SQUIRE PATTON BOGGS

Regulatory Alert European Commission (EC) Fact Sheet on Ex Works (EXW) Incoterm and EU Sanctions

June 2025

The EC recently issued an EU Sanctions Fact Sheet (Fact Sheet) [see this link] reminding exporters/sellers of their obligations to comply with EU sanctions regulations, even when selling commodities under the Incoterms EXW sales term or rule.

Incoterms, short for "international commercial terms", are published by the International Chamber of Commerce, and are sets of standards used globally in contracts for the sale and purchase of commodities. There are 11 different sets of terms, which define the responsibilities of exporters/sellers and importers/buyers regarding costs, risks and the point of delivery.

The EXW Incoterm places the maximum amount of responsibility on the buyer for the cost and risk of shipping the goods. The seller's only responsibility is to make the goods available at their premises, usually at its factory or warehouse, with the buyer then handling all subsequent costs and risks, including transportation, export procedures and customs clearance.

Compliance with EU sanctions (set out in Council Regulations) is mandatory for all companies and persons under EU jurisdiction, including individuals on EU territory, EU nationals wherever they are located, EU flagged vessels, companies incorporated in the EU, whether they are doing business inside or outside the EU and foreign companies regarding business conducted in the EU.

Consequently, a seller, subject to EU jurisdiction, will remain under an obligation to carry out due diligence on the identity of its buyer and the intended destination of the goods, even when it is selling on EXW terms. The EU evidently felt compelled to issue this Fact Sheet and guidance because some sellers were under the mistaken or erroneous impression that the EXW Incoterm, which normally shifted the onus for sales, transportation and exports/customs responsibility to the buyer, also relieved them of responsibility for sanctions compliance.

The Fact Sheet provides an example of a seller supplying goods on EXW terms covered by EU sanctions on Russia, with a Russian importer collecting them from the premises of the seller in the EU. The guidance confirms that the seller in question would be required to comply with EU sanctions irrespective of contracting on EXW terms and would face liability whether it violates sanctions intentionally or by negligence.

Further, under several of the other Incoterms, risk passes to the buyer on loading of the goods on to the carrying means of transport in the country of origin of the goods, and the seller then has no further involvement in the shipment process (for example under the FOB Incoterm), but again a seller will be expected to undertake appropriate due diligence as to the destination of the goods in order to satisfy its sanctions obligations.

The EU's admonishment applies equally to logistics and transportation companies that are not even in the sales chain but are simply asked to retrieve the product at a warehouse and arrange for its transport.

The EC's message is that commercial parties' private law agreements cannot derogate from EU sanctions. Indeed, any attempt by a private party to limit their sanctions obligations would also be likely to be contrary to public policy, and therefore unlawful under the governing law of the sale contract.

Nonetheless every case will turn on its particular facts. Parties at times wrongly assert that sanctions apply to particular entities or trades when they do not, to try and avoid their contractual obligations, for example when the market turns against them, and they do not wish to perform. It is always prudent to seek specialist legal advice on any contract which may be affected by the UK, EU, Swiss, US or other sanctions regimes.

Contacts

José María Viñals
Partner, Madrid
T +34 91 426 4840
E josemaria.vinals@squirepb.com

Katie Pritchard
Partner, London
T +44 20 7655 1582
E katie.pritchard@squirepb.com

D. Michael Kaye
Partner, Washington, DC
T +1 202 457 6545
E michael.kaye@squirepb.com

Tigran Piruzyan
Senior Associate, Madrid
T +34 91 520 0772
E tigran.piruzyan@squirepb.com

Diego Sevilla Pascual
Senior Associate, Brussels
T +322 627 7612
E diego.sevillapascual@squirepb.com

68635/06/25