Council Regulation (EC) No 305/2006 of 21 February 2006 imposing specific restrictive measures against certain persons suspected of involvement in the assassination of former Lebanese Prime Minister Rafiq Hariri

COUNCIL REGULATION (EC) No 305/2006

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imposing specific restrictive measures against certain persons suspected of involvement in the assassination of former Lebanese Prime Minister Rafiq Hariri

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60, 301 and 308 thereof,

Having regard to Council Common Position 2005/888/CFSP of 12 December 2005 concerning specific restrictive measures against certain persons suspected of involvement in the assassination of former Lebanese Prime Minister Rafiq Hariri[(1)],

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament[(2)],

Whereas:

(1) On 31 October 2005, the Security Council of the United Nations adopted Resolution 1636 (2005) noting the conclusion of the report of the International Investigation Commission into the 14 February 2005 terrorist bombing in Beirut, Lebanon, that killed 23 people, including former Lebanese Prime Minister Rafiq Hariri, and caused injury to dozens of people.

(2) The Security Council noted with extreme concern the International Investigation Commission's conclusion that there is converging evidence pointing at the involvement of both Lebanese and Syrian officials in this terrorist act, and acting under Chapter VII of the Charter of the United Nations, decided, as a step to assist in the investigation of this crime and without prejudice to the ultimate judicial determination of the guilt or innocence of any individual, to impose measures against all individuals suspected of involvement in the planning, sponsoring, organizing or perpetrating of this terrorist act.

(3) Common Position 2005/888/CFSP provides for implementation of the measures set out in UNSCR 1636 (2005) and, in particular, the freezing of funds and economic resources of persons registered by the Committee of the Security Council established by paragraph 3(b) of UNSCR 1636 (2005) as suspected of involvement in the planning, sponsoring, organising or perpetrating of the assassination of former Lebanese Prime Minister Rafiq Hariri and others on 14 February 2005.

(4) These 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,

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Community legislation is necessary to implement them as far as the Community is concerned.

(5) For reasons of expediency, the Commission should be empowered to amend the Annexes to this Regulation, on the basis of notification or information by the relevant Sanctions Committee and Member States, as appropriate.

(6) 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.

(7) In order to ensure that the measures provided for in this Regulation are effective, it should 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:

1. ‘Sanctions Committee’ means the Committee of the Security Council of the United Nations which was established pursuant to paragraph 3(b) of UNSCR 1636 (2005);

2. ‘funds’ means financial assets and benefits of every kind, including but not limited to:

   (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;

   (b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;

   (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;

   (d) interest, dividends or other income on or value accruing from or generated by assets;

   (e) credit, right of set-off, guarantees, performance bonds or other financial commitments;

   (f) letters of credit, bills of lading, bills of sale;

   (g) documents evidencing an interest in funds or financial resources;

3. ‘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;

4. ‘economic resources’ means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services;

5. ‘freezing of economic resources’ means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, the selling, hiring or mortgaging of them;

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6. 'territory of the Community' means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in that Treaty.

Article 2

1 All funds and economic resources belonging to, owned, held or controlled by the 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 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 By way of derogation from Article 2, the competent authorities of the Member States, as listed in Annex II, may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources or the making available of certain funds or economic resources, having determined that the funds or economic resources concerned are:

a necessary for basic expenses, 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; or

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

provided that the Member State concerned has notified the Sanctions Committee of that determination and that the determination has been approved by that Committee.

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

3 Article 2(2) shall not apply to the addition to frozen accounts of interest or other earnings on those accounts provided that any such interest or other earnings are frozen in accordance with Article 2(1).

Article 4

Article 2(2) shall not prevent the crediting of the frozen accounts by financial institutions that receive funds transferred by third parties to the account of a listed person, entity or body, provided that any such crediting to such accounts is also frozen in accordance with Article 2(1). The financial institution shall inform the competent authorities of such transactions without delay.

Article 5

1 Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy and to the provisions of Article 284 of the Treaty, 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 authorities of the Member States listed in Annex II where they are resident or located, and shall transmit such information, directly or through these competent authorities, to the Commission;

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b cooperate with the competent authorities listed in Annex II in any verification of this information.

2 Any additional information directly received by the Commission shall be made available to the competent authorities of 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. Such purposes shall be deemed to include cooperation with any international investigation related to the assets or financial transactions of the natural and legal persons, bodies and entities listed in Annex I.

Article 6

The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith 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, entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen as result of negligence.

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 information in respect of violation 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 determinations made by the Sanctions Committee; and

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

2 Without prejudice to the rights and obligations of the Member States under the Charter of the United Nations, the Commission shall maintain all necessary contacts with the Sanctions Committee for the purpose of the effective implementation of this Regulation.

Article 9

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

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 to them.

Article 10

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;

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(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 Community.

Article 11

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.