Council Regulation (EU) 2017/1770 of 28 September 2017 concerning restrictive measures in view of the situation in Mali

COUNCIL REGULATION (EU) 2017/1770

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concerning restrictive measures in view of the situation in Mali

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) 2017/1775 of 28 September 2017 concerning restrictive measures in view of the situation in Mali[(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) On 28 September 2017, the Council adopted Decision (CFSP) 2017/1775 concerning restrictive measures in view of the situation in Mali and implementing United Nations Security Council Resolution (UNSCR) 2374 (2017). Those measures provide for travel restrictions and the freezing of funds and economic resources of certain of persons designated by the United Nations Security Council (the 'Security Council') or by the relevant United Nations Sanctions Committee as responsible for or complicit in, or having engaged in, directly or indirectly, actions or policies that threaten the peace, security, or stability of Mali. Those persons are listed in the Annex to Decision (CFSP) 2017/1775.

(2) Certain measures provided for in UNSCR 2374 (2017) fall within the scope of the Treaty on the Functioning of the European Union 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.

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

(4) The power to amend the lists in Annex I to this Regulation should be exercised by the Council, in view of the specific threat to international peace and security posed by the situation in Mali, and in order to ensure consistency with the process for amending and reviewing the Annex to Decision (CFSP) 2017/1775.

(5) 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

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legal persons, entities and bodies whose funds and economic resources must 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)].

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

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 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 that purpose 'contract' includes a bond, guarantee or indemnity, particularly 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 II;

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

(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, 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, destination or any other change that would enable the funds to be used, including portfolio management;

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(g) 'funds' means financial assets and benefits of any 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-traded 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) 'Sanctions Committee' means the Committee of the Security Council established pursuant to paragraph 9 of United Nations Security Council Resolution UNSCR 2374 (2017);

(i) '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 All funds and economic resources belonging to, owned, held or controlled, directly or indirectly, by any natural or legal person, entity or body listed in Annex I shall be frozen.

2 No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex I.

3 Annex I shall include natural and legal persons, entities and bodies and persons and entities acting on their behalf or at their direction, and entities owned and controlled by them, identified by the Security Council or by the Sanctions Committee as:

a engaging in hostilities in violation of the Agreement on Peace and Reconciliation in Mali (the 'Agreement');

b taking actions that obstruct, or that obstruct by prolonged delay, or that threaten the implementation of the Agreement;

c acting for or on behalf of or at the direction of, or otherwise supporting or financing individuals and entities identified in points (a) and (b), including through the proceeds from organised crime, including the production and trafficking of narcotic drugs and their precursors originating in or transiting through Mali, the trafficking in persons and the smuggling of migrants, the smuggling and trafficking of arms as well as the trafficking in cultural property;

d involved in planning, directing, sponsoring, or conducting attacks against:

(i) the various entities referenced in the Agreement, including local, regional and state institutions, joint patrols and the Malian Security and Defence forces;

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(ii) United Nations Multidimensional Integrated Stabilization Mission (MINUSMA) peacekeepers and other UN and associated personnel, including members of the Panel of Experts;

(iii) international security presences, including the Force Conjointe des Etats du G5 Sahel (FC-G5S), European Union Missions and French forces;

e obstructing the delivery of humanitarian assistance to Mali, or access to, or distribution of, humanitarian assistance in Mali;

f planning, directing, or committing acts in Mali that violate international human rights law or international humanitarian law, as applicable, or that constitute human rights abuses or violations, including those involving the targeting of civilians, including women and children, through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, enforced disappearance, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge;

g using or recruiting children by armed groups or armed forces in violation of applicable international law, in the context of the armed conflict in Mali;

h knowingly facilitating the travel of a listed person in violation of the travel restrictions.

4 Annex I shall include the grounds for the listing of the persons, entities and bodies concerned.

5 Annex I shall also include, where available, information necessary to identify the natural or legal persons, entities and bodies concerned. With regard to natural persons, such information may include names including aliases, date and place of birth, nationality, passport and ID card numbers, gender, address, if known, and function or profession. With regard to legal persons, entities and bodies, such information may include names, place and date of registration, registration number and place of business.

Article 3

1 By way of derogation from Article 2, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources concerned are:

a necessary to satisfy the basic needs of natural persons listed in Annex I, and dependent family members of such natural persons, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

b intended exclusively for payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services;

c intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources;

provided that the competent authority of the Member State concerned has notified the Sanctions Committee of that determination and its intention to grant an authorisation, and in the absence of a negative decision by the Sanctions Committee within five working days of such notification.

2 By way of derogation from Article 2, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources concerned are necessary for extraordinary expenses, provided that such determination has been notified to the

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Sanctions Committee by the competent authority of the Member State concerned and that the determination has been approved by that Committee.

3 By way of derogation from Article 2, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, provided that the Sanctions Committee determined on a case-by-case basis that such a derogation would further the objectives of peace and national reconciliation in Mali and stability in the region.

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

Article 4

1 By way of derogation from Article 2, the competent authorities in the Member States may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

a the funds or economic resources are the subject of a judicial, administrative or arbitral decision established prior to the date on which the natural or legal person, entity or body referred to in Article 2 was included in Annex I, or of a judicial, administrative or arbitral lien rendered prior to that date;

b the funds or economic resources will be used exclusively to satisfy claims secured by a decision referred to in point (a) or recognised as valid in such a decision, within the limits set by applicable laws and regulations governing the rights of persons having such claims;

c the decision or lien is not for the benefit of a natural or legal person, entity or body listed in Annex I;

d recognising the decision or lien is not contrary to public policy in the Member State concerned; and

e the Sanctions Committee has been notified by the Member State of the decision or lien.

2 The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

Article 5

1 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 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;

b the payment is not in breach of Article 2(2); and

c the Sanctions Committee has been notified by the relevant Member State of the intention to grant an authorisation 10 working days in advance.

2 The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.