

(Acts adopted under Title V of the Treaty on European Union)

COUNCIL COMMON POSITION 2005/411/CFSP
of 30 May 2005
concerning restrictive measures against Sudan and repealing Common Position 2004/31/CFSP

THE COUNCIL OF THE EUROPEAN UNION,

entry into or transit through Member States' territories of all persons designated by the Committee established by paragraph 3 of that Resolution (the Committee).

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Whereas:

(1) On 9 January 2004, the Council adopted Common Position 2004/31/CFSP ⁽¹⁾ concerning the imposition of an embargo on arms, munitions and military equipment on Sudan.

(2) On 10 June 2004, the Council adopted Common Position 2004/510/CFSP amending Common Position 2004/31/CFSP so as to allow exemptions to the embargo for the African Union-led Ceasefire Commission.

(3) The Council deems it appropriate to maintain the arms embargo against Sudan. The policy objective of the European Union in this regard is to promote lasting peace and reconciliation within Sudan.

(4) On 30 July 2004, the United Nations Security Council adopted Resolution 1556 (2004), hereinafter referred to as 'UNSCR 1556(2004)', imposing an arms embargo on all non-governmental entities and individuals, including the Janjaweed, operating in the states of North Darfur, South Darfur and West Darfur.

(5) On 29 March 2005, the United Nations Security Council adopted Resolution 1591 (2005), hereinafter referred to as 'UNSCR 1591(2005)', imposing measures to prevent

(6) UNSCR 1591(2005) also imposes a freeze of all funds, financial assets and economic resources, owned or controlled, directly or indirectly by the persons designated by the Committee 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.

(7) UNSCR 1591(2005) furthermore reaffirms the measures imposed by UNSCR 1556(2004) and provides that these measures shall also apply to all the parties to the N'djamena Ceasefire Agreement and any other belligerents in the states of North Darfur, South Darfur and West Darfur.

(8) Paragraph 4 of UNSCR 1591(2005) provides that the measures relating to the entry into or transit through Member States' territories and to the freezing of funds, financial assets and economic resources shall enter into force on 28 April 2005, unless the Security Council determines before then that the parties to the conflict in Darfur have complied with all the commitments and demands of the Security Council referred to in UNSCR 1556(2004) and resolutions 1564(2004) and 1574(2004) and have taken immediate steps to fulfil all their commitments to respect the N'djamena Ceasefire Agreement and the Abuja Protocols, including notification of force positions, to facilitate humanitarian assistance and to cooperate fully with the African Union Mission.

(9) It is appropriate to integrate the measures imposed by Common Position 2004/31/CFSP and the measures to be imposed pursuant to UNSCR 1591(2005) in one single legal instrument.

(10) Common Position 2004/31/CFSP should therefore be repealed.

⁽¹⁾ OJ L 6, 10.1.2004, p. 55. Common Position as amended by Common Position 2004/510/CFSP (OJ L 209, 11.6.2004, p. 28).

(11) Action by the Community is needed in order to implement certain measures,

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.

HAS ADOPTED THIS COMMON POSITION:

Article 1

In accordance with UNSCR 1591 (2005), restrictive measures should 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 relevant persons are listed in the Annex to this Common Position.

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 Committee determines that travel is justified on the grounds of humanitarian need, including religious obligation, or where the Committee concludes that an exemption would further the objectives of the UNSCR 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 Committee, the authorisation shall be limited to the purpose for which it is given and to the persons concerned thereby.

Article 3

1. All funds, other financial assets and economic resources owned or controlled directly or indirectly by the persons

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 food-stuffs, 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, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources,

after notification by the Member State concerned to the 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 Committee within two working days of such notification;

(d) necessary for extraordinary expenses, after notification by the Member State concerned to and approval by the Committee;

(e) 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 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 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) grant, sell, supply or transfer technical assistance, brokering services and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, directly or indirectly to any person, entity or body in, or for use in Sudan;
- (b) provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of arms and related materiel, or for any grant, sale, supply, or transfer of related technical assistance, brokering services and other services, directly or indirectly to any person, entity or body in, or for use in Sudan.

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 UN, the African Union, the EU and the Community, or of material intended for EU, UN and African Union crisis management operations;

- (b) technical training and assistance related to such equipment;
- (c) the sale, supply, transfer or export of de-mining equipment and materiel for use in de-mining operations;
- (d) assistance and supplies provided in support of implementation of the Comprehensive Peace Agreement;

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 by United Nations personnel, personnel of the EU, the Community 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 the European Union code of conduct on arms exports adopted on 8 June 1998. 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 the determination made by the Committee.

Article 7

This Common Position shall take effect on the date of its adoption, with the exception of the measures set out under Articles 2 and 3, which shall apply as of 29 April 2005, unless the Council decides otherwise in the light of the determination by the Security Council on the fulfilment of the conditions set out in paragraphs 1 and 6 of UNSCR 1591(2005).

Article 8

The measures referred to in Articles 2 and 3 of this Common Position shall be reviewed 12 months after its adoption, or earlier, in the light of the determinations of the Security Council regarding the situation in Sudan. The measures referred to in Article 4 shall be reviewed 12 months after the adoption of this Common Position, and every 12 months thereafter. They shall be repealed if the Council deems that their objectives have been met.

Article 9

Common Position 2004/31/CFSP is hereby repealed.

Article 10

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Brussels, 30 May 2005.

For the Council

The President

F. BODEN

ANNEX

List of persons and entities referred to in Articles 1 and 3
