Council Regulation (EU) No 101/2011 of 4 February 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia

COUNCIL REGULATION (EU) No 101/2011

of 4 February 2011

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

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 2011/72/CFSP of 31 January 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia[(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) Decision 2011/72/CFSP provides for the freezing of funds and economic resources belonging to, owned, held or controlled by certain persons responsible for the misappropriation of Tunisian State funds, and persons associated with them, who are thus depriving the Tunisian people of the benefits of the sustainable development of their economy and society and undermining the development of democracy in the country. Those natural or legal persons, entities and bodies are listed in the Annex to the Decision.

(2) 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.

(3) 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.

(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 Tunisia, and to ensure consistency with the process for amending and reviewing the Annex to Decision 2011/72/CFSP.

(5) The procedure for amending the lists 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

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EU) No 101/2011. 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*

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.

(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 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)].

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

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(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.

Article 2

1 All funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies who, in accordance with Article 1(1) of Decision 2011/72/CFSP, have been identified by the Council as being responsible for the misappropriation of Tunisian State funds, and natural or legal persons, entities and bodies associated with them, 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 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 include the grounds for the 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 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 or 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 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 2 weeks prior to authorisation.

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

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[F1 Article 5

1 By way of derogation from Article 2, the competent authorities in Member States, as indicated on the websites listed in Annex II, may authorise the release of certain frozen funds or economic resources, provided the following conditions are met:

a the funds or economic resources are the subject of an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in Article 2 was listed in Annex I, or of a judicial or administrative decision rendered in the Union, or a judicial decision enforceable in the Member State concerned, prior to or after that date;

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

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

d recognising the decision is not contrary to public policy in the Member State concerned.

2 The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this Article.**]**

Textual Amendments

F1 Substituted by Council Regulation (EU) No 1100/2012 of 26 November 2012 amending Regulation (EU) No 101/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia.

Article 6

[F1 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 before the date on which the natural or legal person, entity or body referred to in Article 2 has been listed in Annex I; or

c payments due under judicial, administrative or arbitral decisions rendered in the Union or enforceable in the Member State concerned,

provided that 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.

Textual Amendments

F1 Substituted by Council Regulation (EU) No 1100/2012 of 26 November 2012 amending Regulation (EU) No 101/2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia.

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Article 7

By way of derogation from Article 2 and provided that a payment by a person, entity or body listed in Annex I is due under a contract or agreement that was concluded by, or an obligation that arose for the person, entity or body concerned, before the date on which that person, entity or body had been designated, the competent authorities of the Member States, as indicated on the websites listed in Annex II, may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources, if the following conditions are met:

(a) the competent authority concerned has determined that:

(i) the funds or economic resources shall be used for a payment by a person, entity or body listed in Annex I;

(ii) the payment is not in breach of Article 2(2);

(b) the Member State concerned has, at least 2 weeks prior to the grant of the authorisation, notified the other Member States and the Commission of that determination and its intention to grant an authorisation.

Article 8

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 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.

Article 9

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 in the Member State where they are resident or located, as indicated on the websites listed in Annex II, and shall transmit such information, either directly or through the Member States, 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.

[[F2]3 Paragraph 2 shall not prevent Member States from sharing that information, in accordance with their national law, with the relevant authorities of Tunisia and other Member States where necessary for the purpose of assisting the recovery of misappropriated assets.**]**