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**COMMISSION OPINION**

**of 13.2.2017**

**on the provision of shareholders loans to finance the sale of goods listed in Annex II of  
Regulation 833/2014**

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#### The request for an opinion

In its role as the guardian of the treaties, the European Commission ('Commission') monitors the implementation of EU law by the Member States<sup>1</sup>.

In the context of restrictive measures, the competent authorities of the Member States may request the Commission to provide its views on the application of specific provisions of the relevant legal acts or to provide guidance on their implementation.

The Commission has received a request for an opinion from a Member State competent authority (NCA) concerning the application of Article 4(3)(b) of Regulation 833/2014<sup>2</sup>.

#### Background

The NCA's question concerns a transaction in which a number of economic operators from several EU Member States are shareholders in a company incorporated under the laws of a non-EU country (the 'Project company'). The Project company intends to run a project which will take place partly in Russia, including in its Exclusive Economic Zone, and which involves the purchase, supply, transport and export of goods and technologies contained in Annex II to Regulation 833/2014 (the 'Project').

Until external financing is available, the shareholders shall provide financing for the operations of the Project Company in the form of equity and shareholders loans. The Project company will use the said financing to, *inter alia*, purchase, supply, transport and export of goods listed in Annex II of Regulation 833/2014.

In this context, the NCA asks the following questions:

*1. Does the provision of equity and shareholders' loans constitute financing or financial assistance in the sense of Article 4(3)(b) of Regulation 833/2014?*

*2. In the affirmative, is such financing and financial assistance subject to prior authorisation by the national competent authority when it is provided by EU economic operators to a third-country entity carrying out activities in the Exclusive Economic Zone of Russia and involving the purchase, supply, transport and export of goods in Annex II to Regulation 833/2014?*

#### Assessment

Both questions will be taken together. The Commission will assess, first, the meaning and scope of Article 4(3)(b), and second, its applicability to the present case.

Article 4(3) of Regulation 833/2014 requires that "*[t]he provision of the following shall be subject to an authorisation from the competent authority concerned: (...)*

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<sup>1</sup> The Commission oversees the application of Union law under the control of the Court of Justice of the European Union. Pursuant to the Treaties, only the Court of Justice of the European Union can provide legally binding interpretations of acts of the institutions of the Union.

<sup>2</sup> Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31 July 2014, p. 1)

*(b) financing or financial assistance related to items referred to in Annex II, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of those items, or for any provision of related technical assistance, directly or indirectly, to any natural or legal person, entity or body in Russia, including its Exclusive Economic Zone and Continental Shelf or, if such assistance concerns items for use in Russia, including its Exclusive Economic Zone and Continental Shelf, to any person, entity or body in any other State."*

Article 4(3)(b) lists a number of operations which can be considered "*financing or financial assistance*" within the meaning of that provision, namely, "*grants, loans and export credit insurance*". However, the wording of the Article does not support the conclusion that the operations falling within its scope have been enumerated exhaustively. On the contrary, the list of operations is preceded by the term "*in particular*". This clearly indicates that the operations expressly mentioned should be construed as being examples.

In the absence of any explicit limitation to the type of financing and financial assistance operations falling within the scope of Article 4(3)(b) and in view of the general aim and objective of the restrictive measures, it must be concluded that the intention is to cover any operation, whether external or internal, by which an economic operator obtains financial resources. In particular, as regards loans, the text is silent on the issue as to whether it only refers to internal loans (shareholders loans, such as in the present case) or external loans (for example, bank loans).

**It follows that the term "financing or financial assistance" in Article 4(3)(b) of Regulation 833/2014 must be interpreted as including operations such as the provision of equity and shareholders loans.**

According to the information provided by the NCA, the financing and financial assistance in question is related to the sale, supply and export to Russia of a number of goods and technologies, some of which are listed in Annex II of Regulation 833/2014. Moreover, these goods and technologies will, at least in part, be used in Russia, including in its Exclusive Economic Zone. It follows that both of the alternative conditions laid down in Article 4(3)(b) ("*export... to any... body in Russia*" or "*for use in Russia*") are fulfilled in this case.

**The fact that the financing is not specifically and exclusively intended for sales, supplies and exports of goods in Annex II to Russia or for use in Russia, but will also cover other types of sales and supplies, does not render Article 4(3)(b) inapplicable.** Indeed, in accordance with the terms of Article 4(3)(b), the financing or financial assistance must be "related" to the relevant goods for the relevant use/geographic destination but it is not necessary for the act of financial assistance to be exclusively destined for them.

The jurisdiction clause in Article 13 of Regulation 833/2014 provides that the Regulation will apply *inter alia*, '*(d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State*'.

**Therefore, the shareholders of the Project company, who according to the information provided by the NCA, are EU legal persons, are subject to the obligations laid down in Regulation 833/2014, including those stemming from Article 4(3)(b).** The fact that the financing or financial assistance is to be provided to a non-EU entity, namely the Project company, does not alter the above conclusion as the status of the beneficiary of the financing is not determinative. This is clear from the wording of Article 4(3)(b), and in particular from the term *to any person, entity or body in any other State*". The relevant requirement is therefore, that the financing must be related to a sale, supply, transfer or export of goods listed in Annex II, to Russia or for use in Russia. In this instance, that requirement has been met.

## **Conclusion**

**The Commission takes the view that prior authorisation by the national competent authorities pursuant to Article 4(3)(b) of Regulation 833/2014 is required in a situation in which the EU shareholders of a non-EU company will provide the latter with equity and shareholders loans related to the sale, supply, transport or export, to persons in Russia or for use in Russia, of goods and technologies which include items listed in Annex II to the Regulation<sup>3</sup>.**

The procedure foreseen in Article 3 of Regulation 833/2014 shall apply *mutatis mutandis* to such authorisations, as required by Article 4(4). If the shareholders are companies incorporated or registered in different Member States, several national authorities may be required to assess applications for the financing or provision of financial assistance granted by companies under their jurisdiction. The Commission stresses the importance of ensuring the uniform implementation of the provisions of Article 4(3)(b) of Regulation 833/2014.

Done at Brussels, 13.2.2017

*For the Commission*

*Member of the Commission*

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<sup>3</sup> The information provided by the NCA shows that once external financing is obtained, the shareholders will provide guarantees in support of the Project company, thereby mitigating the risks for the external financiers. National competent authorities will need to assess whether the provision of such guarantees also falls under the incidence of Article 4(3)(b). Moreover, the information provided by the NCA seems to suggest that one of the EU shareholders might (also) provide technical assistance related to the Project. If the said technical assistance fulfils the conditions laid down in Article 4(3)(a) of Regulation 833/2014, it shall also be subject to a prior authorisation. However, these aspects are not part of the NCA's request for an opinion and thus are not dealt with.