

IMPORTS & PURCHASE OF GOODS

FREQUENTLY ASKED QUESTIONS – AS OF 14 JUNE 2022

1. Why is the adoption of the Russian Presidential Decree no 172 of 31 March relevant for EU gas importers in light of Council Regulation (EU) 833/2014?

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The Decree of 31 March substantially amends the legal framework for the execution of supply contracts concluded between Russian gas suppliers and EU companies, adding new obligations for each EU company.

EU Companies can only lawfully comply with implementation measures of the new Decree if the compliance with these measures is not in conflict with the obligations arising from the restrictive measures under Council Regulations (EU) 833/2014 or 269/2014.

2. Why could the compliance with the new rules of Decree no 172 of 31 March be in conflict with the sanctions?

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The Decree introduces a new payment procedure, whereby the deposition of Euros or Dollars on the supplier's account is no longer considered as fulfilment of the contractual obligations. Instead, Euros or Dollars received by EU companies need to be converted into roubles under the Decree, and EU companies are only deemed to have fulfilled their contractual obligations once the conversion process from Euros or Dollars has been successfully completed, and the payment has been made in roubles.

This process, which is entirely in the hands of the Russian authorities, would also allow Russia to involve the Russian Central Bank in this process, through a number of transactions linked to the management of the Central Bank's assets and reserves, which is prohibited under the EU sanctions. As the conversion process may take an undefined amount of time, during which time the foreign currency is entirely in the hands of the Russian authorities including the Central Bank, it may even be considered as a loan granted by EU companies.

3. Is it still possible to pay for gas after the adoption of Decree no 172 of 31 March without getting in conflict with EU law?

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Yes, this appears possible. EU companies can ask their Russian counterparts to fulfil their contractual obligations in the same manner as before the adoption of the Decree, i.e. by depositing the due amount in Euros or Dollars. The Decree of 31 March does not preclude a payment process which is in line with the EU restrictive measures. However, the procedure for derogations from the requirements of the Decree is not clear yet.

4. Are EU gas importers allowed to engage with Gazprom and GazpromBank in order to seek an acceptable solution or additional information on the situation? Are they allowed to open an account in euro with GazpromBank for gas payments?

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The existing sanctions do not prohibit engagement with Gazprom or GazpromBank, beyond the refinancing prohibitions relating to the latter, as per Article 5(1)(a) and (6). Likewise, they do not prohibit opening an account with GazpromBank. Such engagement or account, however, should not lead to the violation of other prohibitions in Council Regulations (EU) 833/2014 or Council Regulation 269/2014.

5. Can EU operators make transfers in euros to the specified account at GazpromBank if they previously or simultaneously make a clear statement to the effect that their payment obligation ends with this transfer?

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Yes, EU companies could make a clear statement that they intend to fulfil their obligations under existing contracts and consider their contractual obligations regarding the payment already fulfilled by paying in euros or dollars, in line with the existing contracts, as before the adoption of the Decree.

It would be advisable to seek confirmation from the Russian side that this procedure is possible under the rules of the Decree.

Is the purchase of goods listed in Annexes XVII, Annex XXI and XXII of Council Regulation 833/2014 by an EU company allowed when the goods are exported from Russia towards a third country and are not transiting Union territory?

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No. Articles 3g, 3i and 3j of Council Regulation 833/2014 prohibit the purchase, import, or transfer, directly or indirectly, of the goods listed in Annexes XVII, XXI and XII if they originate in Russia or are exported from Russia. The prohibition on purchase applies irrespective of the final destination of the goods. Provided the purchase falls within the scope of Article 13 of Regulation 833/2014, it is not relevant whether the goods are destined for the EU or not.

7. Is the purchase of Russian seaborne crude oil by an EU company allowed when the goods are exported from Russia towards a third country and are not transiting Union territory?

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Yes. Contrary to Articles 3g, 3i and 3j of Council Regulation 833/2014, Article 3m of Council Regulation 833/2014 prohibits only the purchase, import, transfer of Russian seaborne crude oil that is destined for import into Member States, as highlighted in recital 15 by Council Regulation 2022/879 of 3 June 2022 amending Council Regulation 833/2014. An EU company is still allowed to transport Russian crude oil to a third country.

8. Does “purchase” also refer to restricted goods that are already released for free circulation within the territory of the Union before the restrictive measures?

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No. The restrictions envisaged in Article Articles 3g, 3i, 3j and 3m of Council Regulation 833/2014 do not concern goods which are already released for free circulation within the territory of the Union (i.e. placing on the market) at the time when the respective measure becomes applicable.