



2024/577

14.2.2024

COUNCIL DECISION (CFSP) 2024/577

of 12 February 2024

amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 29 thereof,

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

Whereas:

- (1) On 31 July 2014, the Council adopted Decision 2014/512/CFSP ⁽¹⁾.
- (2) On 24 February 2022, the President of the Russian Federation announced a military operation in Ukraine, and the Russian armed forces began an unprovoked and unjustified attack on Ukraine. That military aggression is a blatant violation of the territorial integrity, sovereignty and independence of Ukraine, as well as a violation of the prohibition on the use of force enshrined in Article 2(4) of the United Nations (UN) Charter, which is a peremptory rule of international law, and of the other principles of the UN Charter.
- (3) In its Resolution ES-11/1, adopted on 2 March 2022, the UN General Assembly deplored in the strongest terms the aggression by the Russian Federation against Ukraine in violation of Article 2(4) of the UN Charter. In its Resolution ES-11/4, adopted on 12 October 2022, the UN General Assembly, noting the UN Secretary-General's statement of 29 September 2022 in which he recalled that any annexation of a State's territory by another State resulting from the threat or use of force is a violation of the principles of the Charter and international law, condemned the organisation by the Russian Federation of illegal so-called referenda in regions within the internationally recognised borders of Ukraine and the attempted illegal annexation of the Donetsk, Kherson, Luhansk and Zaporizhzhia regions of Ukraine, following the organisation of those so-called referenda.
- (4) In its Resolution A/RES/ES-11/5 of 15 November 2022, the UN General Assembly expressed grave concern at the loss of life, civilian displacement, destruction of infrastructure and natural resources, loss of public and private property, and economic calamity caused by the aggression by the Russian Federation against Ukraine, and recognised that the Russian Federation must be held to account for any violations of international law in or against Ukraine, including its aggression in violation of the UN Charter, as well as any violations of international humanitarian law and international human rights law, and that it must bear the legal consequences of all of its internationally wrongful acts, including making reparation for the injury, including any damage, caused by such acts.
- (5) In its Resolution A/ES-11/L.7 of 23 February 2023, the UN General Assembly also called for full adherence by the parties to the armed conflict to their obligations under international humanitarian law, and for an immediate cessation of the attacks on the critical infrastructure of Ukraine and any deliberate attacks on civilian objects, including those that are residences, schools and hospitals.
- (6) The International Court of Justice (ICJ), in its binding order of 16 March 2022 on the indication of provisional measures in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)*, found (at paragraph 60 of the order) 'that Ukraine has a plausible right not to be subjected to military operations by the Russian Federation', and (at paragraph 74 of the order) that prejudice to that right 'is capable of causing irreparable harm'. It added that any military operation, in particular one on the scale carried out by the Russian Federation on the territory of Ukraine, inevitably causes loss of life, mental and bodily harm, and damage to property and to the environment ⁽²⁾. The ICJ ordered the Russian Federation to suspend the military operations that it commenced on 24 February 2022 on the territory of Ukraine.

⁽¹⁾ Council Decision 2014/512/CFSP 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. 13).

⁽²⁾ ICJ, ORDER of 16 March 2022 in case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v Russian Federation)*, at paragraph 74.

- (7) In its conclusions of 14 and 15 December 2023, the European Council reiterated its resolute condemnation of Russia's war of aggression against Ukraine, which constitutes a manifest violation of the UN Charter, and reaffirmed the Union's unwavering support for Ukraine's independence, sovereignty and territorial integrity within its internationally recognised borders and its inherent right of self-defence against the Russian aggression.
- (8) In line with the objectives of the Common Foreign and Security Policy, that support also includes assisting populations, countries and regions confronting man-made disasters, such as those inflicted upon Ukraine and its population by Russia's war of aggression.
- (9) In view of the gravity of the situation and in response to Russia's war of aggression against Ukraine, and as long as the illegal actions by the Russian Federation continue to violate peremptory rules of international law, including, in particular, the prohibition on the use of force enshrined in Article 2(4) of the UN Charter, or of international humanitarian law, it is appropriate to maintain in force all the measures imposed by the Union. It is also appropriate to take additional exceptional measures aiming at supporting Ukraine and its recovery and reconstruction, in line with the objectives of the Common Foreign and Security Policy, in particular consolidation of and support for democracy, the rule of law, human rights and the principles of international law, including international humanitarian law, the preservation of peace, prevention of conflicts and strengthening of international security and the protection of civilian populations as well as assisting populations confronting man-made disasters.
- (10) On 28 February 2022, the Council adopted Decision (CFSP) 2022/335 ⁽³⁾ amending Decision 2014/512/CFSP, which prohibited any transactions related to the management of reserves of, as well as of assets of, the Central Bank of Russia, including transactions with any legal person, entity or body acting on behalf of, or at the direction of, the Central Bank of Russia. On 9 March 2022, the Council adopted Decision (CFSP) 2022/395 ⁽⁴⁾ to include such prohibition concerning the Russian National Wealth Fund. The prohibition is laid down in Article 1a(4) of Decision 2014/512/CFSP, and is also reflected in Article 5a(4) of Council Regulation (EU) No 833/2014 ⁽⁵⁾. As a result of those prohibitions, the relevant assets held by financial institutions in the Member States are 'immobilised'.
- (11) As underlined in the conclusions of the European Council meeting on 26 and 27 October 2023, decisive progress is needed, in coordination with partners, on how any extraordinary revenues held by private entities stemming directly from Russia's immobilised assets could be directed to support Ukraine and its recovery and reconstruction, consistent with applicable contractual obligations, and in accordance with Union and international law. In its conclusions, the European Council called on the High Representative of the Union for Foreign Affairs and Security Policy (the High Representative) and the Commission to accelerate work with a view to submitting proposals.
- (12) As regards the coordination with partners, the G7 Leaders, in their statement of 6 December 2023, reiterated that decisive progress was needed to direct extraordinary revenues held by private entities stemming directly from Russia's immobilised sovereign assets to support Ukraine, consistent with applicable contractual obligations and in accordance with applicable laws.
- (13) In that context, it is appropriate to provide certain clarifications regarding the prohibition of any transaction related to the management of reserves and assets of the Central Bank of Russia, as well as to introduce further measures.

⁽³⁾ Council Decision (CFSP) 2022/335 of 28 February 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 57, 28.2.2022, p. 4).

⁽⁴⁾ Council Decision (CFSP) 2022/395 of 9 March 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 81, 9.3.2022, p. 8).

⁽⁵⁾ 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).

- (14) In particular, it is appropriate to clarify that balance sheet management transactions linked to assets and reserves of the Central Bank of Russia, or linked to assets and reserves of any legal person, entity or body acting on behalf of, or at the direction of, the Central Bank of Russia, such as the Russian National Wealth Fund, are not within the scope of the prohibition of transactions which applies since 28 February 2022. The balance sheet management transactions that remain authorised relate in particular to the reinvestment of cash balances, accumulating due to immobilised coupon or dividend and redemption payments and maturing deposits, in line with a prudent investment policy, in accordance with applicable regulatory requirements.
- (15) Other transactions, in particular any direct or indirect transfer to or for the benefit of the Central Bank of Russia, or to or for the benefit of any legal person, entity or body acting on behalf of, or at the direction of, the Central Bank of Russia, such as the Russian National Wealth Fund, should remain prohibited.
- (16) The prohibition of such other transactions generates an extraordinary and unexpected accumulation of cash balances on the balance sheets of central securities depositories within the meaning of Regulation (EU) No 909/2014 of the European Parliament and of the Council ⁽⁶⁾ that occupy a key position in the settlement and the central maintenance of financial instruments in the Union. That accumulation is due to the immobilisation of assets and reserves of the Central Bank of Russia, or those of any legal person, entity or body acting on behalf of, or at the direction of, the Central Bank of Russia, such as the Russian National Wealth Fund, because any payments of principal and interest, coupons, dividends or other income on securities to the Central Bank of Russia and those persons, entities and bodies are prohibited.
- (17) Central securities depositories are in a specific situation, which is different from that of other financial institutions because cash balances of or with customers of central securities depositories are usually transferred out of the central securities depositories before the end of the day and do not yield any remuneration for the customers. The cash balances held by central securities depositories in relation to the assets of the Central Bank of Russia, or those of any legal person, entity or body acting on behalf of, or at the direction of, the Central Bank of Russia, such as the Russian National Wealth Fund, accumulating due to restrictive measures, subsequently need to be prudently managed by the central securities depositories. This results in the generation of unexpected and extraordinary revenues.
- (18) Unexpected and extraordinary revenues covered by this Decision do not have to be made available to the Central Bank of Russia under applicable rules, even after the discontinuation of the transaction prohibition. Thus, they do not constitute sovereign assets. Therefore, the rules protecting sovereign assets are not applicable to these revenues.
- (19) Moreover, since those unexpected and extraordinary revenues result necessarily from the implementation of the restrictive measures, in particular the prohibition laid down in Article 1a(4) of Decision 2014/512/CFSP and Article 5a(4) of Regulation (EU) No 833/2014, central securities depositories cannot expect to gain an undue and unintended economic benefit from them. Based on the legitimate aim of pursuing the objectives of the Common Foreign and Security Policy, in particular the consolidation of, and support for, democracy, the rule of law, human rights and the principles of international law, including international humanitarian law, the preservation of peace, the prevention of conflicts and strengthening of international security and the protection of civilian populations, as well as assisting populations confronting man-made disasters, it is therefore appropriate and necessary to ensure that the unexpected and extraordinary profits of central securities depositories, accruing in the time period between the entry into force of this Decision and the moment when the temporary restrictive measures concerning assets and reserves of the Central Bank of Russia will be discontinued, benefit Ukraine. Moreover, the measures under this Decision avoid imposing an excessive burden upon central securities depositories. The measures therefore fully respect the fundamental rights and freedoms recognised in the Charter of Fundamental Rights, in particular Articles 17 and 52 thereof, as they are justified and proportionate to the objectives pursued.

⁽⁶⁾ 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).

- (20) It is therefore appropriate to introduce additional measures concerning those unexpected and extraordinary revenues and net profits, in full compliance with international and Union law. In line with the principle of legal certainty, these additional measures should apply from the date of entry into force of this Decision. The objective of the additional measures should ultimately be to support Ukraine and its recovery and reconstruction, in particular through the future Ukraine Facility proposed by the Commission ⁽⁷⁾, in line with the objectives thereof and of Decision 2014/512/CFSP, and consistent with the purpose of the restrictive measures and the objectives of the Union's Common Foreign and Security Policy, including in particular the objective of the preservation of peace, the prevention of conflicts and strengthening of international security and the protection of civilian populations, and assisting populations, countries and regions confronting man-made disasters, such as those inflicted upon Ukraine and its population by Russia's war of aggression.
- (21) The imposition of such additional measures on central securities depositories holding very small amounts of assets and reserves of the Central Bank of Russia, or those of any legal person, entity or body acting on behalf of, or at the direction of, the Central Bank of Russia, such as the Russian National Wealth Fund, would not be justified. It would create a disproportionate administrative burden for those central securities depositories, given the very small amounts that could be collected. The additional measures should therefore apply only to central securities depositories holding such reserves and assets with a total value of more than EUR 1 million.
- (22) In a first step, those central securities depositories should account for and manage such extraordinary cash balances accumulating due to the immobilisation of assets and reserves of the Central Bank of Russia separately from their other activities and should also keep the revenues generated separate.
- (23) Central securities depositories should also be prohibited from disposing of their ensuing net profits, as determined in accordance with national law, after deduction of corporate tax under the general regime of the Member State concerned, whether by way of distribution in the form of dividends or in whatever form to the benefit of shareholders or of any third party. Until the Council decision referred to in recital 24, in view of the risks and costs related to holding assets and reserves of the Central Bank of Russia, each central security depository may request its supervisory authority to authorise the release of a part of those net profits in view of complying with statutory capital and risk-management requirements.
- (24) In a second step, the Council should be able to decide how those net profits should be directed to support Ukraine and its recovery and reconstruction, consistent with applicable contractual obligations, and in accordance with Union and international law, in coordination with partners. In that context, the Council should also decide the amount of those net profits that central securities depositories should be able to provisionally retain in view of complying with statutory capital and risk-management requirements and in view of risks and costs related to holding the assets and reserves of the Central Bank of Russia. To that effect, the High Representative should make a proposal in due time to accompany Union measures in support of Ukraine. In the preparation of that proposal, the High Representative is expected to consult relevant stakeholders, in particular the European Central Bank.
- (25) Further action by the Union is needed in order to implement certain measures.
- (26) Decision 2014/512/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

In Article 1a of Decision 2014/512/CFSP, the following paragraphs are added:

'7. Paragraph 4 shall not apply to any balance sheet management transactions linked to assets and reserves of the Central Bank of Russia, or linked to assets and reserves of any legal person, entity or body acting on behalf of, or at the direction of, the Central Bank of Russia, such as the Russian National Wealth Fund, carried out on or after 28 February 2022.

⁽⁷⁾ Legislative Procedure 2023/0200/COD: Proposal for a Regulation of the European Parliament and of the Council on establishing the Ukraine Facility. Details of the procedure are available at <https://eur-lex.europa.eu/legal-content/EN/HIS/?uri=CELEX:52023PC0338>

8. As of 15 February 2024, and as long as the restrictive measures set out in paragraph 4 are maintained, central securities depositories within the meaning of Regulation (EU) No 909/2014 holding assets and reserves referred to in paragraph 4 of this Article with a total value exceeding EUR 1 million shall apply the following rules regarding cash balances accumulating exclusively due to the restrictive measures:

- (a) those cash balances shall be accounted for separately;
- (b) revenues accruing from or generated by the cash balances referred to in point (a) from 15 February 2024 shall be registered separately in the financial accounts of central securities depositories;
- (c) net profits determined in respect of revenues referred to in point (b) in accordance with national law, including by deducting all relevant expenses linked to or resulting from the management of the immobilised assets and the risk-management associated with the immobilised assets and after deduction of corporate tax under the general regime of the Member State concerned, may not be disposed of by way of distribution in the form of dividends or in whatever form to the benefit of shareholders or any third party until the Council decides, acting by unanimity on the basis of Articles 29 and 30 of the Treaty on European Union, on a possible establishment of a financial contribution to the Union budget that shall be raised on those net profits to support Ukraine and its recovery and reconstruction, as well as detailed arrangements therefor, consistent with applicable contractual obligations, and in accordance with Union and international law. In that context, the Council shall also decide the amount that central securities depositories may provisionally retain in addition to complying with statutory capital and risk-management requirements, without prejudice to the respect by the relevant central securities depositories of the rules provided for in or pursuant to the Union legal acts governing their supervision;
- (d) until the Council decision referred to in point (c) is adopted, each central security depository may request its supervisory authority to authorise releases of a part of the net profits referred to in point (c), in view of complying with statutory capital and risk-management requirements. The Member States concerned shall notify the Commission in advance of any authorisation.’

Article 2

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

Done at Brussels, 12 February 2024.

For the Council
The President
H. LAHBIB