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LIMITE

CORLX 252
CFSP/PESC 348
RELEX 279
CONUN 64
MOG 34
COAFR 87
COLAC 18
MAMA 32

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL REGULATION amending certain Council Regulations concerning restrictive measures in order to insert provisions on a humanitarian exemption

COUNCIL REGULATION (EU) 2023/...

of ...

**amending certain Council Regulations concerning restrictive measures
in order to insert provisions on a humanitarian exemption**

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

Whereas:

- (1) The European Union is able to impose restrictive measures, including the freezing of funds and economic resources against designated natural or legal persons, entities and bodies. Council Regulations give effect to those measures.
- (2) On 9 December 2022, the United Nations Security Council (UNSC) adopted United Nations Security Council Resolution (UNSCR) 2664 (2022). Paragraph 1 of that Resolution introduces an exemption from the sanctions in the form of asset freezes imposed by the Security Council or by its Sanctions Committees for humanitarian assistance and other activities that support basic human needs, applicable to certain actors. For the purposes of this Regulation, paragraph 1 of UNSCR 2664 (2022) is termed the ‘humanitarian exemption’.
- (3) On ... 2023, Council Decision (CFSP) 2023/...¹⁺ was adopted to give effect to UNSCR 2664 (2022) in Union law.
- (4) UNSCR 2664 (2022) emphasises that where the humanitarian exemption to the asset freeze measures conflicts with previous resolutions, it is to supersede such previous resolutions to the extent of such conflict. However, UNSCR 2664 (2022) clarifies that paragraph 1 of UNSC resolution 2615 (2021) remains in effect.

¹ OJ L [...], [...], p. [...].

⁺ OJ: please complete the date, number and publication details for the Decision in Document ST 6833/23.

- (5) UNSCR 2664 (2022) requests that providers relying on the humanitarian exemption make reasonable efforts to minimise the accrual of any benefits prohibited by sanctions, whether as a result of direct or indirect provision or diversion, to individuals or entities listed under the relevant Regulation, including by strengthening the providers' risk management and due diligence strategies and processes.
- (6) UNSCR 2664 (2022) requires that the humanitarian exemption to the asset freeze measures will apply to the 1267/1989/2253 ISIL (Da'esh) and Al-Qaida sanctions regime for a period of two years from the date of the adoption of UNSCR 2664 (2022), and states that the UNSC intends to decide on an extension of the application of UNSCR 2664 (2022) prior to the date on which the application of that exemption would otherwise expire.
- (7) The Council considers that the humanitarian exemption to the asset freeze measures pursuant to UNSCR 2664 (2022) should also apply in cases where the Union decides to adopt complementary measures concerning the freezing of funds and economic resources in addition to those decided by the UNSC or its Sanctions Committees.
- (8) The amendments fall within the scope of the Treaty and therefore regulatory action at the level of the Union is necessary in order to implement them, in particular with a view to ensuring their uniform application in all Member States.

- (9) Council Regulations (EC) No 881/2002¹, (EC) No 1183/2005², (EU) No 267/2012³, (EU) No 747/2014⁴, (EU) 2015/735⁵, (EU) 2016/1686⁶, (EU) 2016/44⁷, (EU) 2017/1509⁸ and (EU) 2017/1770⁹ should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

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- ¹ 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 (OJ L 139, 29.5.2002, p. 9).
- ² Council Regulation (EC) No 1183/2005 of 18 July 2005 concerning restrictive measures in view of the situation in the Democratic Republic of the Congo (OJ L 193, 23.7.2005, p. 1).
- ³ Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ L 88, 24.3.2012, p. 1).
- ⁴ Council Regulation (EU) No 747/2014 of 10 July 2014 concerning restrictive measures in view of the situation in Sudan and repealing Regulations (EC) No 131/2004 and (EC) No 1184/2005 (OJ L 203, 11.7.2014, p. 1).
- ⁵ Council Regulation (EU) 2015/735 of 7 May 2015 concerning restrictive measures in respect of the situation in South Sudan, and repealing Regulation (EU) No 748/2014 (OJ L 117, 8.5.2015, p. 13).
- ⁶ Council Regulation (EU) 2016/1686 of 20 September 2016 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them (OJ L 255, 21.9.2016, p. 1).
- ⁷ Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011 (OJ L 12, 19.1.2016, p. 1).
- ⁸ Council Regulation (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007 (OJ L 224, 31.8.2017, p. 1).
- ⁹ Council Regulation (EU) 2017/1770 of 28 September 2017 concerning restrictive measures in view of the situation in Mali (OJ L 251, 29.9.2017, p. 1).

Article 1

Regulation (EU) 2017/1509 is amended as follows:

(1) in Article 34, the following paragraph is added:

‘10. Paragraphs 1 and 3 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Sanctions Committee as regards Annexes XIII, XVI and XVII, and by the Council as regards Annex XV.’;

(2) in Article 45, paragraph 1 is replaced by the following:

- ‘1. Without prejudice to Article 34(10), the competent authorities of the Member States may authorise any activities otherwise prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017), 2375 (2017) or 2397 (2017) if the Sanctions Committee has determined, on a case-by-case basis, that they are necessary to facilitate the work of international and non-governmental organisations carrying out assistance and relief activities in the DPRK for the benefit of the civilian population in the DPRK or for any other purpose consistent with the objectives of those UNSCRs.’;

- (3) Article 37 is replaced by the following:

‘Article 37

Without prejudice to Article 34(10), the prohibitions in Article 34(1) and (3) shall not apply with regard to funds and economic resources belonging or made available to the Foreign Trade Bank or the Korean National Insurance Company (KNIC) in so far as such funds and economic resources are meant exclusively for the official purposes of a diplomatic or consular mission in the DPRK, or for humanitarian assistance activities which are undertaken by, or in coordination with, the United Nations.’.

Article 2

Regulation (EC) No 1183/2005 is amended as follows:

- (1) in Article 2, the following paragraph is added:

‘3. Paragraphs 1 and 2 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Sanctions Committee as regards Annex I, and by the Council as regards Annex Ia.’;

(2) Article 4b is replaced by the following:

‘Article 4b

1. Without prejudice to Article 2(3), by way of derogation from Article 2(1) and (2), the competent authorities of the Member States may authorise the release of frozen funds or economic resources belonging to natural or legal persons, entities or bodies listed in Annex Ia, or the making available of certain funds or economic resources to natural or legal persons, entities or bodies listed in Annex Ia, under such conditions as they deem appropriate, after having determined that the provision of such funds or economic resources is necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies and food, or the transfer of humanitarian workers and related assistance or for evacuations from DRC.
2. The Member State concerned shall inform other Member States and the Commission of authorisations made under this Article within four weeks of the authorisation.’;

(3) Article 7b is replaced by the following:

‘Article 7b

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Articles 1a, 2(1) and 2(2).’.

Article 3

Regulation (EU) No 267/2012 is amended as follows:

(1) in Article 23, the following paragraph is added:

- ‘7. Paragraphs 1, 2 and 3 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Sanctions Committee as regards Annex VIII, and by the Council as regards Annex IX.’;

(2) in Article 23a, the following paragraph is added:

‘7. Paragraphs 1, 2 and 3 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Sanctions Committee as regards Annex XIII, and by the Council as regards Annex XIV.’;

(3) Article 41 is replaced by the following:

‘Article 41

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Articles 2a, 2b, 2c, 2d, 3a, 3b, 3c, 3d, 4a, 4b, 5, 10d, 15a, 23(1), 23(2), 23(3), 23(4), 23a(1), 23a(2), 23a(3) and 23a(4).’.

Article 4

In Article 2 of Regulation (EU) No 2016/1686, the following paragraph is added:

- ‘3. Paragraphs 1 and 2 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Council as regards Annex I.’

Article 5

In Article 2 of Regulation (EC) No 881/2002, the following paragraph is added:

- ‘5. Article 2(1) and (2) 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Sanctions Committee as regards Annexes I and Ia.’.

Article 6

Regulation (EU) No 2016/44 is amended as follows:

(1) in Article 5, the following paragraph is added:

- ‘5. Paragraphs 1 and 2 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Sanctions Committee as regards Annexes II and VI, and by the Council as regards Annex III.’;

- (2) Article 10 is replaced by the following:

‘Article 10

Without prejudice to Article 5(5), by way of derogation from Article 5(1) and (2) the competent authorities in the Member States, as listed in Annex IV, may authorise the release of frozen funds or economic resources belonging to persons, entities or bodies listed in Annex III, or the making available of certain funds or economic resources to persons, entities or bodies listed in Annex III, under such conditions as they deem appropriate, where they consider it necessary for humanitarian purposes, such as the delivery and facilitation of delivery of humanitarian aid, the delivery of materials and supplies necessary for essential civilian needs, including food and agricultural materials for its production, medical products and the provision of electricity, or for evacuations from Libya. The Member State concerned shall inform other Member States and the Commission of authorisations made under this Article within two weeks of the authorisation.’;

(3) Article 11, paragraph 1 is replaced by the following:

- ‘1. Without prejudice to Article 5(5), the competent authorities of the Member States, as indicated on the websites listed in Annex IV, may authorise the release of certain frozen funds or economic resources, provided that:
- (a) the funds or economic resources are used for one or more of the following purposes:
 - (i) humanitarian needs;
 - (ii) fuel, electricity and water for strictly civilian uses;
 - (iii) resuming Libyan production and sale of hydrocarbons;
 - (iv) establishing, operating, or strengthening institutions of civilian government and civilian public infrastructure; or,
 - (v) facilitating the resumption of banking sector operations, including to support or facilitate international trade with Libya;

- (b) the Member State concerned has notified to the Sanctions Committee its intention to authorise access to funds or economic resources, and the Sanctions Committee has not objected within five working days of such a notification;
- (c) the Member State concerned has notified the Sanctions Committee that those funds or economic resources shall not be made available to or for the benefit of any person, entity or body listed in Annex II or III;
- (d) the Member State concerned has consulted in advance with the Libyan authorities about the use of such funds or economic resources; and
- (e) the Member State concerned has shared with the Libyan authorities the notifications submitted pursuant to points (b) and (c) of this paragraph and the Libyan authorities have not objected within five working days to the release of such funds or economic resources.’.

Article 7

Regulation (EU) No 2017/1770 is amended as follows:

(1) in Article 2, the following paragraph is added:

- ‘3. Paragraphs 1 and 2 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Sanctions Committee as regards Annex I, and by the Council as regards Annex Ia.’;

(2) Article 3a, paragraph 1, is replaced by the following:

- ‘1. Without prejudice to Article 2, paragraph 3, by way of derogation from Article 2(1) and (2) and with regard to a person, entity or body listed in Annex Ia, the competent authorities may authorise 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 for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations from Mali.’;

- (3) Article 8 is replaced by the following:

Article 8

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2(1) and (2).’

Article 8

Regulation (EU) No 2015/735 is amended as follows:

- (1) in Article 5, the following paragraph is added:

‘4. Paragraphs 1, 2 and 3 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Sanctions Committee as regards Annex I, and by the Council as regards Annex II.’;

(2) Article 15 is replaced by the following:

‘Article 15

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2 and Article 5(1), (2), and (3).’.

Article 9

Regulation (EU) No 747/2014 is amended as follows:

(1) in Article 5, the following paragraph is added:

- ‘4. Paragraphs 1, 2 and 3 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Sanctions Committee as regards Annex I.’;

(2) Article 10 is replaced by the following:

‘Article 10

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2 and Article 5(1), (2), and (3).’.

Article 10

This Regulation shall enter into force on the day following that 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.

Done at ...,

For the Council

The President
