

DIVESTMENT FROM RUSSIA
RELATED PROVISION: ARTICLE 12b OF COUNCIL REGULATION 833/2014
FREQUENTLY ASKED QUESTIONS – AS OF 17 DECEMBER 2024

1. Why were the derogations in Article 12b(1) and (2) of Council Regulation 833/2014 introduced?

Last update: 17 December 2024

When EU operators are divesting from the Russian market, they are still bound by the prohibitions set out in Council Regulation 833/2014. It is therefore not possible to import goods subject to an import prohibition from Russia into the Union or to sell, transfer or supply prohibited goods falling to a Russian buyer.

Therefore, derogations from several prohibitions in Council Regulation 833/2014 have been introduced in Article 12b. Since the aim is to facilitate an expeditious exit from the Russian market, those derogations are temporary.

For prohibitions pursuant to Articles 2, 2a, 3, 3b, 3c, 3f, 3h and 3k (Article 12b(1)):

Operators can request an authorisation to enable the sale, supply or transfer of goods and technologies listed in Annexes II, VII, X, XI, XVI, XVIII, XX and XXIII to Council Regulation 833/2014 as well as in Annex I to Regulation (EU) 2021/821 as well as the sale, licensing or transfer in any other way of intellectual property rights or trade secrets as well as granting rights to access or re-use any material or information protected by means of intellectual property rights or constituting trade secrets, related to the goods and technology in the aforementioned annexes.

The following **cumulative** requirements must be met:

- the sale, supply or transfer is strictly necessary for the divestment from Russia or the wind-down of business activities in Russia;
- the goods and technologies are owned by an EU national or EU operator or by a Russian entity owned by or solely or jointly controlled by an EU operator;
- there are no reasonable grounds to believe that the goods might be for a military end-user or have a military end-use in Russia;
- the concerned goods and technologies were physically located in Russia before the relevant prohibitions have entered into force in respect of those goods and technologies listed in the aforementioned Annexes.
- The sale, supply and transfer of the goods and technologies has to take place before 31 December 2025.

For prohibitions pursuant to Article 3g and 3i (Article 12b(2)):

Operators can request an authorisation to enable the import into the Union or transfer of goods and technologies listed in Annexes XVII and XXI to Council Regulation 833/2014.

The following **cumulative** requirements must be met:

- The import or transfer is strictly necessary for the divestment from Russia or the wind-down of business activities in Russia;
- The concerned goods are owned by an EU national or EU operator or by a Russian operator owned by or solely or jointly controlled by an EU operator;
- The concerned goods were physically located in Russia before the relevant prohibitions in Articles 3g and 3i entered into force in respect of those goods.
- The import into the Union or transfer took place before 31 December 2025.

In both Art 12b(1) and Art.12b(2), the conditions aim at ensuring that no circumvention of the relevant measures takes place under the pretext of divestment – for instance, that divestment does not retroactively validate purchases in Russia or exports to Russia of goods which were prohibited under the EU restrictive measures at the time when they took place.

2. Should the sale of shares of a Russian subsidiary that holds goods and technologies listed in Annexes II, VII, X, XI, XVI, XVIII, XX and XXIII to Council Regulation No. 833/2014 as well as in Annex I to Regulation (EU) 2021/821 to a Russian buyer be considered an indirect sale, supply or transfer of prohibited goods and technologies as listed in Articles 2, 2a, 3, 3b, 3c, 3f, 3h and 3k of Council Regulation No. 833/2014?

Last update: 22 December 2023

Yes. A sale of shares of a Russian subsidiary must be considered as a prohibited indirect sale, supply or transfer of prohibited goods given that the buyer of the shares acquires at the same time the goods and technologies listed in Annexes II, VII, X, XI, XVI, XVIII, XX and XXIII to Council Regulation No. 833/2014 as well as in Annex I to Regulation (EU) 2021/821.

It is not relevant that the full 100% of the shares are sold. Once the buyer has control over the subsidiary, they have control over the assets. The sale of the shares thus amounts to a sale, supply or transfer of the goods in question to a “natural or legal person, entity or body in Russia or for use in Russia”. It is moreover not relevant if those goods are already in Russia or that they cannot be re-exported from Russia due to restrictions imposed by the Russian government.

EU operators may apply for a derogation based on Article 12b(1) of Council Regulation 833/2014.