



Brussels, 17.10.2017  
C(2017) 6904 final/2  
DOWNGRADED on 12.9.2022

**COMMISSION OPINION**

**of 17.10.2017**

**on the making of funds or economic resources indirectly available to a listed person  
under Article 2(2) of Regulation 269/2014**

## COMMISSION OPINION

of 17.10.2017

### on the making of funds or economic resources indirectly available to a listed person under Article 2(2) of Regulation 269/2014

#### 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 national competent authority ("NCA") of a Member State with regards to the application of Article 2(2) of Council Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine<sup>2</sup> ("Regulation").

#### Background

The NCA's question concerns a transaction whereby an EU exporter sells rescue equipment which is not subject to any export restrictions, to Company A, a non-listed entity, which is incorporated under the laws of a non-EU country. Company A subsequently incorporates the equipment into final products (rescue ships), and delivers them to Company B, a non-listed entity, which is also incorporated under the laws of a non-EU country. Company B is organisationally placed under Company C, a non-listed entity, which is also incorporated under the laws of a non-EU country. The Director of Company C is a person listed in Annex I of the Regulation.

In this context, the NCA asks the following question:

*Does the export of equipment by the EU company to Company A constitute a case of making economic resources available, directly or indirectly, to a listed person in the sense of Article 2(2) of Regulation 269/2014?*

#### Assessment

The Regulation introduced an asset freeze and a prohibition to make funds or economic resources available to persons or entities responsible for actions undermining or threatening

---

<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 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 78, 17 March 2014, p. 6–15)

the territorial integrity, sovereignty and independence of Ukraine. Article 2(2) of the Regulation stipulates that:

*"No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I."*

The answer to the question by NCA will therefore depend on the interpretation of "making economic resources available directly or indirectly" to a listed person. Consequently, it is necessary to present the meaning of three terms: "economic resources", "listed persons or a person, entity or body associated with them" and "directly or indirectly making available of economic resources to or for the benefit of".

Firstly, the term "economic resources" is defined in a very broad manner and *"means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services"*<sup>3</sup>. Therefore, in the presented context, the rescue equipment constitutes an economic resource within the meaning of the Regulation.

Secondly, "listed persons or a person, entity or body associated with them" means persons who were identified by the Council to undermine or threaten the territorial integrity, sovereignty and independence of Ukraine and are therefore listed in Annex I to the Regulation.

The facts, as presented by the NCA, are that neither Company A nor B nor C is a listed entity. It is only the Director of Company C who was listed by the Council as a natural person in Annex I of the Regulation. Furthermore, there appears to be no ownership or control relationship between Company A and Companies B or C. Therefore, there is no direct relation between being a Director of Company C and Company A.

Thirdly, according to the case-law of the Court of Justice, the term "directly or indirectly making available of resources to or for the benefit of" is understood as the succession of acts by which a person *"is effectively to **obtain full power of disposal** in relation to the economic resource concerned."*<sup>4</sup> This broad scope of the term is reiterated by the use of words "directly or indirectly" in Article 2(2) of the Regulation that includes any acts which result in effectively obtaining the full power of disposal of an economic resource comes within the meaning of the term. However, this needs to be analysed on a case by case basis. The EU Best Practices for the effective implementation of the restrictive measures<sup>5</sup> ("EU Best practices") state that making resources available to a non-listed person which is controlled by a listed one in principle will amount to making them indirectly available to the latter, unless *"it can be reasonably determined, on a case-by-case basis using a risk-based approach, taking into account all of the relevant circumstances, including the criteria below, that the funds or economic resources **concerned will not be used by or be for the benefit** of that listed person or entity"*<sup>6</sup>. Among the criteria to be taken into account to determine the above, the EU Best practices mention *"the characteristics of the funds or economic resources made available, including their potential practical use by, and ease of transfer to, the listed entity."*<sup>7</sup>

In Commission's view the export of the rescue equipment, as presented by the NCA in its question, does not come within the scope of the term "directly or indirectly making available of economic resources to or for the benefit of", as the link between the initial export and the

---

<sup>3</sup> Article 1(d) of the Regulation.

<sup>4</sup> Mollendorf case (C-117/06), paragraph 51.

<sup>5</sup> EU Best Practices for the effective implementation of the restrictive measures.

<sup>6</sup> *Idem*, paragraph 66.

<sup>7</sup> *Idem*.

listed Director of Company C is not supported by sufficient evidence. Firstly, there is no direct relation between Company A and Director of Company C. Secondly, it appears that the position of Director of Company C does not give the full power of disposal over goods obtained by Company B. Finally, there is low risk that rescue ships would be used by the Director of Company C in his personal capacity because of their specific application.

### **Conclusion**

**The Commission takes the view that in this specific context the export of equipment by an EU company to Company A that then incorporates the products into final products that are sold to Company B, which is organisationally placed under Company C, whose Director is a listed person in Annex I to Regulation 269/2014, does not constitute a case of making economic resources available, directly or indirectly, to or for the benefit of a listed person in the meaning of Article 2(2) of Regulation 269/2014.**

As a principle, the national competent authorities should assess on a case-by-case basis using a risk-based approach, taking into account all of the relevant circumstances, that the economic resources concerned will not be made available to or for the benefit of the listed person or entity.

Done at Brussels, 17.10.2017

*For the Commission  
Federica Mogherini  
Vice-President*