Assets freeze and prohibition to make funds and economic resources available

FREQUENTLY ASKED QUESTIONS – AS OF 8 April 2022

1. Do the sanctions in Article 2 of Council Regulation (EU) No 269/2014 apply to the companies owned, controlled, managed by or otherwise associated with listed persons?

Only the persons and entities listed in Annex I to the Regulation are directly targeted by sanctions.

However, if the listed person is deemed to own or control a non-listed entity, it can be presumed that the control also extends to the assets of that entity, and that any funds or economic resources made available to that entity would reach the listed person.

This presumption can be rebutted on a case-by-case basis by the entity concerned, if it can be demonstrated that some or all of its assets are outside the control of the listed person, and/or that funds or economic resources made available to it would in fact not reach the listed person.

For further details on ‘control’, please see the Commission opinion of 19 June 2020 and Commission opinion 8 June 2021.

2. Article 2 of Council Regulation (EU) No 269/2014 refers to legal persons, entities or bodies, or natural or legal persons, entities or bodies associated with them, as listed in Annex I. Where can I find the ‘natural or legal persons, entities or bodies associated with them’?

Strictly speaking, only the persons and entities who/which appear under the column ‘Name’ in Annex I to Council Regulation (EU) 269/2014 are directly subject to an asset freeze and a prohibition to make funds and economic resources available to them or for their benefit. However, these restrictions can affect transactions with natural or legal persons, entities or bodies associated with them, some of which happen to be mentioned in the ‘Identifying information’ and/or ‘Reasons’ columns of Annex I to Council Regulation (EU) 269/2014. Operators need to exert the highest caution when dealing with associated persons or entities. If non listed entities are deemed to be owned or controlled by listed persons or entities, their assets must be frozen as well, and no funds or economic resources can be made available to them.

This presumption can be rebutted on a case-by-case basis by the entity concerned, if it can be demonstrated that some or all of its assets are outside the control of the listed person, and/or that funds or economic resources made available to it would in fact not reach the listed person.
3. Aggregate ownership: If two or more listed persons are each minority shareholders of a non-listed entity, but their aggregate ownership amounts to more than 50% of that entity, should that entity be considered as owned by listed persons?

One should take into account the aggregated ownership of the entity. For example, if one listed person owns 30% of the entity and another listed person owns 25% of the entity, the entity should be considered as owned and controlled by listed persons.

4. A listed person is deemed to control a business group that also includes a listed entity. Should the assets of all the companies belonging to the group be considered as controlled by the listed person and accordingly be subject to restrictions under Article 2 of Council Regulation (EU) No 269/2014?

If control of the listed person over the group as a whole is determined, then the conclusion can extend to all subsidiaries within the group. If control of the listed person was determined over a single entity in the group (e.g. the listed entity), then this would have only impacted its own subsidiaries, and not other companies in the wider group.

5. If an EU citizen provides manual or intellectual labour to an EU entity that is owned or controlled by a listed person, would that be considered as making economic resources available indirectly to the listed person?

As indicated in the Commission opinion of 19 June 2020, the Commission is of the view that working for an owned or controlled entity can be considered as making economic resources indirectly available to the listed person exerting ownership/control over that entity insofar as this labour enables the listed person to obtain funds, goods, or services. The latter assessment is for the national competent authority to make.

6. Does the derogation in Article 6 of Council Regulation (EU) No 269/2014 allow for the payment of salaries of EU citizens by entities located in Member States considered to be owned or controlled by a listed person?

Assets of an owned or controlled entity that are frozen because they were deemed to be controlled by the listed person can be released on the basis of an authorisation granted in line with Article 6 of Council Regulation (EU) No 269/2014, if the conditions specified therein are fulfilled, notably that payment is due under a contract or agreement that was concluded or an obligation that arose before the date on which the person was listed in Annex I to that Regulation; the frozen funds are used for a payment by a listed person (or in this case the owned/controlled entity), and the payment is not made towards any listed person.

7. Do public entities responsible for the administration of state registries (ministries and state-owned companies) have the right to decide themselves on whether some property is indirectly owned by sanctioned persons and freeze it immediately, without
referring the case to the authority responsible for the implementation of financial sanctions under national law?

The obligation to freeze the assets is activated as soon as the public entity holding the assets has reasonable grounds to believe that these are owned or controlled by a listed person. Prompt application of the sanctions is key to preventing asset flight. It is however recommended to ensure coordination with the authority responsible for the implementation of financial sanctions, which may have further information and investigative tools enabling a definitive assessment of ultimate beneficial ownership.

8. If a national competent authority freezes the funds of a company owned by a listed person and the company has no possibility to buy resources necessary for its operation, is there a possibility for temporary administration of the company by the state or involvement of state representatives in its management, without the objective of making profit, but to avoid worsening its business condition during the asset freeze?

Sanctions in general and asset freezes in particular do not entail expropriation and are of a temporary nature. Furthermore, EU operators and institutions holding frozen assets should avoid outcomes causing a disproportionate prejudice to the listed person, which would go beyond the objectives of restrictive measures. It is for the national competent authority to determine how to fulfil and monitor this objective, on a case-case by basis.

9. What measure (if any) should competent authorities adopt in respect of listed shareholders with qualifying holdings in an EU bank? Is the freezing of voting rights appropriate/required? In that case, should a proportionality approach be applied, e.g. by starting with increased monitoring of governance?

Shares qualify as ‘funds’ and therefore must be frozen if belonging to, owned, held or controlled by a listed person. Accordingly, this means that it is prohibited for the listed person to exercise any voting rights which could lead to any change in relation to these shares (e.g. in their volume, amount, location, ownership, possession, character, destination etc.).

10. If an EU citizen is a board member in a listed Russian/Belarusian company and at the same time a board member in an EU company, should that person resign from one such post? Can a person be considered of good repute/integrity if he/she is a board member in a listed company?

EU sanctions are targeted, meaning that they apply only to those persons and entities that are subject to a specific restriction (e.g. asset freeze, financing ban etc.). Therefore, sanctions on listed entities do not automatically extend to their board members. However, board members may be themselves listed.
The notions of good repute/integrity are indeterminate legal concepts which are not defined in EU sanctions law.

Elsewhere in EU law, the notion of good repute has been interpreted by the Court of Justice of the EU (case T-27/19, Pilatus v European Central Bank, point 73), in the context of Article 23(1) of Directive 2013/36 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms. According to the Court, in the absence of an exhaustive definition of that concept or a list of conduct which may fall within the scope of that concept, the competent authorities are required to examine on a case-by-case basis whether the criterion of good repute is met by a shareholder seeking to acquire a qualifying holding in a credit institution. This requires taking into account the relevant facts (among which the fact that the person in question sits on the board of a sanctioned entity is relevant), the reasons underlying the criterion and the objectives which that criterion is intended to secure. The principle of legal certainty does not, therefore, preclude those authorities from enjoying discretion in the application of the criteria in question.

11. Should an EU bank freeze funds that are transferred via a listed bank, when both the sender of the funds and the receiver of the funds are non-listed persons?

In principle, all assets of a listed entity must be frozen. That includes funds coming from it and funds going to it. See in this regard the Commission opinion of 4 July 2019 which states, in a similar scenario, that funds of a non-listed person that are deposited in or even just transferred to a listed bank can be considered to be “held”, in the meaning of Article 2 of Council Regulation (EU) No 269/2014, albeit temporarily, by the listed bank in question. Article 2 on the assets freeze does not require a minimum duration for the possession of the funds by the listed entity.

This means transfers from a listed bank should not be rejected nor should the funds be returned to the sender; instead, the funds should remain blocked in the EU bank. It will be possible to request to the relevant national competent authority the release of those funds, for instance under the derogation envisaged in Article 6 of Council Regulation (EU) No 269/2014 concerning a payment by a listed person under a contract concluded before the date on which that person was listed.

12. Is it allowed to pay dividends to persons listed in Council Regulation (EU) No 269/2014 or to persons targeted by the financing restrictions in Council Regulation (EU) No 833/2014?

Dividends may be paid to the frozen accounts of persons listed in Annex I to Council Regulation (EU) No 269/2014, as per the derogation laid down in Article 7.2(b). In that case, the dividends must also be immediately frozen.
Separately, note that dividends may still be paid to legal persons and entities subject to a financing ban pursuant to Article 5 of **Council Regulation (EU) 833/2014** (e.g. credit institutions, Russian state-owned enterprises).

13. **Do ships (vessels) fall under the assets freeze?**

Ships fall under the asset freeze, which encompasses all assets owned or controlled by a listed person. This also means that no services, including maritime services, can be provided to ships owned by listed persons.


EU sanctions can indeed apply to intellectual property rights (IPRs). The EU has designated (listed) a number of individuals and legal persons as subject to sanctions. All funds and economic resources, directly or indirectly belonging to, held or controlled by the listed persons must be frozen.

In practice, any EU person, public institution and person doing business in the EU must prevent any transfer of, alteration of, access to, use of or other dealings with those frozen funds or resources. In particular, the freezing of a listed person’s economic resources means that any asset of the listed person, whether tangible or intangible, cannot be used by anyone to obtain other funds or assets. Since IPRs can qualify as ‘economic resources’, they are also subject to this restriction. This means that public institutions (e.g. a trademark register) must not enable the use of IPRs of a listed person, or of a person owned or controlled by a listed person (e.g. no property transfer should be registered).

EU sanctions also prohibit making further funds or economic resources available to listed persons or to entities owned/controlled by them. This means that no further transactions with those persons are possible (e.g. license fees for an IPR paid by an EU person to a person under sanctions).