

07 February 2024

**Guidance Note on Article 11 of Council Regulation (EU) No. 833/2014 relating to refund of advance payments**

Reference is being made to the scope of the provision under Article 11 of Council Regulation (EU) No. 833/2014, on the basis of which no claims in connection with any contract or transaction, the performance of which has been affected by the sectorial measures imposed under the aforementioned Regulation, shall be satisfied, if they are made by Russian person, entity or body (article 11, point b).

Specifically, the issue being discussed in this Guidance concerns a specific scenario hereunder where:

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*An EU economic operator (hereafter, supplier) signed a supply agreement with a Russian counterpart (hereafter, buyer) prior to the entry into force of the sectorial measures, with the delivery of goods to be executed at a later stage. At the time of the conclusion of the contract, the buyer made an advance payment to the supplier. However, before the goods could be delivered, they were included in Annex XXIII, and therefore the transfer of the goods became prohibited, based on Article 3k of Regulation (EU) No. 833/2014. Here, given the entry into force of this prohibition, the supplier could not fulfil the obligations under the contract and hence, the buyer terminates the same contract and asks for the reimbursement of the above-mentioned advance payment.*

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It is the opinion of the Sanctions Monitoring Board that the repayment of advance payments in this case would constitute a violation of the “no claims” clause as envisaged in Article 11 of Council Regulation (EU) No 833/2014, even if that advance payment concerned goods whose export was not restricted at the time when such advanced payment was made. It is important to keep in view that Article 11 is aimed at protecting those economic operators who comply with EU sanctions (e.g., in connection with an export prohibition) against claims based on non-performance of a contract brought by their trade partners which are mentioned in Article 11 of Regulation 833/2014.

The notion of “claim” should be interpreted broadly in light of the language of Article 11 (“No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation”), including but not limited to the types of claims mentioned in the Article. The list of claims expressly mentioned in Article 11 has general and illustrative nature (see case C 168/17, SH v TG, Judgment ECLI:EU:C:2019:36, paras. 71 ff.). The concept of ‘claim’ shall also be interpreted in light of the definition given to this term in Regulation 269/2014 where a similar no claims clause exists. According to Article 1(a) of Regulation 269/2014, ‘claim’ includes “a claim for performance of any obligation arising under or in connection with a contract or transaction”.

In principle, the underlying contract does not have to cease to exist when a restrictive measure precludes compliance with the contractual obligation of the exporter. This, of course, may depend on the applicable national law and the relevant contractual clauses. If the restrictive measures cease to apply, the exporter would have to comply with its obligation.