Council Regulation (EU) No 965/2011 of 28 September 2011 amending Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya

COUNCIL REGULATION (EU) No 965/2011

of 28 September 2011

amending Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya

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 2011/625/CFSP of 22 September 2011 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 2011/625/CFSP provides, in particular, for new exemptions from the arms embargo, adjustments to the assets freeze of certain Libyan entities and for the possibility of making funds and economic resources available to such 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 regulatory action at the level of the Union is necessary in order to implement them, in particular with a view to ensuring their uniform application by economic operators in all Member States.

(4) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must enter into force immediately upon its publication,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 204/2011 is hereby amended as follows:

(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 for security or disarmament assistance to the Libyan authorities, provided that

Changes to legislation: *Council Regulation (EU) No 965/2011 is up to date with all changes known to be in force on or before 18 February 2022. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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 5 working days of such notification.;

(2) Article 4a is deleted;

(3) in Article 5, the following paragraph is added:

4. All funds and economic resources belonging to, owned, held or controlled on 16 September 2011 by:

a Central Bank of Libya;

b Libyan Arab Foreign Bank (a. k. a. Libyan Foreign Bank);

c Libyan Investment Authority; and

d Libyan Africa Investment Portfolio,

and located outside Libya on that date shall remain frozen.;

(4) Article 7 is replaced by the following:

Article 7

1 By way of derogation from Article 5, the competent authorities in the Member States, as identified on the websites listed in Annex IV, 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 are:

a necessary to satisfy the basic needs of persons listed in Annex II or III or referred to in Article 5(4), and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

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

c intended exclusively for the payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources;

provided that, where the authorisation concerns a person, entity or body listed in Annex II or referred to in Article 5(4), the Member State concerned has notified the Sanctions Committee of that determination and its intention to grant an authorisation, and the Sanctions Committee has not objected to that course of action within five working days of notification.

2 By way of derogation from Article 5, 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, or the making available of certain frozen funds or economic resources, after having determined that the frozen funds or economic resources are necessary for extraordinary expenses provided that the following conditions are met:

a where the authorisation concerns a person, entity or body listed in Annex II or referred to in Article 5(4), the Sanctions Committee has been notified of that determination by the Member State concerned and the determination has been approved by that Committee; and

b where the authorisation concerns a person, entity or body listed in Annex III, the competent authority has notified the grounds on which it considers that a specific authorisation should be granted to the other competent authorities

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of the Member States and to the Commission at least two weeks before the authorisation.;

(5) Article 8 is replaced by the following:

Article 8

By way of derogation from Article 5, the competent authorities in the Member States, as listed in Annex IV, may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

(a) the funds or economic resources in question 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 II or III, or was referred to in Article 5(4), or of a judicial, administrative or arbitral judgment rendered prior to that date;

(b) the funds or economic resources in question 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 II or III, or referred to in Article 5(4);

(d) recognising the lien or judgment is not contrary to public policy in the Member State concerned;

(e) where the authorisation concerns a person, entity or body listed in Annex II or referred to in Article 5(4), the Sanctions Committee has been notified by the Member State of the lien or judgment; and

(f) where the authorisation concerns a person, entity or body listed in Annex III, the relevant Member State has informed the other Member States and the Commission of any authorisation granted.;

(6) the following Article 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;