

EXECUTION OF CONTRACTS AND CLAIMS
*RELATED PROVISION: TRADE RELATED ARTICLES; ARTICLE 11 OF COUNCIL
REGULATION 833/2014*

FREQUENTLY ASKED QUESTIONS – AS OF 26 AUGUST 2022

1. What is a contract in the context of sanctions regimes against Russia and Belarus?

Last update: 8 April 2022

The term ‘contract’ refers to a binding commitment between parties. Such an agreement should contain all the necessary elements for its validity and the execution of a transaction (such as indication of the parties, price, quantities, delivery dates, modalities of execution, etc.) Most framework contracts which do not specify the quantities or the price would therefore not be considered as a contract for the purpose of the exceptions foreseen for the execution of prior contracts.

2. Can framework contracts be considered as contracts which may benefit from the prior contracts exception?

Last update: 13 June 2022

Where framework contracts do not specify the exact quantities, precise price or delivery date, they cannot benefit from the exceptions. Usually, framework agreements do not contain all the necessary elements for the execution of a transaction (such as price, quantities, deliver dates, modalities of execution etc.). This means that their implementation requires subsequent signature of new and specific contracts.

3. What is an “ancillary contract“?

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An “ancillary contract” is a contract necessary for the execution of another (principal) contract, that is, a contract without which the main contract cannot be executed, such as insurance, financing etc.

However, the execution of ancillary contract must not lead to circumvention of the regulation. For example, a contract on transportation would not be covered by the ancillary contract exception since it would fall under the prohibition of “transfer” or “transport”.

4. Does a separate annex signed after 2 March 2022, which defines the quantity and price of goods for a pre-existing framework contract, fall under the “ancillary contract” definition?

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No. The specification of quantity and price of goods is an essential element of a purchase contract and has to be determined before 2 March 2022. A separate annex is not an ancillary contract, but part of the main contract. If the separate annex that specifies essential contract elements was signed on or after 2 March 2022, it is considered a new contract.

5. Is an extension of a contract considered an “ancillary contract”?

Last update: 13 June 2022

No. The prolongation (whether tacit or explicit) of a contract is considered a new contract. Consequently, for example, an import based on a contract extended on or after 2 March 2022 (or executed after 4 June 2022) is prohibited.

6. Are automatic renewals of contracts signed before 2 March 2022 permitted?

Last update: 13 June 2022

No. The tacit prolongation of a contract is treated as a new contract and is therefore prohibited.

7. In Article 11 of Regulation (EU) 833/2014, do the “claims” in connection with any contract or transaction, the performance of which has been affected by the compliance of this Regulation, include the liquidation of financial instruments, such as mutual fund shares by any Russian citizen or natural person residing in Russia, or legal entity/ body established in Russia? If so, under which conditions?

Last update: 24 May 2022

Article 11 relates to claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly by Regulation (EU) 833/2014, made by a counterpart referred to in Article 11(1) under (a), (b) or (c), who would have suffered an alleged damage due to the compliance with the Regulation by an EU operator - for example if a contract with this counterpart cannot be fulfilled or was terminated due to the restrictive measures. This Article seeks to protect EU operators from having to satisfy damage claims of any types in connection with such contract or transaction, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form.

Without prejudice to other restrictive measures that may affect certain financial instruments, the EU operator would not be required to satisfy a request for liquidation of a financial instrument, if such liquidation relates to payment of a bond, guarantee or indemnity referred to in Article 11.

Please note also that if the Russian person is targeted by measures freezing that person's funds and economic resources (e.g. via Regulation (EU) 269/2014), the applicable Regulation will, in principle, prevent the liquidation of financial instruments of that Russian person.

8. Are the claims coming from non-Russians residents in Russia also covered by the protection offered in Article 11(1)b?

Last update: 13 June 2022

Article 11 protects EU operators against claims by “any other Russian person, entity or body”. Considering the objective of that provision which is to offer protection to those implementing EU sanctions, its wording and context, “Russian person” must be understood as including Russian nationals and Russian residents which are nationals of other States.

9. Article 51 of Council Regulation 833/2014 prohibits to keep executing certain contracts with Russian entities. How does it affect the due payments to these entities and will I have to pay interests for the damages caused?

Last update: 26 August 2022

According to Article 51 of the Regulation, it is prohibited to provide direct or indirect support, including financing and financial assistance or any other benefit under a Union, Euratom or Member State national programme and contracts to any legal person, entity or body established in Russia with over 50 % public ownership or public control. It must therefore be understood that payments prohibited by Article 51 must be withheld while the sanctions are in force. Interests claimed by Russian contractual counterparts for alleged damages originating by this prohibition qualify as a form of compensation. Hence, they cannot be satisfied if brought forward by the persons indicated in Article 11(1)(a)-(c). See also Question 6.

10. When an article of Council Regulation 833/2014 provides for an exception allowing for the execution of a prior contract until a specific date, does it allow for the payment on the basis of such contract by the EU operation to its Russian counterpart after this date?

Last update: 26 August 2022

It is the Commission's view that an exception allowing for the execution of prior contracts until a specified date would not allow for a payment to be made to the Russian counterpart beyond that date. Since the payment is part of the execution of the contract, EU operators are prohibited from

making such a payment thereafter, even if the goods originating in Russia have already been received. Questions on the concrete application of EU sanctions in specific cases should be addressed to the relevant national competent authority.