

## **Explanatory Statement**

Issued by the Authority of the Minister for Foreign Affairs

### *Autonomous Sanctions Regulations 2011*

#### *Autonomous Sanctions (Export Sanctioned Goods—specified Ukraine regions) Designation 2023*

Autonomous sanctions are measures not involving the use of armed force which a government imposes as a matter of foreign policy – as opposed to an international obligation under a United Nations Security Council decision – in response to situations of international concern. They are a discretionary tool which the Government can apply, alone or with like-minded countries where appropriate, to address egregious situations of international concern.

The *Autonomous Sanctions Regulations 2011* (the Regulations) make provision for, amongst other things, the designation of goods as ‘export sanctioned goods’ for a country or part of a country. The supply, sale or transfer of ‘export sanctioned goods’ to specified Ukraine regions, for use in specified Ukraine regions or for the benefit of specified Ukraine regions is prohibited under regulations 4 and 12 of the Regulations. For specified Ukraine regions, the provision of services which assist with, or which are provided in relation to, the supply, sale or transport of export sanctioned goods or the manufacture, maintenance or use of export sanctioned goods is also prohibited under regulations 5 and 13.

The purpose of the *Autonomous Sanctions (Export Sanctioned Goods—specified Ukraine regions) Designation 2023* (the Designation) is to expand, under subregulation 4(3) of the Regulations, what goods are ‘export sanctioned goods’ for specified Ukraine regions to include certain machinery and related parts. The machinery and related parts designated as export sanctioned goods for specified Ukraine regions in the Designation are described by reference to codes in the Australian Harmonized Export Commodity Classification (AHECC), 2022. This document is incorporated as existing at the time of the commencement of the Designation and could in October 2023 be freely accessed on the Australian Bureau of Statistics website ([Australian Harmonized Export Commodity Classification \(AHECC\), 2022 | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/australian-harmonized-export-commodity-classification-ahecc-2022)).

The prohibition on the export of such goods is in response to Russia’s illegal war against Ukraine. Russia’s aggression towards Ukraine presents serious threat to the international rules-based order which underpins global security. Prohibiting the export of machinery and related parts to areas of Ukraine temporarily controlled by Russia would assist with ensuring that Australian goods are not aiding Russia’s aggression in Ukraine.

When considering whether to apply autonomous sanctions, the Government considers Australia’s national interest, including bilateral, regional and multilateral equities, and the impact of sanctions on Australia’s economic, security or other interests.

Details of the Designation are set out at **Attachment A**.

The legal framework for the imposition of autonomous sanctions by Australia, of which the Regulations are part, was the subject of extensive consultation with governmental and non-governmental stakeholders when introduced, and when amended to include the

Russia/Ukraine sanctions. The Designation, which expands the listed goods considered to be ‘export sanctioned goods’ for specified Ukraine regions, does not alter the existing regulatory framework. Public consultations on the proposed expansion of ‘export sanctioned goods’ for specified Ukraine regions to include machinery and related parts were undertaken between 22 May and 19 June 2023. No submissions were received. The proposed expansion was also subject to consultation within government, including the Department of the Prime Minister and Cabinet, Australian Border Force, Australian Federal Police, Austrade, Department of Defence, Department of Industry, Science and Resources and Treasury.

The Office of Impact Analysis (OIA) has advised that a Regulation Impact Statement is not required (reference: OIA23-04939).

The Designation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A statement of compatibility with human rights is at **Attachment B**.

*Autonomous Sanctions (Export Sanctioned Goods—specified Ukraine regions)  
Designation 2023*

Section 1

The title of the instrument is the *Autonomous Sanctions (Export Sanctioned Goods—specified Ukraine regions) Designation 2023* (the Designation).

Section 2

Subsection 2(1) provides that the Designation commences the day it is registered.

Subsection 2(2) is a technical provision that makes clear that any information inserted in column 3 of the table about the specific date of commencement is not part of the Designation and can be inserted or edited at a later date.

Section 3

The Designation is made under subregulation 4(3) of the *Autonomous Sanctions Regulations 2022* (the Regulations).

Section 4

Regulation 4 of the Regulations sets out what constitutes a sanctioned supply for a country or part of a country. Provision of a sanctioned supply is prohibited under regulation 12, unless the Minister has granted a permit under regulation 18.

Item 3A of the table in subregulation 4(2) of the Regulations provides that export sanctioned goods for specified Ukraine regions are specified items relating to the creation, acquisition of development of infrastructure in certain the transport, telecommunications or energy sectors, or in relation to the exploitation of oil, gas and mineral reserves in specified Ukraine regions. The Minister for Foreign Affairs has the authority, under subregulation 4(3) of the Regulations, to designate by legislative instrument, additional goods as export sanctioned goods for a country or part of a country mentioned in the designation. This mechanism exists to ensure that the Australian Government is able to act swiftly to expand the existing export prohibitions that apply in respect of a sanctioned country, enabling Australia to be responsive to evolving situations of international concern.

Section 4 provides that goods that have been designated by the Minister as export sanctioned goods for specified Ukraine regions under subregulation 4(3) of the Regulations are listed in Schedule 1 of the instrument.

Schedule 1

Schedule 1 sets out goods that are designated as export sanctioned goods for Russia under subregulation 4(3) of the Regulations. These goods are machinery and related parts. A good is captured if it falls within a specified Australian Harmonized Export Commodity Classification (AHECC) code and meets the description as set out in the table in Part 1 of Schedule 1.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.*

### **AUTONOMOUS SANCTIONS (EXPORT SANCTIONED GOODS—SPECIFIED UKRAINE REGIONS) DESIGNATION 2023**

The *Autonomous Sanctions (Export Sanctioned Goods—specified Ukraine regions) Designation 2023* (the Designation) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Designation**

Autonomous sanctions are measures not involving the use of armed force which the Australian Government imposes and implements as a matter of foreign policy. They are a discretionary tool which the Government can apply, alone or with like-minded countries where appropriate, to address egregious situations of international concern.

The *Autonomous Sanctions Regulations 2011* (the Regulations) make provision for, amongst other things, the designation of goods as ‘export sanctioned goods’ for a country or part of a country. The supply, sale or transfer of ‘export sanctioned goods’ to specified Ukraine regions, for use in specified Ukraine regions or for the benefit of specified Ukraine regions is prohibited under regulations 4 and 12 of the Regulations.

Russia’s aggression towards Ukraine presents a serious threat to the international rules-based order which underpins global security. The purpose of the Designation is to expand, under subregulation 4(3) of the Regulations, what goods are ‘export sanctioned goods’ for specified Ukraine regions to include certain machinery and related parts. In prohibiting the export of such goods, Australia is demonstrating its condemnation of Russia’s illegal and unjustified invasion of Ukraine.

When considering whether to apply autonomous sanctions, the Government considers Australia’s national interest, including bilateral, regional and multilateral equities, and the impact of sanctions on Australia’s economic, security or other interests.

#### **Human rights implications**

The Designation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Designation expands, under subregulation 4(3) of the Regulations, what goods are ‘export sanctioned goods’ for specified Ukraine regions to include machinery and related parts. The supply, sale or transfer of such goods therefore become subject to the existing prohibition on making a sanctioned supply under regulation 12 of the Regulations. The Designation does not change the overarching operation of the Regulations.

The human rights obligation that may possibly be affected by including machinery and related parts as ‘export sanctioned goods’ for specified Ukraine regions is the presumption of innocence. Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) provides that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. As strict liability offences allow for the imposition of criminal liability without the need to prove fault, all strict liability offences engage the presumption of innocence in article 14(2) of the ICCPR. A strict liability offence will not necessarily violate the presumption of innocence provided that it is: (i) aimed at achieving a purpose which is legitimate; (ii) based on reasonable and objective criteria, and (iii) proportionate to the aim to be achieved.

Regulation 12 of the Regulations provide that strict liability applies unless the sanctioned supply is authorised by a permit under regulation 18 of the Regulations. The Designation has the effect of making certain machinery and related parts ‘export sanctioned goods’ for specified Ukraine regions. The effect of this is that strict liability applies to the existence or otherwise of a sanctions permit. For an individual, strict liability will not apply to any other element of the offence.

The Designation is compatible with human rights because the limitations that arise are reasonable, necessary and proportionate measures which enable Australia to maintain its foreign policy and national security interests.

## **Conclusion**

This Designation is compatible with human rights as the measures in the Designation do not raise any human rights issues.