EU Sanctions Against Russia: Practical Implementation of the "No Russia Clause"

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The following article was commissioned by the EU SME Centre to shed light on the new legal requirement under Article 12g of EU Regulation 833/2014, or "No Russia Clause", and its implications for European SMEs. The article was written by legal experts from Dewit Law Office. Please note that this article is provided for general information purposes only and that any views expressed in this publication do not necessarily reflect the views of the European Union.

Since Russia's full-scale invasion of Ukraine in 2022, the European Union has responded with a series of significant sanctions designed to weaken the Russian economy and significantly reduce its ability to finance military operations. The EU sanctions can be broadly classified into three principal categories:

- **Economic sanctions** aim to undermine Russia's financial stability and limit its military funding.
- **Targeted sanctions** affect more than 2,300 individuals and entities involved explicitly in supporting Russia's aggressive actions.
- **Diplomatic and visa measures**, including reducing diplomatic engagement with Russia and imposing travel restrictions on sanctioned individuals, further isolate the country on the global

stage.

The implications of these sanctions go beyond Russia, extending to Belarus, Iran, and North Korea for their support of Russia.

As a result of the implementation of these unprecedented restrictive measures, Russia began employing various tactics to evade them (e.g., complex financial arrangements or falsifying the nature of the origin of goods exported). In light of these attempts, the European Union introduced anti-circumvention measures, including the "No Russia Clause" established in 2023.

The "No Russia Clause"

Following the 12th package of sanctions, the EU introduced a new legal requirement under Article 12g of EU Regulation 833/2014. This article, referred to as the "No Russia Clause," mandates EU exporters to prohibit the re-export of goods to Russia in their contracts with third countries. The 'no Russia clause' also aims to deter non-EU countries from redirecting sanctioned goods to Russia, exposing them to potential financial penalties. This provision applies solely to specific types of sensitive goods classified as common high priority and economically critical goods.

The list of prohibited items includes:

- **Dual-use goods**: These items can be used for civilian and military purposes.
- **Advanced technology**: Technologies employed in Russian military systems currently deployed in conflict zones.
- **Military production items**: Goods vital for developing and deploying military systems.
- **Aviation goods and weapons**: Products linked to military aviation and defense sectors.

Implications of the "No Russia Clause"

After the establishment of the "No Russia Clause," the European Commission published FAQs concerning Article 12g (updated regularly) *and Guidance for EU operators on improving due diligence to protect against sanctions circumvention*. Due diligence, not explicitly mentioned in Article 12g, is advised to ensure compliance with sanctions (refer to the European Commission notice of April 1, 2022). This guidance emphasises that due diligence must be tailored to specific business circumstances, as there is no one-size-fits-all model, and it outlines general best practices.

Exporters and importers must incorporate provisions into their contracts to ensure compliance. These might include:

- Statements affirming adherence to the clause as an essential contract element.
- Clauses requiring third-country importers to commit to not re-exporting designated goods to Russia.

- Preventing the resale of goods to partners who do not also commit to avoiding exports to sanctioned countries.

While specific wording for the “No Russia Clause” is not specified, templates are available in the FAQs. To ensure effectiveness, EU exporters should incorporate robust remedies—such as the ability to terminate contracts or impose financial penalties—in case of violations. It is essential to refrain from partnering with entities unwilling to incorporate the clause, and exporters must demonstrate compliance to competent authorities upon request. Moreover, it is mandatory to notify relevant authorities within member states in the event of violations.

Key Deadlines

- **Contracts Concluded Before 19 December 2023**: These contracts benefit from a one-year transition period until 19 December 2024, or until the contract’s expiry, whichever comes first. For execution starting 1 January 2025, contracts must include the “No Russia Clause.”
- **Contracts Concluded After 19 December 2023**: These contracts are required to incorporate the “No Russia Clause” starting 20 March 2024.

How it will work in practice?

The implementation of the “No Russia Clause” may lead to significant challenges in trade relationships with Chinese businesses. Heightened scrutiny on sensitive goods increases risks and could cause resistance from Chinese partners, who may cite national interests or enforcement limitations. Differing compliance perspectives between European and Chinese entities could create friction, strain negotiations, and complicate partnerships. Legal disputes may arise if Chinese partners perceive the clause as overreaching or clashing with local regulations. Furthermore, operational delays might occur due to additional compliance checks, particularly for newer or unfamiliar business relationships.

From a cost perspective, the clause will likely necessitate substantial investments in legal oversight, training, and technology. Businesses will need to develop tailored compliance programs, conduct enhanced due diligence, and ensure continuous partner monitoring, all of which increase operational costs. Training on compliance processes and robust internal systems to track trade flows and report violations will also be essential. Additionally, IT systems or external advisory services will help minimize compliance risks. These measures, while costly, are crucial for ensuring adherence to the clause without disrupting global trade operations.

Case Study: A European Manufacturer Navigates the “No Russia Clause”

Background

A mid-sized European machinery manufacturer, “EuroMach,” relies heavily on Chinese suppliers for specialized components used in its production line. The company exports its products globally, including to regions with stringent EU-sanction compliance requirements. Following the introduction of the “No Russia Clause,” EuroMach encountered resistance from its Chinese suppliers, who were wary of how the clause might conflict with their own trade policies and partnerships.

Challenges Faced

- **Contract Negotiations:** Chinese suppliers viewed the clause as intrusive and potentially harmful to their other business relationships.
- **Operational Delays:** The need for additional compliance checks caused delays in sourcing materials, disrupting EuroMach’s production timelines.
- **Financial Strain:** The company incurred increased costs due to legal consultations, compliance audits, and investments in new tracking systems.

Steps Taken

- **Proactive Communication:** EuroMach organized virtual workshops with its suppliers to explain the legal and operational necessity of the “No Russia Clause.” It provided detailed documentation and offered training resources to address supplier concerns. Allow suppliers a reasonable timeline to comply with the clause, broken into phases. For example: “Supplier shall ensure compliance with the ‘No Russia Clause’ within 90 days of contract execution, with a progress report submitted every 30 days.”

- **Enhanced Contractual Clauses:** The company revised its contracts to include more flexible terms, such as phased compliance deadlines and mutual audit agreements, which reassured suppliers about fairness.

- **Mutual Audit Rights:** For example: “Both parties agree to mutual audit rights, whereby each party may request documentation or conduct on-site inspections to verify compliance with the ‘No Russia Clause,’ provided that such audits are conducted with 15 days’ prior written notice.”

- **Proportional Penalties**: Implement penalties that are proportional to the breach, rather than immediate termination. For example: “In the event of a minor breach of the ‘No Russia Clause,’ the Supplier shall be subject to a penalty of 5% of the contract value, escalating only if the breach is not rectified within the agreed timeframe.”

- **Grace Periods for Rectification**: Allow suppliers a grace period to rectify any non-compliance before penalties are imposed. For example: "In the event of non-compliance with the 'No Russia Clause,' the Supplier shall have 30 days to rectify the breach before the Company may terminate the contract or impose penalties."
- **Force Majeure or Hardship Clauses**: Address unforeseen circumstances that may hinder compliance. For example: "In the event of unforeseen circumstances beyond the Supplier's control that prevent compliance with the 'No Russia Clause,' the Supplier shall notify the Company within 10 days, and both parties shall negotiate in good faith to find a reasonable solution."
- **Supplier Diversification:** To mitigate risks, EuroMach identified alternative suppliers in Southeast Asia and Europe, gradually reducing its reliance on Chinese partners.
- **Technology Implementation:** EuroMach invested in a digital compliance platform that streamlined due diligence processes and provided real-time updates on regulatory requirements.

The application of the "No Russia Clause" provides European businesses with critical lessons on navigating regulatory complexities in a globalized trade environment. The key takeaway is the importance of balancing compliance with operational efficiency and maintaining international partnerships.

Firstly, transparency and proactive communication with foreign suppliers are essential to understanding and addressing potential resistance. By establishing clear channels of dialogue and providing training or clarifications, companies can align their compliance goals with supplier expectations, reducing friction.

Secondly, flexibility in contracts is vital. Including phased deadlines, mutual audits, proportional penalties, and allowances for rectifications ensures fairness and adaptability while maintaining regulatory adherence. This approach fosters trust and collaboration, especially with partners from jurisdictions that may not fully align with EU regulations.

Diversifying supply chains is a strategic necessity. Over-reliance on a single region with differing regulatory environments can expose businesses to higher risks. Companies should consider alternative suppliers to ensure continuity in operations.

Lastly, technology is a cornerstone in managing compliance. Investing in advanced tools to streamline due diligence and monitor trade flows ensures efficiency and reduces delays caused by manual processes.

For European enterprises, these strategies underline the importance of proactive planning, adaptability, and innovation to successfully integrate the "No Russia Clause" into their operations while preserving competitive advantage in the global marketplace.

Practical Case Study: C-313/24, Opera Laboratori Fiorentini SpA

Background

The case of Opera Laboratori Fiorentini SpA v Ministero della Cultura, Gallerie degli Uffizi, A.L.E.S. – Arte Lavoro e Servizi SpA (Case C-313/24) highlights the practical implications of EU sanctions and the "No Russia Clause" in public procurement. The case was referred to the European Court of Justice (ECJ) by the Consiglio di Stato (Italy) on 29 April 2024.

Key Question

Must Article 5k(c) of Regulation (EU) 833/2014, concerning restrictive measures in view of Russia's actions destabilizing Ukraine, be interpreted as applying to an Italian company with non-Russian shareholders but two board members who are Russian nationals, including the chairman and CEO, who also directs the parent company holding a 90% stake?

Challenges Identified

1. Interpretation of ownership and control under EU sanctions.
2. Balancing national regulations with EU directives.
3. Ensuring compliance while maintaining business operations.

Insights from the Case

The case of Opera Laboratori Fiorentini SpA (Case C-313/24) highlights critical complexities in interpreting and applying the "No Russia Clause" under EU law. It underscores the vital importance of clear definitions of "ownership" and "control" in compliance assessments, particularly in situations where Russian-linked entities play key roles in corporate governance. This case raises significant questions about how board membership and control stake are evaluated within the context of EU sanctions, especially when national and EU-level regulatory frameworks need to align. Companies facing similar compliance challenges can gain valuable insights from this case, such as the necessity to evaluate corporate governance structures rigorously. Leveraging external legal expertise and proactively engaging with relevant authorities can be crucial to clarifying ambiguities and navigating the regulatory environment effectively. Additionally, businesses must balance operational continuity with strict adherence to sanctions to mitigate compliance risks. This case serves as a precedent for businesses operating under multi-jurisdictional sanctions frameworks.

Checklist for Contract Evaluation and Risk Mitigation

To evaluate contracts and mitigate risks associated with the “No Russia Clause,” companies should:

Conduct a Thorough Contract Review

Identify all clauses that could conflict with EU sanctions or compliance requirements.
Check for ambiguous terms that may lead to disputes.

Incorporate Clear Compliance Clauses

Define specific compliance obligations, including adherence to the “No Russia Clause.”
Include detailed breach and remedy provisions, such as penalties or termination rights.

Engage Legal Experts

Consult legal counsel to ensure contracts align with EU and local regulations.
Seek advice on handling disputes that may arise from clause enforcement.

Strengthen Due Diligence Processes

Use third-party verification services to confirm compliance.

Monitor Ongoing Compliance

Establish regular reporting requirements for partners.
Use technology to track and document compliance efforts.

Include Flexibility for Changes

Allow for contract amendments in response to evolving regulations.
Negotiate phased compliance timelines to accommodate partner concerns.

Foster Open Communication

Share compliance expectations with partners early in negotiations.
Offer training or resources to help partners adapt to the requirements.

Evaluate Supply Chain Risks

Assess the impact of potential partner withdrawal on operations.
Develop contingency plans for sourcing alternative suppliers.

Conclusion

To effectively navigate the complexities of the “No Russia Clause,” European companies must adopt advanced strategies that go beyond traditional compliance measures. Leveraging blockchain technology is a critical step for enhancing supply chain transparency and traceability, reducing the risk of non-compliance. Scenario planning, including simulations and contingency plans for supplier withdrawal or geopolitical disruptions, ensures businesses can adapt swiftly to unforeseen challenges.

Collaboration with industry groups presents an invaluable opportunity for staying informed on best practices and influencing regulatory clarity. By joining associations and advocating for clear EU guidance, companies can collectively build resilience against compliance challenges. Tailored training programs are equally important, offering role-specific modules with real-life case studies to equip employees with practical knowledge and application skills.

Ultimately, these strategies—embracing innovative technologies, anticipating disruption through scenario planning, fostering industry collaboration, and investing in workforce training—will empower European businesses to meet compliance requirements while safeguarding operational efficiency and global competitiveness.

The “No Russia Clause” requires companies to make substantial adjustments, including bearing increased costs and addressing potential cooperation challenges with Chinese partners. To mitigate risks and ensure compliance with EU sanctions, companies must prioritise robust due diligence, leverage legal guidance, and foster transparent communication with international stakeholders. These proactive measures will support compliance while maintaining essential trade relationships.