

Unofficial and not binding translation

EXPLANATORY MEMORANDUM

General explanation

The violent repression and the violation of human rights of the Syrian population by the Syrian government have prompted the European Union to take sanctions against that country. The restrictive measures are laid down in Regulation (UE) No. 36/2012 of the Council of the European Union of January 18, 2012, Decision 2011/782/CFSP of December 1, 2011 and Decision 2013/255/CFSP of May 31, 2013 of the Council of the European Union.

The restrictive measures consist of an arms embargo, a ban on the supply of equipment that could be used for internal repression, travel restrictions and the freezing of funds and other assets of persons and entities responsible for the violent repression, a ban on the export of equipment for surveillance of telecommunications for use by the Syrian regime, a prohibition on the import or purchase of petroleum or petroleum products, a ban on the sale and supply to the Central Bank of Syria of new banknotes and coins, a prohibition on participation in certain infrastructure projects and investment in such projects, and additional restrictions on the transfer of funds and the provision of financial services.

The purpose of this State Decree containing General Administrative Orders is to implement UE Regulation No. 36/2012 and to implement UE Decisions 2011/782 and 2013/255 in Aruba.

Within the framework of the common foreign and security policy of the Kingdom, and with a view to the protection of the integrity and reputation of Aruba and its financial sector, the Government has decided, having regard to UE Regulation No. 36/2012, while making use of Articles 2 and 2a of the Sanctions Ordinance 2006, to take restrictive measures against natural persons, legal persons, entities and bodies. This State Decree is related to the freezing measures in § 2, in § 3 restrictions on the financing of certain enterprises (Article 7), and in § 4 restrictions on the transfer of capital and on financial services (Articles 8 through 11), as also laid down in Regulation (UE) No. 36/2012.

Explanatory notes on individual articles

Article 1

The first paragraph of this Article contains the definitions necessary for the application of this State Decree.

Article 2

Pursuant to this Article, the funds and other assets of persons and entities listed in Annexes II and II bis to Regulation No. 36/2012, Annexes I and II to Decision 2011/782 and Annexes I and II to Decision 2013/255, respectively, whom/which are held responsible for the violent repression against the civilian population in Syria, are frozen. To prevent the diversion of credit balances, reference is made to the UE Annexes and the Implementing Decisions against whom the freezing measures should be taken. An exemption from the freezing measures may be requested from the Minister charged with financial matters, in order to provide for the basic needs or to incur extraordinary expenses.

Article 3

Article 3 entrusts the Central Bank of Aruba (the Bank) and the Reporting Center Unusual Transactions (the Reporting Center) with the timely and digital publication via the website of the Bank, www.cbaruba.org, or via the website of the Reporting Center, www.fiu-aruba.com. Thus, the intended freezing measures can be implemented in an efficient and effective manner.

Article 4

Pursuant to this Article, the service providers are obligated not to provide services and not to perform acts that lead to it or could reasonably lead to it that a natural person, legal person or other entity listed in the Annexes to the UE Regulation and UE Decisions gains access in any way to the funds or other assets frozen pursuant to Article 2. This does not only concern services within the meaning of Article 1 of this State Decree, but also each actual act that leads to it that a fund or asset is brought under the control of a designated person.

Article 6

A freezing order may also relate to a property subject to registration, as this can also be an asset within the meaning of this State Decree. A property subject to registration is defined in Article 3.10 of the Civil Code of Aruba as a property for the transfer or creation of which an entry in the relevant public registers is necessary. In essence, it concerns immovable property, aircraft and vessels, and the restricted rights that can be created on such property. As freezing such an asset leads to it that the party entitled can no longer use it, it is desirable to make an entry thereof in the public records. Thus, it will be made clear to each and anyone that this property subject to registration has been frozen. This notably applies to the service providers that, by virtue of their position, engage in transactions concerning property subject to registration (such as civil-law notaries), and that have been designated for this purpose in the public registers.

In connection with the above, this Article imposes a duty of care on the keepers of the public registers - for immovable property and the restricted rights to be created on such property, being the registrar of mortgages, and for aircraft and vessels, being the keepers of the ship's

registry or the aircraft register, respectively - to enter the freezing in the public register in question. The duty of care implies that the keepers of the public register itself should ascertain whether a property subject to registration has been frozen because of the listing of the party entitled on one of the asset-freezing lists. The best way for this is the consultation of these lists.

Article 7

This Article provides for the prohibition on the financing of certain enterprises, such as the exploration, production and refining of petroleum, and on investments in the construction or installation of new power plants. The term “exploration of petroleum” should be understood to be the exploration for, the extraction of and management of petroleum reserves, as well as the provision of services in the area of geology in connection with these reserves. “Refining” is understood to be the processing, conditioning or preparation of petroleum for the purpose of selling fuels to the final consumer. This Article corresponds to Article 13 of the UE Regulation.

Article 8

Article 8 provides for the ban on the supply to the Central Bank of Syria of new Syrian banknotes and coins that are printed or minted in the European Union and corresponds to Article 11 of the UE Regulation. The second paragraph also implies an obligation for the Central Bank of Aruba.

Article 9

Article 9 (see Article 24 of the UE Regulation) provides for a ban on the sale or purchase of Syrian government bonds or public-guaranteed bonds or financial institutions established in Syria. The ban also applies to brokering services and assistance for these activities.

Article 10

Article 10 (see Article 25 of the UE Regulation) provides for a prohibition for service providers to open a new bank account with a Syrian credit or financial institution. It is also prohibited *inter alia* to establish a new correspondent banking relationship with a Syrian credit or financial institution, to open a new office in Syria, to establish a new joint venture with a Syrian credit or financial institution, to acquire or extend a participation or shares. For the term “Syrian credit institution”, reference can be made to the definition of a “credit institution” as referred to in Article 1, first paragraph, of the State Ordinance on the Supervision of the Credit System (AB 1998 No. 16), and reference is also made to the Explanatory Memorandum to this concept. For the purposes of this State Decree, the Central Bank of Syria also falls under the concept of a credit institution, as well as branches and subsidiaries of credit or financial institutions established in Syria. A “financial institution” is understood to be an enterprise other than a credit institution, such as insurance companies and insurers. Reference is made to the definition of a “financial service provider” as referred to in

Article 1, first paragraph, of the State Ordinance for the Prevention and Combating of Money Laundering and Terrorist Financing (AB 2011 No. 28). The second paragraph also prohibits circumventing these sanctions - - directly or indirectly.

Article 11

Article 11 (see Article 26 UE Regulation) contains a prohibition on offering insurance or reinsurance to the Syrian government, Syrian public bodies, corporations and agencies.

Finally, it is noted that the Government has decided not to hear the Advisory Council, as the purpose of the State Decree is the immediate implementation of an international decision. The possibility to do so is offered by Article 2, second paragraph, of the Sanctions Ordinance 2006.

The Minister of Finance and Government Organization,
[was signed:]

The Minister of Justice,
[was signed]

The Minister of General Affairs, Science, Innovation and Sustainable Development,
[was signed]