

UNNUMBERED DOCUMENTS

EXPLANATORY MEMORANDUM ON THE EUROPEAN UNION'S COMMON FOREIGN AND SECURITY POLICY

Council Decision (CFSP) 2017/2163 of 20 November 2017 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

Council Implementing Regulation (EU) 2017/2153 of 20 November 2017 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

Submitted by the Foreign and Commonwealth Office on 5 December 2017.

SUBJECT MATTER

1. The attached Council Decision (CFSP) 2017/2163, and Council Implementing Regulation (EU) 2017/2153, amend Council Decision 2014/145/CFSP and Council Implementing Regulation (EU) No.269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, concluding the most recent review of the listings under the EU's regime.
2. One individual has been proposed for listing under Annex 1 of Regulation (EU) No.269/2014.
3. The Council agreed to extend restrictive measures in the form of an EU-wide asset freeze and travel ban imposed against now 150 persons and 38 entities "responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, including actions on the future status of any part of the territory which are contrary to the Ukrainian Constitution, and persons, entities or bodies".
4. The Council has reviewed the designations and has **added one individual** to the list:

- **Dmitry Vladimirovich Ovsyannikov** – The Governor of Sevastopol

SCRUTINY HISTORY

5. An Explanatory Memorandum on this subject was last submitted for Parliamentary Scrutiny on 21 September 2017. It was cleared at the Chairman's sift on 11 October 2017. The House of Commons European Scrutiny Committee cleared the document as not legally or politically important on 13 November 2017.

MINISTERIAL RESPONSIBILITY

6. The Secretary of State for Foreign and Commonwealth Affairs is the Minister with overall responsibility for UK policy on the EU's Common Foreign and Security Policy.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

7. The UK's Foreign Affairs policy is a reserved matter under the UK's devolution settlements and no devolved administration interests arise. The devolved administrations have therefore not been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

8. Legal Basis: Article 29 of the Treaty on European Union for the Council Decision and Article 215 of the Treaty on the Functioning of the European Union for the Council Regulations.
9. Voting Procedures: Council acting by Unanimity for the Council Decision and Qualified Majority Voting for the Council Regulation.
10. Impact on UK law: The restrictions set out in Council Decision 2014/145/CFSP, which this Decision amends and extends for a further period of six months, are already in full force in the UK and therefore no changes to the domestic legislation are necessary. The Implementing Regulation will be directly applicable in the United Kingdom. In the UK, DIT administers and implements trade sanctions and HM Treasury administers and implements the asset freeze.
11. Application to Gibraltar: Yes.
12. Fundamental rights analysis: The procedures for designating individuals under Council Decision 2014/145/CFSP and Council Regulation 269/2014 which this Decision and Implementing Regulation amend and extend (the Principal Decision and Regulation) are considered to be compliant with fundamental rights.
13. Provision is made under the Principal Decision and Regulation for competent authorities of Member States to authorise the release of frozen funds where necessary in certain circumstances, for example, to satisfy the basic needs of listed persons or their dependents and where necessary for extraordinary expenses. Decisions by competent authorities of Member States in this regard would be subject to challenge in Member States' courts. In addition, the Principal Decision provides for Member States to grant exemptions from the travel ban where travel is justified, *inter alia*, on the basis of urgent humanitarian need.
14. The Principal Decision and Regulation respect fundamental rights, notably the right to an effective remedy and to a fair trial and the right to the protection of personal data.

15. Both the Principal Decision and Regulation state that the Council shall provide designated persons and entities with an opportunity to present observations on the reasons for their listing. Where observations are submitted, the Council shall review its decision in the light of those observations and inform the person or entity concerned accordingly. In addition, the measures will be kept under review. Furthermore, the Courts of the European Union must, in accordance with the powers conferred on them, ensure the review of the lawfulness of all European Union acts in respect of fundamental rights. Those fundamental rights include respect for the rights of the defence and the right to effective judicial protection.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

16. None.

SUBSIDIARITY

17. Action by the EU is appropriate to ensure the uniform application across the EU of the sanctions measures against Russia.

POLICY IMPLICATIONS

18. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty on European Union on 29 March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period, the Government will also continue to negotiate, implement and apply EU legislation.
19. Tier II sanctions were imposed on Russia in March 2014, and subsequently expanded and renewed every six months, in response to its illegal annexation of Crimea and continued destabilisation of eastern Ukraine. The UK fully supports the EU's strategy for resolving the Ukraine crisis through diplomacy, supported by political and economic restrictive measures on Russia, conditional on the full implementation of the Minsk agreements.
20. Evidence for the listing of the Governor meets the criteria of actively supporting or implementing actions or policies which undermine or threaten the territorial integrity, sovereignty, and independence of Ukraine. The Governor of Sevastopol was personally appointed to a position that directly contravenes the EU's non-recognition policy of the illegal annexation of Crimea and Sevastopol. The Governor has additionally used his capacity to publically strive for further integration of the illegally annexed Crimean peninsula into the Russian Federation.
21. At the time of writing, Russia has not returned Crimea to Ukraine and the Minsk agreements have not been implemented in full. Maintaining and updating Tier II sanctions clearly keeps pressure on Russia to fulfil its obligations.

Ensuring the EU continues to stand up to Russian aggression, in Ukraine and elsewhere, is a core priority for the UK.

REGULATORY IMPACT ASSESSMENT

22. Not applicable.

FINANCIAL IMPLICATIONS

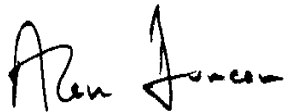
23. None.

TIMETABLE

24. The Council Decision, and the Council Implementing Regulation were adopted at the Justice and Home Affairs Council on 20 November 2017.

OTHER OBSERVATIONS

25. None.

A handwritten signature in black ink, appearing to read 'Alan Duncan'.

Rt Hon Sir Alan Duncan MP
Minister for Europe and the Americas
Foreign and Commonwealth Office