

## Will the EU Sanctions against Russia affect IT Companies?

Bird & Bird

Bird & Bird's recent newsflash on the [EU sanctions against Russia](#) gave general guidance on the scope of the recent EU sanctions against Russia.

This update focusses on the issue of whether these sanctions will affect the operations of IT companies that conduct business activities in Russia. The relevant restrictions of the EU sanctions that could have an impact on the operation of IT companies in Russia are the restrictions on "dual use" technology. As set out in Bird & Bird's recent newsflash the relevant provisions establish:

*A prohibition to sell, supply, transfer or export, directly or indirectly, dual-use items to any person in Russia where those items are or may be intended for military use or for a military end-user. This applies also to providing, directly or indirectly, technical assistance, brokering services, financing or financial assistance (e.g. grants, loans, export credit insurance, etc.) related to such dual-use items.*

As a result, the fact that an IT product or service could have a military use or could be used in a military context does not automatically bring the IT product or services within the scope of the sanctions. In any case, the export of dual-use items is subject to control and dual-use items may not leave the EU customs territory without an export authorisation. It is only where the items "are or may be intended for military use or for a military end user" that the sanctions are applicable. Where the sale is made to a non- military end user or where the intention is clearly for non-military use then the EU sanctions do not apply.

The items that are regarded as being "dual use goods and technology" are defined by reference to a list which is contained in an Annex to an EU Regulation<sup>1</sup>. The list is extensive and complex, and includes sections dealing individually with electronics, computers, telecommunications and information security.

### Electronics

The "dual-use" list includes a wide range of electronic components, general purpose electronic equipment and specialist equipment, such as spray cooling thermal management systems, thermal batteries, frequency changers, high-power and high voltage direct current supplies,

switching devices and many other devices. If electronic equipment is being exported to Russia, specialist legal advice should be obtained in order to determine if it could be regarded as being "dual-use" goods or services.

### **Computers and Software**

There is a general exclusion in the list for software which is "generally available to the public" or which is "in the public domain". The term "generally available to the public" is further defined and requires that software is sold from stock at retail selling points, without restriction, by means of: over-the-counter transactions mail order transactions; electronic transactions; or telephone order transactions; and is designed for installation by the user without further substantial support by the supplier.

Providers of package software that is designed for customer installation will benefit from this exclusion from the definition of "dual-use" goods and services provided that they sell their products directly to end users and the software is available, for example, by download from an Internet site. However, if a distribution network is used in Russia for the software sales then the benefit of this exemption will not be available. Open source software has the benefit of the exemption.

Various special purpose computers and related equipment categories are included on the "dual-use" list, including where the computers are rated for low or high temperature operations, are radiation-hardened, designed for "fault tolerance" or having an "Adjusted Peak Performance" in excess of 1.5 Weighted TeraFLOPS. Again, if computer equipment is to be exported to Russia, particularly if it has any unusual characteristics, specialist legal advice should be obtained in order to determine if it could be regarded as being "dual-use" goods or services.

### **Telecommunications and information security**

Certain telecommunications equipment is included in the "dual-use" list, including telecommunications equipment that can withstand transitory electronic effects or electromagnetic pulses effects, underwater untethered communications systems, radio equipment in certain "military" bands, optical fibres of more than 500 meters, high frequency radio direction finding equipment, jamming equipment, and telemetry and telecontrol equipment.

Information security systems are included in the list of "dual-use" items, including where the systems are designed or modified to use "cryptography" (other than authentication and digital signatures) which either uses a "symmetric algorithm" with a key length in excess of 56 bits or an asymmetric algorithm in certain circumstances, or cryptanalytic functions, cryptographic techniques to generate the spreading code for "spread spectrum" systems, or cryptographic techniques to generate certain channelising codes, scrambling codes or network identification codes.

In general, most general purposes IT goods and services that are sold by commercial IT companies will not be covered by the "dual-use" list. Companies supplying electronic components will need to take some care that the products that they supply are not included on the list. Even where a product is included on the "dual-use" list it is not automatically covered by the EU sanctions. It is only when the items are or may be intended for military use or for a military end-user that the sanctions are applicable.

[See Regulation \(EC\) No. 428/2009](#)

## Authors

Image of Brian Mulier

Image not found or type unknown

### Brian Mulier

Partner  
Netherlands

Call me on: +31 (0)70 353 8800  
Bickerstaff-Roger

Image not found or type unknown

### Roger Bickerstaff

Partner  
UK

Call me on: +44 (0)20 7415 6000