Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011

COUNCIL REGULATION (EU) 2016/44

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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 (CFSP) 2015/1333 of 31 July 2015 concerning restrictive measures in view of the situation in Libya, and repealing Decision 2011/137/CFSP[(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 28 February 2011, the Council adopted Decision 2011/137/CFSP[(2)]. In accordance with United Nations Security Council Resolution (UNSCR) 1970 (2011) and successor resolutions, Decision 2011/137/CFSP provided for an arms embargo, a ban on internal repression equipment, as well as restrictions on the admission and the freezing of funds and economic resources of certain persons and entities involved in serious human rights abuses against persons in Libya, including by being involved in attacks, in violation of international law, on civilian populations and facilities. Those natural or legal persons and entities are listed in the Annexes to Decision 2011/137/CFSP. Regulatory action was therefore required in order to provide the relevant necessary measures. The United Nations Security Council (‘the Security Council’) has since adopted a number of additional Resolutions on Libya that have extended or amended the UN's restrictive measures against Libya, including UNSCR 2174 (2014) amending the scope of the arms embargo and extending the application of the travel ban and asset freeze measures, and UNSCR 2213 (2015) in connection with the Security Council's commitment to the sovereignty, independence, territorial integrity and national unity of Libya.

(2) On 26 May 2015, the Council adopted Decision (CFSP) 2015/818[(3)] amending Decision 2011/137/CFSP taking into consideration the threat that continues to be posed to the peace, stability or security of Libya and the successful completion of its political transition. Decision (CFSP) 2015/818 also took into account the threat posed by persons and entities owning or controlling Libyan state funds misappropriated during the former regime of Muammar Qadhafi in Libya which could be used to threaten the peace, stability or security of Libya, or obstruct or undermine the successful completion of its political transition. The Council carried out a complete review of the lists of persons and entities subject to the travel ban and asset freeze measures, as set out in Annexes II and

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III to Decision 2011/137/CFSP. On 31 July 2015, the Council adopted a consolidated Decision (CFSP) 2015/1333 and repealed Decision 2011/137/CFSP.

(3) For the sake of clarity, Council Regulation (EU) No 204/2011[(4)] as amended and implemented by a number of subsequent Regulations, should be consolidated into a new Regulation.

(4) The power to amend the lists in Annexes II and III to this Regulation should be exercised by the Council, in view of the specific threat to international peace and security in the region posed by the situation in Libya and in order to ensure consistency with the process for amending and reviewing the Annexes to Decision (CFSP) 2015/1333.

(5) 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, should be made public. Any processing of personal data should comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council[(5)] and Directive 95/46/EC of the European Parliament and of the Council[(6)].

(6) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

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

(a) ‘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;
- (vii) documents evidencing an interest in funds or financial resources;

(b) ‘freezing of funds’ means preventing any move, transfer, alteration or 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;

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(c) '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;

(d) 'freezing of economic resources' means preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;

(e) 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, the transmission of working knowledge or skills or consulting services, including verbal forms of assistance;

(f) 'Sanctions Committee' means the Committee of the United Nations Security Council which was established pursuant to paragraph 24 of UNSCR 1970 (2011);

(g) '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;

(h) 'designated vessels' means vessels designated by the Sanctions Committee as referred to in paragraph 11 of UNSCR 2146 (2014), as listed in Annex V to this Regulation;

(i) 'the Government of Libya focal point' means the focal point appointed by the Government of Libya as notified to the Sanctions Committee in accordance with paragraph 3 of UNSCR 2146 (2014).

Article 2

1 It shall be prohibited:

a to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex I, whether or not originating in the Union, to any person, entity or body in Libya or for use in Libya;

b to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in point (a).

2 It shall be prohibited to purchase, import or transport from Libya equipment which might be used for internal repression as listed in Annex I, whether or not the item concerned originates in Libya.

3 Paragraph 1 shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Libya by UN 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.

4 By way of derogation from paragraph 1, the competent authorities in the Member States as listed in Annex IV may authorise the sale, supply, transfer or export of 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.

[F1 Article 2a

1 Prior authorisation shall be required for:

a the sale, supply, transfer or export, directly or indirectly, of the goods set out in Annex VII, whether or not originating in the Union, to any person, entity or body in Libya or for use in Libya;

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b the provision of technical assistance or brokering services related to goods set out in Annex VII or related to the provision, manufacture, maintenance and use of such goods, directly or indirectly, to any person, entity or body in Libya or for use in Libya;

c the provision of financing or financial assistance related to goods set out in Annex VII, 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 or brokering services, directly or indirectly, to any person, entity or body in Libya or for use in Libya.

2 Annex VII shall include the items which could be used for the smuggling of migrants and trafficking in human beings.

3 Paragraph 1 shall not apply to the sale, supply, transfer or export, directly or indirectly, of goods set out in Annex VII, as well as the provision of technical assistance, brokering services, financing or financial assistance related to those goods by authorities of Member States to the Libyan government.

4 The competent authority concerned shall not grant authorisation referred to in paragraph 1 when there are reasonable grounds to believe that the goods would be used for the purpose of smuggling of migrants and trafficking in human beings.

5 Where a competent authority listed in Annex IV refuses to grant authorisation, or annuls, suspends, substantively modifies or revokes authorisation in accordance with this Article, the Member State concerned shall notify the other Member States and the Commission thereof and share the relevant information with them.**]**

Textual Amendments

F1 Inserted by Council Regulation (EU) 2017/1325 of 17 July 2017 amending Regulation (EU) 2016/44 concerning restrictive measures in view of the situation in Libya.

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[7] (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 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 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 laid down therein shall not apply to:

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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 protective clothing, including flak jackets and military helmets, temporarily exported to Libya by UN 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;

c the provision of technical assistance, financing or financial assistance related to non-lethal military equipment intended solely for security or disarmament assistance to the Libyan government.

3 By way of derogation from paragraph 1, and as approved in advance by the Sanctions Committee, the prohibitions laid down therein shall not apply to:

a the provision of technical assistance, financing or financial assistance related to other sales and supply of arms and related material;

b the provision of technical assistance, financing or financial assistance related to military equipment, including arms and related materiel not falling within the scope of paragraph (a) and intended solely for security or disarmament assistance to the Libyan government.

4 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.

Article 4

To prevent the transfer of goods and technology which are covered by the Common Military List or the supply, sale, transfer, export or import of which is prohibited by this Regulation, for all goods brought into or leaving the customs territory of the Union from or to Libya, in addition to the rules governing the obligation to provide pre-arrival and pre-departure information as determined in the relevant provisions concerning entry and exit summary declarations as well as customs declarations in Regulations (EC) No 450/2008[(8)] and (EU) No 952/2013[(9)] of the European Parliament and of the Council, the person who provides that information shall declare whether the goods are covered by the Common Military List or by this Regulation and, where the exported goods are subject to authorisation, specify the particulars of the export licence granted. These additional elements shall be submitted to the competent customs authorities of the Member State concerned either in written form or using a customs declaration, as appropriate.

Article 5

1 All funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annexes II and III shall be frozen.

2 No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annexes II and III.

3 The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1 and 2 shall be prohibited.

4 All funds and economic resources belonging to, or owned, held or controlled on 16 September 2011 by the entities listed in Annex VI and located outside Libya on that date, shall remain frozen.