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► **B****COUNCIL DECISION 2011/172/CFSP****of 21 March 2011****concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt**

(OJ L 76, 22.3.2011, p. 63)

Amended by:

		Official Journal		
		No	page	date
► <u>M1</u>	Council Decision 2012/159/CFSP of 19 March 2012	L 80	18	20.3.2012
► <u>M2</u>	Council Decision 2012/723/CFSP of 26 November 2012	L 327	44	27.11.2012
► <u>M3</u>	Council Decision 2013/144/CFSP of 21 March 2013	L 82	54	22.3.2013
► <u>M4</u>	Council Decision 2014/153/CFSP of 20 March 2014	L 85	9	21.3.2014
► <u>M5</u>	Council Decision (CFSP) 2015/486 of 20 March 2015	L 77	16	21.3.2015
► <u>M6</u>	Council Decision (CFSP) 2016/411 of 18 March 2016	L 74	40	19.3.2016
► <u>M7</u>	Council Decision (CFSP) 2017/496 of 21 March 2017	L 76	22	22.3.2017
► <u>M8</u>	Council Implementing Decision (CFSP) 2017/498 of 21 March 2017	L 76	33	22.3.2017
► <u>M9</u>	Council Decision (CFSP) 2018/466 of 21 March 2018	L 78 I	3	21.3.2018
► <u>M10</u>	Council Decision (CFSP) 2019/468 of 21 March 2019	L 80	40	22.3.2019

▼ B**COUNCIL DECISION 2011/172/CFSP****of 21 March 2011****concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt***Article 1*

1. All funds and economic resources belonging to, owned, held or controlled by persons having been identified as responsible for misappropriation of Egyptian State funds, and natural or legal persons, entities or bodies associated with them, as listed in the Annex, 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 the Annex.

3. 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 persons listed in the Annex and their dependent family members, 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; or
- (d) necessary for extraordinary expenses, provided that the 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 2 weeks prior to the authorisation.

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

▼ M2

4. By way of derogation from paragraph 1, the competent authorities of a Member State may authorise the release of certain frozen funds or economic resources, provided the following conditions are met:

▼M2

- (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 was listed in the Annex 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 the Annex; 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.

▼B

5. Paragraph 1 shall not prevent a listed natural or legal person, entity or body from making a payment due under a contract entered into prior to the date on which such person, entity or body was listed in the Annex, provided that the Member State concerned has determined that the payment is not directly or indirectly received by a person, entity or body referred to in paragraph 1.

▼M2

- 6. 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 prior to the date on which those accounts became subject to the measures provided for in paragraphs 1 and 2; 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.

▼B*Article 2*

1. The Council, acting upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, shall decide to establish and amend the list in the Annex.

▼B

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 person, entity or body concerned accordingly.

Article 3

1. The Annex shall include the grounds for listing the natural and legal persons, entities and bodies referred to in Article 1(1).

2. The Annex shall also contain, where available, the information necessary to identify the natural and 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.

Article 4

In order to maximise the impact of the measures referred to in Article 1(1) and (2), the Union shall encourage third States to adopt restrictive measures similar to those provided for in this Decision.

▼M1*Article 5*

This Decision shall enter into force on the date of its adoption.

▼M10

This Decision shall apply until 22 March 2020.

▼M1

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.

▼ **M10**

ANNEX

A. List of natural and legal persons, entities and bodies referred to in Article 1

	Name (and any aliases)	Identifying information	Grounds for designation
1.	Mohamed Hosni Elsayed Mubarak	Former President of the Arab Republic of Egypt Date of birth: 4.5.1928 Male	Person subject to judicial proceedings or an asset recovery process by the Egyptian authorities following a final court ruling in respect of the misappropriation of State Funds on the basis of the United Nations Convention against corruption.
2.	Suzanne Saleh Thabet	Spouse of Mr Mohamed Hosni Elsayed Mubarak, former President of the Arab Republic of Egypt Date of birth: 28.2.1941 Female	Associated with Mohamed Hosni Elsayed Mubarak, who is subject to judicial proceedings or an asset recovery process by the Egyptian authorities following a final court ruling in respect of the misappropriation of State Funds on the basis of the United Nations Convention against corruption.
3.	Alaa Mohamed Hosni Elsayed Mubarak	Son of Mr. Mohamed Hosni Elsayed Mubarak, former President of the Arab Republic of Egypt Date of birth: 26.11.1960 Male	Person subject to judicial proceedings or an asset recovery process by the Egyptian authorities following a final court ruling in respect of the misappropriation of State Funds on the basis of the United Nations Convention against corruption.
4.	Heidy Mahmoud Magdy Hussein Rasekh	Spouse of Mr Alaa Mohamed Elsayed Mubarak, son of former President of the Arab Republic of Egypt Date of birth: 5.10.1971 Female	Person subject to judicial proceedings or an asset recovery process by the Egyptian authorities following a final court ruling in respect of the misappropriation of State Funds on the basis of the United Nations Convention against corruption, and associated with Alaa Mohamed Hosni Elsayed Mubarak.
5.	Gamal Mohamed Hosni Elsayed Mubarak	Son of Mr. Mohamed Hosni Elsayed Mubarak, former President of the Arab Republic of Egypt Date of birth: 28.12.1963 Male	Person subject to judicial proceedings or an asset recovery process by the Egyptian authorities following a final court ruling in respect of the misappropriation of State Funds on the basis of the United Nations Convention against corruption.

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	Name (and any aliases)	Identifying information	Grounds for designation
6.	Khadiga Mahmoud El Gammal	Spouse of Mr Gamal Mahamed Hosni Elsayed Mubarak, son of former President of the Arab Republic of Egypt Date of birth: 13.10.1982 Female	Person subject to judicial proceedings or an asset recovery process by the Egyptian authorities following a final court ruling in respect of the misappropriation of State Funds on the basis of the United Nations Convention against corruption, and associated with Gamal Mohamed Hosni Elsayed Mubarak.
15.	Mohamed Zohir Mohamed Wahed Garrana	Former Minister of Tourism Date of birth: 20.2.1959 Male	Person subject to judicial proceedings by the Egyptian authorities in respect of the misappropriation of State Funds on the basis of the United Nations Convention against corruption.
18.	Habib Ibrahim Habib Eladli	Former Minister of Interior Date of birth: 1.3.1938 Male	Person subject to judicial proceedings by the Egyptian authorities in respect of the misappropriation of State Funds on the basis of the United Nations Convention against corruption.
19.	Elham Sayed Salem Sharshar	Spouse of Mr Habib Ibrahim Eladli Date of birth: 23.1.1963 Female	Person subject to judicial proceedings in respect of the misappropriation of State Funds on the basis of the United Nations Convention against corruption, and associated with Habib Ibrahim Eladli.

B. Rights of defence and right to effective judicial protection under Egyptian law:

The rights of defence and the right to effective judicial protection

It follows from Articles 54, 97 and 98 of the Egypt Constitution, Articles 77, 78, 124, 199, 214, 271, 272 and 277 of the Egypt Criminal Procedures Act and Articles 93 and 94 of the Egypt Advocacy Act (Law No 17 of 1983) that the following rights are guaranteed under Egyptian law:

- to any individual suspected of or charged with a criminal offence:
 1. the right to judicial review of any act or administrative decision;
 2. the right to defend himself/herself in person or through legal assistance of his/her own choosing or, if he/she has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- to any individual charged with a criminal offence:
 1. the right to be informed promptly, in a language which he/she understands and in detail, of the nature and cause of the accusation against him/her;
 2. the right to have adequate time and facilities for the preparation of his/her defence;
 3. the right to examine or have examined witnesses against him/her and to obtain the attendance and examination of witnesses on his/her behalf under the same conditions as witnesses against him/her;
 4. the right to have the free assistance of an interpreter if he/she cannot understand or speak the language used in court.

▼ M10

Application of the rights of defence and the right to effective judicial protection

1. Mohamed Hosni Elsayed Mubarak

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Mubarak were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular as follows:

First case

On 27 June 2013, Mr Mubarak was charged together with two other individuals with misappropriation of public funds and proceedings were initiated before the Cairo Criminal Court on 17 November 2013. On 21 May 2014, that Court convicted the three defendants. The defendants challenged this judgment before the Court of Cassation. On 13 January 2015, the Court of Cassation quashed the verdict and ordered a retrial. On retrial, on 4 and 29 April 2015, verbal and written pleadings of the parties were presented. On 9 May 2015, the Cairo Criminal Court convicted the defendants, ordered the restitution of the misappropriated funds and ordered the payment of a fine. On 24 May 2015, an appeal was lodged with the Court of Cassation. On 9 January 2016, the Court of Cassation upheld the convictions. On 8 March 2016, the defendants reached a settlement within the Experts Committee set up by Prime Ministerial Decree No 2873 of 2015. That settlement was approved by the Cabinet of Ministers on 9 March 2016. That settlement was not submitted to the Court of Cassation for final approval by the Prosecutor General because the Experts Committee was not the competent committee. It is open to the defendants to submit a request for settlement to the competent committee, the National Committee for Recovery of Assets Located Abroad (NCRAA).

Second case

The investigation relating to facts of misappropriation of public funds or assets is still ongoing. The Council has found no indication that the rights of defence or the right to effective judicial protection of Mr Mubarak were not respected.

3. Alaa Mohamed Hosni Elsayed Mubarak

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Alaa Mubarak were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular as follows:

Freezing order

On 28 February 2011, the Prosecutor General issued an order prohibiting Mr Alaa Mubarak and other individuals from disposing of their assets and funds in accordance with Article 208 bis/a of the Egypt Criminal Procedures Act, which allows the Prosecutor General to prohibit the defendant, his wife and his children from disposing of their assets if there are any doubts that such assets are the illegal proceeds of the crimes committed by that defendant. On 8 March 2011, the competent Criminal Court upheld the prohibition order. Pursuant to the laws of the Arab Republic of Egypt, defendants have the right to challenge the court ruling on the prohibition order before the same court. Mr Alaa Mubarak has not challenged the ruling of 8 March 2011.

First case

The defendant was referred together with another individual to the trial court (Cairo Criminal Court) on 30 May 2012. On 6 June 2013, the Court returned the case to the public prosecution for further investigations. After the conclusion of the investigations, the case was referred again to the Court. On 15 September 2018, the Cairo Criminal Court delivered a judgment by which: (i) it requested the expert committee it had appointed to complement the expert report it had submitted to the court in July 2018; (ii) ordered the arrest of the

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defendants; and (iii) asked to refer the defendants to the National Committee for Recovery of Assets Located Abroad (NCRAA) with a view to a possible reconciliation. The defendants successfully challenged the order of arrest and, following a motion of recusal of the judicial panel, the case was referred to another circuit of the criminal court to review the merits.

Second case

On 27 June 2013, Mr Alaa Mubarak was charged together with two other individuals with misappropriation of public funds and proceedings were initiated before the Cairo criminal court on 17 November 2013. On 21 May 2014, that Court convicted the three defendants. The defendants challenged this judgment before the Court of Cassation. On 13 January 2015, the Court of Cassation quashed the verdict and ordered a retrial. On retrial, on 4 and 29 April 2015, verbal and written pleadings of the parties were presented.

On 9 May 2015, the Cairo Criminal Court convicted the defendants, ordered the restitution of the misappropriated funds and ordered the payment of a fine. On 24 May 2015, an appeal was lodged with the Court of Cassation. On 9 January 2016, the Court of Cassation upheld the convictions. On 8 March 2016, the defendants reached a settlement within the Experts Committee set up by Prime Ministerial Decree No 2873 of 2015. This settlement was approved by the Cabinet of Ministers on 9 March 2016. This settlement was not submitted to the Court of Cassation for final approval by the Prosecutor General because the Experts Committee was not the competent committee. It is open to the defendants to submit a request for settlement to the competent committee, the National Committee for Recovery of Assets Located Abroad (NCRAA).

Third case

The investigation relating to facts of misappropriation of public funds or assets is still ongoing. The Council has found no indication that the rights of the defence or the right to effective judicial protection of Mr Alaa Mubarak were not respected.

4. Heidy Mahmoud Magdy Hussein Rasekh

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Ms Rasekh were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular as follows:

Freezing order

On 28 February 2011, the Prosecutor General issued an order prohibiting Ms Rasekh and other individuals from disposing of their assets and funds in accordance with Article 208 bis/a of the Egypt Criminal Procedures Act, which allows the Prosecutor General to prohibit the defendant, his wife and his children from disposing of their assets if there are any doubts that such assets are the illegal proceeds of the crimes committed by that defendant. On 8 March 2011, the competent Criminal Court upheld the prohibition order. Pursuant to the laws of the Arab Republic of Egypt, defendants have the right to challenge the court ruling on the prohibition order before the same court. Ms Rasekh has not challenged the ruling of 8 March 2011.

Case

The investigation relating to facts of misappropriation of public funds or assets is still ongoing. The Council has found no indication that the rights of the defence or the right to effective judicial protection of Ms Rasekh were not respected.

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5. Gamal Mohamed Hosni Elsayed Mubarak

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Gamal Mubarak were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular as follows:

Freezing order

On 28 February 2011, the Prosecutor General issued an order prohibiting Mr Gamal Mubarak and other individuals from disposing of their assets and funds in accordance with Article 208 bis/a of the Egypt Criminal Procedures Act, which allows the Prosecutor General to prohibit the defendant, his wife and his children from disposing of their assets if there are any doubts that such assets are the illegal proceeds of the crimes committed by that defendant. On 8 March 2011, the competent criminal Court upheld the prohibition order. Pursuant to the laws of the Arab Republic of Egypt, defendants have the right to challenge the court ruling on the prohibition order before the same court. Mr Gamal Mubarak has not challenged the ruling of 8 March 2011.

First case

Mr Gamal Mubarak and another individual were referred to the trial court (Cairo Criminal Court) on 30 May 2012. On 6 June 2013, the Court returned the case to the public prosecution for further investigations. After the conclusion of the investigations, the case was referred again to the court. On 15 September 2018, the Cairo Criminal Court delivered a judgment by which: (i) it requested the expert committee it had appointed to complement the expert report it had submitted to the Court in July 2018; (ii) ordered the arrest of the defendants; and (iii) asked to refer the defendants to the National Committee for Recovery of Assets Located Abroad (NCRAA) with a view to a possible reconciliation. The defendants successfully challenged the order of arrest and, following a motion of recusal of the judicial panel, the case was referred to another circuit of the criminal court to review the merits.

Second case

On 27 June 2013, Mr Gamal Mubarak was charged together with two other individuals with misappropriation of public funds and proceedings were initiated before the Cairo Criminal Court on 17 November 2013. On 21 May 2014, that Court convicted the three defendants. The defendants challenged this judgment before the Court of Cassation. On 13 January 2015, the Court of Cassation quashed the verdict and ordered a retrial. On retrial, on 4 and 29 April 2015, verbal and written pleadings of the parties were presented. On 9 May 2015, the Cairo Criminal Court convicted the defendants, ordered the restitution of the misappropriated funds and ordered the payment of a fine. On 24 May 2015, an appeal was lodged with the Court of Cassation. On 9 January 2016, the Court of Cassation upheld the convictions. On 8 March 2016, the defendants reached a settlement within the Experts Committee set up by Prime Ministerial Decree No 2873 of 2015. This settlement was approved by the Cabinet of Ministers on 9 March 2016. This settlement was not submitted to the Court of Cassation for final approval by the Prosecutor General because the Experts Committee was not the competent committee. It is open to the defendants to submit a request for settlement to the competent committee, the National Committee for Recovery of Assets Located Abroad (NCRAA).

Third case

The investigation relating to facts of misappropriation of public funds or assets is still ongoing. In the course of the investigation proceedings Mr Gamal Mubarak has been questioned. The Council has found no indication that the rights of the defence or the right to effective judicial protection of Mr Gamal Mubarak were not respected.

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6. Khadiga Mahmoud El Gammal

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Ms El Gammal were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular as follows:

Freezing order

On 28 February 2011, the Prosecutor General issued an order prohibiting Ms Khadiga El Gammal and other individuals from disposing of their assets and funds in accordance with Article 208 bis/a of the Egypt Criminal Procedures Act, which allows the Prosecutor General to prohibit the defendant, his wife and his children from disposing of their assets if there are any doubts that such assets are the illegal proceeds of the crimes committed by that defendant. On 8 March 2011, the competent criminal court upheld the prohibition order. Pursuant to the laws of the Arab Republic of Egypt, defendants have the right to challenge the court ruling on the prohibition order before the same court. Ms El Gammal has not challenged the ruling of 8 March 2011.

Case

The investigation relating to facts of misappropriation of public funds or assets is still ongoing. The Council has found no indication that the rights of defence or the right to effective judicial protection of Ms El Gammal were not respected.

15. Mohamed Zohir Mohamed Wahed Garrana

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Garrana were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular as follows:

Case

The investigation relating to facts of misappropriation of public funds or assets is still ongoing. The Council has found no indication that the rights of defence or the right to effective judicial protection of Mr Garrana were not respected.

18. Habib Ibrahim Habib Eladli

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Eladli were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular as follows:

Case

Mr Eladli was referred by the investigating judge to the competent trial court on charges of misappropriation of public funds. On 7 February 2016, that Court decided that the assets of Mr Eladli, his spouse and minor son should be frozen. Pursuant to that Court decision the Prosecutor General issued a freezing order on 10 February 2016 in accordance with Article 208 bis/a of the Egypt Criminal Procedures Act, which allows the Prosecutor General to prohibit the defendant, his wife and his children from disposing of their assets if there are any doubts that such assets are the illegal proceeds of the crimes committed by that defendant. Pursuant to the laws of the Arab Republic of Egypt, defendants have the right to challenge the court ruling on the prohibition order before the same court. On 15 April 2017, the Court convicted the defendant. The defendant challenged this judgment before the Court of Cassation, which quashed the verdict on 11 January 2018 and ordered a retrial. The new trial is still ongoing.

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19. Elham Sayed Salem Sharshar

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Ms Sharshar were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular as follows:

Freezing order

The husband of Ms Sharshar was referred by the investigating judge to the competent trial court on charges of misappropriation of public funds. On 7 February 2016, that Court decided that the assets of her husband, her own and those of their minor son should be frozen. Pursuant to that Court decision the Prosecutor General issued a freezing order on 10 February 2016 in accordance with Article 208 bis/a of the Egypt Criminal Procedures Act, which allows the Prosecutor General to prohibit the defendant, his wife and his children from disposing of their assets if there are any doubts that such assets are the illegal proceeds of the crimes committed by that defendant. Pursuant to the laws of the Arab Republic of Egypt, defendants have the right to challenge the court ruling on the prohibition order before the same court. Ms Sharshar has not challenged the Court ruling.