Council Regulation (EU) No 359/2011 of 12 April 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran

COUNCIL REGULATION (EU) No 359/2011

of 12 April 2011

concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran

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 2011/235/CFSP of 12 April 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Iran[(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 from the European Commission,

Whereas:

(1) Decision 2011/235/CFSP provides for the freezing of funds and economic resources of certain persons responsible for serious human rights violations in Iran. Those persons and entities are listed in the Annex to the Decision.

(2) The restrictive measures should target persons complicit in or responsible for directing or implementing grave human rights violations in the repression of peaceful demonstrators, journalists, human rights defenders, students or other persons who speak up in defence of their legitimate rights, including freedom of expression, as well as persons complicit in or responsible for directing or implementing grave violations of the right to due process, torture, cruel, inhuman and degrading treatment, or the indiscriminate, excessive and increasing application of the death penalty, including public executions, stoning, hangings or executions of juvenile offenders in contravention of Iran's international human rights obligations.

(3) Those measures fall within the scope of the Treaty on the Functioning of the European Union 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 in particular 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.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EU) No 359/2011. 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 power to amend the list in Annex I to this Regulation should be exercised by the Council, in view of the political situation in Iran, and to ensure consistency with the process for amending and reviewing the Annex to Decision 2011/235/CFSP.

(6) The procedure for amending the lists in Annex I to this Regulation should include providing designated persons, entities or bodies with the grounds for 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 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, 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)].

(8) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must 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;

  (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,

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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) '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.

[F1 Article 1a

[F2 1.] It shall be prohibited:

a to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex III, whether or not originating in the Union, to any person, entity or body in Iran or for use in Iran;

b to provide, directly or indirectly, technical assistance or brokering services related to equipment which might be used for internal repression as listed in Annex III, to any person, entity or body in Iran or for use in Iran;

c to provide, directly or indirectly, financing or financial assistance related to equipment which might be used for internal repression as listed in Annex III, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for any provision of related technical assistance to any person, entity or body in Iran or for use in Iran;

d to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in points (a), (b) and (c).

[F2 2. By way of derogation from paragraph 1, the competent authorities of the Member States, as listed in Annex II, may authorise, under such conditions as they deem appropriate, the sale, supply, transfer or export of equipment which might be used for internal repression as listed in Annex III provided that it is intended solely for the protective use of the personnel of the Union and its Member States in Iran, or the provision of technical assistance or brokering services or of financing or financial assistance referred to in paragraph 1(b) and (c) related to such equipment.]

Textual Amendments

F1 Inserted by Council Regulation (EU) No 264/2012 of 23 March 2012 amending Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran.

F2 Inserted by Council Regulation (EU) No 1245/2012 of 20 December 2012 amending Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran.

Article 1b

1 It shall be prohibited to sell, supply, transfer or export, directly or indirectly, equipment, technology or software identified in Annex IV, whether or not originating in the Union, to any person, entity or body in Iran or for use in Iran, unless the competent authority

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of the relevant Member State, as identified in the websites referred to in Annex II, has given prior authorisation.

2 The competent authorities of the Member States, as identified in the websites referred to 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 monitoring or interception, by Iran's government, public bodies, corporations and agencies or any person or entity acting on their behalf or at their direction, of internet or telephone communications in Iran.

3 Annex IV shall include equipment, technology or software which may be used for 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 following the authorisation.

Textual Amendments

F1 Inserted by Council Regulation (EU) No 264/2012 of 23 March 2012 amending Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran.

Article 1c

1 It shall be prohibited:

a to provide, directly or indirectly, technical assistance or brokering services related to the equipment, technology and software identified in Annex IV, or related to the provision, manufacture, maintenance and use of the equipment and technology identified in Annex IV or to the provision, installation, operation or updating of any software identified in Annex IV, to any person, entity or body in Iran or for use in Iran;

b to provide, directly or indirectly, financing or financial assistance related to the equipment, technology and software identified in Annex IV, to any person, entity or body in Iran or for use in Iran;

c to provide any telecommunication or internet monitoring or interception services of any kind to, or for the direct or indirect benefit of, Iran's government, public bodies, corporations and agencies or any person or entity acting on their behalf or at their direction; and

d to participate, knowingly and intentionally, in any activity the object or effect of which is to circumvent the prohibitions referred to in point (a), (b) or (c) above;

unless the competent authority of the relevant Member State, as identified in the websites referred to in Annex II, has given prior authorisation, on the basis set out in Article 1b(2).

2 For the purposes of paragraph 1(c), ‘telecommunication or internet monitoring or interception services’ means those services that provide, in particular using equipment, technology or software as identified in Annex IV, access to and delivery of a subject's incoming and outgoing telecommunications and call- associated data for the purpose of its extraction, decoding, recording, processing, analysis and storing or any other related activity.]

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Textual Amendments

F1 Inserted by Council Regulation (EU) No 264/2012 of 23 March 2012 amending Regulation (EU) No 359/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Iran.

Article 2

1 All funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies 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 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 3

1 Annex I shall consist of a list of persons who, in accordance with Article 2(1) of Decision 2011/235/CFSP, have been identified by the Council as being persons responsible for serious human rights violations in Iran, and persons, entities or bodies associated with them.

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

3 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 identity 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 in the Member States, as 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 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 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; or

d necessary for extraordinary expenses, provided that the Member State concerned has notified all other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted, at least 2 weeks prior to the authorisation.

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