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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION amending Decision 2012/642/CFSP concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine

COUNCIL DECISION (CFSP) 2025/...

of ...

**amending Decision 2012/642/CFSP
concerning restrictive measures in view of the situation in Belarus
and the involvement of Belarus in the Russian aggression against 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 15 October 2012, the Council adopted Decision 2012/642/CFSP¹.
- (2) On 24 February 2022, the President of the Russian Federation announced a military operation in Ukraine and Russian armed forces began an attack on Ukraine, including from the territory of Belarus. That attack was a blatant violation of the territorial integrity, sovereignty and independence of Ukraine.
- (3) In its conclusions of 19 February 2024, the Council strongly condemned the continued support provided by the Belarusian regime to Russia's war of aggression against Ukraine and called on Belarus to refrain from such action and to abide by its international obligations.
- (4) In view of the gravity of the situation, and in response to Belarus's continued involvement in Russia's aggression against Ukraine, it is appropriate to introduce additional restrictive measures.
- (5) In particular, it is appropriate to prohibit the procurement from Belarus of arms and related materiel of all types.

¹ Council Decision 2012/642/CFSP of 15 October 2012 concerning restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine (OJ L 285, 17.10.2012, p. 1, ELI: <http://data.europa.eu/eli/dec/2012/642/oj>).

- (6) In order to strengthen the effectiveness of the restrictive measures imposed in response to Russia's war of aggression against Ukraine, it is necessary to address the risk of circumvention of those measures through indirect exports via third countries. Certain goods and technology might contribute to Belarus's military and technological enhancement or to the development of its defence and security sector, including when exported under the guise of being intended for civilian end-use. The prohibition on indirect exports covers the export of items that are subject to restrictive measures, including via a third country. Competent authorities should take timely preventive action where there is a credible risk that such items exported to third countries might ultimately be diverted to Belarus. Therefore, it is appropriate to provide Member States with an optional administrative mechanism that enables national competent authorities to require prior authorisation for exports of items which might contribute to Belarus's military and technological enhancement or to the development of its defence and security sector, to any third country, where the exporter has been informed that there is sufficient reason to suspect that the end destination of the items may be in Belarus or that the end-use of the items may be for Belarusian entities. This measure is not intended to impose a new blanket restriction, but to equip Member States with an effective and proportionate tool to investigate and prevent possible circumvention of restrictive measures, while ensuring a harmonised interpretation and legal clarity for exporters. The scope of the indirect export prohibition clause should not be affected by this measure. It is at the discretion of Member States to decide whether this measure or the indirect export prohibition clause is to be applied as a mechanism of enforcement in cases in which the end destination of the items may be in Belarus or the end-use of the items may be for Belarusian entities.

- (7) It is also appropriate to expand into a transaction ban, the existing prohibition to provide specialised financial messaging services to certain Belarusian credit institutions and their Belarusian subsidiaries, which are relevant for the Belarusian financial system, and which are already the subject of restrictive measures imposed by the Union. In addition, it is appropriate to add exemptions related to the functioning of diplomatic and consular representations of the Union and of the Member States or of partner countries in Belarus, and, to transactions made by nationals of a Member State who are residents in Belarus. It is also appropriate to add a derogation for transactions which are strictly necessary for the divestment from Belarus or for the wind-down of business activities in Belarus. It is recalled that Union restrictive measures do not have extra-territorial effect and do not bind operators incorporated under the laws of third countries, including those of Belarus. Therefore, transactions between legal persons, entities or bodies incorporated or constituted under the law of a Member State and their subsidiaries in third countries do not qualify as a violation of this prohibition, including if credit or financial institutions subject to the ban are involved in such transactions. The exemptions and the derogation in Article 2y of Decision 2012/642/CFSP are without prejudice to the prohibition on operators in the Union to provide financial messaging services to the entities listed in Annex V.

- (8) In addition, it is appropriate to expand the list of items which might contribute to Belarus's military and technological enhancement or to the development of its defence and security sector, by listing items which have been used by Russia in its war of aggression against Ukraine and items which contribute to the development or production of Belarus's military systems, including chemical precursors to energetic materials, spare parts for machine tools, additional computer numerical control (CNC) machines and constituent chemicals for propellants.
- (9) Moreover, it is appropriate to expand the list of goods subject to export restrictions which might contribute to the enhancement of Belarusian industrial capacities, such as machinery, chemicals, some metals and plastics. In order to minimise the risk of circumvention of restrictive measures, it is also appropriate to extend the list of goods and technology subject to the prohibition on transit via the territory of Belarus.

- (10) Member States should, with due respect for their applicable international obligations, not recognise or enforce any injunction, order, relief, judgment of a court other than a court of a Member State or other court, arbitral or administrative decision issued in proceedings other than those in the Member States pursuant to or derived from investor-State dispute settlement proceedings in connection with measures imposed under Decision 2012/642/CFSP. The effective implementation of the no claims clause should be regarded as the public policy of the Union and the Member States for the purposes of the recognition and enforcement of arbitral awards or judicial or administrative decisions. As a result, the recognition or enforcement by Member States of an injunction, order, relief, judgment of a court other than a court of a Member State or other court, arbitral or administrative decision issued in proceedings other than those in the Member States pursuant to or derived from investor-State dispute settlement proceedings which could lead to the satisfaction of any claims in connection with measures imposed under Decision 2012/642/CFSP should be regarded as violating the public policy of the Union and the Member States. This provision should be without prejudice to the obligation of a Member State to participate and to defend itself in proceedings initiated against it and to ask for the recognition and enforcement of an award that grants it the reimbursement of costs.

- (11) While satisfaction of claims in connection with measures imposed under Decision 2012/642/CFSP is prohibited in the Union, including in out-of-court settlement proceedings, there is evidence to suggest that Belarusian persons, entities or bodies, or persons, entities or bodies acting through or on behalf of one of those Belarusian persons, entities or bodies, or owned or controlled by such persons, entities or bodies, seek or might seek to abusively initiate and pursue dispute settlement proceedings outside of the Union in connection with measures imposed under Decision 2012/642/CFSP, or seek or might seek to illegally obtain recognition or enforcement of arbitral awards granted through such abusive dispute settlement proceedings. It is therefore necessary to enable competent authorities or the Union, where applicable, to recover in proceedings before a court of a Member State any damages caused, including legal costs and costs incurred in the event of non-compliance with the arbitral award by the other party, from those persons, entities or bodies and from persons, entities or bodies that own or control those persons, entities or bodies, as a consequence of an investor-State dispute settlement in connection with measures imposed under Decision 2012/642/CFSP, provided that all available legal remedies in the relevant jurisdiction have been exercised. Competent authorities should recover such damages in accordance with Union law and customary rules of international law.

- (12) Where Member States are confronted with arbitral awards rendered against them in investor-State dispute settlement proceedings in connection with measures imposed under Decision 2012/642/CFSP, they should invoke any objection available to them in domestic or foreign proceedings for the recognition and enforcement of such awards. This includes raising the objection that the recognition or enforcement of the award would be contrary to the public policy of the country where recognition and enforcement is sought, pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.
- (13) The application of the forum necessitatis provision should be extended.
- (14) It is also appropriate to amend the title to Annex II, in order to include all the relevant provisions in which reference to that Annex is made.
- (15) Further action by the Union is needed in order to implement certain measures.
- (16) Decision 2012/642/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2012/642/CFSP is amended as follows:

(1) the following article is inserted:

‘Article 1aa

1. It shall be prohibited to purchase, import or transfer, directly or indirectly, arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, into the Union if they originate in Belarus or are exported from Belarus.
2. The prohibitions in paragraph 1 shall be without prejudice to the import, purchase or transfer related to:
 - (a) the provision of spare parts and services necessary for the maintenance and safety of existing capabilities within the Union; or
 - (b) the execution of contracts concluded before ... [OJ: please include date of entry into force of this Decision], or ancillary contracts necessary for the execution of such contracts.’;

(2) Article 1b is amended as follows:

(a) the following paragraphs are inserted:

‘3a. The prohibitions in paragraphs 1 and 3 shall not apply to the sale, supply, transfer or export of goods falling under CN codes 3204 11, 3204 12, 3204 13, 3204 14, 3204 15, 3204 16, 3204 17, 3204 18, 3204 19, 3204 20, 3506 10, 3506 91, 3907 10, 3907 21, 3907 30, 3907 50, 3907 61, 3907 69 and 3907 99, that is necessary for the execution until ... [three months from the date of entry into force of this amending Decision] of contracts concluded before ... [date of entry into force of this amending Decision], or of ancillary contracts necessary for the execution of such contracts.

3b. The prohibitions in paragraphs 1 and 3 shall not apply to the sale, supply, transfer or export of goods falling under CN code 9032 89 that is necessary for the execution until ... [six months from the date of entry into force of this amending Decision] of contracts concluded before ... [date of entry into force of this amending Decision], or of ancillary contracts necessary for the execution of such contracts.’;

(b) paragraph 13 is replaced by the following:

‘13. The competent authorities of the Member States may authorise, under such conditions as they deem appropriate, the sale, supply, transfer or export of the following goods, or the provision of related technical or financial assistance, after having determined that such goods or the provision of related technical or financial assistance are necessary for personal household use of natural persons in Belarus:

- (a) goods falling under CN code 8417 20;
- (b) copper tubes, pipes and pipe fittings falling under CN codes 7411 or 7412 that have an internal diameter of up to 50 mm;
- (c) goods falling under CN code 8414 60;
- (d) goods falling under CN 3916 20 when strictly necessary for the sale of PVC flooring.’;

(3) Article 2d is amended as follows:

(a) the following paragraph is inserted:

‘1aa. Without prejudice to the prohibition on indirect exports in paragraph 1 of this Article and Article 4 of Regulation (EU) 2021/821, an authorisation shall be required for the export of goods and technology which might contribute to Belarus’s military and technological enhancement, or the development of the defence and security sector, to any third country other than Belarus, if the exporter has been informed by the competent authority of the Member State where the exporter is resident or established that the items in question are or may be intended, in their entirety or in part, for any natural or legal person, entity or body in Belarus, or for use in Belarus.’;

(b) the following paragraph is inserted:

‘6a. Where an authorisation is required in accordance with paragraph 1aa, the competent authorities shall proceed in accordance with the rules and procedures laid down in Article 4 of Regulation (EU) 2021/821, which shall apply *mutatis mutandis*.’;

(4) Article 2n is replaced by the following:

‘Article 2n

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 Decision, 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) any natural or legal person, entity or body referred to in Articles 2h, 2i, 2j or 2y, or listed in Annex II, III or V;
 - (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 points (a), (b) or (c) of this paragraph.

2. No injunction, order, relief, judgment of a judicial court other than a court of a Member State or other court, arbitral or administrative decision issued in proceedings other than those in the Member States pursuant to or derived from investor-State dispute settlement proceedings against a Member State which could lead to the satisfaction of any claims in connection with measures imposed under this Decision shall be recognised, given effect or enforced in a Member State if it is invoked by any persons, entities or bodies referred to in paragraph 1, points (a), (b), (c) or (d), or persons, entities or bodies that own or control those persons, entities or bodies.
3. No request for assistance during an investigation or other proceedings, and no punishment or other penalty based on an injunction, order, relief, judgment of a court other than a court of a Member State or other court, arbitral or administrative decision issued in proceedings other than those in the Member States pursuant to or derived from investor-State dispute settlement proceedings against a Member State in connection with measures imposed under this Decision shall be recognised, given effect or enforced in a Member State if it is invoked by any persons, entities or bodies referred to in paragraph 1, points (a), (b), (c) or (d), or persons, entities or bodies that own or control those persons, entities or bodies.
4. 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.

5. 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 Decision.’;

(5) the following articles are inserted:

‘Article 2na

Any Member State shall, where applicable, take any appropriate measures to recover or be entitled to recover, in judicial proceedings before the competent courts of a Member State, any direct or indirect damages, including legal costs, incurred by that Member State as a consequence of investor-State dispute settlement proceedings brought against a Member State in connection with measures imposed under this Decision. The Member State shall, where applicable, be entitled to recover such damages from any persons, entities or bodies referred to in Article 2n(1), points (a), (b), (c) or (d), which initiated, intervened or participated in the investor-State dispute settlement or which seek to enforce any award, decision or judgment related to the investor-State dispute settlement and persons, entities or bodies that own or control any of those persons, entities or bodies.

Where applicable, the Union shall be entitled to recover any damages incurred by it under the same conditions.

Article 2nb

Member States shall raise any available objection to the recognition and enforcement of arbitral awards that were rendered against them in investor-State dispute settlement proceedings in connection with measures imposed under this Decision.’;

(6) Article 2y is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. It shall be prohibited to engage, directly or indirectly, in any transaction with legal persons, entities or bodies listed in Annex V or with any legal person, entity or body established in Belarus whose proprietary rights are directly or indirectly owned for more than 50 % by an entity listed in Annex V.’;

(b) the following paragraphs are inserted:

‘1a. The prohibition in paragraph 1 shall not apply to transactions:

(a) that are necessary for the functioning of diplomatic and consular representations of the Union and of the Member States or of partner countries in Belarus, including delegations, embassies and missions, or international organisations in Belarus enjoying immunities in accordance with international law; or

(b) made by nationals of a Member State who are residents of Belarus and were so before 24 February 2022.

1b. By way of derogation from paragraph 1, the competent authorities may authorise, under such conditions as they deem appropriate, transactions which are strictly necessary for divestment from Belarus or the wind-down of business activities in Belarus.’;

(7) Annex II is amended in accordance with the Annex to this Decision.

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 ..., ...

For the Council
The President

ANNEX

The title and heading of Annex II to Decision 2012/642/CFSP are replaced by the following:

‘ANNEX II

LIST OF LEGAL PERSONS, ENTITIES OR BODIES REFERRED TO IN ARTICLES 2c(7),
2d(7) AND 2da’.
