Council Regulation (EU) 2016/2230 of 12 December 2016 amending Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo

COUNCIL REGULATION (EU) 2016/2230

of 12 December 2016

amending Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo

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) 2016/2231 of 12 December 2016 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of Congo[(1)],

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

Whereas:

(1) Council Regulation (EC) No 1183/2005[(2)] gives effect to Decision 2010/788/CFSP[(3)] and provides for certain measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, including a freezing of their assets.

(2) Decision (CFSP) 2016/2231 establishes criteria for Union autonomous listings.

(3) Regulatory action at the Union level is therefore necessary to give effect to Decision (CFSP) 2016/2231, in particular with a view to ensure uniform application by economic operators in all Member States.

(4) Regulation (EC) No 1183/2005 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1183/2005 is amended as follows:

(1) Article 2 is replaced by the following:

Article 2

1 All funds and economic resources belonging to, owned, held or controlled, either directly or indirectly, by a natural or legal person, entity or body listed in Annex

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) 2016/2230. (See end of Document for details)*

I or Annex Ia including by a third party acting on their behalf or at their direction, shall be frozen.

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

(2) the following Article is inserted:

Article 2b

1 Annex Ia shall include the natural or legal persons, entities or bodies designated by the Council on any of the following grounds:

a obstructing a consensual and peaceful solution towards elections in DRC, including by acts of violence, repression or inciting violence, or by undermining the rule of law;

b planning, directing, or committing acts that constitute serious human rights violations or abuses in DRC;

c being associated with natural or legal persons, entities or bodies referred to in points (a) and (b).

2 Annex Ia shall include the grounds for listing the persons and entities referred to therein.

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

(3) Article 3 is replaced by the following:

Article 3

1 By way of derogation from Article 2, the competent authorities 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 or legal persons, entities or bodies listed in Annex I or Annex Ia 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 and reimbursement of incurred expenses associated with the provision of legal services; or

c intended exclusively for payment of fees or services charges for routine holding or maintenance of frozen funds or economic resources, and

where the authorisation concerns a person, entity and body listed in Annex I, the Member State concerned has notified the Sanctions Committee of that determination and its intention to grant an authorisation, and the Sanctions Committee has not objected to that course of action within four working days of notification.

2 By way of derogation from Article 2, the competent authorities may authorise the release of certain frozen funds or economic resources or the making available of certain frozen funds or economic resources, after having determined that the funds or economic resources are necessary for extraordinary expenses, provided that:

a where the authorisation concerns a natural or legal person, entity or body listed in Annex I, the Sanctions Committee has been notified of this determination by the Member State concerned and that the determination has been approved by that Committee; and

b where the authorisation concerns a natural or legal person, entity or body listed in Annex Ia, the Member State concerned has notified other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted, at least two weeks prior to the authorisation.

3 For a natural or legal person, entity or body listed in Annex Ia, the Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraphs 1 and 2.;

(4) Article 4 is replaced by the following:

Article 4

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

a the funds or economic resources are the subject of:

(i) a judicial, administrative or arbitral lien established prior to 18 April 2005 or of a judicial, administrative or arbitral judgement rendered prior to that date, for a natural or legal person, entity or body listed in Annex I; or

(ii) an arbitral decision rendered prior to the date on which the natural or legal person, entity or body was listed in Annex Ia, or of a judicial or administrative decision rendered in the Union, or a judicial decision enforceable in the Member State concerned, prior to or after that date;

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

c the lien or judgement is not for the benefit of a person, entity or body listed in Annex I or Annex Ia;

d recognising the lien or judgement is not contrary to public policy in the Member State concerned.

2 For a natural or legal person, entity or body listed in Annex I, the lien or judgement referred to in paragraph 1(a)(i) shall be notified by the Member State to the Sanctions Committee.

3 For a natural or legal person, entity or body listed in Annex Ia, the Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this Article.;

(5) the following article is inserted:

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) 2016/2230. (See end of Document for details)*

Article 4b

1 By way of derogation from Article 2, the competent authorities may authorise the release of frozen funds or economic resources belonging to natural or legal persons, entities or bodies listed in Annex Ia, or the making available of certain funds or economic resources to natural or legal persons, entities or bodies listed in Annex Ia, under such conditions as they deem appropriate, after having determined that the provision of such funds or economic resources is necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies and food, or the transfer of humanitarian workers and related assistance or for evacuations from DRC.

2 The Member State concerned shall inform other Member States and the Commission of authorisations made under this Article within four weeks of the authorisation.;

(6) Article 5 is replaced by the following:

Article 5

1 Article 2(2) shall not apply to the addition to frozen accounts of:

a interest or other earnings on those accounts;

b payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to this Regulation;

c payments due to a natural or legal person, entity or body listed in Annex Ia under judicial, administrative or arbitral decisions rendered in the EU or enforceable in the Member State concerned,

provided that any such interest, other earnings and payments are frozen in accordance with Article 2(1).

2 Article 2(2) shall not prevent the crediting of the frozen accounts by financial or credit institutions that receive funds transferred by third parties to the account of the natural or legal person, entity or body listed in Annexes I or Ia, provided that any such additions to such accounts are frozen. The financial or credit institutions shall inform the competent authorities about such transactions without delay.;

(7) in Article 6, paragraph 1 is replaced by the following:

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall:

a supply immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 2, to the competent authorities of the Member States where they are resident or located, and shall transmit such information, directly or through these competent authorities, to the Commission;

b cooperate with the competent authorities in any verification of this information.;

(8) in Article 7a(1), point (a) is replaced by the following:

(a) designated natural or legal persons, entities or bodies listed in Annexes I and Ia;;

(9) Article 9 is replaced by the following:

Article 9

1 Where the UN Security Council or the Sanctions Committee designates a natural or legal person, entity or body, the Council shall include such natural or legal person, entity or body in Annex I.

2 The Council shall establish and amend the list of natural or legal persons, entities or bodies in Annex Ia.

3 The Council shall communicate its decision, including the grounds for listing, to the natural or legal person, entity or body referred to in paragraphs 1 and 2, either directly, if the address is known, or through the publication of a notice, providing such natural or legal person, entity or body with an opportunity to present observations.

4 Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the natural or legal person, entity or body accordingly.

5 Where the UN Security Council or the Sanctions Committee decides to delist a natural or legal person, entity or body, or to amend the identification data for a listed natural or legal person, entity or body, the Council shall amend Annex I accordingly.

6 The Commission shall be empowered to amend Annex II on the basis of information supplied by Member States.;

(10) in Regulation (EC) No 1183/2005, the text appearing in the Annex to this Regulation is inserted after the Annex I.

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 12 December 2016.

For the Council

The President

F. MOGHERINI