Council Regulation (EU) No 1284/2009 of 22 December 2009 imposing certain specific restrictive measures in respect of the Republic of Guinea

COUNCIL REGULATION (EU) No 1284/2009

of 22 December 2009

imposing certain specific restrictive measures in respect of the Republic of Guinea

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 Common Position 2009/788/CFSP of 27 October 2009 concerning restrictive measures against the Republic of Guinea[(1)], as amended by Council Decision 2009/1003/CFSP of 22 December 2009,

Having regard to the joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission,

Whereas:

(1) Common Position 2009/788/CFSP provides for certain restrictive measures concerning members of the National Council for Democracy and Development (NCDD) and individuals associated with them, responsible for the violent repression of 28 September 2009 or the political stalemate in the country.

(2) Those measures include the freezing of funds and economic resources of the natural or legal persons, entities and bodies listed in the Annex to the Common Position, as well as a prohibition on the provision of technical and financial assistance and other services related to military equipments to any natural or legal person, entity or body in, or for use in, the Republic of Guinea. The measures also include a prohibition on the sale, supply, transfer or export of equipment to the Republic of Guinea which could be used for internal repression.

(3) Those measures fall within the scope of the Treaty and, therefore, notably with a view to ensuring their uniform application by economic operators in all Member States, legislation at the level of the Union is necessary in order to implement them as far as the Union is concerned.

(4) Any processing of personal data of natural persons under this Regulation should observe 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)].

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EU) No 1284/2009. 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) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

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

(a) **[**[F1]. . . . .

(b) . . . . .

(c) . . . . .**]**

(d) '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;

(e) '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;

(f) '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;

(g) '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;

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

Textual Amendments

F1 Deleted by Council Regulation (EU) No 380/2014 of 14 April 2014 amending Regulation (EU) No 1284/2009 imposing certain specific restrictive measures in respect of the Republic of Guinea.

***Changes to legislation:** There are outstanding changes not yet made to Council Regulation (EU) No 1284/2009. 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*

F1 Article 2

. . . . . .

Textual Amendments

F1 Deleted by Council Regulation (EU) No 380/2014 of 14 April 2014 amending Regulation (EU) No 1284/2009 imposing certain specific restrictive measures in respect of the Republic of Guinea.

F1 Article 3

. . . . . .

Textual Amendments

F1 Deleted by Council Regulation (EU) No 380/2014 of 14 April 2014 amending Regulation (EU) No 1284/2009 imposing certain specific restrictive measures in respect of the Republic of Guinea.

F1 Article 4

. . . . . .

Textual Amendments

F1 Deleted by Council Regulation (EU) No 380/2014 of 14 April 2014 amending Regulation (EU) No 1284/2009 imposing certain specific restrictive measures in respect of the Republic of Guinea.

F1 Article 5

. . . . . .

Textual Amendments

F1 Deleted by Council Regulation (EU) No 380/2014 of 14 April 2014 amending Regulation (EU) No 1284/2009 imposing certain specific restrictive measures in respect of the Republic of Guinea.

Article 6

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

[F2 3 Annex II shall consist of the persons identified by the International Commission of Inquiry as responsible for the 28 September 2009 events in the Republic of Guinea, and natural or legal persons, entities or bodies associated with them, as designated by the Council in accordance with Article 4(1) of Council Decision 2010/638/CFSP of 25 October 2010 concerning restrictive measures against the Republic of Guinea(4).**]**

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.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EU) No 1284/2009. 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*

Textual Amendments

F2 Substituted by Council Regulation (EU) No 269/2011 of 21 March 2011 amending Regulation (EU) No 1284/2009 imposing certain specific restrictive measures in respect of the Republic of Guinea.

[F3 Article 7

The prohibition set out in Article 6(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.**]**

Textual Amendments

F3 Substituted by Council Regulation (EU) No 380/2014 of 14 April 2014 amending Regulation (EU) No 1284/2009 imposing certain specific restrictive measures in respect of the Republic of Guinea.

Article 8

1 By way of derogation from Article 6, the competent authorities of the Member States as indicated in the websites listed in Annex III 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 II, 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 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 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.

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

Article 9

1 By way of derogation from Article 6, the competent authorities of the Member States as indicated in the websites listed in Annex III 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 person, entity or body referred to in Article 6 was included in Annex II, 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 person, entity or body listed in Annex II; and

***Changes to legislation:** There are outstanding changes not yet made to Council Regulation (EU) No 1284/2009. 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*

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 10

1 Article 6(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.

2 Article 6(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 3 has been included in Annex II,

provided that any such interest, other earnings, payments or financial instruments are frozen in accordance with Article 6(1).

Article 11

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.

Article 12

1 Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities or bodies shall:

a supply immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 6, to the competent authorities of Member States as indicated in the websites listed in Annex III for the country where they are resident or located and shall transmit such information, directly or through the competent authority as indicated in the websites listed in Annex III, to the Commission; and

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

2 Any additional information directly received by the Commission shall be made available to the Member State concerned.

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

Article 13

The Commission and the 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.