Council Regulation (EU) No 356/2010 of 26 April 2010 imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia

COUNCIL REGULATION (EU) No 356/2010

of 26 April 2010

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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 (1) and (2) thereof,

Having regard to Council Decision 2010/231/CFSP of 26 April 2010 concerning restrictive measures against Somalia and repealing Common Position 2009/138/CFSP[(1)],

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 20 November 2008, the United Nations Security Council (hereinafter referred to as the 'Security Council'), acting under Chapter VII of the Charter of the United Nations, adopted Resolution 1844 (2008) confirming the general and complete arms embargo against Somalia imposed by the United Nations Security Council Resolution (UNSCR) 733 (1992) and introducing additional restrictive measures.

(2) The additional restrictive measures concern restrictions on admission and financial restrictive measures against individuals and entities designated by the Security Council or by the United Nations Sanctions Committee established pursuant to UNSCR 751 (1992) concerning Somalia (hereinafter referred to as the 'Sanctions Committee'). In addition to the general arms embargo, the Resolution introduces a specific prohibition on the direct and indirect supply, sale or transfer, of weapons and military equipment and a specific prohibition on the provision of related assistance and services, to individuals and entities listed by the Sanctions Committee.

(3) The restrictive measures are aimed at individuals and entities designated by the United Nations (UN) as engaging in or providing support for acts that threaten the peace, security or stability of Somalia, including acts that threaten the Djibouti Agreement of 18 August 2008 or the political process, or threaten the Transitional Federal Institutions (TFIs) or the African Union Mission in Somalia (AMISOM) by force, as having acted in violation of the arms embargo and related measures, or as obstructing the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EU) No 356/2010. 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*

(4) On 16 February 2009, the Council of the European Union adopted Common Position 2009/138/CFSP concerning restrictive measures against Somalia[(2)] which provides, inter alia, for financial restrictive measures concerning natural or legal persons, entities or bodies listed by the UN, as well as for a prohibition on the direct and indirect provision of assistance and services related to weapons and military equipment to such persons, entities or bodies.

(5) On 19 March 2010, the Security Council adopted UNSCR 1916 (2010) which, inter alia, decided to ease some restrictions and obligations under the sanctions regime to enable the delivery of supplies and technical assistance by international, regional and sub-regional organisations and to ensure the timely delivery of urgently needed humanitarian assistance by the UN.

(6) On 12 April 2010, the Sanctions Committee adopted the list of persons and entities which are subject to restrictive measures.

(7) On that basis, on 26 April 2010 the Council adopted Decision 2010/231/CFSP.

(8) These measures fall within the scope of the Treaty on the Functioning of the European Union and, therefore, notably with a view to ensuring their uniform application by economic operators in all Member States, an act of the Union is necessary in order to implement them as far as the Union is concerned.

(9) Council Regulation (EC) No 147/2003 of 27 January 2003 concerning certain restrictive measures in respect of Somalia[(3)] imposed a general prohibition on the provision of technical advice, assistance, training, financing or financial assistance related to military activities, to any person, entity or body in Somalia. A new Council Regulation should be adopted to implement the measures concerning natural or legal persons, entities or bodies listed by the UN.

(10) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union[(4)] and notably the right to an effective remedy and to a fair trial, the right to property and the right to the protection of personal data. This Regulation should be applied in accordance with those rights and principles.

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

(12) 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 in the region posed by the situation in Somalia and in order to ensure consistency with the process for amending and reviewing the Annex to Council Decision 2010/231/CFSP.

(13) The procedure for amending the list in Annex I to this Regulation should include providing to designated natural or legal persons, entities or bodies the reasons for their listing as transmitted by the Sanctions Committee, so as to give them an opportunity to present 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.

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(14) In order to create maximum legal certainty within the Union, the names and other relevant data for identifying natural or legal persons, entities or bodies whose funds and economic resources are frozen in accordance with this Regulation should be published.

(15) Any processing of personal data of natural persons under this Regulation 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[(5)] 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[(6)].

(16) Member States should determine the penalties applicable to infringements of the provisions of this Regulation. The penalties provided for should be proportionate, effective and dissuasive,

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;

(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;

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(e) 'Sanctions Committee' means the Committee of the Security Council established pursuant to UNSCR 751 (1992) concerning Somalia;

(f) '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;

(g) 'investment services' means:

(i) reception and transmission of orders in relation to one or more financial instruments;

(ii) execution of orders on behalf of clients;

(iii) dealing on own account;

(iv) portfolio management;

(v) investment advice;

(vi) underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;

(vii) placing of financial instruments without a firm commitment basis; or

(viii) operating of multilateral trading facilities,

provided that the activity relates to any of the financial instruments listed in Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments[7];

(h) 'territory of the Union' means the territories to which the Treaties are applicable, under the conditions laid down in the Treaties.

(i) 'statement of reasons' means the publicly releasable portion of the statement of case and/or, where applicable, the narrative summary of reasons for listing as provided by the Sanctions Committee.

Article 2

1 All funds and economic resources belonging to, owned, held or controlled by natural or legal persons, entities, or 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 natural or legal persons, entities or bodies listed in Annex I.

[F1 3 Annex I shall consist of natural or legal persons, entities or bodies designated by the Security Council or the Sanctions Committee as:

[F2 a engaging in, or providing support for, acts that threaten the peace, security or stability of Somalia, where such acts include, but are not limited to:

(i) planning, directing or committing acts involving sexual and gender-based violence;

(ii) acts that threaten the peace and reconciliation process in Somalia;

(iii) acts that threaten the Federal Government of Somalia or the African Union Mission in Somalia (AMISOM) by force;**]**

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b having acted in violation of the arms embargo or the prohibition against providing related assistance or the arms resale and transfer restrictions as stipulated in paragraph 34 of UNSCR 2093 (2013);

c obstructing the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia;

d being political or military leaders recruiting or using children in armed conflicts in Somalia in violation of applicable international law;

e being responsible for violations of applicable international law in Somalia involving the targeting of civilians, including children and women, in situations of armed conflict, including killing and maiming, sexual and gender-based violence, attacks on schools and hospitals and abduction and forced displacement.**]**

4 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.

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

Textual Amendments

F1 Substituted by Council Regulation (EU) No 432/2013 of 13 May 2013 amending Regulation (EU) No 356/2010 imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia.

F2 Substituted by Council Regulation (EU) 2018/1933 of 10 December 2018 amending Regulation (EU) No 356/2010 imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia.

Article 3

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 was designated by the Sanctions Committee or the Security Council,

provided that any such interest, other earnings and payments continue to be subject to 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 competent authorities in the Member States, as indicated in the websites listed in Annex II, about such transactions without delay.

Article 4

[F3 1 Article 2(1) and (2) shall not apply to the making available of funds or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia by the United Nations, its specialised agencies or programmes, humanitarian organisations having observer status with the United Nations General Assembly that provide