

# DECISIONS

## COUNCIL DECISION (CFSP) 2023/338

of 14 February 2023

### **amending certain Council decisions and common positions concerning restrictive measures in order to insert provisions on a humanitarian exemption**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

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

Whereas:

- (1) On 9 December 2022, the United Nations Security Council (the 'UNSC') adopted Resolution 2664 (2022), recalling its previous resolutions imposing sanctions measures in response to threats to international peace and security, and emphasising that measures taken by UN Member States to implement sanctions comply with their obligations under international law and are not intended to have adverse humanitarian consequences for civilian populations or adverse consequences for humanitarian activities or those carrying them out.
- (2) Expressing its readiness to review, adjust and terminate, when appropriate, its sanctions regimes, taking into account the evolution of situations on the ground and the need to minimize unintended adverse humanitarian effects, the UNSC decides in paragraph 1 of Resolution 2664 (2022) that the provision, processing or payment of funds, other financial assets or economic resources or the provision of goods and services necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs are permitted and are not a violation of the asset freezes imposed by the UNSC or its sanctions committees. For the purposes of this Decision, paragraph 1 of Resolution 2664 (2022) is termed the 'humanitarian exemption'. The humanitarian exemption is applicable to certain actors as set out in that Resolution.
- (3) Resolution 2664 (2022) emphasises that where the humanitarian exemption conflicts with previous resolutions, it is to supersede such previous resolutions to the extent of such conflict. However, Resolution 2664 (2022) clarifies that paragraph 1 of UNSC Resolution 2615 (2021) remains in effect.
- (4) Resolution 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 designated individuals or entities, including by strengthening risk management and due diligence strategies and processes.

- (5) It is necessary to amend accordingly Council Decisions 2010/231/CFSP <sup>(1)</sup>, 2013/798/CFSP <sup>(2)</sup>, 2014/932/CFSP <sup>(3)</sup>, (CFSP) 2022/2319 <sup>(4)</sup>, and Council Common Positions 2003/495/CFSP <sup>(5)</sup> and 2005/888/CFSP <sup>(6)</sup>.
- (6) Further action by the Union is necessary to implement certain measures in this Decision,

HAS ADOPTED THIS DECISION:

#### *Article 1*

In Article 6 of Decision 2010/231/CFSP, paragraph 6 is replaced by the following:

‘6. Paragraphs 1 and 2 shall not apply to the provision, processing or payment of funds, other financial assets or economic resources or to the provision of goods and services which are 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
- (f) appropriate other actors as determined by the Sanctions Committee.’.

#### *Article 2*

In Article 2b of Decision 2013/798/CFSP, the following paragraph is added:

‘7. Paragraphs 1 and 2 shall not apply to the provision, processing or payment of funds, other financial assets or economic resources or to the provision of goods and services which are 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;

<sup>(1)</sup> Council Decision 2010/231/CFSP of 26 April 2010 concerning restrictive measures against Somalia and repealing Common Position 2009/138/CFSP (OJ L 105, 27.4.2010, p. 17).

<sup>(2)</sup> Council Decision 2013/798/CFSP of 23 December 2013 concerning restrictive measures in view of the situation in the Central African Republic (OJ L 352, 24.12.2013, p. 51).

<sup>(3)</sup> Council Decision 2014/932/CFSP of 18 December 2014 concerning restrictive measures in view of the situation in Yemen (OJ L 365, 19.12.2014, p. 147).

<sup>(4)</sup> Council Decision (CFSP) 2022/2319 of 25 November 2022 concerning restrictive measures in view of the situation in Haiti (OJ L 307, 28.11.2022, p. 135).

<sup>(5)</sup> Council Common Position 2003/495/CFSP of 7 July 2003 on Iraq and repealing Common Positions 96/741/CFSP and 2002/599/CFSP (OJ L 169, 8.7.2003, p. 72).

<sup>(6)</sup> Council Common Position 2005/888/CFSP of 12 December 2005 concerning specific restrictive measures against certain persons suspected of involvement in the assassination of former Lebanese Prime Minister Rafiq Hariri (OJ L 327, 14.12.2005, p. 26).

- (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
- (f) appropriate other actors as determined by the Committee.’

### Article 3

Decision 2014/932/CFSP is amended as follows:

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

‘7. Paragraphs 1 and 2 shall not apply to the provision, processing or payment of funds, other financial assets or economic resources or to the provision of goods and services which are 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
- (f) appropriate other actors as determined by the Sanctions Committee.’;

- (2) Article 6a is replaced by the following:

#### ‘Article 6a

Without prejudice to Article 2b(7), by way of derogation from the measures imposed by UNSCR 2140 (2014) and UNSCR 2216 (2015), provided that the Sanctions Committee has determined on a case-by-case basis that an exemption is necessary to facilitate the work of the United Nations and other humanitarian organisations in Yemen or for any other purpose consistent with the objectives of those Resolutions, the competent authority of a Member State shall grant the necessary authorisation.’

### Article 4

In Article 3 of Decision (CFSP) 2022/2319, paragraph 7 is replaced by the following:

‘7. Paragraphs 1 and 2 shall not apply to the provision, processing or payment of funds, other financial assets or economic resources or to the provision of goods and services which are 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
- (f) appropriate other actors as determined by the Sanctions Committee.’.

#### Article 5

Common Position 2003/495/CFSP is amended as follows:

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

##### *‘Article 2*

All funds or other financial assets or economic resources:

- (a) of the previous Government of Iraq or its State bodies, corporations or agencies located outside Iraq on the date of 22 May 2003, as designated by the Security Council Committee established pursuant to UNSCR 1518 (2003) (the ‘Sanctions Committee’); or
- (b) that have been removed from Iraq, or acquired by Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled directly or indirectly by them or by persons acting on their behalf or at their direction, as designated by the Sanctions Committee;

shall be frozen without delay and, unless those funds or other financial assets or economic resources are themselves the subject of a prior judicial, administrative or arbitral lien or judgement, in which case they may be used to satisfy such lien or judgement, Member States shall immediately cause their transfer to the successor arrangements to the Development Fund for Iraq put in place by the Government of Iraq under the conditions set out in Security Council Resolutions 1483 (2003) and 1956 (2010).’;

- (2) the following Article is inserted:

##### *‘Article 2b*

Articles 2 and 2a shall not apply to the provision, processing or payment of funds, other financial assets or economic resources or to the provision of goods and services which are 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 specialized 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
- (f) appropriate other actors as determined by the Sanctions Committee.’

#### *Article 6*

In Article 2 of Common Position 2005/888/CFSP, the following paragraph is added:

‘5. Paragraphs 1 and 2 shall not apply to the provision, processing or payment of funds, other financial assets or economic resources or to the provision of goods and services which are 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
- (f) appropriate other actors as determined by the Committee.’

#### *Article 7*

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 14 February 2023.

*For the Council*  
*The President*  
E. SVANTESSON

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