Council Regulation (EU) 2015/1755 of 1 October 2015 concerning restrictive measures in view of the situation in Burundi

COUNCIL REGULATION (EU) 2015/1755

of 1 October 2015

concerning restrictive measures in view of the situation in Burundi

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) 2015/1763 of 1 October 2015 concerning restrictive measures in respect of the situation in Burundi[(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 1 October 2015, the Council adopted Decision (CFSP) 2015/1763 concerning restrictive measures in view of the situation in Burundi providing for travel restrictions and the freezing of funds and economic resources of certain persons, entities or bodies responsible for undermining democracy or obstructing the search for a political solution in Burundi, including by acts of violence, repression or inciting violence, persons, entities or bodies involved in planning, directing, or committing acts that violate international human rights law or international humanitarian law, as applicable, or that constitute serious human rights abuses, in Burundi. Those persons, entities and bodies are listed in the Annex to Decision (CFSP) 2015/1763.

(2) Further action by the Union is needed in order to implement Decision (CFSP) 2015/1763.

(3) The High Representative of the Union for Foreign Affairs and Security Policy and the European Commission should make a proposal for a Regulation concerning restrictive measures in view of the situation in Burundi.

(4) 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.

(5) 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 in the region posed by the situation in Burundi and in order to ensure consistency with the process for amending and reviewing the Annex to Decision (CFSP) 2015/1763.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EU) 2015/1755. 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 ensure 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 this Regulation, must be made public. Any processing of personal data should comply with Directive 95/46/EC[(2)] and Regulation (EC) No 45/2001[(3)].

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

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the following definitions shall 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 this 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 every 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 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 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) '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 by any natural or legal person, entity or body as 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 or legal persons, entities and bodies which, in accordance with Article 2(1) of Council Decision (CFSP) 2015/1763, have been identified by the Council as:

a undermining democracy or obstructing the search for a political solution in Burundi, including by acts of violence, repression or inciting violence;

b being involved in planning, directing, or committing acts that violate international human rights law or international humanitarian law, as applicable, or that constitute serious human rights abuses, in Burundi; and

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

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 or legal 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; or

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d necessary for extraordinary expenses, provided that the relevant competent authority has notified the competent authorities of the 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 authorisation.

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

Article 4

1 By way of derogation from Article 2(1), the competent authorities of 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 subject to an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in Article 2 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 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; and

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

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(1) 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 will be used for a payment by a natural or legal person, entity or body listed in Annex I; and

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

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

Article 6

1 Article 2(2) shall not prevent the crediting of the frozen accounts by financial or credit institutions that receive funds transferred by third parties onto the account of a listed natural or legal person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the relevant competent authority about any such transaction without delay.

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

a interest or other earnings on those accounts;

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b payments due under contracts, agreements or obligations that were concluded or arose before the date on which the natural or legal person, entity or body referred to in Article 2 was included in Annex I; or

c payments due under judicial, administrative or arbitral decisions rendered in a Member State or enforceable in the Member State concerned;

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

Article 7

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 information on accounts and amounts frozen in accordance with Article 2, to the competent authority of the Member State where they are resident or located, and shall transmit such information, directly or through the Member State, to the Commission; and

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

2 Any additional information received directly by the Commission shall be made available to the Member States.

3 Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

Article 8

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2.

Article 9

1 The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen or withheld as a result of negligence.

2 Actions by natural or legal persons, entities or bodies shall not give rise to any liability of any kind on their part if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in this Regulation.

Article 10

1 No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:

a designated natural or legal persons, entities or bodies listed in Annex I;

b any natural or legal person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in point (a).