisions not only require EU operators to ensure that the applicable restrictive measures are not breached by non-EU subsidiaries, but also by providing guidance and recommendations to member states on how to apply their internal enforcement practices.

The key points of this extended scope of EU restrictive measures are:

-Undertaking Best Efforts

A new article 8a has been inserted in Regulation 833/2014, providing that natural and legal persons, entities and bodies shall undertake their best efforts to ensure that any legal person, entity or body established outside the EU, that they own or control, does not participate in activities that undermine the restrictive measures.

It seems that the EU somehow deviates from its long-standing position of the non-extraterritorial effect of restrictive measures and that now requires from EU legal persons to apply their best efforts to ensure that non-EU entities that they own or control, do not breach EU sanctions.

However, the EU has clarified that best efforts should be understood as comprising all actions that are suitable and necessary to achieve the result of preventing the undermining of the restrictive measures of Regulation 833/2014. Examples of such actions may include, the implementation of appropriate policies, controls and procedures to mitigate and manage risk effectively, considering factors such as the third country of establishment, the business sector and the type of activity of the entity that is owned or controlled by the EU operator.

The EU has also stated that best efforts should be understood as actions that are feasible for the EU operator in view of its nature, its size and the relevant factual circumstances, in particular the degree of effective control over the legal person established outside the EU.

-Lowering the standard for circumvention

The new article 12 of Regulation 833/2014 now states that it shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions in the Regulation, including by participating in such activities without deliberately seeking that object or effect but being aware that the participation may have that object or effect and accepting that possibility.

Using wording such as “but being aware” indicates that the standard of intent has been lowered. Therefore, it is clear that member states are now urged to target less evident cases of sanctions’ circumvention.

-Guidance for enforcement of sanctions by member states

The previous wording of article 8 of Regulation 833/2014 stated:

“Member States shall lay down the rules on penalties, including as appropriate criminal penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall also provide for appropriate measures of confiscation of the proceeds of such infringements.”

This wording has been now amended and provides that:

“...The penalties provided for must be effective, proportionate and dissuasive, and may take the voluntary self-disclosure of infringements of the provisions of this Regulation into account as a mitigating factor, in accordance with the respective national law...”

The added wording, namely that member states should take the voluntary self-disclosure of infringements of the provisions of Regulation 833/2014 into account as a mitigating factor, indicates the intention of EU to provide clear guidance and recommendations to member states on how to enforce the restrictive measures on the local level.

For any questions on EU restrictive measures please contact the Patrikios Legal team of experts at: compliance.services@pavlaw.com



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