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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL REGULATION amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

COUNCIL REGULATION (EU) 2023/...

of ...

**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 Ukraine¹,

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

¹ OJ L 78, 17.3.2014, p. 16.

Whereas:

- (1) Council Regulation (EU) No 269/2014¹ gives effect to restrictive measures provided for in Decision 2014/145/CFSP.
- (2) On ... 2023, the Council adopted Decision (CFSP) 2023/...²⁺, amending Decision 2014/145/CFSP, which introduced a further criterion for the listing of natural or legal persons, entities or bodies subject to the asset freeze and the prohibition on making funds and economic resources available to designated persons and entities in response to information warfare conducted by Russia in order to implement its war of aggression against Ukraine. That Decision also amended one of the existing listing criteria, in view of the Council's assessment that circumventing the restrictive measures adopted by the Union in response to Russia's war of aggression against Ukraine, or otherwise significantly frustrating such restrictive measures by third country operators not bound by those measures in such a way as to contribute to Russia's capacity to wage war, may undermine the purpose and effectiveness of those measures. Indications of cases of frustrating the Union's restrictive measures could include, inter alia, the fact that the main activity of a third country operator consists of purchasing restricted goods in the Union that reach Russia, the involvement of Russian persons or entities at any stage, the recent creation of a company for purposes related to restricted goods reaching Russia, or a drastic increase in the turnover of a third country operator involved in such activities.

¹ 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).

² Council Decision (CFSP) 2023/... of ... 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 ...).

⁺ OJ please insert date of adoption and reference number of Decision in ST 8493/23 and complete footnote reference at footnote 2.

- (3) Decision (CFSP) 2023/...⁺ also introduced further derogations from the asset freeze and the prohibition on making funds and economic resources available to certain listed entities to allow for divestment from Russian companies and the disposal of certain types of securities held with specified listed entities. It also introduced a derogation allowing for the setting-up, certification or evaluation of a firewall that removes the control exercised by a listed person over the assets of a non-listed Union entity which the listed person owns or controls and that ensures that no benefit accrues to the latter, thus allowing that entity to continue its business operations. With a view to safeguarding maritime safety, Decision (CFSP) 2023/...⁺ also introduced an exemption from the asset freeze and the prohibition on making funds and economic resources available to allow for the provision of pilot services in specific circumstances.
- (4) Decision (CFSP) 2023/...⁺ also extended to certain newly-listed financial institutions the derogation from the asset freeze and from the prohibition on making available funds and economic resources that was applicable to previously-listed financial institutions.

⁺ OJ please insert reference number of Decision in ST 8493/23.

- (5) It is also appropriate to clarify that certain reporting obligations apply consistent with respect for the confidentiality of communications between lawyers and their clients guaranteed under the Charter of Fundamental Rights of the European Union and to provide further clarifications regarding the processing and exchanging of information by the competent authorities of the Member States.
- (6) The amendments made to Decision 2014/145/CFSP by Decision (CFSP) 2023/...⁺ fall within the scope of the Treaty on the Functioning of the European Union 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.
- (7) Regulation (EU) No 269/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

⁺ OJ please insert reference number of Decision in ST 8493/23.

Article 1

Regulation (EU) No 269/2014 is amended as follows:

(1) Article 3(1) is amended as follows:

(a) point (h) is replaced by the following:

‘(h) natural or legal persons, entities or bodies:

- (i) facilitating infringements of the prohibition against circumvention of the provisions of this Regulation, or of Council Regulations (EU) No 692/2014^{*}, (EU) No 833/2014^{**} or (EU) 2022/263^{***} or of Council Decisions 2014/145/CFSP^{****}, 2014/386/CFSP^{*****}, 2014/512/CFSP^{*****} or (CFSP) 2022/266^{*****}; or
- (ii) otherwise significantly frustrating those provisions; or

^{*} Council Regulation (EU) No 692/2014 of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol (OJ L 183, 24.6.2014, p. 9).

^{**} 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).

- *** Council Regulation (EU) 2022/263 of 23 February 2022 concerning restrictive measures in response to the illegal recognition, occupation or annexation by the Russian Federation of certain non-government controlled areas of Ukraine (OJ L 42I, 23.2.2022, p. 77).
- **** 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 (OJ L 78, 17.4.2014, p.16).
- ***** Council Decision 2014/386/CFSP of 23 June 2014 concerning restrictive measures in response to the illegal annexation of Crimea and Sevastopol (OJ L 183, 24.6.2014, p. 70).
- ***** 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).
- ***** Council Decision (CFSP) 2022/266 of 23 February 2022 concerning restrictive measures in response to the illegal recognition, occupation or annexation by the Russian Federation of certain non-government controlled areas of Ukraine (OJ L 42I, 23.2.2022, p. 109).’;

(b) the following point is inserted:

- ‘(i) legal persons, entities or bodies operating in the Russian IT-sector with a license administered by the Federal Security Service of the Russian Federation (FSB) Center for Licensing, Certification, and Protection of State Secrets or a “weapons and military equipment” license administered by the Russian Ministry of Industry and Trade,’;

(2) Article 6b is amended as follows:

(a) paragraph 5a is replaced by the following:

‘5a. By way of derogation from Article 2, 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 belonging to the entities listed under entry numbers 82 and 101 under the heading ‘Entities’ in Annex I, or the making available of certain funds or economic resources to those entities, 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 31 December 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 entities listed under entry numbers 82 and 101 under the heading ‘Entities’ in Annex I, before 3 June 2022.’;

(b) the following paragraph is inserted:

‘5aa. By way of derogation from Article 2, competent authorities of a Member State may authorise the conversion by ... [*OJ: please insert date 6 months after entry into force*] by nationals or residents of a Member State, or an entity established in the Union, of a depositary receipt with Russian underlying security held with the entity listed under entry number 101 under the heading “Entities” in Annex I for the purpose of selling the underlying security, and the making available of funds linked to the conversion of the depositary receipt and to the sale of the underlying security directly or indirectly to that entity in Russia, under such conditions as the competent authorities deem appropriate and after having determined that:

- (a) the depositary receipt was issued before 3 June 2022;
- (b) the relevant request for authorisation is submitted by ... [*OJ: please insert date 3 months after entry into force*];
- (c) the holder of the depositary receipt is able to demonstrate that such conversion is necessary for the sale of the underlying security;
- (d) the sale of the underlying security is compliant with prohibitions under Regulation No 833/2014, including Articles 5 and 5f; and
- (e) no funds will be made available to any other entity listed in Annex I.’;

(c) the following paragraph is inserted:

‘5c. 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 natural person listed under entry number 695 under the heading ‘Persons’ in Annex I, or the making available of certain funds or economic resources to this natural person or an entity owned by this natural person, under such conditions as the competent authorities deem appropriate and after having determined that such funds or economic resources are necessary for the completion of transactions, including sales, which are strictly necessary for the wind-down, by 31 August 2023, of a joint venture or similar legal arrangement established in Russia with this natural person or an entity owned by this natural person before 28 February 2022.’;

(d) the following paragraph is inserted:

‘5d. 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, owned, held or controlled by a natural or legal person, entity or body listed in Annex I, or the provision of services to such a natural or legal person, entity or body, under such conditions as they deem appropriate and after having determined that this is strictly necessary for the setting-up, certification or evaluation of a firewall which:

- (a) removes the control by the natural or legal person, entity or body listed in Annex I over the assets of a non-listed legal person, entity or body incorporated or constituted under the law of a Member State and which is owned or controlled by the former; and
- (b) ensures that no further funds or economic resources accrue for the benefit of the listed natural or legal person, entity or body.’;

(3) 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 and 215 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.’;

(4) the following Article is inserted:

‘Article 6f

Article 2 shall not apply to funds or economic resources that are needed for the provision of pilot services to vessels in innocent passage as defined by international law which are necessary for reasons of maritime safety.’;

(5) Article 8 is amended as follows:

(a) in paragraph 1, the introductory part is replaced by the following:

‘1. Notwithstanding the applicable rules concerning reporting, confidentiality and professional secrecy, and consistent with respect for the confidentiality of communications between lawyers and their clients guaranteed in Article 7 of the Charter of Fundamental Rights of the European Union, natural and legal persons, entities and bodies shall:’;

(b) paragraph 4 is replaced by the following:

- ‘4. The competent authorities of the Member States, including enforcement authorities, customs authorities within the meaning of Regulation (EU) No 952/2013 of the European Parliament and of the Council*, competent authorities within the meaning of Regulation (EU) 575/2013, Directive (EU) 2015/849 of the European Parliament and of the Council** and Directive 2014/65/EU, as well as 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 without delay information, including personal data and, if necessary, the information referred to in paragraphs 1 and 1a, with other competent authorities of their Member State, of other Member States and the Commission, if such processing and exchange is necessary to carry out the tasks of the processing authority or the receiving authority under this Regulation, in particular when they detect instances of a breach or circumvention, or attempts at a breach or circumvention, of the prohibitions set out in this Regulation.

* Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

** Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).’.

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 ...,

For the Council

The President
