

On November 22, 2024, the European Commission issued important updates to its Consolidated FAQs on the implementation of Council Regulation No 833/2014 and Council Regulation No 269/2014 (FAQ) concerning the “best efforts” obligation under Article 8a of [Council Regulation 833/2014](#), effective as of November 22, 2024.

The updates clarify the responsibilities of EU operators regarding foreign entities they own or control, particularly those based in high-risk jurisdictions like Russia.

The “best efforts” obligation requires EU operators to take reasonable and proportionate actions to ensure their subsidiaries do not engage in activities that undermine EU sanctions. This includes implementing appropriate internal controls, policies and risk management procedures. The commission’s guidance emphasizes that these actions should be tailored to the operator’s size, resources, market sector and level of control over the foreign entity. Importantly, the obligation is not absolute, and external factors, such as legislation in third countries, can impact an operator’s liability.

The updated FAQs clarify the distinction between “undermining” and “circumventing” sanctions. “Undermining” refers to actions that directly oppose the objectives of the sanctions, such as enabling the supply of prohibited goods to sanctioned countries. EU operators must take proactive steps to prevent such activities and ensure compliance, even if they occur outside the EU.

In cases where external factors limit an operator’s control over a foreign entity, such as restrictive laws in jurisdictions like Russia, the operator may face reduced liability, provided the loss of control was not due to their negligence. This will be assessed on a case-by-case basis.

To demonstrate compliance with the “best efforts” obligation, EU operators must show that they have taken all necessary steps to prevent their foreign subsidiaries from violating sanctions. This includes conducting due diligence, implementing compliance programs and monitoring the activities of their subsidiaries. Operators must also ensure that their subsidiaries are fully aware of and compliant with EU sanctions.

The updates to the guidance further clarify that EU operators could be liable for goods produced by foreign subsidiaries, if these goods are covered by an EU export ban and end up in Russia or Belarus.

Operators must take all reasonable measures to block the use of intellectual property or trade secrets that could facilitate such exports. It is important to note that the timing of the intellectual property transfer does not affect the operator’s responsibility, as long as they retain control over its use.

Finally, the updates to the FAQs highlight that EU operators must ensure that intra-group transfers of goods subject to import bans do not indirectly benefit Russia’s economy. Even if the goods are transferred within the same corporate group, operators are still obligated to prevent the flow of sanctioned goods that could contribute to Russia’s economic activities.

EU operators are advised to review their risk management processes to ensure compliance with the “best efforts” obligation. For further details, please refer to the [Commission Consolidated FAQs](#).

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