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DIRECTORATE-GENERAL
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The Director General

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Mr. Alin CHITU
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Subject: Your letter of 19 January 2023 regarding the application of Chapter III of Council Regulation (EU) 2022/1854

Ref.: Ares(2023) 62720

Dear Mr. Chitu,

I am writing to you in connection with your letter of 19 January 2023 requesting Commission services' views concerning the proper application of Council Regulation (EU) 2022/1854 ("the Regulation").

I would first like to thank you for Romania's support to the Commission's proposal, which the Council has adopted in October 2022 to help address the consequences of the energy crisis, which severely affects the affordability of energy for our citizens and businesses. The concerted action of Member States in the Council and swiftness in adopting this Regulation shows that in times of crisis, unity and solidarity are key to address the challenges we jointly face in the European Union. In this respect, I also welcome your proactive reach-out to my services with a view of ensuring the proper application of Chapter III of the Regulation in your country dealing with the solidarity contribution for the fossil fuel industry.

I have understood from your letter that you have in essence three questions that all relate to the scope of the Regulation, i.e. which companies are in scope of the solidarity contribution.

Firstly, you inquire whether a Member State could "reduce" the 75 percent threshold referred to in the definition of "Union companies and permanent establishments with activities in the crude petroleum, natural gas, coal and refinery sectors", as set by Article

2(17) of the Regulation¹. This is not the case. The threshold of 75 percent is fully and integrally part of the definition set by the Regulation as a matter of EU law. Hence, individual Member States cannot amend it at their own initiative.

Secondly, I understand you want to seek clarity about the applicable NACE rev2 codes laid down in Regulation (EC) 1893/2006 that correspond to the economic activities covered by the definition of “Union companies and permanent establishments with economic activities in the field of extraction, mining, refining of petroleum or manufacture of coke oven products”. It concerns the following economic activities: 05.1 mining of hard coal; 06.1 extraction of crude petroleum; 06.2 extraction of natural gas; 19.1. manufacture of coke oven products; and 19.2. manufacture of refined petroleum products.

Thirdly, with respect to your last question how the 75% threshold referred to in the definition should be applied to the business models you refer to in your letter, additional information is required on our side to understand the issue you are focussing on. I therefore propose that your services set up a meeting with my services to discuss further.

Yours sincerely,

(e-signed)
Gerassimos THOMAS
Director General

¹ Article 2(17) reads as follows: ‘Union companies and permanent establishments with activities in the crude petroleum, natural gas, coal and refinery sectors’ means Union companies or permanent establishments generating at least 75 % of their turnover from economic activities in the field of the extraction, mining, refining of petroleum or manufacture of coke oven products, as referred to in Regulation (EC) No 1893/2006 of the European Parliament and of the Council. This definition should be read together with Article 2(15) laying down the definition of ‘Union company’ and Article 2(16) setting the definition of ‘permanent establishment’.