

Guidance note to Member States on stopped goods as a result of the sanctions

It must be stressed that this document does not constitute a legally binding act and is of a purely explanatory nature. Legal provisions of Union legislation take precedence over the contents of this document and should always be consulted. The authentic texts of the EU legal instruments are those published in the Official Journal of the European Union.

This guidance was prepared by Commission services and does not commit the European Commission. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law.

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I. INTRODUCTION

Customs administrations in EU Member States are implementing various sanctions in response to Russia's unprecedented and unprovoked military attack against Ukraine. In this capacity they have, in certain cases, stopped goods subject to import and export prohibitions, and other relevant restrictive measures. In some cases, those goods which had been brought into the EU in good faith before the sanctions had entered into force, have not been released for free circulation and have remained blocked in customs offices of entry/exit in the Member States.

To guide Member States and economic operators in dealing with such cases, COM published an FAQ on 21 December 2022. In the 10th sanctions package, a new Article 12e of Council Regulation (EU) No 833/2014 was added to ensure legal certainty concerning the treatment of blocked goods as a result of import prohibitions (see point II.A). The aim of the new Article 12e is to protect the legitimate interests of EU importers who should not be unduly penalised by their goods having become subject to sanctions before they were released by customs, while at the same time ensuring that this does not benefit Russia's economy nor constitute a circumvention risk.

This guidance note sets out how certain cases of stopped goods subject to import and export prohibitions and relating to listed people can be handled. As the matter is legally complex, with many exceptions applying, Member States' customs administrations are asked to carefully consider this when applying this guidance.

In principle, blocked goods brought into the EU before any restrictions applied to them may be released. Nevertheless, Member States must carefully check whether this creates a risk of circumvention of the applicable sanctions. Thus, even if the release of stopped goods is allowed, in line with the applicable sectorial restrictive measures, Customs need to always carefully check that this release is in compliance with the following provisions:

- Art. 5aa of Council Regulation (EU) No 833/2014 (prohibition on directly or indirectly engaging in any transaction with a legal person, entity or body listed in Annex XIX);
- the provisions of Council Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (namely, the obligation to freeze the assets of listed persons and entities and the prohibition on making funds or economic resources available to them);
- the provisions of other relevant sanctions regimes, in particular where Russian persons and entities are listed (e.g. Council Regulation (EU) No 2022/263 concerning restrictive measures in response to the illegal recognition, occupation or annexation by the Russian Federation of certain non-government controlled areas of Ukraine; Council Regulation (EU) 2019/796 concerning restrictive measures against cyber-attacks threatening the Union or its Member States; Council

Regulation (EU) 2018/1542 concerning restrictive measures against the proliferation and use of chemical weapons etc.).

Member States should assess each case independently and then take a decision, taking into account the specificities of each case.

In assessing each case, it is also important to consider the objective of the respective restrictive measure according to which the goods were stopped. The objective of the import related restrictions is to deprive Russia of income which it can use to finance its war in Ukraine. The objective of the export related restrictions is to deprive Russia of goods which can be used for its military aggression. At the same time, the negative impact of these restrictions on the EU's economic operators, businesses and economy is to be minimised as much as possible.

This guidance aims at addressing the most recurring issues however, there might be other situations that are not covered here. In such cases, please contact us on TAXUD-CR@ec.europa.eu. The Commission will update this guidance in light of further developments¹.

II. STOPPED GOODS AS A RESULT OF AN IMPORT, PURCHASE OR TRANSFER PROHIBITION

A. Cases falling under Article 12e of Regulation 833/2014 as introduced in the 10th Sanctions Package. Article 12e² provides as follows:

- 1. For the purposes of the prohibitions on importing goods provided for in this Regulation, goods physically in the Union may be released as provided for in Article 5, point (26) of the Union Customs Code⁽³⁾ by the customs authorities provided that they have been presented to customs in accordance with Article 134 of the Union Customs Code before the entry into force or applicability date of the respective import prohibitions, whichever is latest.*
- 2. All procedural steps necessary for the release referred to in paragraphs 1 and 5 of the relevant goods pursuant to the Union Customs Code shall be allowed.*
- 3. The customs authorities shall not allow the release of the goods if they have reasonable grounds to suspect circumvention and shall not authorise the re-export of the goods to Russia.*
- 4. Payments in relation to such goods shall be consistent with the provisions and objectives of this Regulation, in particular the prohibition on purchasing, and Regulation (EU) No 269/2014.*
- 5. Goods physically in the Union and presented to customs prior to 26 February 2023 which were stopped in application of this Regulation may be released by the customs authorities under the conditions provided for in paragraphs 1, 2, 3 and 4.*

¹ This guidance takes into account relevant legal developments until the adoption of the 11th Sanctions package through Regulation (EU) 2023/1214.

² Council Regulation (EU) 2023/427 of 25 February 2023

³ Regulation (EU) 952/2013 of the European Parliament and of the Council laying down the Union Customs Code

1. Goods brought into the EU after 26 February 2023, but before the entry into force or applicability date of an import prohibition, whichever is latest, and which have been stopped due to an import prohibition, can be released, Article 12e (1)

This concerns any cases of goods that have entered the EU after 26 February 2023, but before the entry into force or applicability date of current or future restrictive measures under Regulation (EU) 833/2014, without having been released for free circulation. Those goods can be released.

Example:

Iron products incorporating iron originating in RU were brought into the EU on 27 February 2023 and were put in a warehouse. By 30 September 2023, the date of entry into force of Article 3g (1) (d), the products are still in the customs warehouse.

Questions:

→ **Can the goods be released for free circulation in the EU?**

Answer: **Yes**, customs authorities should allow those goods to be released for free circulation, if all other conditions are fulfilled.

If there are other procedural steps necessary for the release of the relevant goods pursuant to the Union Customs Code, i.e. submission of a customs declaration, its acceptance, etc., they all are allowed.

However, the customs authorities should not allow the release for free circulation of the goods if they have reasonable grounds to suspect circumvention.

→ **Can the goods be released for another customs procedure in the EU (e.g., inward processing etc.)?**

Answer: **Yes**, customs authorities should allow these goods to be released for any of the customs procedures according to the Union Customs Code, if all other conditions are fulfilled.

If there are other procedural steps necessary for the release of the relevant goods pursuant to the Union Customs Code, i.e. submission of a customs declaration, its acceptance, etc., they should be allowed.

However, the customs authorities should not allow the release of the goods for a customs procedure if they have reasonable grounds to suspect circumvention.

→ **Can the goods be re-exported to Russia?**

Answer: **No**, the re-export to Russia is prohibited (Article 12e(3) of Council Regulation (EU) No 833/2014).

→ **Can the goods be re-exported to a 3rd country other than RU?**

Answer: It depends on

- 1) the specific provisions for certain goods ([Commission FAQs](#)),
- 2) the specific country, e.g. export bans to other third countries like Belarus, DPRK; or suspicions that the goods may have Russia as a final destination, or may otherwise generate revenues for Russia, in breach of the purpose of the import prohibitions or in case of serious concerns for possible circumvention, even if they are formally re-exported to another third country.

2. Goods brought into the EU before 26 February 2023, prior to the entry into force or applicability date of an import prohibition, whichever is latest, can be released, Article 12e (5)

This concerns any goods that were physically in the EU and presented to customs before the 26 February 2023, and before the entry into force or date of applicability of the respective restrictive measure(s) under Regulation (EU) 833/2014, but which had not been released into free circulation or placed under any other customs procedure at the time of entry into force/applicability date of those measures. Such goods fall under Article 12e(5) and can be released if all the conditions set out therein are fulfilled.

Example:

Bricks made of concrete (Article 3i) were brought into the EU on 22 February 2022, that is before the entry into force of the first sanctions package and also before 8 April 2022 (date of entry into force of that specific import ban). They were placed under the customs warehousing procedure. However, no release for free circulation was requested until 10 July 2022, the date of the expiry of the wind-down period of Article 3i (3)⁴.

Questions:

→ **Can the goods be released for free circulation in the EU?**

Answer: **Yes**, customs authorities should allow those goods to be released for free circulation, if all other conditions are fulfilled.

If there are other procedural steps necessary for the release of the relevant goods pursuant to the Union Customs Code, i.e. submission of a customs declaration, its acceptance, etc., they all are allowed.

However, the customs authorities should not allow the release for free circulation of the goods if they have reasonable grounds to suspect circumvention.

→ **Can the goods be released for another customs procedure in the EU (e.g., inward processing etc.)?**

Answer: **Yes**, customs authorities should allow these goods to be released for any of the customs procedures according to the Union Customs Code, if all other conditions are fulfilled.

⁴ Article 3i(3) of Regulation (EU) 833/2014 has been deleted in accordance with Article 1(14) of Regulation (EU) 2023/1214 (11th sanctions package).

If there are other procedural steps necessary for the release of the relevant goods pursuant to the Union Customs Code, i.e. submission of a customs declaration, its acceptance, etc., they should be allowed.

However, the customs authorities should not allow the release of the goods for a customs procedure if they have reasonable grounds to suspect circumvention.

→ **Can the goods be re-exported to Russia?**

Answer: **No**, the re-export to Russia is prohibited (Article 12e(3) of Council Regulation (EU) No 833/2014).

→ **Can the goods be re-exported to a 3rd country other than RU?**

Answer: It depends on

- 1) the specific provisions for certain goods ([Commission FAQs](#)),
- 2) the specific country, e.g. export bans to other third countries like Belarus, DPRK; or suspicions that the goods may have Russia as a final destination, or may otherwise generate revenues for Russia, in breach of the purpose of the import prohibitions, or in case of serious concerns for possible circumvention, even if they are formally re-exported to another third country.

3. Transit cases

Articles 12e (1) and (5) also kick in where goods are already in the EU, in transit, but subject to a prohibition on transferring these goods, related to their possible entry into the EU flow of goods (Articles 3g, 3i, 3m, 3o).

Example:

Goods of Russian origin move from Turkey into Bosnia Herzegovina through the EU. The goods are in the EU before the entry into application of the prohibition on transferring but the transit procedure continues after the entry into application of the prohibition as a result of logistical problems (e.g. low level of water in the Danube).

Question:

→ **Can the transit procedure continue in this case?**

Answer: **Yes**. In this case the goods can continue towards Bosnia Herzegovina under the transit procedure as they were already in the EU under a customs procedure (transit) before the entry into application of the sanctions, even if the prohibition relates to the transfer of the goods.

However, the customs authorities should not allow the transit if they have reasonable grounds to suspect circumvention. Checking against circumvention attempts is all the more important in this case, where goods are destined for a third country and hence will leave the EU's jurisdiction.

4. Goods brought into the EU and placed under the inward processing procedure before sanctions related to these goods came into force or became applicable (whichever is the latest)

Example 1:

Glass fibres from Russia (covered by an import ban in Article 3i of Council Regulation (EU) No 833/2014) were placed under the inward processing procedure before the sanctions came into force. They undergo a production process resulting in a different finished product such as, for example, car bumpers. Whilst the glass fibres are subject to the sanctions on imports, the final product is not subject to sanctions.

Questions:

→ **Can the goods (raw materials: glass fibres) be released for free circulation in the EU?**

Answer: **Yes**, because the goods had been brought into the Union, were presented and under Customs supervision (Art 134 UCC) before the sanctions came into force.

→ **Can the goods (finished product: car bumper) be released for free circulation in the EU?**

Answer: **Yes**, the goods are part of a transaction falling within the scope of Art. 12e.

→ **Can the goods (raw materials) be re-exported to Russia?**

Answer: **No**, the re-export to RU is not possible (Article 12e (3)).

→ **Can the goods (finished product) be re-exported to Russia?**

Answer: **Yes**, if the finished good is not itself subject to an export prohibition and if there is no risk of circumvention.

→ **Can the goods be re-exported to a third country other than Russia?**

Answer: It depends on

- 1) the specific provisions for certain goods ([Commission FAQs](#)),
- 2) the specific country, e.g. export bans to other third countries like Belarus, DPRK; or suspicions that the goods may have Russia as a final destination, or may otherwise generate revenues for Russia, in breach of the purpose of the import prohibitions, or in case of serious concerns for possible circumvention, even if they are formally re-exported to another third country.

→ **Is abandonment to the State possible (for raw materials)?**

Answer: **Yes**, with prior permission of the customs authorities. In such a case, the sale of the goods by the State is also possible.

Example 2:

Wool from Russia (subject to export prohibition under Article 3k) is brought into the Union and placed under the inward processing procedure before the sanctions came into force and is processed to produce carpets (subject to export prohibition under Article 3h).

Questions:

→ **Can the goods (the wool and the carpets) be released for free circulation in the EU?**

Answer: **Yes**, because the goods were in the Union under inward processing before sanctions related to these goods came into force or became applicable (whichever is the latest).

→ **Can the goods (the wool and the carpets) be re-exported to Russia?**

Answer: **No**, the re-export to RU is not possible (Article 12e (3)).

→ **Can the goods be exported or re-exported to a third country other than Russia?**

Answer: It depends on

- 1) the specific provisions for certain goods ([Commission FAQs](#)),
- 2) the specific country, e.g. export bans to other third countries like Belarus, DPRK; or suspicions that the goods may have Russia as a final destination, or may otherwise generate revenues for Russia, in breach of the purpose of the import prohibitions, or in case of serious concerns for possible circumvention, even if they are formally re-exported to another third country.

B. Other situations outside the scope of Article 12e

1. Goods under the scope of the sanctions that arrived in the EU after the entry into force of the relevant import prohibition or applicability date of the respective import prohibition, whichever is latest

Example:

Glass products (Article 3i of Council Regulation (EU) No 833/2014) that were on board a ship that arrived into the territorial waters of a Member State, in a consignment that was presented to customs in the EU after 10 July 2022,⁵ and for which no derogation or exception is envisaged.

Questions:

→ **Can the goods be released for free circulation or for another customs procedure such as customs warehousing in the Union?**

Answer: **No**, the release for free circulation or other customs procedures in the Union is prohibited under Article 3i.

⁵ The wind-down period ending 10 July 2022, provided for in Article 3i(3) of Regulation (EU) 833/2014, has been deleted in accordance with Article 1(14) of Regulation (EU) 2023/1214 (11th sanctions package).

→ **Can the goods be re-exported to Russia?**

Answer: **No**, the re-export to Russia is prohibited, because the goods entered the EU in breach of the sanctions.

→ **Can the goods be re-exported to a 3rd country other than RU?**

Answer: **No**. The goods entered the EU in breach of the sanctions and therefore the goods cannot be re-exported.

→ **Is abandonment to the State possible?**

Answer: **Yes**, with prior permission of the customs authorities.

→ **Is sale of these goods possible?**

Answer: **Yes**. On the condition that the goods have been confiscated by Customs (and have been attributed to the State) or have been abandoned to the State, they can then be sold to the benefit of the State.

2. Goods where customs authorities have reasonable grounds to suspect circumvention of existing restrictive measures

For these cases Article 12e(3) applies and these goods must undergo an investigation. Until completion of the investigation the goods should remain under customs supervision. There might be certain cases in which these goods are already in the EU, e.g. in cases where the goods might be covered by the sanctions and an attempt at circumvention is discovered before the goods are released for a customs procedure.

Questions:

→ **Can the goods be released for free circulation or for another customs procedure such as customs warehousing in the Union?**

Answer: **No**, the release in the Union for free circulation or other customs procedure is prohibited under Article 3i, until completion of the investigation and final decision.

→ **Can the goods be re-exported to Russia?**

Answer: **No**. According to Article 12e(3), the re-export to Russia is prohibited, because the goods entered the EU in possible breach of the sanctions.

→ **Can the goods be re-exported to a 3rd country other than RU?**

Answer: **No**. The goods entered the EU in possible breach of the sanctions and therefore the goods cannot be re-exported, until completion of the investigation and final decision.

→ **Is abandonment to the State possible?**

Answer: **Yes**, with prior permission of the customs authorities.

→ **Is sale of these goods possible?**

Answer: **Yes**. On the condition that the goods have been confiscated by Customs (and have been attributed to the State) or have been abandoned to the State, they can then be sold to the benefit of the State.

3. Inward processing scenario

Goods brought into the EU after the date of the entry into force or applicability date of an import prohibition, whichever is latest, to be placed under the inward processing procedure after sanctions relating to these goods came into force or became applicable (whichever is the latest)

Example:

Silver (7106) brought into the EU to be placed under inward processing to produce jewellery.

Question:

→ **Can the goods (silver) be released for inward processing in the EU?**

Answer: **No**, because the import prohibition in Art. 3i covers all customs procedures, including inward processing and is not limited to release for free circulation.

→ **Can the goods be re-exported to Russia?**

Answer: **No**. According to Article 12e(3), the re-export to Russia is prohibited, because the goods entered the EU in breach of the sanctions.

→ **Can the goods be re-exported to a 3rd country other than RU?**

Answer: **No**. The goods entered the EU in breach of the sanctions and therefore the goods cannot be re-exported.

→ **Is abandonment to the State possible?**

Answer: **Yes**, with prior permission of the customs authorities.

→ **Is sale of these goods possible?**

Answer: **Yes**. On the condition that the goods have been confiscated by Customs (and have been attributed to the State) or have been abandoned to the State, they can then be sold to the benefit of the State.

III. STOPPED GOODS AS A RESULT OF EXPORT PROHIBITIONS

Article 12e does not cover goods subject to an export prohibition because it would deprive the export prohibition of practical application. There are situations where the export prohibition requires that the export/exit of the goods must be stopped, if they are still under customs supervision in the EU at the time when the export ban becomes applicable. The purpose of sanctions is to deprive Russia of certain inputs, whether material (goods, export prohibitions) or financial (additional financial resources). The prohibitions are easier to apply and control, to the extent that the goods are in the EU's hands, while they are still in the EU territory. Therefore, when a good has physically left the EU territory, it is far more difficult for the EU to stop it making its way to Russia. However, as long as the goods are still in the EU territory, if an export prohibition kicks in, the goods must be stopped, regardless of the authorisations/discharges that it has already received in the same Member State or in another.

1. Non-Union goods under customs supervision in the Union when the sanctions regulations entered into force

Example: Non-Union caviar (Article 3h) from Norway and above the value threshold in customs warehousing in the EU was declared and released for re-export to Russia on 14 March 2022. The goods became subject to sanctions on 16 March 2022, while they were still in the process of moving from the warehouse facilities to the customs office of exit. The goods were stopped at the customs office of exit.

Questions:

→ **Can the goods be imported in the EU?**

Answer: **Yes**, as the aim of the sanctions is to prevent the export to Russia only and as long as customs authorities have no grounds to suspect an attempt at circumvention.

→ **Can the goods be re-exported to a 3rd country other than Russia?**

Answer: It depends on

- 1) the specific provisions for certain goods ([Commission FAQs](#)),
- 2) the specific country, e.g. export bans to other third countries like Belarus, DPRK; or suspicions that the goods may have Russia as a final destination, or may otherwise generate revenues for Russia, in breach of the purpose of the import prohibitions, or in case of serious concerns for possible circumvention, even if they are formally re-exported to another third country.

→ **Can the goods be re-exported to Russia?**

Answer: **No**, as this would constitute a breach of the relevant export prohibition to Russia.

→ **Is abandonment to the State possible?**

Answer: **Yes**, with prior permission of the customs authorities.

→ **Is sale of these goods possible?**

Answer: Yes. On the condition that the goods have been confiscated by Customs (and have been attributed to the State) or have been abandoned to the State, they can then be sold to the benefit of the State.

2. Union goods under the export procedure become subject to sanctions before they exit, so they are stopped at the Customs office of exit

Example:

Union wallpaper (Article 3k) was declared and released for export to Russia on 8 July 2022, based on a contract concluded on 5 April 2022. The wallpaper became subject to sanctions on 10 July 2022 (Article 3k(3))⁶, while it was still moving from the customs office of export to the customs office of exit. The consignment is stopped at the customs office of exit.

Questions:

→ **Can the goods be sent back to the EU exporter?**

Answer: Yes, as these goods are still considered Union goods and the aim of the sanctions is to prevent the export to Russia only and as long as customs authorities have no grounds to suspect an attempt at circumvention.

→ **Can the goods be exported to Russia?**

Answer: No, as this would constitute a breach of the relevant export prohibition to Russia.

3. The customs office of export releases for export Union goods that are subject to sanctions. The customs office of exit stops them.

The release for export in this situation is possible only if the export of these goods is allowed under an envisaged exception or derogation.

Example:

Union wallpaper (Article 3k) is declared and released for export to Russia. The goods are stopped at the customs office of exit.

Question:

→ **How shall the customs office of exit handle the situation?**

Answer: The customs office of exit shall check and verify that the export is indeed subject to an exemption or derogation. It is the primary responsibility of the economic operator to provide all necessary documentation proving that. Customs authorities can perform all necessary controls, including consulting the customs office of export, in order to identify whether or not the goods fall under any of the derogations provided for in the sanctions regulations. If not,

⁶ The wind-down period ending 10 July 2022 provided for in Article 3k(3) of Regulation (EU) 833/2014 is not reflected in the sanctions Regulation any more. Please see Article 1(16) of Regulation (EU) 2023/1214 (11th sanctions package).

the export should be treated as a breach of the sanctions provisions and the exit of the goods not allowed⁷.

4. Outward processing scenario

Goods (i.e. materials) placed under outward processing and sent to Russia before sanctions related to these goods came into force or became applicable (whichever is the latest)

Example:

Cotton fabric (subject to an export prohibition under Article 3k) had been placed under the outward processing procedure and been sent to Russia before the export prohibition on these products came into force, in order to be processed into luxury clothes in Russia, which then became subject to an export prohibition (under Article 3h).

Questions:

→ **Can the goods (fabrics and clothing) which are already physically located in Russia be sent back to the EU exporters and be released for free circulation in the EU again?**

Answer: **Yes**, as long as these goods are not subject to import bans.

→ **Can the goods be permanently exported to Russia?**

Answer: **No**, because the export prohibition applies. If the goods cannot be sent back to the EU, e.g. in case Russia permanently blocks the re-export to the EU, the outward processing procedure in the EU can be closed on the grounds of force majeure.

→ **Can the final products be re-imported into the EU, if there is an import ban?**

Answer: **No**, not if the import of such final products from Russia is prohibited.

In all export related cases, in particular for outward processing, national customs authorities should also pay attention to the possible circumvention of EU sanctions that might occur if such an export is allowed. For instance, if the finished product is broken into components, which are prohibited from export to Russia; or the initial raw material can be extracted by Russia from the finished product and re-sold to another buyer, in breach of the objective to deprive Russia of revenues from such goods; or if the pieces may be used for another prohibited purposes, such as the military.

⁷ A dedicated guidance on **Customs Control and Risk Assessment** will be published in the near future.

IV. CASES WHERE THE RESTRICTIVE MEASURES ARE RELATED TO THE PARTIES INVOLVED IN THE TRANSACTION

In these cases, the goods as such are not subject to any sectorial and/or product-specific restrictive measure. Nevertheless, the goods cannot be released for the respective customs procedure or returned to the economic operator or person concerned if they are part of a transaction where one or more of the parties involved are, or might be, a designated person whose funds and economic resources shall be frozen or are State-owned enterprises subject to a transaction ban.

Such cases may apply to:

- Union goods intended to be exported from the EU,
- non-Union goods in the EU territory either transiting or intended to be re-exported, and
- non-Union goods intended to be imported (in its broader sense and going beyond release for free circulation).

Examples: Article 2 of Council Regulation (EU)⁸ No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine; restrictive measures in Article 5aa of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine and Article 2 of Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine.

Proposed way to proceed:

In all these cases, the context of the restrictive measure is ‘freezing of economic resources’ of the listed person/entity and ‘prohibition from making economic resources available’ to them. It is recommended that customs authorities immediately contact and inform their national competent authorities as indicated under Article 16 and Annex II of Council Regulation (EU) No 269/2014 (NCA).

Possible customs-specific dimensions:

- establishment of the possible involvement of a designated party in the transaction (e.g. importer, exporter, consignee, etc.). Nevertheless, it is up to the NCA to verify the actual relationship (ownership and control) based on the information provided by customs authorities.
- ensuring goods remain under customs supervision until a decision on subsequent handling has been taken.

EU sanctions rules provide a sufficient legal basis upon which to apply the freezing measure on such goods where it is established that they “belong” to the listed person, per Article 2(1) of Council Regulation (EU) No 269/2014. “Belonging” does not only refer to ownership, but also to the sanctioned person’s control over the goods in another capacity (power of decision), or his/her/its ability to extract a profit from the transaction concerning those goods (intermediary).

As per the definition present in Article 1(e) of Council Regulation (EU) No 269/2014, the freezing of economic resources means “preventing their use to obtain funds, goods, or services in any way,

⁸ All the references in the note are to the basic Regulations as originally enacted, however they are meant to cover all their subsequent amendments as well.

including by selling, hiring or mortgaging them". It is for the NCA to decide the way forward, keeping in mind that the freezing of assets is in principle a temporary measure and in itself does not affect the right to property. Confiscation may occur however if the goods are the proceeds of a crime. National law will be the determining factor here.

How this is done in practice (customs warehousing, storage elsewhere, return to the exporter under strict conditions that the goods can in no way go to the sanctioned person etc.) is not determined by the sanctions regulations and will depend on national law. The following UCC provisions might however be relevant:

UCC possibilities for keeping the goods under customs supervision:

- (a) *for goods at entry*: 90 days in temporary storage, after that customs warehousing, if goods have been abandoned to the State, seized or confiscated;
- (b) *for goods at exit*: various possibilities, depending on whether the goods are Union or non-Union goods.

In practice, it is necessary to determine to whom the goods belong (who the owner is). If the goods are the property of the sanctioned person, they need to be frozen. If the goods belong to a non-listed person (importer or exporter), the outcome will depend on the qualification of the attempt to export/import the goods, namely:

- if it can be considered a sanctions breach (most likely, unless the importer/exporter can demonstrate that they had no reasonable cause to suspect that they were breaching sanctions),
- if it is punishable under national law (also very likely, since it is an obligation on MS to have penalties for breaches).

Member States are responsible for laying down the penalties for breaches of EU sanctions law. In some Member States current penalties include the seizure/confiscation of goods that are the proceeds of crime (depending on the gravity of the action in question).

Any follow-up decisions, including with regard to further handling of the goods will be based on national competence and legislation.

Apart from the freezing of economic resources belonging to listed persons, it is prohibited to make any economic resources available to them, whether directly or indirectly – as set out in Article 2(2) of Council Regulation (EU) No 269/2014. This includes gifts, sales, barter, as well as returning economic resources held or controlled by a third party to a listed owner. The term 'making economic resources available' is not defined in the Regulation, but it has been interpreted by the Court of Justice as having a wide meaning⁹. Rather than denoting a specific legal category of act, it encompasses all the acts necessary under the applicable national law if a person is to effectively obtain full power of disposal in relation to the economic resource concerned. The prohibition applies to any mode of making available an economic resource, whatever the consideration provided. The fact that economic resources are made available against payment is therefore irrelevant.

⁹ Judgment of the Court of Justice in case C-117/06, Möllendorf, paragraphs 56 and 62.

https://finance.ec.europa.eu/system/files/2020-06/200619-opinion-financial-sanctions_en.pdf, page 5 Question 2.4.