Council Regulation (EU) No 1352/2014 of 18 December 2014 concerning restrictive measures in view of the situation in Yemen

COUNCIL REGULATION (EU) No 1352/2014

of 18 December 2014

concerning restrictive measures in view of the situation in Yemen

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 2014/932/CFSP[(1)],

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

Whereas:

(1) In accordance with the United Nations Security Council Resolution (UNSCR) 2140 (2014) of 26 February 2014, Decision 2014/932/CFSP provides for restrictions on the entry or transit and the freezing of funds and economic resources of certain persons to be designated by the Committee established pursuant to paragraph 19 of UNSCR 2140 (2014).

(2) On 7 November 2014, that Committee designated three individuals to be subject to restrictions on entry or transit and to the freezing of funds and economic resources as set out in UNSCR 2140 (2014).

(3) Certain measures provided for in Decision 2014/932/CFSP fall within the scope of the Treaty on the Functioning of the European Union and, therefore, notably with a view 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.

(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 is to 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 Yemen and in order to ensure consistency with the process for amending and reviewing the Annex to Decision 2014/932/CFSP.

(6) The procedure for amending the list in Annex I to this Regulation should include the provision of reasons for their listing as transmitted by the Committee established pursuant to paragraph 19 of UNSCR 2140 (2014) to designated natural or legal persons, entities or bodies, so as to give them an opportunity to present observations. Where

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observations are submitted or substantial new evidence is presented, the Council should review its decision in the light of those observations and inform the person, entity or body concerned accordingly.

(7) 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 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)].

(8) 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 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;

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(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;

(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) 'Sanctions Committee' means the Committee of the United Nations Security Council established pursuant to paragraph 19 of UNSCR 2140 (2014);

(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;

(j) **[**[F1]'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services, including verbal forms of assistance.**]**

Textual Amendments

F1 Inserted by Council Regulation (EU) 2015/878 of 8 June 2015 amending Regulation (EU) No 1352/2014 concerning restrictive measures in view of the situation in Yemen.

[F1 Article 1a

It shall be prohibited to:

(a) provide technical assistance related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts therefor, directly or indirectly to any natural or legal person, entity or body, as listed in Annex I;

(b) provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance, for any sale, supply, transfer or export of arms and related materiel, or

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for the provision of related technical assistance, directly or indirectly to any natural or legal person, entity or body, as listed in Annex I.**]**

Textual Amendments

F1 Inserted by Council Regulation (EU) 2015/878 of 8 June 2015 amending Regulation (EU) No 1352/2014 concerning restrictive measures in view of the situation in Yemen.

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 to this Regulation 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

[[F2]1 Annex I shall include natural or legal persons, entities and bodies identified by the Sanctions Committee as engaging in or providing support for acts that threaten the peace, security or stability of Yemen, including but not limited to:

a acts obstructing or undermining the successful completion of the political transition, as outlined in the Gulf Cooperation Council Initiative and Implementation Mechanism Agreement;

b acts impeding the implementation of the outcomes of the final report of the Comprehensive National Dialogue Conference through violence, or attacks on essential infrastructure;

c planning, directing or committing acts that violate applicable international human rights law or international humanitarian law, or acts that constitute human rights abuses, in Yemen, including sexual violence in armed conflict, or the recruitment or use of children in armed conflict in violation of international law;

d acts violating the arms embargo imposed by Article 1 of Decision 2014/932/CFSP or obstructing the delivery of humanitarian assistance to Yemen or access to, or distribution of, humanitarian assistance in Yemen.**]**

2 Annex I shall include the grounds for the listing of natural or legal persons, entities or bodies concerned.

3 Annex I shall include, where available, information provided by the Security Council or by the Sanctions Committee 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 or bodies, such information may include names, place and date of registration, registration number and place of business. Annex I shall also include the date of designation by the Security Council or by the Sanctions Committee.

Textual Amendments

F2 Substituted by Council Regulation (EU) 2020/488 of 2 April 2020 amending Regulation (EU) No 1352/2014 concerning restrictive measures in view of the situation in Yemen.

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[F3 Article 3a

By way of derogation from Articles 1a and 2, the competent authorities of the Member States may authorise:

(a) the provision of technical assistance, financing or financial assistance related to the activities described in Article 1a;

(b) 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, and provided that the Sanctions Committee has determined on a case-by-case basis that a derogation is necessary to facilitate the work of the United Nations and other humanitarian organisations in Yemen or for any other purpose consistent with the objectives of UNSCR 2140 (2014) and UNSCR 2216 (2015).**]**

Textual Amendments

F3 Inserted by Council Regulation (EU) 2020/488 of 2 April 2020 amending Regulation (EU) No 1352/2014 concerning restrictive measures in view of the situation in Yemen.

Article 4

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 following conditions are met:

(a) the competent authority concerned has determined that the funds or economic resources are:

(i) 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;

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

(iii) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources; and

(b) the Member State concerned has notified the Sanctions Committee of the determination referred to in point (a) and its intention to grant an authorisation, and the Sanctions Committee has not objected to that course of action within five working days of notification.

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, provided that the competent authority concerned has determined that the funds or economic resources are necessary for extraordinary expenses, and provided that