

## STATE-OWNED ENTERPRISES

RELATED PROVISION: ARTICLE 5aa OF COUNCIL REGULATION 833/2014

### 1. What is prohibited under Article 5aa?

*Last update: 11 May 2022*

This provision prohibits the conclusion of new contracts after 16 March 2022 with the legal persons contained in the Annex. The prohibition also applies to the execution of existing ones after 15 May 2022 or to the provision of any sort of economically valuable benefit (such as services or payments), even in the absence of such contractual relationship. The article does not prescribe the consequences that the prohibition should have on any ongoing contractual relations; an EU operator should take the measures necessary in light of its specific situation to halt its dealings by the end of the wind-down period on 15 May 2022.

### 2. What does “acting on behalf of the direction” mean?

*Last update: 1 June 2022*

Article 5aa (1) (c) prohibits to directly or indirectly engage in any transaction with a legal person, entity or body acting on behalf or at the direction of an entity referred to in point (a) or (b) of this paragraph.

Commission opinion of October 2019 addresses this notion of “acting on behalf or at the direction” and notably this excerpt : *“Ownership or control of the [targeted person/entity over the other entity] is an element that can be considered [...] to increase the likelihood of [acting on behalf or at the direction of the targeted person/entity], but cannot suffice in determining whether the conduct did occur. In the absence of a definition and/or criteria that can be used to assess whether an entity acted on behalf or at the direction of a targeted entity, the NCA should take into account all the relevant circumstances in order to establish the situation at hand. These can include, for example, the precise ownership/control structure, including links between natural persons; the nature and purpose of the transaction, coupled with the stated business duties of the entity that is owned or controlled; previous instances of acting on behalf or at the direction of the targeted entity; disclosure made by third parties and/or factual evidence indicating that directions were given by the targeted entity”.*

- 3. Regarding the scope of the exception provided in Article 5aa(2) of Council Regulation (EU) 833/2014, in the context of a credit agreement, do we understand correctly that “execution” means that the credit line can be drawn until 15 May 2022, with the subsequent repayment after such date? Or both also the repayment has to happen before 15 May 2022?**

*Last update: 16 June 2022*

The intention of Article 5aa is to prohibit all dealings with the legal persons listed in the Annex. In this regards, repayments in the context of a credit agreement are covered by this transaction ban since they amount to the execution of a contract and should have been finalised by 15 May 2022.

However, since 3 June 2022, in accordance with Council Regulation (EU) 2022/879, the reception of payments due by the legal persons, entities or bodies referred to in paragraph 1 pursuant to contracts performed before 15 May 2022 is allowed under paragraph 2a.

- 4. Does Article 5aa(3)(c) of Regulation 833/2014 permit the purchase of Annex XXII coal products from an entity listed in Annex XIX, in circumstances where the contract is entered into after 9 April 2022?**

*Last update: 8 June 2022*

Article 5aa(3)(c) should be read in conjunction with Article 3j, in particular the wind-down period provided for in paragraph 3. Accordingly, transactions falling under the scope of Article 5aa(3)(c) are possible until 10<sup>th</sup> August 2022 only for contracts concluded before 9 April 2022.

- 5. Does the prohibition under Article 5aa extend to the provision of legal services to entities listed in Annex XIX?**

*Last update: 16 June 2022*

With regards to the provision of the related legal services, Article 5aa should be interpreted in light of the fundamental rights protected under the Charter, in particular the right of defence. This provision does not affect the provision of services that are strictly necessary for the exercise of the right of defence in judicial proceedings and the right to an effective legal remedy as referred in Article 47 of the EU Charter of Fundamental Rights and Article 6 of the European Convention on Human Rights.

**6. *Does an EU operator engage indirectly with an entity targeted by Article 5aa if it provides insurance coverage to a vessel calling into a port owned by this entity?***

*Last update: 22 June 2022*

The provision of insurance coverage for a vessel calling into a port owned by an entity listed in Annex XIX is not prohibited under Article 5aa.

However, should the insured damage materialize, an EU insurer would not be allowed to make a direct payment to the port or reimburse liabilities for damages occurring in such a port if the latter is owned by an entity targeted by Article 5aa and listed in Annex XIX.