

Subject: Important Update on New Russian Regulation and Related Concerns

Dear Members,

I hope this message finds you well. We have received several inquiries regarding the 14th Sanctions Package about Russian Nationals, specifically from the Austrian Business Aviation Association who send the below practical questions on behalf of two operators.

I am pleased to enclose feedback from the Aviation safety department of DG Move at the European Commission. Please note that these remarks have as always the standard caveat:

*The Commission is not entitled to give legally binding or definitive interpretation of EU law and the implementation of Council Regulations is Member States responsibility. Therefore, even if you strive for accuracy and correctness, we cannot guarantee every State – or the Court - will accept the below*

Responses from the European Commission Safety Department in red on the questions raised by the operators:

OPERATOR 1:

1. Are independent investigations necessary for the specified Lead Pax?

**Yes. We encounter many fake lead pax and ultimately it is the operator that faces the consequences when caught.**

2. If the specified Lead Pax has a place of birth in Russia / Russian territory but travels with a foreign passport, must dual citizenship be assumed?

**That is the wisest thing to do. Currently most Member States work from the assumption that a person born in Russia (or of Russian parents elsewhere) is assumed to be Russian until official proof is provided that they have rescinded Russian nationality.**

3. Can a passenger with a place of birth in Russia be accepted if they can present an official document of revocation of Russian citizenship?

**Yes. The Russian administration has a standard form for this and it is issued by either a Russian embassy or in a few cases by the ministry of interior. ("a letter from Putin" is not considered legal)**

4. Is a declaration made to confirm the control of the aircraft by the Lead Pax sufficient as "credible and satisfactory information"?

**No. people have been known to lie. The old Russian proverb "Trust, but verify" is a good maxim to live by.**

5. Do the payment flows to the broker also need to be checked?

**The source of original payment is often a revealing fact, so States often request to see it, if they are not sure of the situation. The same can be used by operators.**

6. Is a specific lead time necessary for the review? How should "ad hoc" guests be handled?

At the moment there is no commonly agreed lead time from States side, but most will eventually converge around the 48 hour mark. Last minute “ad hoc” guests should be treated with suspicion, because that trick has often been used by Russians to try and avoid a proper check and you as operator are liable.

7. Which databases are recognized by the authorities for the sanctions check?

No commercial databases are officially endorsed. For the EU asset freeze, it is recommended to go to the eur-lex server and use the latest consolidated version of the regulation ( <https://eur-lex.europa.eu/eli/reg/2014/269/oj> N.B. you need to pick the consolidated and not the original version from this site and preferably check when it was done to see if there have been updates since the publication of the consolidated version, which always happens with some delay – e.g- the 14th package is not yet reflected in current consolidation). However for the flight ban the sanction applies to all Russians and not just to the listed persons, so never trust the list alone for the flight ban.

8. How do operators gain access to passport data to check for possible dual citizenships?

Russian passport data is not public, so the only way really is to demand the pax show proof of having given up Russian nationality, if there is any doubt.

9. How can the state delegate such a sovereign task to aviation companies when they do not have the means to conduct such checks?

It is quite common that companies are responsible for ensuring compliance with rules, be it food safety, banks checking for money laundering or airlines checking that their pax have the right of entry into a certain country. It is not easy, but the operators should know their clients best.

OPERATOR 2:

Article 3 d, par 1 provides:

“It shall be prohibited for any aircraft operated by Russian air carriers, including as a marketing carrier in code-sharing or blocked-space arrangements, or for any Russian registered aircraft, or for any non-Russian-registered aircraft which is owned or chartered, or otherwise controlled by any Russian natural or legal person, entity or body, to land in, take off from or overfly the territory of the Union. The prohibition in this paragraph shall also apply to any other aircraft which is used for a non-scheduled flight and with regard to which a Russian natural or legal person, entity or body is in a position to effectively determine the place or time of its take-off or landing.”

1. No Russian pilots may be employed.

Not correct. The text about determining T-O or Ldg place is merely a reiteration and clarification of original policy around the word “control”. In this sense the current FAQ remains valid and Russian pilots can be employed, because it is their employer (or employers customer), not the pilot themselves who determines departure and destination location.

2. The "Main Charter Passenger" must not have a Russian passport. We assume that the "Main Charter Passenger" is the person who pays for the flight. If the flight is sold through a charter broker, we require payment confirmation from the charter broker.

Generally that is the case, but we do have a lot of fake lead pax around. No matter where the money was paid from, it will continue to be implausible that a young penniless student pays for the trip of a Russian millionaire.

3. We then Google the names of the passengers to find out if the "Main Charter Passenger" is indeed the "richest passenger."

Due to the way algorithms work, it is recommend using Yandex.ru in addition to Google. Yanndex.ru (not Yandex.com) is better at scouring the Russian internet.

4. We verify that the majority of passengers do not hold Russian passports.

OK.

New notification obligations:

5. It is unclear what exactly we need to submit to the authorities and in what form. That is ultimately for the national authorities to decide. It is useful to submit as early as possible so that they can ask for more information if needed.

6. What constitutes "credible and satisfactory information"?

That is ultimately for the national authorities to decide. In the current situation where no information coming from Russia can be trusted 100%, so it will always remain a question of judgement.

Please keep in mind that while these insights are valuable, they do not constitute legal advice from the commission. Each member state has its own regulations and interpretations that must be adhered to.

-Continued-

## Member feedback

The EBAA has also received valuable feedback on the questions raised by the ABAA regarding the 14th Russian Sanction package from the following experts of the EBAA Lawyer committee: Nicholas Fischel of Chesneau Fischel, Ivars Mekons, Managing Partner at SUCCESS410.COM, and Lucie Cordier and Bertrand Rager of Custax & Tax.

Please note that their statements are for informational purposes only and no rights can be derived from them. We strongly advise you to consult your own legal counsel to discuss your specific situation and the interpretation of your competent authority.

### OPERATOR 1:

#### **1. Are independent investigations necessary for the specified Lead Pax?**

According to new Article 3d, §1, aircraft operators shall provide, for non-scheduled flights, *“credible and satisfactory information regarding the actual ultimate beneficial owner of the aircraft and, where applicable, of the natural and legal person, entity or body ultimately chartering the aircraft”*.

If there are reasonable grounds to suspect circumvention of §1 (routing or origin the flight or info about the relevant operator), then the operators shall provide *“a general declaration, passenger manifest and other official documents displaying the full names, birth dates, birth places and nationalities of all PAX, crew members”*.

This is part of the new due diligences requirements as per Article 12. Indeed, this article prohibiting circumvention is rewritten with the 14<sup>th</sup> package of sanctions to clarify that the intent to circumvent is characterised not only when a person knowingly and intentionally participates in an activity the object or effect of which is to circumvent the restrictive measures, **but also when that person is aware that such participation may have that object or effect, and accepts that possibility**. All EU operators have now an active responsibility in complying with EU sanctions against Russia.

We recommend to screen the relevant PAX and UBO against the EU Sanctions tracker: <https://data.europa.eu/apps/eusanctionstracker/>.

It is also a good practice to check the tools mentioned by IVARS: [Cirium](#), [Semaphore Intelligence](#), [Global ADS-B Exchange](#).

If you have no screening tool, some operators were satisfied with nonprofit organization C4ADS tools:

- [Sanctions Explorer](#) (for sanctioned legal entities or individuals)
- [Icarus Flights](#) which is a tool for analyzing uncensored aircraft activity data and tracing global aircraft ownership records

#### **2. If the specified Lead Pax has a place of birth in Russia / Russian territory but travels with a foreign passport, must dual citizenship be assumed?**

In order to respond to the question highlighted in **green** below and according to FAQ EASA (<https://www.easa.europa.eu/en/faq/136186>), it seems that a passenger (born in Russia but holding a foreign passport should be considered as a Russian citizen). As

per Question 11 of EU FAQ Does the ban apply also in case of a person who is a dual person (e.g. has both Russian and EU passports)?

*“yes they remain citizens of Russia, even if they also hold a second passport from elsewhere (...) if a person holds RU passport, this person is to be treated as RU citizen for the purpose of Article 3d of this Regulation, for all cases of an ownership, chartering and control of aircraft, also when having the EU member states residency. It is up to the national authorities/operators to assess whether the operation is in line with the Regulation. All stakeholders should bear in mind a liability for the circumvention of the prohibition as foreseen in Article 12 of the Regulation.”*

According to the Citizenship Act of 2002 that replaced the previous one dated from 1999, and to the Constitution of the Russian Federation of 1993 (the Constitution) Russian citizens are those persons who:

- were born in the territory of the RSFSR
- were citizens of the USSR
- **did not renounce Russian citizenship**
- relocated to another Soviet republic
- were not citizens of another Soviet republic
- eventually returned to Russia

A constitutional Court cases "Case of Smirnov (1996)" ruled that every former citizen of the USSR who was born in the territory of the RSFSR and never renounced Russian citizenship is a Russian citizen by birth, even if he also has foreign citizenship. This opinion is based on the Court's interpretation of Article 6 of the Constitution given in the text of the decision: "such persons ... cannot lose Russian citizenship unless they explicitly expressed their will to give it up".

Furthermore, under the Federal Law No. 134-FZ of April 24. 2020, Concerning the Simplification of the Procedure for Acquisition of Russian Citizenship which has amended the Federal Law No. 62-FZ of June 5, 2002, on Citizenship of the Russian Federation, all individuals are treated as Russian citizens regardless of whether they have citizenship of a foreign country. An exception is made for the citizens of Tajikistan, the only country that has a relevant treaty with Russia.

**3. .Can a passenger with a place of birth in Russia be accepted if they can present an official document of revocation of Russian citizenship?**

Yes but he/she must have indeed officially renounced to his Russian citizenship (a person wishing to renounce his or her Russian citizenship must voluntarily and with intent to relinquish Russian citizenship appear in person before a Russian Embassy or Consulate and must have a valid - not expired - Russian passport). One does not lose his/her Russian nationality if his/her passport has expired. The renouncement shall be confirmed by the official document emanating from the competent Russian authority, a renouncement application is not sufficient. In other words, you're not a Russian citizen anymore once you get this through a decision of a competent Russian authority only.

**4. Is a declaration made to confirm the control of the aircraft by the Lead Pax sufficient as "credible and satisfactory information"?**

According to answer 21 of the EU consolidated FAQ about aviation, "A self-declaration is not enough, as may lead to the circumvention of the sanctions. For example, a dual citizenship (RU not declared) should be taken into account".

It is important to check the consistency of the information provided to ensure that the flight (place or time of take-off or landing) is not determined by a Russian natural or legal person.

Nicolas Fischel of law firm Chesneau Fischel mentioned that the ECJ (Case T-233/22) ruled that The concept of 'control' is understood in the 'economic' or 'financial' sense and not in the 'technical' or 'operational' sense.

**5. Do the payment flows to the broker also need to be checked?**

We recommend to "screen" (verify they are not sanctioned) customers and third parties (including brokers) against national sanctions list and, at least, the EU Sanctions tracker: <https://data.europa.eu/apps/eusanctionstracker/>.

**6. Is a specific lead time necessary for the review? How should "ad hoc" guests be handled?**

It is mentioned that the information shall be provided "*upon request of the competent authorities (...) in advance of landing in, taking off from or verifying the territory of the EU, within a deadline set by the competent authorities of the Member State*".

So far no deadline has yet been set by the French authorities and it is difficult at the moment to reach the DG Trésor (French authority in charge of interpreting the Reg 833/2014).

**7. Which databases are recognized by the authorities for the sanctions check?**

Official EU database :

- EU sanctions maps: <https://www.sanctionsmap.eu/#/main>
- EU Sanctions tracker: <https://data.europa.eu/apps/eusanctionstracker/> and national sanctions tools.

**8. How do operators gain access to passport data to check for possible dual citizenships?**

Answer to above mentioned question 21: "Stakeholders/national authorities responsibility" of the EU consolidated FAQ about aviation provides some clues:

*"In the following cases :*

- *The private charter flight done via brokers where the nationality is not checked*
- *Flight goes via airport/business aviation sector where inspections or checks are incidental*
- *Flight operated on the basis of a self-declaration that is in line with the Regulation*

*We advise that all involved in the booking need to do proper "due diligence" and actively question potential customers, as normal practices do not suffice under this exceptional circumstances. Therefore, if asked to provide an aircraft, your members need to actively question every customer to verify that they are not either themselves Russian or acting on behalf of a Russian entity. They also need to go beyond just asking the the passenger to state or sign something and see for example what languages the customers use, how their luggage looks (i.e. signs of frequent Russian travel, etc.) or other elements that could help determine what the actual truth is.*

*If the operator has any doubts then should check with the national authorities. It is important to keep in mind Article 12 of the Regulation concerning the liability for the circumvention of the measures.*

*In our opinion, the "self declaration" is not enough, as may lead to the circumvention of the sanctions. For example, a dual citizenship (RU not declared) should be taken into account".*

**9. How can the state delegate such a sovereign task to aviation companies when they do not have the means to conduct such checks?**

See comments of the commission

**OPERATOR 2:**

Article 3 d, par 1 provides:

*"It shall be prohibited for any aircraft operated by Russian air carriers, including as a marketing carrier in code-sharing or blocked-space arrangements, or for any Russian registered aircraft, or **for any non-Russian-registered aircraft** which is owned or chartered, or **otherwise controlled by any Russian** natural or legal person, entity or body, to land in, take off from or overfly the territory of the Union. The prohibition in this paragraph shall also apply to any other aircraft which is used for a non-scheduled flight and with regard to which a Russian natural or legal person, entity or body is in a position **to effectively determine the place or time of its take-off or landing.**"*

Question from operator 2 it correct if we proceed as follows to comply with this regulation:

**1. No Russian pilots may be employed.**

According to FAQ EASA (<https://www.easa.europa.eu/en/faq/136912>), it seems that a Russian citizen can pilot an EU aircraft, provided that the pilot is an employee and the aircraft is not operated by a Russian air carrier, not registered in Russia, and not owned or chartered or otherwise controlled by any Russian natural or legal person, entity or body.... This position seems to be confirmed by Recital 4 in the Preamble of the Regulation 2024/1745.

A pilot can be Russian as long as he/she is not employed by a Russian air carrier (and aircraft not registered in Russia or owned, chartered, controlled by Russian).

**2. The "Main Charter Passenger" must not have a Russian passport. We assume that the "Main Charter Passenger" is the person who pays for the flight. If the flight is sold through a charter broker, we require payment confirmation from the charter broker.**

According to Lucie Cordier and Bertrand Rager of Custax the important concept is the UBO of the aircraft. The person who pays for the flight is a good indication but may not necessarily be that person (for example if they work for the UBO).

**3. We then Google the names of the passengers to find out if the "Main Charter Passenger" is indeed the "richest passenger."**

See comments of the Commission above

4. We verify that the majority of passengers do not hold Russian passports.

See comments of the Commission above

5. It is unclear what exactly we need to submit to the authorities and in what form.

Cf answer to question 1 and 6.

6. What constitutes "credible and satisfactory information"?

The main provision that concerns us regarding non-scheduled flights is the following:

Furthermore, in order to avoid other forms of circumvention, the Council decided to

1. **widen the EU flight ban.** The prohibition to land in, take off from or overfly the territory of the EU will also apply to any aircraft used for a non-scheduled flight, and where a Russian natural or legal person, entity or body, is in a position to effectively determine the place or time for its take-off or landing to reach, for instance, a holiday destination or a business meeting. Furthermore, **operators must provide any information** requested by member states' national competent authorities about non-scheduled flights, including ownership of the aircraft and possibly passengers

Sharing the experiences concerning the EU 14<sup>th</sup> Ukraine related sanctions package, Ivars Mekons Managing Partner at SUCCESS410.COM, made the following additional observations on several Baltic market (Estonia, Latvia, and Lithuania) operators' approaches:

1. The operators consult Recitals 4 and 5 in the Preamble of the [Regulation 2024/1745](#), where rationale is given for the recent business aviation related amendments made in the sectoral sanctions Regulation 833/2014. Perception is that these amendments are tailored to minimize the potential of circumvention rather than imposing substantially new obligations on the operators.
2. Recital 4 seems clear that the concept '*in a position to effectively determine the place or time of take-off or landing*' still denotes the commercial fate of the flight, and is not intended to ban Russian nationality pilots, when they perform their duties on non-Russian aircraft or airlines. The examples provided in that Recital are perceived that this newly introduced concept is simply designation of a specific actual charterer (irrespective of its technical designation and the actual payor), which can be, for instance, (i) otherwise a passenger only, but, in fact, instructing the flight choices or (ii) the one that procures the carriage of people falling under its authority (such as a Russian company making arrangements for its employees) or entitlement (such as a Russian tour operator making arrangements for its clients).
3. The newly introduced paragraph '1a' in Article 3d is perceived, on a pragmatic scale, as a duty to demonstrate, upon the authority's request, the operator's sensible due diligence outcomes (with an ultimate goal to avoid circumvention of the Article 3d(1) general prohibition).



- a. For passenger data, there is at least one operator which now demands a presentation of an advance signed declaration by each passenger that it does not possess Russian nationality, even if no allusions to Russia would appear to be present at all. Other operators normally demand such written confirmation in cases, where, for instance, a name and surname of at least one of the passengers seems to imply a potentially Russian linkage.
- b. In terms of payment for the charter indirectly (such as by the charterer to the broker), the general trend here now appears to be that the operators demand from brokers a presentation of a payment slip copy (assuming that the payment amount itself may be redacted, of course, for commercial secrecy issues).
- c. In terms of rescinding the Russian nationality, the operators normally accept the 'Russian' issues closed only upon having been presented a document, emanating from the Russian authority, confirming the actual revocation of that person's citizenship.
- d. At least what we've encountered in our practice, the authorities (including, the DG MOVE) normally make their determinations or risk assessment over the particular aircraft from the information available on databases maintained by (i) [Cirium](#) or (ii) [Semaphore Intelligence](#) (this one provides additional data besides aircraft, and includes also profiles of individuals associated with alleged adverse involvements), while flight history is usually consulted from [Global ADS-B Exchange](#).