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**COMMISSION OPINION**

**of 5.8.2019**

**on a request for interpretation concerning the provision of higher education and the undertaking of applied research in the framework of a prohibition to provide technology or technical assistance to a third country**

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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 States<sup>1</sup>.

In the context of restrictive measures, 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 or to provide guidance on their implementation.

The Commission has received a request for an opinion from a Member State competent authority (NCA) concerning the interpretation of the notion of “technical assistance” contained in most Council regulations concerning restrictive measures.

### **BACKGROUND**

The NCA submitted the following question regarding the provision of higher education and the undertaking of applied research:

Can the provision of higher education and the undertaking of applied research (provided for example by universities or research groups) on the technology and goods mentioned in the annex of the relevant regulations fall under the prohibition to provide (indirect) “technical assistance” related to the goods and technology listed in the annex as referred to in the relevant regulation?

### **LEGAL ASSESSMENT**

Numerous Council regulations imposing restrictive measures contain provisions prohibiting the sale, supply, transfer or export of certain goods or technologies to a country or specific recipients, sometimes also in connection with the potential use of those goods. Practically all those regulations also prohibit the provision of technical assistance related to those goods or technologies. This practice is consistent, given that the prohibition on the sale, supply, transfer or export of the goods in question could be at least partly rendered ineffective by the provision of technical assistance enabling the targeted country or persons to manufacture the goods in question themselves.

The EU Restrictive measures Guidelines<sup>2</sup> define “technical assistance” as:

*“any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as*

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<sup>1</sup> 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.

<sup>2</sup> Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign And Security Policy, document 5664/18, available at <http://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf> (retrieved 26 March 2019).

*instruction, advice, training, transmission of working knowledge or skills or consulting services; technical assistance includes verbal forms of assistance”.*

This standard definition is followed in all restrictive measures regulations, with minor variations which do not impact on the Commission’s assessment and reply to the question raised.

It is immediately apparent from the above definition that one of the behaviours it covers is precisely the provision of training, which lies at the heart of any education programme, including those provided by higher education institutions. It is equally apparent that “*the transmission of working knowledge or skills*” covers activities in the range of applied research in a university, technical institute or research group. The specification that the term “*technical assistance*” also encompasses “*verbal forms of assistance*” makes education or research in such establishments even more likely to overlap with the concept of technical assistance as contemplated in the EU legislation.

Consequently, the provision of education, whether higher or of another level, and the undertaking of applied research in universities, research groups or other fora, may fall under the definition of technical assistance if they are related to “*repairs, development, manufacture, assembly, testing, maintenance, or any other technical service*”. Further, if such provision of education or undertaking of applied research is related to goods, services and technology the sale, supply, transfer or export of which is prohibited by the relevant regulation, it will be prohibited as well.

The prohibitions contained in restrictive measures regulations are applicable, among others, to natural persons as well as legal persons and other bodies alike, as long as they are either within the territory of the Union, incorporated under the laws of a Member State or are involved in any business done within the Union. This would therefore include universities with a legal statute in a Member State. The prohibition would also apply to research groups having their own legal personality, e.g. being incorporated under public or private law in a Member State. In any event, the prohibition would apply to any employee or natural person otherwise attached to a university or research group if they are EU nationals, reside in the EU or carry out activities in its territory.

It is for the NCA to determine whether the elements of a case brought before them indeed fall under the definition of technical assistance.

## CONCLUSION

**The Commission takes the view that the provision of higher education and the undertaking of applied research could fall under the notion of “technical assistance” as provided by the sanctions regulations. It is for the NCA to determine in each individual case whether the preconditions of the relevant regulations in order for such activities to constitute technical assistance are met, and, if they are, to ensure that the relevant restrictions on the provision of such technical assistance are respected.**

Done at Brussels, 5.8.2019

*For the Commission  
Federica MOGHERINI  
Vice President*