



2023/2873

18.12.2023

**COUNCIL REGULATION (EU) 2023/2873**

**of 18 December 2023**

**amending 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 <sup>(1)</sup>,

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

Whereas:

- (1) Council Regulation (EU) No 269/2014 <sup>(2)</sup> gives effect to restrictive measures provided for in Decision 2014/145/CFSP.
- (2) On 18 December 2023, the Council adopted Decision (CFSP) 2023/2871 <sup>(3)</sup> amending Decision 2014/145/CFSP. Decision (CFSP) 2023/2871 extends the listing criteria to cover natural or legal persons, entities or bodies benefitting from the compulsory transfer of ownership of, or control over, entities established in Russia that were previously owned or controlled by Union entities.
- (3) Decision (CFSP) 2023/2871 also sets out the conditions on which the Council is able to retain the name of a deceased person on the list of natural or legal persons, entities or bodies subject to the asset freeze and the prohibition on making funds and economic resources available, where it considers there is a likelihood that the assets concerned would otherwise be used to finance Russia's war of aggression against Ukraine or other actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.
- (4) Decision (CFSP) 2023/2871 also introduces a derogation to allow for the release of frozen funds or economic resources in the event that a Member State has decided to deprive in the public interest a listed natural or legal person, entity or body of funds or economic resources belonging to, owned by or controlled by that person, entity or body, and for making funds and economic resources available to such person, entity or body in order for compensation to be paid, provided that such compensation is frozen.
- (5) Decision (CFSP) 2023/2871 also introduces a derogation from the asset freeze and the prohibition on making funds and economic resources available to allow for the sale or use of shares in, or assets of, an entity established in Russia where the ownership or control by a Union legal person of that entity has been compulsorily transferred by the Russian Government. That derogation would enable, *inter alia*, the payment of agreed adequate compensation to Union legal persons.
- (6) Decision (CFSP) 2023/2871 also extends the deadline applicable to the existing derogation allowing the processing of payments by the Jewish Claims Conference through a listed bank and introduces a derogation to allow for certain payments as an indemnity or benefit for the materialisation of a risk involving a newly listed entity.

<sup>(1)</sup> OJ L 78, 17.3.2014, p. 16.

<sup>(2)</sup> 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).

<sup>(3)</sup> Council Decision (CFSP) 2023/2871 of 18 December 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (OJ L, 2023/2871, 18.12.2023, ELI: <http://data.europa.eu/eli/dec/2023/2871/oj>).

- (7) Decision (CFSP) 2023/2871 also introduces a temporary derogation from the asset freeze and the prohibition on making funds and economic resources available to allow the sale and transfer of proprietary rights directly or indirectly owned by certain listed natural or legal persons, entities or bodies in a legal person, entity or body established in the Union.
- (8) Decision (CFSP) 2023/2871 also introduces a derogation from the asset freeze and the prohibition on making funds and economic resources available to allow for the termination of contracts concluded with a newly listed entity.
- (9) Decision (CFSP) 2023/2871 also extends to a newly listed insurance company the existing derogation currently applicable to certain listed banks, allowing for the purchase, import or transport of agricultural and food products.
- (10) Decision (CFSP) 2023/2871 also makes technical amendments in the operative text, defines the scope of certain reporting obligations and introduces an obligation for national competent authorities of Member States to designate in accordance with national legislation the national authorities competent to identify and trace, where appropriate, funds and economic resources belonging to, or owned, held or controlled by, listed natural or legal persons, entities or bodies, with a view to preventing or detecting instances of a breach or circumvention, or attempts at a breach or circumvention, of Regulation (EU) No 269/2014. That obligation to designate does not necessarily require Member States to create a new authority.
- (11) The amendments made to Decision 2014/145/CFSP by Decision (CFSP) 2023/2871 fall within the scope of the Treaty 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.
- (12) 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) Article 3 is amended as follows:

(a) in paragraph 1, the following point is added:

‘(j) entities established in Russia, previously owned or controlled by entities established in the Union, ownership or control of which has been compulsorily transferred by the Government of the Russian Federation through laws, regulations, other legislative instruments or other action of a Russian public authority, or natural or legal persons, entities or bodies that have benefitted from such a transfer, and natural persons who have been appointed to the governing bodies of such entities in Russia without the consent of the Union entities which previously owned or controlled them;’

(b) the following paragraph is inserted:

‘1a. If natural persons listed in Annex I die during the period of application of the restrictive measures, the Council may retain the names of the deceased persons on that list if their delisting would pose a risk of undermining the objectives of Union restrictive measures because of a likelihood that the assets concerned would otherwise be used to finance Russia’s war of aggression against Ukraine or other actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.’;

(2) the following Articles are inserted:

*Article 5a*

1. 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, or the making available of certain funds or economic resources, after having determined that a judicial or administrative authority of a Member State has adopted a decision, under the conditions provided by law, to deprive in the public interest a natural or legal person, entity or body listed in Annex I of funds or economic resources belonging to, owned by or controlled by such person, entity or body, provided that compensation paid for such deprivation of funds or economic resources is frozen.

2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

*Article 5b*

1. By way of derogation from Article 2, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources belonging to the natural or legal persons, entities or bodies listed in Annex I pursuant to Article 3(1), point (j), or the making available of certain funds or economic resources to those natural or legal persons, entities or bodies, under such conditions as they deem appropriate, after having determined that those funds or economic resources are necessary for the sale or use of shares in, or assets of, legal persons, entities or bodies established in Russia listed in Annex I pursuant to Article 3(1), point (j), in order to enable the payment of the consideration agreed by the parties or for the compensation decided by a judicial or administrative authority or established by law in the context of the compulsory transfer of ownership or control by the Government of the Russian Federation. This paragraph shall not apply in relation to frozen funds or economic resources held by Central securities depositories within the meaning of Regulation (EU) No 909/2014 of the European Parliament and of the Council (\*).

2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

(\*) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).;

(3) Article 6b is amended as follows:

(a) paragraph 2d is replaced by the following:

‘2d. 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 198, 199 and 200 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 26 August 2023 of operations, contracts, or other agreements, including correspondent banking relations, concluded with those entities before 25 February 2023, or, with respect to the entity listed under entry number 198 under the heading ‘Entities’ in Annex I, for transactions for the disbursement of funds by the Jewish Claims Conference to beneficiaries in the Russian Federation by 31 December 2024, irrespective of when the operations, contracts or other agreements were concluded.’;

(b) the following paragraphs are inserted:

‘5e. 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 entity listed under entry number 270 under the heading ‘Entities’ in Annex I, under such conditions as the competent authorities deem appropriate and after having determined that:

- (a) this is necessary to allow a payment due by the entity listed under entry number 270 under the heading 'Entities' in Annex I to be made to an entity established in the Union, in a country member of the European Economic Area, in Switzerland or in a partner country as listed in Annex VIII to Council Regulation (EU) No 833/2014 (\*), or to a national or resident of a Member State, of a country member of the European Economic Area, of Switzerland or of a partner country as listed in Annex VIII to Regulation (EU) No 833/2014; and
- (b) such payment constitutes the indemnity or benefit provided further to the materialisation of a risk and is not in breach of Article 2(2) of this Regulation.

5f. By way of derogation from Article 2, the competent authorities of a Member State may, under such conditions as they deem appropriate, authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources to the individuals listed under entry numbers 92, 674, 675, 694, 880, 882, 909 and 920 under the heading 'Persons' in Annex I and entities listed under entry numbers 38 and 39 under the heading 'Entities' in Annex I, after having determined that:

- (a) the funds or economic resources are necessary for the sale and transfer by 30 June 2024 of proprietary rights directly or indirectly owned by one of those individuals or entities in a legal person, entity or body established in the Union; and
- (b) the proceeds of such sale and transfer are frozen.

5g. By way of derogation from Article 2, the competent authorities of a Member State may, under such conditions as they deem appropriate, authorise the release of certain frozen funds or economic resources belonging to the entity listed under entry number 333 under the heading 'Entities' in Annex I, or the making available of certain funds or economic resources to that entity, after having determined that such funds or economic resources are necessary for the termination by 20 June 2024 of contracts concluded with that entity before 19 December 2023.

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(\*) Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229 31.7.2014, p. 1).;

- (4) in Article 6e, paragraph 1 is replaced by the following:

'1. 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 53, 54, 55, 79, 80, 81, 82, 108, 126, 127, 198, 199, 200, 214, 215 and 270 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 purchase, import or transport of agricultural and food products, including wheat and fertilisers.;

- (5) Article 6f is replaced by the following:

*'Article 6f*

Article 2 shall not apply to funds or economic resources that are needed for the provision of pilot services which are necessary for reasons of maritime safety.;

- (6) Article 8 is amended as follows:

- (a) in paragraph 1, the following subparagraphs are added:

'The obligation in the first subparagraph shall apply subject to national or other applicable rules regarding the confidentiality of information held by judicial authorities.

For the purposes of the first subparagraph, the confidentiality of communications between lawyers and their clients shall include the confidentiality of communications relating to legal advice provided by other certified professionals who are authorised under national law to represent their clients in judicial proceedings, insofar as such legal advice is provided in connection with pending or prospective judicial proceedings.’;

(b) the following paragraph is inserted:

‘1d. Member States shall designate by 31 October 2024 the national authorities competent to identify and trace, where appropriate, the funds and economic resources belonging to, or owned, held or controlled by, any natural or legal persons, entities or bodies listed in Annex I and that are located in their jurisdiction, with a view to preventing or detecting instances of a breach or circumvention, or attempts at a 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, 18 December 2023.

*For the Council*  
*The President*  
P. NAVARRO RÍOS