Council Regulation (EU) No 747/2014 of 10 July 2014 concerning restrictive measures in view of the situation in Sudan and repealing Regulations (EC) No 131/2004 and (EC) No 1184/2005

COUNCIL REGULATION (EU) No 747/2014

of 10 July 2014

concerning restrictive measures in view of the situation in Sudan and repealing Regulations (EC) No 131/2004 and (EC) No 1184/2005

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 2014/450/CFSP of 10 July 2014 concerning restrictive measures in view of the situation in Sudan and repealing Decision 2011/423/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 10 January 2004, the Council adopted Common Position 2004/31/CFSP[(2)] maintaining the arms embargo on Sudan imposed by Council Decision 94/165/CFSP[(3)]. On 26 January 2004, the Council adopted Regulation (EC) No 131/2004[(4)] giving effect to Common Position 2004/31/CFSP.

(2) On 30 July 2004, the UN Security Council adopted UN Security Council Resolution (UNSCR) 1556 (2004) imposing an arms embargo on Sudan. On 29 March 2005, the UN Security Council adopted UNSCR 1591 (2005) imposing certain restrictions on those who impede the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities, violate the arms embargo or are responsible for certain offensive military flights in and over the Darfur region.

(3) On 30 May 2005, the Council adopted Common Position 2005/411/CFSP[(5)] which integrated the measures imposed by Common Position 2004/31/CFSP and the measures to be implemented pursuant to UNSCR 1591(2005) into a single legal act.

(4) On 18 July 2005, the Council adopted Regulation (EC) No 1184/2005[(6)] giving effect to Common Position 2005/411/CFSP and imposing certain specific restrictive measures directed against certain persons impeding the peace process and breaking international law in the conflict in the Darfur region in Sudan.

(5) On 18 July 2011, the Council adopted Decision 2011/423/CFSP[(7)] which extended the scope of application of the arms embargo to South Sudan.

(6) On 10 July 2014, the Council adopted Decision 2014/450/CFSP separating the measures concerning Sudan and integrating them into a single legal act.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EU) No 747/2014. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(7) For the sake of clarity, measures concerning Sudan should be separated from measures concerning South Sudan. Regulation (EC) No 131/2004 and Regulation (EC) No 1184/2005 should therefore be repealed and replaced by this Regulation in so far as they concern Sudan. Regulation (EC) No 131/2004 should also be replaced by Council Regulation (EU) No 748/2014[(8)] in so far as it concerns South Sudan.

(8) The power to amend the list in Annex I 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 Sudan and in order to ensure consistency with the process for amending and reviewing the Annex to Decision 2014/450/CFSP.

(9) 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 should 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[(9)] and Directive 95/46/EC of the European Parliament and of the Council[(10)].

(10) 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 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;

***Changes to legislation:** There are outstanding changes not yet made to Council Regulation (EU) No 747/2014. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(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 that 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) 'Sanctions Committee' means the UN Security Council Committee established pursuant to paragraph 3 of UNSCR 1591 (2005);

(j) '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, transmission of working knowledge or skills or consulting services, including verbal forms of assistance;

(k) '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.

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EU) No 747/2014. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Article 2

It shall be prohibited to:

(a) provide technical assistance or brokering services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts therefor, directly or indirectly to any natural or legal person, entity or body in, or for use in Sudan;

(b) provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance, for any sale, supply, transfer or export of arms and related materiel, or for the provision of related technical assistance, directly or indirectly to any natural or legal person, entity or body in, or for use in Sudan.

Article 3

By way of derogation from Article 2, 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 UN, the African Union (AU), the European Union;

(b) materiel intended for European Union, UN and AU crisis management operations;

(c) de-mining equipment and materiel for use in de-mining operations.

Article 4

Article 2 shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Sudan by UN personnel, personnel of the European Union or its Member States, representatives of the media, humanitarian and development workers and associated personnel for their personal use only.

Article 5

1 All funds and economic resources belonging to, owned or controlled, directly or indirectly, by the natural or legal persons, entities or bodies 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 the natural or legal persons, entities or bodies listed in Annex I.

3 Annex I shall include natural or legal persons, entities or bodies who impede the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities, violate the arms embargo and/or are responsible for offensive military overflights in and over the Darfur region, as designated by the Sanctions Committee.

Article 6

1 By way of derogation from Article 5, 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, provided that the following conditions are met:

***Changes to legislation:** There are outstanding changes not yet made to Council Regulation (EU) No 747/2014. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

a the competent authority concerned has determined that the funds or economic resources are:

(i) necessary for the basic needs of natural or legal persons, entities or bodies listed in Annex I, and dependant family members of such natural persons, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

(ii) intended exclusively for payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services; or

(iii) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources; and

b the Member State concerned has notified the Sanctions Committee of the determination referred to in point (a) and its intention to grant an authorisation, and the Sanctions Committee has not objected to that course of action within two working days of such notification.

2 By way of derogation from Article 5, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources or the making available of certain frozen funds or economic resources, after having determined that the funds or economic resources are necessary for extraordinary expenses, provided that the Member State concerned has notified the Sanctions Committee of that determination and the Sanctions Committee has approved that determination.

Article 7

By way of derogation from Article 5, the competent authorities of 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 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 I, or of a judicial, administrative or arbitral judgment rendered prior to that date;

(b) the funds or economic resources 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 I;

(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.

Article 8

1 Article 5(2) shall not prevent the crediting of the frozen accounts by financial or credit institutions that receive funds transferred by third parties to the account of the person, entity or body listed in Annex I, provided that any such additions to such accounts will also be frozen. The financial or credit institutions shall inform the relevant competent authority about any such transactions without delay.