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COUNCIL DECISION (CFSP) 2017/2074

of 13 November 2017

concerning restrictive measures in view of the situation in Venezuela

(OJ L 295, 14.11.2017, p. 60)

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COUNCIL DECISION (CFSP) 2017/2074

of 13 November 2017

concerning restrictive measures in view of the situation in Venezuela

CHAPTER I

EXPORT RESTRICTIONS

Article 1

1. The sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned to Venezuela by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft shall be prohibited whether originating or not in their territories.

2. It shall be prohibited:

(a) to provide technical assistance, brokering services and other services 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 for the aforementioned directly or indirectly to any natural or legal person, entity or body in, or for use in, Venezuela;

(b) to 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, brokering services and other services directly or indirectly to any person, entity or body in, or for use in, Venezuela.

Article 2

The prohibition in Article 1 shall not apply to the execution of contracts concluded before 13 November 2017 or to ancillary contracts necessary for the execution of such contracts, provided that they comply with Council Common Position 2008/944/CFSP ([1]), in particular with the criteria set out in Article 2 thereof, and that the natural or legal persons, entities or bodies seeking to perform the contract have notified the contract to the competent authority of the Member State in which they are established within 5 working days of the entry into force of this Decision.

([1]) Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ L 335, 13.12.2008, p. 99).

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Article 3

1. The sale, supply, transfer or export of equipment which might be used for internal repression to Venezuela by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft shall be prohibited whether originating or not in their territories.

2. It shall be prohibited:

(a) to provide technical assistance, brokering services and other services related to equipment which might be used for internal repression and to the provision, manufacture, maintenance and use of such equipment directly or indirectly to any natural or legal person, entity or body in, or for use in, Venezuela;

(b) to provide financing or financial assistance related to equipment which might be used for internal repression, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance, for any sale, supply, transfer or export of such equipment or for the provision of related technical assistance, brokering services and other services directly or indirectly to any person, entity or body in, or for use in, Venezuela.

3. The Union shall take the necessary measures in order to determine the relevant items to be covered by this Article.

Article 4

1. Articles 1 and 3 shall not apply to:

(a) the sale, supply, transfer or export of non-lethal military equipment, or of equipment which might be used for internal repression, intended solely for humanitarian or protective use, or for institution-building programmes of the United Nations (UN) and the Union and its Member States or of regional and subregional organisations, or of materiel intended for crisis-management operations of the UN and the Union or of regional and subregional organisations;

(b) the sale, supply, transfer or export of demining equipment and materiel for use in demining operations;

(c) the maintenance of non-lethal equipment which might be used by the navy and coastguard of Venezuela intended solely for border protection, regional stability and the interception of narcotics;

(d) the provision of financing and financial assistance related to the equipment or materiel referred to in points (a), (b) and (c);

(e) the provision of technical assistance related to the equipment or materiel referred to in points (a), (b) and (c),

on condition that such exports have been approved in advance by the relevant competent authority.

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2. Articles 1 and 3 shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Venezuela by UN personnel, personnel of the Union or its Member States, representatives of the media, and humanitarian and development workers and associated personnel for their personal use only.

Article 5

1. The sale, supply, transfer or export of equipment, technology or software intended primarily for use in the monitoring or interception by, or on behalf of, the Venezuelan regime of the internet and of telephone communications on mobile or fixed networks in Venezuela, including the provision of any telecommunication or internet monitoring or interception services of any kind, as well as the provision of financial and technical assistance to install, operate or update such equipment, technology or software, by nationals of Member States or from the territories of Member States shall be prohibited.

2. By derogation from paragraph 1, Member States may authorise the sale, supply, transfer or export of the equipment, technology or software, including the provision of any telecommunication or internet monitoring or interception services of any kind, as well as the related provision of financial and technical assistance, referred to in paragraph 1 if they have reasonable grounds to determine that the equipment, technology or software would not be used for internal repression by Venezuela's government, public bodies, corporations or agencies, or any person or entity acting on their behalf or at their direction.

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

3. The Union shall take the necessary measures in order to determine the relevant elements to be covered by this Article.

CHAPTER II

RESTRICTIONS ON ADMISSION

Article 6

1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of:

(a) natural persons responsible for serious human rights violations or abuses or the repression of civil society and democratic opposition in Venezuela; or

(b) natural persons whose actions, policies or activities otherwise undermine democracy or the rule of law in Venezuela;

as listed in Annex I.

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

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3. Paragraph 1 shall be without prejudice to the cases where a Member State is bound by an obligation of international law, namely:

(a) as a host country to an international intergovernmental organisation;

(b) as a host country to an international conference convened by, or under the auspices of, the UN;

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

(d) under the 1929 Treaty of Conciliation (Lateran Pact) concluded by the Holy See (State of the Vatican City) and Italy.

4. Paragraph 3 shall be considered as also applying in cases where a Member State is host country of the Organization for Security and Co-operation in Europe (OSCE).

5. The Council shall be duly informed in all cases where a Member State grants an exemption pursuant to paragraph 3 or 4.

6. Member States may grant exemptions from the measures imposed in paragraph 1 where travel is justified on the grounds of urgent humanitarian need, or on grounds of attending intergovernmental meetings and meetings promoted 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 democracy, human rights and the rule of law in Venezuela.

7. A Member State wishing to grant exemptions referred to in paragraph 6 shall notify the Council in writing. The exemption shall be deemed to be granted unless one or more of the Council members raise an objection in writing within two working days of receiving notification of the proposed exemption. In the event that one or more of the Council members raise an objection, the Council, acting by a qualified majority, may decide to grant the proposed exemption.

8. Where, pursuant to paragraphs 3, 4, 6 and 7, a Member State authorises the entry into, or transit through, its territory of persons listed in Annex I, the authorisation shall be limited to the purpose for which it is given and to the persons concerned thereby.

CHAPTER III

FREEZING OF FUNDS AND ECONOMIC RESOURCES

Article 7

1. All funds and economic resources belonging to or owned, held or controlled by:

(a) natural or legal persons, entities or bodies responsible for serious human rights violations or abuses or the repression of civil society and democratic opposition in Venezuela;

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(b) natural or legal persons, entities or bodies whose actions, policies or activities otherwise undermine democracy or the rule of law in Venezuela,

as listed in Annex I, shall be frozen.

2. All funds and economic resources belonging to or owned, held or controlled by natural or legal persons, entities and bodies associated with the persons entities or bodies referred to in paragraph 1, as listed in Annex II, shall be frozen.

3. 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 II.

4. The competent authority of a Member State 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 it deems appropriate, after having determined that the funds or economic resources concerned are:

(a) necessary to satisfy the basic needs of the natural or legal persons, entities or bodies listed in Annex I or II 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;

(b) intended exclusively for the payment of reasonable professional fees and the reimbursement of incurred expenses associated with the provision of legal services;

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

(d) necessary for extraordinary expenses, provided that the relevant competent authority has notified the competent authorities of the 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 the authorisation; or

(e) 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.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this paragraph.

5. By way of derogation from paragraphs 1 and 2, the competent authorities of a Member State may authorise the release of certain frozen funds or economic resources if the following conditions are met:

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(a) the funds or economic resources are the subject of an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in paragraph 1 or 2 was listed in Annex I or II, 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 such a decision 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 is not for the benefit of a natural or legal person, entity or body listed in Annex I or II; and

(d) recognising the decision is not contrary to public policy in the Member State concerned.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this paragraph.

6. Paragraphs 1 and 2 shall not prevent a natural or legal person, entity or body listed in Annex I or II from making a payment due under a contract or agreement that was concluded by, or an obligation that arose for, a natural or legal person, an entity or body listed in Annex I or II prior to the date on which such natural or legal person, entity or body was listed therein, provided that the Member State concerned has determined that the payment is not in breach of paragraph 3.

7. Paragraph 3 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 prior to the date on which those accounts became subject to the measures provided for in paragraphs 1, 2 and 3; or

(c) payments due 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 remain subject to the measures provided for in paragraph 1 or 2.

CHAPTER IV

GENERAL AND FINAL PROVISIONS

Article 8

1. The Council, acting by unanimity upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, shall establish and amend the lists in Annexes I and II.

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2. The Council shall communicate the decision referred to in paragraph 1, including the grounds for the listing, 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 person, entity or body with an opportunity to present observations.

3. Where observations are submitted, or where substantial new evidence is presented, the Council shall review the decision referred to in paragraph 1 and inform the natural or legal person, entity or body concerned accordingly.

Article 9

1. Annexes I and II shall include the grounds for listing the natural and legal persons, entities and bodies referred to in Articles 6(1) and 7(1), and Article 7(2), respectively.

2. Annexes I and II shall also contain, where available, the information 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 identity 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.

Article 10

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures laid down in this Decision.

Article 11

No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Decision, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, in particular a claim for extension or payment of a bond, guarantee or indemnity, in particular a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:

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

(b) any natural or legal person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in point (a).

Article 12

In order to maximise the impact of the measures set out in this Decision, the Union shall encourage third States to adopt restrictive measures similar to those provided for in this Decision.

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Article 13

This Decision shall apply until 14 November 2018.

This Decision shall be kept under constant review. It shall be renewed, or amended as appropriate, if the Council deems that its objectives have not been met.

Article 14

This Decision shall enter into force on the date of its publication in the *Official Journal of the European Union*.

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ANNEX I

List of natural and legal persons, entities and bodies referred to in Articles 6(1) and 7(1)

▼M1

	Name	Identifying information	Reasons	Date of listing
1.	Néstor Luis Reverol Torres	Date of birth: 28 October 1964	Minister for Interior, Justice and Peace; former Commander General of the Bolivarian National Guard. Responsible for serious human rights violations and repression of the democratic opposition in Venezuela, including the prohibition and repression of political demonstrations.	22.1.2018
2.	Gustavo Enrique González López	Date of birth: 2 November 1960	Head of the Bolivarian National Intelligence Service (SEBIN). Responsible for serious human rights violations (including arbitrary detention, inhuman and degrading treatment, and torture) and repression of civil society and the democratic opposition in Venezuela.	22.1.2018
3.	Tibisay Lucena Ramírez	Date of birth: 26 April 1959	President of the National Electoral Council (*Consejo Nacional Electoral* – CNE). Her actions and policies have undermined democracy and the rule of law in Venezuela, including by facilitating the establishment of the Constituent Assembly by failing to ensure that the CNE remains an impartial and independent institution in accordance with the Venezuelan Constitution.	22.1.2018
4.	Antonio José Benavides Torres	Date of birth: 13 June 1961	Chief of the Capital District (*Distrito Capital*) Government. General Commander of the Bolivarian National Guard until 21 June 2017. Involved in repression of civil society and democratic opposition in Venezuela, and responsible for serious human rights violations committed by the Bolivarian National Guard under his command. His actions and policies as General Commander of the Bolivarian National Guard, including the Bolivarian National Guard taking the lead in the policing of civilian demonstrations and publicly advocating that military courts should have jurisdiction over civilians, have undermined the rule of law in Venezuela.	22.1.2018
5.	Maikel José Moreno Pérez	Date of birth: 12 December 1965	President, and former Vice President, of the Supreme Court of Justice of Venezuela (*Tribunal Supremo de Justicia*). In these roles, he has supported and facilitated the Government's actions and policies which have undermined democracy and the rule of law in Venezuela, and is responsible for actions and statements that have usurped the authority of the National Assembly.	22.1.2018

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	Name	Identifying information	Reasons	Date of listing
6.	Tarek William Saab Halabi	Date of birth: 10 September 1963	Venezuelan Attorney General appointed by the Constituent Assembly. In this role and previous roles as Ombudsman and President of the Republican Moral Council, he has undermined democracy and the rule of law in Venezuela by publicly supporting actions against opponents of the Government and the withdrawal of competences from the National Assembly.	22.1.2018
7.	Diosdado Cabello Rondón	Date of birth: 15 April 1963	Member of the Constituent Assembly and First Vice President of the United Socialist Party of Venezuela (PSUV). Involved in undermining democracy and the rule of law in Venezuela, including by using the media to publicly attack and threaten political opposition, other media and civil society.	22.1.2018

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ANNEX II

List of natural and legal persons, entities and bodies referred to in Article 7(2)