1. How should an authorisation in accordance with Article 5c(1)(a) and 5c(1)(d) of Council Regulation 833/2014 take place?

Procedures for granting derogations are established at Member State level by national administrative law. The national competent authorities (NCA) to which the applicant should lodge its request for authorisation are indicated here. Member States are then free to distribute the work internally to assess the request as they sees fit. Member States legislation and procedures must not be in contradiction with the provisions set out in EU law. According to the case law of the Court of Justice of the European Union, NCAs must exercise their powers in a manner that upholds the rights provided for in Article 47 of the Charter of Fundamental Rights of the EU.

2. Are there any formal requirements as to how the authorisation should be designed?

The process and design of the authorisation is to be decided upon by the national competent authority in line with national practice. For instance, it is up to the national competent authority to decide whether to provide a form for the submission of the request or not.

3. Which information and documentation should be obtained by the national competent authority for assessments made under Article 5c(1) of Council Regulation 833/2014? Whom should the national competent authority obtain the information and documentation from: natural or legal persons?

It is for the national competent authority to decide on what evidence is required. The national competent authority will need to ascertain that the deposits are indeed required for the purposes providing the grounds for an exemption under Article 5c. Which documents are needed for this needs to be decided on a case by case basis. In particular, the national competent authority will assess whether the information provided by credit institution applying for the authorisation is sufficient, or whether additional documentation from the natural and legal persons is needed.

4. What may be considered “necessary to satisfy the basic needs” in accordance with Article 5c(1)(a), and “necessary for official purposes” in accordance with Article 5c(1)(d)? Which elements should be included in the assessment?

For basic needs, please refer to page 27 of the Best Practices for the implementation of Sanctions (payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges). For official purposes, the national
A competent authority should assess on a case-by-case basis if the deposit falls within the scope of the derogation. Regarding a diplomatic mission or consular post or international organisation, the exemption under Article 5c(1)(d) shall be interpreted as covering all deposits needed to finance the office purposes of such a mission. In general, money transfers by the Russian State to its embassy in one Member State would qualify for this derogation. Nevertheless, it remains up to the national competent authority to ascertain in the authorisation application process the necessary nature for official purposes of a transfer to the embassy.

5. **Does the reporting obligation under Article 5g(1)(b) of Council Regulation 833/2014 only take effect on 27 May 2022 or is it already in effect?**

The obligation is in effect immediately and shall be complied with by no later than 27 May, in line with Article 5g(1)(a). In other terms, the list of deposits exceeding EUR 100 000 held by Russian nationals or natural persons residing in Russia who have acquired the citizenship of a Member State or residence rights in a Member State through an investor citizenship scheme or an investor residence scheme, which credit institutions shall provide their national competent authority with by 27 May 2022, must take into consideration all deposits as from the application date of this substantive provision, i.e. all deposits from 27 February onwards. 27 May is not a reference date for reporting (cut-off date), it is a deadline for banks to provide the information to their national competent authority.

Note that Article 5g(1)(b) is the reporting rule applicable for bi-national exempted from the prohibition on deposits acceptance under Article 5b and should be read in conjunction with it. Article 5b has itself been applying immediately since its entry into force. The fact that the reporting provision in Article 5g is “no later than” merely gives banks some flexibility for effective reporting, but it is not the cut-off date for the application of the reporting rule itself.

6. **Art 5g of Council Regulation 833/2014 refers to credit institutions. Is the reporting obligation also applicable to other institutions, e.g., payment institutions, financial institutions and/or electronic money institutes?**

Article 5g imposes reporting obligations on credit institutions as defined in Article 1(h) and which hold deposits as defined in Article 1(k). In case of doubt, the institution should seek information from its national competent authority for an assessment on a case-by-case basis. In this respect, it must be recalled that it is prohibited to participate in activities that would circumvent the restrictions in Council Regulation 833/2014.

7. **For the purpose of complying with the obligation under Article 5g(1)(b) of Council Regulation 833/2014, how can a credit institution verify whether a deposit holder is a Russian national or natural person residing in Russia who has acquired the citizenship of a Member State or residence rights in a Member State through an investor citizenship scheme or an investor residence scheme?**
Investor citizenship schemes and investor residence schemes are defined in Articles 1(l) and 1(m) of Council Regulation 833/2014. A credit institution should first assess the documents that have been submitted to it by the deposit holder. Should it need further assistance, the credit institution can contact its national competent authority.

8. Are EU parent companies obliged to report deposits from Russian persons or entities for the entire group on a consolidated basis (including deposits at their non-EU subsidiaries)?

EU sanctions do not apply extra-territorially. Third-country subsidiaries of EU parent companies are incorporated under third-country law, not under the law of a Member State. They are therefore not expected to comply with Article 5g of Council Regulation 833/2014.

9. Should the prohibition in Article 5b of Council Regulation 833/2014 also be complied with by branches of EU banks outside the EU?

EU sanctions must be complied with by all EU persons – both natural and legal – and therefore by all EU incorporated companies. Branches of EU companies outside the EU remain EU persons, and as such are bound by Council Regulation 833/2014, including Article 5b.

10. Should the prohibition to accept deposits exceeding a total of 100 000 € from Russian nationals and natural persons living in Russia or legal persons, entities or bodies established in Russia in Article 5b of Council Regulation 833/2014 apply to deposits made by Russian nationals residing in a third country (e.g. the US)?

The prohibition in Article 5b applies, inter alia, to deposits made by Russian nationals wherever they reside, unless they have a temporary or permanent residence permit in a Member State, a country member of the European Economic Area or Switzerland.

11. Does the prohibition in Article 5b apply for all types of account (e.g. savings and current accounts)?

The prohibition applies to all deposits as defined in Article 1(k), irrespective of the type of account they are being held in. The limit of 100 000 € should be understood as the sum of all accounts being held at a credit institution.

FREQUENTLY ASKED QUESTIONS – AS OF 04 APRIL 2022

12. What does the term "Russian national" mean in the context of Article 5b of Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine? Does it
includes all holders of the Russian nationality or Russian residents only? What about holders of dual EU-Russia citizenship?

Article 5(b)(1) of Council Regulation (EU) No 833/2014 provides that: “It shall be prohibited to accept any deposits from Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia, if the total value of deposits of the natural or legal person, entity or body per credit institution exceeds 100 000 EUR.”

The prohibition applies to all Russian nationals and Russian residents, unless they are also EU nationals (Art. 5b(3)).

13. Should the broad term “entities” in Article 5b be interpreted as including subsidiaries of European financial institutions in Russia and could it therefore stop them from conducting ordinary business operations, including moving money to nostro accounts, conducting business with other EU banks with which they hold accounts or non-designated Russian banks banking with EU institutions?

The term ‘entities’ in Article 5b of Council Regulation (EU) No 833/2014 comprises all entities established in Russia, including subsidiaries of EU operators which are incorporated in Russia.

The prohibition does not apply to those deposits that are necessary for non-prohibited cross-border trade in goods and services (Article 5b(4)). Moreover, Article 5c and 5d enable the competent authorities of the Member States to authorise the acceptance of such deposits in limited and well-defined circumstances.

14. Does the prohibition for EU credit institutions to accept deposits from Russian legal and natural persons above EUR 100 000 refer only to new or also to existing deposits?

The prohibition is to accept any new deposits if the total value of deposits of the natural or legal person, entity or body per credit institutions exceeds EUR 100 000. Implicitly this means that those deposits that are already in EU banks can remain there but their value cannot be further increased above EUR 100 000. The reporting obligation applies to all deposits that exceed the specified value. In practice, this means that:

1. For new deposits:

   EU operators must not accept (new) deposits if the total value of deposits of the natural person or legal person, entity or body per credit institution exceeds EUR 100 000.

2. For existing deposits:
• If a Russian legal or natural person had more than EUR 100,000 in a deposit on the day of entry into force of the Regulation (26 February 2022), the relevant deposit is grandfathered. This means that the Russian legal or natural person is entitled to keep the money and do whatever it wants (e.g. withdraw, leave in the account), but it cannot again increase the balance in a way that would exceed EUR 100,000 (unless the competent authority of a Member State grants an authorisation under Article 5c or 5d).

• If a Russian legal or natural person had less than EUR 100,000, it is entitled to increase the balance of the deposit up to EUR 100,000 (but not more) per credit institution.

15. Regarding Article 5b on deposits exceeding EUR 100,000, we understand that the bank should monitor these deposits and gather information per customer and per financial institution from where these funds are generated in order to monitor the cumulative amount not exceeding EUR 100,000 per financial institution. Can you confirm that the following examples concerning a Russian national and/or resident sending money are correct?

• Payment 1 - from a Russian bank A of EUR 99,000 can be accepted
• Payment 2 – from the same bank of EUR 150,000 shall be rejected
• Payment 3 - from a Russian bank B of EUR 99,000 can be accepted
• Payment 4 - from a bank in Italy of EUR 150,000 shall be rejected

The understanding in the examples is correct. EU operators must not accept (new) deposits in excess of EUR 100,000. If a Russian national or natural person residing in Russia had less than EUR 100,000, it is entitled to increase the balance of the deposit up to EUR 100,000 (but not more) per credit institution.

16. Russian nationals and persons residing in Russia could have various accounts outside of Russia. If the deposit being received at our bank is generated outside of Russia, does this transaction fall under the EUR 100,000 limitation?

Yes, it does. If the deposit belongs to a Russian national or natural person residing in Russia, the transaction would fall under the EUR 100,000 limitation. Banks need to monitor incoming transactions to accounts held by Russian nationals and natural persons residing in Russia to ensure that the EUR 100,000 limit is not exceeded, irrespective of where the incoming transactions are made from. Banks also have a reporting obligation under Article 5g(1)(a) regarding the accounts of Russian nationals, residents or Russia companies exceeding EUR 100,000, which the Commission intends to monitor very closely.

17. With regard to legal persons, is there a prohibition on deposits per legal entity or should the group structure be considered?

The prohibition in Art. 5b applies per legal entity.
18. Are limits targeting new deposits received after 25 February 2022? Does any account balance held for Russian nationals and residents fall into the targeted categories as well? If yes, what action would be required on balances held at the bank that are over EUR 100 000?

As regards existing deposits, if a Russian national or natural person residing in Russia had more than EUR 100 000 in a deposit on the day of entry into force of the amended Regulation (26 February 2022), the relevant deposit is grandfathered. This means that the Russian national or natural person residing in Russia is entitled to keep the money and do whatever it wants (e.g. withdraw, leave in the account), but it cannot increase the balance in a way that would exceed EUR 100 000 (unless the competent authority of a Member State grants an authorisation under Article 5c or 5d).

19. Financial instruments, as defined in Section C of Annex I to Directive 2014/65/EU, are not qualified as deposits. Should other financial assets than financial securities be qualified as deposits? For example, do they include express trusts and similar legal entities or arrangements; a legal entity or special structure whose object is to manage wealth of its legal representative or Ultimate Beneficial Owner?

Article 1(k) of Council Regulation (EU) No 833/2014 (the Sanctions Regulation) provides the following definition of deposit:

(k) “deposit” means a credit balance which results from funds left in an account or from temporary situations deriving from normal banking transactions and which a credit institution is required to repay under the legal and contractual conditions applicable, including a fixed term deposit and a savings deposit, but excluding a credit balance where:

1. its existence can only be proven by a financial instrument as defined in Article 4(1)(15) of Directive 2014/65/EU of the European Parliament and of the Council, unless it is a savings product which is evidenced by a certificate of deposit made out to a named person and which exists in a Member State on 2 July 2014
2. its principal is not repayable at par
3. its principal is only repayable at par under a particular guarantee or agreement provided by the credit institution or a third party

It would be up to the credit institution to assess whether the individual product/circumstance therefore falls within this definition of ‘deposit’.

20. Is it correct that “deposit” does not include any credit/debit entry or cash flow resulting from transactions or corporate events, whether linked or not with financial instruments, as defined in Annex I to Directive 2014/65/EU.

The prohibition provides that: “It shall be prohibited to accept any deposits from Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia, if the total value of deposits of the natural or legal person, entity or
body per credit institution exceeds EUR 100 000.” Therefore, if the transaction or corporate event results in a positive cash flow, and thereby becomes a deposit as defined under Article 1(k), into an account held by a Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia, this would fall within the prohibition and is prohibited.

Note: payments made by CSD participants for the settlement of transactions that are not affected by the sanctions set out in Council Regulation (EU) No 833/2014 should be considered as benefiting from the exemption set out in Article 5b(4), whereby “Paragraph 1 shall not apply to deposits which are necessary for non-prohibited cross-border trade in goods and services between the Union and Russia.” Then, if the counterparty to the transaction who receives the cash payment is a Russian person, the provisions in Article 5b shall apply to any further transfer of the cash out of the account where it was credited in the context of the settlement of the transaction.

21. What should a bank do if it has already received the deposit?

The bank should then transfer the deposit back. If the deposit was received before the sanction entered into force on 26 February 2022, the deposit can however be kept in the account.

22. Is it correct that the concept of “total value” must be calculated taking into account customers' positions with the bank in current accounts and deposits at the point in time when the restrictions entered into force?

This is correct.

23. Does the concept of “total value” have to be calculated taking into account customers' accounts in currencies different from euros?

Yes, the total value should take into account all deposits, irrespective of the currency in which they are denominated.

24. Does the meaning of “deposit” also include (i) accounts opened to hold collateral for financing arrangements (ii) shared accounts, for example accounts of spouses?

i. Collateral would fall within the exemption of the definition of deposit as set out in Article 1(k)(iii). However, if accounts used to hold collateral have excess collateral, EU operators should ensure, via their due diligence, that this excess collateral is not held in the account with the purpose of circumventing the prohibition in Article 5b.

ii. In case the person with whom the account is shared falls within the scope of the prohibition (i.e. being Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia), then these deposits fall within the scope of the prohibition. As the prohibition applies per natural or legal
person, entity or body, the total value of the deposits can be split over two persons to calculate whether the individual value of the deposits exceeds EUR 100 000. In this case, for an account shared by two persons both subject to the prohibition, the maximum value of deposits allowed to be held per credit institution would be EUR 200 000.

The prohibition does not apply to EU nationals, nationals of a European Economic Area country or of Switzerland, or natural persons having a temporary or permanent residence permit in a Member State, in a country member of the European Economic Area or in Switzerland. (Article 5b(3)). In case any of those persons jointly holds the account with someone of a targeted nationality, the prohibition does not apply. However, the joint account cannot be used to circumvent the rules (Article 12).

25. Does the meaning of “deposit” also include correspondent accounts for Russian banks, especially of Russian bank subsidiaries of banks headquartered in the EU?

The prohibition applies to “legal persons, entities or bodies established in Russia”. Russian banks, including subsidiaries of banks headquartered in the EU, would fall under that definition and would therefore be subject to this prohibition. However, the prohibition shall not apply to deposits which are necessary for non-prohibited cross-border trade in goods and services between the European Union and Russia. Whether the correspondent account qualifies for this exemption would need to be assessed on a case-by-case basis.

26. Is it correct that any portion of a credit entry in excess to the EUR 100 000 aggregated limit should not be blocked but returned to the remitting bank or wired outward according to our customer instructions?

Council Regulation (EU) No 833/2014 prohibits the acceptance of deposits, but does not prescribe how credit institutions should do this. This will be left to the individual institution to decide, possibly in dialogue with the relevant customer.

27. Should interest, dividend payments or coupon payments be booked if the EUR 100 000 limit is already exceeded.

The payment of interest or dividend should in this case not be accepted. Where and how the interest or dividend payment should be made to would need to be decided by the parties involved, including the possibility to wire the funds out of the EU.

28. Does Article 5b(3) exclude dual nationals (having Russian nationality and the nationality of an EU Member State) as well as persons of Russian nationality who have a temporary or permanent residence permit in another Member State?

Yes, those dual nationals would fall under the exemption as set out under Article 5b(3).
29. How is the term “temporary or permanent residence permit in a Member State, in a country member of the European Economic Area or in Switzerland” in Article 5b(3) of Council Regulation (EU) 833/2014 defined?

Each Member State defines its own national rules thereon.

30. Does the term “Russian nationals” in Article 5b of Council Regulation (EU) No 833/2014 also include refugees from Russia who might not be able to easily discard their nationality and who might have found refuge in a non-EU country (such as Switzerland or Norway)?

Dual nationals whose one nationality would be that of a Member State or a country that is a member of the European Economic Area or Switzerland, or otherwise natural person having a temporary or permanent residence permit in a Member State or a country that is a member of the European Economic Area or Switzerland, fall under the exemption as set out under Article 5b(3). If the dual nationality falls outside this scope (i.e. a dual national having both a Russian nationality and a nationality of a country other than that of a member of the European Economic Area or Switzerland), the prohibition in Article 5b would apply.

31. Does the restriction apply per banking licence or to a combination of EU banks? What are the criteria for joint account holders to deposit euros into bank accounts?

The restriction applies per banking license.

32. What are the criteria for joint account holders to deposit euros into bank accounts?

In a case where the two persons who share the account both fall within the scope of the prohibition to have deposits in excess of EUR 100 000 (i.e. they are Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia), then the joint account falls within the scope of the prohibition. As the prohibition applies per natural or legal person, entity or body, the total value of the deposits can be split over the two persons. For an account shared by two in-scope persons, the maximum value of deposits allowed to be held per credit institution would therefore be EUR 200 000.

In a case where an EU national co-holds the account, the prohibition to have deposits in excess of EUR 100 000 does not apply, as EU nationals are exempted therefrom pursuant to Article 5b(3). However, pursuant to Article 12, the joint account shall not be used to circumvent the rules. This obligation applies, inter alia, to EU nationals.

33. Can incoming payments from a Russian national or entity in favour of an EU-based natural person or legal entity be processed?
It depends whether the EU-based natural person or legal entity falls within the scope of the prohibition under Article 5b.

34. Can currency exchange transactions be processed on behalf of a Russian national without account opening?

This would be permissible as long as it does not result in deposits being accepted if the total value of deposits of the natural person or legal person, entity or body per credit institution exceeds EUR 100,000.

35. How are basic accounts requested by refugees treated?

Basic accounts are treated no differently from other accounts. The prohibition as set out in Article 5b, including the derogations for example set out in Article 5c(1)(a) for the basic needs of those in scope of the prohibition, would apply.

36. How should the bank proceed if a deposit of a Russian national with temporary or permanent residence in a Member State exceeds €100,000 and his/her residence permit later on expires or get revoked? Is there an obligation to reduce or block the amount of deposits exceeding €100,000?

When the residence permit is revoked, the Russian national no longer benefits from the exemption to the prohibition in Article 5b, as provided for in paragraph 2 of that article. As the prohibition would start applying from that point in time, there would be no obligation to retrospectively reduce or block deposits exceeding EUR 100,000. From the point of revocation of the residence permit, it shall however be prohibited to accept any new deposits exceeding EUR 100,000.

37. How should a Russian person who acts on behalf of an EU account holder and also carries out transactions including cash deposits on the account be treated regarding the prohibition in Article 5b?

The prohibition in Article 5b applies to the deposits of Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia. If the person is not the owner of the deposits but merely manages the account, the prohibition would not apply. However, EU operators should ensure, via their due diligence, that such non-EU entities are not used by another beneficiary to mask their identity and evade the sanctions.

38. Are sole proprietors that are legally speaking natural persons but have registered business activity and are therefore treated by the banks as companies (legal persons) subject to sanctions directed against Russian citizens or natural persons residing in Russia under Article 5b?

The prohibition in Art. 5b applies to the deposits of Russian nationals or natural persons residing in Russia, or legal persons, entities or bodies established in Russia. Here, it
seems that the sole proprietors would indeed fall within this category. However, the category of clients mentioned in the question may fall under the exemption provided in Art. 5b(3). Determining whether this is the case requires an assessment on a case-by-case basis.