

CLIENT ALERT

EU's Guidance on 'Best Efforts' Obligations under Sanctions targeting Russia and Belarus

September 5, 2025

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1. *Introduction and Scope of the 'Best Efforts' Obligation*

In August 2025, the European Union issued a guidance note in respect of the 'best efforts' rule laid down in Article 8a of Regulation (EU) No. 833/2014 (the "**EU Russia Regulation**") requiring EU operators to use their best efforts to ensure that EU sanctions against Russia or Belarus are not undermined by their non-EU subsidiaries (the "**Guidance**").

The Guidance, to be read in conjunction with the European Commission's FAQs on the implementation of the EU Russia Regulation, together with respective guidance notes of EU member state competent authorities, provides further clarification on the broad scope and meaning of the 'best efforts' obligation and, consequently, the actions that EU operators are recommended to take to prevent possible breaches.

Whilst the 'best efforts' obligation only applies in the context of sanctions on Russia and Belarus, the Guidance encourages EU operators – as a matter of best practice – to ensure that all entities they own and/or control do not undermine EU sanctions.

2. *Meaning of 'Undermining' and 'Best Efforts'*

The Guidance clarifies the meaning of 'undermining' restrictive measures in the context of EU sanctions regimes by distinguishing it from 'breaching' or 'circumventing' sanctions:

- **Breaching** sanctions refers to a direct or indirect violation of EU sanctions. This may occur, for example, when an EU operator exports prohibited goods to Russia whether intentionally or unintentionally.
- **Circumventing** sanctions is the act of seeking to find "a way around" or evade sanctions. For example, structuring a transaction to give the formal appearance of being in compliance with sanctions, such as a third-country buyer of EU machine tools declaring itself as the end-user but then transferring the goods to Russia.
- **Undermining** sanctions rather refers to actions that weaken the effect of the sanctions, even if they don't breach or circumvent them. For example, if an EU exporter has a subsidiary outside the EU and that subsidiary sells machine tools to Russia, then sanctions are being undermined. In such a case, the EU parent must still use its best efforts to ensure that its non-EU subsidiary does not undermine EU sanctions.

Furthermore, the Guidance explains that 'best efforts' require a degree of effort higher than 'reasonable efforts', namely comprising of all actions that are necessary and feasible to prevent the undermining of sanctions. Best efforts specifically need to be calibrated to the sanctions risk a business is exposed to, taking into account its size, sector, and activities, including those of its affiliates.

3. *Recommended Actions*

According to the Guidance, and consistent with the manner in which we regularly assist our clients seeking to comply with sanctions regimes beyond the EU, EU operators should take the following actions to ensure compliance with their 'best efforts' obligations:

1. Undertake a **risk assessment** of their business, including any entities in which they own or control, to identify which sanctions-related risks they are potentially exposed to.
2. Implement a **sanctions compliance program** to address and mitigate risks identified. This involves establishing operating procedures, internal controls, and related responsibilities aimed at identifying, managing, and mitigating the relevant risks and facilitating regulatory compliance.
3. Take preventive steps, i.e. **plan ahead** to develop EU sanctions compliance practices to be prepared, for upcoming regulatory changes, which may include the introduction of 'best effort' requirements beyond EU sanctions relating to Russia and Belarus.

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