Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011

COUNCIL REGULATION (EU) No 36/2012

of 18 January 2012

concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria[(1)],

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

Whereas:

(1) On 9 May 2011, the Council adopted Regulation (EU) No 442/2011 concerning restrictive measures in view of the situation in Syria[(2)].

(2) The Council expanded the scope of its measures against Syria by way of Council Regulations on 2 September, 23 September, 13 October and 14 November 2011[(3)], as well as making amendments and additions to the list of targeted persons and entities through successive Council Implementing Regulations[(4)]. Further measures, which do not fall within the scope of Union law, are set out in the corresponding CFSP Decisions of the Council[(5)].

(3) In view of the continued brutal repression and violation of human rights by the Government of Syria, Council Decision 2011/782/CFSP provides for additional measures, namely a prohibition on the export of telecommunications monitoring equipment for use by the Syrian regime, a prohibition on the participation in certain infrastructure projects and investment in such projects, and additional restrictions on the transfers of funds and the provision of financial services.

(4) It should be clarified that submitting and forwarding the necessary documents to a bank for the purpose of their final transfer to a person, entity or body that is not listed, to trigger payments allowed under Article 20, does not constitute making funds available within the meaning of Article 14.

(5) The power to amend the list in Annex II and IIa to this Regulation should be exercised by the Council, in view of the serious political situation in Syria, and to ensure consistency with the process for amending and reviewing the Annex to Decision 2011/782/CFSP.

(6) The procedure for amending the lists in Annex II and IIa to this Regulation should include providing designated natural or legal persons, entities or bodies with the

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grounds for listing, so as to give them an opportunity to submit observations. Where observations are submitted, or substantial new evidence is presented, the Council should review its decision in light of those observations and inform the person, entity or body concerned accordingly.

(7) For the implementation of this Regulation, and in order to create maximum legal certainty within the Union, the names and other relevant data concerning natural and legal persons, entities and bodies whose funds and economic resources must be frozen in accordance with this Regulation, must be made public.Any processing of personal data should comply with 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[(6)] 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[(7)].

(8) These measures fall within the scope of the Treaty on the Functioning of the European Union and, therefore, notably with a view to ensuring its uniform application by economic operators in all Member States, regulatory action at the level of the Union is necessary in order to implement them.

(9) In view of the extent of the amendments introduced, taken together with the various measures already adopted in relation to Syria, it is appropriate to consolidate all the measures into a new regulation which repeals and replaces Regulation (EU) No 442/2011.

(10) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force immediately,

HAS ADOPTED THIS REGULATION:

CHAPTER I

DEFINITIONS

Article 1

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

(a) ‘branch’ of a financial or credit institution means a place of business which forms a legally dependent part of a financial or credit institution and which carries out directly all or some of the transactions inherent in the business of financial or credit institutions;

(b) ‘brokering services’ means:

(i) the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology from a third country to any other third country, or

(ii) the selling or buying of goods and technology that are located in third countries for their transfer to another third country;

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(c) 'contract or transaction' means any transaction of whatever form and whatever the applicable law, whether comprising one or more contracts or similar obligations made between the same or different parties; for this purpose 'contract' includes a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, and credit, whether legally independent or not, as well as any related provision arising under, or in connection with, the transaction;

(d) 'credit institution' means a credit institution as defined in Article 4(1) of Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions[(8)], including its branches inside or outside the Union;

(e) 'crude oil and petroleum products' means the products listed in Annex IV;

(f) 'economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but which may be used to obtain funds, goods or services;

(g) 'financial institution' means:

(i) an undertaking, other than a credit institution, which carries out one or more of the operations included in points 2 to 12 and points 14 and 15 of Annex I to Directive 2006/48/EC, including the activities of currency exchange offices (bureaux de change);

(ii) an insurance company duly authorised in accordance with Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance[(9)], insofar as it carries out activities covered by that Directive;

(iii) an investment firm as defined in point 1 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments[(10)];

(iv) a collective investment undertaking marketing its units or shares; or

(v) an insurance intermediary as defined in Article 2(5) of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation[(11)], with the exception of intermediaries referred to in Article 2(7) of that Directive, when they act in respect of life insurance and other investment related services;

including its branches, whether inside or outside the Union;

(h) '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;

(i) '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;

(j) '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;

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(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;

(k) 'goods' includes items, materials and equipment;

(l) 'insurance' means an undertaking or commitment whereby one or more natural or legal persons are obliged, in return for payment, to provide one or more other persons, in the event of materialisation of a risk, with an indemnity or a benefit as determined by the undertaking or commitment;

(m) 'reinsurance' means the activity consisting in accepting risks ceded by an insurance undertaking or by another reinsurance undertaking or, in the case of the association of underwriters known as Lloyd's, the activity consisting in accepting risks, ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's;

(n) 'Syrian credit or financial institution' means:

(i) any credit or financial institution domiciled in Syria, including the Central Bank of Syria;

(ii) any branch or subsidiary, where it falls within the scope of Article 35, of a credit or financial institution domiciled in Syria;

(iii) any branch or subsidiary, where it does not fall within the scope of Article 35, of a credit or financial institution domiciled in Syria;

(iv) any credit or financial institution that is not domiciled in Syria but is controlled by one or more persons or entities domiciled in Syria;

(o) 'Syrian person, entity or body' means:

(i) the State of Syria or any public authority thereof;

(ii) any natural person in, or resident in, Syria;

(iii) any legal person, entity or body having its registered office in Syria;

(iv) any legal person, entity or body, inside or outside Syria, owned or controlled directly or indirectly by one or more of the above-mentioned persons or bodies;

(p) 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and

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may take forms such as instruction, advice, training, the transmission of working knowledge or skills or consulting services; including verbal forms of assistance;

(q) 'territory of the Union' means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty, including their airspace**[**F1**;]**

(r) '**[**F2customs territory of the Union' means the territory as defined in Article 3 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code(12).**]**

Textual Amendments

F1 Substituted by Council Regulation (EU) No 867/2012 of 24 September 2012 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria.

F2 Inserted by Council Regulation (EU) No 867/2012 of 24 September 2012 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria.

CHAPTER II

EXPORT AND IMPORT RESTRICTIONS

[F3 Article 2

1 A Member State may prohibit or impose an authorisation requirement on the export, sale, supply or transfer of equipment which might be used for internal repression other than those listed in Annex IA or Annex IX, whether or not originating in the Union, to any person, entity or body in Syria or for use in Syria.

2 A Member State may prohibit or impose an authorisation requirement on the provision of technical assistance, financing and financial assistance related to the equipment referred to in paragraph 1, to any person, entity or body in Syria or for use in Syria.**]**

Textual Amendments

F3 Substituted by Council Regulation (EU) No 697/2013 of 22 July 2013 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria.

[F4[F3 Article 2a

1 It shall be prohibited:

a to sell, supply, transfer or export, directly or indirectly, equipment, goods or technology which might be used for internal repression or for the manufacture and maintenance of products which might be used for internal repression, as listed in Annex IA, whether or not originating in the Union, to any person, entity or body in Syria or for use in Syria;

b to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in point (a).

2 By way of derogation from paragraph 1, the competent authorities in the Member States, as identified on the websites listed in Annex III, may grant, under such terms and conditions as they deem appropriate, an authorisation for a transaction in relation to equipment, goods or technology as listed in Annex IA, provided that the equipment, goods or technology