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EUROPEAN COMMISSION

HIGH REPRESENTATIVE OF
THE EUROPEAN UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 28.2.2011
COM(2011) 108 final

2011/0048 (NLE)

Joint proposal for a

COUNCIL REGULATION

concerning restrictive measures in view of the situation in Libya

EXPLANATORY MEMORANDUM

- (1) Council Decision 2011/[...]/CFSP of [...] provides for the adoption of restrictive measures in view of the situation in Libya in order to comply with UN Security Council Resolution 1970 (2011) and to provide for EU autonomous accompanying measures in consideration of the seriousness of the situation in Libya.
- (2) These measures consist of an arms embargo, a ban on exports of internal repression equipment, as well as restrictions on the admission and the freezing of funds and economic resources of persons and entities involved in serious human rights abuses against persons in Libya, including by being involved in attacks, in violation of international law, on civilian populations and facilities.
- (3) The High Representative of the EU for Foreign Affairs and Security Policy and the Commission propose to give effect to these measures by means of a Regulation based on Article 215 of the Treaty on the Functioning of the European Union (TFEU).

Joint proposal for a

COUNCIL REGULATION

concerning restrictive measures in view of the situation in Libya

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Council Decision 2011/[...]/CFSP of [...] concerning restrictive measures in view of the situation in Libya,

Having regard to the joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission,

After consulting the European Data Protection Supervisor,

Whereas:

- (1) In accordance with UN Council Security Resolution 1970 (2011) of 26 February 2011, Council Decision 2011/[...]/CFSP of [...] provides for an arms embargo, a ban on internal repression equipment, as well as restrictions on the admission and the freezing of funds and economic resources of certain persons and entities involved in serious human rights abuses against persons in Libya, including by being involved in attacks, in violation of international law, on civilian populations and facilities. These natural or legal persons, entities and bodies are listed in the Annexes to the Decision.
- (2) Some of these measures fall within the scope of the Treaty on the Functioning of the European Union and, therefore, notably with a view to ensuring their uniform application by economic operators in all Member States, regulatory action at the level of the Union is necessary in order to implement them.
- (3) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably the right to an effective remedy and to a fair trial and the right to the protection of personal data. This Regulation should be applied in accordance with those rights.
- (4) Article 291(2) TFEU provides that, where uniform conditions for implementing legally binding Union acts such as Regulations based on Article 215 TFEU are needed, those acts shall confer implementing powers on the Commission.
- (5) For the implementation of this Regulation, and in order to create maximum legal certainty within the Union, the names and other relevant data concerning natural and legal persons, entities and bodies whose funds and economic resources must be frozen

in accordance with this Regulation, must be made public. Any processing of personal data should respect Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹ and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data².

- (6) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

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

- (a) 'funds' means financial assets and benefits of every kind, including but not limited to:
- (i) cash, cheques, claims on money, drafts, money orders and other payment instruments;
 - (ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
 - (iii) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
 - (iv) interest, dividends or other income on or value accruing from or generated by assets;
 - (v) credit, right of set-off, guarantees, performance bonds or other financial commitments;
 - (vi) letters of credit, bills of lading, bills of sale;
 - (vii) documents evidencing an interest in funds or financial resources;
- (b) '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;
- (c) 'economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services;

¹ OJ L 8, 12.1.2001, p. 1.

² OJ L 281, 23.11.1995, p. 31.

- (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) 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; including verbal forms of assistance;
- (f) 'Sanctions Committee' means the Committee of the United Nations Security Council which was established pursuant to paragraph 24 of United Nations Security Council Resolution ("UNSCR") 1970 (2011);
- (g) 'territory of the Union' means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty, including their airspace.

Article 2

1. It shall be prohibited:
 - (a) to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex I, whether or not originating in the Union, to any person, entity or body in Libya or (to any other person, entity or body) for use in Libya;
 - (b) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in point (a).
2. It shall be prohibited to purchase, import or transport from Libya equipment which might be used for internal repression as listed in Annex I, whether the item concerned originates in Libya or not.
3. Paragraph 1 shall not apply to protective clothing, including flak jackets and helmets, temporarily exported to Libya by United Nations personnel, personnel of the European Union or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.
4. By way of derogation from paragraph 1, the competent authorities in the Member States as listed in Annex IV may authorise the sale, supply, transfer or export of equipment which might be used for internal repression, under such conditions as they deem appropriate, if they determine that such equipment is intended solely for humanitarian or protective use.

Article 3

1. It shall be prohibited:
 - (a) to provide, directly or indirectly, technical assistance related to the goods and technology listed in the Common Military List of the European Union

(Common Military List)³ or related to the provision, manufacture, maintenance and use of goods included in that list, to any person, entity or body in Libya or for use in Libya;

- (b) to provide, directly or indirectly, technical assistance or brokering services related to equipment which might be used for internal repression as listed in Annex I, to any person, entity or body in Libya or for use in Libya;
 - (c) to provide, directly or indirectly, financing or financial assistance related to the goods and technology listed in the Common Military List or in Annex I, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for any provision of related technical assistance to any person, entity or body in Libya or for use in Libya;
 - (d) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in points (a) to (c).
2. By way of derogation from paragraph 1, the prohibitions referred to therein shall not apply to the provision of technical assistance, financing and financial assistance related to non lethal military equipment intended solely for humanitarian purposes or protective use, or to other sales and supply of arms and related material, as approved in advance by the Sanctions Committee.
3. By way of derogation from paragraph 1, the competent authorities in the Member States as listed in Annex IV may authorise the provision of technical assistance, financing and financial assistance related to equipment which might be used for internal repression, under such conditions as they deem appropriate, if they determine that such equipment is intended solely for humanitarian or protective use.

Article 4

To prevent the transfer of goods and technology which are covered by the Common Military List or the supply, sale, transfer, export or import of which is prohibited by this Regulation, for all goods brought into or leaving the customs territory of the Union from or to LIBYA, in addition to the rules governing the obligation to provide pre-arrival and pre-departure information as determined in the relevant provisions concerning entry and exit summary declarations as well as customs declarations in Regulation (EEC) No 2913/92 of 12 October 1992⁴ and in Regulation (EEC) No 2454/93⁵, the person who provides that information shall declare whether the goods are covered by the Common Military List or by this Regulation and, where their export is subject to authorisation, specify the particulars of the export licence granted. These additional elements shall be submitted to the competent customs authorities of the Member State concerned either in written form or using a customs declaration as appropriate.

³ OJ C 69, 18.3.2010, p. 19.

⁴ OJ L 302, 19.10.1992, p. 1

⁵ OJ L 253, 11.10.1993, p. 1

Article 5

1. All funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex II and III shall be frozen.
2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annex II and III.
3. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1 and 2 shall be prohibited.

Article 6

1. Annex II shall include the natural or legal persons, entities and bodies designated by the United Nations Security Council or by the Sanctions Committee in accordance with paragraph 22 of UNSCR 1970 (2011).
2. Annex III shall consist of natural or legal persons, entities and bodies not covered by Annex II who, in accordance with Article 6(1) of Council Decision 2011/[...]/CFSP of [...], have been identified by the Council as being persons and entities involved in or complicit in ordering, controlling, or otherwise directing, the commission of serious human rights abuses against persons in Libya, including by being involved in or complicit in planning, commanding, ordering or conducting attacks, in violation of international law, including aerial bombardments, on civilian populations and facilities, or individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them.
2. Annex II and III shall include only the following information on listed natural persons:
 - (a) for identification purposes: surname and given names (including alias names and titles, if any); date and place of birth; nationality; passport and identity card numbers; tax and social security numbers; sex; address or other information on whereabouts; function held or profession;
 - (b) the date on which the natural or legal person, entity or body has been included in Annex;
 - (c) the grounds for listing.
3. Annex II and III may also include information on family members of the persons listed, provided that the inclusion of this information is considered to be necessary in a specific case for the sole purpose of verifying the identity of the listed natural person in question.

Article 7

1. By way of derogation from Article 5, the competent authorities in the Member States as identified on the websites listed in Annex IV 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 are:
 - (a) necessary to satisfy the basic needs of persons listed in Annex II or III, 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 payment of reasonable professional fees and 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;

provided that, where the the authorisation concerns a person, entity or body listed in Annex II, the Member State concerned has notified the Sanctions Committee of that determination and its intention to grant an authorisation, and the Sanctions Committee has not objected to that course of action within five working days of notification.

2. By way of derogation from Article 5, the competent authorities of the Member States, as indicated on the websites listed in Annex IV, may authorise the release of certain frozen funds or economic resources, or the making available of certain frozen funds or economic resources, after having determined that the frozen funds or economic resources are necessary for extraordinary expenses provided that the following conditions are met:
 - (a) where the authorisation concerns a person, entity or body listed in Annex II, the Sanctions Committee has been notified of that determination by the Member State concerned and the determination has been approved by that Committee; and
 - (b) where the authorisation concerns a person, entity or body listed in Annex III, the competent authority has notified the grounds on which it considers that a specific authorisation should be granted to the other competent authorities of the Member States and to the Commission at least two weeks before the authorisation.

Article 8

By way of derogation from Article 5, the competent authorities in the Member States as listed in Annex IV may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

- (a) the funds or economic resources in question are the subject of a judicial, administrative or arbitral lien established prior to the date on which the person,

entity or body referred to in Article 5 was included in Annex II or III, or of a judicial, administrative or arbitral judgment rendered prior to that date;

- (b) the funds or economic resources in question will be used exclusively to satisfy claims secured by such a lien or recognised as valid in such a judgment, within the limits set by applicable laws and regulations governing the rights of persons having such claims;
- (c) the lien or judgment is not for the benefit of a person, entity or body listed in Annex II or III;
- (d) recognising the lien or judgment is not contrary to public policy in the Member State concerned;
- (e) where the authorisation concerns a person, entity or body listed in Annex II, the Sanctions Committee has been notified by the Member State of the lien or judgment, and
- (f) where the authorisation concerns a person, entity or body listed in Annex III, the relevant Member State has informed the other Member States and the Commission of any authorisation granted under paragraph 1.

Article 9

1. Article 5(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 the natural or legal person, entity or body referred to in Article 5 has been designated by the Sanctions Committee, the Security Council or by the Council,

provided that any such interest, other earnings and payments are frozen in accordance with Article 5(1).

2. Article 5(2) shall not prevent financial or credit institutions in the Union from crediting frozen accounts where they receive funds transferred to the account of a listed natural or legal person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the relevant competent authority about any such transaction without delay.

Article 10

By way of derogation from Article 5 and provided that a payment by a person, entity or body listed in Annex II or III is due under a contract or agreement that was concluded by, or an obligation that arose for the person, entity or body concerned, before the date on which that person, entity or body had been designated, the competent authorities of the Member States, as indicated on the websites listed in Annex IV, may authorise, under such conditions as they

deem appropriate, the release of certain frozen funds or economic resources, if the following conditions are met:

- (a) the competent authority concerned has determined that:
 - (i) the funds or economic resources shall be used for a payment by a person, entity or body listed in Annex II or III;
 - (ii) the payment is not in breach of Article 5 (2);
- (b) where the authorisation concerns a person, entity or body listed in Annex II, the Sanctions Committee has been notified by the relevant Member State of the intention to grant an authorisation ten working days in advance,
- (c) where the authorisation concerns a person, entity or body listed in Annex III, the Member State concerned has, at least two weeks prior to the grant of the authorisation, notified the other Member States and the Commission of that determination and its intention to grant an authorisation.

Article 11

1. The freezing of funds and economic resources or the refusal to make funds or economic resources available, 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 or 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. The prohibition set out in Article 5(2) shall not give rise to any liability of any kind on the part of the natural and legal persons, entities and bodies who made funds or economic resources available if they did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibition in question.

Article 12

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall:
 - (a) supply immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 4, to the competent authority in the Member State where they are resident or located, as indicated on the websites listed in Annex II, and shall transmit such information, either directly or through the Member States, to the Commission; and
 - (b) co-operate with that competent authority 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.

Article 13

The Commission and Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with any other relevant information at their disposal in connection with this Regulation, in particular information in respect of violation and enforcement problems and judgments handed down by national courts.

Article 14

1. The Commission shall be empowered to:
 - (a) amend Annex II on the basis of determinations made by either the United Nations Security Council or the Sanctions Committee
 - (b) amend Annex III on the basis of decisions taken in respect of Annex IV to Council Decision 2011/XXX/CFSP; and
 - (b) amend Annex IV on the basis of information supplied by Member States.
2. The Commission shall state the grounds for listing in its decisions taken pursuant to paragraph 1(a) and (b), and shall communicate its decision to the natural or legal person, entity or body included in Annex III through individual notification or, where the address is not known, through the publication of a notice, providing such natural or legal person, entity or body with an opportunity to submit observations.
3. Where observations are submitted, the Commission shall review Annex II and Annex III and inform the person, entity or body accordingly.
4. The Commission shall process personal data in order to carry out its tasks under this Regulation. These tasks include:
 - (a) preparing and making amendments of Annex II or III to this Regulation;
 - (b) including the contents of these annexes in the electronic, consolidated list of persons, groups and entities subject to EU financial sanctions available on the Commission website⁶;
 - (c) processing of information on the impact of the measures of this Regulation such as the value of frozen funds and information on authorisations granted by the competent authorities.
5. The Commission may process relevant data relating to criminal offences committed by listed natural persons, and to criminal convictions or security measures concerning such persons, only to the extent that such processing is necessary for the preparation of Annex II to this Regulation. Such data shall not be made public or exchanged.
6. For the purposes of this Regulation, the Commission unit listed in Annex IV is designated as “controller” for the Commission within the meaning of Article 2(d) of

⁶ http://ec.europa.eu/external_relations/cfsp/sanctions/consol-list_en.htm

Regulation (EC) No 45/2001, in order to ensure that the natural persons concerned can exercise their rights under Regulation (EC) No 45/2001.

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 Commission of those rules without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 16

Where there is, in this Regulation, 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 IV.

Article 17

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;
- (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 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 18

This Regulation shall enter into force on the day 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.

Done at Brussels, [...]

For the Council
The President
[...]

ANNEX I

List of equipment which might be used for internal repression as referred to in Articles 2, 3 and 4

1. Fire-arms, ammunition and related accessories therefor, as follows:
 - 1.1 Firearms not controlled by ML 1 and ML 2 of the Common Military List of the European Union ('Common Military List')⁷;
 - 1.2 Ammunition specially designed for the firearms listed in item 1.1 and specially designed components therefor;
 - 1.3 Weapon-sights not controlled by the Common Military List.
2. Bombs and grenades not controlled by the Common Military List.
3. Vehicles as follows:
 - 3.1 Vehicles equipped with a water cannon, specially designed or modified for the purpose of riot control;
 - 3.2 Vehicles specially designed or modified to be electrified to repel borders;
 - 3.3 Vehicles specially designed or modified to remove barricades, including construction equipment with ballistic protection;
 - 3.4 Vehicles specially designed for the transport or transfer of prisoners and/or detainees;
 - 3.5 Vehicles specially designed to deploy mobile barriers;
 - 3.6 Components for the vehicles specified in items 3.1 to 3.5 specially designed for the purposes of riot control.

Note 1 This item does not control vehicles specially designed for the purposes of fire-fighting.

Note 2 For the purposes of item 3.5 the term "vehicles" includes trailers.
4. Explosive substances and related equipment as follows:
 - 4.1 Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor; except those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflaters, electric-surge arresters of fire sprinkler actuators);

⁷ OJ L 88, 29.3.2007, p. 58.

- 4.2 Linear cutting explosive charges not controlled by the Common Military List;
- 4.3 Other explosives not controlled by the Common Military List and related substances as follows:
 - a. amatol;
 - b. nitrocellulose (containing more than 12,5 % nitrogen);
 - c. nitroglycol;
 - d. pentaerythritol tetranitrate (PETN);
 - e. picryl chloride;
 - f. 2,4,6-trinitrotoluene (TNT).
5. Protective equipment not controlled by ML 13 of the Common Military List as follows:
 - 5.1 Body armour providing ballistic and/or stabbing protection;
 - 5.2 Helmets providing ballistic and/or fragmentation protection, anti-riot helmets, antiriot shields and ballistic shields.

Note: This item does not control:

 - *equipment specially designed for sports activities;*
 - *equipment specially designed for safety of work requirements.*
6. Simulators, other than those controlled by ML 14 of the Common Military List, for training in the use of firearms, and specially designed software therefor.
7. Night vision, thermal imaging equipment and image intensifier tubes, other than those controlled by the Common Military List.
8. Razor barbed wire.
9. Military knives, combat knives and bayonets with blade lengths in excess of 10 cm.
10. Production equipment specially designed for the items specified in this list.
11. Specific technology for the development, production or use of the items specified in this list.

ANNEX II

List of natural and legal persons, entities or bodies referred to in Article 6 (1).

- 1. QADHAFI, Aisha Muammar**
Date of birth : 1978. Place of birth: Tripoli, Libya.
Daughter of Muammar QADHAFI. Closeness of association with regime.

Date of UN designation: 26.2.2011.
- 2. QADHAFI, Hannibal Muammar**
Passport number: B/002210. Date of birth: 20/09/1975. Place of birth: Tripoli, Libya.
Son of Muammar QADHAFI. Closeness of association with regime.

Date of UN designation: 26.2.2011.
- 3. QADHAFI, Khamis Muammar**
Date of birth: 1978. Place of birth: Tripoli, Libya.
Son of Muammar QADHAFI. Closeness of association with regime. Command of military units involved in repression of demonstrations.

Date of UN designation: 26.2.2011.
- 4. QADHAFI, Muammar Mohammed Abu Minyar**
Date of birth: 1942. Place of birth: Sirte, Libya.
Leader of the Revolution, Supreme Commander of Armed Forces. Responsibility for ordering repression of demonstrations, human rights abuses.

Date of UN designation: 26.2.2011.
- 5. QADHAFI, Mutassim**
Date of birth: 1976. Place of birth: Tripoli, Libya.
National Security Adviser. Son of Muammar QADHAFI. Closeness of association with regime.

Date of UN designation: 26.2.2011.
- 6. QADHAFI, Saif al-Islam**
Director, Qadhafi Foundation. B014995. 25/06/1972. Tripoli, Libya. Son of Muammar QADHAFI. Closeness of association with regime. Inflammatory public statements encouraging violence against demonstrators.

Date of UN designation: 26.2.2011.

ANNEX III

List of natural and legal persons, entities or bodies referred to in Article 6(2).

(To be completed by Council)

ANNEX IV

List of competent authorities in the Member States referred to in Articles 7(1), 8(1), 10 and 12(1) and address for notifications to the European Commission

(To be completed by the Member States)

A. Competent authorities in each Member State:

BELGIUM

BULGARIA

CZECH REPUBLIC

DENMARK

GERMANY

ESTONIA

IRELAND

GREECE

SPAIN

FRANCE

ITALY

CYPRUS

LATVIA

LITHUANIA

LUXEMBOURG

HUNGARY

MALTA

NETHERLANDS

AUSTRIA

POLAND

PORTUGAL

ROMANIA

SLOVENIA

SLOVAKIA

FINLAND

SWEDEN

UNITED KINGDOM

B. Address for notifications to or other communication with the European Commission:

European Commission

Foreign Policy Instruments Service

CHAR 12/106

B-1049 Bruxelles/Brussel

Belgium

E-mail: relex-sanctions@ec.europa.eu

Tel.: (32 2) 295 55 85

Fax: (32 2) 299 08 73