

Roadmap on the fulfilment of pre-existing obligations



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Purpose of information material

- The Commission has prepared this information material in order to provide guidance on the activities needed to enable the person to decide on the fulfilment of pre-existing obligations* to a certain extent when European Union sanctions are imposed against the person or the counterparty, which include the freezing of funds and economic resources and the prohibition of making funds and economic resources available directly or indirectly.
- The information contained in this information material cannot be regarded as an official interpretation of European Union legislation imposing sanctions.

* Pre-existing obligations – obligations due under contracts or agreements that were concluded before or that arose before the date on which one of the counterparties is included in the sanctions list.



Fulfilment of pre-existing obligations

A

Execution of payments under the contract entered into before if the goods have been supplied/received and /or the service has been provided /received before the date on which the person or the counterparty was included in the sanctions list

B

Fulfilment of pre-existing obligations if the goods are located (including when the goods have been produced) in the warehouse of sanctioned counterparty but not delivered to the customer until the date on which the counterparty was included in the sanctions list

C

Fulfilment of pre-existing obligations arising from "umbrella" long-term contracts



Execution of payments under the contract entered into before

A

A person may decide on the execution of payment arising from the obligations due under the contract entered into before, provided that the following conditions are met :

- Did the supply/receipt of goods and/or the provision/receipt of services arising from obligations due under the contract entered into before, take place before the date on which the person or the counterparty was included in the sanctions list, and the person possesses documents confirming it?
- Is it necessary, in accordance with the obligations due under the contract entered into before, for the sanctioned person to make payments, or is the person required to make payments to a sanctioned person for the goods and/or services, the supply and/or provision took place before the date on which the person or the counterparty was included in the sanctions list?
- Whether one of the following two conditions is met:
 - a) Will the person make payment for such goods and/or services into the sanctioned person's account opened in a credit institution that is obliged to comply with the relevant sanctions/Regulation and the corresponding funds will be frozen in that account (**if the person has to make payment to a sanctioned counterparty**)?
 - b) Are the funds or economic resources, as a result of payment, made available directly or indirectly to the sanctioned person or for its benefit (**if the sanctioned person has to make payment**)?



Fulfillment of pre-existing obligations if the goods are located in the warehouse of the sanctioned counterparty, but not delivered

B

A person may decide on the fulfilment of pre-existing obligations if the goods are located (including when the goods have been produced) in the warehouse of sanctioned counterparty but not delivered to the customer until the date on which the counterparty was included in the sanctions list, and the cancellation of the obligations is not possible. The following circumstances may indicate the impossibility of fulfilling the obligations:

- Did the sanctioned person produce, until the date of its inclusion in the sanctions list, such goods that were produced for a particular customer under their instructions and those goods may be used only by the customer?
- Has ownership of the goods, which correspond to the above, been transferred to the customer before the date on which the counterparty was included in the sanctions list, and the goods were considered to be the goods owned by the customer on the date on which the counterparty was included in the sanctions list and the goods still remain in possession of the customer?
- In the absence of the supply to the customer of such goods that meet the above two criteria, would the failure to supply such goods result in the direct or indirect transfer of funds to a sanctioned person, namely in a situation where the goods are not delivered, be more favorable to a sanctioned person from a financial point of view than when the goods are delivered to the customer?
- Will the customer be required, under the contract entered into before, to pay for such goods and the customer will make payment to the sanctioned person's account opened in a credit institution that is obliged to comply with the relevant sanctions/Regulation and that the funds will be frozen in that account accordingly?



Fulfillment of pre-existing obligations arising from "umbrella" long-term contracts



- In order for a person to decide whether the fulfilment of the pre-existing obligations arising from the “umbrella” long-term contracts is permissible, it is necessary to assess whether, in accordance with the terms and conditions of the contract concluded, the applicable laws and regulations and actual circumstances, the conditions laid down in Section A or B are met.
- Accordingly, if the conditions laid down in Section A or B are met, the person may decide to fulfill the obligations arising from “umbrella” long-term contracts to the extent specified in Sections A and B, in line with the procedures for obtaining authorization.



Process: what actions should be taken?



Legal assessment

Application to a credit institution

Decision of a credit institution

Commission's authorization

- The person must make a legal assessment, to assess the conformity of pre-existing obligations with conditions laid down in Section A, B or C of this information material, in view of conditions and terms of the contract, applicable laws and regulations and actual circumstances
- The person must prepare a written assessment
- **The person must take a decision** on whether the fulfilment of pre-existing obligation is admissible



- 1 The person may carry out an assessment by its own
- 2 If a person does not have adequate knowledge, competence or experience in the handling of sanctions issues, please consult a sworn law office /attorney, who has impeccable reputation and adequate expertise, experience and knowledge
- 3 Contact a credit institution to clarify whether version 1 will be acceptable

The person must approach a credit institution with a relevant application for a financial service, the prepared assessment and supporting documents

The person's credit institution must assess the conclusion and validity of the assessment and decide whether the provision of the proposed financial service is admissible

Where necessary, a credit institution must contact the Commission for authorization to execute the financial service. The Commission assesses the conformity of the circumstances referred in the Regulation and takes a decision