Council Regulation (EU) No 377/2012 of 3 May 2012 concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau

COUNCIL REGULATION (EU) No 377/2012

of 3 May 2012

concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215(2) thereof,

Having regard to Council Decision 2012/237/CFSP of 3 May 2012 concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau[(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) Decision 2012/237/CFSP provides for the adoption of restrictive measures against certain persons, entities and bodies who seek to prevent or block a peaceful political process, or who take action that undermines stability in the Republic of Guinea-Bissau. This concerns in particular those who played a leading role in the mutiny of 1 April 2010 and the coup d'état of 12 April 2012 and whose actions continue to be aimed at undermining the rule of law and the primacy of civilian power. These measures include the freezing of funds and economic resources of the natural or legal persons, entities and bodies listed in the Annex to that Decision.

(2) These measures fall within the scope of the Treaty on the Functioning of the European Union and, therefore, in particular 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.

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

(4) 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 the situation in Guinea-Bissau and in order to ensure consistency with the procedure for amending and reviewing the Annex to Decision 2012/237/CFSP.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EU) No 377/2012. 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*

(5) The procedure for amending the list in Annex I to this Regulation should include providing designated natural or legal persons, entities or bodies with the grounds for the listing so as to give them an opportunity to submit observations. Where 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.

(6) 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 are to be frozen in accordance with this Regulation should be made public. Any processing of personal data should respect Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(2)] and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[(3)].

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

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the following definitions shall apply:

(a) ‘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;

  (vii) documents evidencing an interest in funds or financial resources;

(b) ‘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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(c) '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;

(d) '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;

(e) 'territory of the Union' means the territories to which the Treaty is applicable, under the conditions laid down in the Treaty.

Article 2

1 All funds and economic resources belonging to, owned, held or controlled by natural or legal persons, entities and bodies who, in accordance with Article 2(1) of Decision 2012/237/CFSP, have been identified by the Council as either (i) engaging in or providing support for acts that threaten the peace, security or stability of the Republic of Guinea-Bissau or (ii) being associated with such persons, entities or bodies, 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 the natural or legal persons, entities or bodies listed in Annex I.

3 Participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1 and 2 shall be prohibited.

Article 3

1 Annex I shall include the grounds for listing of listed persons, entities and bodies.

2 Annex I shall also include, where available, information necessary to identify the natural or legal persons, entities and 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 By way of derogation from Article 2, the competent authorities of the Member States, as identified on the websites listed in Annex II, 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 are:

a necessary to satisfy the basic needs of the persons listed in Annex I and their dependent family members, 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 and 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, provided in this case that the Member State has notified the grounds on which it considers that a specific authorisation should be granted to all other Member States and to the Commission at least two weeks prior to authorisation.

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2 The relevant Member State 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, the competent authorities of the Member States, as identified on the websites listed in Annex II, may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

a the funds or economic resources in question are the subject of a judicial, administrative or arbitral lien established prior to the date on which the natural or legal person, entity or body referred to in Article 2 was included in Annex I or of a judicial, administrative or arbitral judgment rendered prior to that date;

b the funds or economic resources in question will be used exclusively to satisfy claims secured by such a lien or recognised as valid in such a judgment, within the limits set by applicable laws and regulations governing the rights of persons having such claims;

c the lien or judgment is not for the benefit of a natural or legal person, entity or body listed in Annex I; and

d recognising the lien or judgment is not contrary to public policy in the Member State concerned.

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

Article 6

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

a interest or other earnings on those accounts; or

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

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

2 Article 2(2) shall not prevent financial or credit institutions in the Union from crediting frozen accounts where they receive funds transferred to 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.

Article 7

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, 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 The prohibition set out in Article 2(2) shall not give rise to any liability of any kind on the part of the natural and legal persons, entities and bodies who made funds or economic resources available if they did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibition in question.

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Article 8

[[X1]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 accounts and amounts frozen in accordance with Article 2, to the competent authority of the Member State where they are resident or located, as identified on the websites listed in Annex II, and shall transmit such information, either directly or through that competent authority, to the Commission; and

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

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

Editorial Information

X1 Substituted by Corrigendum to Council Regulation (EU) No 377/2012 of 3 May 2012 concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau (Official Journal of the European Union L 119 of 4 May 2012).

Article 9

The Commission and Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with any other relevant information at their disposal in connection with this Regulation, in particular information in respect of violation and enforcement problems and judgments handed down by national courts.

Article 10

The Commission shall be empowered to amend Annex II on the basis of information supplied by Member States.

Article 11

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

2 The Council shall communicate its decision, including the grounds for the 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 submit observations.

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 concerned accordingly.

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

Article 12

1 Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.