Council Regulation (EC) No 314/2004 of 19 February 2004 concerning restrictive measures in view of the situation in Zimbabwe

[F1[X1]COUNCIL REGULATION (EC) No 314/2004

of 19 February 2004

concerning restrictive measures in view of the situation in Zimbabwe**]]**

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 Council Common Position 2004/161/CFSP of 19 February 2004 renewing restrictive measures against Zimbabwe(1),

Having regard to the proposal from the Commission,

Whereas:

(1) By means of Common Position 2002/145/CFSP of 18 February 2002 concerning restrictive measures against Zimbabwe(2), the Council expressed serious concern about the situation in Zimbabwe and in particular about serious violations of human rights by the Government of Zimbabwe, including violations of the freedoms of opinion, of association and of peaceful assembly. In view of this, it imposed certain restrictive measures, which are subject to annual review. Some of the restrictive measures imposed against Zimbabwe were implemented at Community level by Council Regulation (EC) No 310/2002(3). The period of that Regulation's application was extended until 20 February 2004 by Council Regulation (EC) No 313/2003(4).

(2) The Council continues to consider that the Government of Zimbabwe is still engaging in serious violations of human rights. Therefore, for as long as the violations occur, the Council deems it necessary to maintain restrictive measures against the Government of Zimbabwe and those who bear prime responsibility for such violations.

(3) Accordingly, Common Position 2004/161/CFSP provides for renewal of the restrictive measures provided for by Common Position 2002/145/CFSP.

(4) The restrictive measures provided for by Common Position 2004/161/CFSP include, *inter alia*, a ban on technical assistance, financing and financial assistance related to military activities, a ban on the export of equipment which might be used for internal repression, and the freezing of funds, financial assets and economic resources of members of the Government of Zimbabwe and of any natural or legal persons, entities or bodies associated with them.

(5) These measures fall within the scope of the Treaty and, therefore, in order to avoid any distortion of competition, Community legislation is necessary to implement them as far as the Community is concerned. For the purpose of this Regulation, the territory of

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the Community should be deemed to encompass the territories of the Member States to which the Treaty is applicable, under the conditions laid down in that Treaty.

(6) It is desirable to align with recent practice the provisions concerning the ban on technical assistance, financing and financial assistance related to military activities, and those concerning the freezing of funds, financial assets and economic resources.

(7) This Regulation amends and extends the restrictive measures contained in Regulation (EC) No 310/2002, which it should replace immediately on the latter's expiry,

HAS ADOPTED THIS REGULATION:

Editorial Information

X1 Substituted by Corrigendum to Council Regulation (EU) 2020/213 of 17 February 2020 amending Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe (Official Journal of the European Union L 45 of 18 February 2020).

Textual Amendments

F1 Substituted by Council Regulation (EU) 2020/213 of 17 February 2020 amending Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe.

Article 1

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

(a) ‘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; technical assistance includes verbal forms of assistance;

(b) ‘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;

(viii) any other instrument of export-financing;

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(c) ‘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;

(d) ‘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;

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

Article 2

It shall be prohibited:

(a) to grant, sell, supply or transfer technical assistance related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, directly or indirectly to any person, entity or body in, or for use in Zimbabwe;

(b) to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of arms and related materiel, directly or indirectly to any person, entity or body in, or for use in Zimbabwe;

(c) to participate, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote the transactions referred to at points (a) or (b).

Article 3

It shall be prohibited:

(a) knowingly and intentionally, to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex I, whether or not originating in the Community, to any natural or legal person, entity or body in, or for use in Zimbabwe;

(b) to grant, sell, supply or transfer, directly or indirectly, technical assistance related to the equipment referred to at point (a), to any natural or legal person, entity or body in, or for use in Zimbabwe;

(c) to provide, directly or indirectly, financing or financial assistance related to the equipment referred to at point (a), to any natural or legal person, entity or body in, or for use in Zimbabwe;

(d) to participate, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote the transactions referred to at points (a), (b) or (c).

Article 4

1 By way of derogation from Articles 2 and 3 the competent authorities of Member States as listed in Annex II may authorise:

a the provision of financing and financial assistance and technical assistance related to:

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(i) non-lethal military equipment intended solely for humanitarian or protective use, or for institution-building programmes of the United Nations, the European Union and the Community;

(ii) materiel intended for European Union and United Nations crisis-management operations;

b the sale, supply, transfer or export of equipment listed in Annex I intended solely for humanitarian or protective use, and the provision of financial assistance, financing and technical assistance related to these transactions.

2 No authorisations shall be granted for activities that have already taken place.

[F2 Article 4a

1 By way of derogation from Article 3, the competent authority, as listed in Annex II, of the Member State where the exporter is established or the Member State where the explosive substances or related equipment is supplied from, may authorise, under such conditions as it deems appropriate, the sale, supply, transfer or export of explosive substances and related equipment as listed in point 4 of Annex I and financial and technical assistance, where the explosive substances and related equipment are intended and will be used solely for civilian use in mining and infrastructure projects.

2 The authorisation referred to in this Article shall be granted in accordance with the detailed rules laid down in Article 11 of Regulation (EC) No 428/2009. The authorisation shall be valid throughout the Union.

3 Exporters shall supply the competent authority with all relevant information required for the assessment of their application for an authorisation.

4 The relevant Member State shall inform the other Members States and the Commission at least two weeks in advance of its intention to grant an authorisation referred to in paragraph 1 of this Article.**]**

Textual Amendments

F2 Inserted by Council Regulation (EU) 2017/284 of 17 February 2017 amending Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe.

Article 5

Articles 2 and 3 shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Zimbabwe by United Nations personnel, personnel of the European Union, the Community or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

Article 6

1 All funds and economic resources belonging to individual members of the Government of Zimbabwe and to any natural or legal persons, entities or bodies associated with them as listed in Annex III 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 III.

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3 The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote the transactions referred to in paragraphs 1 and 2 shall be prohibited.

[[F3]4 The measures in paragraphs 1 and 2 shall be suspended in so far as they concern persons and entities listed in Annex IV.**]**

Textual Amendments

F3 Inserted by Council Regulation (EU) No 153/2014 of 17 February 2014 amending Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe and repealing Regulation (EU) No 298/2013.

Article 7

1 By way of derogation from Article 6, the competent authorities of 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 frozen funds or economic resources, under such conditions as they deem appropriate, after 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;

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 relevant competent authority has notified the grounds on which it considers that a specific authorisation should be granted to all other competent authorities and the Commission at least two weeks prior to the authorisation.

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

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 prior to the date on which those accounts became subject to Regulation (EC) No 310/2002 or this Regulation,

provided that any such interest, other earnings and payments continue to be subject to Article 6(1).

Article 8

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 6, 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;