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COMMISSION OPINION

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on the export ban established by Council Regulation (EU) No 692/2014

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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 States¹.

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 adopted on the basis of Article 215 TFEU 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 interpretation of Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol² (hereafter: 'Regulation 692/2014').

The question is, in substance, the following:

Is the prohibition to export goods and technologies which are listed in Annex II to Regulation 692/2014 limited to goods meant, or specifically suitable, for use in the four sectors mentioned in Article 2b of the Regulation (transport, telecommunications, energy, and the prospection, exploration and production of oil, gas and mineral resources)?

Assessment

The first subparagraph of Article 2b(1) of Regulation 692/2014 prohibits the sale, supply, transfer or export of *'goods and technology as listed in Annex II to the Regulation (a) to any natural or legal person, entity or body in Crimea or Sevastopol, or (b) for use in Crimea or Sevastopol.*

The second subparagraph of the same article specifies that *'Annex II shall include certain goods and technologies suited for use in the following key sectors: (i) transport; (ii) telecommunications; (iii) energy; (iv) the prospection, exploration and production of oil, gas and mineral resources'*.

The NCA query concerns the relationship between these provisions, i.e. whether the second subparagraph of Article 2b(1) of Regulation 692/2014 limits the prohibition in paragraph 1 only to goods specifically meant to be used in the sectors mentioned in the first subparagraph of that article, either by their nature or by the will of their acquirer.

Article 2b(1) reached its current form in two steps. Council Regulation (EU) No 825/2014³, amending Regulation 692/2014, first introduced an export ban on *"key equipment and technology related to the creation, acquisition or development of infrastructure"* in the four

¹ 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.

² Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol, OJ L 183 24.6.2014, p. 9

³ Council Regulation (EU) No 825/2014 of 30 July 2014 amending Regulation (EU) No 692/2014 concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol, OJ L 226, 30.7.2014, p. 2–15

sectors mentioned above. Council Regulation (EU) No 1351/2014⁴, further amending Regulation 692/2014, broadened the former export prohibition on goods and technology in the four sectors.

The wording referring to ‘*key equipment and technology related to the creation, acquisition or development of infrastructure in the [four] sectors*’ was replaced with a broader one, which presently covers ‘*certain goods and technologies suited for use in the [four] key sectors*’. While the sectors are seen as “key” insofar as EU objectives are concerned, the goods and equipment themselves do not have any particular attribute apart from being considered suitable for use in the four sectors and thus listed in the corresponding annex. The annexes of Regulation 692/2014 were reorganised and expanded in two steps, in line with the amendments referred to above.

The first subparagraph of Article 2b(1) of Regulation 692/2014 contains a number of qualifiers concerning the type of action (sale, supply, transfer or export), the receiving party (any natural or legal person, entity or body in Crimea or Sevastopol) and the final location of the use (Crimea or Sevastopol). It does not contain any qualifier on the targeted goods and technology, other than indicating which ones they are: those contained in Annex II. It is clear that this first subparagraph intends to subject **all** the goods and technologies in Annex II to the restrictions it sets forth.

The second subparagraph of Article 2b(1) of Regulation 692/2014 contains a broad description of the goods and technologies contained in Annex II, so as to offer guidance on the contours of the prohibition. However, this second subparagraph does not state that the goods in Annex II are **only or mainly** suitable for use in the four sectors, or meant by their acquirer to be used in those sectors. It establishes their **potential suitability** for use, in one way or another, in the four key sectors. It follows that the second subparagraph cannot be construed to limit the prohibitions of the first subparagraph toward any of the goods and technology listed in Annex II.

Had the legislator intended to limit the scope of the goods and technologies contained in Annex II to those only, or mainly, suited to be used in the four sectors, it would have either stated so in the second subparagraph, or included a “ex” in front of the chapter/CN code of each category of goods listed in Annex II. The latter is a technical indicator that only some parts of the chapter of CN code in question are actually subject to the restrictions in the relevant Article⁵.

The Commission concludes that the prohibition in the first subparagraph of Article 2b(1) applies to all the goods and technologies listed in Annex II to the Regulation, regardless whether they are actually used, in practice, in one of the four key sectors.

This is all the more reasonable in light of Article 4 of the Regulation, which prohibits the circumvention of the prohibitions laid down in the Regulation. Should goods in Annex II be supplied into the territory of Crimea and Sevastopol on account that they will not be used in one of the four sectors, there would be no possibility for the Member States authorities to subsequently control that this is indeed the case, and the goods and technology are not diverted to a prohibited use, in breach of Regulation 692/2014.

⁴ Council Regulation (EU) No 1351/2014 of 18 December 2014 amending Regulation (EU) No 692/2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol, OJ L 365, 19.12.2014, p. 46–59

⁵ See for instance Annex II to Council Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

Conclusion

The Commission takes the view that the prohibition established by Article 2b of Regulation 692/2014 is applicable to the entire list of goods and technologies in Annex II to the Regulation.

Done at Brussels, 4.7.2019

*For the Commission
Federica MOGHERINI
Vice President*