

The European Commission has issued updated guidance on a requirement that will soon oblige European Union (“EU”) exporters to include clauses in their contracts banning the re-export of certain sensitive products to Russia. This requirement falls under the existing prohibition contained in Article 12 of Council Regulation (EU) No 833/2014 (the “**Regulations**”) on knowingly and intentionally engaging in activities designed to circumvent sanctioning laws.

The inclusion of Article 12(g) in the Regulation underlines the EU’s growing concern and effort to ensure compliance with sanctions provisions. Thus, this guidance describes how EU companies should comply with the “no re-export to Russia” clause, covering issues such as its impact on existing contracts, methods of enforcement by the EU and the appropriate wording of the clause.

The obligation to include this “no re-export to Russia” clause depends on the contract’s date of conclusion. Contracts concluded before 19 December, benefit from a transitional period of one year or upon expiry of the contract, whichever is earliest. Contracts concluded after 19 December must include the clause as of 20 March 2024.

Applicable to contracts with non-EU operators – excluding some “partner countries” such as the US, UK, or Japan – the mandatory inclusion of the clause is limited to “specific types of sensitive products”, including those related to aviation, aviation fuel, firearms and other high priority items shared by the US, the EU, and other countries.

EU exporters should therefore refrain from selling to third countries that do not accept such clauses and should consider this clause as an essential element of the contract, especially with operators from high-risk jurisdictions. Additionally, for the clauses to be effective, contracts must include robust remedies, such as termination of the contract or payment of a penalty, to deter non-compliance.

According to the EU, exporters will have to demonstrate applicability of the clause if requested by the competent authorities and inform their government as soon as they become aware of a breach or circumvention of the clause. Therefore, operators should remain vigilant for possible involvement in circumvention schemes.

Exporters must be diligent in their implementation, demonstrating compliance and adopting strong deterrent measures to ensure the integrity of these agreements and prevent the risk of evasion in high-risk jurisdictions.

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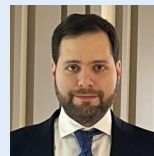
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