

COUNCIL COMMON POSITION 2009/138/CFSP**of 16 February 2009****concerning restrictive measures against Somalia and repealing Common Position 2002/960/CFSP**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Whereas:

- (1) On 10 December 2002, the Council adopted Common Position 2002/960/CFSP⁽¹⁾, following United Nations Security Council Resolutions (UNSCR) 733 (1992), 1356 (2001) and 1425 (2002) relating to an arms embargo against Somalia.
- (2) On 20 November 2008, the United Nations Security Council adopted UNSCR 1844 (2008) introducing restrictive measures against those who seek to prevent or block a peaceful political process, or those who threaten the Transitional Federal Institutions (TFIs) of Somalia or the African Union Mission in Somalia (AMISOM) by force, or take action that undermines stability in Somalia or the region.
- (3) For the sake of clarity, the measures imposed by Common Position 2002/960/CFSP and those to be imposed pursuant to UNSCR 1844 (2008) should be integrated into a single legal instrument.
- (4) Common Position 2002/960/CFSP should therefore be repealed.
- (5) Action by the Community is needed in order to implement certain measures,

HAS ADOPTED THIS COMMON POSITION:

Article 1

1. The supply or sale of arms and related material of all types, including weapons and ammunition, military vehicles

and equipment, paramilitary equipment and spare parts for the aforementioned to Somalia by nationals of Member States or from the territories of Member States shall be prohibited whether originating or not in their territories.

2. The direct or indirect supply to Somalia of technical advice, financial and other assistance and training related to military activities, including in particular technical training and assistance related to the provision, manufacture, maintenance or use of the items mentioned in paragraph 1, by nationals of Member States or from the territories of the Member States shall be prohibited.

3. Paragraphs 1 and 2 shall not apply to:

- (a) the supply or sale of arms and related material of all types and to the direct or indirect supply of technical advice, financial and other assistance and training related to military activities intended solely for the support of or use by the AMISOM mission as stipulated in paragraph 4 of UNSCR 1744 (2007) or for the sole use of States and regional organisations undertaking measures in accordance with paragraph 6 of UNSCR 1851 (2008) and paragraph 10 of UNSCR 1846 (2008);
- (b) the supply or sale of arms and related material of all types and to the direct or indirect supply of technical advice intended solely for the purpose of helping to develop security sector institutions, consistent with the political process set out in paragraphs 1, 2 and 3 of UNSCR 1744 (2007) and in the absence of a negative decision by the Committee established by paragraph 11 of UNSCR 751 (1992) (hereinafter Sanctions Committee) within five working days of receiving the relevant notification;
- (c) supplies of non-lethal military equipment intended solely for humanitarian or protective use, or of material intended for institution building programmes of the Union, the Community or Member States, including in the field of security, carried out within the framework of the Peace and Reconciliation Process, as approved in advance by the Sanctions Committee, and to protective clothing, including flak jackets and military helmets, temporarily exported to Somalia by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

⁽¹⁾ OJ L 334, 11.12.2002, p. 1.

Article 2

Restrictive measures as provided for in Articles 3, 4(1) and 5(1) and (2) shall be imposed against persons and entities designated by the Sanctions Committee:

- 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 TFLs or AMISOM by force,
- as having acted in violation of the arms embargo and related measures as referred to in Article 1,
- as obstructing the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia.

The relevant persons and entities are listed in the Annex.

Article 3

Member States shall take the necessary measures to prevent the direct and indirect supply, sale or transfer of weapons and military equipment and the direct or indirect supply of technical assistance or training, financial and other assistance including investment, brokering or other financial services, related to military activities or to the supply, sale, transfer, manufacture, maintenance or use of weapons and military equipment, to persons or entities referred to in Article 2.

Article 4

1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of the persons referred to in Article 2.

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

3. Paragraph 1 shall not apply where the Sanctions Committee:

- (a) determines on a case-by-case basis that such entry or transit is justified on the grounds of humanitarian need, including religious obligation,

- (b) determines on a case-by-case basis that an exemption would otherwise further the objectives of peace and national reconciliation in Somalia and stability in the region.

4. In cases where, pursuant to paragraph 3, a Member State authorises the entry into, or transit through, its territory of persons designated by the Sanctions Committee, the authorisation shall be limited to the purpose for which it is given and to the persons concerned thereby.

Article 5

1. All funds and economic resources owned or controlled directly or indirectly by the persons or entities referred to in Article 2 or held by entities owned or controlled directly or indirectly by them or by any persons or entities acting on their behalf or at their direction, as designated by the Sanctions Committee, shall be frozen. The persons and entities concerned are identified in the Annex.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the persons or entities referred to in paragraph 1.

3. Member States may allow for exemptions from the measures referred to in paragraphs 1 and 2 in respect of funds and economic resources which are:

- (a) necessary for basic expenses, including payments for food-stuffs, 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 reimbursement of incurred expenses associated with the provision of legal services;

- (c) intended exclusively for the payment of fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds and economic resources;

(d) necessary for extraordinary expenses, after notification by the Member State concerned to, and approval by, the Sanctions Committee;

(e) the subject of a judicial, administrative or arbitral lien or judgment, in which case the funds and economic resources may be used to satisfy that lien or judgment provided that the lien or judgment was entered before designation by the Sanctions Committee of the person or entity concerned, and is not for the benefit of a person or entity referred to in Article 2, after notification by the Member State concerned to the Sanctions Committee.

4. The exemptions referred to in paragraph 3(a), (b) and (c) may be made after notification to the Sanctions Committee by the Member State concerned of its intention to authorise, where appropriate, access to such funds and economic resources, and in the absence of a negative decision by the Sanctions Committee within three working days of such notification.

5. Paragraph 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 those accounts became subject to restrictive measures,

provided that any such interest, other earnings and payments remain subject to paragraph 1.

Article 6

The Council shall establish the list contained in the Annex and amend it in accordance with determinations by the Sanctions Committee.

Article 7

This Common Position shall take effect on the date of its adoption.

Article 8

This Common Position shall be reviewed, amended or repealed as appropriate, in accordance with relevant decisions of the United Nations Security Council.

Article 9

Common Position 2002/960/CFSP is hereby repealed.

Article 10

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Brussels, 16 February 2009.

For the Council
The President
O. LIŠKA

ANNEX

List of persons and entities referred to in Articles 2, 3, 4 and 5
