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EUROPEAN COMMISSION

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

Brussels, 23.3.2011
COM(2011) 157 final

2011/0066 (NLE)

Joint proposal for a

COUNCIL REGULATION

**amending Council Regulation (EU) No 204/2011 concerning restrictive measures in view
of the situation in Libya**

EXPLANATORY MEMORANDUM

- (1) Council Regulation (EU) No 204/2011 was adopted on 2 March 2011, pursuant to Council Decision 2011/137/CFSP of 28 February 2011, in order to implement United Nations Security Council Resolution 1970 (2011) and to provide for additional EU autonomous measures in consideration of the seriousness of the situation in Libya.
- (2) Council Decision 2011/[...]/CFSP of [...] amends Council Decision 2011/137/CFSP and provides for the adoption of further restrictive measures in order to comply with UN Security Council Resolution 1973 (2011).
- (3) These further measures include a prohibition on certain flights, a prohibition on the provision of armed mercenary personnel, and a broadening of the freezing measures. In addition, the Council Decision includes a provision to ensure that the measures do not affect the provision of humanitarian assistance in Libya.
- (4) 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

amending Council Regulation (EU) No 204/2011 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 [...] amending Council Decision 2011/137/CFSP concerning further 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) Council Decision 2011/[...]/CFSP of [...] provides, inter alia, for further restrictive measures in relation to Libya, including a prohibition on flights in the Libyan airspace, a prohibition on Libyan aircraft in EU airspace, and further provisions in relation to the measures introduced in Council Decision 2011/137/CFSP including a provision to ensure that these measures do not affect humanitarian operations in Libya.
- (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) Council Regulation (EU) No 204/2011¹ should be amended accordingly.
- (4) 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

Regulation (EU) No 204/2011 is amended as follows:

¹ OJ L 58, 3.3.2011, p. 1.

- (1) Article 3 shall be replaced by the following:

“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)² 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 provide, directly or indirectly, technical assistance, financing or financial assistance, brokering services or transport services related to the provision of armed mercenary personnel in Libya or for use in Libya;
 - (e) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in points (a) to (d).
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.
4. By way of derogation from paragraph 1, the competent authorities in the Member States, as listed in Annex IV, may authorise the provision to persons, entities or bodies in Libya of technical assistance, financing and financial assistance related to the goods and technology listed in the Common Military List, or to equipment which might be used for internal repression, where the competent authority considers that such authorisation is necessary in order to protect civilians and civilian populated areas in Libya which are under threat of attack, provided that the Member State

² OJ C 69, 18.3.2010, p. 19.

concerned has given prior notification to the Secretary General of the United Nations;

5. 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.”

- (2) The following Article 4a shall be inserted:

“Article 4a

1. It shall be prohibited for any aircraft or air carrier registered in Libya, or owned or operated by Libyan nationals or entities to:

- (a) fly over the territory of the Union;
- (b) to make stops in the territory of the Union for any purpose;
- (c) to operate any air service from / to the Union.

except where the particular flight has been approved in advance by the Sanctions Committee or in the case of an emergency landing.

2. It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibition in paragraph 1.”

- (3) The following Article 4b shall be inserted:

“Article 4b

1. It shall be prohibited for any aircraft or air carrier in the EU, or owned or operated by citizens of the union or by entities incorporated or constituted under the law of a Member State to :

- (a) fly over the territory of Libya;
- (b) to make stops in the territory of Libya for any purpose;
- (c) to operate any air service from / to Libya.

2. Paragraph 1 shall not apply to flights

- (i) whose sole purpose is humanitarian, such as delivering or facilitating the delivery of assistance, including medical supplies, food, humanitarian workers and related assistance;
- (ii) evacuating foreign nationals from Libya
- (iii) authorised by paragraphs 4 or 8 of UN Security Council Resolution 1973 (2011); or

- (iv) deemed necessary by Member States acting under the authority of paragraph 8 of UNSCR 1973 (2011) for the benefit of the Libyan people
3. It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibition in paragraph 1.”
- (4) Article 6(1) and (2) shall be replaced by the following:
- “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) or paragraph 19, 22 or 23 of UNSCR 1973 (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 Decision 2011/137/CFSP 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 as being persons or entities that are Libyan authorities, or as being persons and entities that have violated or have assisted in violating the provisions of UNSCR 1970 and 1973 or this regulation , or as being persons or entities acting for or on behalf or at the direction of any of the above, or by entities owned or controlled by them or by persons and entities listed in Annex II.”
- (5) The following Article 6a is inserted:
- “Article 6a*
- With regard to non-designated entities in which a designated entity has a stake, the obligation to freeze the funds and economic resources of the designated entity does not prevent such non-designated entities from continuing to conduct legitimate business insofar as this does not involve making available any funds or economic resources to a designated person or entity.
- (6) The following Article 8a is inserted:
- “Article 8a*
- By way of derogation from Article 5, the competent authorities in the Member States, as listed in Annex IV, may authorise the release of frozen funds or economic resources belonging to persons entities or bodies listed in Annex III, or the making available of certain funds or economic resources to persons entities or bodies listed in Annex III, under such conditions as they deem appropriate, where they consider it necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, provision of electricity, humanitarian workers, or the evacuation of foreign nationals from Libya. The Member State shall inform other Member States and the Commission of authorisations made under this paragraph.”
- (7) Article 12 shall be replaced by the following:

“Article 12

No claims, including for compensation or any other claim of this kind, such as a claim of set-off or a claim under a guarantee, in connection with any contract or transaction the performance of which was affected, directly or indirectly, wholly or in part, by reason of measures decided upon pursuant to UNSCR 1970 (2011) or UNSCR 1973 (2011), including measures of the Union or any Member State in accordance with, as required by or in any connection with, the implementation of the relevant decisions of the Security Council or measures covered by this Regulation, shall be granted to the Libyan Authorities, or any person or entity claiming on its behalf or for its benefit.”

Article 2

The persons and entities mentioned in the Annex to this Regulation shall be included in Annex II to Regulation (EU) No 204/2011.

Article 3

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

Persons and entities to be included in Annex II to Regulation (EU) No 204/2011 “**List of natural and legal persons, entities or bodies referred to in Article 6 (1)**”

Persons

1. **DORDA, Abu Zaid Umar**
Director, External Security Organisation.

Date of UN designation: 18.3.2011.
2. **JABIR, Abu Bakr Yunis**
Date of birth: 1952. Place of birth: Jalo, Libya.
Major General, Defence Minister.

Date of UN designation: 18.3.2011.
3. **MATUQ, Matuq Mohamed**
Date of birth: 1956. Place of birth: Khoms.
Secretary for utilities.

Date of UN designation: 18.3.2011.
4. **QADHAFI, Mohammed Muammar**
Date of birth: 1970. Place of birth: Tripoli, Libya.
Son of Muammar Qadhafi. Closeness of association with regime.
5. **QADHAFI, Saadi**
Date of birth: 25.05.1973. Place of birth: Tripoli, Libya.
Commander Special Forces. Son of Muammar Qadhafi. Closeness of association with regime. Command of military units involved in repression of demonstrations.

Date of UN designation: 18.3.2011.
6. **QADHAFI, Saif Al Arab**
Date of birth: 1982. Place of birth: Tripoli, Libya.
Son of Muammar QADHAFI. Closeness of association with regime.

Date of UN designation: 18.3.2011.
7. **AL SENUSSI, Abdullah**
Date of birth: 1949. Place of birth: Sudan.
Colonel. Director Military Intelligence.

Date of UN designation: 18.3.2011.

Entities.

1. **Central Bank of Libya**
Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.

Date of UN designation: 18.3.2011.

2. Libyan Investment Authority

a.k.a: Libyan Arab Foreign Investment Company (LAFICO)

Address: 1 Fateh Tower Office, No9, 22nd Floor, Borgaida Street, Tripoli, Libya, 1103

Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.

Date of UN designation: 18.3.2011.

3. Libyan Foreign Bank

Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.

Date of UN designation: 18.3.2011.

4. Libyan African Investment Portfolio

Address: Jamahiriya Street, LAP Building, PO Box 91330, Tripoli, Libya

Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.

Date of UN designation: 18.3.2011.

5. Libyan National Oil Company

Address: Bashir Saadawi Street, Tripoli, Tarabulus, Libya

Under control of Muammar Qadhafi and his family, and potential source of funding for his regime.

Date of UN designation: 18.3.2011.”