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COMMISSION

HIGH REPRESENTATIVE
OF THE UNION FOR
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Joint Proposal for a

COUNCIL REGULATION

amending Council Regulation (EU) 2017/1770 concerning restrictive measures in view of the situation in Mali

EXPLANATORY MEMORANDUM

(1) Council Regulation (EU) No 2017/1770 gives effect to Council Decision 2017/1775/CFSP and provides for the freezing of funds and economic resources of certain persons designated by the United Nations Security Council (the 'Security Council') or by the relevant United Nations Sanctions Committee as responsible for or complicit in, or having engaged in, directly or indirectly, actions or policies that threaten the peace, security, or stability of Mali.

(2) Decision (CFSP) 2021/XXX establishes criteria for Union autonomous listings.

(3) Regulatory action at the Union level is therefore necessary to give effect to Decision (CFSP) 2021/XXX, in particular with a view to ensure uniform application by economic operators in all Member States.

(4) Regulation (EU) No 2017/1770 should therefore be amended accordingly.

(5) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force immediately.

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Joint Proposal for a

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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) 2017/1775 of 28 September 2017 concerning restrictive measures in view of the situation in Mali[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 (EU) No 2017/1770[2] gives effect to Council Decision 2017/1775/CFSP and provides for the freezing of funds and economic resources of certain persons designated by the United Nations Security Council (the 'Security Council') or by the relevant United Nations Sanctions Committee as responsible for or complicit in, or having engaged in, directly or indirectly, actions or policies that threaten the peace, security, or stability of Mali.

(2) Decision (CFSP) 2021/XXX establishes criteria for Union autonomous listings.

(3) Regulatory action at the Union level is therefore necessary to give effect to Decision (CFSP) 2021/XXX, in particular with a view to ensure uniform application by economic operators in all Member States.

(4) Regulation (EU) No 2017/1770 should therefore be amended accordingly.

(5) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force immediately.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 2017/1770 is amended as follows:

(1) Article 2 is replaced by the following:

'Article 2

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.

[1] OJ L 251, 29.9.2017, p. 23.

[2] Council Regulation (EU) No 2017/1770 of 28 September 2017 concerning restrictive measures in view of the situation in Mali (OJ L 251, 29.9.2017, p. 1).

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.'

(2) the following articles are inserted:

'Article 2a

1. Annex I shall include natural and legal persons, entities and bodies identified by the Security Council or by the Sanctions Committee as:

(a) engaging in hostilities in violation of the Agreement on Peace and Reconciliation in Mali (the 'Agreement');

(b) taking actions that obstruct, or that obstruct by prolonged delay, or that threaten the implementation of the Agreement;

(c) acting for or on behalf of or at the direction of, or otherwise supporting or financing individuals and entities identified in points (a) and (b), including through the proceeds from organised crime, including the production and trafficking of narcotic drugs and their precursors originating in or transiting through Mali, the trafficking in persons and the smuggling of migrants, the smuggling and trafficking of arms as well as the trafficking in cultural property;

(d) involved in planning, directing, sponsoring, or conducting attacks against:

(i) the various entities referenced in the Agreement, including local, regional and state institutions, joint patrols and the Malian Security and Defence forces;

(ii) United Nations Multidimensional Integrated Stabilization Mission (MINUSMA) peacekeepers and other UN and associated personnel, including members of the Panel of Experts;

(iii) international security presences, including the Force Conjointe des Etats du G5 Sahel (FC-G5S), European Union Missions and French forces;

(e) obstructing the delivery of humanitarian assistance to Mali, or access to, or distribution of, humanitarian assistance in Mali;

(f) planning, directing, or committing acts in Mali that violate international human rights law or international humanitarian law, as applicable, or that constitute human rights abuses or violations, including those involving the targeting of civilians, including women and children, through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual violence), abduction, enforced disappearance, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge;

(g) using or recruiting children by armed groups or armed forces in violation of applicable international law, in the context of the armed conflict in Mali;

(h) knowingly facilitating the travel of a listed person in violation of the travel restrictions.

2. Annex I shall include the grounds for the listing of the persons, entities and bodies concerned.

3. Annex I shall also include, where available, information necessary to identify the natural or legal persons, entities and 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 and bodies, such information may include names, place and date of registration, registration number and place of business.

Article 2b

1. Annex Ia shall include the natural or legal persons, entities or bodies designated by the Council on any of the following grounds:

(a) being responsible for or complicit in, or having engaged, directly or indirectly, in the actions or policies that threaten the peace, security, or stability of Mali, [including those actions or policies referred to in Article 2a, paragraph 1] or

(b) obstructing or undermining the successful completion of its political transition, including by obstructing or undermining the holding of elections or the handover of power to elected authorities or

(c) being associated with natural or legal persons, entities or bodies referred to in 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.'

(3) Article 3, paragraph 1, letter (a) is replaced by the following:

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

(4) in Article 3, paragraph 1, letter (c) is replaced by the following:

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

(5) in Article 3, paragraph 1, last subparagraph is replaced by the following:

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

(6) in Article 3, paragraphs 2, 3 and 4 are replaced by the following:

'2. By way of derogation from Article 2, 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 two weeks prior to granting the authorisation.

3. By way of derogation from Article 2, with regard to a natural or legal person, entity and body listed in Annex I, 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, provided that the Sanctions Committee determined on a case-by-case basis that such a derogation would further the objectives of peace and national reconciliation in Mali and stability in the region.

4. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this Article within two weeks of the authorisation.'

(7) the following articles are inserted:

'Article 3a

1. By way of derogation from Article 2, and with regard to a person, entity and 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 humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations from Mali.

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

Article 3b

1. By way of derogation from Article 2, and with regard to a person, entity and 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 two weeks of the authorisation.'

(8) Article 4 is replaced by the following:

'1. By way of derogation from Article 2, the competent authorities in 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 2a 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 2b 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 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) recognising 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.

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

(9) Article 5 is replaced by the following:

'Article 5

1. By way of derogation from Article 2(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, 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 shall 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 2(2).

2. 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.

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

(10) in Article 6, paragraph 2 is replaced by the following:

'2. Article 2(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 2 has been 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 EU or enforceable in the Member State concerned,

provided that any such interest, other earnings and payments are frozen in accordance with Article 2.'

(11) the following articles are inserted:

'Article 6a

1. Natural persons as listed in Annex I or Annex Ia shall be prevented from entering into, or transiting through, the territory of a Member State.

2. Paragraph 1 shall not oblige a Member State to refuse its own nationals entry into its territory.

Article 6b

1. Article 6a shall not apply to the entry into or transit through the territory of a Member State of the natural persons listed in Annex Ia provided that:

(a) such entry or transit is required by an obligation of international law binding on the Member State in question:

(i) as a host country of an international intergovernmental organisation;

(ii) as a host country to an international conference convened by, or under the auspices of, the United Nations;

(iii) under a multilateral agreement conferring privileges and immunities; or

(iv) pursuant to the 1929 Treaty of Conciliation (Lateran Pact) concluded by the Holy See (Vatican City State) and Italy.

(b) the Member State is host country of the Organization for Security and Co-operation in Europe (OSCE).

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

3. An exemption granted pursuant to this Article shall be strictly limited to the purpose for which it is given and to the natural persons directly concerned thereby.

Article 6c

1. By way of derogation from Article 6a, the competent authorities may authorise, under such conditions as they deem appropriate, the entry into or transit through the territory of a Member State of the natural persons listed in Annex I or Annex Ia provided that such entry or transit is:

(a) in the case of natural persons listed in Annex I, and based on a case-by-case determination by the Sanctions Committee: justified on the grounds of urgent humanitarian need, including religious obligation or where an exemption would further the objectives of peace and national reconciliation in Mali and stability in the region;

(b) in the case of natural persons listed in Annex Ia, justified on the grounds of urgent humanitarian need, or on grounds of attending intergovernmental meetings or meetings promoted or hosted by the Union, or hosted by a Member State holding the Chairmanship in office of the OSCE, where a political dialogue is conducted that directly promotes the policy objectives of the restrictive measures in view of the situation in Mali; or

(c) necessary for the fulfilment of a judicial process.

2. The Member State concerned shall notify the other Member States and the Commission in writing of its intention to grant an authorisation under this Article. If a Member State or the Commission raises an objection in writing within two working days of receiving the notification, the Council, acting by a qualified majority, may decide to grant the proposed authorisation.

3. An authorisation granted pursuant to this Article shall be strictly limited to the purpose for which it is given and to the natural persons directly concerned thereby.'

(12) Article 8 is replaced by the following:

'Article 8

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 Article 2 and 6a.'

(13) Article 10, paragraph 1, letter (a) is replaced by the following:

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

(14) in Article 12, paragraph 5 is deleted

(15) the following article is inserted:

'Article 12a

1. The Commission shall be empowered to:

(a) amend Annex Ia on the basis of decisions taken by the Council in respect of Annex II to Council Decision (CFSP) 2021/XXX; and

(b) amend Annex II on the basis of information supplied by Member States.

2. The Commission shall communicate the decision referred to in paragraph 1(a), including the grounds for the listing, to the natural or legal person, entity or body concerned if the address is known or, if the address is not known, make known the decision to the natural or legal person, entity or body concerned through the publication of a notice in the *Official Journal of the European Union,* in either case providing such natural or legal person, entity or body with an opportunity to submit observations.

3. Where observations are submitted or where substantial new evidence is presented, the Commission shall review its decision in light of the observations or new evidence submitted and any other relevant information, and as a result may amend Annex Ia following the empowerment procedure in paragraph 1(a). The natural or legal person shall be informed of the outcome of the review.'

(16) the following article is inserted:

'Article 13a

1. The Commission shall process personal data in order to carry out its tasks under this Regulation. These tasks include:

(a) preparing and making amendments to Annex Ia;

(b) adding the contents of Annex I and Annex 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;

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

2. For the purposes of this Regulation, the Commission is designated as 'controller' within the meaning of Article 3(8) of Regulation (EU) 2018/1725[3] in relation to the processing activities necessary to accomplish the tasks referred to in paragraph 1.'

(17) the title of Annex I is replaced by:

'List of natural or legal persons, entities and bodies referred to in Article 2a'

(18) the following Annex is inserted:

'ANNEX Ia

List of natural or legal persons, entities and bodies referred to in Article 2b'

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,

For the Council
The President

[3] Regulation (EU) 2018/1725 of the European Parliament and the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).