

Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Autonomous Sanctions Regulations 2011

Autonomous Sanctions (Designated and Declared Persons – Former Federal Republic of Yugoslavia) Continuing Effect Declaration and Revocation Instrument 2018

Section 28 of the *Autonomous Sanctions Act 2011* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Autonomous Sanctions Regulations 2011* (the Regulations) regulate the conduct of Australia's relations with persons associated with the former Milosevic regime or indicted for, or suspected of committing, war crimes during the Balkan wars in the early 1990s, through the imposition of autonomous sanctions against such persons.

The Regulations permit the Minister to designate a person or entity for targeted financial sanctions and/or declare a person for the purposes of a travel ban, if they satisfy a range of criteria, as set out in regulation 6.

The purpose of a designation is to subject the designated person or entity to targeted financial sanctions. There are two types of targeted financial sanctions under the Regulations:

- the designated person or entity becomes the object of the prohibition in regulation 14 (which prohibits directly or indirectly making an asset available to, or for the benefit of, a designated person or entity, other than as authorised by a permit granted under regulation 18); and/or
- an asset owned or controlled by a designated person or entity is a “controlled asset”, subject to the prohibition in regulation 15 (which requires a person who holds a controlled asset to freeze that asset, by prohibiting that person from either using or dealing with that asset, or allowing it to be used or dealt with, or facilitating the use of or dealing with it, other than as authorised by a permit granted under regulation 18).

The purpose of a declaration is to prevent a person from travelling to, entering or remaining in Australia.

Designated and declared persons in respect of the Former Federal Republic of Yugoslavia (FFRY) are listed in the *Autonomous Sanctions (Designated and Declared Persons – Former Federal Republic of Yugoslavia) List 2012*.

The persons listed in Schedule 1 of the *Autonomous Sanctions (Designated and Declared Persons – Former Federal Republic of Yugoslavia) Continuing Effect Declaration and Revocation Instrument 2018* (the FFRY List) were originally

designated and declared pursuant to subregulation 6(1) of the Regulations on the basis that the person met the criteria mentioned in the table in subregulation 6(1) of the Regulations for the FFRY; that is:

- a) a person who has been indicted for an offence by the ICTY (whether or not the person has been convicted of the offence);
- b) a person who has been indicted for an offence within the jurisdiction of the ICTY by a domestic court in Bosnia-Herzegovina, Croatia or Serbia (whether or not the person has been convicted of the offence);
- c) a person who is subject to an Interpol arrest warrant related to an offence within the jurisdiction of the ICTY;
- d) a person who the Minister is satisfied is a supporter of the former regime of Slobodan Milosevic; and/or
- e) a person who is suspected of assisting a person who is:
 - i. indicted by the ICTY; and
 - ii. not currently detained by the ICTY.

Section 4 of the FFRY List contains the Minister's declaration under subregulation 9(3) of the Regulations that the designations and declarations of the persons listed in Schedule 1 (who were originally designated and declared in 2012, and last renewed in 2015) continue to have effect.

Section 5 of the FFRY List contains the Minister's revocation of the designations and declarations of the persons listed in Schedule 2 (who were originally designated and declared in 2012, and last renewed in 2015).

The FFRY List renews targeted financial sanctions and travel bans that would otherwise lapse on 111 persons, each of whom the Minister is satisfied is mentioned in Item 2 of the table in subregulation 6(1) of the Regulations.

The legal framework for the imposition of autonomous sanctions by Australia, of which the Regulations and the FFRY List are part, has been the subject of extensive consultation with governmental and non-governmental stakeholders since May 2010.

The Department of Foreign Affairs and Trade (DFAT) conducts public consultations, including with the Australian financial services sector and broader business community, in relation to these types of measures. Relevant Commonwealth Government departments were consulted prior to and during the drafting of this legislative instrument.

DFAT undertook public consultation through its website seeking submissions from interested parties and to afford natural justice to those persons whose designations and declarations were being reviewed. No submissions were received in response to these public consultations.

Statement of Compatibility with Human Rights

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

Autonomous Sanctions (Designated and Declared Persons – Former Federal Republic of Yugoslavia) Continuing Effect Declaration and Revocation Instrument 2018

The *Autonomous Sanctions (Designated and Declared Persons – Former Federal Republic of Yugoslavia) Continuing Effect Declaration and Revocation Instrument 2018* (the FFRY List) 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 person subject to designation or declaration under regulation 6 of the Regulations may apply to the Minister for the revocation of those decisions (regulation 11 of the Regulations). Decisions under both regulations 6 and 11 of the Regulations are judicially reviewable.

The targeted financial sanctions imposed on persons designated under paragraph 6(1)(a) of the Regulations do not affect the title to any asset owned or controlled by the designated person. A designated person may continue to draw on his or her frozen assets, or receive assets from other sources, to meet basic expenses, including for foodstuffs, rent or mortgage, medicines or medical treatment, taxes, insurance premiums, public utility charges, reasonable professional fees, reimbursement of expenses associated with the provision of legal services, or fees or service charges that are in accordance with a law in force in Australia for the routine holding or maintenance of frozen assets (regulations 18 and 20 of the Regulations).

Similarly, a designated person may draw on frozen assets they own or control to satisfy any pre-existing judicial, administrative or arbitral lien or judgement awarded to another (non-designated) person or entity, as well as to make payments required under contracts, agreements or obligations made before the date on which those assets became frozen.

The Department of Foreign Affairs and Trade (DFAT) undertook public consultation through its website seeking submissions from interested parties and to afford natural justice to those persons whose designations and declarations were to lapse and were being reviewed. No submissions were received.

Regulation 19 authorises the Minister to waive the operation of a declaration under regulation 6 so as to allow the person to travel to, enter or remain in Australia, either on the grounds that it would be in the national interest or on humanitarian grounds.