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Commission Notice

**COMMISSION GUIDANCE NOTE ON THE IMPLEMENTATION OF CERTAIN
PROVISIONS OF COUNCIL REGULATION (EU) 2020/1998**

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On 7 December 2020, the European Union adopted a restrictive measures (sanctions) regime to address serious human rights violations and abuses worldwide – the EU Global Human Rights Sanctions Regime. This sanctions regime consists of two legal acts: Council Decision (CFSP) 2020/1999 ('the Decision')¹ and Council Regulation (EU) 2020/1998 ('the Regulation')². The latter act is addressed to all persons, entities and bodies under EU jurisdiction ('EU operators')³, for which it creates legal obligations.

The aim of this note⁴ is to provide guidance on certain provisions in the Regulation, for the purpose of ensuring uniform implementation by EU operators and national competent authorities ('NCA'). The note is presented in the form of answers to the questions considered most likely to arise. Should further questions arise, the Commission may revise or extend the note.

For more information on the EU Global Human Rights Sanctions Regime, please also consult the European External Action Service (EEAS) "Questions and Answers on the EU Global Human Rights Sanctions Regime (EUGHRSR)"⁵.

1. What types of sanctions are in place?

This sanctions regime comprises two types of measures, which are common to most EU sanctions regimes: financial sanctions and restrictions on movement (travel ban). There are no arms embargoes or sectoral/economic sanctions, such as import/export bans, in this particular regime.

The Regulation concerns the application of the financial sanctions (Article 3). These consist of an asset freeze and a prohibition to make funds and economic resources available to the natural and legal persons, entities and bodies targeted by the sanctions and listed in Annex I to the Regulation ('listed persons').

¹ Council Decision (CFSP) 2020/1999 concerning restrictive measures against serious human rights violations and abuses, OJ L 410I, 7.12.2020, p. 13.

² Council Regulation (EU) 2020/1998 concerning restrictive measures against serious human rights violations and abuses, OJ L 410I, 7.12.2020, p. 1.

³ See also Question 2.

⁴ This note has been conceived as a guidance document where the Commission sheds light on its current understanding of a number of provisions of the Regulation. The note does not aspire to cover all provisions in an exhaustive manner, nor does it create any new legislative rules. The Commission oversees the application of Union law under the control of the Court of Justice of the European Union. Pursuant to the Treaties, only the Court of Justice of the European Union can provide legally binding interpretations of acts of the institutions of the Union.

⁵ https://eeas.europa.eu/headquarters/headquarters-homepage/90013/questions-and-answers-eu-global-human-rights-sanctions-regime_en

2. Who must comply with the provisions of the Regulation?

EU sanctions create legal obligations for all EU operators, and in respect of any business conducted within the EU. Article 19 of the Regulation defines the scope of this jurisdiction⁶.

EU sanctions are expected to produce effects in third countries through pressure on the listed persons. However, they do not apply extra-territorially. In other words, they do not create obligations for non-EU operators, unless the business is conducted at least partly within the EU.

3. What do the financial sanctions entail?

EU operators must comply with the obligation to freeze all assets (funds and economic resources) of the listed persons, and must also ensure that they do not make any funds or economic resources available to the listed persons (Article 3 of the Regulation). See also Question 4 and Question 5.

In principle, conducting business with a listed person involves financial transactions. This will likely imply either a change in the form of the listed person's funds (for example, changing the amount or location of the funds), a use of its economic resources, or making funds or economic resources available to the listed person, all of which are prohibited.

The notions of 'funds', 'economic resources', 'freezing of funds' and 'freezing of economic resources' are defined in Article 1 of the Regulation.

4. What does the freezing of assets mean?

The Regulation requires EU operators to freeze the funds of listed persons. In other words, EU operators must prevent dealing with such funds in any way that would result in any change to their features that would enable the funds to be used (by anyone). This means, for example, that an EU bank holding the accounts of a listed person must prevent transfers that would change the location of the funds frozen, and that an EU citizen holding shares in an investment fund on behalf of a listed person must prevent any alterations that would change the shares' ownership.

The Regulation also requires EU operators to freeze the economic resources of listed persons. In other words, EU operators must prevent the use of such resources for the obtainment of funds, goods or services in any way. In principle, and for example, this means that an EU airport should not allow the plane of a listed person to operate flights, and that an EU real estate agency managing the property of a listed person should not allow it to be rented out. The prohibition does not concern resources that are only suitable for personal use or consumption, such as electricity or food. In case of doubt, see also Question 13.

⁶ The Regulation applies within the territory of the Union, including its airspace; on board any aircraft or vessel under the jurisdiction of a Member State; to any citizen of a Member State, inside or outside the territory of the Union; to any legal person, entity or body, inside or outside the territory of the Union, incorporated or constituted under the law of a Member State; and to any legal person, entity or body, in respect of any business done in whole or in part within the Union.

Note that an asset freeze, unlike confiscation, does not affect the ownership of the funds or economic resources concerned.

5. What does the prohibition to make funds and economic resources available mean?

This measure prohibits EU operators from putting any funds or economic resources at the disposal of listed persons directly or indirectly, whether by gift, sale, barter or any other means, including the return of the listed person's own resources.

In principle, and for example, an EU business is not allowed to sell or deliver products or services to a listed person, even if in exchange for adequate payment; an EU citizen is not allowed to work for a listed company; and a third-country citizen is not allowed to make donations, from the territory of a Member State, to a listed person.

6. Are there additional obligations with which EU operators must comply?

i) Non-circumvention (Article 10 of the Regulation)

EU operators are prohibited from taking part, knowingly and intentionally, in any activities which circumvent the financial sanctions. Such activities can include, for example, operating as a front company for a listed entity, or conducting transactions in the EU at the direction of a listed person.

ii) Supplying information (Article 9 of the Regulation)

EU operators must supply to the NCA any information which would facilitate compliance with the Regulation, transmit this information also to the Commission, and cooperate with the NCA in the possible follow-up. Such information includes details of any accounts frozen (e.g. account holder, number, value of funds frozen) and incoming transfers; attempts by customers or other persons to circumvent the Regulation; ownership or control over a non-listed entity by a listed person; and any other details which may be useful to the NCA.

Some Member States have laid down specific reporting procedures. Further details can be provided by the NCA. See also Question 13.

7. How can EU operators find out who is targeted by these sanctions?

The names and identifying information of the listed persons can be found in Annex I to the Regulation, along with the specific reasons why these persons are listed. The Council of the EU is responsible for amending the list. It does so by means of Council Implementing Regulations, which are published in the Official Journal of the European Union (OJ)⁷. The names and identifying information of the listed persons are also reflected in the EU Sanctions Map⁸ and in the Financial Sanctions Database⁹, both of which are freely accessible online.

⁷ <https://eur-lex.europa.eu/oj/direct-access.html>

⁸ <https://www.sanctionsmap.eu/>

As per Article 2(3) of the Regulation, the listed persons can be State actors (for example, government bodies or officials); other actors exercising effective control or authority over a territory; and other non-State actors¹⁰ (for example, private individuals and business entities).

8. What about entities owned or controlled by listed persons? Do the sanctions also apply to them?

Only the persons listed in Annex I to the Regulation are directly targeted by EU sanctions, and all funds and economic resources belonging to, owned, held or controlled by these listed persons must be frozen. Thus, EU operators must be very careful when engaging with an entity that is owned or controlled by a listed person.

If, for example, an Entity 'X' is owned or controlled by a listed person, it can be presumed that this control extends to all assets nominally owned by Entity X. Therefore, EU operators must freeze all funds and economic resources of Entity X, pursuant to Article 3(1) of the Regulation. Entity X may obtain the lifting of the freeze on some or all of its assets by demonstrating that these are in fact not controlled by the listed person¹¹.

If Entity X is owned or controlled by the listed person, EU operators are moreover prohibited from making available any funds or economic resources to Entity X. This would be considered as making them indirectly available to the listed person and would be in breach of Article 3(2) of the Regulation, unless it can be reasonably determined, on a case-by-case basis using a risk-based approach, taking into account all of the relevant circumstances, that the funds or economic resources will not be used by or for the benefit of the listed person.

9. How can the presence of ownership or control be determined?

a) Ownership¹²

If the listed person possesses more than 50% of the proprietary rights of Entity X or has majority interest in Entity X, then it is considered that the listed person owns Entity X.

b) Control¹³

If any of the following non-exhaustive criteria are satisfied, it can be considered that the listed person controls Entity X, alone or pursuant to an agreement with another

⁹ <https://webgate.ec.europa.eu/europeaid/fsd/fsf>

¹⁰ As laid down in Article 1(4) of Council Decision (CFSP) 2020/1999 concerning restrictive measures against serious human rights violations and abuses.

¹¹ Commission Opinion of 19.06.2020 on Article 2 of Council Regulation (EU) No 269/2014 (C(2020 4117 final): https://ec.europa.eu/info/files/200619-opinion-financial-sanctions_en

¹² See also the EU Best Practice for the effective implementation of restrictive measures of 4 May 2018 (8519/18), available at <https://www.consilium.europa.eu/en/policies/sanctions>

¹³ Ibid.

shareholder or other third party, unless the contrary can be established on a case-by-case basis:

- (a) having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of Entity X;
- (b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of Entity X who have held office during the relevant and the previous financial year;
- (c) controlling alone, pursuant to an agreement with other shareholders in or members of Entity X, a majority of shareholders' or members' voting rights in Entity X;
- (d) having the right to exercise a dominant influence over Entity X, pursuant to an agreement entered into with Entity X, or to a provision in its Memorandum or Articles of Association, where the law governing Entity X permits its being subject to such an agreement or provision;
- (e) having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right¹⁴;
- (f) having the right to use all or part of the assets of Entity X;
- (g) managing the business of Entity X on a unified basis, while publishing consolidated accounts;
- (h) sharing jointly and severally the financial liabilities of Entity X, or guaranteeing them.

10. Are there any exceptions from the financial sanctions?

The Regulation contains a number of exceptions¹⁵ (derogations).

These derogations enable the release of frozen funds or economic resources, and/or the making available of funds or economic resources to listed persons. This is subject to prior authorisation from the relevant NCA¹⁶, which can only be granted under strict and specific conditions:

- **Specific needs:** if the release or the making available of funds or economic resources is necessary to satisfy the **basic needs** of a listed person and dependent family members of natural persons, including payments for food, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges; to cover the listed person's **legal expenses** or **extraordinary expenses**¹⁷; to ensure the **routine holding or maintenance** of

¹⁴ Including, for example, by means of a front company.

¹⁵ Exceptions from EU sanctions usually take the form of derogations or exemptions. Derogations mean that a restricted (prohibited) action can be carried out only after the NCA has granted an authorisation. Exemptions mean that a restriction does not apply when the purpose of the action coincides with the scope of the exemption; as a result, persons falling within the purview of the exemption can carry out the action at hand without any delay. No exemptions are included in this sanctions regime.

¹⁶ Within two weeks of granting any authorisation, the Member State concerned must inform the other Member States and the Commission.

¹⁷ The NCA decides, on a case-by-case basis, which expenses can be considered as 'extraordinary'.

frozen assets; or to be used for **official purposes** of a diplomatic or consular mission or international organisation (Article 4 of the Regulation);

- **Humanitarian aid:** if the release or the making available of funds or economic resources is necessary for the purpose of providing humanitarian aid, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations (Article 5 of the Regulation; see also Question 11);
- **Decisions:** if the release is prescribed by certain types of arbitral, judicial or administrative decisions rendered prior to or in certain cases after the imposition of sanctions, only if the decision is not for the benefit of a listed person and the recognition of the decision is not contrary to public policy in the Member State concerned (Article 6 of the Regulation);
- **Prior contracts:** if a payment is due under a contract or agreement concluded or an obligation that arose before the imposition of sanctions, provided that the funds or economic resources will be used for a payment by a listed person and that the payment is not for the benefit of a listed person (Article 7 of the Regulation).

Potential applicants can seek guidance from their NCA to identify the documents needed and procedures in place to obtain an authorisation.

In addition, Article 8 of the Regulation allows the crediting of frozen accounts and the addition of interest and other earnings, of payments due under contracts or obligations pre-dating the sanctions, and of payments due under certain types of decisions (judicial, administrative or arbitral) valid in a Member State, as long as all such additions are also frozen. This is an exception from the prohibition to make funds and economic resources available to listed persons, and it does not require a prior authorisation by the NCA. EU operators must nonetheless comply with Article 9 of the Regulation. See also Question 6.

11. What does the humanitarian derogation entail?

EU sanctions are not meant to impede the delivery of humanitarian assistance. The humanitarian derogation laid down in Article 5 of the Regulation aims to address and minimise potential obstacles to the delivery of humanitarian aid. It allows for funds and economic resources to be released or made available to listed persons, provided that such funds or resources are necessary solely for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations. Doing so requires prior authorisation from the NCA.

According to International Humanitarian Law, Article 214(2) of the Treaty on the Functioning of the European Union and the humanitarian principles of humanity, impartiality, independence and neutrality, humanitarian aid must be provided without discrimination. The identification as an individual in need must be made on the basis of these principles. Once this identification has been made, no vetting of the final beneficiary who is an individual in need is required.

12. What happens if the Regulation is not complied with by EU operators?

Article 16 of the Regulation requires Member States to lay down the applicable penalties, and to ensure their enforcement. These penalties, which must be effective, proportionate and dissuasive, usually pertain to the area of criminal law and/or administrative law.

13. Where can EU operators receive more information?

EU sanctions are to be implemented by the Member States, which are also responsible for verifying their application. The European Commission supports the uniform implementation of sanctions throughout the EU, and monitors their enforcement by Member States.

A list of the NCAs and their contact details, together with the contact details of the European Commission, can be found in Annex II to the Regulation.