

Aircraft Lessor Sanctions Update: No Russia and No Belarus Clauses

19 July 2024

Background

On 24 June 2024, the EU issued its 14th package of sanctions against Russia ([Council Regulation \(EU\) 2024/1745 of 24 June 2024](#)) (the “**Additional Russia Sanctions Package**”) which is an expansion of the EU’s comprehensive trade sanctions against Russia which were first introduced in 2014 ([Council Regulation \(EU\) No 833/2014 of 31 July 2014](#)) (the “**Russia Sanctions Regime**”).

On 29 June 2024, the EU imposed additional sanctions measures against Belarus ([Council Regulation \(EU\) 2024/1865 of 29 June 2024](#)) (the “**Additional Belarus Sanctions Package**”) which is an expansion of the EU’s comprehensive trade sanctions against Belarus which were first introduced in 2006 ([Council Regulation \(EC\) No 765/2006 of 18 May 2006](#)) (the “**Belarus Sanctions Regime**”).

Amongst other things, the Additional Russia Sanctions Package makes certain minor amendments to Article 12g of the Russia Sanctions Package, and the Additional Belarus Sanctions Package applies a similar regime to the Belarus Sanctions Regime. Aircraft lessors should familiarise themselves with the Additional Belarus Sanctions Package as part of their ongoing policies to ensure compliance with Article 12g of the Russia Sanctions Package.

Article 12g Refresher

Article 12g was introduced in December 2023 and requires that, when an EU counterparty contracts with counterparties outside the EU or certain partner countries (currently: United States of America, Japan, United Kingdom (excluding its overseas territories), South Korea, Australia, Canada, New Zealand, Norway, Switzerland, Liechtenstein and Iceland) for the sale, supply, transfer or export of certain objects (including aircraft and aircraft parts), such EU counterparty must:

1. **contractually prohibit** the re-export to Russia or re-export for use in Russia of those objects;
2. **ensure that the contract** includes “*adequate remedies*” in the event of a breach of the no Russia clause by the Non-Partner Counterparty; and
3. in the **event of a breach** of the no Russia clause, notify the competent authority (in Ireland: [Department of Enterprise Trade and Employment](#)) as soon as they become aware of the breach.

The obligation under Article 12g is on the EU counterparty (i.e. the aircraft leasing company) to ensure that an adequate clause is included in a relevant contract (such as an aircraft sale agreement or leasing

agreement) irrespective of whether its third-country counterparty ever actually exports or re-exports anything to Russia.

Any breach by an Irish company of Article 12g is a criminal offence under Irish law which is potentially liable:

1. on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months or both; or
2. on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or both.

What has changed under Article 12g?

Amongst other things, the Additional Russia Sanctions Package made the following changes to Article 12g:

1. the deadline for contracts concluded before 19 December 2023 to include a no-Russia clause has been marginally extended from 20 December 2024 to 1 January 2025; and
2. the obligation to include a no Russia clause has been excluded for contracts entered into with public authorities in third-countries as well as with international organisations. However, in such cases, an EU counterparty is required to inform its competent authority that it has concluded such a contract. This is unlikely to be of relevance to most aircraft leasing companies except in a small number of discreet cases, for example, where a sale or lease agreement is entered into with a government entity.

What has changed under the Belarusian Sanctions Regime?

Amongst other things, the Additional Belarus Sanctions Package has inserted a new Article 8g into the Belarusian Sanctions Regime. Article 8g of the Belarusian Sanctions Package broadly mirrors Article 12g of the Russian Sanctions Regime except that:

1. it applies to new contracts entered into on or after 1 July 2024; and
2. unlike Article 12g (where relevant contracts entered into prior to 19 December 2023 must include a no Russia clause prior to 1 January 2025) there is no requirement to insert a no Belarus clause into contracts concluded prior to 1 July 2024.

Accordingly, aircraft leasing companies should ensure that all relevant contracts entered into after 1 July 2024 include reference to Belarus in the no Russia clause.

As always, McCann FitzGerald LLP's leading aircraft finance and compliance teams are available to advise on the matters mentioned above and to assist clients in ensuring compliance with this rapidly developing area of law.

This document has been prepared by McCann FitzGerald LLP for general guidance only and should not be regarded as a substitute for professional advice. Such advice should always be taken before acting on any of the matters discussed.

