Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine

COUNCIL REGULATION (EU) No 208/2014

of 5 March 2014

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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 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in 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) On 20 February 2014, the Council condemned in the strongest terms all use of violence in Ukraine. It called for an immediate end to the violence, and full respect for human rights and fundamental freedoms in Ukraine. It called upon the Ukrainian Government to exercise maximum restraint and opposition leaders to distance themselves from those who resort to radical action, including violence.

(2) On 3 March 2014, the Council agreed to focus restrictive measures on the freezing and recovery of assets of persons identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations in Ukraine.

(3) On 5 March 2014, the Council adopted Decision 2014/119/CFSP.

(4) Decision 2014/119/CFSP provides for the freezing of funds and economic resources of certain persons identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations in Ukraine, and natural or legal persons, entities or bodies associated with them, with a view to consolidating and supporting the rule of law and respect for human rights in Ukraine. Those persons, entities and bodies are listed in the Annex to that Decision.

(5) These measures fall within the scope of the Treaty on the Functioning of the European Union and, therefore, notably with a view to ensuring their uniform application by economic operators in all Member States, regulatory action at the level of the Union is necessary in order to implement them.

(6) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably

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the right to an effective remedy and to a fair trial and the right to the protection of personal data. This Regulation should be applied in accordance with those rights and principles.

(7) The power to amend the list in Annex I to this Regulation should be exercised by the Council, in view of the serious political situation in Ukraine, and to ensure consistency with the process for amending and reviewing the Annex to Decision 2014/119/CFSP.

(8) The procedure for amending the list in Annex I to this Regulation should include providing designated natural or legal persons, entities or bodies with the grounds for listing, so as to give them an opportunity to submit observations. Where observations are submitted, or substantial new evidence is presented, the Council should review its decision in light of those observations and inform the person, entity or body concerned accordingly.

(9) For the implementation of this Regulation, and in order to create maximum legal certainty within the Union, the names and other relevant data concerning natural and legal persons, entities and bodies whose funds and economic resources must be frozen in accordance with this Regulation, must be made public. Any processing of personal data should comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council[(2)] and Directive 95/46/EC of the European Parliament and of the Council[(3)].

(10) In order to ensure that the measures provided for in this Regulation are effective, it should enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the following definitions apply:

(a) ‘claim’ means any claim, whether asserted by legal proceedings or not, made before or after 6 March 2014, 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;

(b) ‘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, particularly 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;

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(c) 'competent authorities' means the competent authorities of the Member States as identified on the websites listed in Annex II;

(d) 'economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but may be used to obtain funds, goods or services;

(e) 'freezing of economic resources' means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;

(f) 'freezing of funds' means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management;

(g) 'funds' means financial assets and benefits of every kind, including, but not limited to:

(i) cash, cheques, claims on money, drafts, money orders and other payment instruments;

(ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;

(iii) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;

(iv) interest, dividends or other income on or value accruing from or generated by assets;

(v) credit, right of set-off, guarantees, performance bonds or other financial commitments;

(vi) letters of credit, bills of lading, bills of sale; and

(vii) documents showing evidence of an interest in funds or financial resources;

(h) 'territory of the Union' means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty, including their airspace.

Article 2

1 All funds and economic resources belonging to, owned, held or controlled by any natural or legal person, entity or body as listed in Annex I shall be frozen.

2 No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex I.

Article 3

1 Annex I shall include persons who, in accordance with Article 1 of Decision 2014/119/CFSP, have been identified by the Council as being responsible for the misappropriation of Ukrainian State funds, and persons responsible for human rights violations in Ukraine, and natural or legal persons, entities or bodies associated with them.

[F11a For the purposes of paragraph 1 persons identified as responsible for the misappropriation of Ukrainian State funds include persons subject to investigation by the Ukrainian authorities:

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a for the misappropriation of Ukrainian public funds or assets or being an accomplice thereto; or

b for abuse of office as a public office-holder in order to procure an unjustified advantage for him- or herself or for a third party and thereby causing a loss to Ukrainian public funds or assets, or being an accomplice thereto.**]**

2 Annex I shall include the grounds for the listing of natural or legal persons, entities and bodies concerned.

3 Annex I shall include, where available, information necessary to identify the natural or legal persons, entities and bodies concerned. With regard to natural persons, such information may include names including aliases, date and place of birth, nationality, passport and ID card numbers, gender, address, if known, and function or profession. With regard to legal persons, entities and bodies, such information may include names, place and date of registration, registration number and place of business.

Textual Amendments

F1 Inserted by Council Regulation (EU) 2015/138 of 29 January 2015 amending Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.

Article 4

1 By way of derogation from Article 2, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources concerned are:

a necessary to satisfy the basic needs of the natural or legal persons, entities or bodies listed in Annex I, and dependent family members of such natural persons, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

b intended exclusively for payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services;

c intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources; or

d necessary for extraordinary expenses, provided that the relevant competent authority has notified the grounds on which it considers that a specific authorisation should be granted to the competent authorities of the other Member States and to the Commission at least two weeks prior to authorisation.

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

Article 5

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

a the funds or economic resources are subject to an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in Article 2 was included 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;

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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.

Article 6

1 By way of derogation from Article 2 and provided that a payment by a natural or legal person, entity or body listed in Annex I is due under a contract or agreement that was concluded by, or under an obligation that arose for the natural or legal person, entity or body concerned, before the date on which that natural or legal person, entity or body was included in Annex I, the competent authorities of the Member States may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources, provided that the competent authority concerned has determined that:

a the funds or economic resources shall be used for a payment by a natural or legal person, entity or body listed in Annex I; and

b the payment is not in breach of Article 2(2).

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

Article 7

1 Article 2(2) shall not prevent the crediting of the frozen accounts by financial or credit institutions that receive funds transferred by third parties onto the account of a listed natural or legal person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the relevant competent authority about any such transaction without delay.

2 Article 2(2) shall not apply to the addition to frozen accounts of:

a interest or other earnings on those accounts;

b payments due under contracts, agreements or obligations that were concluded or arose before the date on which the natural or legal person, entity or body referred to in Article 2 has been included in Annex I; or

c payments due under judicial, administrative or arbitral decisions rendered in a Member State or enforceable in the Member State concerned,

provided that any such interest, other earnings and payments are frozen in accordance with Article 2(1).

Article 8

1 Without prejudice to 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 compliance with this Regulation, such as information on accounts and amounts frozen in accordance with Article 2, to the competent authority of the Member State where they are resident or located, and shall transmit such information, directly or through the Member State, to the Commission; and