

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2023/1569

of 28 July 2023

amending Regulation (EU) 2022/2309 concerning restrictive measures in view of the situation in Haiti

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 (CFSP) 2023/1574 of 28 July 2023 amending Decision (CFSP) 2022/2319 concerning restrictive measures in view of the situation in Haiti ⁽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 25 November 2022, the Council adopted Regulation (EU) 2022/2309 ⁽²⁾, which concerns restrictive measures in view of the situation in Haiti.
- (2) Regulation (EU) 2022/2309 gives effect to Council Decision (CFSP) 2022/2319 ⁽³⁾ and provides for the freezing of funds and economic resources of certain persons designated by the United Nations Security Council or by the relevant United Nations sanctions committee for engaging in or supporting gang violence, criminal activities or human rights abuses, or otherwise taking action that undermines the peace, stability and security of Haiti and the region.
- (3) Decision (CFSP) 2023/1574 establishes complementary criteria on the basis of which the Union can autonomously apply travel restrictions, asset freezes and prohibitions to make resources available to natural or legal persons, entities or bodies ('complementary measures').
- (4) Decision (CFSP) 2023/1574 further establishes that the humanitarian exemption from the asset-freeze measures pursuant to UNSC Resolution 2664 (2022) is also to apply to complementary measures.
- (5) Regulatory action at the Union level is therefore necessary to give effect to Decision (CFSP) 2023/1574, in particular with a view to ensuring uniform application by economic operators in all Member States.
- (6) The power to establish and amend the lists set out in Annexes I and Ia to Regulation (EU) 2022/2309 should be exercised by the Council in order to ensure consistency with the process for establishing, amending and reviewing Annex II to Decision (CFSP) 2022/2319.

⁽¹⁾ See page 21 of this Official Journal.

⁽²⁾ 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).

⁽³⁾ 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).

- (7) Regulation (EU) 2022/2309 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2022/2309 is amended as follows:

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

'Article 2

It shall be prohibited to:

- (a) provide technical assistance related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts therefor, directly or indirectly to any natural or legal person, entity or body listed in Annex I or Annex Ia;
- (b) provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance, for any sale, supply, transfer or export of arms and related materiel, or for the provision of related technical assistance, directly or indirectly to any natural or legal person, entity or body listed in Annex I or Annex Ia.;

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

'Article 3

- 1. All funds and economic resources belonging to, owned, held or controlled, directly or indirectly, by any natural or legal person, entity or body listed in Annex I or Annex Ia shall be frozen.
- 2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex I or Annex Ia.;

- (3) the following Article is inserted:

'Article 4a

- 1. Annex Ia shall include the natural or legal persons, entities or bodies designated by the Council that are:
 - (a) responsible for or complicit in, or having engaged in, directly or indirectly, actions that threaten the peace, stability and security of Haiti, including:
 - (i) engaging in, directly or indirectly, or supporting criminal activities and violence involving armed groups and criminal networks that promote violence, including forcible recruitment of children by such groups and networks, kidnappings, trafficking in persons and the smuggling of migrants, and homicides and sexual and gender-based violence;
 - (ii) supporting illicit trafficking and diversion of arms and related materiel, or illicit financial flows related thereto;
 - (iii) acting for or on behalf of or at the direction of, or otherwise supporting or financing, a person or entity designated in connection with the activity described in points (i) and (ii), including through the direct or indirect use of the proceeds from organised crime, including proceeds from illicit production and trafficking in drugs and their precursors originating in or transiting through Haiti, the trafficking in persons and the smuggling of migrants from Haiti, or the smuggling and trafficking of arms to or from Haiti;
 - (iv) acting in violation of the arms embargo, or having directly or indirectly supplied, sold or transferred to armed groups or criminal networks in Haiti, or having been the recipient of, arms or any related materiel, or any technical advice, training or assistance, including financing and financial assistance, related to violent activities of armed groups or criminal networks in Haiti;

- (v) planning, directing or committing acts that violate international human rights law or acts that constitute human rights abuses, including those involving extrajudicial killing, including of women and children, and the commission of acts of violence, abduction, enforced disappearances or kidnappings for ransom in Haiti;
- (vi) planning, directing or committing acts involving sexual and gender-based violence, including rape and sexual slavery, in Haiti;
- (vii) obstructing the delivery of humanitarian assistance to Haiti or access to, or the distribution of, humanitarian assistance in Haiti;
- (viii) attacking personnel or premises of Union delegations and Member State diplomatic missions and operations in Haiti, or providing support for such attacks;
- (b) undermining democracy or the rule of law in Haiti through serious financial misconduct concerning public funds or the unauthorised export of capital; or
- (c) associated with natural or legal persons, entities or bodies designated under points (a) and (b).

2. Annex Ia shall include the grounds for listing the persons and entities referred to therein.

3. Annex Ia shall also contain, where available, the information necessary to identify the persons or entities concerned. With regard to natural persons, such information may include: names, including aliases; date and place of birth; nationality; passport and identity card numbers; gender; address, if known; and function or profession. With regard to entities, such information may include: names; place and date of registration; registration number; and place of business.;

(4) in Article 5, point (f) is replaced by the following:

‘(f) other appropriate actors as determined by the Sanctions Committee as regards Annex I and by the Council as regards Annex Ia.’;

(5) Article 6 is replaced by the following:

‘Article 6

1. By way of derogation from Article 3, 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 funds or economic resources concerned are:

- (a) necessary to satisfy the basic needs of natural or legal persons, entities or bodies listed in Annex I or Annex Ia, and dependent family members of such natural persons, including payments for food, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and public utility charges;
- (b) intended exclusively for the payment of reasonable professional fees or the reimbursement of incurred expenses associated with the provision of legal services;
- (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources,

where the authorisation concerns a natural or legal person, entity or body listed in Annex I and provided that the competent authority of the Member State concerned has notified the Sanctions Committee of that determination and of its intention to grant an authorisation, and in the absence of a negative decision by the Sanctions Committee within 5 working days of such notification.

2. By way of derogation from Article 3, the competent authorities of the Member States 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 funds or economic resources concerned are necessary for extraordinary expenses, provided that:

- (a) where the authorisation concerns a natural or legal person, entity or body listed in Annex I, such determination has been notified to the Sanctions Committee by the competent authority of the Member State concerned and that the determination has been approved by that Committee; and

(b) where the authorisation concerns a natural or legal person, entity or body listed in Annex Ia, the Member State concerned has notified other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted, at least 2 weeks prior to granting the authorisation.

3. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this Article within 2 weeks of the authorisation.’;

(6) the following Articles are inserted:

‘Article 6a

1. Without prejudice to Article 5, by way of derogation from Article 3(1) and (2), and with regard to a natural or legal 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 the timely delivery of humanitarian assistance or to support other activities that support basic human needs.

2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1 within 2 weeks of the authorisation.

Article 6b

1. By way of derogation from Article 3, and with regard to a natural or legal person, entity or body listed in Annex Ia, the competent authorities of the Member States 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 funds or economic resources concerned are to be paid into or from an account of a diplomatic or consular mission or an international organisation enjoying immunities in accordance with international law, insofar as such payments are intended to be used for official purposes of the diplomatic or consular mission or international organisation.

2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1 within 2 weeks of the authorisation.’;

(7) in Article 7, paragraph 1 is replaced by the following:

‘1. By way of derogation from Article 3(1), the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources for natural or legal persons, entities or bodies listed in Annex I or Annex Ia, or the making available of certain funds or economic resources for natural or legal persons, entities or bodies listed in Annex I or Annex Ia, if the following conditions are met:

(a) the funds or economic resources are the subject of:

- (i) for a natural or legal person, entity or body listed in Annex I, a judicial, administrative or arbitral decision established prior to the date on which the natural or legal person, entity or body referred to in Article 4 was included in Annex I, or of a judicial, administrative or arbitral lien rendered prior to that date;
- (ii) for a natural or legal person, entity or body listed in Annex Ia, an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in Article 4a was included in Annex Ia, or of a judicial or administrative decision rendered in the Union, or a judicial decision enforceable in the Member State concerned, prior to or after that date;

(b) the funds or economic resources will be used exclusively to satisfy claims secured by a decision as referred to in point (a) or recognised as valid in such a decision, within the limits set by applicable laws and regulations governing the rights of persons having such claims;

(c) the decision or lien is not for the benefit of a natural or legal person, entity or body listed in Annex I or Annex Ia;

(d) the recognition of the decision or lien is not contrary to public policy in the Member State concerned; and

- (e) for a natural or legal person, entity or body listed in Annex I, the Sanctions Committee has been notified by the Member State of the decision or lien.;

(8) Article 8 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. By way of derogation from Article 3(1) and provided that a payment by a natural or legal person, entity or body listed in Annex I or Annex Ia is due under a contract or agreement that was concluded by, or an obligation that arose for, the natural or legal person, entity or body concerned, before the date on which that natural or legal person, entity or body was included in Annex I or Annex Ia, the competent authorities of the Member States may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources, provided that the competent authority concerned has determined that:

- (a) the funds or economic resources will be used for a payment by a natural or legal person, entity or body listed in Annex I or Annex Ia; and

- (b) the payment is not in breach of Article 3(2).’;

- (b) the following paragraph is inserted:

‘1a. For a natural or legal person, entity or body listed in Annex I, the intention to grant an authorisation shall be notified by the relevant Member State to the Sanctions Committee 10 working days in advance.’;

(9) in Article 9, paragraph 2 is replaced by the following:

‘2. Article 3(2) shall not apply to the addition to frozen accounts of:

- (a) interest or other earnings on those accounts;
- (b) payments due under contracts, agreements or obligations that were concluded or arose before the date on which the natural or legal person, entity or body referred to in Article 4 was included in Annex I or Annex Ia; or
- (c) payments due to a natural or legal person, entity or body listed in Annex Ia under judicial, administrative or arbitral decisions rendered in the Union or enforceable in the Member State concerned,

provided that any such interest, other earnings and payments are frozen in accordance with Article 3.’;

(10) Article 11 is amended as follows:

- (a) paragraph 2 is replaced by the following:

‘2. Natural or legal persons, entities or bodies listed in Annex I or Annex Ia shall:

- (a) report before 9 January 2023 or within 6 weeks from the date of listing in Annex I, whichever is the latest, funds or economic resources within the jurisdiction of a Member State belonging to, owned, held or controlled by them, to the competent authority of the Member State where those funds or economic resources are located;
- (aa) report before 9 September 2023 or within 6 weeks from the date of listing in Annex Ia, whichever is the latest, funds or economic resources within the jurisdiction of a Member State belonging to, owned, held or controlled by them, to the competent authority of the Member State where those funds or economic resources are located; and

- (b) cooperate with the competent authority in any verification of such information.’;

- (b) paragraph 4 is replaced by the following:

‘4. The Member State concerned shall inform the Commission within 2 weeks of the information received pursuant to paragraph 2, points (a) and (aa).’;

(c) the following paragraph is inserted:

‘5a. The obligation in paragraph 2, point (aa), shall not apply until 2 September 2023 with regard to funds or economic resources located in a Member State that had laid down a similar reporting obligation under national law before 1 August 2023.’;

(11) in Article 13(1), point (a) is replaced by the following:

‘(a) natural or legal persons, entities or bodies listed in Annex I or Annex Ia’;

(12) in Article 14(1), point (a) is replaced by the following:

‘(a) funds frozen under Article 3(1) and authorisations granted under Articles 6, 6a, 6b, 7 and 8’;

(13) Article 16 is replaced by the following:

‘Article 16

1. Where the Security Council or the Sanctions Committee lists a natural or legal person, entity or body and has provided a statement of reasons for the designation, the Council shall include that natural or legal person, entity or body in Annex I.

1a. The Council shall establish and amend the list of natural and legal persons, entities and bodies set out in Annex Ia.

1b. The Council shall communicate its decision to a natural or legal person, entity or body as referred to in paragraphs 1 and 1a, including the grounds for listing, either directly, if the address is known, or through the publication of a notice, providing that natural or legal person, entity or body with an opportunity to present observations.

2. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the natural or legal person, entity or body accordingly.

3. Where the Security Council or the Sanctions Committee decides to delist a natural or legal person, entity or body, or to amend the identifying data of a listed natural or legal person, entity or body, the Council shall amend Annex I accordingly.

The list set out in Annex Ia shall be reviewed at regular intervals and at least every 12 months.’;

(14) in Article 18, paragraphs 1 and 2 are replaced by the following:

‘1. The Council, the Commission and the High Representative of the Union for Foreign Affairs and Security Policy (the “High Representative”) shall process personal data in order to carry out their tasks under this Regulation. Those tasks include:

(a) as regards the Council, preparing and making amendments to Annexes I and Ia;

(b) as regards the High Representative, preparing amendments to Annexes I and Ia;

(c) as regards the Commission:

(i) adding the contents of Annexes I and Ia to the electronic, consolidated list of persons, groups and entities subject to Union financial sanctions and to the interactive sanctions map, both publicly available;

(ii) processing information on the impact of the measures provided for in this Regulation such as the value of frozen funds and information on authorisations granted by the competent authorities.

2. The Council, the Commission and the High Representative may process, where applicable, relevant data relating to criminal offences committed by listed natural persons, to criminal convictions of such persons or to security measures concerning such persons, only to the extent that such processing is necessary for the preparation of Annexes I and Ia.’;

(15) the text set out in the Annex to this Regulation is inserted as Annex Ia.

Article 2

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, 28 July 2023.

For the Council
The President
P. NAVARRO RÍOS

*ANNEX**'ANNEX Ia*

List of natural and legal persons, entities and bodies referred to in Article 4a'.
