

Update to STEP Position Paper: EU sanctions against trusts with a ‘Russian connection’ and prohibition of book-keeping, consulting, and other services to the Russian government and Russian companies

(A) Background and Purpose of this Update

1. On 3 June 2022, the Council of the European Union (‘EU’) adopted *Regulation 2022/879* (‘the Regulation’), which contains a sixth round of sanctions against the Russian Federation in view of the continued war in Ukraine.
2. The Regulation has made some amendments to Article 5m, which is the subject matter of the *STEP Position Paper: EU sanctions against trusts with a ‘Russian connection’* originally published on 21 April 2022 and amended on 1st May and 23 May 2022¹ (‘the Position Paper’). Furthermore, a new Article 5n has been added, which prohibits the provision of accounting, auditing, bookkeeping or tax consulting services, or business and management consulting or public relations services to the Government of Russia or to legal persons, entities or bodies established in Russia.
3. The text of Article 5m with the amended parts earmarked in red and the text of the new Article 5n are featured in the Schedule to this Update.
4. The Regulation has been directly applicable to all EU Member States since 4 June 2022, the day following its publication in the Official Journal of the European Union.
5. In the interest of time and for the sake of clarity, this separate Update has been prepared instead of a further amendment to the Position Paper. Many of the general issues discussed in the Position Paper, as amended when necessary, remain valid however, and it is recommended that this Update should be read in conjunction with the Position Paper.

(B) Trusts with a Russian connection: the new version of Article 5m

6. The amended Article 5m of the Regulation appears to recognise some of the issues which were emphasised in the Position Paper. In particular:
 - a. it extends the deadline to cease to provide services to trusts until 5 July 2022 and;
 - b. it allows the competent authorities of each Member State to grant a further extension under certain circumstances.

¹ <https://www.step.org/system/files/media/files/2022-05/step-position-paper-on-eu-sanctions-amended-23-may-2022.pdf>

7. The general framework has not changed and the range of services targeted under the original version of Article 5m has not been modified. As explained in the Position Paper, Article 5m has introduced a prohibition to register, provide a registered office, business or administrative address as well as management services to a trust or any similar legal arrangement where the settlor or a beneficiary is a national or resident of Russia, a legal entity established in Russia, or a legal entity owned by more than 50% or controlled by a Russian individual or legal entity.
8. Furthermore, it is prohibited to act as, or arrange for another person to act as, a trustee, nominee shareholder, director, secretary or a similar position, for a trust or a similar legal arrangement.
9. An exception continues to apply and the services specified above can continue to be provided if the settlor or a beneficiary has the nationality or a temporary or permanent residence permit in an EU Member State.
10. It was observed in the Position Paper that a sole trustee cannot resign and cease to hold office unless a new trustee agrees to take over. Alternatively, a trustee may bring the trust to an end and distribute the entire trust fund to the beneficiaries. However each option has its difficulties. Finding a new trustee willing to take office usually takes time and requires specific arrangements to effectively transfer the various assets in the trust fund (bank accounts, company shares, real estate, etc). In addition, one could legitimately query whether terminating a trust and making all of its assets available to its Russian beneficiaries is consistent with the spirit of the sanctions.
11. Both of these difficulties were referred to in the amended Article 5m.
12. The deadline to cease to provide trust services, which had originally been set on 10 May 2022, was extended until 5 July 2022, which provides further time to properly organise a transfer of trusteeship between an outgoing and an incoming trustee.
13. Furthermore, a new paragraph 5m(5) was added, enabling the competent authorities of each Member State to grant a further extension:
 - (a) from 5 July 2022 to 5 September 2022 for the transactions required to terminate the trusts with a Russian connection which were in existence on 9 April 2022 ('the termination transactions'); or
 - (b) even beyond 5 September 2022 and not only to complete the ongoing termination transactions, provided that the concerned service providers do not accept further funds from the Russian settlors and do not distribute or otherwise provide any benefits from the trust assets to the Russian beneficiaries.

14. An exemption was already provided in the original version of Article 5m and allowed the competent authorities of each Member State to authorise some trust services to continue beyond the due date if they served humanitarian purposes or promoted civil society, democracy, human rights or the rule of law in Russia.
15. A further sub-paragraph 5m(6)(c) was added, which extends the exemption to:
 - (c) the operation of trusts whose purpose is the administration of occupational pension schemes, insurance policies or employee shares scheme, charities, amateur sports clubs, and funds for minors or vulnerable adults.
16. The Member States that decide to grant such further authorisations under paragraphs (5) and (6) of Article 5m need to inform the EU Commission within fifteen days.
17. The new deadline of 5 July 2022, which may be further extended by some Member States, appears to be more reasonable than the initial one of 5 May, which only provided one month to carry out some potentially complex termination transactions.
18. The amended Article 5m appears to allow the alternative option of terminating the trust and distributing all the assets to the beneficiaries up to 5 July 2022.
19. Article 5m(5)(b) appears to address the situation where a trustee based in the EU is unable to find a new trustee willing to take over the trust. In these circumstances, if the Member State of that trustee allows it, the trust may remain in place provided that no new funds are accepted from Russian settlors and no distributions are made to Russian beneficiaries. For the avoidance of doubt, the phrases 'Russian settlors' and 'Russian beneficiaries' in this paragraph refer to persons who cannot rely on the exemption under Article 5m(4) because they are not nationals or residents of an EU Member State.
20. This appears to suggest that a trust in which the settlor or some beneficiaries are not caught by the definition under Article 5m(1), because they have other nationalities or are resident elsewhere, can remain in existence with their current EU trustees provided that no further funds are accepted and no further distributions are made to any persons that are caught by the sanction. A solution was suggested in the Position Paper to exclude, at least on a temporary basis so long as the sanctions are in force, the concerned beneficiaries in order to let those trusts continue. The amended Article 5m appears to confirm that such a solution is a viable option.
21. In relation to the range of prohibited services, the conclusions that were made in the Position Paper appear to remain valid as follows;
 - (i) nominee agreements are caught by the sanction only if they are offered to a trust that is itself caught and not if they are directly offered to a Russian principal;

- (ii) private foundations appear to meet the definition of ‘an arrangement similar to a trust’ with the exception of Liechtenstein foundations, that were expressly excluded by the Liechtenstein FIU²; and
- (iii) the provision of corporate services (registered office, directorship, etc.) to commercial companies is not targeted by this sanction.

22. A qualification is in order with respect to a statement in the Position Paper.

The wording of Article 5m(4) appears to indicate that a trust where at least one beneficiary can rely on the exemption (i.e. a beneficiary who is a national or resident in an EU Member State) is not caught by the prohibition. In other words, the fact that the settlor is a Russian national or resident who cannot rely on the exemption does not trigger the prohibition to carry on with that trust after 5 July 2022 provided that at least one beneficiary is an EU national or resident.

23. As a consequence, it appears that Russian nationals who have already applied for an EU residence permit and will receive it by 5 July (or the later date which may be established in the concerned EU Member State) will qualify for the exemption and possibly allow the EU service provider to retain the relevant trust.

24. In relation to corporate services provided to commercial companies, an indirect confirmation that they are not targeted by Article 5m is provided by the insertion of the new Article 5n prohibiting specific services.

(C) Book-keeping, consulting, and other services: Article 5n

25. Article 5n introduced a new range of prohibitions in relation to the following services; accounting, auditing, including statutory audit, bookkeeping or tax consulting services, or business and management consulting or public relations services.

26. The prohibition applies to directly or indirectly providing such services to:

- (a) the Government of Russia; or
- (b) legal persons, entities or bodies established in Russia

The expression ‘legal persons, entities or bodies established in Russia’ appears to mean legal entities that have their registered office or business address in Russia.

27. The prohibition of such services does not extend to companies based in an EU Member State and owned or controlled by Russian nationals and residents. The concerned service providers can continue to service such companies notwithstanding this new sanction.

² Liechtenstein, FAQ to the application of the sanctions:
https://www.llv.li/files/sfiu/20220518_faq-zu-art-29d.pdf

28. In fact, an exemption exists under Article 5n(4) for Russian entities that are subsidiaries of entities established in an EU Member State or more precisely are; 'legal persons, entities or bodies established in Russia that are owned by, or solely or jointly controlled by, a legal person, entity or body which is incorporated or constituted under the law of a Member State'.

Therefore, the Russian subsidiaries of EU groups (and more generally any Russian entities with a parent company based in an EU Member State) will continue to be allowed to receive the services that are otherwise prohibited under Article 5n.

The same exemption should apply to the Russian branches of EU companies.

29. The list of services under Article 5n(1) does not include legal advice. Such services as accounting, audit, and bookkeeping are incompatible with the legal profession in some EU Member States. Legal advice may perhaps be caught under the prohibition if it can qualify as 'tax consulting' or 'business and management consulting'. This of course does not apply to all the possible types of legal advice which may be provided to the Russian government or Russian corporate clients. Nonetheless, Article 5n(3) introduced an express exemption for 'the provision of services that are strictly necessary for the exercise of the right of defence in judicial proceedings and the right to an effective legal remedy'.

30. A combined reading of paragraphs 5n(1) and 5n(3) appears to indicate that:

- (a) certain types of legal advice are caught by the sanction if they qualify as 'tax, business, and management consulting' but,
- (b) representation in legal proceedings is exempt from the prohibition introduced under the new Article 5n.

31. The deadline for the termination of such services is 5 July 2022 and no extension can be granted by the competent authorities of the EU Member States. This appears to recognise that the termination of contractual services is less problematic than the termination of a trusteeship. Nonetheless, it is likely that many existing contractual arrangements provide for a notice period longer than one month. In such cases it appears to be reasonable to conclude that the concerned service providers will be compliant with the sanction if a termination notice is served before 5 July 2022 subject to their contractual obligations during the notice period.

32. Similarly in the case of trusts, an exemption may be operated by the competent authorities of each EU Member State for the provision of services that are necessary to humanitarian purposes or the promotion of civil society, democracy, human rights or the rule of law in Russia.

(D) What next?

33. The amendments to Article 5m of the Regulation are welcome in that they address some of the difficulties which had been identified in the Position Paper.

34. The sanction under Article 5n echoes the position of the United States, which prohibits as of 7 June 2022³:

‘the exportation, re-exportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of accounting, trust and corporate formation, or management consulting services to any person located in the Russian Federation.’

35. It is anticipated that Monaco, Switzerland and Liechtenstein will update their own national sanctions so that they will be equivalent to the amended Article 5m and will incorporate the new Article 5n.

36. A significant responsibility is placed on the individual Member States. It can be expected that Cyprus, which is probably the most directly affected EU Member State by these sanctions, will rely on the authority conferred under the new Article 5m(5) and grant an additional extension under the conditions specified therein.

37. STEP will endeavour to monitor these developments and produce updates as soon as we become aware of any relevant news.

(E) STEP contacts and disclaimer

38. It must be emphasised that an underlying assumption to this Update and to the Position Paper is that we refer to Russian nationals or residents who are not designated persons in any applicable sanctions list.

39. It is intended that this Update provides some useful guidance in relation to the most likely issues that arise for members as a consequence of *Regulation 2022/879*.

For any queries, comments, clarifications, corrections or to notify the position taken by the competent authorities of any EU Member State please contact:
policy@step.org.

40. This guidance is intended to be informative and not an exhaustive statement of the law. While reasonable endeavours are taken to ensure that information is accurate and up-to-date as at the date of publication it does not represent legal advice. STEP and its contributing authors do not accept liability or responsibility for any loss or damage occasioned to any person acting or refraining from acting on any information contained therein.

**Produced by Paolo Panico,
Chair of STEP Europe on 6 June 2022**

³ Determination pursuant to section 1(a9(ii)) of Executive Order 14071
https://home.treasury.gov/system/files/126/determination_05082022_eo14071.pdf

Schedule

Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

Article 5m

1. It shall be prohibited to register, provide a registered office, business or administrative address as well as management services to, a trust or any similar legal arrangement having as a trustor or a beneficiary:
 - (a) Russian nationals or natural persons residing in Russia;
 - (b) legal persons, entities or bodies established in Russia;
 - (c) legal persons, entities or bodies whose proprietary rights are directly or indirectly owned for more than 50 % by a natural or legal person, entity or body referred to in points (a) or (b);
 - (d) legal persons, entities or bodies controlled by a natural or legal person, entity or body referred to in points (a), (b) or (c);
 - (e) a natural or legal person, entity or body acting on behalf or at the direction of a natural or legal person, entity or body referred to in points (a), (b), (c) or (d).
2. It shall be prohibited as of **5 July 2022** to act as, or arrange for another person to act as, a trustee, nominee shareholder, director, secretary or a similar position, for a trust or similar legal arrangement as referred to in paragraph 1.
3. Paragraphs 1 and 2 shall not apply to the operations that are strictly necessary for the termination by **5 July 2022** of contracts which are not compliant with this article concluded before 9 April 2022 or ancillary contracts necessary for the execution of such contracts.
4. Paragraphs 1 and 2 shall not apply when the trustor or beneficiary is a national of a Member State or a natural person having a temporary or permanent residence permit in a Member State.
5. **By way of derogation from paragraph 2, the competent authorities may authorise, under such conditions as they deem appropriate, the services referred to in paragraph 2 to continue beyond 5 July 2022, for:**

- (a) the completion by 5 September 2022 of operations strictly necessary for the termination of contracts referred to in paragraph 3, provided that such operations were initiated before 11 May 2022; or
 - (b) other reasons, provided that the service providers do not accept from, or make available to, the persons referred to in paragraph 1 any funds or economic resources directly or indirectly, or otherwise provide such persons with any benefits from assets placed in a trust.
6. By way of derogation from paragraphs 1 and 2, the competent authorities may authorise the services referred to in those paragraphs, under such conditions as they deem appropriate, after having determined that this is necessary for:
- (a) humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations;
 - (b) civil society activities that directly promote democracy, human rights or the rule of law in Russia; or
 - (c) the operation of trusts whose purpose is the administration of occupational pension schemes, insurance policies or employee shares scheme, charities, amateur sports clubs, and funds for minors or vulnerable adults.
7. The Member State concerned shall inform the Commission of any authorization granted under paragraph 5 or 6 within two weeks of such authorization.

Article 5n

1. It shall be prohibited to provide, directly or indirectly, accounting, auditing, including statutory audit, bookkeeping or tax consulting services, or business and management consulting or public relations services to:
 - (a) the Government of Russia; or
 - (b) legal persons, entities or bodies established in Russia
2. Paragraph 1 shall not apply to the provision of services that are strictly necessary for the termination by 5 July 2022 of contracts which are not compliant with this Article concluded before 4 June 2022, or of ancillary contracts necessary for the execution of such contracts.
3. Paragraph 1 shall not apply to the provision of services that are strictly necessary for the exercise of the right of defence in judicial proceedings and the right to an effective legal remedy.

4. Paragraph 1 shall not apply to the provision of services intended for the exclusive use of legal persons, entities or bodies established in Russia that are owned by, or solely or jointly controlled by, a legal person, entity or body which is incorporated or constituted under the law of a Member State.
5. By way of derogation from paragraph 1, the competent authorities may authorise the services referred to therein, under such conditions as they deem appropriate, after having determined that this is necessary for:
 - (a) humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations; or
 - (b) civil society activities that directly promote democracy, human rights or the rule of law in Russia.