Council Regulation (EU) 2017/2063 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela

COUNCIL REGULATION (EU) 2017/2063

of 13 November 2017

concerning restrictive measures in view of the situation in Venezuela

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Council Decision (CFSP) 2017/2074 of 13 November 2017 concerning restrictive measures in view of the situation in Venezuela[(1)],

Having regard to the joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission,

Whereas:

(1) In view of the continuing deterioration of democracy, the rule of law and human rights in Venezuela, the Union has repeatedly expressed concern and called on all Venezuelan political actors and institutions to work in a constructive manner towards a solution to the crisis in the country while fully respecting the rule of law and human rights, democratic institutions and the separation of powers.

(2) On 13 November 2017, the Council adopted Decision (CFSP) 2017/2074, providing for, inter alia, a ban on the export of arms and equipment which might be used for internal repression, a ban on the export of surveillance equipment and the freezing of funds and economic resources of certain persons, entities and bodies responsible for serious human rights violations or abuses or the repression of civil society and democratic opposition and persons, entities and bodies whose actions, policies or activities otherwise undermine democracy or the rule of law in Venezuela, as well as persons, entities and bodies associated with them.

(3) Certain measures provided for in Decision (CFSP) 2017/2074 fall within the scope of the Treaty and therefore, with a view, in particular, to ensuring their uniform application by economic operators in all Member States, regulatory action at the level of the Union is necessary in order to implement them.

(4) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, in particular the right to an effective remedy and a fair trial and the right to the protection of personal data. This Regulation should be applied in accordance with those rights.

(5) The power to amend the lists in Annexes IV and V to this Regulation should be exercised by the Council in order to ensure consistency with the process for amending and reviewing Annexes I and II to Decision (CFSP) 2017/2074.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EU) 2017/2063. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) For the implementation of this Regulation, and in order to create maximum legal certainty within the Union, the names and other relevant data concerning natural and legal persons, entities and bodies whose funds and economic resources are to be frozen in accordance with this Regulation should be made public. Any processing of personal data should comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council[(2)] and Directive 95/46/EC of the European Parliament and of the Council[(3)].

(7) Member States and the Commission should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation.

(8) Member States should determine the penalties applicable to infringements of this Regulation. The penalties should be effective, proportionate and dissuasive.

(9) In order to ensure that the measures provided for in this Regulation are effective, it should enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the following definitions apply:

(a) ‘claim’ means any claim, whether asserted by legal proceedings or not, made before, on or after the date of entry into force of this Regulation, under or in connection with a contract or transaction, and includes in particular:

  (i) a claim for performance of any obligation arising under or in connection with a contract or transaction;

  (ii) a claim for extension or payment of a bond, financial guarantee or indemnity of whatever form;

  (iii) a claim for compensation in respect of a contract or transaction;

  (iv) a counterclaim;

  (v) a claim for the recognition or enforcement, including by the procedure of *exequatur*, of a judgment, an arbitration award or an equivalent decision, wherever made or given;

(b) ‘contract or transaction’ means any transaction of whatever form and whatever the applicable law, whether comprising one or more contracts or similar obligations made between the same or different parties; for this purpose, ‘contract’ includes a bond, guarantee or indemnity, in particular a financial guarantee or financial indemnity, and credit, whether legally independent or not, as well as any related provision arising under, or in connection with, the transaction;

(c) ‘competent authorities’ refers to the competent authorities of the Member States as identified on the websites listed in Annex III;

(d) ‘economic resources’ means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but may be used to obtain funds, goods or services;

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(e) 'freezing of economic resources' means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;

(f) 'freezing of funds' means preventing any move, transfer, alteration or use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character or destination or other change that would enable the funds to be used, including portfolio management;

(g) 'funds' means financial assets and benefits of every kind, including, but not limited to:

(i) cash, cheques, claims on money, drafts, money orders and other payment instruments;

(ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;

(iii) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;

(iv) interest, dividends or other income on or value accruing from or generated by assets;

(v) credit, right of set-off, guarantees, performance bonds or other financial commitments;

(vi) letters of credit, bills of lading, bills of sale; and

(vii) documents showing evidence of an interest in funds or financial resources;

(h) 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills, or consulting services, including verbal forms of assistance;

(i) 'brokering services' means:

(i) the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology or financial and technical services from a third country to any other third country, or

(ii) the selling or buying of goods and technology or financial and technical services that are located in a third country for their transfer to another third country;

(j) 'territory of the Union' means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty, including their airspace.

Article 2

1 It shall be prohibited:

a to provide, directly or indirectly, technical assistance, brokering services and other services related to the goods and technology listed in the EU Common List of Military Equipment ('the Common Military List') and to the provision, manufacture, maintenance and use of goods and technology listed in the Common Military List to any natural or legal person, entity or body in, or for use in, Venezuela;

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b to provide, directly or indirectly, financing or financial assistance related to the goods and technology listed in the Common Military List, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance, for any sale, supply, transfer or export of such items, or for the provision of related technical assistance, brokering services and other services, directly or indirectly to any person, entity or body in, or for use in, Venezuela.

2 The prohibition in paragraph 1 shall not apply to the execution of contracts concluded before 13 November 2017 or to ancillary contracts necessary for the execution of such contracts, provided that they comply with Council Common Position 2008/944/CFSP[(4)], in particular with the criteria set out in Article 2 thereof and that the natural or legal persons, entities or bodies seeking to perform the contract have notified the contract to the competent authority of the Member State in which they are established within 5 working days of the entry into force of this Regulation.

Article 3

It shall be prohibited:

(a) to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex I, whether or not originating in the Union, to any natural or legal person, entity or body in, or for use in, Venezuela;

(b) to provide technical assistance and brokering and other services related to the equipment referred to in point (a), directly or indirectly to any natural or legal person, entity or body in, or for use in, Venezuela;

(c) to provide financing or financial assistance, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance, related to the equipment referred to in point (a), directly or indirectly to any natural or legal person, entity or body in, or for use in, Venezuela.

Article 4

1 By way of derogation from Articles 2 and 3, the competent authorities of Member States as listed in Annex III may authorise, under such conditions as they deem appropriate:

a the provision of financing and financial assistance and technical assistance related to:

(i) non-lethal military equipment intended solely for humanitarian or protective use, or for institution-building programmes of the United Nations (UN) and the Union or its Member States or of regional and sub-regional organisations;

(ii) material intended for crisis-management operations of the UN and the Union or of regional and sub-regional organisations;

b the sale, supply, transfer or export of equipment which might be used for internal repression and associated financing and financial and technical assistance, intended solely for humanitarian or protective use or for institution-building programmes of the UN or the Union, or for crisis-management operations of the UN and the Union or of regional and subregional organisations;

c the sale, supply, transfer or export of demining equipment and materiel for use in demining operations and associated financing and financial and technical assistance.

2 Authorisations referred to in paragraph 1 may be granted only prior to the activity for which they are requested.

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Article 5

Articles 2 and 3 shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Venezuela by UN personnel, personnel of the Union or its Member States, representatives of the media, and humanitarian and development workers and associated personnel for their personal use only.

Article 6

1 It shall be prohibited to sell, supply, transfer or export, directly or indirectly, equipment, technology or software identified in Annex II, whether or not originating in the Union, to any person, entity or body in Venezuela or for use in Venezuela, unless the competent authority of the relevant Member State, as identified on the websites listed in Annex III, has given prior authorisation.

2 The competent authorities of the Member States, as identified on the websites listed in Annex III, shall not grant any authorisation under paragraph 1 if they have reasonable grounds to determine that the equipment, technology or software in question would be used for internal repression by Venezuela's government, public bodies, corporations or agencies, or any person or entity acting on their behalf or at their direction.

3 Annex II shall include equipment, technology or software intended primarily for use in the monitoring or interception of internet or telephone communications.

4 The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this Article, within four weeks of the authorisation.

Article 7

1 Unless the competent authority of the relevant Member State, as identified on the websites listed in Annex III, has given prior authorisation in accordance with Article 6(2), it shall be prohibited:

a to provide, directly or indirectly, technical assistance or brokering services related to the equipment, technology and software identified in Annex II, or related to the installation, provision, manufacture, maintenance and use of the equipment and technology identified in Annex II or to the provision, installation, operation or updating of any software identified in Annex II, to any person, entity or body in Venezuela or for use in Venezuela;

b to provide, directly or indirectly, financing or financial assistance related to the equipment, technology and software identified in Annex II to any person, entity or body in Venezuela or for use in Venezuela;

c to provide any telecommunication or internet monitoring or interception services of any kind to, or for the direct or indirect benefit of, Venezuela's government, public bodies, corporations and agencies or any person or entity acting on their behalf or at their direction.

2 For the purposes of point (c) of paragraph 1, ‘telecommunication or internet monitoring or interception services’ means those services that provide, in particular using equipment, technology or software as identified in Annex II, access to and delivery of a subject's incoming and outgoing telecommunications and call- associated data for the purpose of its extraction, decoding, recording, processing, analysis or storing, or any other related activity.