Council Regulation (EU) 2016/1686 of 20 September 2016 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them

COUNCIL REGULATION (EU) 2016/1686

of 20 September 2016

imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them

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) 2016/1693 of 20 September 2016 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them and repealing Common Position 2002/402/CFSP[(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) The United Nations Security Council (UNSC) has addressed the threat to the international peace and security posed by Al-Qaeda and ISIL (Da'esh) through the adoption of resolutions 1267 (1999), 1333 (2000), 1390 (2002) and 2253(2015).

(2) Those resolutions are given effect in Union law by means of Common Position 2002/402/CFSP[(2)] concerning restrictive measures against members of the ISIL (Da'esh) and Al-Qaeda organisations, and other individuals, groups, undertakings and entities associated with them and by Council Regulation (EC) No 881/2002[(3)].

(3) On 20 September 2016, the Council adopted Decision (CFSP) 2016/1693 repealing and replacing Common Position 2002/402/CFSP.

(4) Since that Decision contains additional measures which the Council has established in order to further fight the international terrorist threat posed by ISIL (Da'esh) and Al-Qaeda, as mandated by the UNSC, an asset freeze to target natural or legal persons, entities or bodies who fulfil the relevant criteria is introduced in order to further the fight against the international terrorist threat posed by ISIL (Da'esh) and Al-Qaeda. Regulatory action is necessary in order to implement them, in particular with a view to ensuring their uniform application by economic operators in all Member States.

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

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(6) The power to amend the list 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 ISIL (Da'esh) and Al-Qaeda and in order to ensure consistency with the process for amending and reviewing the Annex to Decision (CFSP) 2016/1693.

(7) For the implementation of this Regulation, and 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 must be frozen in accordance with the Regulation, should be made public. Any processing of personal data of natural persons under this Regulation should be in conformity with Regulation (EC) No 45/2001 of the European Parliament and of the Council[(4)] and Directive 95/46/EC of the European Parliament and of the Council[(5)].

(8) 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.

(9) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and make sure that they are implemented. Those sanctions must be effective, proportionate and dissuasive.

(10) 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 purpose of this Regulation, the following definitions shall apply:

(a) ‘funds’ means financial assets and economic benefits of every kind, including but not limited to cash, cheques, claims on money, drafts, money orders and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; publicly and privately traded securities and debt instruments, including stocks and shares, certificates presenting securities, bonds, notes, warrants, debentures, derivatives contracts; interest, dividends or other income on or value accruing from or generated by assets; credit, right of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export-financing;

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

(c) ‘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 other change that would enable the funds to be used, including portfolio management;

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

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(e) 'competent authorities' means the competent authorities of the Member States as identified on the websites listed in Annex II;

(f) 'claim' means any claim, whether asserted by legal proceedings or not, made before or after the date on which a person, entity or body has been listed in Annex I, 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.

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 I 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, natural or legal persons, entities or bodies listed in Annex I.

Article 3

1 Annex I shall consist of natural and legal persons, entities and bodies who, in accordance with Article 3(3) of Decision (CFSP) 2016/1693, have been identified by the Council as being:

a associated with ISIL (Da'esh) and Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, including by:

(i) participating in the financing of ISIL (Da'esh) and Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, or in the financing of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of them;

(ii) participating in the planning, facilitating, preparing, or perpetrating of acts or activities or providing or receiving of terrorist training such as instruction related to arms, explosive devices or other methods or technologies with the purpose of committing terrorist acts by, in conjunction with, under the name of, on behalf of, or in support of ISIL (Da'esh) and Al-Qaeda or any cell, affiliate, splinter group or derivative thereof;

(iii) engaging in trade with ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, in particular of oil, oil products, modular refineries and related material, as well as trade in other natural resources and trade in cultural property;

(iv) supplying, selling or transferring arms and related materiel to ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof;

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b travelling or seeking to travel outside of the Union for the purpose of:

(i) the perpetration, planning, or preparation of, or participation in, terrorist acts on behalf of or in support of ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof, or

(ii) the providing or receiving of terrorist training, on behalf of or in support of, ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, or

(iii) otherwise supporting ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof;

c seeking to travel into the Union for the same purpose as referred to in paragraph (b) or to participate in acts or activities in conjunction with, under the name of, on behalf of or in support of ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof;

d recruiting for or otherwise supporting acts or activities of ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof, including by:

(i) providing or collecting, by any means, directly or indirectly, funds in order to finance the travelling of individuals, for the purpose referred to in paragraphs (b) and (c); organising the travel of individuals for the purpose referred to in paragraphs (b) and (c), or otherwise facilitating it for that purpose;

(ii) soliciting another person to participate in acts or activities by, in conjunction with, under the name of, on behalf of, or in support of ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof;

e inciting or publicly provoking acts or activities by, in conjunction with, under the name of, on behalf of, or in support of ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, including by encouraging or glorifying such acts or activities thereby causing a danger that terrorist acts may be committed;

f being involved or complicit in ordering or committing serious abuses of human rights, including abduction, rape, sexual violence, forced marriage and enslavement of persons, outside the territory of the Union, on behalf of or in the name of ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof.

2 Annex I shall include, where available, information necessary to identify the natural or legal persons, entities or 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 4

1 Where the Council decides to subject a natural or legal person, entity or body to the measures referred to in Articles 2 and 9 it shall amend Annex I accordingly.

2 The Council shall communicate its decision, including the grounds for listing, to the natural or legal person, entity or body referred to in paragraph 1, 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.

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3 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.

4 The list in Annex I shall be reviewed at regular intervals and at least every 12 months.

Article 5

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 or legal persons, entities or bodies 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; or

(d) necessary for extraordinary expenses.

Article 6

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

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

(b) the funds or economic resources will be used exclusively to satisfy claims secured by such a decision 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 is not for the benefit of a natural or legal person, entity or body listed in Annex I;

(d) recognising the decision is not contrary to public policy in the Member State concerned.

Article 7

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 under 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: