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LIMITE

**CORLX 910
CFSP/PESC 1315
RELEX 1103
COASI 168
COEST 529
COLAC 117
COAFR 325
MAMA 150
MOG 133
COHOM 194
CYBER 228
COMET 45**

'I' ITEM NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	Horizontal approach regarding humanitarian clauses in certain EU regimes of restrictive measures

1. A horizontal approach should be decided concerning the most suitable provisions for the preservation of humanitarian space in certain EU regimes of restrictive measures.
2. On 2 October 2023, the Working Party of Foreign Relations Counsellors agreed (through written consultation) on a horizontal approach in the Annex to this note.
3. Coreper is therefore invited to approve the horizontal approach as set out in the Annex.

AGREEMENT ON HUMANITARIAN CLAUSES IN CERTAIN EU
REGIMES OF RESTRICTIVE MEASURES

A. AGREEMENT

1. A horizontal approach is agreed concerning the most suitable provisions for certain regimes of EU restrictive measures for the preservation of humanitarian space.

B. ALTERNATIVE OPTIONS

2. For the regimes laid down in point C below, one of the two following options applies:

- i) Inserting the following humanitarian clause based on UNSCR 2664 (2022):

“1. Paragraph [XXX] shall not apply to the making available of funds or economic resources necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs where such assistance and other activities are carried out by:

(a) the United Nations, including its programmes, funds and other entities and bodies, as well as its specialised agencies and related organisations;

(b) international organisations;

(c) humanitarian organisations having observer status with the United Nations General Assembly and members of those humanitarian organisations;

(d) bilaterally or multilaterally funded non-governmental organisations participating in the United Nations Humanitarian Response Plans, Refugee Response Plans, other United Nations appeals or humanitarian clusters coordinated by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA);

(e) Organisations and agencies to which the Union has granted the Humanitarian Partnership Certificate or which are certified or recognised by a Member State in accordance with national procedures;

(f) Member States' specialised agencies; or by

(g) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (f) while and to the extent that they are acting in those capacities.

2. Without prejudice to Article/Paragraph [XXX], and by way of derogation from Article [XXX], the competent authorities in the Member States may authorize 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, after having determined that the provision of such funds or economic resources is necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs.

3. In the absence of a negative decision, a request for information or a notification for additional time from the competent authority within 5 working days of the date of receipt of a request for authorisation under paragraph 2, the authorisation shall be considered granted.

The Member State concerned shall inform the other Member States and the Commission of any authorizations granted under this Article within four weeks following the authorization.

- ii) Adopting a tailor-made solution, including an exemption, a derogation or a combination of the two. In these cases, a closer scrutiny of the list of actors covered by humanitarian clauses is deemed advisable.
- 3. In addition to the relevant option between the ones referred to in paragraph 2 above, the following review clause related to the humanitarian exception is also inserted, subject to technical adaptation as appropriate:

The exception referred to in Article [XXX] as regards Article [XXX], shall be reviewed at regular intervals and at least every twelve months or at the urgent request of any Member State, the High Representative or the Commission following a fundamental change in circumstances.

C. APPLICATION OF THE RELEVANT OPTIONS TO CERTAIN EU REGIMES

- 4. The option under point B.2.i) above is applied to the following EU regimes:

- 1) Restrictive measures in view of the situation in Bosnia and Herzegovina;
- 2) Restrictive measures in view of the situation in Burundi;
- 3) Restrictive measures against cyber-attacks threatening the Union or its Member States;
- 4) Restrictive measures in view of the situation in Guinea;

- 5) Restrictive measures in view of the situation in Lebanon;
 - 6) Restrictive measures in view of the situation in Myanmar/Burma;
 - 7) Restrictive measures in view of the situation in the Republic of Nicaragua;
 - 8) Restrictive measures in view of the situation in Niger;¹
 - 9) Restrictive measures directed against certain persons and entities in view of the situation in Tunisia;
 - 10) Restrictive measures in view of activities undermining the stability and the political transition of Sudan;²
 - 11) Restrictive measures in view of the situation in Venezuela;
 - 12) Restrictive measures in view of the situation in Zimbabwe.
5. The option under point B.2.ii) above is applied to the following EU regimes, respecting the current *status quo*:
- 1) Restrictive measures in view of the situation in Belarus and the involvement of Belarus in the Russian aggression against Ukraine;
 - 2) Restrictive measures in view of Iran's military support of Russia's war of aggression against Ukraine;
 - 3) Restrictive measures in view of actions destabilising the Republic of Moldova;
 - 4) Restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine;
 - 5) Restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.

D. GUIDANCE FRAMING FUTURE DISCUSSIONS

6. Additionally, the following guidance will be taken into account in the future when deciding the most suitable option respecting humanitarian principles and ensuring the effective implementation of EU restrictive measures, between the two options above – based on UNSCR 2664 (2022) or a tailor-made approach –, for all EU autonomous sanctions regimes imposing individual restrictive measures:
- (a) The humanitarian situation on the ground.
 - (b) Information on which humanitarian actors operate in the region and could potentially be affected, including the estimated size and way of delivery of humanitarian aid originating in the EU.
 - (c) Concrete concerns or considerations on relevant risks such as, but not limited to, the financing of terrorism, that would undermine the impact of EU restrictive measures.
 - (d) Assessment on whether current humanitarian clauses in the given sanctions framework properly facilitate humanitarian action.
 - (e) The harmonisation with other sanctions regimes currently applicable to the same territory or with related scope, where possible.
 - (f) The specific objectives of the sanctions regime.

¹ Pending adoption.

² Pending adoption.