

PROVISION OF SERVICES

RELATED PROVISION: ARTICLE 5n OF COUNCIL REGULATION 833/2014

FREQUENTLY ASKED QUESTIONS – AS OF 30 JUNE 2023

1. The EU has prohibited the provision of certain business-relevant services to the Russian government, as well as to legal persons such as companies and other entities or bodies established in Russia. What kind of services are prohibited?

Last update: 30 June 2022

As of 4 June 2022, it is prohibited to provide, directly or indirectly, accounting, auditing, including statutory audit, bookkeeping and tax consulting services, as well as business and management consulting or public relations services (Article 5n of Council Regulation 833/2014) to the Russian government, as well as to legal persons such as companies and other entities or bodies established in Russia.

The scope of the services prohibited should be interpreted with reference to [Annex II to Regulation \(EC\) No 184/2005 of the European Parliament and of the Council of 12 January 2005 on Community statistics concerning balance of payments, international trade in services and foreign direct investment](#)¹.

- Accounting, auditing, bookkeeping and tax consultancy services cover the recording of commercial transactions for businesses and others; examination services of accounting records and financial statements; business tax planning and consulting; and the preparation of tax documents.
- Business and management consulting and public relations services cover advisory, guidance and operational assistance services provided to businesses for business policy and strategy and the overall planning, structuring and control of an organisation. Management fees, management auditing; market management, human resources, production management and project management consulting; and advisory, guidance and operational services related to improving the image of the clients and their relations with the general public and other institutions are all included.

The provision in Article 5n has been amended since its introduction in June 2022. Please find in Annex A an outline of the applicable prohibitions on the provision of services, as well as of the relevant wind down periods, exemptions and derogations.

2. Do public relations services falling under the prohibition of Article 5n (1) also include lobbying activities?

Last update: 26 October 2022

¹ See Recital (26) of Council Regulation 2022/879 of 3 June 2022, amending Council Regulation 833/2014.

Yes, lobbying services could constitute public relations services and therefore fall under the prohibition laid down in Article 5n.

As stated in [Article 3 of the interinstitutional agreement of 20 May 2021 on a mandatory transparency register](#), the activities covered by lobbying services include, inter alia:

- organising or participating in meetings, conferences and events, and engaging in any similar contacts with EU institutions;
- contributing to, or participating in, consultations, hearings or similar initiatives;
- organising communication campaigns, platforms, networks and grassroots initiatives; and
- preparing or commissioning policy and position papers, amendments, opinion polls, surveys, open letters, other communication or information material, or commissioning and carrying out research.

However,

- activities by employers and trade unions acting as participants in social dialogue;
- activities carried out by individuals acting in a strictly personal capacity and not in association with others; and
- spontaneous, purely private or social meetings and meetings taking place in the context of an administrative procedure established by the treaties or legal acts of the EU

are not covered by the definition of lobbying activities and therefore fall outside the scope of Article 5n (1).

3. What do the terms “strictly“ and “exclusive“ refer to in the exceptions contained in Articles 5n (3), (4), (4a), (5), (6) and (7)?

Last update: 21 December 2022

These terms are used to make sure that the exceptions contained in Articles 5n (3), (4), (4a), (5), (6) and (7) are correctly interpreted by EU operators when assessing whether they can rely on these provisions. These exceptions are to be interpreted restrictively. The term strictly means that there is no other way to terminate contracts or to exercise the right of defense other than to rely on the provision of these otherwise prohibited services.

Article 12 prohibits conscious and intentional participation in activities the object or effect of which is to circumvent the prohibitions in the Regulation.

4. Does the prohibition on providing services “indirectly” in Article 5n prohibit an EU services provider from providing restricted services to subsidiaries of an entity established in Russia?

Last update: 30 June 2023

No. It is not prohibited to provide services to non-Russian entities, i.e. entities not established in Russia, even if they are subsidiaries of entities established in Russia.

The use of the term “indirectly” in Article 5n means that it is prohibited for an EU services provider to provide restricted services to EU or other non-Russian entities that are subsidiaries of entities established in Russia if those services would actually be for the benefit of the parent company established in Russia.

Article 12 prohibits knowing and intentional participation in activities the object or effect of which is to circumvent prohibitions in the Regulation.

5. Does the prohibition on providing services “indirectly” in Article 5n prohibit an EU services provider from providing outsourced restricted services to Russian legal entities?

Last update: 30 June 2023

Yes. EU entities cannot provide services to entities established in Russia, so they cannot use outsourced services to provide prohibited services as this indeed could be considered an indirect provision of these services.

Article 12 prohibits EU entities to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions in this Regulation.

6. Does the prohibition on providing services in Article 5n (1), (2) and (2a) prohibit entities established in the EU which are subsidiaries of Russian companies from providing prohibited services to their mother companies established in Russia?

Last update: 30 June 2023

Yes. Entities established in the EU, including those that are subsidiaries of companies established in Russia, are bound by EU sanctions. Hence, they are prohibited from providing, directly or indirectly, any of the listed services (accounting, auditing, including statutory audit, bookkeeping or tax consulting services, or business and management consulting or public relations services, architectural and engineering services, legal consultancy services, IT consultancy services, market research and public opinion polling services, technical testing and analysis services and advertising services) to the Government of Russia or persons established in Russia.

7. Does the prohibition on providing services prohibit nationals of EU Member States or persons located in the EU from working as employees of entities established in Russia?

Last update: 30 June 2023

Not necessarily, it depends on the service provided. Under Article 5n, EU persons, including nationals of EU Member States or persons located in the Union, are prohibited from providing, directly or indirectly, any of the listed services (accounting, auditing, including statutory audit, bookkeeping or tax consulting services, or business and management consulting or public

relations services, architectural and engineering services, legal consultancy services, IT consultancy services, market research and public opinion polling services, technical testing and analysis services and advertising services) to the Government of Russia or persons established in Russia. Hence, EU persons are prohibited from providing these services to companies established in Russia in their capacity as employees.

However, EU persons can still provide all services that are not prohibited in their capacity as employees.

8. How is the sectoral scope for 'IT consultancy services' defined in relation to Art 5n (2) of Council Regulation 833/2014?

Last update: 24 October 2022

IT consultancy services are defined by reference to the United Nations' Central Products Classification "CPC" (Statistical Office of the United Nations, Statistical Papers, Series M, No 77, CPC prov., 1991).

According to this definition, 'IT consultancy services' include:

- Consultancy services related to the installation of computer hardware: assistance services to the clients in the installation of computer hardware (i.e. physical equipment) and computer networks.
- 'Software implementation services': all services involving consultancy services on, development and implementation of software. The term "software" may be defined as the sets of instructions required to make computers work and communicate. A number of different programmes may be developed for specific applications (application software), and the customer may have a choice of using ready-made programmes off the shelf (packaged software), developing specific programmes for particular requirements (customized software) or using a combination of the two. The following sub-sectors are included:
 - Systems and software consulting services: services of a general nature prior to the development of data processing systems and applications. It might be management services, project planning services, etc.
 - Systems analysis services: analysis services include analysis of the clients' needs, defining functional specification, and setting up the team. Also involved are project management, technical coordination and integration and definition of the systems architecture.

- Systems design services: design services include technical solutions, with respect to methodology, quality-assurance, choice of equipment software packages or new technologies, etc.
- Programming services: programming services include the implementation phase, i.e. writing and debugging programmes, conducting tests, and editing documentation.
- Systems maintenance services: maintenance services include consulting and technical assistance services of software products in use, rewriting or changing existing programmes or systems, and maintaining up-to-date software documentation and manuals. Also included are specialist work, e.g. conversions.

9. Can these measures not further hamper the already challenging working conditions of civil society organisation in Russia?

Last update: 21 December 2022

The ban on IT consultancy services is subject to the exemptions and derogations specified in Article 5n of Council Regulation (EU) No 833/2014, which aims to protect the work of the civil society. The derogations provided for include, inter alia, the supply of IT consultancy services to civil society activities that directly promote democracy, human rights or the rule of law in Russia.

10. What activities are covered under the prohibition on ‘architectural and engineering services’ in Art. 5n (2) of Council Regulation 833/2014?

Last update: 24 October 2022

‘Architectural and engineering services’ are defined by reference to the United Nations’ Central Products Classification “CPC” (Statistical Office of the United Nations, Statistical Papers, Series M, No 77, CPC prov., 1991). According to this definition, the covered sub-sectors are: ‘Architectural services’, ‘Engineering services’, ‘Integrated engineering services’, ‘Urban planning and landscape architectural services’ and ‘Related scientific and technical consulting services’.

‘Architectural services’ include:

- Advisory and pre-design architectural services: assistance, advisory and recommendation services concerning architectural and related matters. Included here are services as undertaking preliminary studies addressing issues such as site philosophy, intent of development, climatic and environmental concerns, occupancy requirements, cost constraints, site selection analysis, design and construction scheduling and any other issues affecting the nature of the design and construction of a project. The provision of these services is not necessarily related to a new construction project. For example, it may consist of advice concerning the means of carrying out maintenance, renovation,

restoration or recycling of buildings, or appraisals of the value and quality of buildings or of advice on any other architectural matter.

- Architectural design services: architectural design services for buildings and other structures. Design services may consist of one or a combination of the following: schematic design services, which consist of determining, with the client, the essential character of the project, defining intent, space requirements, budget limitations and time scheduling; and of preparing sketches including floor plans, site plans and exterior views; design development services, which consist of a more precise illustration of the design concept in terms of siting plan, form, material to be used, structural, mechanical and electrical systems and probable construction costs; final design services, which consist of drawings and written specifications sufficiently detailed for tender submission and construction, and of expert advice to the client at the time of calling for and accepting tenders.
- Contract administration services: advisory and technical assistance services to the client during the construction phase to ensure that the structure is being erected in conformity with the final drawings and specifications. This involves services provided both in offices and the field, such as construction inspection, preparation of progress reports, issuance of certificates for payments to the contractor, guidance to the client and the contractor in the interpretation of contract documents and any other advice on technical questions that may develop during construction.
- Combined architectural design and contract administration services: combinations of architectural services utilized on most projects including schematic design, design development, final design and contract administration services. This may include post construction services which consist of the assessment of deficiencies in construction and instructions regarding corrective measures to be taken during the 12-month period following the completion of the construction.
- Other architectural services: all other services requiring the expertise of architects, such as the preparation of promotional material and presentations, preparation of as-built drawings, constant site representation during the construction phase, provision of operating manuals, etc.

‘Engineering services’ include:

- Advisory and consultative engineering services: assistance, advisory and recommendation services concerning engineering matters. Included here are the undertaking of preparatory technical feasibility studies and project impact studies. Examples are: study of the impact of topography and geology on the design, construction and cost of a road, pipeline or other transportation infrastructure; study of the quality or

suitability of materials intended for use in a construction project and the impact on design, construction and cost of using different materials; study of the environmental impact of a project; study of the efficiency gains in production as a result of alternative process, technology or plant layout. The provision of these services is not necessarily related to a construction project. It may consist, for example, of the appraisal of the structural, mechanical and electrical installations of buildings, of expert testimony in litigation cases, of assistance to government bodies in drafting laws, etc.

- Engineering design services for the construction of foundations and building structures: structural engineering design services for the load-bearing framework of residential and commercial, industrial and institutional buildings. Design services consist of one or a combination of the following: preliminary plans, specifications and cost estimates to define the engineering design concept; final plans, specifications and cost estimates, including working drawings, specifications regarding materials to be used, method of installation, time limitations and other specifications necessary for tender submission and construction and expert advice to the client at the time of calling for and accepting tenders; services during the construction phase. Exclusion: Engineering services for buildings if they are an integral part of the engineering design service for a civil work or production plant or facility.
- Engineering design services for mechanical and electrical installations for buildings: mechanical and electrical engineering design services for the power system, lighting system, fire alarm system, communication system and other electrical installations for all types of buildings and/or the heating, ventilating, air conditioning, refrigeration and other mechanical installations for all types of buildings. Design services consist of one or a combination of the following: preliminary plans, specifications and cost estimates to define the engineering design concept; final plans, specifications and cost estimates, including working drawings, specifications regarding materials to be used, method of installation, time limitations and other specifications necessary for tender submission and construction and expert advice to the client at the time of calling for and accepting tenders; services during the construction phase.
- Engineering design services for the construction of civil engineering works: engineering design services for the construction of civil engineering works, such as bridges and viaducts, dams, catchment basins, retaining walls, irrigation systems, flood control works, tunnels, highways and streets including interchanges and related works, locks, canals, wharves and harbours works, water supply and sanitation works such as water distribution systems, water, sewage, industrial and solid waste treatment plants and other civil engineering projects. Design services consist of one or a combination of the following: preliminary plans, specifications and cost estimates to define the engineering design concept; final plans, specifications and cost estimates, including working

drawings, specifications regarding materials to be used, method of installation, time limitations and other specifications necessary for tender submission and construction and expert advice to the client at the time of calling for and accepting tenders; services during the construction phase. Included are engineering design services for buildings if they are an integral part of the engineering design for a civil engineering work.

- Engineering design services for industrial processes and production: engineering design services for production processes, procedures and facilities. Included here are design services as they relate to methods of cutting, handling and transporting logs and logging site layout; mine development layout and underground construction, the complete civil, mechanical and electrical mine surface plant installations including hoists, compressors, pumping stations, crushers, conveyors and ore and waste-handling systems; oil and gas recovery procedures, the construction, installation and/or maintenance of drilling equipment, pumping stations, treating and storage facilities and other oil field facilities; materials flows, equipment layout, material handling systems, processes and process control (which may integrate computer technology) for manufacturing plants; special machinery, equipment and instrumentation systems; any other design services for production procedures and facilities. Design services consist of one or a combination of the following: preliminary plans, specifications and cost estimates to define the engineering design concept; final plans, specifications and cost estimates, including working drawings, specifications regarding materials to be used, method of construction and/or installation, time limitations and other specifications necessary for tender submission and construction and expert advice to the client at the time of calling for and accepting tenders; services during the installation phase. Included are engineering design services for buildings if they are an integral part of the engineering design service for a production plant or facility.
- Engineering design services n.e.c.: other specialty engineering design services. Included here are acoustical and vibration engineering designs, traffic control systems designs, prototype development and detailed designs for new products and any other specialty engineering design services. Exclusion: The aesthetic design of products and the complete design of products which do not require complex engineering (e.g. furniture) are classified in subclass 87907 (Specialty design services).
- Other engineering services during the construction and installation phase: advisory and technical assistance services to the client during construction to ensure that construction work is in conformity with the final design. This involves services provided both in offices and in the field, such as the review of shop drawings, periodic visits to the site to assess progress and quality of the work, guiding the client and the contractor in the interpretation of contract documents and any other advice on technical questions that may develop during construction.

- Other engineering services: engineering services not elsewhere classified. Included here are geotechnical engineering services providing engineers and architects with necessary subsurface information to design various projects; groundwater engineering services including groundwater resources assessment, contamination studies and quality management; corrosion engineering services including inspection, detection and corrosion control programmes; failure investigations and other services requiring the expertise of engineers.

‘Integrated engineering services’ include:

- Integrated engineering services for transportation infrastructure turnkey projects: fully integrated engineering services for the construction of transportation infrastructure turnkey projects. Services included here are planning and pre-investment studies, preliminary and final design, cost estimation, construction scheduling, inspection and acceptance of contract work as well as technical services, such as the selection and training of personnel and the provision of operation and maintenance manuals and any other engineering services provided to the client that form part of an integrated bundle of services for a turnkey project.
- Integrated engineering and project management services for water supply and sanitation works turnkey projects: fully integrated engineering services for the construction of water supply and sanitation works turnkey projects. Services included here are planning and pre-investment studies, preliminary and final design, cost estimation, construction scheduling, inspection and acceptance of contracts as well as technical services, such as the selection and training of personnel and the provision of operation and maintenance manuals and any other engineering services provided to the client that form part of an integrated bundle of services for a turnkey project.
- Integrated engineering services for the construction of manufacturing turnkey projects: fully integrated engineering services for the construction of manufacturing facilities turnkey projects. Services included here are planning and pre-investment studies to address issues such as the integration of operations, site selection, pollution and effluent control and capital requirements; all necessary structural, mechanical and electrical design services; production process engineering design services including detailed process flow diagrams, general site and plant arrangement drawings, plant and equipment specifications; tender specifications; construction scheduling inspection and acceptance of work as well as technical services, such as the selection and training of personnel, the provision of operations and maintenance manuals, start-up assistance and any other engineering services that form part of an integrated bundle of services for a turnkey project.

- Integrated engineering services for other turnkey projects: fully integrated engineering services for other construction works. Services included here are planning and pre-investment studies, preliminary and final design, cost estimates, construction scheduling, inspection and acceptance of contracts as well as technical services, such as the selection and training of personnel and the provision of operation and maintenance manuals and any other engineering services provided to the client that form part of an integrated bundle of services for a turnkey project.

‘Urban planning and landscape architectural services’ include:

- Urban planning services: development services of programme regarding land use, site selection, control and utilization, road systems and servicing of land with a view to creating and maintaining systematic, coordinated urban development.
- Landscape architectural services: plan and design services for the aesthetic landscaping of parks, commercial and residential land, etc. This implies preparing site plans, working drawings, specifications and cost estimates for land development, showing ground contours, vegetation to be planted, and facilities such as walks, fences and parking areas. Also included are inspection services of the work during construction.

‘Related scientific and technical consulting services’ include:

- Geological, geophysical and other scientific prospecting services: geological, geophysical, geochemical and other scientific consulting services as they relate to the location of mineral deposits, oil and gas and groundwater by studying the properties of the earth and rock formations and structures. Included here are the services of analysing the results of subsurface surveys, the study of earth sample and core, and assistance and advice in developing and extracting mineral resources.
- Subsurface surveying services: gathering services of information on subsurface earth formations by different methods, including seismographic, gravimetric, magnetometric and other subsurface surveying methods.
- Surface surveying services: gathering services of information on the shape, position and/or boundaries of a portion of the earth's surface by different methods, including transit, photogrammetric and hydrographic surveying, for the purpose of preparing maps.
- Map - making services: map-making services consisting in the preparation and revision of maps of all kinds (e.g. road, cadastral, topographic, planimetric, hydrographic) using results of survey activities, other maps, and other information sources.

11. Which activities are covered by the prohibition of ‘legal advisory services’ according to Art 5n (2) of Council Regulation (EU) No. 833/2014? Is the guarantee of the right of defence affected?

Last update: 24 October 2022

The sanctions on ‘legal advisory services’ have been designed so as to preserve access to justice and the right of defence. ‘Legal advisory services’ include:

- the provision of legal advice to customers in non-contentious matters, including commercial transactions, involving the application or interpretation of law;
- participation with or on behalf of clients in commercial transactions, negotiations and other dealings with third parties; and
- preparation, execution and verification of legal documents.

Article 5n of Council Regulation (EU) No. 833/2014 explicitly excludes from the ban the provision of services that are strictly necessary:

- for the termination by 8 January 2023 of contracts which are not compliant with this Article concluded before 7 October 2022, or of ancillary contracts necessary for the execution of such contracts;
- for the exercise of the right of defence in judicial proceedings and the right to an effective legal remedy; or
- to ensure access to judicial, administrative or arbitral proceedings in a Member State, or for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State, provided that such provision of services is consistent with the objectives of this Regulation and of Council Regulation (EU) No 269/2014.

12. What is the meaning of “entities or bodies established in Russia”? In particular, do the restrictions in Article 5n(1), (2) and (2a) apply to services provided to (a) non-Russian branches of Russian entities; (b) non-Russian related parties of Russian companies / non-Russian affiliated parties of Russian companies / non-Russian companies belonging to the same group as Russian companies; (c) non-Russian companies owned by Russian residents?

Last update: 21 December 2022

The restrictions under Article 5n(1), (2) and (2a) apply to services provided to entities or bodies established in Russia.

As a result, the prohibition:

- Applies to services provided to non-Russian branches of Russian entities, which have no legal personality and are therefore considered to be established in Russia;
- Does not apply to services provided to companies incorporated under the law of a country different from Russia, which are not established in Russia, even if they are subsidiaries of Russian companies or are owned by Russian residents, provided that the services are not for the benefit of the parent company established in Russia.

13. Are services provided to natural persons in Russia covered by the prohibitions under Article 5n(1), (2) and (2a) of Council Regulation 833/2014?

Last update: 21 December 2022

No, the prohibitions under Article 5n(1), (2) and (2a) of Council Regulation 833/2014 only cover services provided to the Russian government and to legal persons, entities or bodies established in Russia.

14. Does the prohibition apply to EU individuals providing restricted services to Russian entities?

Last update: 21 December 2022

Yes, the prohibitions in Article 5n(1), (2) and (2a) have general application, including on individuals.

15. Does the provision of services to EU established but Russian tax residents companies fall under the prohibitions of Article 5n?

Last update: 21 December 2022

Under Article 5n(1), lett. b, (2), lett. b, and (2a), lett. b of Council Regulation (EU) No. 833/2014, it is prohibited to provide the restricted services to legal persons, entities or bodies established in Russia (as well as to the Government of Russia). As a result, it is not prohibited to provide the restricted services to companies that are not established in Russia (including EU subsidiaries of entities established in Russia).

In principle, for the purpose of applying the prohibitions contained in Article 5n, it is not relevant that the EU established company is tax resident (also) in Russia. However, Article 5n prohibits both the direct and the indirect provision of the restricted services to entities established in Russia. As a result, it is possible to provide those services to the EU subsidiary of a Russian company, provided that they are not actually for the benefit of the company established in Russia.

On the contrary, it is prohibited to provide restricted services to the EU branches of Russian companies because they do not have legal personality and are considered as entities established in Russia.

It must be ensured that the rules described above are not used as a means to circumvent the application of the EU restrictive measures.

16. Does the exemption under Article 5n(7) apply only when the Russian entity receiving the services is owned or controlled exclusively by legal persons, entities or bodies incorporated or constituted under the law of a Member State, a country member of the European Economic Area, Switzerland or a partner country as listed in Annex VIII?

Last update: 30 June 2023

No, it is sufficient that the Russian entity is owned, or solely or jointly controlled by a legal person, entity or body incorporated or constituted under the law of a Member State, a country member of the European Economic Area, Switzerland or a partner country as listed in Annex VIII.

The exemption under Article 5n(7) may for instance apply when a Russian company is jointly controlled by an EU company and a company that is neither from the EU nor from a partner country as listed in Annex VIII.

17. Does the exemption under Article 5n(7) of Regulation 833/2014 apply if the legal persons, entities or bodies established in Russia are indirectly owned by, or solely or jointly controlled by, a legal person, entity or body which is incorporated or constituted under the law of a Member State, the EEA, Switzerland or a partner country?

Last update: 30 June 2023

The exemption under Article 5n(7) applies when the provision of services is intended for the exclusive use of entities established in Russia that are ultimately owned or controlled by an entity from a country of the EU or EEA, from Switzerland or from one of the partner countries as listed in Annex VIII.

In view of the above:

- the exemption applies if for example the Russian entity receiving the services is owned by an entity (which is neither Russian nor from the EU, EEA, Switzerland or partner country as listed in Annex VIII), which is in turn ultimately owned or controlled by a company from the EU, EEA, Switzerland or partner country as listed in Annex VIII;
- the exemption does not apply if for example the Russian entity receiving the services is owned or controlled by a company from the EU, EEA, Switzerland or partner country as listed in Annex VIII, which is in turn owned or controlled by a Russian company or by a company from another jurisdiction (a company not from the EU, EEA, Switzerland or partner country as listed in Annex VIII).

It must be ensured that the rules outlined above are not used as a means to circumvent the application of the EU restrictive measures.

18. Does the exemption under Article 5n(7) apply when the Russian legal person is owned or controlled by a natural person who is the citizen of a Member State, of a

country member of the European Economic Area, of Switzerland or of a partner country as listed in Annex VIII?

Last update: 21 December 2022

No. The exemption under Article 5n(7) is meant to apply only to subsidiaries of EU companies (or of companies incorporated in EEA, Switzerland or a partner country as listed in Annex VIII). It does not apply to services provided to Russian companies owned or controlled by individuals, including when those individuals are from the EU, EEA, Switzerland or from one of the partner countries as listed in Annex VIII.

19. Do the prohibitions in Article 5n restrict the possibility to provide the relevant services to Russian entities controlled by foreign companies not being from the EU, EEA, Switzerland or from one of the partner countries as listed in Annex VIII?

Last update: 21 December 2022

Yes. The exemption under Article 5n(7) applies only with respect to entities owned or controlled by EU companies, companies incorporated in the EU, EEA, Switzerland or from one of the partner countries as listed in Annex VIII.

20. When are legal advisory services indirectly provided for the purposes of Article 5n(2) of the Council Regulation 833/2014?

Last update: 21 December 2022

An indirect provision of legal advisory services is constituted when another operator than the recipient of services is (also) benefitting from them. This could be the case when e.g. an EU subsidiary is receiving legal consultation, which indirectly benefits the Russian parent company. Although a case-by-case assessment is required, certain legal services are more likely than others to be (also) for the benefit of the parent company: legal consultation regarding a local issue, e.g. car lease for local staff in a EU Member State, is less likely to constitute an indirect provision of prohibited legal advisory services as this typically benefits largely the EU subsidiary. However, e.g. the legal consultation to set up a new globally operating corporate structure probably would.

21. Are notarial services covered by the prohibition under Article 5n(2) of Council Regulation 833/2014? Does the prohibition also apply in cases where notaries are state-appointed public officers and exercise public authority when performing their activities on behalf of the participants? Is the exercise of public authority through notaries covered by the prohibition of “legal advisory services” within the meaning of the Council Regulation?

Last update: 21 December 2022

Yes, notarial services are covered by the prohibition under Article 5n(2) of Council Regulation 833/2014 if they are provided to an entity established in Russia or to the Government of Russia and do not fall within any of the applicable exemptions provided in Article 5n.

The status of the provider of the services is not relevant, only the provision of certain services itself is prohibited. The fact that seeking a certain service is mandated or even just recognised by

the law does not mean that the provision of this service is somehow exempted from the prohibition set out by Art 5n(2) of Council Regulation 833/2014.

The prohibition applies for example to the authentication of contracts and other declarations directed at the performance of legal transactions, as well as the certification of signatures and the establishment of deeds regarding factual circumstances (these activities would be covered by the notion of “preparation, execution and verification of legal documents”; see recital 19 of Council Regulation 1904/2022).

22. Does the exemption for court and administrative procedures pursuant to Art. 5n(6) also apply to official notarial authentication procedures?

Last update: 21 December 2022

According to Article 5n(6), only those legal advisory services are exempted which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in the EU or which are needed for the recognition or enforcement of a judgment or an arbitration award rendered in the EU. If notarial authentication services are strictly necessary in those circumstances and meet the conditions, they are exempted from the prohibition.

23. Are pro bono legal services covered by the prohibition under Article 5n(2) of the Council Regulation 833/2014?

Last update: 21 December 2022

No specific exemptions or derogations are provided for pro bono legal advisory services as such. As a result, it is in general prohibited to provide those services to the Government of Russia and to any legal person, entity or body established in Russia.

However, as with remunerated services, pro-bono services are not prohibited if they fall outside the scope of that prohibition or fall within the scope of application of the general exemptions provided under Article 5n (e.g. they are provided to a natural person, they are covered by the exemptions in paragraphs 5 or 6). The same services may also be authorized if they fall within the scope of application of one of the derogations provided in Article 5n (for example if their provision is necessary for humanitarian purposes or for civil society activities that directly promote democracy, human rights or the rule of law in Russia).

24. Are law firms and lawyers subject to EU jurisdiction authorized to represent the Government of Russia or legal entities established in Russia in judicial, arbitral or administrative proceedings outside the EU?

Last update: 21 December 2022

The exemption under Article 5n(6) only applies to the provision of services which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a Member State, or for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State.

However, the provision of the legal advisory services may still be allowed (even outside of the EU) if it falls within the scope of Article 5n(5), i.e. if the services are strictly necessary for the exercise of the right of defense in judicial proceedings and the right to an effective legal remedy.

25. Does the prohibition also cover legal advisory services under the Russian laws (or any other laws, non-EU) provided by the Russian representative office of an EU based legal entity?

Last update: 21 December 2022

The prohibition to provide legal advisory services applies regardless of the type of law (EU law, Russian law or other) to which it refers. The representative offices of EU legal entities are bound to comply with EU restrictive measures and it is therefore prohibited for them to provide the restricted services to the Government of Russia or to companies in Russia (unless any of the exemptions or derogations in Article 5n apply).

26. Is it prohibited to provide sanctions compliance advice to Russian entities and the Government of Russia?

Last update: 21 December 2022

Russian companies are generally not bound to comply with EU sanctions, which typically only apply to EU companies and companies doing business in the EU. As a result, they should not in principle need to seek legal advice regarding the application of EU sanctions.

EU companies (not their Russian counterparties) are typically the entities applying for the authorizations to be issued by the national competent authorities of the EU Member States, under the derogations contained in the EU sanctions regulations. It is not prohibited to provide services to non-Russian entities (i.e., entities not established in Russia), even if they are subsidiaries of entities established in Russia. However, it is for example prohibited to provide services to EU or other non-Russian entities that are subsidiaries of entities established in Russia if those services would actually be for the benefit of the parent company established in Russia.

EU restrictive measures do not contain a specific exception for the provision of sanctions compliance advice as such.

However, the prohibition under Article 5n does not apply inter alia to the provision of:

- Services that are strictly necessary for the exercise of the right of defence in judicial proceedings and the right to an effective legal remedy (paragraph 5); and
- Services which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a Member State, or for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State, provided that such provision of services is consistent with the objectives of this Regulation and of Council Regulation (EU) No 269/2014 (paragraph 6). As explained in Recital 19 of Council Regulation (EU) 2022/1904, the prohibition of legal services does not apply to representation, advice, preparation of documents or verification of documents in the context of legal representation services.

In view of the above, the provision of sanctions compliance advice may not be prohibited if it falls in one or more of the cases explicitly allowed under the provisions above. In any event, legal services providers must pay particular attention that their services to Russian entities do not entail any legal advice which might be considered as a form of evasion of EU sanctions by those Russian entities and/or circumvention of those sanctions by EU companies.

27. How should the term “statutory audit” in Article 5n(1) of Council Regulation 833/2014 be interpreted?

Last update: 21 December 2022

In general terms, the scope of the services prohibited under Article 5n(1) of Council Regulation 833/2014 should be interpreted with reference to Annex II to Regulation (EC) No 184/2005 of the European Parliament and of the Council of 12 January 2005 on Community statistics concerning balance of payments, international trade in services and foreign direct investment. Accounting, auditing, bookkeeping and tax consultancy services cover the recording of commercial transactions for businesses and others; examination services of accounting records and financial statements; business tax planning and consulting; and the preparation of tax documents.

With respect in particular to the definition of ‘statutory audits’, in the European Commission’s view this may be interpreted by reference to the definition contained in Article 2(1) of Directive 2006/43/EC. Please note anyway that Article 5n(1) shall be read in its integrity and the “statutory audit” is just a subset, an example of all the services that must not be provided to the Russian government and to Russian entities.

28. Does ‘IT consultancy services’ cover the supply of software?

Last update: 21 December 2022

IT consultancy services include the development and implementation of software, as well as assistance or advice relating to the development and implementation of software, thus including the supply of bespoke software. However, the retail sale of off-the-shelf software is covered under a different CPC code (CPC 63252) and is therefore not included in the scope of IT consultancy services within the meaning of Article 5n of the Council Regulation (EU) No 833/2014.

29. Does ‘IT consultancy services’ cover software updates and upgrades?

Last update: 21 December 2022

The CPC classification of IT consultancy services referred to in Article 5n of the Council Regulation (EU) No 833/2014 includes a category called ‘systems maintenance services’. Those include consulting and technical assistance services regarding software products in use, rewriting or changing existing programmes or systems, and maintaining up-to-date software documentation and manuals.

To that extent, IT consultancy services also include assistance or advice relating to software updates and upgrades, as well as bespoke software updates and upgrades. However, in cases where software updates and upgrades do not involve the provision of assistance or advice to the customer, for example in cases of the supply of automatic software updates to previously purchased software, this should not be regarded as IT consultancy services within the meaning of Article 5n of the Regulation.

Further, paragraph 9 of Article 5n expressly excludes from the scope of the ban the provision of services necessary for software updates for dual-use goods and technology for non-military use and for a non-military end-user.

30. Does the prohibition to provide legal advisory services also include the provision of legal representation in front of courts?

Last update: 30 June 2023

As recital 19 of Council Regulation 1904/2022 mentions, legal advisory services do not include any representation, advice, preparation of documents or verification of documents in the context of legal representation services, namely in matters or proceedings before administrative agencies, courts or other duly constituted official tribunals, or in arbitral or mediation proceedings. Hence they are not subject to the prohibition.

31. Does IT consultancy services according to Art 5n(2) of Council Regulation (EU) No. 833/2014 also include ‘cloud services’?

Last update: 30 June 2023

No, ‘cloud services’ are not covered under the definition of ‘IT consultancy services’ set out in Article 5n(2) of the Regulation and are therefore not subject to the relevant prohibition.

32. Are technical assistance or maintenance services provided for already existing software products, programmes or systems covered by the prohibition to provide IT consultancy services?

Last update: 30 June 2023

Yes, unless no exemption or derogation of Art 5n applies, maintenance services are also covered under the definition of “IT consultancy services” and hence prohibited. See also CPC class 8425 “systems maintenance services” in Question 8 above.

ANNEX A - OVERVIEW OF PROHIBITIONS ON SERVICES

	GROUP 1	GROUP 2	GROUP 3
Scope	Accounting, auditing, including statutory audit, bookkeeping, tax consulting services, business and management consulting, public relations services <i>Article 5n(1) Council Regulation 833/2014</i>	Architectural and engineering services, legal advisory services, IT consultancy services <i>Article 5n(2) Council Regulation 833/2014</i>	Market research and public opinion polling services, technical testing and analysis services, advertising services <i>Article 5n(2a) Council Regulation 833/2014</i>
Wind-down	Termination by 5 July 2022 of contracts concluded before 4 June 2022	Termination by 8 January 2023 of contracts concluded before 7 October 2022	Termination by 16 January 2023 of contracts concluded before 17 December 2022
Exemption for services that are strictly necessary for the exercise of the right of defence in judicial proceedings and the right to an effective legal remedy <i>Article 5n(5) Council Regulation 833/2014</i>	Applicable	Applicable	Not Applicable
Exemption for services that are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a Member State <i>Article 5n(6) Council Regulation 833/2014</i>	Applicable	Applicable	Not Applicable
Exemption for services that are strictly necessary for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State <i>Article 5n(6) Council Regulation 833/2014</i>	Applicable	Applicable	Not Applicable
Exemption for services intended for the exclusive use of entities owned or controlled by entities from EU, EEA or a listed partner	Applicable	Applicable	Applicable

	GROUP 1	GROUP 2	GROUP 3
country <i>Article 5n(7) Council Regulation 833/2014</i>			
Exemption for services that are necessary for public health emergencies , the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health and safety or the environment , or as a response to natural disasters <i>Article 5n(8) Council Regulation 833/2014</i>	Not Applicable	Applicable	Applicable
Exemption for services that are necessary for software updates for non-military use and for a non-military end user, permitted by Articles 2(3)(d) and 2a(3)(d) in relation to goods listed in Annex VII <i>Article 5n(9) Council Regulation 833/2014</i>	Not Applicable	Applicable	Not Applicable
Derogation for services necessary for: <i>Article 5n(10) Council Regulation 833/2014</i>			
<ul style="list-style-type: none"> humanitarian purposes (such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations) 	Applicable	Applicable	Applicable
<ul style="list-style-type: none"> civil society activities that directly promote democracy, human rights or the rule of law in Russia 	Applicable	Applicable	Applicable
<ul style="list-style-type: none"> the functioning of diplomatic and consular representations of the Union and of the Member States or partner countries in Russia, or international organisations 	Applicable	Applicable	Applicable

	GROUP 1	GROUP 2	GROUP 3
<ul style="list-style-type: none"> ensuring critical energy supply within the Union and the purchase, import or transport into the Union of titanium, aluminium, copper, nickel, palladium and iron ore 	Applicable	Applicable	Applicable
<ul style="list-style-type: none"> ensuring the continuous operation of infrastructures, hardware and software which are critical for human health and safety, or the safety of the environment 	Applicable	Applicable	Applicable
<ul style="list-style-type: none"> the establishment, operation, maintenance, fuel supply and retreatment and safety of civil nuclear capabilities, and the continuation of design, construction and commissioning required for the completion of civil nuclear facilities, the supply of precursor material for the production of medical radioisotopes and similar medical applications, or critical technology for environmental radiation monitoring, as well as for civil nuclear cooperation, in particular in the field of research and development 	Applicable	Applicable	Applicable
<ul style="list-style-type: none"> the provision of electronic communication services by Union telecommunication operators necessary for the operation, maintenance and security, including cybersecurity, of electronic communication services, in Russia, in Ukraine, in the Union, between Russia and the Union, and between Ukraine and the Union, and for data centre services in the Union 	Applicable	Applicable	Applicable