

ENERGY FINANCING

RELATED PROVISION: ARTICLE 3a OF COUNCIL REGULATION 833/2014

1. Does the prohibition to finance the Russian energy sector only apply to new projects or also to new/additional investments in existing projects?

Last update: 22 April 2022

The prohibition in Article 3a of **Council Regulation 833/2014** refers to all new investment across the Russian energy sector and also imposes restrictions on further investments in already existing projects. The prohibition foresees limited exceptions for when such investments are necessary for ensuring critical energy supply within the Union or for the necessary transport of certain energy products into the Union.

2. Article 3a(b) of Council Regulation 833/2014 prohibits granting of being part of any arrangement to grant “any new loan or credit or otherwise provide financing, including equity capital, to any legal person, entity or body incorporated or constituted under the law of Russia or any other third country and operating in the energy sector in Russia [...]”. Does this prohibition also cover companies incorporated in the Union which continue to have global operations, including in Russia?

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No, it does not. “Third country” refers to non-EU countries. This provision does not prohibit investments in EU-based companies.

3. Does the provision in Article 3a(1)(b) prohibit drawdowns or disbursements made under a loan, credit or a financing contract concluded before the entry into force of the prohibition (16 March 2022)?

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The general purpose of Article 3a is to restrict the development of new projects in the energy sector in Russia. To this end, Article 3a(1)(b) prohibits new loans and credits to any legal person, entity or body incorporated or constituted under the law of Russia or any other third country and operating in the energy sector in Russia. It does not prohibit drawdowns or disbursements made under pre-existing loans or credits in line with the agreed terms and conditions of the contract. The prohibition must not be circumvented through changes to the existing terms and conditions.

4. What is considered as “new loan or credit”? What kind of amendments, waivers would re-qualify an existing loan as a new loan or credit?

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Such amendments should not result for instance in extending the dates for loan repayment, or

lowering the capital to be repaid, or the interest rates applicable in case of delays. It should not, in any other way, result in a financial benefit for the entity.

5. Should the phrase “operating in the energy sector in Russia” as formulated in Article 3a(1) be understood as covering commercial activities such as holding minority shares or other property interest in a Russian company operating in the energy sector (i.e. a Russian company conducting activities listed in Article 1(u))?

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In this example, the Russian company is be the one “operating in the energy sector”. The Commission is of the view that persons or entities that own or control such a company should be considered as “operating in the energy sector” as well. However, a mere minority shareholding in the company, in the absence of determined control, does not automatically amount to “operating in the energy sector”. Other elements would then need to be present, and should be assessed on a case-by-case basis. For instance, one can draw upon the distinction between Foreign Direct Investment (Article 2(1) of [Regulation \(EU\) 2019/452](#)), which would make an investor meet the threshold for “operating in the energy sector”, and portfolio investment (generally viewed as below 10% shareholding), which in itself would not.

6. Is it prohibited to provide financing to EU-incorporated businesses that operate in the energy sector in Russia?

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Article 3a(1) does not prohibit financing to EU companies that operate in the energy sector in Russia. The activities of those companies could however be affected by several other provisions in **Council Regulation 833/2014** (Articles 3, 3a, 3b). In parallel, Article 2e(1) prohibits public financing for any kind of trade with or investment in Russia.