

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2023/331

of 14 February 2023

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 from the High Representative of the Union for Foreign Affairs and Security Policy and from 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 such measures.
- (2) On 9 December 2022, the United Nations Security Council (the 'UNSC') adopted Resolution 2664 (2022). Paragraph 1 of that Resolution introduces an exemption to 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 Resolution 2664 (2022) is termed the 'humanitarian exemption'.
- (3) On 14 February 2023, the Council adopted Decision (CFSP) 2023/338 ⁽¹⁾ to give effect to Resolution 2664 (2022) in Union law.
- (4) 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.
- (5) 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 individuals or entities listed under the relevant Regulation, including by strengthening risk management and due diligence strategies and processes.
- (6) 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.

⁽¹⁾ See page 50 of this Official Journal.

- (7) Council Regulations (EC) No 1210/2003 ^(*), (EC) No 305/2006 ^(†), (EU) No 356/2010 ^(‡), (EU) No 224/2014 ^(§), (EU) No 1352/2014 ^(¶), and (EU) 2022/2309 ^(‡) should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Council Regulation (EC) No 1210/2003 is amended as follows:

- (1) in Article 4, 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
- (f) appropriate other actors as determined by the Sanctions Committee.’;

- (2) Article 7 is replaced by the following:

‘Article 7

1. The participation, knowingly and intentionally, in activities, the object or effect of which is, directly or indirectly, to circumvent Article 4(1) to (3) or to promote the transactions referred to in Articles 2 and 3, shall be prohibited.
2. Any information that the provisions of this Regulation are being, or have been, circumvented shall be notified to the competent authorities of the Member States, as listed in Annex V, and, directly or through these competent authorities, to the Commission.’.

Article 2

In Article 2 of Council Regulation (EC) No 305/2006, the following paragraph is added:

-
- ^(*) Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96 (OJ L 169, 8.7.2003, p. 6).
 - ^(†) Council Regulation (EC) No 305/2006 of 21 February 2006 imposing specific restrictive measures against certain persons suspected of involvement in the assassination of former Lebanese Prime Minister Rafiq Hariri (OJ L 51, 22.2.2006, p. 1).
 - ^(‡) Council Regulation (EU) No 356/2010 of 26 April 2010 imposing certain specific restrictive measures directed against certain natural or legal persons, entities or bodies, in view of the situation in Somalia (OJ L 105, 27.4.2010, p. 1).
 - ^(§) Council Regulation (EU) No 224/2014 of 10 March 2014 concerning restrictive measures in view of the situation in the Central African Republic (OJ L 70, 11.3.2014, p. 1).
 - ^(¶) Council Regulation (EU) No 1352/2014 of 18 December 2014 concerning restrictive measures in view of the situation in Yemen (OJ L 365, 19.12.2014, p. 60).
 - ^(‡) Council Regulation (EU) 2022/2309 of 25 November 2022 concerning restrictive measures in view of the situation in Haiti (OJ L 307, 28.11.2022, p. 17).

'4. 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
- (f) appropriate other actors as determined by the Sanctions Committee.'

Article 3

In Council Regulation (EU) No 356/2010, Article 4 is replaced by the following:

'Article 4

1. 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
- (f) appropriate other actors as determined by the Sanctions Committee.

2. The exemption set out in paragraph 1 shall not give rise to liability of any kind on the part of the natural or legal persons, entities or bodies which made funds or economic resources available, where they did not know, and had no reasonable cause to suspect, that their actions would not be covered by this exemption.'

Article 4

Council Regulation (EU) No 224/2014 is amended as follows:

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

'4. 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
 - (f) appropriate other actors as determined by the Sanctions Committee.’;
- (2) Article 12 is replaced by the following:

Article 12

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 2, 5(1) and 5(2).’.

Article 5

Council Regulation (EU) No 1352/2014 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
- (f) appropriate other actors as determined by the Sanctions Committee.’;

- (2) Article 3a is replaced by the following:

Article 3a

1. By way of derogation from Articles 1a and 2, the competent authorities of the Member States may, under such conditions as they deem appropriate, and provided that the Sanctions Committee has determined on a case-by-case basis that a derogation 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 UNSCR 2140 (2014) and UNSCR 2216 (2015), authorise:

- (a) the provision of technical assistance, financing or financial assistance related to the activities described in Article 1a;
- (b) the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources.

2. Paragraph 1(b) is without prejudice to Article 2(3).;

(3) Article 10 is replaced by the following:

'Article 10

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

Article 6

Article 5 of Council Regulation (EU) 2022/2309 is replaced by the following:

'Article 5

Article 3(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
- (f) appropriate other actors as determined by the Sanctions Committee.'

Article 7

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 Brussels, 14 February 2023.

For the Council
The President
E. SVANTESSON