



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

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Joint Proposal for a

COUNCIL REGULATION

concerning restrictive measures in respect of the situation in South Sudan

EXPLANATORY MEMORANDUM

- (1) On 18 July 2011, the Council adopted Decision 2011/423/CFSP concerning restrictive measures against Sudan and South Sudan and repealing Common Position 2005/411/CFSP which extended the arms embargo against Sudan to cover South Sudan.
- (2) On 24 November 2011, the Council adopted Regulation (EU) No 1215/2011 amending Regulation (EC) No 131/2004 imposing certain restrictive measures in respect of Sudan which extended the scope of application of the arms embargo to South Sudan.
- (3) The Council is preparing a new decision separating the measures concerning South Sudan and integrating them into a single legal act. The decision will also provide for restrictions on admission and the freezing of funds and economic resources of persons obstructing the political process in South Sudan, including by acts of violence or violations of ceasefire agreements, as well as persons responsible for serious violations of human rights in South Sudan.
- (4) Further action by the Union is needed in order to implement this decision.
- (5) The High Representative of the Union for Foreign Affairs and Security Policy and the European Commission should make a proposal for a Regulation concerning restrictive measures in view of the situation in South Sudan.

Joint Proposal for a

COUNCIL REGULATION

concerning restrictive measures in respect of the situation in South Sudan

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 2014/.../CFSP of ... concerning restrictive measures in respect of the situation in South Sudan and repealing Council Decision 2011/423/CFSP¹,

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

Whereas:

- (1) On 18 July 2011, the Council adopted Decision 2011/423/CFSP² which extended the arms embargo against Sudan to cover South Sudan.
- (2) On 24 November 2011, the Council adopted Regulation (EU) No 1215/2011³ which extended the scope of application of the arms embargo to South Sudan.
- (3) On ... June 2014, the Council adopted Decision 2014/.../CFSP⁴ separating the measures concerning South Sudan and integrating them into a single legal act and providing for restrictions on admission and the freezing of funds and economic resources of persons obstructing the political process in South Sudan, including by acts of violence or violations of ceasefire agreements, as well as persons responsible for serious violations of human rights in South Sudan.
- (4) 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 in all Member States, regulatory action at the level of the Union is necessary in order to implement them.
- (5) For the sake of clarity, measures concerning South Sudan should be separated from measures concerning Sudan. Regulation (EC) No 131/2004 should therefore be replaced by this Regulation in so far as it concerns South Sudan. Regulation (EC) No 131/2004 should also be replaced by Regulation (EU) No .../2014 in so far as it concerns Sudan.
- (6) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably

¹ OJ L

² Council Decision 2011/423/CFSP of 18 July 2011 concerning restrictive measures against Sudan and South Sudan and repealing Common Position 2005/411/CFSP (OJ L 188, 19.7.2011, p. 20).

³ Council Regulation (EU) No 1215/2011 of 24 November 2011 amending Regulation (EC) No 131/2004 imposing certain restrictive measures in respect of Sudan (OJ L 310, 25/11/2011, p. 1).

⁴ *(full title plus OJ reference)*

the right to an effective remedy and to a fair trial and the right to the protection of personal data. This Regulation should be applied in accordance with those rights.

- (7) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011⁵.
- (8) For the implementation of this Regulation, and in order to create maximum legal certainty within the Union, the names and other relevant data concerning natural and legal persons, entities and bodies whose funds and economic resources must be frozen in accordance with this Regulation, must be made public. Any processing of personal data should comply with Regulation (EC) No 45/2001⁶ and Directive 95/46/EC⁷.
- (9) In order to ensure that the measures provided for in this Regulation are effective, it should enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'brokering services' means:
 - (i) the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology or of financial and technical services, from a third country to any other third country, or
 - (ii) the selling or buying of goods and technology or of financial and technical services, that are located in third countries for their transfer to another third country;
- (b) 'claim' means any claim, whether asserted by legal proceedings or not, made before or after the date of entry into force of this Regulation, under or in connection with a contract or transaction, and includes in particular:
 - (i) a claim for performance of any obligation arising under or in connection with a contract or transaction;
 - (ii) a claim for extension or payment of a bond, financial guarantee or indemnity of whatever form;
 - (iii) a claim for compensation in respect of a contract or transaction;
 - (iv) a counterclaim;
 - (v) a claim for the recognition or enforcement, including by the procedure of *exequatur*, of a judgment, an arbitration award or an equivalent decision, wherever made or given;

⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

⁶ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁷ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

- (c) ‘contract or transaction’ means any transaction of whatever form and whatever the applicable law, whether comprising one or more contracts or similar obligations made between the same or different parties; for this purpose 'contract' includes a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, and credit, whether legally independent or not, as well as any related provision arising under, or in connection with, the transaction;
- (d) ‘competent authorities’ refers to the competent authorities of the Member States as identified on the websites listed in Annex II;
- (e) ‘economic resources’ means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but may be used to obtain funds, goods or services;
- (f) ‘freezing of economic resources’ means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;
- (g) ‘freezing of funds’ means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management;
- (h) ‘funds’ means financial assets and benefits of every kind, including, but not limited to:
 - (i) cash, cheques, claims on money, drafts, money orders and other payment instruments;
 - (ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
 - (iii) publicly-and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
 - (iv) interest, dividends or other income on or value accruing from or generated by assets;
 - (v) credit, right of set-off, guarantees, performance bonds or other financial commitments;
 - (vi) letters of credit, bills of lading, bills of sale; and
 - (vii) documents showing evidence of an interest in funds or financial resources;
- (i) ‘territory of the Union’ means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty, including their airspace.

Article 2

1. It shall be prohibited:
 - (a) to provide technical assistance related to military activities and to the provision, manufacture, maintenance and use of arms and related material of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts therefor, directly or indirectly to any person, entity or body in, or for use in South Sudan;

(b) to 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 material, or for the provision of related technical assistance, directly or indirectly to any person, entity or body in, or for use in South Sudan.

Article 3

The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote the transactions referred to in Article 2 shall be prohibited.

Article 4

1. By way of derogation from Articles 2 and 3, the competent authorities of Member States may authorise the provision of financing and financial assistance, technical assistance and brokering services related to:
 - (a) non-lethal military equipment intended solely for humanitarian, human rights monitoring or protective use, or for institution-building programmes of the United Nations, the African Union, the Intergovernmental Authority on Development (IGAD) and the European Union;
 - (b) material intended for European Union, United Nations and African Union crisis management operations;
 - (c) de mining equipment and materiel for use in de-mining operations;
 - (d) the implementation of the Comprehensive Peace Agreement signed by the Government of Sudan and the Sudan People's Liberation Movement/Army in Nairobi, Kenya, on 9 January 2005;
 - (e) support for the process of Security Sector Reform in South Sudan.
2. No authorisations shall be granted for activities that have already taken place.

Article 5

Articles 2 and 3 shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to South Sudan by United Nations personnel, personnel of the Union or its Member States, personnel of the Intergovernmental Authority on Development (IGAD), representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

Article 6

1. All funds and economic resources belonging to, owned, held or controlled by any natural or legal person, entity or bodies as listed in Annex I shall be frozen.
2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex I.
3. Annex I shall include natural or legal persons, entities and bodies who, in accordance with Article ... of Council Decision 2014/.../CFSP of ... June 2014, have been identified by the Council as obstructing the political process in South Sudan, including by acts of violence or violations of ceasefire agreements, as well as persons

responsible for serious violations of human rights in South Sudan, and natural or legal persons, entities or bodies associated with them.

4. Annex I shall include only the following information on listed natural or legal persons, entities or bodies:
 - (a) for identification purposes: in the case of natural persons, surname and given names (including alias names and titles, if any); date and place of birth; nationality; passport and identity card numbers; tax and social security numbers; sex; address or other information on whereabouts; function held or profession; in the case of legal persons, entities or bodies, name, place and date of registration, registration number and place of business.
 - (b) the date on which the natural or legal person, entity or body has been included in Annex I;
 - (c) the grounds for listing, subject to the requirements set out in Regulation (EC) No 45/2001.
5. Annex I may also include information on family members of the persons listed, provided that the inclusion of this information is considered to be necessary in a specific case for the sole purpose of verifying the identity of the listed natural person in question.

Article 7

1. By way of derogation from Article 6, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources concerned are:
 - (a) necessary to satisfy the basic needs of natural or legal persons, entities or bodies listed in Annex I, and dependent family members of such natural persons, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
 - (b) intended exclusively for payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services;
 - (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources;
 - (d) necessary for extraordinary expenses, provided that the relevant competent authority has notified the grounds on which it considers that a specific authorisation should be granted to the competent authorities of the other Member States and to the Commission at least two weeks prior to authorisation;
2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

Article 8

1. By way of derogation from Article 6, the competent authorities in the Member States 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 to an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in Article 6 was included 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; and
 - (d) recognising the decision is not contrary to public policy in the Member State concerned.
2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

Article 9

1. By way of derogation from Article 6 and provided that a payment by a natural or legal person, entity or body listed in Annex I is due under a contract or agreement that was concluded by, or an obligation that arose for the natural or legal person, entity or body concerned, before the date on which that natural or legal person, entity or body was included in Annex I, the competent authorities of the Member States may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources, provided that the competent authority concerned has determined that:
 - (a) the funds or economic resources shall be used for a payment by a natural or legal person, entity or body listed in Annex I; and
 - (b) the payment is not in breach of Article 6(2).
2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

Article 10

1. Article 6(2) shall not prevent the crediting of the frozen accounts by financial or credit institutions that receive funds transferred by third parties onto the account of a listed natural or legal person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the relevant competent authority about any such transaction without delay.
2. Article 6(2) shall not apply to the addition to frozen accounts of:
 - (a) interest or other earnings on those accounts;

- (b) payments due under contracts, agreements or obligations that were concluded or arose before the date on which the natural or legal person, entity or body referred to in Article 6 has been included in Annex I; or
- (c) payments due under judicial, administrative or arbitral decisions rendered in a EU Member State or enforceable in the Member State concerned;

provided that any such interest, other earnings and payments are frozen in accordance with Article 6(1).

Article 11

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall:
 - (a) supply immediately any information which would facilitate compliance with this Regulation, such as information on accounts and amounts frozen in accordance with Article 6, to the competent authority of the Member State where they are resident or located, and shall transmit such information, directly or through the Member State, to the Commission; and
 - (b) co-operate with the competent authority in any verification of this information.
2. Any additional information received directly by the Commission shall be made available to the Member States.
3. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

Article 12

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Articles 2 and 6.

Article 13

1. The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen or withheld as a result of negligence.
2. Actions by natural or legal persons, entities or bodies shall not give rise to any liability of any kind on their part if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in this Regulation.

Article 14

1. No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial

guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:

- (a) designated natural or legal persons, entities or bodies listed in Annex I;
 - (b) any natural or legal person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in point (a).
2. In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the natural or legal person, entity or body seeking the enforcement of that claim.
 3. This Article is without prejudice to the right of the natural or legal persons, entities and bodies referred to in paragraph 1 to judicial review of the legality of the non-performance of contractual obligations in accordance with this Regulation.

Article 15

1. The Commission and Member States shall inform each other of the measures taken under this Regulation and share any other relevant information at their disposal in connection with this Regulation in particular information:
 - (a) in respect of funds frozen under Article 6 and authorisations granted under Articles 7, 8 and 9;
 - (b) in respect of violation and enforcement problems and judgments handed down by national courts.
2. The Member States shall immediately inform each other and the Commission of any other relevant information at their disposal which might affect the effective implementation of this Regulation.

Article 16

1. The Commission shall be empowered to:
 - (a) amend Annex I on the basis of decisions taken by the Council in respect of Annex ... to Council Decision 2014/.../CFSP; and
 - (b) amend Annex II on the basis of information supplied by Member States.
2. The Commission shall state, in Annex I, the grounds for its decision to include an entry in that Annex, and shall communicate its decisions, including the grounds for the listing to the listed natural or legal persons, entities or bodies if the address is known or, if the address is not known, draw its decisions to the attention of the listed natural or legal persons, entities or bodies through the publication of a notice in the *Official Journal of the European Union*, providing such natural or legal person, entity or body with an opportunity to submit observations.
3. Where observations are submitted or where substantial new evidence is presented, the Commission shall review its decision in light of the observations submitted and any other relevant information, following the procedure referred to in Article 17(2), and inform the natural or legal person, entity or body of the outcome of the review.

Article 17

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 18

1. The Commission shall process personal data in order to carry out its tasks under this Regulation. These tasks include:
 - (a) preparing and making amendments of Annex I;
 - (b) including the contents of Annex I in the electronic, consolidated list of persons, groups and entities subject to EU financial sanctions available on the website⁸;
 - (c) processing of information on the impact of the measures of this Regulation such as the value of frozen funds and information on authorisations granted by the competent authorities.
2. The Commission may process relevant data relating to criminal offences committed by listed natural persons, and to criminal convictions or security measures concerning such persons, only to the extent that such processing is necessary for the preparation of Annex I to this Regulation. Such data shall not be made public or exchanged.
3. For the purposes of this Regulation, the Commission service listed in Annex II is designated as “controller” for the Commission within the meaning of Article 2(d) of Regulation (EC) No 45/2001, in order to ensure that the natural persons concerned can exercise their rights under Regulation (EC) No 45/2001.

Article 19

1. Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.
2. Member States shall notify these rules to the Commission without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 20

1. Member States shall designate the competent authorities referred to in this Regulation and identify them on the websites listed in Annex II. Member States shall notify the Commission of any changes in the addresses of their websites listed in Annex II.
2. Member States shall notify the Commission of their competent authorities, including the contact details of those competent authorities, without delay after the entry into force of this Regulation, and shall notify it of any subsequent amendment.
3. Where this Regulation sets out a requirement to notify, inform or otherwise communicate with the Commission, the address and other contact details to be used for such communication shall be those indicated in Annex II.

⁸ http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm

Article 21

This Regulation shall apply:

- (a) within the territory of the Union, including its airspace;
- (b) on board of any aircraft or any vessel under the jurisdiction of a Member State;
- (c) to any person inside or outside the territory of the Union who is a national of a Member State;
- (d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.

Article 22

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*