

II

(Non-legislative acts)

REGULATIONS

COUNCIL REGULATION (EU) 2021/48**of 22 January 2021****amending Regulation (EC) No 147/2003 concerning restrictive measures in respect of Somalia**

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 Council Decision 2010/231/CFSP of 26 April 2010 concerning restrictive measures against Somalia and repealing Common Position 2009/138/CFSP ⁽¹⁾,

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) Council Regulation (EC) No 147/2003 ⁽²⁾ concerning certain restrictive measures in respect of Somalia restricts the provision of financing, financial assistance and technical assistance related to military activities in relation to goods and technology included in the Common Military List of the European Union ⁽³⁾ to any person, entity or body in Somalia. It also restricts the supply to Somalia of goods that can contribute to the manufacture of improvised explosive devices ('IEDs').
- (2) On 12 November 2020, the United Nations Security Council (UNSC) adopted Resolution 2551 (2020). The Resolution, inter alia, amends the exemptions to the arms embargo regarding certain arms supplies and the related financing, financial assistance and technical assistance intended for Somali security forces and expands the list of controlled goods that can contribute to the manufacture of IEDs.
- (3) On 22 January 2021, Council Decision (CFSP) 2021/48 ⁽⁴⁾ was adopted, amending Decision 2010/231/CFSP in accordance with UNSC Resolution 2551 (2020).
- (4) A certain number of these 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.
- (5) Regulation (EC) No 147/2003 should therefore be amended accordingly,

⁽¹⁾ OJ L 105, 27.4.2010, p. 17.

⁽²⁾ Council Regulation (EC) No 147/2003 of 27 January 2003 concerning certain restrictive measures in respect of Somalia (OJ L 24, 29.1.2003, p. 2).

⁽³⁾ OJ C 98, 15.3.2018, p. 1.

⁽⁴⁾ See page 1 of this Official Journal.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 147/2003 is amended as follows:

(1) Article 1 is replaced by the following:

'Article 1

1. It shall be prohibited:

- (a) to provide financing or financial assistance related to military activities, for any sale, supply, transfer or export of goods and technology included in the Common Military List of the European Union *, directly or indirectly to any person, entity or body in Somalia;
- (b) to provide technical assistance related to military activities in relation to goods and technology included in the Common Military List of the European Union, directly or indirectly, to any person, entity or body in Somalia.

* OJ C 98, 15.3.2018, p. 1.;

(2) the following Article is inserted:

'Article 1a

For the purposes of this Regulation, the following definitions apply:

- (a) "technical assistance" means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; including verbal forms of assistance;
- (b) "financing or financial assistance" means any action, irrespective of the particular means chosen, whereby the person, entity or body concerned, conditionally or unconditionally, disburses or commits to disburse its own funds or economic resources, including but not limited to grants, loans, guarantees, suretyships, bonds, letters of credit, supplier credits, buyer credits, import or export advances and all types of insurance and reinsurance, including export credit insurance. Payment as well as terms and conditions of payment of the agreed price for a good or a service, made in line with normal business practice, do not constitute financing or financial assistance;
- (c) "Sanctions Committee" means the Committee of the UN Security Council which was established pursuant to paragraph 11 of UNSCR 751 (1992);
- (d) "territory of the Union" means the territories of the Member States to which the Treaty on the Functioning of the European Union is applicable, under the conditions laid down in that Treaty, including their airspace.;

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

'Article 2a

By way of derogation from Article 1, the competent authority in the Member State where the service provider is established, as indicated on the websites set out in Annex I, may authorise:

- (a) the provision of financing or financial assistance or technical assistance related to military activities in relation to goods and technology included in the Common Military List of the European Union, if the competent authority concerned has determined that such financing or financial assistance, or technical assistance is intended solely for the development of the Somali National Security Forces to provide security for the Somali people;
- (b) the provision of financing or financial assistance or technical assistance related to military activities in relation to goods and technology included in the Common Military List of the European Union if all of the following conditions are met:
 - (i) the competent authority concerned has determined that such financing, financial assistance or technical assistance is intended solely for the development of the Somali security sector institutions other than those of the Federal Government of Somalia, to provide security for the Somali people;

- (ii) the Sanctions Committee has not taken a negative decision within five working days of receiving a notification from the Member State providing such financing, financial assistance or technical assistance, of any provision of such financing, financial assistance or technical assistance;
 - (iii) the Federal Government of Somalia has been informed in parallel at least five working days in advance in accordance with UNSCR 2551 (2020).;
- (4) in Article 3, paragraph 1 is replaced by the following:
- ‘1. Article 1 shall not apply to:
- (a) the provision of financing or financial assistance for the sale, supply, transfer or export of non-lethal military equipment intended solely for humanitarian or protective use;
 - (b) the provision of technical assistance related to such non-lethal equipment, provided that such activities have been notified in advance and for its information only to the Sanctions Committee by the supplying Member State, international, regional or subregional organisation;
 - (c) the provision of financing or financial assistance or technical assistance related to military activities in relation to goods and technology included in the Common Military List of the European Union, intended solely for the support of or use by United Nations personnel, including the United Nations Assistance Mission in Somalia (UNSOM), the African Union Mission in Somalia (AMISOM); AMISOM's strategic partners, operating solely under the latest African Union Strategic Concept of Operations, and in cooperation and coordination with AMISOM; and the European Union Training Mission (EUTM) in Somalia; or
 - (d) the provision of financing or financial assistance or technical assistance for the sale, supply, transfer or export of goods and technology included in the Common Military List of the European Union destined for the sole use of States or international, regional and subregional organisations undertaking measures to suppress acts of piracy and armed robbery at sea off the coast of Somalia, upon the request of the Federal Government of Somalia and for which the Federal Government of Somalia has notified the UN Secretary-General, and provided that any measures undertaken shall be consistent with applicable international humanitarian and international human rights law.’;
- (5) Annex III is amended as set out in Annex to this Regulation.

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, 22 January 2021.

For the Council
The President
A. P. ZACARIAS

ANNEX

In Annex III, paragraph 3 is replaced by the following:

‘3. Explosive materials, as follows, and mixtures containing one or more thereof:

Name of the substance	Chemical Abstracts Service Registry number (CAS RN)	Combined Nomenclature (CN) code ⁽¹⁾
Ammonium Nitrate Fuel Oil (ANFO)	6484-52-2 (ammonium nitrate)	3102 30 90 3102 40
Nitrocellulose (containing more than 12,5 % nitrogen w/w)	9004-70-0	ex 3912 20
Nitroglycerin (except when packaged/prepared in individual medicinal doses) unless compounded or mixed with the “energetic material” specified by ML8.a. or powdered metals specified by ML8.c. of the EU Common Military List	55-63-0	ex 2920 90 70
Nitroglycol	628-96-6	ex 2920 90 70
Pentaerythritol tetranitrate (PETN)	78-11-5	ex 2920 90 70
Picryl chloride	88-88-0	ex 2904 99 00
2,4,6-Trinitrotoluene (TNT)	118-96-7	2904 20 00

⁽¹⁾ The nomenclature codes are taken from the Combined Nomenclature as defined in Article 1(2) of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1) and as set out in Annex I thereto, which are valid at the time of publication of this Regulation and *mutatis mutandis* as amended by subsequent legislation.’