

Asset freeze and prohibition to make funds and economic resources available

FREQUENTLY ASKED QUESTIONS – AS OF 19 MAY 2022

- 1. (AMENDED) 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 or benefit 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 or benefit the listed person.

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

- 2. (AMENDED) 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 or benefit the listed person.

3. Is there a list of the ownership percentages of firms owned by people on the sanctions' list?

No, this is a task for EU credit institution's compliance and due diligence departments. Some guidance on ownership/control can be found in [EU Best Practices](#). On that basis, it is possible to know which other firms than the banks, state-owned entities or other entities in the Annexes are affected by the restrictive measures. These should not be financed either directly or indirectly.

4. Can funds or economic resources be considered as being made available to a listed person via an entity he/she neither owns nor controls?

If the entity is neither owned nor controlled by the listed person, then the presumptions referred to in Question 1 do not apply to it. In that case, the entity as such is in principle not affected by the asset freeze or the prohibition to make funds or economic resources available to it.

However, it cannot be ruled out that funds or economic resources might be made indirectly available to listed persons via an entity which they neither own nor control (e.g. but is acting as an intermediary). This is to be assessed on a case-by-case basis, if there are indications of a possible sanctions breach.

5. If, before the listing took effect, the assets of a listed person were transferred to a non-listed third person (e.g. a family member), do the assets still need to be frozen?

Article 2(1) of [Council Regulation \(EU\) No 269/2014](#) does not apply retroactively. However, it does require the freezing of all assets currently belonging to, or held, owned or controlled by listed persons. If, at the time of the assessment, there are reasonable grounds to believe that certain assets "belong to" or are "controlled by" the listed person, even if they are nominally owned by someone else, then these assets must be frozen under Article 2(1). It does not matter when the assets were transferred.

In what regards the assessment, the criteria exemplified in the past by the Commission in the context of 'control' were non-exhaustive. In situations involving third persons (and possible family ties), other elements could also be taken into account, such as:

- the closeness of business and family ties between the listed person and the third person;
- the professional independence of the third person now owning the assets;
- previous gifts given to the third person and how they compare to the transaction in question;
- the frequency/regularity of previous gifts to the third person;
- the content of formal agreements between the listed person and the third person;

- the nature of the assets (e.g. whether these are shares in a company owned or controlled by the listed person).

6. Does the EU owner of shares or bonds in a company subject to an asset freeze as a result of its ownership or control by a listed person have a duty to freeze these shares or bonds?

Since the owner of the shares is the EU operator, not the listed person, no freezing is necessary as such under Article 2(1) of [Council Regulation \(EU\) No 269/2014](#).

7. Can the EU owner of the shares or bonds of a listed company sell them?

If the sale does not result in making funds or economic resources available to the listed company or for its benefit, it is allowed. However, it would be prohibited if the buyer were the company itself or any other person targeted by EU restrictive measures such as those in Article 2 of [Council Regulation \(EU\) No 269/2014](#). Furthermore, the transaction must not breach Article 5 or Article 5e of [Council Regulation \(EU\) No 833/2014](#).

8. 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 by listed persons.

9. 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 impact its own subsidiaries, but not other subsidiaries in the wider group.

10. 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.

11. 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.

12. For an existing bond, are non-listed entities entitled to receive payments so the listed entity can meet its contractual obligations to pay interest and principal?

In such a case, the payment could be made to a non-listed entity if an authorisation is granted by the [national competent authority](#), pursuant to Article 6 of [Council Regulation \(EU\) No 269/2014](#), whereby: *“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).”* The Regulation does not prohibit a general authorisation for payments to all holders of the security/bond, provided that the national competent authority can ascertain that all the payments comply with the conditions in Article 6 of [Council Regulation \(EU\) No 269/2014](#).

13. 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.

14. 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.

15. 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.).

16. 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.

17. Should the employment contract of listed persons employed in whatever function by an EU financial firm be terminated?

[Council Regulation \(EU\) No 269/2014](#) prohibits EU operators from making funds or economic resources available, directly or indirectly, to persons listed in the Annex to said Regulation. In principle, a salary payment would fall in the category of ‘making funds or economic resources available’. Nonetheless, Article 7(2)(b) of [Council Regulation \(EU\) No 269/2014](#) foresees an exception where, subject to prior authorisation, funds can be provided if they are necessary for fulfilling obligations stemming from a prior contract. The listed person may therefore remain in his/her employment. However, his/her salary would need to be paid on a frozen account.

18. 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 asset 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.

19. 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 \(EU\) No 833/2014](#) (e.g. credit institutions, Russian state-owned enterprises).

20. For an existing derivative contract (e.g. an interest rate swap) subject to daily margining requirements, is one party allowed to receive collateral that is contractually due even if the counterparty is a designated entity under [Council Regulation \(EU\) No 269/2014](#)?

In the situation where a designated entity is fulfilling a non-listed entity's margin call by making payments to that entity linked to an already concluded derivative contract, forbidding such payments would result in the absence of transfer of funds owed by the designated entity to the non-designated entity. This would amount to a transfer of economic resources to the designated entity. Considering the wide interpretation of the notion of 'making economic resources available' to listed entities by the Court of Justice, this situation is not compatible with the restrictive measures taken vis-à-vis those designated entities. Non-designated entities can therefore receive collateral.

21. In case of a trigger event, e.g. as a consequence of either party not meeting a margining requirement, many derivative contracts give the other party to the contract the right to foreclose the contract at replacement value. Is such foreclosure permitted?

[Council Regulation \(EU\) No 269/2014](#) foresees the possibility to derogate from Article 2. The foreclosure can be carried out if the conditions specified in Articles 6, 6b or 7 are fulfilled. If that is not the case, no foreclosure should be carried out.

22. Do ships (vessels) fall under the asset 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.

23. Do the restrictive measures in [Council Regulation \(EU\) No 269/2014](#) apply to intellectual property rights (patent applications, patents and related procedures) in the European Union?

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).

For more information on the treatment of intellectual property rights, please consult the dedicated [Q&As](#).

24. Does [Council Regulation \(EU\) No 269/2014](#) allow secondary trading of securities issued by an entity listed in Annex I?

Supposing the entity is not subject to securities transactions restrictions under Article 5 of [Council Regulation \(EU\) No 833/2014](#), secondary market trading of its securities would not be forbidden. Securities traded on a secondary market cannot be considered as "belonging to, owned, held or controlled by" the entity, nor can their purchase be considered as making funds or economic resources available to that entity. It should nonetheless be reminded that pursuant to Article 9 of [Council Regulation \(EU\) No 269/2014](#), it is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2 of said Regulation. If you believe you are witnessing sanctions violations or circumvention, these can be reported to your [national competent authority](#) or anonymously via the [EU whistle-blower tool](#).

25. (NEW) If the assets of a person listed under [Council Regulation \(EU\) No 269/2014](#) were transferred to an EU operator before that person's listing, can the operator be held accountable for having accepted them?

If a certain structure was created in order to assist a person to evade the effects of its possible future listing, then current, ongoing participation in that structure can amount to circumvention of the restrictive measures, if done knowingly and intentionally. Circumvention is prohibited under Article 9 of [Council Regulation \(EU\) No 269/2014](#). Article 9 can be breached even if the freezing of assets is not discontinued and no assets reach or benefit the now-listed person; mere participation in a structure created for that purpose can be considered as a breach. In what regards the cumulative requirements of knowledge and intent, see also the jurisprudence in [Case C-72/11](#), Afrasiabi and Others, in particular that these requirements are met where the operator "deliberately seeks that object or effect or is at least aware that its participation may have that object or that effect and accepts that possibility".