



BORD TA' SORVELJANZA DWAR IS-SANZJONIJIET
SANCTIONS MONITORING BOARD
MALTA

**Guidance Note on Article 5m of Council
Regulation of Council Regulation (EU)
2022/879 of 3 June 2022 amending Regulation
(EU) No 833/2014 concerning restrictive
measures in view of Russia's actions
destabilising the situation in Ukraine**

Guidance Note

03 June 2022

1. Is a trust affected by article 5m when a Russian national is the beneficiary or settlor in a trust where there are other EU nationals who are beneficiaries or settlors?

In such a case, the trustee is to continue administering the trust in line with the trust deed in relation to the EU nationals. However, an authorisation for a derogation from the Sanctions Monitoring Board is still required under article 5m(5)(b) with respect to the involvement of the Russian nationals. In such a case, provided the authorisation is issued by the Sanctions Monitoring Board, the trustee is to continue administering the trust in line with the trust deed, without making funds or economic resources available to the Russian national.

2. Does article 5m apply when the settlor or a beneficiary of a trust is a Russian national who is resident in a country outside the EU but not in Russia?

The exemption provided in article 5m(4) clearly provides that articles 5m(1) and (2) shall not apply solely when the trustee or beneficiary is a national of a Member State or a natural person having a temporary or permanent residence permit in a Member State. Hence, in the case where the beneficiary or settlor of a trust is a Russian national who is resident, whether temporary or permanent, in a country outside the EU, the exemption in article 5m(4) will not apply and the trustee should apply for an authorisation for a derogation from the Sanctions Monitoring Board as required under article 5m(5)(b).

3. Does article 5m apply when the Russian national who is also a national of another country other than an EU Member State and is resident of a country outside the EU but not in Russia?

The exemption provided in article 5m(4) clearly provides that articles 5m(1) and (2) shall not apply solely when the trustee or beneficiary is a national of a Member State or a natural person having a temporary or permanent residence permit in a Member State. Hence, in the case where the beneficiary or settlor of a trust is a Russian national who is a national or resident, whether temporary or permanent, in a country outside the EU, the exemption in article 5m(4) will not apply and the trustee should apply for an authorisation for a derogation from the Sanctions Monitoring Board as required under article 5m(5)(b).

4. Does article 5m apply to foundations?

Article 5m(1) provides that this particular prohibition applies to trusts or any similar legal arrangements. The latter includes foundations, as per the definition found in article 3(6)(3) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC and as transposed in subsidiary legislation 373.01. Any references to the settlors and beneficiaries should therefore be construed to refer to the founder and beneficiaries or any other persons having an equivalent position in the structure as set out in the aforementioned EU Directive.

5. Which are the applicable exemptions to articles 5m(1) and (2) of Council Regulation 833/2014?

Article 5m(4) provides that articles 5m(1) and (2) shall not apply when the settlor or the beneficiary is a national of a Member State or a natural person having a temporary or permanent residence permit in a Member State. No authorisation is required from the Sanctions Monitoring Board in these cases.

6. Which are the derogations applicable to article 5m of Council Regulation 833/2014?

Article 5m provides several derogations which could be availed from by economic operators, in case of strict necessity. Such derogations are subject to an authorisation from the Sanctions Monitoring Board and would only apply if following the application, the Sanctions Monitoring Board accedes to such a request following an assessment of the relevant conditions. The first two derogations could be found in article 5m(5), which provides that the economic operators could apply for a derogation the Sanctions Monitoring Board to continue providing the services mentioned in article 5m(2) beyond the date established in article 5m(3), for:

- (a) the completion by 05 September 2022 of operations strictly necessary for the termination of contracts mentioned in paragraph 3, provided that such operations were initiated on or before 11 May 2022; or
- (b) other reasons, provided that the service providers do not accept from, or make available any funds or economic resources, directly or indirectly, to the persons referred to in paragraph 1, or otherwise provide such persons with any benefit from assets placed in a trust.

Another 3 derogations could be found in article 5m(6). Economic operators may apply with the Sanctions Monitoring Board for a derogation from articles 5m(1) and (2), after having determined that this is necessary for the following exhaustive reasons:

- (a) humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations; or
- (b) civil society activities that directly promote democracy, human rights or the rule of law in Russia.
- (c) the operation of trusts whose purpose is the administration of occupational pension schemes, insurance policies or employee share scheme, charities, amateur sports clubs, and funds for minors or vulnerable adults.

Authorisations by the Sanctions Monitoring Board are subject to such conditions as it deems appropriate.

7. Can I avail myself from the derogations provided in article 5m when the settlor or beneficiary is listed by the EU or by another country?

When the settlor or beneficiary is listed by the EU, the said trust or other similar arrangement is to be frozen and there can be no funds or economic resources made available to the listed person or entity. It is to be noted that the EU Regulation consists in itself a freezing order as purported by National Interest (Enabling Powers) Act.

8. How do I apply for a derogation and what should the application for the derogation consist of?

Trustees or administrators applying for a derogation under the relevant sub-articles of Article 5m in Malta shall seek to address the application to the Sanctions Monitoring Board. A copy of the application is to be sent to the Board's attention in electronic format via email (sanctions.smb@gov.mt) and also in the form of a physical copy to the following address: The Sanctions Monitoring Board, 16, Triq Kukkanja, St Venera.

In order to lodge an application, please kindly use the standardised template of the Sanctions Monitoring Board. This may be accessed through the following link: [https://foreign.gov.mt/en/Government/SMB/Documents/Application%20for%20Derogation%20\(MT\)%20Sanctions%20Monitoring%20Board.pdf](https://foreign.gov.mt/en/Government/SMB/Documents/Application%20for%20Derogation%20(MT)%20Sanctions%20Monitoring%20Board.pdf).



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The restrictive measures adopted by the European Union and the United Nations, including those on Russia following the aggression against Ukraine, may be consulted on the website of the Sanctions Monitoring Board on <https://foreign.gov.mt/smb>.

It is recommended that all persons in Malta remain informed of any updates made to applicable sanctions. To subscribe to the mailing list of the Sanctions Monitoring Board one may send an email to updates.smb@gov.mt.

Sanctions Monitoring Board

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