



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

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Joint Proposal for a

COUNCIL REGULATION

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

EXPLANATORY MEMORANDUM

- (1) On 2 March 2011 the Council adopted Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya to give effect to the measures provided for in Decision 2011/137/CFSP of 28 February 2011.
- (2) On 22 January 2013 the Council adopted Decision 2013/45/CFSP which provides for an amendment to Decision 2011/137/CFSP in order to permit the release of certain frozen funds or economic resources where they are required to respond to a judicial or administrative decision delivered in the Union, or a judicial decision enforceable in a Member State.
- (3) On 22 April 2013 the Council adopted Decision 2013/182/CFSP further amending Decision 2011/137/CFSP and providing for additional derogations from the arms embargo.
- (4) Some of these measures fall within the scope of the Treaty on the Functioning of the European Union and, therefore, in particular 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.
- (5) The High Representative of the Union for Foreign Affairs and Security Policy and the European Commission propose to amend Regulation (EU) No 204/2011 accordingly.

Joint Proposal for a

COUNCIL REGULATION

amending 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 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya¹,

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

Whereas:

- (1) Council Regulation (EU) No 204/2011 of 2 March 2011 concerning restrictive measures in view of the situation in Libya² gives effect to the measures provided for in Decision 2011/137/CFSP.
- (2) Council Decision 2013/45/CFSP of 22 January 2013³ provides for an amendment to Decision 2011/137/CFSP in order to permit the release of certain frozen funds or economic resources where they are required to respond to a judicial or administrative decision delivered in the Union, or a judicial decision enforceable in a Member State.
- (3) Council Decision 2013/182/CFSP of 22 April 2013⁴ provides for an amendment to Decision 2011/137/CFSP in accordance with the Resolution 2095 (2013) of the United Nations Security Council which amends the arms embargo imposed by paragraph 9(a) of Resolution 1970 (2011) and further elaborated upon by in paragraph 13(a) of Resolution 2009(2011).
- (4) Certain of these measures fall within the scope of the Treaty on the Functioning of the European Union and, therefore, in particular 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.
- (5) Regulation (EU) No 204/2011 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

- (1) Article 3 is replaced by the following:

¹ O L L 58, 3.3.2011, p.53.

² O J L 58, 3.03.2011, p. 1.

³ O J L 20, 23.1.2013, p. 60.

⁴ O J L 111, 23.4.2013, p. 50.

“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 Union⁵ (Common Military List) 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, financing or financial 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:

(a) the provision of technical assistance, financing or financial assistance related to non-lethal military equipment intended solely for humanitarian purposes or protective use;

(b) the provision of technical assistance, financing or financial assistance related to other sales and supply of arms and related material, as approved in advance by the Sanctions Committee;

(c) the provision of technical assistance, financing or financial assistance intended solely for security or disarmament assistance to the Libyan government;

(d) protective clothing, including flak jackets and helmets, temporarily exported to Libya by United Nations personnel, personnel of the Union or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

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."

(2) Article 8 is replaced by the following:

“Article 8

⁵ OJ C 69, 18.3.2010, p. 19.

1. By way of derogation from Article 5, with regard to persons, entities or bodies listed in Annex II, 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 was referred to in Article 5(4), 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, or referred to in Article 5(4);

(d) recognising the lien or judgment is not contrary to public policy in the Member State concerned; and

(e) the Sanctions Committee has been notified by the Member State of the lien or judgment.

2. By way of derogation from Article 5, with regard to persons, entities or bodies listed in Annex III, 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 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 Article 5 was listed in Annex III, 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 Annex II or III, or referred to in Article 5(4);

(d) recognising the decision is not contrary to public policy in the Member State concerned; and

(e) the relevant Member State has informed the other Member States and the Commission of any authorisation granted."

(3) In Article 9(1), the following points (c) and (d) are added:

“(c) payments due under judicial, administrative or arbitral lien or judgment, as referred to in Article 8(1);

(d) payments due under judicial, administrative or arbitral decisions rendered in the Union, or enforceable in the Member State concerned, as referred to in Article 8(2),”

Article 2

This Regulation shall enter into force on the day following that 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