

II

(Non-legislative acts)

REGULATIONS

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

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 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.

⁽¹⁾ See page 26 of this Official Journal.

- (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⁽¹⁾ and Directive 95/46/EC of the European Parliament and of the Council⁽²⁾.
- (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;

⁽¹⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁽²⁾ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

- (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.

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.

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;
- (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
- (b) cooperate with the competent authority in any verification of such information.

2. Any additional information received directly by the Commission shall be made available to the Member States.

3. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

4. Paragraph 3 shall not prevent Member States from sharing that information, in accordance with their national law, with the relevant authorities of Ukraine and other Member States where necessary for the purpose of assisting the recovery of misappropriated funds.

Article 9

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2.

Article 10

1. The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen or withheld as a result of negligence.

2. Actions by natural or legal persons, entities or bodies shall not give rise to any liability of any kind on their part if they did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibitions set out in this Regulation.

Article 11

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 Regulation, 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 acting through or on behalf of one of the persons, entities or bodies referred to in point (a).

2. 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 natural or legal person, entity or body seeking the enforcement of that claim.

3. This Article is without prejudice to the right of the natural or legal 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 Regulation.

Article 12

1. The Commission and Member States shall inform each other of the measures taken under this Regulation and share any other relevant information at their disposal in connection with this Regulation in particular information:

- (a) in respect of funds frozen under Article 2 and authorisations granted under Articles 4, 5 and 6;
- (b) in respect of violation and enforcement problems and judgments handed down by national courts.

2. The Member States shall immediately inform each other and the Commission of any other relevant information at their disposal which might affect the effective implementation of this Regulation.

Article 13

The Commission shall be empowered to amend Annex II on the basis of information supplied by Member States.

Article 14

1. Where the Council decides to subject a natural or legal person, entity or body to the measures referred to in Article 2, it shall amend Annex I accordingly.

2. The Council shall communicate its decision, including the grounds for listing, to the natural or legal person, entity or body referred to in paragraph 1, either directly, if the address is known, or through the publication of a notice, providing such natural or legal person, entity or body with an opportunity to present observations.

3. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the natural or legal person, entity or body accordingly.

4. The list in Annex I shall be reviewed at regular intervals and at least every 12 months.

Article 15

1. Member States shall lay down the rules on 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.

2. Member States shall notify the rules referred to in paragraph 1 to the Commission without delay after 6 March 2014 and shall notify it of any subsequent amendment.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 5 March 2014.

Article 16

1. Member States shall designate the competent authorities referred to in this Regulation and identify them on the websites listed in Annex II. Member States shall notify the Commission of any changes in the addresses of their websites listed in Annex II.

2. Member States shall notify the Commission of their competent authorities, including the contact details of those competent authorities, without delay after the entry into force of this Regulation, and shall notify it of any subsequent amendment.

3. Where this Regulation sets out a requirement to notify, inform or otherwise communicate with the Commission, the address and other contact details to be used for such communication shall be those indicated in Annex II.

Article 17

This Regulation shall apply:

- (a) within the territory of the Union, including its airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State;
- (c) to any person inside or outside the territory of the Union who is a national of a Member State;
- (d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.

Article 18

This Regulation shall enter into force on the date of its publication in the *Official Journal of the European Union*.

For the Council
The President
D. KOURKOULAS

ANNEX I

List of natural and legal persons, entities and bodies referred to in Article 2

	Name	Identifying information	Statement of reasons	Date of listing
1.	Viktor Fedorovych Yanukovych	born on 9 July 1950, former President of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
2.	Vitalii Yuriyovych Zakharchenko	born on 20 January 1963, former Minister of Internal Affairs	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
3.	Viktor Pavlovych Pshonka	born on 6 February 1954, former Prosecutor General of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
4.	Oleksandr Hryhorovych Yakymenko	born on 22 December 1964, former Head of Security Service of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
5.	Andriy Volodymyrovych Portnov	born on 27 October 1973, former Adviser to the President of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
6.	Olena Leonidivna Lukash	born on 12 November 1976, former Minister of Justice	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
7.	Andrii Petrovych Kliuiev	born on 12 August 1964, former Head of Administration of President of Ukraine	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014

	Name	Identifying information	Statement of reasons	Date of listing
8.	Viktor Ivanovych Ratushniak	born on 16 October 1959, former Deputy Minister of Internal Affairs	Person subject to criminal proceedings in Ukraine to investigate crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
9.	Oleksandr Viktorovych Yanukovych	born on 1 July 1973, son of former President, businessman	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
10.	Viktor Viktorovych Yanukovych	born on 16 July 1981, son of former President, Member of the Verkhovna Rada of Ukraine	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
11.	Artem Viktorovych Pshonka	born on 19 March 1976, son of former Prosecutor General, Deputy Head of the faction of Party of Regions in the Verkhovna Rada of Ukraine	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
12.	Serhii Petrovych Kliuiev	born on 12 August 1969, businessman, brother of Mr. Andrii Kliuiev	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
13.	Mykola Yanovych Azarov	born on 17 December 1947, Prime Minister of Ukraine until January 2014	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
14.	Oleksii Mykolayovych Azarov	son of former Prime Minister Azarov	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
15.	Serhiy Vitaliyovych Kurchenko	born on 21 September 1985, businessman	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014

	Name	Identifying information	Statement of reasons	Date of listing
16.	Dmytro Volodymyrovych Tabachnyk	born on 28 November 1963, former Minister of Education and Science	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
17.	Raisa Vasylivna Bohatyriova	born on 6 January 1953, former Minister of Health	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014
18.	Ihor Oleksandrovych Kalinin	born on 28 December 1959, former Adviser to the President of Ukraine	Person subject to investigation in Ukraine for involvement in crimes in connection with the embezzlement of Ukrainian State funds and their illegal transfer outside Ukraine.	6.3.2014

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ANNEX II

Websites for information on the competent authorities and address for notification to the European Commission

BELGIUM

<http://www.diplomatie.be/eusanctions>

BULGARIA

<http://www.mfa.bg/en/pages/135/index.html>

CZECH REPUBLIC

<http://www.mfcr.cz/mezinarodnisankce>

DENMARK

<http://um.dk/da/politik-og-diplomati/retsorden/sanktioner/>

GERMANY

<http://www.bmwi.de/DE/Themen/Aussenwirtschaft/aussenwirtschaftsrecht,did=404888.html>

ESTONIA

http://www.vm.ee/est/kat_622/

IRELAND

<http://www.dfa.ie/home/index.aspx?id=28519>

GREECE

<http://www.mfa.gr/en/foreign-policy/global-issues/international-sanctions.html>

SPAIN

<http://www.exteriores.gob.es/Portal/es/PoliticaExteriorCooperacion/GlobalizacionOportunidadesRiesgos/Documents/ORGANISMOS%20COMPETENTES%20SANCIONES%20INTERNACIONALES.pdf>

FRANCE

<http://www.diplomatie.gouv.fr/autorites-sanctions/>

CROATIA

<http://www.mvep.hr/sankcije>

ITALY

http://www.esteri.it/MAE/IT/Politica_Europea/Deroghe.htm

CYPRUS

<http://www.mfa.gov.cy/sanctions>

LATVIA

<http://www.mfa.gov.lv/en/security/4539>

LITHUANIA

<http://www.urm.lt/sanctions>

LUXEMBOURG

<http://www.mae.lu/sanctions>

HUNGARY

http://www.kulugyminiszterium.hu/kum/hu/bal/Kulpolitikank/nemzetkozi_szankciok/

MALTA

http://www.doi.gov.mt/EN/bodies/boards/sanctions_monitoring.asp

NETHERLANDS

www.rijksoverheid.nl/onderwerpen/internationale-vrede-en-veiligheid/sancties

AUSTRIA

http://www.bmeia.gv.at/view.php3?f_id=12750&LNG=en&version=

POLAND

<http://www.msz.gov.pl>

PORTUGAL

<http://www.portugal.gov.pt/pt/os-ministerios/ministerio-dos-negocios-estrangeiros/quero-saber-mais/sobre-o-ministerio/medidas-restritivas/medidas-restritivas.aspx>

ROMANIA

<http://www.mae.ro/node/1548>

SLOVENIA

http://www.mzz.gov.si/si/zunanja_politika_in_mednarodno_pravo/zunanja_politika/mednarodna_varnost/omejevalni_ukrepi/

SLOVAKIA

http://www.mzv.sk/sk/europske_zalezitosti/europske_politiky-sankcie_eu

FINLAND

<http://formin.finland.fi/kvyhteistyo/pakotteet>

SWEDEN

<http://www.ud.se/sanktioner>

UNITED KINGDOM

<https://www.gov.uk/sanctions-embargoes-and-restrictions>

Address for notifications to the European Commission:

European Commission
Service for Foreign Policy Instruments (FPI)
EEAS 02/309
B-1049 Brussels
Belgium
E-mail: relex-sanctions@ec.europa.eu
