

## **REMEDIES AGAINST EU SANCTIONS TARGETING RUSSIAN AND UKRAINIAN OFFICIALS**



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In the wake of new turmoil in eastern regions of Ukraine, the European Union has decided to expand the list of sanctioned persons subject to a freezing of their assets.

Regulation 381/2014, adopted by the Council of EU Foreign Ministers on April 14, has included four Ukrainian nationals – a former Prime Minister, two former Members of Government and a current Member of Parliament – among the individuals listed in Annex I to Regulation 208/2014, enacted on March 5 and freezing the assets of persons who “have been identified by the Council as being responsible for the misappropriation of Ukrainian State funds” as well as “persons responsible for human rights violations in Ukraine”. Their inclusion on the list is effective as of April 15.

These four Ukrainian nationals are not, however, subject in addition to a travel ban in the EU. Such measure was imposed – together with an asset freeze – on another series of Ukrainian and Russian senior officials and military staff, who were considered “responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine”. This second series of sanctioned persons are listed in the Annex common to Decision 2014/145/CFSP and Regulation 269/2014 (both adopted by the Council on March 17), as amended respectively by Decision 2014/151/CFSP and Regulation 284/2014 (both adopted by the Council on March 21).

To date no company or other legal person has been added to the above lists. Depending on the future evolution of the situation, the EU authorities might decide to sanction such entities as the relevant Regulations already provide for the possible listing of “natural or legal persons, entities or bodies associated with” the persons identified as being responsible for either misappropriation of Ukrainian State funds or human rights violations, or actions undermining the sovereignty of Ukraine.

### *Assets Frozen*

All funds and economic resources belonging to, owned, held or controlled by the sanctioned persons – whether they appear on the first or the second list – are frozen. Further, they cannot be made available, directly or indirectly, to or for the benefit of the sanctioned person.

“Funds” are defined as financial assets and benefits of every kind, *e.g.* cash, deposits with banks, publicly- and privately-traded securities, interests and dividends, letters of credit, etc. “Economic resources” means assets of every kind, including immovable property and intangible assets, which are not funds but may be used to obtain funds, goods or services.

“Freezing funds” entails preventing any move, transfer, alteration, etc. of funds, that would result, in a nutshell, in making them somehow available to the listed person. “Freezing economic resources” is understood as preventing their use to obtain funds in any way, *e.g.* by selling or mortgaging them.

It is worth stressing that the EU Regulations do not provide direct guidance as to the question whether funds or economic resources can be deemed to be “controlled” by a sanctioned person. There may be variations among Member States in the implementation of this concept.

The freezing measures apply on the EU territory, but also – even outside the EU territory – to any national of a Member State and to any legal person, entity or body incorporated or constituted under the law of a Member State. They are directly applicable, hence do not call for any domestic measures of implementation. The EU Member States are nevertheless responsible for laying down the rules on penalties applicable to infringements of the above Regulations.

### *Exemptions and Remedies*

A number of exemptions are contemplated by the Regulations, allowing for the release of certain frozen funds or economic resources upon authorization by the competent authorities of the Member State concerned. The special circumstances for such exemptions include the necessity to satisfy basic needs of the listed person and dependent family members (foodstuffs, rent, medicines, taxes, etc.), the payment of legal fees or fees for routine maintenance of frozen assets, the satisfaction of a claim secured by an arbitral decision rendered prior to the date of listing, a payment due under a contract concluded prior to that date, etc.

Regardless of these exemptions, the targeted persons may file a request to the EU Council, together with supporting documentation, that the decision to include them on the list should be reconsidered. Where such observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the person concerned accordingly.

Finally, the sanctioned persons also have the possibility of challenging the validity of the freezing measures by bringing an action for annulment before the General Court of the European Union (and, on appeal, before the Court of Justice of the European Union) in Luxembourg. Proceedings must be instituted within two months of the publication of the measure. Grounds for annulment may relate *inter alia* to the right to respect for property, or to procedural guarantees such as the right to be heard or the obligation to state reasons. Jurisprudence of the EU Courts in Luxembourg has been recently developing on these issues, as the EU authorities are increasingly resorting to restrictive measures of asset freeze. It is necessary to take this case-law into account when assessing the validity of the current freezing measures against Russian and Ukrainian nationals.