Council Regulation (EU) 2015/1861 of 18 October 2015 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran

COUNCIL REGULATION (EU) 2015/1861

of 18 October 2015

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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 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/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) Council Regulation (EU) No 267/2012[(2)] gives effect to the measures provided for in Decision 2010/413/CFSP.

(2) On 18 October 2015, the Council adopted Decision (CFSP) 2015/1863[(3)] amending Decision 2010/413/CFSP, providing for certain measures in accordance with United Nations Security Council Resolution (UNSCR) 2231 (2015) endorsing the Joint Comprehensive Plan of Action of 14 July 2015 ('JCPOA') on the Iran nuclear issue and providing for actions to take place in accordance with the JCPOA.

(3) UNSCR 2231 (2015) determines that upon verification by the International Atomic Energy Agency (IAEA) of the implementation of Iran's nuclear-related commitments as set out in the JCPOA, the provisions of UNSCRs 1696 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1835 (2008), 1929 (2010) and 2224 (2015) are to be terminated.

(4) UNSCR 2231 (2015) further determines that States are to comply with the relevant provisions contained in Annex B to UNSCR 2231 (2015) aimed at promoting transparency and creating an atmosphere conducive to the full implementation of the JCPOA.

(5) In accordance with the JCPOA, Decision (CFSP) 2015/1863 provides for the termination of all Union nuclear-related economic and financial restrictive measures simultaneously with the IAEA-verified implementation by Iran of the agreed nuclear-related measures. Furthermore, Decision (CFSP) 2015/1863 introduces an authorisation regime for reviewing and deciding on nuclear-related transfers to, or activities with, Iran not covered by UNSCR 2231 (2015) in full consistency with the JCPOA.

(6) The commitment to lift all Union nuclear-related restrictive measures in accordance with the JCPOA is without prejudice to the dispute-resolution mechanism specified

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in the JCPOA and to the reintroduction of Union restrictive measures in the event of significant non-performance by Iran of its commitments under the JCPOA.

(7) In case of reintroduction of Union restrictive measures, adequate protection for the execution of contracts concluded in accordance with the JCPOA while sanctions relief was in force will be provided consistent with previous provisions when sanctions were originally imposed.

(8) The power to amend the lists in Annexes VIII, IX, XIII and XIV to Regulation (EU) No 267/2012 should be exercised by the Council, in view of the specific threat to international peace and security posed by Iran's nuclear programme, and to ensure consistency with the process for amending and reviewing Annexes I, II, III and IV to Decision 2010/413/CFSP.

(9) Regulatory action at the level of the Union is necessary in order to implement the measures, in particular with a view to ensuring their uniform application by economic operators in all Member States.

(10) Regulation (EU) No 267/2012 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 267/2012 is amended as follows:

(1) In Article 1, point (t) is deleted and the following point is added:

(u) "Joint Commission" means a joint commission consisting of representatives of Iran and of China, France, Germany, the Russian Federation, the United Kingdom and the United States with the High Representative of the Union for Foreign Affairs and Security Policy ("High Representative"), that will be established to monitor the implementation of the Joint Comprehensive Plan of Action of 14 July 2015 ("JCPOA") and will carry out the functions provided for in the JCPOA, in accordance with point ix of the JCPOA's "Preamble and General Provisions" and Annex IV to the JCPOA..

(2) Articles 2, 3 and 4 are deleted.

(3) The following Articles are inserted:

Article 2a

1 A prior authorisation shall be required:

a for the sale, supply, transfer or export, directly or indirectly, of the goods and technology listed in Annex I, whether or not originating in the Union, to any Iranian person, entity or body or for use in Iran;

b for the provision of technical assistance or brokering services related to goods and technology listed in Annex I or related to the provision, manufacture, maintenance and use of goods and technology included in Annex I, directly or indirectly, to any Iranian person, entity or body, or for use in Iran;

c for the provision of financing or financial assistance related to goods and technology listed Annex I, including in particular grants, loans and export credit insurance for any sale, supply, transfer or export of such items, or for

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any provision of related technical assistance or brokering services, directly or indirectly, to any Iranian person, entity or body, or for use in Iran;

d before entering into any arrangement with an Iranian person, entity or body, or any person or entity acting on their behalf or at their direction, including the acceptance of loans or credit made by such person, entity or body, that would enable such person, entity or body to participate in or increase its participation, be that independently or as part of a joint venture or other partnership, in commercial activities involving the following:

(i) uranium mining,

(ii) production or use of nuclear materials as listed in Part 1 of the Nuclear Suppliers Group list.

This shall include the making of loans or credit to such a person, entity or body;

e for the purchase, import or transport from Iran of goods and technology listed in Annex I, whether or not originating in Iran.

2 Annex I shall list the items, including goods, technology and software, contained in the Nuclear Suppliers Group list.

3 The Member State concerned shall submit the proposed authorisation under points (a) to (d) of paragraph 1 to the UN Security Council for approval on a case-by-case basis and shall not grant the authorisation until that approval has been received.

4 The Member State concerned shall also submit the proposed authorisations of activities referred to in points (a) to (d) of paragraph 1 to the UN Security Council for approval on a case-by-case basis if the activities are related to any further goods and technology that, based on the determination by that Member State, could contribute to reprocessing- or enrichment-related or heavy water-related activities inconsistent with the JCPOA. The Member State shall not grant the authorisation until that approval has been received.

5 The competent authority concerned shall not grant the authorisation under point (e) of paragraph 1 until it has been approved by the Joint Commission.

6 The Member State concerned shall notify the other Member States, the Commission and the High Representative of authorisations granted under paragraphs (1) and (5), or any refusal by the UN Security Council to approve an authorisation in accordance with paragraphs (3) or (4).

Article 2b

1 Article 2a(3) and (4) do not apply in relation to proposed authorisations for the supply, sale or transfer to Iran of equipment referred to in paragraph 2(c), subparagraph 1 of Annex B to UNSCR 2231 (2015) for light water reactors.

2 The Member State concerned shall inform the other Member States, the Commission and the High Representative, within four weeks, of authorisations granted under this Article.

Article 2c

1 The competent authorities granting an authorisation in accordance with Article 2a(1)(a) and Article 2b shall ensure the following:

a the requirements, as appropriate, of the Guidelines as set out in the Nuclear Suppliers Group list have been met;

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b the rights to verify the end-use and end-use location of any supplied item have been obtained from Iran and can be exercised effectively;

c the notification of the UN Security Council within ten days of the supply, sale or transfer; and

d in the case of supplied goods and technology referred to in Annex I, the notification of the IAEA within ten days of the supply, sale or transfer.

2 For all exports for which an authorisation is required under Article 2a(1)(a), such authorisation shall be granted by the competent authorities of the Member State where the exporter is established. The authorisation shall be valid throughout the Union.

3 Exporters shall supply the competent authorities with all relevant information, as set out in Article 14(1) of Regulation (EC) No 428/2009 and as specified by each competent authority, required for their application for an export authorisation.

Article 2d

1 Article 2a(3) and (4) do not apply in relation to proposed authorisations for the supply, sale, or transfer of items, materials, equipment, goods and technology, and the provision of any related technical assistance, training, financial assistance, investment, brokering or other services where the competent authorities consider them to be directly related to the following:

a the necessary modification of two cascades at the Fordow facility for stable isotope production;

b the export of Iran's enriched uranium in excess of 300 kilograms in return for natural uranium; or

c the modernisation of the Arak reactor based on the agreed conceptual design and, subsequently, on the agreed final design of such reactor.

2 The competent authority granting an authorisation in accordance with paragraph 1 shall ensure the following:

a all activities are undertaken strictly in accordance with the JCPOA;

b the requirements, as appropriate, of the Guidelines as set out in the Nuclear Suppliers Group list have been met;

c rights to verify the end-use and end-use location of any supplied item have been obtained from Iran and can be exercised effectively.

3 The Member State concerned shall notify:

a the UN Security Council and the Joint Commission ten days in advance of such activities;

b the IAEA within ten days of the supply, sale or transfer, in case of supplied items, materials, equipment, goods and technology included in the Nuclear Suppliers Group list.

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

(4) The following Articles are inserted:

Article 3a

1 A prior authorisation shall be required, on a case-by-case basis:

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a for the sale, supply, transfer or export, directly or indirectly, of the goods and technology listed in Annex II, whether or not originating in the Union, to any Iranian person, entity or body or for use in Iran;

b for the provision of technical assistance or brokering services related to goods and technology listed in Annex II or related to the provision, manufacture, maintenance and use of goods included in Annex II, directly or indirectly, to any Iranian person, entity or body, or for use in Iran;

c for the provision of financing or financial assistance related to goods and technology listed Annex II, including in particular grants, loans and export credit insurance for any sale, supply, transfer or export of such items, or for any provision of related technical assistance or brokering services, directly or indirectly, to any Iranian person, entity or body, or for use in Iran;

d before entering into any arrangement with an Iranian person, entity or body, or any person or entity acting on their behalf or at their direction, including the acceptance of loans or credit made by such person, entity or body, that would enable such person, entity or body to participate in or increase its participation, be that independently or as part of a joint venture or other partnership, in commercial activities involving technologies listed in Annex II.;

e for the purchase, import or transport from Iran of goods and technology listed in Annex II, whether or not originating in Iran.

2 Annex II shall list the goods and technology, other than those included in Annexes I and III, that could contribute to reprocessing- or enrichment-related or heavy water-related or other activities inconsistent with the JCPOA.

3 Exporters shall supply the competent authorities with all relevant information required for their application for an authorisation.

4 The competent authorities shall not grant any authorisation for the transactions referred to in paragraph 1(a) to (e), if they have reasonable grounds to determine that the actions concerned would contribute to reprocessing- or enrichment-related, heavy water-related or other nuclear related activities inconsistent with the JCPOA.

5 The competent authorities shall exchange information on requests for authorisation received under this Article. The system referred to in Article 19(4) of Regulation (EC) No 428/2009 shall be used for this purpose.

6 The competent authority granting an authorisation in accordance with paragraph 1(a) shall ensure that rights to verify the end-use and end-use location of any supplied item have been obtained from Iran and can be exercised effectively.

7 The Member State concerned shall notify the other Member States, the Commission and the High Representative of its intention to grant an authorisation under this Article at least ten days prior to the authorisation.

Article 3b

1 For all exports for which an authorisation is required under Article 3a, such authorisation shall be granted by the competent authorities of the Member State where the exporter is established and shall be in accordance with the detailed rules laid down in Article 11 of Regulation (EC) No 428/2009. The authorisation shall be valid throughout the Union.