

INSURANCE AND REINSURANCE

FREQUENTLY ASKED QUESTIONS – AS OF 23 MARCH 2022

Q1. A Russian insurance company insures an aircraft or an engine of an EU policy holder and gets reinsurance from an EU reinsurer. Is the reinsurance provided by the EU reinsurer to the Russian insurer prohibited under Article 3c(2)?

Articles 3c(2) prohibits an EU reinsurance company to provide its services to a Russian person or entity. The EU operators affected must take the necessary measures in light of this situation.

Q2. Do the prohibitions in Article 3c(2) extend to the provision of insurance and reinsurance in respect of coverage of a non-Russian airline which conducts flights into and out of Russia?

Article 3(c)(2) contains a specific prohibition to provide re/insurance in relation to an aircraft. This is different from the prohibitions on financial assistance in Article 3c(4) as well as Articles 2 and 2a. Insurance in relation to a sale, supply, transfer or export is covered under the prohibition in article 3c(4), since insurance/re-insurance are part of the notion of “financing and financial assistance” as per Art 1(o).

The provision of re/insurance in the context of an international flight in and out of Russia by a non-Russian airline which does not have a Russian re/insurance is not covered by the prohibition as it is not for ‘use in Russia’ but part of the normal international services provided by an airline. The wording ‘for use in Russia’ is a standard formulation used to avoid the circumvention of the measures as it ensures that products and services sold/supplied/provided to third country persons, but to be used in the country subject to sanctions, are also prohibited.

Q3. Do these prohibitions extend to the provision of insurance or reinsurance of any parts or components for the purposes of conducting repairs to an aircraft, which conducts flights, if such repair takes place in Russia?

Where the prohibitions applies to the re/insurance of goods and technology, this includes parts or components that fall under the scope of Annex XI.

The provision of re/insurance in the context of an international flight in and out of Russia by a non-Russian airline which does not have a Russian re/insurance is not covered by the prohibition as it is not for ‘use in Russia’ but part of the normal international services provided by an airline. This is true also for the re/insurance of any parts or components for the purposes of conducting repairs to an aircraft, where a non-Russian airline conducts flights into and out of Russia.

Q4. Do these prohibitions extend to an EU company sending an EU vessel to load licit cargo into a Russian port (e.g., normal goods, humanitarian goods, food)?

The prohibitions in Article 3c apply to insurance and reinsurance related to aircrafts (see Annex XI). The prohibitions in Articles 2 and 2a do not prevent airplanes, vessels and trucks from leaving or returning to the Union as part of normal commercial activities, as such movement does not constitute a “sale, supply, transfer or export”. The prohibition on financing and financial assistance in Articles 2 and 2a

cover insurance activities (see Article 1(o)) but only in so far as they relate to the sale, supply, transfer or export of the listed goods.

Q5. Do the prohibitions in Article 3c also apply to the insurance of transshipments of aircrafts and aircraft parts in EU territorial waters and airspace?

Insurance in relation to a sale, supply, transfer or export is covered under the prohibition in Article 3c(4), since insurance/re-insurance are part of the notion of “financing and financial assistance” as per Article 1(o). “Transfer” is a broader concept than “transport”, covering a wide range of operations, not only the movement of goods through customs controls, but also the transport of goods, including the loading, transport, and trans-shipment of goods. Accordingly, the insurance of a transit via the EU territory of goods subject to sanctions is not allowed.

Q6. How does the wind down period in Article 3c paragraph 5 pertain to insurance services?

The wind down provision applies to subsections 1 and 4 only. Provided an insurance contract was concluded before 26 February 2022, insurance services for the sale, supply, transfer or export of goods and technologies listed in Annex XI are not subject to restrictions until 28 March 2022. On the other hand, the prohibition of insurance and reinsurance in subsection 2 applies as from 26 February 2022.

Q7. Council Regulation (EU) 2022/328 amended Regulation (EU) 833/2014 and provided a definition of “financial assistance” in Article 1(o), does this apply to all measures in respect to insurance?

Yes, the definition of “financing or financial assistance” contained in Article 1(o) applies throughout Regulation (EU) 833/2014.

Q8. Article 2 prohibits the provision of financial assistance for the sale, supply, transfer or export of dual-use goods and technology, unless authorised by the national competent authority. By whom the authorisation should be requested: the exporter (i.e. the insured), the insurer or both?

The authorisation should be requested by the insurer after consulting the exporter.

For more information, you can consult the dedicated frequently asked questions on Article 2 and 2a on this webpage: https://ec.europa.eu/info/business-economy-euro/banking-and-finance/international-relations/restrictive-measures-sanctions/sanctions-adopted-following-russias-military-aggression-against-ukraine_en#faq

Q9. Council Regulation (EU) 269/2014 contains individual financial measures against a number of persons and entities. Should EU re/insurance operators cease to provide insurance services to these persons and entities? How should they proceed?

Persons and entities listed under Regulation 269/2014 are subject to financial sanctions that consist of an asset freeze and a prohibition to make funds and economic resources available to them. They are listed in Annex I to the Regulation. These sanctions come into force from the date the person or entity is listed. This is distinct from the sectorial measures provided for in Regulation (EU) 833/2014, which contains certain prohibitions regarding insurance.

The prohibition to make funds and economic resources available to a listed person or entity means that an EU operator cannot put any funds or economic resources at the disposal of a listed person, directly or indirectly, whether by gift, sale, barter or any other means, including the return of the listed person’s

own resources. The consequence of a listing is that the provision of services to the listed person, including insurance, should cease. It is up to the EU operator to take the measures most appropriate in light of the situation.

Exceptionally, an EU operator could proceed with a payment to the frozen account of a listed person provided such funds are also frozen and provided the payment is due under a contract concluded before the date at which the person was listed (See Article 7).
