Council Regulation (EU) No 753/2011 of 1 August 2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan

COUNCIL REGULATION (EU) No 753/2011

of 1 August 2011

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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(2) thereof,

Having regard to Council Decision 2011/486/CFSP of 1 August 2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan[(1)], adopted in accordance with Chapter 2 of Title V of the Treaty on European Union,

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) On 17 June 2011, the United Nations Security Council ('UNSC'), acting under Chapter VII of the Charter of the United Nations, adopted Resolution 1988 (2011) concerning the situation in Afghanistan which still constitutes a threat to international peace and security.

(2) On 1 August 2011, the Council of the European Union adopted Decision 2011/486/CFSP which provides for the freezing of funds and economic resources of, restrictions on the admission to the Union of, prohibition on the direct and indirect supply, sale or transfer, of weapons and military equipment to, and prohibition on the provision of related assistance and services to, individuals, groups, undertakings and entities listed either by the Committee established by UNSC Resolution 1988 (2011), or prior to the adoption of that Resolution, by the Committee established by UNSC Resolutions 1267 (1999) and 1333 (2000).

(3) Some of those measures fall within the scope of the Treaty on the Functioning of the European Union (TFEU) and regulatory action at the level of the Union is therefore necessary in order to implement them, in particular with a view to ensuring their uniform application by economic operators in all Member States.

(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.

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(5) This Regulation also fully respects the obligations of Member States under the Charter of the United Nations and the legally binding nature of the UNSC Resolutions.

(6) 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 Afghanistan, and to ensure consistency with the process for amending and reviewing the Annex to Decision 2011/486/CFSP.

(7) The procedure for amending the list in Annex I to this Regulation should include providing designated natural or legal persons, groups, undertakings and entities with the grounds for listing, so as to give them an opportunity to submit observations. Where observations are submitted by any designated person, group, undertaking or entity, or substantial new evidence is presented, the Council should review its decision in the light of those observations and inform the person, group, undertaking or entity concerned accordingly.

(8) 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, groups, undertakings and entities whose funds and economic resources should be frozen in accordance with this Regulation, must 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)].

(9) 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:

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;

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(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;

(c) '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;

(d) 'freezing of economic resources' means preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;

(e) '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;

(f) 'Sanctions Committee' means the Committee of the UNSC which was established pursuant to paragraph 30 of UNSC Resolution 1988 (2011);

(g) '1267 Committee' means the Committee of the UNSC which was established pursuant to UNSC Resolutions 1267(1999) and 1333(2000).

(h) 'grounds for listing' means the publicly releasable portion of the statement of case as provided by the Sanctions Committee and/or, where applicable, the narrative summary of reasons for listing as provided by the Sanctions Committee; or in the case of a person, group, undertaking or entity listed in Annex I to this Regulation, who was previously listed in Annex I to Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban[(4)], the statement of case and/or narrative summary of reasons provided by the 1267 Committee.

(i) 'territory of the Union' means the territories of the Member States to which the TFEU is applicable, under the conditions laid down in the TFEU, including their airspace.

Article 2

It shall be prohibited:

(a) to provide, directly or indirectly, technical assistance related to the goods and technology listed in the Common Military List of the European Union[(5)] ('Common Military List'), or related to the provision, manufacture, maintenance and use of goods included in that list, to any person, group, undertaking or entity listed in Annex I;

(b) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibition in point (a).

Article 3

1 All funds and economic resources belonging to, owned, held or controlled by a natural or legal person, group, undertaking or entity listed in Annex I shall be frozen.

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2 No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of a natural or legal person, group, undertaking or entity listed in Annex I.

3 The 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 4

1 Annex I shall consist of a list of natural or legal persons, groups, undertakings and entities who:

a were listed, immediately prior to the date of adoption of UNSC Resolution 1988 (2011), as the Taliban, and other individuals, groups, undertakings and entities associated with them, in section A ('Individuals associated with the Taliban') and section B ('entities and other groups and undertaking associated with the Taliban') of the Consolidated List of the 1267 Committee; or

b have been designated by the Sanctions Committee as being individuals, groups, undertakings and entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan.

2 Annex I shall include the grounds for listing of listed natural or legal persons, groups, undertakings and entities, as provided by the UNSC or by the Sanctions Committee.

3 Annex I shall also include, where available, the information necessary to identify the natural or legal persons, groups, undertakings and entities concerned, as provided by the UNSC or by the Sanctions Committee. With regard to natural persons, such information may include names including aliases, date and place of birth, nationality, passport and identity card numbers, gender, address, if known, and function or profession. With regard to legal persons, groups, undertakings and entities, 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 UNSC or by the Sanctions Committee.

Article 5

1 By way of derogation from Article 3, 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 for the basic expenses of persons listed in Annex I and their dependent family members, including payments for foodstuffs, rent or mortgages, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

b intended exclusively for the payment of reasonable professional fees and the reimbursement of incurred expenses associated with the provision of legal services;

c intended exclusively for the payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources;

provided that the Member State concerned has notified the Sanctions Committee of such determination and its intention to grant the authorisation, and the Sanctions Committee has not objected to that course of action within three working days of notification.

2 By way of derogation from Article 3, 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, after having determined that the frozen funds or economic resources are necessary for extraordinary

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expenses provided that the Sanctions Committee has been notified of that determination by the Member State concerned and the determination has been approved by the Sanctions Committee.

3 Any person, group, undertaking or entity wishing to benefit from the exemptions referred to in paragraphs 1 or 2 shall address its request to the relevant competent authority of the Member State as listed in Annex II.

The competent authority listed in Annex II shall promptly notify both the person, group, undertaking or entity that made the request, and any other person, group, undertaking or entity known to be directly concerned, in writing, of whether the request has been granted.

The relevant Member State shall also inform other Member States and the Commission whether the request for such an exemption has been granted.

4 Funds released and transferred within the Union in order to meet expenses or recognised by virtue of this Article shall not be subject to further restrictive measures pursuant to Article 3.

5 In the case of persons, groups, undertakings or entities listed in Annex I to this Regulation who were previously listed in Annex I to Regulation (EC) No 881/2002, authorisations granted previously by the competent authorities of the Member States, as identified on the websites listed in Annex II, in relation to the categories of derogation described in paragraphs 1 and 2 of this Article, shall continue to apply.

Article 6

1 Article 3(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 before the date on which the account became subject to this Regulation, or, in the case of persons, groups, undertakings or entities listed in Annex I to this Regulation who were previously listed in Annex I to Regulation (EC) No 881/2002, the date on which they were first subject to Regulation (EC) No 337/2000[(6)], Regulation (EC) No 467/2001[(7)], or Regulation (EC) No 881/2002.

provided that any such interest, other earnings and payments are frozen in accordance with Article 3(1).

2 Article 3(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, group, undertaking or entity, 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 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 The prohibition set out in Article 3(2) shall not give rise to any liability of any kind on the part of the natural and legal persons, entities or 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.