II

(Non-legislative acts)

REGULATIONS

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 (1) and (2) thereof,


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

Whereas:


(2) The additional restrictive measures concern restrictions on admission and financial restrictive measures against individuals and entities designated by the Security Council or by the United Nations Sanctions Committee established pursuant to UNSCR 751 (1992) concerning Somalia (hereinafter referred to as the ‘Sanctions Committee’). In addition to the general arms embargo, the Resolution introduces a specific prohibition on the direct and indirect supply, sale or transfer, of weapons and military equipment and a specific prohibition on the provision of related assistance and services, to individuals and entities listed by the Sanctions Committee.

(3) The restrictive measures are aimed at individuals and entities designated by the United Nations (UN) as engaging in or providing support for acts that threaten the peace, security or stability of Somalia, including acts that threaten the Djibouti Agreement of 18 August 2008 or the political process, or threaten the Transitional Federal Institutions (TFIs) or the African Union Mission in Somalia (AMISOM) by force, as having acted in violation of the arms embargo and related measures, or as obstructing the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia.

(4) On 16 February 2009, the Council of the European Union adopted Common Position 2009/138/CFSP concerning restrictive measures against Somalia (2) which provides, inter alia, for financial restrictive measures concerning natural or legal persons, entities or bodies listed by the UN, as well as for a prohibition on the direct and indirect provision of assistance and services related to weapons and military equipment to such persons, entities or bodies.

(5) On 19 March 2010, the Security Council adopted UNSCR 1916 (2010) which, inter alia, decided to ease some restrictions and obligations under the sanctions regime to enable the delivery of supplies and technical assistance by international, regional and sub-regional organisations and to ensure the timely delivery of urgently needed humanitarian assistance by the UN.

(6) On 12 April 2010, the Sanctions Committee adopted the list of persons and entities which are subject to restrictive measures.

(*) See page 17 of this Official Journal.

(1) OJ L 46, 17.2.2009, p. 73.
On that basis, on 26 April 2010 the Council adopted Decision 2010/231/CFSP.

These measures fall within the scope of the Treaty on the Functioning of the European Union and, therefore, notably with a view to ensuring their uniform application by economic operators in all Member States, an act of the Union is necessary in order to implement them as far as the Union is concerned.

Council Regulation (EC) No 147/2003 of 27 January 2003 concerning certain restrictive measures in respect of Somalia (¹) imposed a general prohibition on the provision of technical advice, assistance, training, financing or financial assistance related to military activities, to any person, entity or body in Somalia. A new Council Regulation should be adopted to implement the measures concerning natural or legal persons, entities or bodies listed by the UN.

This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (²) and notably the right to an effective remedy and to a fair trial, the right to property and the right to the protection of personal data. This Regulation should be applied in accordance with those rights and principles.

This Regulation also fully respects the obligations of Member States under the Charter of the United Nations and the legally binding nature of Security Council Resolutions.

The power to amend the list in Annex I to this Regulation should be exercised by the Council, in view of the specific threat to international peace and security in the region posed by the situation in Somalia and in order to ensure consistency with the process for amending and reviewing the Annex to Council Decision 2010/231/CFSP.

The procedure for amending the list in Annex I to this Regulation should include providing to designated natural or legal persons, entities or bodies the reasons for their listing as transmitted by the Sanctions Committee, so as to give them an opportunity to present observations. Where observations are submitted or substantial new evidence is presented, the Council should review its decision in the light of those observations and inform the person, entity or body concerned accordingly.

In order to create maximum legal certainty within the Union, the names and other relevant data for identifying natural or legal persons, entities or bodies whose funds and economic resources are frozen in accordance with this Regulation should be published.

Any processing of personal data of natural persons under this Regulation should respect Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (³) and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (⁴).

Member States should determine the penalties applicable to infringements of the provisions of this Regulation. The penalties provided for should be proportionate, effective and dissuasive.

HAS ADOPTED THIS REGULATION:

Article 1

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

(a) ‘funds’ means financial assets and benefits of every kind, including but not limited to:

(i) cash, cheques, claims on money, drafts, money orders and other payment instruments;

(ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;

(iii) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;

(iv) interest, dividends or other income on or value accruing from or generated by assets;

(v) credit, right of set-off, guarantees, performance bonds or other financial commitments;

(vi) letters of credit, bills of lading, bills of sale;

(vii) documents evidencing an interest in funds or financial resources;

(b) ‘freezing of funds’ means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management;

(c) ‘economic resources’ means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services;

(d) ‘freezing of economic resources’ means preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;

(e) ‘Sanctions Committee’ means the Committee of the Security Council established pursuant to UNSCR 751 (1992) concerning Somalia;

(f) ‘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;

(g) ‘investment services’ means:

   (i) reception and transmission of orders in relation to one or more financial instruments;

   (ii) execution of orders on behalf of clients;

   (iii) dealing on own account;

   (iv) portfolio management;

   (v) investment advice;

   (vi) underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;

   (vii) placing of financial instruments without a firm commitment basis; or

   (viii) operating of multilateral trading facilities,

provided that the activity relates to any of the financial instruments listed in Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (1);

(b) ‘territory of the Union’ means the territories to which the Treaties are applicable, under the conditions laid down in the Treaties.

(i) ‘statement of reasons’ means the publicly releasable portion of the statement of case and/or, where applicable, the narrative summary of reasons for listing as provided by the Sanctions Committee.

Article 2

1. All funds and economic resources belonging to, owned, held or controlled by natural or legal persons, entities, or bodies listed in Annex I, 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.

3. Annex I shall consist of natural or legal persons, entities or bodies designated by the Security Council or by the Sanctions Committee in accordance with UNSCR 1844 (2008).

4. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1 and 2 shall be prohibited.

5. The prohibition set out in paragraph 2 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 infringe this prohibition.

Article 3

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

(a) interest or other earnings on those accounts; or

(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 2 was designated by the Sanctions Committee or the Security Council,

provided that any such interest, other earnings and payments continue to be subject to Article 2(1).

2. Article 2(2) shall not prevent financial or credit institutions in the Union from crediting frozen accounts where they receive funds transferred to the account of a listed natural or legal person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the competent authorities in the Member States, as indicated in the websites listed in Annex II, about such transactions without delay.

**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 urgently needed humanitarian assistance in Somalia, by the United Nations, its specialised agencies or programmes, humanitarian organisations having observer status with the United Nations General Assembly that provide humanitarian assistance, or their implementing partners.

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 5**

1. By way of derogation from Article 2, the competent authorities in the Member States, as indicated in the websites listed in Annex II, may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, if the following conditions are met:

(a) the competent authority concerned has determined that the funds or economic resources are:

(i) necessary to satisfy the basic needs of the persons listed in Annex I, and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

(ii) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources; and

(b) the Member State concerned has notified the Sanctions Committee of that determination and its intention to grant an authorisation, and the Sanctions Committee has not objected to that course of action within three working days of the notification.

2. By way of derogation from Article 2, the competent authorities in the Member States, as listed in Annex II, may authorise the release of certain frozen funds or economic resources or the making available of certain funds or economic resources, after having determined that these are necessary to cover extraordinary expenses, provided that the Sanctions Committee has been notified of this determination by the Member State concerned and that the determination has been approved by that Committee.

3. The relevant Member State shall inform the other Member States and the Commission of any authorisation granted under paragraphs 1 and 2.

**Article 6**

By way of derogation from Article 2, the competent authorities in the Member States, as indicated in the websites listed in Annex II, may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

(a) the funds or economic resources are the subject of a judicial, administrative or arbitral lien established before the date on which the natural or legal person, entity or body referred to in Article 2 has been designated by the Sanctions Committee or the Security Council or of a judicial, administrative or arbitral judgment rendered prior to that date;

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

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

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

(e) the Sanctions Committee has been notified by the Member State of the lien or judgment.
Article 7

The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen as a result of negligence.

Article 8

1. It shall be prohibited to provide, directly or indirectly, any of the following to any natural or legal person, entity or body listed in Annex I:

(a) technical assistance related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of goods and technology included in the Common Military List of the European Union (1);

(b) financing or financial assistance related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of goods and technology included in the Common Military List of the European Union;

(c) investment services related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of goods and technology included in the Common Military List of the European Union.

2. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the prohibition referred to in paragraph 1 shall be prohibited.

3. The prohibition set out in paragraph 1(b) shall not give rise to liability of any kind on the part of the natural or legal persons, entities or bodies which provided financing or financial assistance, where they did not know, and had no reasonable cause to suspect, that their actions would infringe this prohibition.

Article 9

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural or legal persons, entities or bodies shall:

(a) supply immediately the competent authorities, as indicated on the websites listed in Annex II for the country where they are resident or located, with any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 2, and shall forward such information, directly or through these competent authorities, to the Commission; and

(b) cooperate with the competent authorities as indicated on the websites listed in Annex II in any verification of this information.

2. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

Article 10

The Commission and Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with any other relevant information at their disposal in connection with this Regulation, in particular information in respect of violation and enforcement problems and judgments handed down by national courts.

Article 11

The Commission shall be empowered to amend Annex II on the basis of information supplied by Member States.

Article 12

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 such natural or legal person, entity or body in Annex I. The Council shall communicate its decision and the statement of reasons to the natural or legal person, entity or body concerned, either directly, if the address is known, or through the publication of a notice, providing such natural or legal person, entity or body 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 person, entity or body accordingly.

Article 13

Where the UN decides to de-list a person, entity or body, or to amend the identifying data of a listed person, entity or body, the Council shall amend Annex I accordingly.

Article 14

Annex I shall include, where available, information provided by the Security Council or by the Sanctions Committee necessary to identify the natural or legal persons, entities or bodies concerned. With regard to natural persons, such information may include names including aliases, date and place of birth, nationality, passport and ID card numbers, gender, address, if known, and function or profession. With regard to legal persons, entities or bodies, such information may include names, place and date of registration, registration number and place of business. Annex I shall also include the date of designation by the Security Council or by the Sanctions Committee.

(1) OJ C 69, 18.3.2010, p. 19.
Article 15

1. Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

2. Member States shall notify the Commission of those rules without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 16

1. Member States shall designate the competent authorities referred to in this Regulation and identify them in, or through, the websites listed in Annex II.

2. Member States shall notify the Commission of their competent authorities without delay after the entry into force of this Regulation, and shall notify it of any subsequent amendment thereto.

3. Where this Regulation sets out a requirement to notify, inform or otherwise communicate with the Commission, the address and other contact details to be used for such communication shall be those indicated in Annex II.

Article 17

This Regulation shall apply:

(a) within the territory of the Union, including its airspace;

(b) on board any aircraft or any vessel under the jurisdiction of a Member State;

(c) to any person inside or outside the territory of the Union who is a national of a Member State;

(d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State;

(e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.

Article 18

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 Luxembourg, 26 April 2010.

For the Council
The President
C. ASHTON
ANNEX I

NATURAL AND LEGAL PERSONS, ENTITIES OR BODIES REFERRED TO IN ARTICLES 2 AND 8

I. Natural persons


8. Fares Mohammed Mana’a (a.k.a.: a) Faris Mana’a, b) Fares Mohammed Mana) Date of birth: 8 February 1965. Place of birth: Sadah, Yemen. Passport No.: 00514146; place of issue: Sanaa, Yemen. ID Card No.: 1417576; place of issue: Al-Amana, Yemen; date of issue: 7 January 1996.

II. Legal persons, entities or bodies

ANNEX II

WEBSITES FOR INFORMATION ON THE COMPETENT AUTHORITIES REFERRED TO IN ARTICLES 3(2), 5, 6 AND 9 AND ADDRESS FOR NOTIFICATIONS TO THE EUROPEAN COMMISSION

BELGIUM
http://www.diplomatie.be/eusancions

BULGARIA
http://www.mfa.government.bg

CZECH REPUBLIC
http://www.mfcr.cz/mezinardnisankce

DENMARK
http://www.um.dk/da/menu/Udenrigspolitik/FredSikkerhedOgInternationalRetsorden/Sanktioner/

GERMANY
http://www.bmwi.de/BMWi/Navigation/Aussenwirtschaft/Aussenwirtschaftsrecht/embargos.html

ESTONIA
http://www.vm.ee/est/kat_622/

IRELAND
http://www.dfa.ie/home/index.aspx?id=28519

GREECE

SPAIN
www.mae.es/es/MenuPpal/Asuntos/Sanciones+Internacionales

FRANCE
http://www.diplomatie.gouv.fr/autorites-sanctions/

ITALY
http://www.esteri.it/UE/deroghe.html

CYPRUS
http://www.mfa.gov.cy/sanctions

LATVIA

LITHUANIA
http://www.urm.lt/sanctions

LUXEMBOURG
http://www.mae.lu/sanctions

HUNGARY
http://www.kulugyminiszterium.hu/kum/hu/bal/Kulpolitikank/nemzetkozi_szankciok/felelos_illetekes_hatosagok.htm

MALTA

NETHERLANDS
www.minbuza.nl/nl/Onderwerpen/Internationale_rechtsorde/Internationale_Sancties/Bevoegde_instituities_algemeen
AUSTRIA

POLAND
http://www.msz.gov.pl

PORTUGAL

ROMANIA

SLOVENIA
http://www.mzz.gov.si/si/zunanja_politika/mednarodna_varnost/omejevalni_ukrepi/

SLOVAKIA
http://www.foreign.gov.sk

FINLAND
http://formin.finland.fi/kvyhteistyo/pakotteet

SWEDEN
http://www.ud.se/sanktioner

UNITED KINGDOM

Address for notifications to the European Commission:

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