EXPLANATORY MEMORANDUM

2023/0153 (NLE)

Joint Proposal for a

COUNCIL REGULATION

amending Council Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine[[1]](#footnote-1),

Having regard to the joint proposal of the High Representative of the Union for Foreign Affairs and Security Policy and of the European Commission,

Whereas:

(1) Council Regulation (EU) No 269/2014[[2]](#footnote-2) gives effect to restrictive measures provided for in Decision 2014/145/CFSP.

(2) On XXX/2023, the Council adopted Decision (CFSP) XXX, amending Decision 2014/145/CFSP, which introduced a further criterion for the listing of natural or legal persons, entities or bodies subject to asset freeze and the prohibition to make funds and economic resources available to designated persons and entities in response to information warfare conducted by Russia to implement its war of aggression against Ukraine. Decision (CFSP) XXX also amended one of the existing listing criteria.

(3) Decision (CFSP) XXX also introduced further derogations from the asset freeze and the prohibition to make funds and economic resources available to certain listed entities to allow for the divestment from Russian companies and the disposal of certain types of securities held with a listed entity.

(4) Decision (CFSP) XXX also extended to certain newly-listed banks derogations from the asset freeze and from the prohibition on making available funds and economic resources that were applicable to previously-listed banks.

(5) It is also appropriate to provide further clarifications regarding the processing and exchanging of information by the competent authorities of the Member States.

(6) The amendments made to Decision 2014/145/CFSP by Decision (CFSP) XXX fall within the scope of the Treaty on the Functioning of the EU and therefore regulatory action at the level of the Union is necessary in order to implement them, in particular with a view to ensuring their uniform application in all Member States.

(7) Regulation (EU) No 269/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 269/2014 is amended as follows:

(1) in Article 3(1), letter (h) is replaced by the following:

‘(h) natural or legal persons, entities or bodies circumventing the Union’s restrictive measures by activities which havethe aim or resultof frustrating the prohibitions in this Regulation, in Council Regulations (EU) No 692/2014, (EU) No 833/2014 or (EU) 2022/263 or in Council Decisions 2014/ 145/CFSP, 2014/386/CFSP, 2014/512/CFSP or (CFSP) 2022/266;’

(2) in Article 3(1), the following point is added:

‘(i) legal persons, entities or bodies operating in the Russian IT-sector with a license administered by the FSB Center for Licensing, Certification, and Protection of State Secrets and by the Russian Ministry of Industry and Trade;’

(3) in Article 6b, the following paragraph is added:

‘2e. By way of derogation from Article 2, the competent authorities of a Member State may authorise the release of certain frozen funds or economic resources belonging to the entities listed under entry numbers *[OJ: add numbers of newly listed banks in Annex I]* under the heading “Entities” in Annex I, or the making available of certain funds or economic resources to those entities, under such conditions as the competent authorities deem appropriate and after having determined that such funds or economic resources are necessary for the termination by *[OJ: add date six months after entry into force of this Regulation]* of operations, contracts, or other agreements, including correspondent banking relations, concluded with those entities before *[OJ: add date of entry into force of this Regulation]*.’

(4) Article 6b is amended as follows:

(a) the following paragraph is added:

‘5aa. By way of derogation from Article 2, competent authorities may authorise the conversion by [*OJ: please insert date 3 months after entry into force*] by nationals or residents of a Member State or an entity established in the Union of American Depositary Receipts (‘ADRs’) with Russian underlying security held with the entity listed under entry number 101 under the heading “Entities” in Annex I for the purpose of selling the underlying security, and the making available of funds linked to the conversion of the ADR and to the sale of the underlying security directly or indirectly to that entity in Russia after having determined that:

(a) the ADR was held with the mentioned entity before 3 June 2022;

(b) the holder of the ADR is able to demonstrate that such conversion is necessary for the sale of the underlying security to a counterparty that has been identified prior to the conversion;

(c) the sale of the underlying security is compliant with prohibitions under Council Regulation No 833/2014, including Articles 5 and 5f; and

(d) no funds will be made available to any other entity listed in Annex I.’

(b) the following paragraph is added:

‘5c. By way of derogation from Article 2, the competent authorities of a Member State may authorise the release of certain frozen funds or economic resources belonging to the natural person listed under entry numbers 695 under the heading ‘Persons’ in Annex I, or the making available of certain funds or economic resources to this natural person or an entity owned by this natural person, under such conditions as the competent authorities deem appropriate and after having determined that such funds or economic resources are necessary for the completion of transactions, including sales, which are strictly necessary for the wind-down, by 31 August 2023, of a joint venture  or similar legal arrangement established in Russia with this natural person or an entity owned by this natural person before 28 February 2022.’

(5) in paragraph 1 of Article 6e, the reference to ‘entry numbers 53, 54, 55, 79, 80, 81, 82, 108, 126, 127, 198, 199 and 200 under the heading ‘Entities’ in Annex I’ is replaced by a reference to ‘entry numbers 53, 54, 55, 79, 80, 81, 82, 108, 126, 127, 198, 199, 200 *[OJ: add numbers of newly listed banks in Annex I]* under the heading ‘Entities’ in Annex I’;

(6) in Article 8, paragraph 4 is replaced by the following:

‘4.   The competent authorities of the Member States, including enforcement authorities, customs authorities within the meaning of Regulation (EU) No 952/2013, competent authorities in the meaning of the Regulation (EU) 575/2013, Directive (EU) 2015/849 and Directive (EU) 2014/65 as well as administrators of official registers where natural persons, legal persons, entities and bodies as well as immovable or movable property are registered, shall process and exchange without delay information, including personal data and, if necessary, the information referred to in paragraphs 1 and 1a, with other competent authorities of their Member State, of other Member States and the Commission, in particular when they detect instances of breach, circumvention and attempts at breach or circumvention of the prohibitions set out in this Regulation.’

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

 For the Council

 The President

1. OJ L 078, 17.3.2014, p. 16. [↑](#footnote-ref-1)
2. Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L 78, 17.3.2014, p. 6). [↑](#footnote-ref-2)