

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2022/212

of 17 February 2022

amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus

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 2012/642/CFSP of 15 October 2012 concerning restrictive measures in view of the situation in Belarus ⁽¹⁾,

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 (EC) No 765/2006 ⁽²⁾ provides for, among others, the freezing of funds and economic resources of, and prohibits making funds or economic resources available to, persons, entities or bodies responsible for serious violations of human rights or the repression of civil society and democratic opposition, or whose activities otherwise seriously undermine democracy or the rule of law in Belarus or who benefit from or support the Lukashenka regime, or persons, entities or bodies that are organising or contributing to activities by the Lukashenka regime that facilitate the illegal crossing of the external borders of the Union or the transfer of prohibited goods and the illegal transfer of restricted goods, including hazardous goods, into the territory of a Member State.
- (2) Regulation (EC) No 765/2006 gives effect to the measures provided for in Decision 2012/642/CFSP.
- (3) On 24 June 2021, the Council adopted Decision (CFSP) 2021/1031 ⁽³⁾, which introduced further targeted economic restrictive measures and Regulation (EU) 2021/1030 ⁽⁴⁾, which amended Regulation (EC) No 765/2006. Decision (CFSP) 2021/1031 and Regulation (EU) 2021/1030 lay down specific sectoral restrictions.
- (4) On 17 February 2022, the Council adopted Decision (CFSP) 2022/218 ⁽⁵⁾, which introduces certain amendments to ensure the effectiveness and uniform application of the measures. These amendments need to be reflected in Regulation (EC) No 765/2006 in order to allow for the correct and uniform implementation of the measures across the Union.
- (5) Regulation (EC) No 765/2006 should therefore be amended accordingly,

⁽¹⁾ OJ L 285, 17.10.2012, p. 1.

⁽²⁾ Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in respect of Belarus (OJ L 134, 20.5.2006, p. 1).

⁽³⁾ Council Decision (CFSP) 2021/1031 of 24 June 2021 amending Council Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (OJ L 224 I, 24.6.2021, p. 15).

⁽⁴⁾ Council Regulation (EU) 2021/1030 of 24 June 2021 amending Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ L 224 I, 24.6.2021, p. 1).

⁽⁵⁾ Council Decision (CFSP) 2022/218 of 17 February 2022 amending Council Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus (see page 41 of this Official Journal).

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 765/2006 is amended as follows:

(1) the title is replaced by the following:

‘Council Regulation (EC) No 765/2006 of 18 May 2006 concerning restrictive measures in view of the situation in Belarus’;

(2) in Article 1, the following points are added:

‘13. “brokering services” means:

- (i) the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology or of financial and technical services, including from a third country to any other third country; or
- (ii) the selling or buying of goods and technology or of financial and technical services, including where they are located in third countries for their transfer to another third country;

14. “public corporation” means an undertaking, other than a credit institution, established in Belarus with over 50 % public ownership, or under public control, as of 1 June 2021;

15. “claim” means any claim, whether asserted by legal proceedings or not, made before, on or after the date of entry into force of this Regulation, under or in connection with a contract or transaction, and includes in particular:

- (i) a claim for performance of any obligation arising under or in connection with a contract or transaction;
- (ii) a claim for extension or payment of a bond, financial guarantee or indemnity of whatever form;
- (iii) a claim for compensation in respect of a contract or transaction;
- (iv) a counterclaim;
- (v) a claim for the recognition or enforcement, including by the procedure of exequatur, of a judgment, an arbitration award or an equivalent decision, wherever made or given;

16. “contract or transaction” means any transaction of whatever form and whatever the applicable law, whether comprising one or more contracts or similar obligations made between the same or different parties; for this purpose, “contract” includes a bond, guarantee or indemnity, in particular a financial guarantee or financial indemnity, and credit, whether legally independent or not, as well as any related provision arising under, or in connection with, the transaction’;

(3) in Article 1e, the following paragraphs are added:

‘3. It shall be prohibited:

- (a) to provide, directly or indirectly, technical assistance or brokering services related to dual-use goods and technology, or related to the provision, manufacture, maintenance and use of such goods or technology, to any natural or legal person, entity or body in Belarus or for use in Belarus, if the items are or may be intended, in their entirety or in part, for military use or for a military end-user;
- (b) to provide, directly or indirectly, financing or financial assistance related to the dual-use goods and technology, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for any provision of related technical assistance to any natural or legal person, entity or body in Belarus or for use in Belarus, if the items are or may be intended, in their entirety or in part, for military use or for a military end-user.

4. The prohibitions in paragraph 3 shall be without prejudice to the execution of contracts concluded before 25 June 2021, or ancillary contracts necessary for the execution of such contracts.’;

(4) in Article 1f, paragraphs 3 and 4 are replaced by the following:

'3. The prohibitions in paragraphs 1 and 2 shall be without prejudice to the execution of contracts concluded before 25 June 2021, or ancillary contracts necessary for the execution of such contracts.

4. The prohibitions in paragraphs 1 and 2 shall not apply to exports, sale, supplies or transfers of dual-use goods and technology or the related provision of technical or financial assistance, for the maintenance and safety of existing civil nuclear capabilities.');

(5) in Article 1g, paragraph 2 is replaced by the following:

'2. Annex VI shall include goods used for the production or manufacturing of tobacco products.');

(6) in Article 1h, paragraphs 1 and 2 are replaced by the following:

'1. It shall be prohibited:

(a) to import, directly or indirectly, petroleum and gaseous hydrocarbon products as listed in Annex VII into the Union if they:

(i) originate in Belarus; or

(ii) have been exported from Belarus;

(b) to purchase, directly or indirectly, petroleum and gaseous hydrocarbon products as listed in Annex VII which are located in or which originated in Belarus;

(c) to transport petroleum and gaseous hydrocarbon products as listed in Annex VII if they originated in Belarus or are being exported from Belarus to any other country.

(d) to provide, directly or indirectly, technical assistance, brokering services, financing or financial assistance, including financial derivatives, as well as insurance and re-insurance, related to the prohibitions in points (a), (b) and (c).

2. The prohibitions in paragraph 1 shall not apply to purchases in Belarus of petroleum and gaseous hydrocarbon products as listed in Annex VII which are required in order to meet the essential needs of the purchaser in Belarus or of humanitarian projects in Belarus.');

(7) in Article 1h, the following paragraph is added:

'4. Paragraph 1 shall be without prejudice to the freedom of transit through Belarus of petroleum and gaseous hydrocarbon products as listed in Annex VII which originate in a third country.');

(8) in Article 1i, paragraph 2 is replaced by the following:

'2. The prohibitions in paragraph 1 shall be without prejudice to the execution of contracts concluded before 25 June 2021 and ancillary contracts necessary for the execution of such contracts. For the purpose of this Article, contracts include legally binding framework contracts which include an end-date and provide for adjustments of price and volumes based on conditions agreed before 25 June 2021.

This paragraph does not apply to any type of agreement which does not include binding commitments between the parties.');

(9) in Article 1j, points (a) to (d) are replaced by the following:

'(a) the Republic of Belarus, its Government, its public bodies, corporations or agencies;

(b) a major credit institution established in Belarus with over 50 % public ownership, or under public control, as of 1 June 2021, as listed in Annex IX;

(c) a legal person, entity or body established outside the Union whose proprietary rights are directly or indirectly owned for more than 50 % by an entity referred to in point (a) or (b) of this Article; or

(d) a natural or legal person, entity or body acting on behalf or at the direction of an entity referred to in point (a), (b) or (c) of this Article.');

(10) in Article 1k(1), points (a) to (d) are replaced by the following:

'(a) the Republic of Belarus, its Government, its public bodies, corporations or agencies;

- (b) a major credit institution established in Belarus with over 50 % public ownership, or under public control, as of 1 June 2021, as listed in Annex IX;
- (c) a legal person, entity or body established outside the Union whose proprietary rights are directly or indirectly owned for more than 50 % by an entity referred to in point (a) or (b) of this paragraph; or
- (d) a natural or legal person, entity or body acting on behalf or at the direction of an entity referred to in point (a), (b) or (c) of this paragraph.;

(11) in Article 11, point (i) is replaced by the following:

'(i) the Republic of Belarus, its Government, its public bodies, corporations or agencies; or';

(12) Article 2a is replaced by the following:

'Article 2a

Actions by natural or legal persons, entities or bodies shall not give rise to liability of any kind on their part, if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in this Regulation.;

(13) in Article 3(1), point (d) is replaced by the following:

'(d) intended exclusively for:

- (i) humanitarian purposes, including the operation of flights for the evacuation or repatriation of persons, or for initiatives providing support to victims of natural, nuclear or chemical disasters;
- (ii) the operation of flights in the framework of international adoption procedures;
- (iii) the operation of flights required for attending meetings with the objective of seeking a solution to the crisis in Belarus or promoting the policy objectives of the restrictive measures; or
- (iv) an emergency landing, take-off or overflight by an EU air carrier.;

(14) the following articles are inserted:

'Article 3a

1. By way of derogation from Article 2(1), the competent authorities may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

- (a) the funds or economic resources are the subject of an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in Article 2 was listed in Annex I, or of a judicial or administrative decision rendered in the Union, or a judicial decision enforceable in the Member State concerned, prior to or after that date;
- (b) the funds or economic resources will be used exclusively to satisfy claims secured by such a decision or recognised as valid in such a decision, within the limits set by applicable laws and regulations governing the rights of persons having such claims;
- (c) the decision is not for the benefit of a natural or legal person, entity or body listed in Annex I; and
- (d) recognition of the decision is not contrary to public policy in the Member State concerned.

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

'Article 8d

1. No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:

- (a) designated natural or legal persons, entities or bodies listed in Annex I;
- (b) entities referred to in Articles 1j, 1k, 1l or listed in Annexes V and IX;
- (c) any other Belarussian person, entity or body, including the Belarussian government;
- (d) any person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in point (a), (b) or (c) of this paragraph.

2. In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the person seeking the enforcement of that claim.

3. This Article is without prejudice to the right of the persons, entities and bodies referred to in paragraph 1 to judicial review of the legality of the non-performance of contractual obligations in accordance with this Regulation.

Article 8e

1. The Council, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy (the “High Representative”) shall process personal data that are necessary to carry out their tasks under this Regulation. Those tasks include:

- (a) as regards the Council, preparing and making amendments to Annex I;
- (b) as regards the High Representative, preparing amendments to Annex I;
- (c) as regards the Commission:
 - (i) adding the contents of Annex I to the electronic, consolidated list of persons, groups and entities subject to Union financial sanctions and to the interactive sanctions map, both publicly available;
 - (ii) processing information on the impact of the measures provided for in this Regulation such as the value of frozen funds and information on authorisations granted by the competent authorities.

2. The Council, the Commission and the High Representative may process, where applicable, relevant data relating to criminal offences committed by listed natural persons, to criminal convictions of such persons or to security measures concerning such persons, only to the extent that such processing is necessary for the preparation of Annex I.

3. For the purposes of this Regulation, the Council, the Commission and the High Representative are designated as “controller” within the meaning of point (8) of Article 3 of Regulation (EU) 2018/1725 of the European Parliament and of the Council (*), in order to ensure that the natural persons concerned can exercise their rights under Regulation (EU) 2018/1725.

(*) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).;

- (15) Annex IV is amended as set out in Annex I to this Regulation;
- (16) Annex VII is amended as set out in Annex II to this Regulation;
- (17) Annex VIII is amended as set out in Annex III to this Regulation;
- (18) Annex IX is amended as set out in Annex IV to 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, 17 February 2022.

For the Council
The President
J.-Y. LE DRIAN

ANNEX I

In Annex IV, 'Intrusion software' is replaced by:

'Systems, equipment, and components therefor, specially designed or modified for the generation, command and control, or delivery of intrusion software as defined in Regulation (EU) 2021/821 of the European Parliament and of the Council (*).

(* Regulation (EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items (OJ L 206, 11.6.2021, p. 1).'

ANNEX II

In Annex VII, the title is replaced by the following:

'LIST OF PETROLEUM AND GASEOUS HYDROCARBON PRODUCTS REFERRED TO IN ARTICLE 1h'

ANNEX III

Annex VIII is replaced by the following:

'ANNEX VIII

Name of the good	Combined Nomenclature (CN) code ⁽¹⁾
Potassium chloride with a potassium content evaluated as K ₂ O, by weight, not exceeding 40 % on the dry anhydrous product	3104 20 10
Potassium chloride with a potassium content evaluated as K ₂ O, by weight, exceeding 62 % on the dry anhydrous product *	3104 20 90
Mineral or chemical fertilisers containing the three fertilising elements nitrogen, phosphorus and potassium	3105 20 10 3105 20 90
Mineral or chemical fertilisers containing the two fertilising elements phosphorus and potassium	3105 60 00
Other fertilisers containing potassium chloride	ex 3105 90 20 ex 3105 90 80

⁽¹⁾ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2020:361:FULL&from=EN>

* When, as confirmed by necessary documents issued by an accredited laboratory, the potassium content was initially measured as not exceeding 62 %, but it is measured subsequently by a competent authority as exceeding this threshold, then the content of potassium will be considered as the result of the competent authority measurement reduced by:

- the tolerance in absolute value in percentage by mass in accordance with Annex II to Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to EC fertilisers and;
- as of 16 July 2022, the tolerance in percentage points in absolute terms set out in Part III of Annex III to Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003 relating to EC fertilisers.

Assessment of the potassium content of potash products by a competent authority in order to verify compliance with this Regulation will be done prior to release of the potash products for free circulation in the Union.'

ANNEX IV

Annex IX is replaced by the following:

'ANNEX IX

LIST OF MAJOR CREDIT INSTITUTIONS REFERRED TO IN ARTICLES 1j AND 1k

Belarusbank

Belinvestbank (Belarusian Bank for Development and Reconstruction)

Belagroprombank

Bank Dabrabyt

Development Bank of the Republic of Belarus'
