CHEMICALS

RELATED PROVISION: REGULATION (EC) No 1907/2006;
COUNCIL REGULATION 833/2014; COUNCIL REGULATION 269/2014
FREQUENTLY ASKED QUESTIONS – AS OF 24 JULY 2024

1. **How do EU sanctions, in particular Council Regulation (EU) No 269/2014 and Council Regulation (EU) No 833/2014, interplay with Regulation (EC) No 1907/2006 and other EU legislation on chemicals in general?**
   Last update: 1 July 2022

European Union sanctions, including Council Regulation (EU) No 269/2014 and Council Regulation (EU) No 833/2014 apply as *lex specialis* with respect to Regulation (EC) No 1907/2006 and other Union legislation on chemicals in general. This means that, while both instruments must continue to be interpreted purposively, that is to say to give full effect to their objectives, the provisions of the latter should apply as long as they are not in conflict with EU sanctions or they cannot be derogated from (see e.g. Question 5).

2. **What does Council Regulation (EU) No 269/2014 entail for communication platforms[1] for data sharing and chemical companies?**
   Last update: 24 July 2024

Under Council Regulation (EU) No 269/2014, the EU has designated a number of individuals and legal persons as subject to sanctions. Being a "designated person" means that all funds and economic resources, directly or indirectly belonging to, held or controlled by a designated person must be frozen. In practice, any EU legal and private person and EU Member State's public institution doing business in the EU must prevent any transfer of, alteration of, access to, use of or other dealings with those funds or economic resources. The freezing of economic resources of a designated person means that any asset of a designated person, whether tangible or intangible, cannot be used by anyone to obtain other funds or assets. Property rights over data and vertebrate or non-vertebrate studies qualify as economic resources since they can be used by the data owner or the recipient of a letter of access to obtain economic benefits (e.g. via the submission of a registration dossier to the European Chemicals Agency (ECHA) or updates of an existing registration). Hence, they are subject to such restriction.

[1] Communication platforms should be understood as any of the several possible ways in which companies can organise their cooperation under REACH. These forms of cooperation can vary from loose ways of cooperating (e.g. IT tools to communicate between all members of a joint submission) to more structured and binding models (e.g. consortia created by means of contracts). Participation in a SIEF (substance information exchange forum) was mandatory for phase-in substances until the last REACH registration deadline of 31 May 2018. After the end of the phase-in period, however, co-registrants remain encouraged to use similar informal communication platforms to enable them to meet their continuing registration and data sharing obligations under REACH.

Council Regulation (EU) No 269/2014 also prohibits making funds or economic resources available to designated persons or persons owned/controlled by them. By way of example, this means that no further trade with those persons is possible as of the moment of their designation. This includes sharing data and studies or making available financial profits to a designated communication platform member, including if they are originating from costs sharing. Council Regulation (EU) No 269/2014 provides for several exceptions, in particular Article 6e(1a) whereby the National Competent Authorities (NCAs) of a Member State, based on a specific and case-by-case assessment, may authorise, for each relevant transaction separately, the release of certain frozen funds or economic resources belonging to natural persons listed in Annex I thereto who held a significant role in international trade in agricultural and food products, including wheat and fertilisers, prior to their listing, or the making available of certain funds or economic resources to those persons, under such conditions as the NCAs deem appropriate and after having determined that such funds or resources are necessary for the sale, supply, transfer or export of agricultural and food products, including wheat and fertilisers, to third countries in order to address food security. Subject to the assessment of the NCA, in the context of REACH Regulation this derogation can apply in the case of chemicals whose intended use is as fertilisers.

See also on this Commission FAQs on Sanctions adopted following Russia's military aggression against Ukraine ('Russia sanctions FAQs'), Section A. Horizontal as well as Circumvention and Due diligence, and B. Individual financial measures.

3. **What does Council Regulation (EU) No 833/2014 entail for communication platforms for data sharing and chemical companies?**
   Last update: 24 July 2024

Council Regulation (EU) No 833/2014 provides for a number of trade restrictions. In particular, Article 5aa prohibits engaging in transactions with certain legal persons, entities or bodies, and Article 5n prohibits the provision of business and management consulting services as well as advisory services to, *inter alia*, legal persons established in Russia. It is an obligation on the existing or potential registrants in REACH to take necessary actions to comply with Council Regulation (EU) No 833/2014.

As far as data sharing is concerned, obtaining permission to refer to data in exchange for cost compensation qualifies as a transaction and it is therefore not permitted when the previous registrant or data owner meets the criteria provided for by letters (a) to (c) of Article 5aa. In this case, the potential registrant should indicate to ECHA that an agreement could not be concluded due to the transaction ban provided for by Council Regulation (EU) No 833/2014. ECHA will then decide whether to grant permission to refer to data. For the case where the potential registrant meets the criteria provided for by letters (a) to (c) of Article 5aa, see Question 6.

Obtaining permission to refer to data from a previous registrant or data owner established in Russia, or from an Only Representative (OR) of a legal entity established in Russia, is not, per se prohibited

according to Article 5n. However, as explained in Questions 14 and 15, and subject to the assessment of the NCA, an OR cannot provide business and management consulting services and legal advisory services to a client established in Russia. Subject to the assessment of the NCA, this may prevent an OR from representing a Russian client in data sharing negotiations. In this case, the potential registrant should indicate to ECHA that an agreement is not reachable due to Council Regulation (EU) No 833/2014. ECHA should then decide whether to grant permission to refer to data. For the case where the potential registrant is an OR of a legal entity established in Russia, see Question 7.

In case of doubt, business operators can seek guidance from their National Competent Authorities (NCAs).

See also on this Commission FAQs on Sanctions adopted following Russia's military aggression against Ukraine ('Russia sanctions FAQs'), Section A. Horizontal as well as Circumvention and Due diligence, and Section B. Individual financial measures.

4. **Should the EU members of a communication platform constituted for generating studies or for data sharing purposes, or an Only Representative (OR) comply with EU sanctions?**
   Last update: 1 July 2022

Yes. EU citizens as well as EU business operators incorporated or constituted under the law of a Member State or doing business in full or in part in the EU are required to comply with EU Sanctions (e.g. Article 13 of Council Regulation (EU) No 833/2014). This includes the different types of communication platforms governed by Union or national Law, as well as their members meeting the conditions indicated above and ORs pursuant to Article 8 of the REACH Regulation.

5. **Should I comply with the mandatory data sharing obligations under Articles 25–27 and 30 of the REACH Regulation and related obligations if the potential registrant is a company designated under Council Regulation (EU) No 269/2014, or owned/controlled by a designated person under Council Regulation (EU) No 269/2014?**
   Last update: 24 July 2024

No. As long as the potential registrant is designated under Council Regulation (EU) No 269/2014 or other EU sanctions (or owned/controlled by a designated person), it cannot receive economic resources from those who are required to comply with Article 11 of Council Regulation (EU) No 269/2014. Previous registrants owning the relevant data must refrain from entering data sharing negotiations and granting letters of access to those that are designated or owned/controlled by a designated person. Ongoing negotiations should be suspended as long as the person is designated or owned or controlled by a designated person. Note that derogations and exemptions under Council Regulation (EU) No 269/2014 may apply. It is an obligation of the data owner to comply with EU sanctions; hence, data owners should investigate if the potential registrant is a company

designated under Council Regulation (EU) No 269/2014, or owned/controlled by a designated person under Council Regulation (EU) No 269/2014 (see also Question 3).

A data owner that is a designated person or a company owned or controlled by a designated person is still obliged to enter mandatory data sharing negotiations. However, it cannot receive financial benefits from it (e.g. a designated member of the communication platform cannot receive funds stemming for instance from data sharing agreements and cost sharing as long as it is designated). Costs due to the designated data owner could be kept in an escrow account until the data owner is no longer designated. If a designated company is non-cooperative or requires payment of the share of the costs for access to studies, the potential registrant should indicate to ECHA that an agreement is not reachable due to the asset freeze derived from EU sanctions. ECHA should then decide whether to grant access to the data[2].

On the identification of potential registrants or previous registrants that are designated, or owned or controlled by designated persons, see Question 8.

6. **Should I comply with the mandatory data sharing obligations under Articles 25–27 and 30 of the REACH Regulation or related obligations if the potential registrant is a company that meets the criteria under letters (a)–(c) of Article 5aa of Council Regulation (EU) No 833/2014?**
   Last update: 24 July 2024

No. Article 5aa(1) of Council Regulation (EU) No 833/2014 prohibits to directly or indirectly engage in any transaction with:

> (a) a legal person, entity or body established in Russia, which is publically controlled or with over 50 % public ownership or in which Russia, its Government or Central Bank has the right to participate in profits or with which Russia, its Government or Central Bank has other substantial economic relationship, as listed in Annex XIX;
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> (b) a legal person, entity or body established outside the Union whose proprietary rights are directly or indirectly owned for more than 50 % by an entity listed in Annex XIX; or
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> (c) a legal person, entity or body acting on behalf or at the direction of an entity referred to in point (a) or (b) of this paragraph.

[2] While studies for registrations owned by designated persons or by persons owned or controlled by designated persons in principle must be frozen, the Court of Justice has held that '[…] the objective of ensuring animal protection is also pursued by the REACH Regulation, in particular by Article 13(1) and Article 25(1) thereof. According to that latter provision, testing on vertebrate animals for the purposes of that regulation is to be undertaken only as a last resort' (Order of the President of the Court Case T-207/21 R, *Polynt v ECHA* Case T-207/21 R, ECLI:EU:T:2021:382. This is mandatory. As such, ECHA has the possibility to grant access to the vertebrate studies of a designated person, provided that the due costs are not made available to that person as long as he/she/it is designated.

Granting a letter of access in exchange of cost sharing qualifies as a transaction and therefore it is not permitted in the cases mentioned under Article 5aa. Exemptions may apply, in particular Article 5(2).

For the case where the previous registrant or data owner meets the criteria provided for by letters (a) to (c) of Article 5aa, see Question 3. On the identification of potential registrants or previous registrants that are subject to the transaction ban, see Question 8.

7. **Should I comply with the mandatory data sharing obligations under Articles 25–27 and 30 of the REACH Regulation or related obligations if the potential registrant is an OR of a legal entity established in Russia?**
   Last update: 24 July 2024

Granting a permission to refer to data for the purposes of compliance with the REACH Regulation does not, per se, qualify as one of the prohibited services according to Article 5n of Council Regulation (EU) No 833/2014. However, as explained in Questions 14 and 15 and subject to the assessment of the NCA, an OR cannot provide business and management consulting services and legal advisory services to a client established in Russia, including representing that client in data sharing negotiations. This will effectively prevent the parties from concluding a data sharing agreement, unless an exception from the prohibition established by Article 5n applies.

For cases where the potential registrant is designated under Council Regulation (EU) No 269/2014 or meets the criteria under letters (a) to (c) of Article 5aa of Council Regulation (EU) No 833/2014 see, respectively, Questions 5 and 6.

8. **What should I do, as a potential registrant or as a previous registrant, to ensure that my counterpart is not designated under Council Regulation (EU) No 269/2014, owned/controlled by a designated person under Council Regulation (EU) No 269/2014 or does not meet the criteria under letters (a)–(c) of Article 5aa of Council Regulation (EU) No 833/2014?**
   Last update: 24 July 2024

It is for the companies that are required to comply with Council Regulation (EU) No 833/2014 and Council Regulation (EU) No 269/2014 as per, respectively Article 13 and Article 17, to decide which due diligence activities to carry out, in the light of the relevant risk assessment. This said, in order to exclude their liability for a sanction breach, a company must be able to demonstrate *they had no reasonable cause to suspect that their actions would infringe the measures set out in* the relevant Regulation (as per e.g. Article 10(2) of Council Regulation (EU) No 269/2014). Subject to the assessment of the NCA, a potential registrant or a previous registrant could not invoke the protection granted by that provision if they failed to carry out sanctions compliance practices, such as contractually agreeing that the counterpart will not breach sanctions in relation to the economic resources provided or requesting a declaration that the counterpart is not listed or subject to sanctions whatsoever.

The responsibility for a sanction breach does not depend on its value or gravity, therefore minor breaches or breaches where the risk of infringement was low (and therefore no or limited due diligence was carried out) do not exclude or limit the liability, unless the absence of reasonable cause of suspicion can be shown. Imposing due diligence checks on the counterpart for the purposes of compliance with sanction legislation appears therefore to be legitimate, even in case of low risk of non-compliance. A case-by-case assessment is warranted to ensure that the request is nevertheless not abusive. The requesting company should also not simply rely on the declaration of the counterpart but should carry out its own verifications. If these verifications cannot confirm the statements by the other party, and the information is necessary due to a reasonable suspicion of possible infringement of sanctions, the potential registrant or previous registrant will have to refrain from any further co-operation as per the sanction provisions relevant in each case. The above is in line with the *Commission Guidance for EU operators: implementing enhanced due diligence to shield against Russia sanctions circumvention* (page 7)[3], which reads as follows:

> *First of all, especially when exporting goods subject to restrictions, EU operators need to know their counterparts and how reliable they are. They should include, in particular, contractual clauses with their third-country business partners prohibiting further re-exports of the items to Russia and Belarus. For example, such a clause may oblige the importer in third countries not to export the concerned goods to Russia or Belarus, and not to resell the concerned goods to any third party business partner unless that partner commits not to export the concerned goods to Russia or Belarus. It is vital that the contractual clause gives rise to liability and can be enforced under the law applicable to the contract.*
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> *The clause may also entail ex post verifications, and may be identified an essential element of the contract. See also the notice to operators of 1 April 2022. It is for Member States to implement and enforce sanctions. The European Commission has the role of ensuring uniform implementation throughout the Union and monitoring enforcement by the Member States.*

9. What should communication platforms do if they have entered a data sharing agreement with a company before it was designated or before the company that owns or controls it was designated under Council Regulation (EU) No 269/2014?

Last update: 24 July 2024

Having made funds or economic resources available to a person before it was designated does not qualify as a violation of EU sanctions. However, in general EU sanctions do not allow to continue providing goods and services to a designated person, even under a prior contract. It is for the communication platform to decide which actions are necessary, taking into account its business operations and existing agreements, to ensure compliance with the asset freeze obligation and the prohibition to make funds available to or for the benefit of designated persons. Only the necessary actions to comply with those obligations should be taken (see also Question 21). For instance, a communication platform must make sure, also taking the appropriate contractual measures, that no further funds or economic resources are made available to the designated members (e.g. from

[3] https://finance.ec.europa.eu/system/files/2023-12/guidance-eu-operators-russia-sanctions-circumvention_en.pdf

further implementation of existing cost-sharing agreement) and, if appropriate, exclude or suspend the relevant company from the Communication platform. See also Question 8.

Communication platforms should remain vigilant and report to NCA information that might be relevant for the implementation of sanctions as provided in Article 8(1)(a) of Council Regulation (EU) No 269/2014. (e.g. circumvention attempts they become aware of, such as a listed company making use of a third company to join the platform as a middle person).

10. **What should communication platforms do if they have entered a data sharing agreement with a company before it met the criteria under letters (a)–(c) of Article 5aa of Council Regulation (EU) No 833/2014?**
    Last update: 24 July 2024

Having engaged in transactions with a company before it met the criteria under letters (a)–(c) of Article 5aa does not violate Council Regulation (EU) No 833/2014. However, communication platforms should not engage in further transactions with those companies. It is for the communication platform to decide which actions are necessary, taking into account its business operations and existing agreements, to ensure compliance with Council Regulation (EU) No 833/2014. This may include to ensure that funds or economic resources including data stemming from existing agreements on cost-sharing or granted letters of access are not made available to that designated member of the platform.

Communication platforms should remain vigilant and report to the NCA information that might be relevant for the implementation of sanctions as provided in Article 6b(1)(a) of Council Regulation (EU) No 833/2014 (e.g. circumvention attempts they become aware, such as a company that met the criteria under letters (a)–(c) of Article 5aa of Council Regulation (EU) No 833/2014 making use of a third company as a middle person to join the platform).

11. **Do data sharing obligations after the submission of a registration dossier under Article 3 of Council Regulation 2019/1692 apply in case the communication platform has granted a letter of access to a company that has become designated or owned/controlled by a designated person, or a company that now meets the criteria under letters (a)–(c) of Article 5aa of Council Regulation (EU) No 833/2014?**
    Last update: 24 July 2024

No. Further data sharing is not possible in this case. Should the lead registrant be a designated entity or owned/controlled by a designated person, or a company that now meets the criteria under letters (a)–(c) of Article 5aa, Council Regulation (EU) No 833/2014, and the communication platform should take action to change its lead registrant. In principle, and subject to the NCA assessment, the actions that are strictly necessary to that end are not, in principle and subject to the assessment of the NCA, prohibited under Article 5n of Council Regulation (EU) No 833/2014. These actions include terminating, suspending or otherwise severing data sharing or joint submission agreements between the lead registrant and other registrants, as well as surrendering the lead registrant's role to another registrant according to procedures made available by ECHA. The NCA may ensure that in that context no other services are provided to those persons. Exceptions might apply (see Question 15).

12. **Can I submit a joint registration dossier as a lead registrant if a co-registrant is designated or is owned or controlled by a designated person, is a company that meets the criteria under letters (a)–(c) of Article 5aa of Council Regulation (EU) No 833/2014, or is an OR of a legal entity established in Russia??**
    Last update: 24 July 2024

No. Such a sub-submission would entail making economic resources available to a designated person. A lead registrant submitting such a registration dossier would be in violation of Council Regulation (EU) No 269/2014. Moreover, ECHA must freeze REACH registration dossiers as that would be for the benefit of a designated person or a person owned or controlled by a designated person. Similarly, submitting a joint registration dossier would be tantamount to entering a transaction with a company that meets the criteria under letters (a)–(c) of Article 5aa of Council Regulation (EU) No 833/2014, which is prohibited by that article. Finally, subject to the assessment of the NCA, such a submission would most likely qualify as an indirect provision of prohibited management and consulting service to a legal entity established in Russia, as per Article 5n(1) of Council Regulation (EU) No 833/2014.

On the submission of registration updates, see also Questions 16 and 17.

13. **As an OR or a Third Party Representative (TPR), can I represent a designated company or a company owned or controlled by a designated person, or a company that meets the criteria under letters (a)–(c) of Article 5aa of Council Regulation (EU) No 833/2014, for instance to submit the update to the registration dossier pursuant to Article 22 of the REACH Regulation?**
    Last update: 24 July 2024

No, as this would be tantamount to making resources available to a designated person or entering a transaction prohibited under Article 5aa. Exceptions might however apply.

In principle, and subject to NCA assessment, activities aimed at discontinuing the relationship between the OR or TPR and the represented company are not covered by this prohibition. These include terminating, suspending or otherwise severing contracts in place with that company and surrendering the lead registrant's role to another registrant according to procedures made available by ECHA. Similarly, the mere notification of a cessation of import as provided for by Article 22(1)(c) and 50 of the REACH Regulation or the submission of information about the non-EU entity to ECHA, including for the purposes of Section 1.1.4 of Annex VI of the REACH Regulation, do not constitute a breach of sanctions.

14. **Outside the case discussed under Question 13 of this section of the Russia Sanctions FAQs, as an OR, can I represent a company established in Russia for REACH Regulation-purposes (e.g. submitting, updating or holding a registration or an application for authorisation)?**
    Last update: 24 July 2024

Article 5n(1) of Council Regulation (EU) No 833/2014 prohibits, inter alia, the provision, directly or indirectly, of business and management consulting services to, inter alia, legal persons, entities or bodies established in Russia.

According to the answer to Question 1, Section G.8 (provision of services) of the Russia sanctions FAQs, such prohibition covers 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.

According to the ECHA Guidance on Registration, Section 2.1.2.5[4]:

> "a natural or legal person established outside the EU, who manufactures a substance, formulates a mixture or produces an article can appoint an only representative to carry out the registration of the substance that is imported"
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> […]
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> "The only representative must keep an up-to-date list of EU customers (importers) within the same supply chain of the 'non-EU manufacturer' and the tonnage covered for each of these customers, as well as information on the supply of the latest update of the safety data sheet. The only representative is legally responsible for the registration and should be contacted by importers for any information related to registration in the EU."

Against this backdrop, the activities of ORs for the benefit of legal persons, entities or bodies established in Russia, as described in the ECHA Guidance, appear to fall within the scope of the prohibited services under Article 5n(1), as clarified in Section G.8 of the Russia sanctions FAQs. It is for the OR to assess on a case-by-case basis its specific activities against Article 5n(1) and these FAQs. Since sanctions enforcement is part of the remit of Member States, economic operators can seek further guidance on their specific case to National Competent Authorities.

It is a responsibility of the OR to immediately discontinue the provision of prohibited services. This includes, first and foremost, taking the necessary contractual adjustements. In taking those actions, ORs can rely on Article 11 of Council Regulation (EU) No 833/2014, whereby no claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under such Regulation shall be satisfied, if they are made by, inter alia, any Russian person, entity or body[5]. Note that the transitional period

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4 https://echa.europa.eu/documents/10162/23036412/registration_en.pdf/de54853d-e19e-4528-9b34-8680944372f2

5 Article 11 is aimed at protecting those who comply with EU sanctions against claims based on non-performance brought by their trade partners which are mentioned in Article 11. The notion of "claim" should be interpreted broadly in light of the language of Article 11, including but not limited to the types of claims mentioned in the Article. The list of claims expressly mentioned in Article 11 has general and illustrative nature (see case C-168/17, SH v TG, Judgment ECLI:EU:C:2019:36, paras. 71 et seq); the concept of 'claim' shall also be interpreted by analogy in light of the definition given to this term in Council Regulation (EU) No 269/2014 where a similar no claims clause exists. According to Article 1(a) of Council Regulation (EU) No 269/2014, 'claim' includes "a claim for performance of any obligation arising under or in connection with a contract or transaction". In principle,

for services strictly necessary for the termination of contracts not compliant with these provisions under Article 5n(3) ended on 5 July 2022. Article 5n does however envisage a number of exceptions[6].

In principle, and subject to NCA assessment, activities aimed at discontinuing the relationship between the OR and the company established in Russia are not covered by the prohibition. These include terminating, suspending or otherwise severing contracts in place with that company and, as the case may be, surrendering the lead registrant's role to another registrant according to procedures made available by ECHA. Similarly, the mere notification of a cessation of import as provided for by Articles 22(1)(c) and 50 of the REACH Regulation or the submission of information about the non-EU entity to ECHA, including for the purposes of Section 1.1.4 of Annex VI of the REACH Regulation, is not a service prohibited pursuant to Article 5n of Council Regulation (EU) No 833/2014. The above considerations also apply to TPRs of legal entities acting on behalf of manufacturers established in Russia, for their respective activities as provided for by Article 4 of the REACH Regulation.

15. Do advisory activities for REACH Regulation-related purposes, such as data sharing negotiations, setting up communication platforms, registration dossier submissions or update and application for authorisations, fall within the scope of the prohibition of Article 5n(2) of Council Regulation (EU) No 833/2014, if provided to or on behalf of companies established in Russia or their representatives?
Last update: 24 July 2024

According to the answer to Question 11, Section G.8 (provision of services) of the Russia sanctions FAQs, Art 5n(2) of Council Regulation (EU) No 833/2014 encompasses 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.

It is for the economic operator to assess, on a case-by-case basis, which of their activities fall within the scope of the prohibition. This said, and subject to the assessment of the NCA in the specific case, several of the services normally provided by lead registrants, communication platforms and lawyers for REACH Regulation-related purposes such as registration dossier submission or update, application for authorisations, appear to fall within the scope of the prohibition (e.g. drafting of consortium and other agreements, provision of legal advice on REACH and other relevant EU legislation, representing companies established in Russia in the context of data sharing negotiations etc.).

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the underlying contract does not probably cease to exist when a restrictive measure precludes compliance with the contractual obligation (this may depend on the applicable national law and the relevant contractual clauses). If the restrictive measures cease to apply, the operator would have to comply with its obligation.

[6] Article 5n was inserted in Council Regulation (EU) No 833/2014 by Council Regulation (EU) 2022/2474 of 16 December 2022. The regulation entered into force on 17 December 2022.

Note that Article 5n provides for carve outs 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 Council Regulation (EU) No 833/2014 and of Council Regulation (EU) No 269/2014.

16. Can I submit information under the first paragraph of Article 11 of the REACH Regulation on behalf of a co-registrant that is designated or is owned or controlled by a designated person?
Last update: 24 July 2024

In order to submit joint updates of registration dossiers, the lead registrant should:

- identify the co-registrants that are designated or owned or controlled by a designated person;
- encourage those co-registrants to cease manufacture or import and to notify the cessation to ECHA pursuant to Articles 22(1)(c) and 50 of the REACH Regulation by a given deadline;
- monitor the registration status of the co-registrants in question until the indicated deadline;
- duly inform the NCA of all the above and communicate any other relevant information as per Article 8(1)(a) of Council Regulation (EU) No 269/2014.

This will be the case even if the designated co-registrant does not co-operate with the request of the lead registrant to cease manufacture or import, provided that the NCA has been informed accordingly.

Finally, as a good due diligence practice, the registrants of the substance should also disseminate the relevant information to their supply chain and concerned persons, as appropriate.

It is nonetheless to be recalled that NCAs are exclusively responsible to assess each case of possible breach of sanctions, and economic operators can seek for further guidance from them.[7] Exceptions may apply.

17. Can I submit information under the first paragraph of Article 11 of the REACH Regulation together with a co-registrant that meets the criteria under letters (a)–(c) of Article 5aa of Council Regulation (EU) No 833/2014?
Last update: 24 July 2024

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[7] When assessing responsibility during the submission of a registration dossier update, NCAs and judiciaries in the Member States should take into consideration whether the lead registrant, communication platform managers and co-registrants, as diligent operators, have duly followed the procedures indicated in this FAQ as well as those recommended by ECHA and by the NCAs. In this case, the NCAs and judiciaries in the Member States might consider to limit or exclude the responsibility of the lead registrant, communication platform managers or co-registrants, in line with the provision of Article 10 of Council Regulation (EU) No 269/2014, whereby actions by natural or legal persons, entities or bodies do not give rise to liability of any kind on their part, if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in that Regulation. In particular, this can be the case if a lead registrant cannot exclude the listed co-registrant from the joint submission for the substance.

In order to submit joint updates of registration dossiers, the lead registrant should:

- identify the co-registrants that meet the criteria under letters (a)–(c) of Article 5aa of Council Regulation (EU) No 833/2014;
- encourage those co-registrants to cease manufacture or import and to notify the cessation to ECHA pursuant to Articles 22(1)(c) and 50 of the REACH Regulation by a given deadline;
- monitor the registration status of the co-registrants in question until the indicated deadline;
- duly inform the NCA of all the above and communicate any other relevant information as per Article 6b(1) of Council Regulation (EU) No 833/2014.

This will be the case even if the co-registrant that meet the criteria under letters (a)–(c) of Article 5aa of Council Regulation (EU) No 833/2014 does not co-operate with the request of the lead registrant to cease manufacture or import, provided that the NCA have been informed accordingly.

Finally, as a good due diligence practice, the registrants of the substance should also disseminate the relevant information to their supply chain and concerned persons, as appropriate.

It is nonetheless to be recalled that NCAs are exclusively responsible to assess each case of possible breach of sanctions, and economic operators can seek for further guidance from them.[8] Exceptions may apply.

18. As an OR of a legal entity established in Russia, should I submit or make information available to ECHA or to any competent authority of the Member State in which I am established, if requested to do so pursuant to Article 36 of the REACH Regulation?
Last update: 24 July 2024

Yes. Article 36 provides that any manufacturer or importer must assemble and keep available all the required information to carry out his or her duties under the REACH Regulation for at least 10 years after the end of manufacture or import. Requests to provide this information are addressed to the OR in their individual capacity, and, in principle and subject to NCA assessment, their fulfilment is permitted under para 6 of Article 5n Council Regulation (EU) No 833/2014.

19. I have received a request to submit information to ECHA to support my self-declaration as a SME, for the purposes of the determination of a fee under the

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[8] When assessing responsibility during the submission of a registration dossier update, NCAs and judiciaries in the Member States should take into consideration whether the lead registrant, communication platform managers and co-registrants, as diligent operators, have duly followed the procedures indicated in this FAQ as well as those recommended by ECHA and by the NCAs. In this case, the NCAs and judiciaries in the Member States might consider to limit or exclude the responsibility of the lead registrant, communication platform managers or co-registrants, in line with the provision of Article 10 of Council Regulation (EU) No 833/2014, whereby actions by natural or legal persons, entities or bodies do not give rise to liability of any kind on their part, if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in that Regulation. In particular, this can be the case if a lead registrant cannot exclude the listed co-registrant from the joint submission for the substance.

REACH Regulation. As an OR of a legal entity established in Russia, can I fulfil this request?
Last update: 24 July 2024

Yes. In principle, and subject to the NCA assessment, the prohibition to provide business and management consulting services and legal advisory services to legal entities established in Russia does not entail restrictions that prevent or prohibit economic operators from co-operating with ECHA in the context of verifications of their SME status. This includes making information in their possession available to ECHA and, if necessary, seeking further information from the legal entity they represent. ECHA's verification is based on Commission Regulation (EC) No 340/2008, and a failure to provide evidence supporting a previous declaration on the company size may result in the obligation to pay an additional fee or administrative charge.

The verification of the eligibility of economic operators to fee reductions is also carried out retrospectively, so the above considerations also apply to ORs who terminated or suspended their services to the legal entity established in Russia.

20. As an OR of a legal entity established in Russia, should I pay my outstanding ECHA invoices originating from activities I performed in the interest of my client?
Last update: 24 July 2024

Yes. In principle, and subject to the NCA assessment, invoices issued by ECHA are based on the REACH Regulation, Commission Regulation (EC) No 340/2008 and the other legislation governing the financial management of the Agency. These are independent from any service agreement between the OR and his or her client. The prohibition to provide certain services to legal entities established in Russia, pursuant to Article 5n of Council Regulation (EU) No 833/2014, does not exempt economic operators from settling their own debts with third parties, including when they arose from the submission of registrations or applications in the interest of a legal entity established in Russia.

When the OR already terminated or suspended their contractual relationship with the legal entity established in Russia, it is left to the addressee of the invoice to recover the payment from their former client, based on any indemnity clause or similar arrangements applicable in each case.

21. How can I protect myself from claims from a potential registrant that is designated or owned or controlled by a designated person regarding the fact that I refused to enter negotiations under Article 25–27 and 30 of the REACH Regulation with it or from other actions I have taken to comply with EU sanctions?
Last update: 1 July 2022

All Council Regulations establishing EU sanctions envisage a standard provision which shields those required to comply with EU sanctions from claims from third parties for those very actions. By way of example, Article 11(1) of Council Regulation (EU) 269/2014 reads: '*No claims in connection with any contract or transaction the performance of which has been affected, directly*

or indirectly, in whole or in part, by the measures imposed under this Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, particularly a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by: (a) designated natural or legal persons, entities or bodies listed in Annex I; (b) any natural or legal person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in point (a).'

Article 11(1)(a)–(b) of Council Regulation (EU) No 833/2014 mirrors the above provision of Council Regulation (EU).

22. As an EU company, can I provide my scientific data to a company in a third country, knowing that those data could be forcibly shared by the local authority to persons listed under Annex I to Council Regulation (EU) No 269/2014, or owned or controlled by them?

Last update: 24 July 2024

No. Article 10 of Council Regulation (EU) No 833/2014 establishes that actions by natural or legal persons, entities or bodies shall not give rise to liability of any kind on their part, if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in that Regulation. If the EU company has reasonable cause to suspect that the data can be shared with a listed company, they should not be provided to a company in a third country, even if that is one of its subsidiaries. This can happen for instance if the third country is not aligned with EU sanctions and it has implemented REACH Regulation-type legislation.

23. Can I grant a letter of access to a company in Russia or in another third country for the manufacturing of chemicals included in Annex VII of Council Regulation (EU) No 833/2014 which are intended to be exported in Russia or to be used in Russia.

Last update: 24 July 2024

No. Council Regulation (EU) 2023/1214 of 23 June 2023 ("11th sanctions package") adding Article 2a(2)(c) to Regulation (EU) No 833/2014 includes the prohibition to provide financing or financial assistance related to the goods and technology referred to in paragraph 1 (Annex VII goods and technology) for any sale, supply, transfer or export of those goods and technology, or for the provision of related technical assistance, brokering services or other services, directly or indirectly to any natural or legal person, entity or body in Russia, or for use in Russia. In essence, this Article prohibits the transfer of rights over scientific data to de-localise production of restricted chemicals to third countries, where those chemicals are intended for Russia.

24. Can I import substances from a legal person, entity or body that meets the criteria under letters (a)–(c) of Article 5aa(1) of Council Regulation (EU) No 833/2014, if that is necessary for the purchase, import or transport of pharmaceutical, medical, agricultural and food products, including wheat and fertilisers?

Last update: 9 December 2022

Yes. Council Regulation (EU) 2022/1269 of 21 July 2022 amended Council Regulation (EU) No 833/2014 to include an exemption under Article 5aa(3)(f) allowing transactions with legal persons, entities and bodies that meet the criteria under letters (a)–(c) of Article 5aa(1) provided that such transactions are necessary for the purchase, import or transport of pharmaceutical, medical, agricultural and food products, including wheat and fertilisers. This is under the condition that the underlying trade in goods is not otherwise restricted under Council Regulation (EU) No 833/2014[9].

Since the provision in Article 5aa(3)(f) qualifies as an exemption, the importer or the OR is not required to obtain the authorisation of the NCA before importing the substance. However, if the substance is imported or used, even by distributors or downstream users, for other purposes than those contemplated under Article 5aa(3)(f), the importer or the OR can be considered liable for the infringement of Article 5aa by the NCA. It is for the importer or the OR to take the necessary actions in order to ensure that the uses by the distributors or downstream users are in line with the purposes indicated in Article 5aa(3)(f); this may include, among others, providing a notice/information to the latter notably on the scope of the uses permitted under Article 5aa(3)(f), including contractual arrangements in the relevant distribution agreements and having a monitoring/tracking system in place. Since Article 5aa(1) prohibits directly or indirectly engaging in any transaction with legal persons, entities and/or bodies that meet the criteria under letters (a)–(c), the relevant NCA can consider distributors or downstream users as in breach of such provision as well.

The importer or the OR should also take the necessary actions to ensure that its REACH registration is in line with the permitted uses (e.g. update the uses or discontinue the import of the substances for non-permitted uses and update the substance volume).

25. Are REACH registrations and authorisations economic resources to be reported to the NCA pursuant to Article 9(2) of Council Regulation (EU) No 269/2014?
Last update: 24 July 2024

Yes. Article 9(2) of Council Regulation (EU) No 269/2014 establishes that listed persons must report, before 1 September 2022 or within 6 weeks from the date of listing in Annex I, whichever is latest, funds or economic resources within the jurisdiction of a Member State belonging to, owned, held or controlled by them, to the competent authority of the Member State where those funds or economic resources are located and cooperate with the competent authority in any verification of such information. REACH registrations should be considered located in Finland, as held by ECHA in Helsinki. REACH Authorisations should be considered located in Belgium, as granted by the Commission. Listed persons and persons owned or controlled by them should therefore report them to the Finnish and Belgian National Competent Authority. The latter is to transmit that information to the Commission, as per Article 9(4).

[9] By way of example, see the restrictions under Article 3i of Council Regulation (EU) No 833/2014 concerning certain chemical substances included in Annex XXI.

26. Can I purchase substances from a company designated or owned/controlled under Council Regulation (EU) No 269/2014, or from a legal person, entity or a legal person, entity or body that meets the criteria under letters (a)–(c) of Article 5aa of Council Regulation (EU) No 833/2014, if that company holds a REACH registration?

Last update: 9 December 2022

No. It is prohibited to provide funds or economic resources to designated persons, even indirectly, or engage in transactions with companies that meet the criteria under letters (a)–(c) of Article 5aa of Council Regulation (EU) No 833/2014. Exceptions might however apply (see also Question 24).