Council Regulation (EC) No 243/2008 of 17 March 2008 imposing certain restrictive measures on the illegal authorities of the island of Anjouan in the Union of the Comoros

COUNCIL REGULATION (EC) No 243/2008

of 17 March 2008

imposing certain restrictive measures on the illegal authorities of the island of Anjouan in the Union of the Comoros

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301 thereof,

Having regard to Common Position 2008/187/CFSP of 3 March 2008 concerning restrictive measures against the illegal authorities of the island of Anjouan in the Union of the Comoros[(1)],

Having regard to the proposal from the Commission,

Whereas:

(1) On 25 October 2007, by letter addressed to the Secretary General/High Representative, the President of the African Union Commission asked for the support of the European Union and its Member States in the enforcement of the sanctions that the Peace and Security Council of the African Union had decided to impose on the illegal authorities of Anjouan and certain associated persons.

(2) Common Position 2008/187/CFSP provides for restrictive measures to be imposed on the illegal authorities of Anjouan and certain associated persons. Those measures include freezing funds and economic resources belonging to the persons concerned.

(3) The said measures fall within the scope of the Treaty establishing the European Community. Accordingly, with a view to ensuring their uniform application by economic operators in all Member States, a Community act is necessary to implement them as far as the Community is concerned,

HAS ADOPTED THIS REGULATION:

Article 1

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

(a) ‘funds’ means financial assets and economic 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;

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(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;

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

Article 2

1 All funds and economic resources belonging to, owned, held or controlled by the natural and 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 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.

4 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 or entities concerned, if they did not know, and could not reasonably have known, that their actions would infringe this prohibition.

Article 3

1 Article 2(2) shall not apply to the addition to frozen accounts of:

a interest or other remuneration on those accounts;

b payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to the provisions of this Regulation,

provided that any such interest, remuneration or payments continue to be subject to Article 2(1).

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2 Article 2(2) shall not prevent financial or credit institutions in the Community from crediting frozen accounts where they receive funds transferred by third parties to the account of a natural or legal person, entity or body listed in Annex I, provided that any additions to such accounts are also frozen. The financial or credit institution shall inform the competent authorities of such transactions without delay.

Article 4

1 The competent authorities in the Member States, as indicated in 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, provided that the funds or economic resources concerned 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 payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;

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

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

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

Article 5

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 implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen as a result of negligence.

Article 6

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

a supply immediately the competent authorities indicated in the websites listed in Annex II of the Member States where they are resident or located with any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 2, and shall forward such information, directly or through the Member States, to the Commission;

b cooperate with the competent authorities indicated in the websites listed in Annex II 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.

Article 7

The Commission and 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

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information in respect of violations and enforcement problems and judgments handed down by national courts.

Article 8

1 The Commission shall be empowered to:

a amend Annex I on the basis of decisions taken in respect of the Annex to Common Position 2008/187/CFSP;

b amend Annex II on the basis of information supplied by Member States.

2 A notice shall be published regarding the procedures for submitting information in relation to Annex I[(2)].

Article 9

1 Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive.

2 Member States shall notify the Commission of those rules without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 10

1 Member States shall designate the competent authorities referred to in this Regulation and identify them in, or through, the websites listed in Annex II.

2 Member States shall notify the Commission of their competent authorities once this Regulation enters into force and shall notify it of any subsequent changes.

Article 11

This Regulation shall apply:

(a) within the territory of the Community, including its airspace;

(b) on board any aircraft or any vessel under the jurisdiction of a Member State;

(c) to any person inside or outside the territory of the Community who is a national of a Member State;

(d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State;

(e) to any legal person, entity or body in respect of any business done in whole or in part within the territory of the Community.

Article 12

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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Done at Brussels, 17 March 2008.

For the Council

The President

I. JARC