



2024/1739

24.6.2024

COUNCIL REGULATION (EU) 2024/1739

of 24 June 2024

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 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 ⁽²⁾ gives effect to restrictive measures provided for in Decision 2014/145/CFSP.
- (2) On 24 June 2024, the Council adopted Decision (CFSP) 2024/1738 ⁽³⁾ amending Decision 2014/145/CFSP. Decision (CFSP) 2024/1738 introduces a derogation allowing the release of funds that were frozen due to the involvement of a listed intermediary bank in their transfer, under the conditions that the transfer is between two non-listed natural or legal persons, entities or bodies and is carried out using accounts at non-listed credit institutions. Decision (CFSP) 2024/1738 also introduces a derogation allowing the release of funds that were frozen due to the involvement of a listed issuing bank in their transfer under the condition that the transfer is between two non-listed natural or legal persons, entities or bodies.
- (3) It is appropriate to clarify that the protection against liability that is granted to Union operators if they did not know, and had no reasonable cause to suspect, that their actions would infringe Union restrictive measures cannot be invoked where Union operators have failed to carry out appropriate due diligence. It is appropriate for publicly or readily available information to be duly taken into account when carrying out such due diligence. Therefore, for example, a Union operator cannot successfully invoke such protection when it is accused of breaching the relevant restrictive measures because it has failed to carry out simple checks or inspections.
- (4) In order to ensure alignment with the interpretation of the Court of Justice of the European Union in Case C-72/11, the provision prohibiting circumvention should be amended to clarify that the requirements of knowledge and intent are met not only where a person deliberately seeks the object or effect of circumventing restrictive measures but also where a person participating in an activity having the object or effect of circumventing restrictive measures is aware that such participation may have that object or that effect, and accepts that possibility.
- (5) It is appropriate to introduce a provision to enable Member State nationals and companies to obtain compensation from Russian individuals and entities that caused damages to them. That includes damages caused to the companies they own or control, in connection with a contract or a transaction the performance of which was affected by the measures imposed under Regulation (EU) No 269/2014, provided that the Member State national or company concerned does not have effective access to remedies, for example under the relevant bilateral investment treaty. Such compensation may be claimed before Member State courts in accordance with the relevant provisions of Union and Member State law regarding jurisdiction and court procedures in civil and commercial matters, including those concerning possible interim relief procedures.

⁽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) 2024/1738 of 24 June 2024 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, 2024/1738, 24.6.2024, ELI: <http://data.europa.eu/eli/dec/2024/1738/oj>).

- (6) With a view to increasing awareness of enforcement action, it is appropriate that Member States report about penalties imposed for violations of the restrictive measures.
- (7) Where a natural or legal person voluntarily, completely and in due time discloses a violation of the restrictive measures, it should be possible for national competent authorities to take that self-disclosure into account when applying penalties, as appropriate, in accordance with national administrative law or with other relevant national law or rules. The measures taken by Member States pursuant to Directive (EU) 2024/1226 of the European Parliament and of the Council⁽⁴⁾ and the requirements contained therein regarding mitigating circumstances apply.
- (8) In line with the Union's common foreign and security policy objectives of preserving peace, reinforcing international security and promoting international cooperation, democracy and the rule of law, and more specifically the objectives pursued by Decision 2014/145/CFSP, it is appropriate to ensure that the documents held by the Council, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy (the 'High Representative') concerning the enforcement of the restrictive measures set out in Regulation (EU) No 269/2014, or concerning the prevention of the violation or circumvention of those measures, are subject to professional secrecy and enjoy the protection afforded by the rules applicable to the Union institutions, since information contained in those documents could be used to obstruct the enforcement of those measures or to compromise their effectiveness, given that the persons and entities concerned could act in such a way as to prevent their enforcement. That protection should also be ensured for joint proposals from the High Representative and the Commission for the amendment of Regulation (EU) No 269/2014 and any related preparatory documents, as their disclosure might affect the effectiveness of the measures set out in Decision 2014/145/CFSP and in that Regulation and the preparation of, and negotiation on the basis of, future proposals. Certain measures which are included in such joint proposals, and which cannot be adopted by the Council for various reasons, are often included by the High Representative and the Commission in subsequent proposals. It is important to protect that power of initiative from any influence exerted by public or private interests that attempt, outside of organised consultations, to compel the Union institutions and Union services to propose, adopt, amend or agree on an amendment. Their disclosure could render the possible new asset freeze measures ineffective due to the fact that their intended adoption would have already been revealed. Thus, it should be presumed that disclosure of those documents would harm the security of the Union or that of one or more of its Member States or the conduct of their international relations.
- (9) These measures fall within the scope of the Treaty on the Functioning of the European Union and therefore, in particular with a view to ensuring their uniform application in all Member States, regulatory action at the level of the Union is necessary.
- (10) 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 paragraphs are inserted:

'5h. By way of derogation from Article 2 of this Regulation, and provided that the funds concerned were frozen as a result of the involvement of a legal person, entity or body listed in Annex I to this Regulation acting as intermediary bank during a transfer of those funds from the Russian Federation to the Union, the competent authorities of a Member State may, under such conditions as they deem appropriate, authorise the release of certain frozen funds, after having determined that the transfer of such funds is:

- (a) between two natural or legal persons, entities or bodies that are not listed in Annex I to this Regulation;
- (b) carried out using accounts at credit institutions that are not listed in Annex I to this Regulation; and
- (c) not in breach of Article 2(2) or Article 9 of this Regulation.

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.

⁽⁴⁾ Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673 (OJ L, 2024/1226, 29.4.2024, ELI: <http://data.europa.eu/eli/dir/2024/1226/oj>).

5i. By way of derogation from Article 2 of this Regulation, and provided that the payment concerned was frozen as a result of a transfer from the Russian Federation to the Union initiated through or from a legal person, entity or body listed in Annex I to this Regulation, the competent authorities of a Member State may, under such conditions as they deem appropriate, authorise the release of that frozen payment, after having determined that the transfer of that payment is:

- (a) between two natural or legal persons, entities or bodies that are not listed in Annex I to this Regulation; and
- (b) not in breach of Article 2(2) or Article 9 of this Regulation.

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.

The beneficiaries of a transfer as referred to in the first subparagraph of this paragraph shall only be nationals of a Member State, of a country member of the European Economic Area or of Switzerland, or natural persons having a temporary or permanent residence permit in a Member State, in a country member of the European Economic Area or in Switzerland.

One authorisation per applicant may be granted under this paragraph.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this paragraph within one week of the authorisation.;

- (2) in Article 9, paragraph 1 is replaced by the following:

‘1. It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions set out in this Regulation, including by participating in such activities without deliberately seeking that object or effect but being aware that the participation may have that object or effect and accepting that possibility.’;

- (3) the following article is inserted:

‘Article 11a

Any person referred to in Article 17, point (c) or (d), shall be entitled to recover, in judicial proceedings before the competent courts of the Member State, any damages, including legal costs, incurred by that person as a consequence of claims lodged with courts in third countries by persons, entities and bodies referred to in Article 11(1), point (a) or (b), 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, provided that the person concerned does not have effective access to the remedies under the relevant jurisdiction.’;

- (4) in Article 12(1), point (b) is replaced by the following:

‘(b) in respect of violation and enforcement problems, penalties applied for infringements of the provisions of this Regulation and judgments handed down by national courts.’;

- (5) in Article 15, paragraph 1 is replaced by the following:

‘1. Member States shall lay down the rules on penalties, including as appropriate criminal penalties, applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive, and may take the voluntary self-disclosure of infringements of the provisions of this Regulation into account as a mitigating factor, in accordance with the respective national law. Member States shall also provide for appropriate measures of confiscation of the proceeds of such infringements.’;

- (6) Article 16a is replaced by the following:

‘Article 16a

1. Any information provided to or received by the Commission in accordance with this Regulation shall be used by the Commission only for the purposes for which it was provided or received.

2. Any document held by the Council, the Commission or the High Representative of the Union for Foreign Affairs and Security Policy (the “High Representative”) for the purpose of ensuring the enforcement of the measures set out in this Regulation, or of preventing the violation or circumvention thereof, shall be subject to professional secrecy and shall enjoy the protection afforded by the rules applicable to the Union institutions. That protection shall apply to the joint proposals from the High Representative and the Commission for the amendment of this Regulation and to any preparatory documents related to them.

It shall be presumed that the disclosure of any documents or proposals referred to in the first subparagraph would harm the security of the Union or that of one or more of its Member States or the conduct of their international relations.’.

Article 2

This Regulation shall enter into force on the date 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 Luxembourg, 24 June 2024.

For the Council

The President

J. BORRELL FONTELLES
