

## **EXPLANATORY MEMORANDUM**

### **General explanation**

The State Ordinance of October 21, 2013 amending the Sanctions Ordinance 2006 (“AB” [*Official Bulletin*] 2007 No. 24) (extension of the possibility to apply sanctions decrees and to improve the appointment of supervisors; see AB 2013 No. 77) has made it possible, with the introduction of Article 2a of the Sanctions Ordinance 2006, to implement in Aruba as well restrictive measures (read: sanctions) taken by the European Union (hereinafter: EU sanctions), adopted within the framework of the Common Foreign and Security Policy of the European Union, and, furthermore, intended to maintain or restore international peace and security.

The sanctions adopted by the European Union are those which are complementary to UN sanctions or additional measures adopted on its own initiative. The EU sanctions are implemented by means of common positions, regulations and decisions. The most frequent sanctions are:

- weapons embargoes and trade restrictions;
- financial sanctions (freezing of funds or other assets); and
- travel and visa restrictions.

Within the framework of the common foreign and security policy of the Kingdom and with a view to protecting the integrity and reputation of Aruba and its financial sector, the Government has decided, using Articles 2 and 2a of the Sanctions Ordinance 2006, to implement some “*priority EU sanctions*” for the purpose of freezing funds or other assets.

This State Decree brings together a number of priority EU sanctions and clarifies which EU sanctions apply in addition to the current sanctions decrees in force. This State Decree refers to its corresponding Annex I, based on which the regime of freezing funds or other assets applies.

Annex I contains the priority sanctions regimes which, given the nature and effectiveness of the foreign policy in the field of the fight against international organized crime and terrorism, but also in the interest of international legal order, require uniform application in Aruba. The speed

at which the location of (legal) persons is changed and funds or other assets are diverted or moved, for example, can be so high that the non-application of such sanctions would undermine their objective. In order to prevent this from happening, Annex I to this State Decree has been drawn up in such a way that it is suitable to be used for easily adopting new sanctions and easily changing adopted sanctions. If, for example, an EU sanction is repealed, Annex I only needs to be adjusted. This makes this State Decree suitable for future sanctions, which improves the effectiveness of sanctions as an instrument of international policy. It is not inconceivable that, in addition to the “*priority sanction regimes*” set out in Annex I, other EU sanctions in force could be implemented.

In addition, the international and EU sanctions in Aruba, based on Articles 2 and 2a of the Sanctions Ordinance 2006, are converted as much as possible into temporary sanctions decrees that are adopted for each country individually, including, for example, the Sanctions Decree Syria (AB 2016 No. 2) and the Sanctions Decree Yemen (AB 2017 No. 10). Some countries are subject to additional measures, including various forms of economic sanctions, such as restrictions on different sectors of economic activity, restrictions on investment or restrictions on the provision of certain services.

In anticipation of the adoption and implementation of such divergent sanctions decrees, this State Decree provides in any case for the “*freezing of funds or other assets*” of natural persons, legal persons and entities, referring for each country to the corresponding Annexes of the EU sanctions, as listed in Annex I.

The introduction of this amending decree does not entail any financial consequences for the Government. Finally, it should be noted that, since this State Decree is intended to implement a number of international decisions without delay, the Government has decided not to hear the Advisory Council. The possibility to do so is offered by the second paragraph of Article 2 of the Sanctions Ordinance 2006.

In the following explanatory notes on the individual Articles, the Articles of this State Decree will be discussed in more detail.

## **Explanatory notes on the individual Articles**

### **Article 1**

This Article contains a number of necessary definitions. It cannot be ruled out that more natural persons, legal persons, entities or bodies will be added to the various Annexes to the EU Regulations and EU Decisions mentioned in Annex I to this State Decree. In order to avoid the need to amend the State Decree each time, a dynamic reference to the concept of “Annex I” is provided for, in particular, in the Annexes to each EU Regulation and EU Decision listed.

For practical reasons, Annex I states the publication reference of the EU Regulations and EU Decisions of the priority sanctions regimes, as well as their name in English in italics and between braces. Under the heading “Measures” of Annex I, it is possible to identify the precise countries to which the freezing of funds or other assets applies.

#### Article 2

Based on this Article, the funds and other assets of persons, undertakings or institutions appearing in one of the various Annexes to the EU sanctions, as stated in Annex I, are frozen. The Government is of the opinion that this Annex I provides for a sufficient legal basis to implement the freezing measures, in any case.

#### Article 3

The first paragraph entrusts the Central Bank of Aruba (the Bank) with the timely and digital publication of Annex I via the website [www.cbaruba.org](http://www.cbaruba.org). This will ensure that the intended freezing measures can be implemented efficiently and effectively. The EU sanctions listed in Annex I can be found in the Official Journal of the European Union and are easily accessible via the website <http://eur-lex.europa.eu>.

The fact that these Annexes will be subject to constant adjustment must also be taken into account. In addition to financial service providers, the Designated Non-Financial Businesses and Professions (DNFBPs), including among others lawyers, accountants, tax consultants, real estate companies/developers, civil-law notaries, car dealers and jewelers, should also be familiar with these adjustments at all times.

#### Article 4

This Article requires everyone not to provide services and to refrain from acts that result or can reasonably result in a natural person, legal person or other entity listed in one of the Annexes to the EU Regulations or Decisions disposing in any way of the funds or other assets frozen

pursuant to Article 2. This applies not only to services within the meaning of Article 1 of this State Decree, but also to any act that has the effect of placing a fund or an asset under the control of a designated person. For the record, it should be noted that the violation of this prohibition has been made punishable under Article 17 of the Sanctions Ordinance 2006.

#### Article 5

This Article requires service providers to take immediate action, insofar as they have funds or assets of a natural person, legal person or other entity listed in one of the Annexes to the EU sanctions in their custody, as a result of which those funds and assets cannot be transferred, converted, relocated or made available to a natural person, legal person or other entity listed in one of the Annexes to the EU sanctions in violation of the freezing order.

#### Article 6

Finally, Article 6 contains the provision on the entry into force. This amending decree enters into force as of the day following the date of issue of the Official Bulletin of Aruba, given that international sanctions are being implemented.

The Minister of General Affairs, Integrity,  
Government Care, Innovation and Energy,

The Minister of Finance, Economic Affairs  
and Culture,

The Minister of Justice, Safety  
and Integrity,