



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

Brussels, 8.11.2012
JOIN(2012) 31 final

2012/0318 (NLE)

Joint Proposal for a

COUNCIL REGULATION

amending Regulation (EU) No 101/2011 of 4 February 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia

EXPLANATORY MEMORANDUM

- (1) On 31 January 2011, the Council adopted Council Decision 2011/72/CFSP concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia.
- (2) Council Decision 2012/.../CFSP of ...provides for an amendment to the derogations given in Article 1 of Council Decision 2011/72/CFSP to expand their scope to permit the release of funds and economic resources where they are required to satisfy a judicial or administrative decision rendered in the EU, or a judicial decision enforceable in a Member State.
- (3) An amendment to Regulation (EU) No 101/2011 of 4 February 2011 concerning restrictive measures directed against persons, entities and bodies in view of the situation in Tunisia is necessary to give effect to this Decision.
- (4) Article 9 of Regulation (EU) No 101/2011 concerns information sharing by persons, entities and bodies in order to facilitate compliance with the Regulation. In accordance with Article 9(2), information provided or received shall be used only for the purposes for which it was provided or received. This amendment clarifies that this does not prevent Member States from sharing such information with Tunisia and other Member States in accordance with national law in order to assist the recovery of misappropriated assets in certain circumstances.
- (5) The High Representative of the Union for Foreign Affairs and Security Policy and the European Commission propose to amend Regulation (EU) No 101/2011 accordingly.

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amending Regulation (EU) No 101/2011 of 4 February 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia

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 2011/72/CFSP of 31 January 2011 concerning restrictive measures directed against certain persons and entities in view of the situation in Tunisia¹,

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 101/2011 of 4 February 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia² gives effect to the measures provided for in Council Decision 2011/72/CFSP.
- (2) Council Decision 2012/.../CFSP of ... provides for an amendment to Council Decision 2011/72/CFSP to enable the release of frozen funds and economic resources where they are required to satisfy a judicial or administrative decision rendered in the EU, or a judicial decision enforceable in a Member State.
- (3) Article 9 of Council Regulation (EU) No 101/2011 concerns information to be shared by persons, entities and bodies with the competent authorities of Member States, which shall be transmitted to the Commission, in order to facilitate compliance with the Regulation. In accordance with Article 9(2), information provided or received shall be used only for the purposes for which it was provided or received. This shall not prevent Member States from sharing such information with Tunisia and other Member States under national law where necessary and for the sole purpose of assisting the recovery of misappropriated assets.
- (4) Regulation (EU) No 101/2011 should therefore be amended accordingly,

¹ OJ L 28, 2.2.2011, p. 62.

² OJ L 31, 5.2.2011, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 101/2011 is amended as follows:

(1) Article 5 shall be replaced by the following:

"Article 5

1. By way of derogation from Article 2, the competent authorities in Member States, as indicated on the websites listed in Annex II, may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

(a) the funds or economic resources are subject of an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in Article 2 was listed in Annex I, or of a judicial or administrative decision rendered in the EU, 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 I;

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

2. The competent authority will inform the competent authority of the other Member States and the Commission of any authorisation granted under this Article."

Article 2

(2) After Article 9(2) the following paragraph 3 shall be added:

"3. Paragraph 2 shall not prevent Member States from sharing that information in accordance with their national law with Tunisia and other Member States where necessary and for the sole purpose of assisting the recovery of misappropriated assets."

Article 3

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