EUROPEAN COMMISSION

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

Brussels, 26.9.2011
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2011/0259 (NLE)

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 imposing restrictive measures in view of the situation in Libya in order to give effect to UN Security Council Resolution 1970 (2011).

(2) On 15 September 2011, the UN Security Council adopted Resolution 2009 (2011) to promote Libya's recovery from its recent conflict and begin unwinding some of the sanctions imposed under UNSCR 1970 and successive resolutions. UNSCR 2009 creates new exemptions to the arms embargo, removes restrictions on Libyan-operated flights and provides for a transparent and responsible unfreezing of certain funds frozen under UNSCR 1970 in order to support the resumption of economic activity. The Council is preparing a CFSP Decision to implement UNSCR 2009.

(3) 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.

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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 restrictive measures in view of the situation in Libya[1],

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) On 2 March 2011, the Council adopted Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya[2].

(2) Further to UN Security Council Resolution 2009 (2011), Decision 2011/[…]/CFSP provides in particular for new exemptions to the arms embargo, adjustments to the assets freeze of certain Libyan entities and the resumption of certain Libyan flights, in order to support Libya's economic recovery.

(3) Some of those 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.

(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:

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[1] OJ L […], […].2011, p. […].

[2] OJ L 58, 3.03.2011, p. 1.

(1) In Article 3, the following paragraph is added:

"6. By way of derogation from paragraph 1, the competent authorities of the Member States, as indicated on the websites 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 related to equipment which might be used for internal repression, for security or disarmament assistance to the Libyan authorities, provided that the Member State concerned has notified its intention to grant an authorisation to the Sanctions Committee in advance, and the Sanctions Committee has not objected within five working days of such notification."

(2) Article 4a is deleted.

(3) In Article 5, the following paragraph is inserted:

"4. All funds and economic resources belonging to, owned, held or controlled on [.../ … / 2011] by:

(a) Central Bank of Libya;

(b) Libyan Arab Foreign Bank;

(c) Libyan Investment Authority; and

(d) Libyan Africa Investment Portfolio,

and located outside Libya on [.../ … / 2011] shall remain frozen.

(4) The following Article 8b is inserted:

"*Article 8b*

1. By way of derogation from Article 5 (4), the competent authorities of the Member States, as indicated on the websites listed in Annex IV, may authorise the release of certain frozen funds or economic resources, provided that:

(a) the funds or economic resources shall be used for one or more of the following purposes:

(i) humanitarian needs;

(ii) fuel, electricity and water for strictly civilian uses;

(iii) resuming Libyan production and sale of hydrocarbons;

(iv) establishing, operating, or strengthening institutions of civilian government and civilian public infrastructure; or

(v) facilitating the resumption of banking sector operations, including to support or facilitate international trade with Libya;

(b) the Member State concerned has provided notice to the Sanctions Committee of its intention to authorize access to funds or economic resources, and the Sanctions Committee has not objected within five working days of such a notification,

(c) the Member State concerned has notified the Sanctions Committee that those funds or economic resources shall not be made available to or for the benefit of any person, entity or body listed in Annexes II and III.

(d) the Member State concerned has consulted in advance with the Libyan authorities about the use of such funds or economic resources; and

(e) the Member State concerned has shared with the Libyan authorities the notification submitted pursuant to this paragraph and the Libyan authorities have not objected within five working days to the release of such funds or economic resources.

2. By way of derogation from Article 5(4) and provided that a payment is due under a contract or agreement that was concluded by, or an obligation that arose for the person, entity or body concerned, before the date on which that person, entity or body had been designated by the UN Security Council or the Sanctions Committee, the competent authorities of the Member States, as indicated on the websites listed in Annex IV, may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources, if the following conditions are met:

(a) the competent authority concerned has determined that the payment is not in breach of Article 5 (2) nor to or for the benefit of persons, entities or bodies referred to in Article 5(4);

(b) the Sanctions Committee has been notified by the relevant Member State of the intention to grant an authorisation ten working days in advance."

Article 2

Annex II to Regulation (EU) No 204/2011 is hereby amended in accordance with the Annex to this Regulation.

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

The following legal persons, entities or bodies shall be removed from the list set out in Annex II to Regulation (EU) No 204/2011.

1. Central Bank of Libya
2. Libyan Investment Authority
3. Libyan Foreign Bank
4. Libya Africa Investment Portfolio