Council Regulation (EU) No 401/2013 of 2 May 2013 concerning restrictive measures in respect of Myanmar/Burma and repealing Regulation (EC) No 194/2008

COUNCIL REGULATION (EU) No 401/2013

of 2 May 2013

concerning restrictive measures in respect of Myanmar/ Burma and repealing Regulation (EC) No 194/2008

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 2013/184/CFSP of 22 April 2013 concerning restrictive measures against Myanmar/Burma[(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) Regulation (EC) No 194/2008 of 25 February 2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar[(2)] provides for certain measures to be taken in relation to Myanmar/Burma, including restrictions on certain exports from Myanmar/Burma and a freezing of the assets of certain individuals and entities.

(2) By Decision 2013/184/CFSP, the Council agreed, as a means of encouraging positive changes to continue, that all those restrictive measures should be lifted, with the exception of the arms embargo and the embargo on equipment which might be used for internal repression.

(3) Council Regulation (EC) No 194/2008 should therefore be repealed, and certain of its provisions replaced by this Regulation.

(4) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

I[F1] Article 1

For the purposes of this Regulation, the following definitions 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;

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(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;

(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) 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may

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take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services, including verbal forms of assistance;

(i) 'brokering services' means:

(i) the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology from a third country to any other third country, or

(ii) the selling or buying of goods and technology that are located in third countries for their transfer to another third country;

(j) 'import' means any entry of goods into the customs territory of the Union or other territories to which the Treaty applies, under the conditions laid down in Articles 349 and 355 thereof. It includes, within the meaning of Regulation (EU) No 952/2013 of the European Parliament and of the Council[(3)] laying down the Union Customs Code, placing in a free zone, placing under special procedure and release for free circulation, but it excludes transit or temporary storage;

(k) 'export' means any departure of goods from the customs territory of the Union or other territories to which the Treaty applies, under the conditions laid down in Articles 349 and 355 thereof. It includes, within the meaning of Regulation (EU) No 952/2013, the departure of goods that requires a customs declaration and the departure of goods after their storage in a free zone or after their placement under a special procedure, but it excludes transit or temporary storage;

(l) 'exporter' means any natural or legal person on whose behalf an export declaration is made, being the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of the Union or other territories to which the Treaty applies;

(m) '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.**]**

Textual Amendments

F1 Substituted by Council Regulation (EU) 2018/647 of 26 April 2018 amending Regulation (EU) No 401/2013 concerning restrictive measures in respect of Myanmar/Burma.

CHAPTER 1

Article 2

1 It shall be prohibited to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex I, whether or not originating in the Union, to any natural or legal person, entity or body in, or for use in Myanmar/Burma.

2 Paragraph 1 shall not apply to protective clothing, including flak jackets and helmets, temporarily exported to Myanmar/Burma by United Nations personnel, personnel of the European Union or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

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Article 3

1 It shall be prohibited:

a to 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 for the aforementioned, directly or indirectly to any natural or legal person, entity or body in, or for use in Myanmar/Burma;

b to provide financing or financial assistance related to military activities, including, in particular, grants, loans and export credit insurance for any sale, supply, transfer or export of arms and related materiel, directly or indirectly to any natural or legal person, entity or body in, or for use in Myanmar/Burma.

2 It shall be prohibited:

a to provide technical assistance related to the equipment which might be used for internal repression as listed in Annex I, directly or indirectly to any natural or legal person, entity or body in, or for use in Myanmar/Burma;

b to provide financing or financial assistance related to the equipment listed in Annex I, including, in particular, grants, loans and export credit insurance, directly or indirectly to any natural or legal person, entity or body in, or for use in Myanmar/Burma.

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Textual Amendments

F2 Deleted by Council Regulation (EU) 2018/647 of 26 April 2018 amending Regulation (EU) No 401/2013 concerning restrictive measures in respect of Myanmar/Burma.

I F3 Article 3a

1 It shall be prohibited to sell, supply, transfer or export, directly or indirectly, dual-use goods and technology as included in Annex I to Council Regulation (EC) No 428/2009[4], whether or not originating in the Union, to any natural or legal person, entity or body in Myanmar/Burma or for use in Myanmar/Burma, if those items are or may be intended, in their entirety or in part, for military use, military end-user or the Border Guard Police.

Where the end-user is the Myanmar's/Burma's military, any dual-use goods and technology procured by it shall be deemed to be for military use.

2 When deciding on requests for authorisations in accordance with Regulation (EC) No 428/2009, the competent authorities shall not grant an authorisation for exports to any natural or legal person, entity or body in Myanmar/Burma or for use in Myanmar/Burma, if they have reasonable grounds to believe that the end-user might be a military end-user, the Border Guard Police or that the goods might have a military end-use.

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

4 It shall be prohibited:

a to provide technical assistance, brokering services or other services related to goods and technology referred to in paragraph 1 and to the provision, manufacture, maintenance

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and use of these goods and technology, directly or indirectly to any military end-user, the Border Guard Police or for military use in Myanmar/Burma;

b to provide financing or financial assistance related to goods and technology referred to in paragraph 1, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of these goods and technology, or for the provision of related technical assistance, brokering services or other services, directly or indirectly to any military end-user, the Border Guard Police or for military use in Myanmar/Burma.

5 The prohibitions in paragraphs 1 and 4 shall be without prejudice to the execution of contracts concluded before 27 April 2018 or ancillary contracts necessary for the execution of such contracts.

6 Paragraph 1 shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Myanmar/Burma by UN personnel, personnel of the EU or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

Textual Amendments

F3 Inserted by Council Regulation (EU) 2018/647 of 26 April 2018 amending Regulation (EU) No 401/2013 concerning restrictive measures in respect of Myanmar/Burma.

Article 3b

1 It shall be prohibited to sell, supply, transfer or export, directly or indirectly, equipment, technology or software identified in Annex III, whether or not originating in the Union, to any person, entity or body in Myanmar/Burma or for use in Myanmar/Burma, unless the competent authority of the relevant Member State, as identified on the websites listed in Annex II, has given prior authorisation.

2 The competent authorities of the Member States, as identified on the websites listed in Annex II, shall not grant any authorisation under paragraph 1 if they have reasonable grounds to determine that the equipment, technology or software in question would be used for internal repression by the Government of Myanmar/Burma, public bodies, corporations or agencies, or any person or entity acting on their behalf or at their direction.

3 Annex III shall include equipment, technology or software intended primarily for use in the monitoring or interception of internet or telephone communications.

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

Textual Amendments

F3 Inserted by Council Regulation (EU) 2018/647 of 26 April 2018 amending Regulation (EU) No 401/2013 concerning restrictive measures in respect of Myanmar/Burma.

Article 3c

1 Unless the competent authority of the relevant Member State, as identified on the websites listed in Annex II, has given prior authorisation in accordance with Article 3b, it shall be prohibited: