

**COUNCIL DECISION 2011/423/CFSP****of 18 July 2011****concerning restrictive measures against Sudan and South Sudan and repealing Common Position 2005/411/CFSP**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Whereas:

- (1) On 30 May 2005, the Council adopted Common Position 2005/411/CFSP<sup>(1)</sup> concerning restrictive measures against Sudan. Common Position 2005/411/CFSP integrated the measures imposed by Common Position 2004/31/CFSP<sup>(2)</sup> and the measures to be imposed pursuant to United Nations Security Council Resolution 1591 (2005) ('UNSCR 1591 (2005)') into a single legal instrument.
- (2) The scope of the restrictive measures imposed by Common Position 2005/411/CFSP should be adapted, and that Common Position should be replaced.
- (3) The procedure for amending the Annex to this Decision should include a requirement to communicate to the designated persons and entities the grounds for listing, as provided by the Sanctions Committee established under UNSCR 1591 (2005), so as to give them an opportunity to present observations. Where observations are submitted or where substantial new evidence is presented, the Council should review its decision in the light thereof and inform the person or entity concerned accordingly.
- (4) This Decision 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, the right to property and the right to the protection of personal data. This Decision should be applied in accordance with those rights and principles.
- (5) This Decision also fully respects the obligations of Member States under the United Nations Charter and the legally binding nature of United Nations Security Council Resolutions.

- (6) The Union implementing measures are set out in Council Regulation (EC) No 131/2004 of 26 January 2004 concerning certain restrictive measures in respect of Sudan<sup>(3)</sup> and Council Regulation (EC) No 1184/2005 of 18 July 2005 imposing certain specific restrictive measures directed against certain persons impeding the peace process and breaking international law in the conflict in the Darfur region in Sudan<sup>(4)</sup>,

HAS ADOPTED THIS DECISION:

*Article 1*

In accordance with United Nations Security Council Resolution (UNSCR) 1591 (2005), restrictive measures as set out in Articles 2(1) and 3(1) of this Decision shall be imposed against those individuals who impede the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities, violate the arms embargo and/or are responsible for offensive military overflights in and over the Darfur region, as designated by the Committee established by paragraph 3 of UNSCR 1591 (2005) (the 'Sanctions Committee').

The relevant persons are listed in the Annex to this Decision.

*Article 2*

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 1.
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 determines that travel is justified on the grounds of humanitarian need, including religious obligation, or where the Sanctions Committee concludes that an exemption would further the objectives of the United Nations Security Council Resolutions for the creation of peace and stability in Sudan and 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.

<sup>(1)</sup> OJ L 139, 2.6.2005, p. 25.

<sup>(2)</sup> OJ L 6, 10.1.2004, p. 55.

<sup>(3)</sup> OJ L 21, 28.1.2004, p. 1.

<sup>(4)</sup> OJ L 193, 23.7.2005, p. 9.

*Article 3*

1. All funds, other financial assets and economic resources owned or controlled directly or indirectly by the persons referred to in Article 1 or held by entities owned or controlled directly or indirectly by such persons or by any persons acting on their behalf or at their direction, as identified in the Annex, shall be frozen.

2. No funds, financial assets or economic resources shall be made available directly or indirectly to or for the benefit of such persons or entities.

3. Exemptions may be made for funds, other financial assets and economic resources which are:

- (a) necessary for basic expenses, 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, in accordance with national laws, for the routine holding or maintenance of frozen funds, other financial assets and economic resources;

after notification by the Member State concerned to the Sanctions Committee of the intention to authorise, where appropriate, access to such funds, other financial assets and economic resources and in the absence of a negative decision by the Sanctions Committee within 2 working days of such notification;

- (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 judgement, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgement provided that the lien or judgement was entered prior to the date of the UNSCR 1591 (2005), and is not for the benefit of a person or entity referred to in this Article, after notification by the Member State concerned to the Sanctions Committee.

4. 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 restrictive measures;

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

*Article 4*

1. The sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned to Sudan or South Sudan by nationals of Member States or from the territories of Member States, or using their flag vessels or aircraft, shall be prohibited whether originating or not in their territories.

2. It shall also be prohibited to:

- (a) provide, directly or indirectly, technical assistance, brokering services or other services related to the items referred to in paragraph 1 or related to the provision, manufacture, maintenance and use of such items, to any natural or legal person, entity or body in, or for use in, Sudan or South Sudan;
- (b) provide, directly or indirectly, financing or financial assistance related to the items referred to in paragraph 1, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for the provision of related technical assistance, brokering services or other services to any natural or legal person, entity or body in, or for use in, Sudan or South Sudan;
- (c) participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibitions referred to in points (a) or (b).

*Article 5*

1. Article 4 shall not apply to:

- (a) the sale, supply, transfer or export of non-lethal military equipment intended solely for humanitarian, human rights monitoring or protective use, or for institution building programmes of the United Nations (UN), the African Union, the European Union, or of material intended for European Union, UN and African Union crisis management operations;
- (b) the sale, supply, transfer or export of non-combat vehicles which have been manufactured or fitted with materials to provide ballistic protection, intended solely for protective use of personnel of the European Union and its Member States in Sudan or South Sudan;
- (c) the provision of technical assistance, brokering services and other services related to such equipment or to such programmes and operations;

- (d) the provision of financing and financial assistance related to such equipment or to such programmes and operations;
- (e) the sale, supply, transfer or export of de-mining equipment and materiel for use in de-mining operations;
- (f) the provision of technical assistance, brokering and other services and financial assistance, and sales, supplies, transfers or exports in support of the implementation of the Comprehensive Peace Agreement;
- (g) the sale, supply, transfer or export of non-lethal military equipment intended solely for the support of the process of Security Sector Reform in South Sudan as well as the provision of financing, financial assistance or technical assistance related to such equipment;

on condition that such deliveries have been approved in advance by the competent authority of the Member State in question.

2. Article 4 shall also not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Sudan or South Sudan 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.

3. Member States shall consider deliveries under this Article on a case-by-case basis, taking full account of the criteria set out in Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment<sup>(1)</sup>. Member States shall require adequate safeguards against misuse of authorisations granted under this Article and, where appropriate, make provisions for repatriation of the equipment.

#### Article 6

The Council shall establish the list contained in the Annex and implement any modifications thereof on the basis of determinations made by the Sanctions Committee.

#### Article 7

1. Where the United Nations Security Council or the Sanctions Committee lists a person or entity, the Council shall include such person or entity in the Annex. The Council shall communicate its decision, including the grounds for

listing, to the person or entity concerned, either directly, if the address is known, or through the publication of a notice, providing such person or entity an opportunity to present observations.

2. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the person or entity concerned accordingly.

#### Article 8

1. The Annex shall include the grounds for the listing of listed persons and entities as provided by the United Nations Security Council or the Sanctions Committee.

2. The Annex shall also include, where available, information provided by the Security Council or by the Sanctions Committee necessary to identify the persons or entities concerned. With regard to persons, such information may include names including aliases, date and place of birth, nationality, passport and identity card numbers, gender, address, if known, and function or profession. With regard to entities, such information may include names, place and date of registration, registration number and place of business. The Annex shall also include the date of designation by the Security Council or by the Sanctions Committee.

#### Article 9

1. The measures referred to in Articles 2 and 3 shall be reviewed by 19 July 2012, in the light of the determinations of the United Nations Security Council regarding the situation in Sudan.

2. The measures referred to in Article 4 shall be reviewed by the date referred to in paragraph 1 of this Article, and every 12 months thereafter. They shall be repealed if the Council deems that their objectives have been met.

#### Article 10

Common Position 2005/411/CFSP is hereby repealed.

#### Article 11

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

Done at Brussels, 18 July 2011.

For the Council  
The President  
C. ASHTON

<sup>(1)</sup> OJ L 335, 13.12.2008, p. 99.

## ANNEX

**LIST OF PERSONS AND ENTITIES REFERRED TO IN ARTICLES 1 AND 3**

1. Surname, first name(s): ELHASSAN, Gaffar Mohamed  
Other information: Major-General and Commander of the Western Military Region for the Sudanese Armed Forces  
Date of UN designation: 25 April 2006
  2. Surname, first name(s): HILAL, Sheikh Musa  
Other information: Paramount Chief of the Jalul Tribe in North Darfur  
Date of UN designation: 25 April 2006
  3. Surname, first name(s): SHANT, Adam Yacub  
Other information: Sudanese Liberation Army (SLA) Commander  
Date of UN designation: 25 April 2006
  4. Surname, first name(s): BADRI, Gabril Abdul Kareem  
Other information: National Movement for Reform and Development (NMRD) Field Commander  
Date of UN designation: 25 April 2006
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