

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2023/426

of 25 February 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 ⁽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⁾ gives effect to restrictive measures provided for in Decision 2014/145/CFSP.
- (2) On 25 February 2023, the Council adopted Decision (CFSP) 2023/432 ⁽³⁾, amending Decision 2014/145/CFSP. Decision (CFSP) 2023/432 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, and to allow the processing of payments by the Jewish Claims Conference through one of them. Decision (CFSP) 2023/432 also introduced a specific and temporary derogation allowing the disposal or the transfer of securities by an entity established in the Union currently or previously controlled by a specific listed entity. Decision (CFSP) 2023/432 furthermore introduced a derogation allowing for the termination of operations, contracts or other agreements with a listed entity, and extended by three months the deadline for the derogation to allow the sale and transfer of proprietary rights in a legal person, entity or body established in the Union owned by a listed natural or legal person, entity or body.

⁽¹⁾ OJ L 78, 17.3.2014, p. 16.

⁽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).

⁽³⁾ Council Decision (CFSP) 2023/432 of 25 February 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (See page 437 of this Official Journal).

- (3) It is appropriate to require that natural and legal persons, entities and bodies supply to the national competent authorities detailed information on funds and economic resources which have been frozen or should have been treated as frozen, as well as information on funds and economic resources belonging to, owned, held or controlled by listed natural or legal persons, entities or bodies which were subject to any move, transfer, alteration, use, access, or dealing shortly before the listing. It is also appropriate to require that central securities depositories, due to their systemic importance for the functioning of securities markets, provide the relevant information to the Member State concerned and simultaneously to the Commission. The obligation to report is ancillary to the effective application of the asset freeze provisions, and is without prejudice to the monetary functions and the principle of independence of the European Central Bank and of the national central banks.
- (4) It is also appropriate to specify the type of information to be provided to national competent authorities, which authorities should then transmit that information to the Commission, with specific adaptations in the case of criminal proceedings. In order to allow time to adapt, it is appropriate to provide for deferred application of the more detailed reporting requirements. It should also be clarified that Member States and the relevant natural and legal persons, entities and bodies are required to cooperate with the Commission in any verification of such information, and that the Commission should be able to request any additional information, while informing the Member State concerned of such request.
- (5) Those amendments 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.
- (6) 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 6b, the following paragraph is inserted:

'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 26 November 2023, irrespective of when the operations, contracts or other agreements were concluded.');

- (2) in Article 6b, the following paragraphs are inserted:

'5a. By way of derogation from Article 2, paragraph 1, the competent authorities of the Member States may, under such conditions as they deem appropriate, authorise the release of certain frozen funds or economic resources held by the entity listed under entry number 101 under the heading "Entities" in Annex I, or the making available of certain funds or economic resources to that entity, after having determined that:

- (a) such funds or economic resources are necessary for the disposal or the transfer of securities by an entity established in the Union, currently or previously controlled by the entity listed under entry number 82 under the heading "Entities" in Annex I;
- (b) such disposal or transfer is completed by 24 July 2023; and,

- (c) such disposal or transfer is carried out on the basis of operations, contracts or other agreements concluded with, or otherwise involving, the entity listed under entry number 101 under the heading “Entities” in Annex I before 3 June 2022.

5b. By way of derogation from Article 2, paragraph 1, the competent authorities of the Member States may, under such conditions as they deem appropriate, authorise the release of certain frozen funds or economic resources held by the entity listed under entry number 190 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 26 August 2023 of operations, contracts or other agreements concluded with, or otherwise involving, that entity before 25 February 2023.;

- (3) in point (a) of Article 6b(3), the date ‘28 February 2023’ is replaced by the date ‘31 May 2023’;
- (4) in paragraph 1 of Article 6e, the reference to ‘entry numbers 53, 54, 55, 79, 80, 81, 82, 108, 126 and 127 in Annex I’ is replaced by a 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’;
- (5) Article 8 is replaced by the following:

Article 8

1. Notwithstanding the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall:

- (a) supply immediately any information which would facilitate implementation of this Regulation, such as:

- information on funds and economic resources frozen in accordance with Article 2 or information held about funds and economic resources within Union territory belonging to, owned, held or controlled by natural or legal persons, entities or bodies listed in Annex I and which have not been treated as frozen by the natural and legal persons, entities and bodies obliged to do so, to the competent authority of the Member State where they are resident or located, within two weeks of acquiring this information;
- information held on funds and economic resources within Union territory belonging to, owned, held or controlled by natural or legal persons, entities or bodies listed in Annex I and which have been subject to any move, transfer, alteration, use of, access to, or dealing referred to in Article 1(e) or 1(f) in the two weeks preceding the listing of those natural or legal persons, entities or bodies in Annex I, to the competent authority of the Member State where they are resident or located, within two weeks of acquiring this information;

and,

- (b) cooperate with the competent authority in any verification of such information.

1a. The information on funds and economic resources frozen in accordance with Article 2 supplied under paragraph 1 of this Article shall include at least the following:

- (a) information identifying the natural or legal persons, entities or bodies owning, holding or controlling the frozen funds and economic resources, including their name, address and VAT registration or tax identification number;
- (b) the amount or market value of such funds or economic resources at the date of reporting and at the date of freezing; and,
- (c) the types of funds, broken down according to the categories set out in points (i) to (vii) of Article 1(g) as well as crypto-assets and other relevant categories, and an additional category corresponding to economic resources within the meaning of Article 1(d). For each of those categories and where available, the quantity, location and other relevant features of the funds or economic resources.

1b. The Member State concerned shall transmit to the Commission the information received pursuant to paragraphs 1 and 1a within two weeks of receiving it. The Member State concerned may transmit such information in an anonymised form if an investigating or judicial authority has declared it to be confidential in the context of pending criminal investigations or criminal judicial proceedings.

Central securities depositories within the meaning of Regulation (EU) No 909/2014 of the European Parliament and of the Council (*) shall provide the information referred to in paragraphs 1 and 1a, and information on extraordinary and unforeseen loss and damage concerning the relevant funds and economic resources, to the competent authority of the Member State where they are located, within two weeks of acquiring it and every three months thereafter, and transmit it simultaneously to the Commission.

1c. Member States, as well as the relevant natural and legal persons, entities and bodies, shall cooperate with the Commission in any verification of the information concerning the funds or economic resources referred to in paragraphs 1 and 1a. The Commission may request any additional information it requires to carry out such verification. When such a request is addressed to a natural or legal person, entity or body, the Commission shall simultaneously transmit it to the Member State concerned.

2. Any additional information received directly by the Commission shall be made available to the Member States.

3. Any information provided to or received by the competent authorities of the Member States in accordance with this Article shall be used by those authorities only for the purposes for which it was provided or received.

4. The competent authorities of the Member States, including enforcement authorities and administrators of official registers wherein natural persons, legal persons, entities and bodies as well as immovable or movable property are registered, shall process and exchange information, including personal data and, if necessary, the information referred to in paragraphs 1 and 1a with other competent authorities of the Member States and with the Commission.

5. Any processing of personal data shall be carried out in accordance with this Regulation and with Regulations (EU) 2016/679 (**) and (EU) 2018/1725 (***) of the European Parliament and of the Council, and only in so far as necessary for the application of this Regulation and to ensure effective cooperation between Member States as well as with the Commission in the application of this Regulation.

(*) 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).

(**) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

(***) 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);

(6) in Article 12, point (a) of paragraph 1 is replaced by the following:

‘(a) in respect of funds and economic resources frozen under Article 2 and authorisations granted under the derogations set out in this Regulation’.

Article 2

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

Article 1, point (5), shall apply from 26 April 2023.

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

Done at Brussels, 25 February 2023.

For the Council
The President
J. ROSWALL
