

"NO RE-EXPORT TO RUSSIA" CLAUSE
RELATED ARTICLE: ARTICLE 12g OF COUNCIL REGULATION 833/2014
FREQUENTLY ASKED QUESTIONS – AS OF 18 DECEMBER 2024

1. What is the purpose of Article 12g and how does the “no re-export to Russia” clause work?

Last update: 22 February 2024

Article 12g aims to combat the circumvention of EU export bans and more specifically the situation where goods exported to third countries are re-exported to Russia. Many EU operators already insert "no re-export" clauses in their contracts, as a good practice within their basic due diligence. Article 12g turns this practice into a legal requirement for certain sensitive goods, improving legal certainty in the context of business negotiations and relations. It moreover creates a deterrent effect on those non-EU operators that redirect sanctioned EU goods to Russia, as in the future it exposes them for instance to contractual penalties.

Concretely, Article 12g obliges EU exporters to insert a "no re-export to Russia" clause in their export/sale/supply/transfer or similar contracts. This applies only to specific types of sensitive goods, including goods related to aviation, jet fuel (Annexes XI, XX to the Regulation), firearms (Annex XXXV to the Regulation, as well as Annex I to Regulation (EU) No 258/2012) and common high priority items¹ (Annex XL to the Regulation). For the geographical scope, see Question 4. To ensure its effectiveness, the “no re-export to Russia” clause must contain adequate remedies (see Question 5).

Exporters should not sell their products to any non-EU operator that is not ready to incorporate a “no re-export to Russia” clause in contracts falling under the scope of Article 12g.

Independently of the obligation established by Article 12g, operators should have in place strong due diligence frameworks to ensure sanctions compliance. In its notice of 1 April 2022², the Commission indicated that *“in view of the risk of circumvention, economic operators in the EU are advised to take adequate due diligence measures available in order to prevent circumvention of the [sanctions on Russia]”*. It further stated that *“due diligence measures that exporters and importers are advised to take are, for instance, the introduction in import and export contracts of provisions destined to ensure that any imported or exported goods are not covered by the restrictions. These may take the form of e.g. a statement that the respect of such provision is an essential element of the contract, or of contractual clauses committing 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 that does not take a commitment not to export the concerned goods to Russia or Belarus giving rise to liability in case the latter re-exports the items to those countries.”*

2. How is the obligation in Article 12g verified and enforced?

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EU exporters' contracts must comply with the obligation in Article 12g prior to or at the latest at the time of the export, sale, supply or transfer of the relevant goods to a third country. Exporters should be able to prove this if requested by their competent authorities.

Moreover, paragraph 4 of Article 12g requires exporters to inform their national competent authorities as soon as they become aware of a breach or circumvention of the “no re-export to Russia” clause.

3. Does the obligation in Article 12g also apply to existing contracts?

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¹ https://finance.ec.europa.eu/publications/list-common-high-priority-items_en

² Notice to economic operators, importers and exporters (2022/C 145 I/01), [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0401\(04\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0401(04))

The obligation to include the “no re-export to Russia” clause depends on the contract’s date of conclusion.

Contracts concluded before 19 December 2023:

- Contracts that were already concluded when Council Regulation (EU) 2023/2878 came into force benefit from a one-year transition period until 19 December 2024 included or until the contracts’ expiry, whichever is earliest. For any execution of these contracts as of 1 January 2025, they need to be amended to include the “no re-export to Russia” clause.

Contracts concluded as of 19 December 2023:

- These contracts must contain the “no re-export to Russia” clause as of 20 March 2024.

4. Does it matter in which country the non-EU operator is incorporated?

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The obligation to include a “no re-export to Russia” clause applies to contracts with operators based in any non-EU country, with the exception of the partner countries listed in Annex VIII to Council Regulation (EU) No 833/2014.

As of 24 June 2024, Annex VIII includes the following partner countries: United States of America, Japan, United Kingdom, South Korea, Australia, Canada, New Zealand, Norway, Switzerland, Liechtenstein and Iceland.

Pursuant to Article 12 of Council Regulation (EU) No 833/2014, it is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent sanctions law. Operators should also remain vigilant of any attempts by third parties to draw them into circumvention schemes. These considerations apply regardless of which non-EU country the counterpart is based in. If you believe you are witnessing sanctions violations or circumvention, these should be reported to your national competent authority or anonymously via the EU whistle-blower tool³.

5. What does “adequate remedies” mean, in the context of paragraph 3 of Article 12g?

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To ensure its effectiveness, the “no re-export to Russia” clause must contain adequate remedies to be activated in case of its breach. These remedies should be reasonably strong and aim to deter non-EU operators from any breaches.

An adequate remedy is, for instance, the possibility for EU operator to stop deliveries and to suspend, interrupt or terminate the contract as soon as it becomes aware of a breach by its contractual counterpart of its contractual commitment not to re-export the goods or technology concerned to Russia. By way of example, and without being cumulative, such adequate remedies may result in the suspension, interruption or termination of the contract, the application of financial penalties, or the determination of a competent court able to recognise this re-export as contrary to the provisions set out in the contract. See also the wording suggested in the answer to Question 6 below.

In parallel, according to paragraph 4 of Article 12g, as soon as they become aware of a breach, exporters must inform the competent authority of the Member State where they are resident or established.

6. Should operators use a specific wording for the “no re-export to Russia” clause?

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³ <https://EUsanctions.integrityline.com>

Operators are free to choose the appropriate wording for the “no re-export to Russia” clause, as long as the outcome fulfils the requirements of Article 12g. In any event, it is recommended that the clause is identified as an essential element of the contract.

While it does not preclude the use of other wordings, the template below can be considered as meeting the obligation in Article 12g. It is recommended in particular for contracts with non-EU operators doing business in jurisdictions seen as posing a high risk of circumvention.

“(1) The [Importer/Buyer] shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.

(2) The [Importer/Buyer] shall undertake its best efforts to ensure that the purpose of paragraph (1) is not frustrated by any third parties further down the commercial chain, including by possible resellers.

(3) The [Importer/Buyer] shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph (1).

(4) Any violation of paragraphs (1), (2) or (3) shall constitute a material breach of an essential element of this Agreement, and the [Exporter/Seller] shall be entitled to seek appropriate remedies, including, but not limited to:

(i) termination of this Agreement; and

(ii) a penalty of [XX]% of the total value of this Agreement or price of the goods exported, whichever is higher.

(5) The [Importer/Buyer] shall immediately inform the [Exporter/Seller] about any problems in applying paragraphs (1), (2) or (3), including any relevant activities by third parties that could frustrate the purpose of paragraph (1). The [Importer/Buyer] shall make available to the [Exporter/Seller] information concerning compliance with the obligations under paragraph (1), (2) and (3) within two weeks of the simple request of such information.”

7. Is the inclusion of the “no re-export to Russia” clause also necessary for public contracts?

Last update: 15 July 2024

On 24 June 2024, the Council adopted Council Regulation (EU) 2024/1745 (part of the “14th sanctions package”), which set out an exemption for public contracts concluded by an exporter with a public authority in a third country or with an international organisation - see paragraph 2a in the amended Article 12g of Council Regulation (EU) No 833/2014. Exporters are not obliged to contractually prohibit the re-exportation to Russia and re-exportation for use in Russia in such contracts.

However, exporters are under the obligation to inform the national competent authorities of the Member State where they reside or are established in, of any public contracts that they have concluded which is benefitting from the above-mentioned exemption.

8. Does the exemption for public contracts in Art. 12g paragraph 2a apply to both existing and future contracts?

Last update: 18 December 2024

Yes, the exemption for contracts concluded by an exporter with a public authority in a third country or with an international organisation applies to both future and existing contracts.

9. Does the exemption for public contracts mean that EU operators are exempted from the notification's obligation for existing contracts?

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The exemption for public contracts is coupled with the obligation to notify the national competent authorities, see paragraph 2b in the amended Article 12g of Council Regulation (EU) No 833/2014. The notification must be carried out within two weeks for newly concluded contracts.

For contracts concluded prior to the adoption of Council Regulation (EU) 2023/2878 ("12th sanctions package" on 19 December 2023), national competent authorities may request a notification within an appropriate timeframe.

10. What information should be notified concerning public contracts?

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EU operators concluding a public contract subject to the exemption and notification requirement in Art. 12g paragraphs 2a and 2b should indicate the following information:

- Legal basis Article 12 g paragraph 2b of Regulation (EU) No 833/2014 in order to help national competent authorities to classify the notification;
- Contract partner, i.e. public authority in the third country or international organisation with which the public contract is concluded; and
- Subject matter of the contract (i.e. which goods referred to in Art. 12g paragraph 1).

11. Can operators use a general clause referencing not only to the re-exportation to Russia in their contracts?

Last update: 18 December 2024

Yes. A general clause prohibiting the re-exportation to countries subject to EU restrictive measures can be sufficient if the other requirements in Art. 12g are met, i.e. adequate remedies are indicated.

In the case of contracts concluded before 19 December 2023, a general clause aimed at respecting EU sanctions regimes can be sufficient if it is broad enough to cover the no re-exportation obligation as set out by Art. 12g.

12. How can the obligations set out in Article 12g be fulfilled if an operator faces persistent difficulties in inserting the "no re-export to Russia" clause in an existing contract due to the refusal of its contractual counterparty?

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If an EU operator faces persistent difficulties in inserting the "no re-export to Russia" clause in a contract concluded before 19 December 2023 due to the refusal of their contractual counterparty, the obligation set out in Article 12g can be considered met, if the operator issues a unilateral communication

to its client (meaning non contractually agreed) prohibiting the re-exportation to Russia and re-exportation for use in Russia.

However, this can be only valid in exceptional cases, for instance where:

- EU operators can demonstrate that they have applied their best efforts to include the clause; or where
- they have longstanding business relations with the counterparty and hence have a good understanding of the counterparty and they have done their adequate due diligence processes that minimises the risk of sanctions violations or circumvention; and/or where
- the national legislation of the third country where the counterparty is established in prevents such clauses; etc.

EU operators must also include a reference to possible adequate remedies which the EU operators could unilaterally activate in case of its breaches, see also Q. 5 and 6 above.

13. Do you need a “no re-export to Russia” clause in intra-EU contracts?

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No. According to Article 12g, in the case of contracts in which only operators established in the European Union are involved and the delivery obligations are only to be performed within the European Union, there is no obligation to include a “no re-export to Russia” clause since all EU operators are bound by the EU sanctions (see also the wording ‘to a third country’).

14. Does the “no re-export to Russia” clause also cover returns/re-exports to a producer in the third country?

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The “no re-export to Russia” clause is mandatory for the sale, supply, transfer or export of certain goods and technology as defined in Article 12g paragraph 1.

If the act in question requires the agreement of a “no re-export to Russia” clause, it also includes returns to e.g. producers in third countries. However, the transitional provisions and exemptions in Article 12g paragraphs 2 and 2a apply.

15. Can the “no re-export to Russia” clause be included in general terms and conditions?

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The wording of Article 12g obliges the operators to agree in principle ‘contractually’ on the “no re-export to Russia” clause. If general terms and conditions are validly incorporated into the contract between the exporter and counter party, the requirements of Article 12g are met.

16. Does the exemption for public contracts concluded with public authorities pursuant to Art. 12g paragraph 2a also apply to public contracts concluded with companies controlled by public capital operating on behalf of the authorities?

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The exemption for public authorities can be applicable for “bodies governed by public law”. Those entities are that are established for the specific purpose of meeting needs in the general interest and do not have an industrial or commercial character. In addition, they have legal personality and are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law. If the entity fulfils the characteristics stated above, it can be considered equivalent to “a public authority” in the sense of the exemption in Art. 12g paragraph 2a.

17. Is it necessary to include the contractual clause for contracts concluded before 19 December 2023 which has been subject to an administrative export control procedure aimed at prohibiting the export or re-export of goods and technologies subject to Article 12g to jurisdictions targeted by EU restrictive measures?

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No, in the case of existing contracts that have been authorised in a Member State of the European Union under an individual export control procedure (individual licence) including end/use(r) certificate and/or other reexport assurances, notably as regards the non-re-exportation to Russia and Belarus, it is not necessary to reopen the contract to add the contractual clause.