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COUNCIL REGULATION (EU) 2016/1686

of 20 September 2016

imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them

(OJ L 255, 21.9.2016, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EU) 2016/1686 of 20 September 2016	L 54I	1	26.2.2018
►**M2**	Council Implementing Regulation (EU) 2018/999 of 16 July 2018	L 178I	1	16.7.2018

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imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them

Article 1

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

(a) ‘funds’ means financial assets and economic benefits of every kind, including but not limited to cash, cheques, claims on money, drafts, money orders and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; publicly and privately traded securities and debt instruments, including stocks and shares, certificates presenting securities, bonds, notes, warrants, debentures, derivatives contracts; interest, dividends or other income on or value accruing from or generated by assets; credit, right of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export-financing;

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

(c) ‘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;

(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) ‘competent authorities’ means the competent authorities of the Member States as identified on the websites listed in Annex II;

(f) ‘claim’ means any claim, whether asserted by legal proceedings or not, made before or after the date on which a person, entity or body has been listed in Annex I, under or in connection with a contract or transaction, and includes in particular:

(i) a claim for performance of any obligation arising under or in connection with a contract or transaction;

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(ii) a claim for extension or payment of a bond, financial guarantee or indemnity of whatever form;

(iii) a claim for compensation in respect of a contract or transaction;

(iv) a counterclaim;

(v) a claim for the recognition or enforcement, including by the procedure of exequatur, of a judgment, an arbitration award or an equivalent decision, wherever made or given.

Article 2

1. All funds and economic resources belonging to, owned, held or controlled, either directly or indirectly, by a natural or legal person, entity or body listed in Annex I including by a third party acting on their behalf or at their direction, 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.

Article 3

1. Annex I shall consist of natural and legal persons, entities and bodies who, in accordance with Article 3(3) of Decision (CFSP) 2016/1693, have been identified by the Council as being:

(a) associated with ISIL (Da'esh) and Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, including by:

(i) participating in the financing of ISIL (Da'esh) and Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, or in the financing of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of them;

(ii) participating in the planning, facilitating, preparing, or perpetrating of acts or activities or providing or receiving of terrorist training such as instruction related to arms, explosive devices or other methods or technologies with the purpose of committing terrorist acts by, in conjunction with, under the name of, on behalf of, or in support of ISIL (Da'esh) and Al-Qaeda or any cell, affiliate, splinter group or derivative thereof;

(iii) engaging in trade with ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, in particular of oil, oil products, modular refineries and related material, as well as trade in other natural resources and trade in cultural property;

(iv) supplying, selling or transferring arms and related materiel to ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof;

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(b) travelling or seeking to travel outside of the Union for the purpose of:

(i) the perpetration, planning, or preparation of, or participation in, terrorist acts on behalf of or in support of ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof, or

(ii) the providing or receiving of terrorist training, on behalf of or in support of, ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, or

(iii) otherwise supporting ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof;

(c) seeking to travel into the Union for the same purpose as referred to in paragraph (b) or to participate in acts or activities in conjunction with, under the name of, on behalf of or in support of ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof;

(d) recruiting for or otherwise supporting acts or activities of ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof, including by:

(i) providing or collecting, by any means, directly or indirectly, funds in order to finance the travelling of individuals, for the purpose referred to in paragraphs (b) and (c); organising the travel of individuals for the purpose referred to in paragraphs (b) and (c), or otherwise facilitating it for that purpose;

(ii) soliciting another person to participate in acts or activities by, in conjunction with, under the name of, on behalf of, or in support of ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof;

(e) inciting or publicly provoking acts or activities by, in conjunction with, under the name of, on behalf of, or in support of ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, including by encouraging or glorifying such acts or activities thereby causing a danger that terrorist acts may be committed;

(f) being involved or complicit in ordering or committing serious abuses of human rights, including abduction, rape, sexual violence, forced marriage and enslavement of persons, outside the territory of the Union, on behalf of or in the name of ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof.

2. Annex I shall include, where available, 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 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.

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Article 4

1. Where the Council decides to subject a natural or legal person, entity or body to the measures referred to in Articles 2 and 9 it shall amend Annex I accordingly.

2. The Council shall communicate its decision, including the grounds for listing, to the natural or legal person, entity or body referred to in paragraph 1, either directly, if the address is known, or through the publication of a notice, providing such natural or legal 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 its decision and inform the natural or legal person, entity or body accordingly.

4. The list in Annex I shall be reviewed at regular intervals and at least every 12 months.

Article 5

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:

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

(d) necessary for extraordinary expenses.

Article 6

By way of derogation from Article 2, the competent authorities of a Member State may authorise the release of certain frozen funds or economic resources provided the following conditions are met:

(a) the funds or economic resources are subject of an arbitral decision rendered prior to the date on which the natural or legal person, entity or body was listed in Annex I, or of a judicial or administrative decision rendered in the Union, or a judicial decision enforceable in the Member State concerned, prior to, on or after that date;

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(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;

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

Article 7

By way of derogation from Article 2 and provided that a payment by a natural or legal person, entity or body listed in Annex I is due under a contract or agreement that was concluded by, or under 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; and

(b) the payment is not in breach of Article 2(2).

Article 8

Article 2(2) shall not prevent the crediting of the frozen accounts by financial or credit institutions in the Union, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the competent authorities about such transactions without delay.

Article 9

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 goods and technology listed in the Common Military List ([1]), 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 Annex I;

(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 Annex I.

([1]) Latest version published in OJ C 122, 6.4.2016, p. 1.

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Article 10

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy and to Article 337 of the Treaty, natural and legal persons, entities and bodies shall:

(a) provide immediately any information which would facilitate compliance with this Regulation, such as information about funds and economic resources held or controlled while acting on behalf of, or at the direction of, any natural or legal person, entity or body listed in Annex I, or about accounts and amounts frozen in accordance with Article 2, to the competent authorities of the Member States where they are resident or located, and, directly or through those competent authorities, to the Commission;

(b) cooperate with the competent authorities 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.

3. Any additional information directly received by the Commission shall be made available to the competent authorities of the Member States concerned.

Article 11

1. It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions established in this Regulation.

2. Any information that the provisions of this Regulation are being, or have been, circumvented shall be notified to the competent authorities of the Member States and, directly or through these competent authorities, to the Commission.

Article 12

1. The freezing of funds and economic resources or the refusal to make funds or economic resources available pursuant to Article 2, 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, entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen or withheld as a result of negligence.

2. Actions by natural or legal persons, entities or bodies shall not give rise to liability of any kind on their part, if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in this Regulation.

Article 13

No claims, including for compensation or any other claim of this kind, such as a claim of set-off or a claim under a guarantee, in connection with any contract or transaction the performance of which was affected, directly or indirectly, wholly or in part, by reason of measures covered by this Regulation, shall be granted to the designated persons or entities listed in Annex I or any person or entity claiming through or for the benefit of any such person or entity.

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Article 14

1. The Commission and the Member States shall immediately inform each other of the measures taken under this Regulation and share any other relevant information at their disposal in connection with this Regulation, in particular information in respect of:

(a) funds frozen pursuant to Article 2 and authorisations granted pursuant to Articles 5, 6 and 7;

(b) matters relating to the violation and enforcement of the provisions of this Regulation and judgments handed down by national courts.

2. The Member States shall immediately inform each other and the Commission of any other relevant information at their disposal which might affect the implementation of this Regulation.

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 rules referred to in paragraph 1 to the Commission 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 on the websites listed in Annex II. Member States shall notify the Commission of any changes in the addresses of their websites listed in Annex II.

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

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

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

Article 18

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;

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(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, inside or outside the territory of the Union, 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 19

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.

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ANNEX I

List of natural and legal persons, entities and bodies referred to in Article 3

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A. **Persons**

1. Fabien CLAIN (a.k.a. Omar); date of birth: 30 January 1978; place of birth: Toulouse (France); Nationality: French; Passport number No 06AP104665 issued on 16.1.2006 (expired); national identity card number: No 150161100206 issued on 8.1.2015 (valid until 7.1.2030).

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2. Rabah TAHARI (a.k.a. Abu Musab); date of birth: 28 August 1971; place of birth: Oran (Algeria); Nationality: Algerian.

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ANNEX II

Websites for information on the competent authorities and address for notification to the European Commission

BELGIUM

http://www.diplomatie.be/eusanctions

BULGARIA

http://www.mfa.bg/en/pages/135/index.html

CZECH REPUBLIC

http://www.mfcr.cz/mezinarodnisankce

DENMARK

http://um.dk/da/politik-og-diplomati/retsorden/sanktioner/

GERMANY

http://www.bmwi.de/DE/Themen/Aussenwirtschaft/aussenwirtschaftsrecht,did=404888.html

ESTONIA

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

IRELAND

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

GREECE

http://www.mfa.gr/en/foreign-policy/global-issues/international-sanctions.html

SPAIN

http://www.exteriores.gob.es/Portal/es/PoliticaExteriorCooperacion/GlobalizacionOportunidadesRiesgos/Documents/ORGANISMOS%20COMPETENTES%20SANCIONES%20INTERNACIONALES.pdf

FRANCE

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

CROATIA

http://www.mvep.hr/sankcije

ITALY

http://www.esteri.it/MAE/IT/Politica_Europea/Deroghe.htm

CYPRUS

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

LATVIA

http://www.mfa.gov.lv/en/security/4539

LITHUANIA

http://www.urm.lt/sanctions

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LUXEMBOURG

http://www.mae.lu/sanctions

HUNGARY

http://www.kulugyminiszterium.hu/kum/hu/bal/Kulpolitikank/nemzetkozi_szankciok/

MALTA

http://www.doi.gov.mt/EN/bodies/boards/sanctions_monitoring.asp

NETHERLANDS

www.rijksoverheid.nl/onderwerpen/internationale-vrede-en-veiligheid/sancties

AUSTRIA

http://www.bmeia.gv.at/view.php3?f_id=12750&LNG=en&version=

POLAND

http://www.msz.gov.pl

PORTUGAL

http://www.portugal.gov.pt/pt/os-ministerios/ministerio-dos-negocios-estrangeiros/quero-saber-mais/sobre-o-ministerio/medidas-restritivas/medidas-restritivas.aspx

ROMANIA

http://www.mae.ro/node/1548

SLOVENIA

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

SLOVAKIA

http://www.mzv.sk/sk/europske_zalezitosti/europske_politiky-sankcie_eu

FINLAND

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

SWEDEN

http://www.ud.se/sanktioner

UNITED KINGDOM

https://www.gov.uk/sanctions-embargoes-and-restrictions

Address for notifications to the European Commission:

European Commission
Service for Foreign Policy Instruments (FPI)
EEAS 02/309
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Email: relex-sanctions@ec.europa.eu