Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations

[F1COUNCIL REGULATION (EC) No 881/2002

of 27 May 2002

imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations]

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 Common Position 2002/402/CFSP concerning restrictive measures against Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them and repealing Common Positions 96/746/CFSP, 1999/727/CFSP, 2001/154/CFSP and 2001/771/CFSP[(1)],

Having regard to the proposal from the Commission[(2)],

Having regard to the opinion of the European Parliament[(3)],

Whereas:

(1) On 16 January 2002, the Security Council of the United Nations adopted Resolution 1390(2002) determining that the Taliban had failed to respond to its demands made in a number of previous resolutions and condemning the Taliban for allowing Afghanistan to be used as a base for terrorist training and activities and also condemning the Al-Qaida network and other associated terrorist groups for their terrorist acts and destruction of property.

(2) The Security Council decided, *inter alia*, that the flight ban and certain export restrictions imposed on Afghanistan further to its Resolutions 1267(1999) and 1333(2000) should be repealed and that the scope of the freezing of funds and the prohibition on funds being made available, which were imposed further to these Resolutions, should be adjusted. It also decided that a prohibition on providing the Taliban and the Al-Qaida organisation with certain services related to military activities should be applied. In accordance with paragraph 3 of Resolution 1390(2002), those measures will be reviewed by the Security Council 12 months after adoption of the resolution and at the end of this period the Security Council will either allow the measures to continue or decide to improve them.

(3) In this regard, the Security Council recalled the obligation to implement in full its Resolution 1373(2001) with regard to any member of the Taliban and the Al-Qaida organisation, but also with regard to those who are associated with them and have

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participated in the financing, planning, facilitation, preparation or perpetration of terrorist acts.

(4) These measures fall under the scope of the Treaty and, therefore, notably with a view to avoiding distortion of competition, Community legislation is necessary to implement the relevant decisions of the Security Council as far as the territory of the Community is concerned. For the purpose of this Regulation, the territory of the Community is deemed to encompass the territories of the Member States to which the Treaty is applicable, under the conditions laid down in that Treaty.

(5) In order to create maximum legal certainty within the Community, the names and other relevant data with regard to natural or legal persons, groups or entities whose funds should be frozen further to a designation by the UN authorities, should be made publicly known and a procedure should be established within the Community to amend these lists.

(6) The competent authorities of the Member States should, where necessary, be empowered to ensure compliance with the provisions of this Regulation.

(7) UN Security Council Resolution 1267(1999) provides that the relevant UN Sanctions Committee may grant exemptions from the freezing of funds on grounds of humanitarian need. Therefore, provision needs to be made to render such exemptions applicable throughout the Community.

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

(9) The Commission and Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation, and cooperate with the relevant UN Sanctions Committee, in particular by supplying it with information.

(10) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those sanctions must be effective, proportionate and dissuasive.

(11) Taking into account that the freezing of funds is to be adjusted, it is necessary to ensure that sanctions for breaches of this Regulation can be imposed as of the date of entry into force of this Regulation.

(12) In view of the measures imposed under Resolution 1390(2002) it is necessary to adjust the measures imposed in the Community by repealing Council Regulation (EC) No 467/2001[(4)] and adopting a new Regulation,

HAS ADOPTED THIS REGULATION:

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Textual Amendments

F1 Substituted by Council Regulation (EU) 2016/363 of 14 March 2016 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network.

Article 1

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

1. ‘funds’ means financial assets and economic benefits of every kind, including but not limited to cash, cheques, claims on money, drafts, money orders and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; publicly and privately traded securities and debt instruments, including stocks and shares, certificates presenting securities, bonds, notes, warrants, debentures, derivatives contracts; interest, dividends or other income on or value accruing from or generated by assets; credit, right of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export-financing;

2. ‘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;

3. **[**F2‘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. ‘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**[**F2;**]**

5. ‘**[**F3**[**F1sanctions Committee’ means the Committee of the UN Security Council established pursuant to UN Security Council Resolution 1267 (1999) concerning ISIL (Da'esh) and Al-Qaida;**]**

6. ‘statement of reasons’ means the publicly releasable portion of the statement of case as provided by the Sanctions Committee and/or, where applicable, the narrative summary of reasons for listing as provided by the Sanctions Committee**[**F1;**]]**

7. **[**F4‘competent authorities’ means the authorities of the Member States, as listed in Annex II.**]**

Textual Amendments

F1 Substituted by Council Regulation (EU) 2016/363 of 14 March 2016 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network.

F2 Substituted by Council Regulation (EU) No 1286/2009 of 22 December 2009 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban.

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F3 Inserted by Council Regulation (EU) No 1286/2009 of 22 December 2009 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban.

F4 Inserted by Council Regulation (EU) 2016/363 of 14 March 2016 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network.

[F2 Article 2

1 **[**F1All funds and economic resources belonging to, owned, held or controlled, either directly or indirectly, by a natural or legal person, entity, body or group listed in Annex I and Annex Ia including by a third party acting on their behalf or at their direction, 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, bodies or groups listed in Annex I.

[F4 2a The prohibition in paragraph 2 includes, but is not limited to, funds and economic resources used for the provision of Internet hosting and related services used for the support of ISIL (Da'esh), Al-Qaida and the natural or legal persons, entities, bodies or groups listed in Annex I; the payment of ransoms to them, regardless of how or by whom the ransom is paid; funds and economic resources provided in connection with the travel of such natural persons, including costs incurred with respect to their transportation and lodging; and funds and economic resources related to the direct or indirect trade in oil and refined oil products, modular refineries and related material including chemicals and lubricants, as well as other natural resources.**]**

3 Annex I shall consist of natural and legal persons, entities, bodies and groups designated by the UN Security Council or by the Sanctions Committee as being **[**F1associated with the ISIL (Da'esh) or Al-Qaida organisations**]**.

[F5 3a Annex Ia consists of a natural person previously designated by the Security Council and previously included in Annex I, in relation to whom the Security Council decided that specific conditions should be applied when unfreezing funds or economic resources that were frozen pursuant to the designation of the person in Annex I.**]**

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, entities, bodies or groups concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe **[**F1this prohibition**]**.**]**

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F4 Inserted by Council Regulation (EU) 2016/363 of 14 March 2016 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network.

F5 Inserted by Council Regulation (EU) No 596/2013 of 24 June 2013 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network.

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[F6 Article 2a

[F7 1 Article 2 shall not apply to funds or economic resources where:

a any of the competent authorities of the Member States **[F8**, as listed in Annex II,**]** has determined, upon a request made by an interested natural or legal person, that these funds or economic resources:

(i) are necessary to cover basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

(ii) are intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;

(iii) are intended exclusively for payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources;

(iv) are necessary for extraordinary expenses; or

(v) were frozen pursuant to the inclusion, in Annex I, of a natural person as listed in Annex Ia; and

b the determination referred to in point (a) has been notified to the Sanctions Committee; and

(i) in the case of a determination under point (a)(i), (ii) or (iii), the Sanctions Committee has not objected to the determination within three working days of notification;

(ii) in the case of a determination under point (a) (iv), the Sanctions Committee has approved the determination; or

(iii) in case of a determination under point (a)(v), the competent authority of the relevant Member State **[F8**, as listed in Annex II,**]** has provided assurances to the Sanctions Committee that the funds or economic resources will not be transferred, directly or indirectly, to any natural or legal person, entity, body or group, as listed in Annex I, or otherwise used for terrorist purposes, in line with UNSCR 1373 (2001), and no member of the Sanctions Committee has objected to the determination within 30 days of notification.**]**

3 Funds released and transferred within the **[F1**Union**]** in order to meet expenses or recognised by virtue of this Article shall not be subject to further restrictive measures pursuant to Article 2.

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

a interest or other earnings due on those accounts; or

b payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of UN Security Council resolutions implemented successively through Regulation (EC) No 337/2000[(5)], Regulation (EC) No 467/2001[(6)] or this Regulation.

In the same manner as the account to which they are added, such interest, other earnings and payments shall also be frozen.**]**