Council Regulation (EU) No 296/2011 of 25 March 2011 amending Regulation (EU) No 204/2011 concerning restrictive measures in view of the situation in Libya

COUNCIL REGULATION (EU) No 296/2011

of 25 March 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 2011/178/CFSP of 23 March 2011 amending 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 Commission,

Whereas:

(1) Decision 2011/178/CFSP provides, inter alia, for further restrictive measures in relation to Libya, including a prohibition on flights in Libyan airspace, a prohibtion on Libyan aircraft in the airspace of the Union, and further provisions in relation to the measures introduced in Council Decision 2011/137/CFSP of 28 February 2011 concerning restrictive measures in view of the situation in Libya[(2)], including a provision to ensure that these measures do not affect humanitarian operations in Libya.

(2) 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 therefore necessary in order to implement them, in particular with a view to ensuring their uniform application by economic operators in all Member States.

(3) Council Regulation (EU) No 204/2011[(3)] should be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) Article 3 is replaced by the following:

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[(4)] (Common Military List) or related to the provision, manufacture, maintenance

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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 or brokering services 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, brokering services or transport services 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 refered to therein shall not apply to the provision of technical assistance, financing and financial assistance related to non-lethal military equipment intended solely for humanitarian purposes or protective use, or to other sales and supply of arms and related material, as approved in advance by the Sanctions Committee.

3 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.

4 By way of derogation from paragraph 1, the competent authorities in the Member States, as 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, where the competent authority considers that such authorisation is necessary in order to protect civilians who, and civilian-populated areas in Libya which, are under threat of attack, provided that, in the case of the provision of assistance related to goods or technology listed in the Common Military List, the Member State concerned has given prior notification to the Secretary-General of the United Nations.

5 Paragraph 1 shall not apply to protective clothing, including flak jackets and helmets, temporarily exported to Libya by United Nations 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.;

(2) the following Articles are inserted:

Article 4a

1 It shall be prohibited for any aircraft or air carrier registered in Libya, or owned or operated by Libyan nationals or entities, to:

a fly over the territory of the Union;

b make stops in the territory of the Union for any purpose; or

c operate any air service to or from the Union,

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except where the particular flight has been approved in advance by the Sanctions Committee, or in the case of an emergency landing.

2 It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibtion in paragraph 1.

Article 4b

1 It shall be prohibited for any aircraft or air carrier in the Union, or owned or operated by citizens of the Union or by entities incorporated or constituted under the law of a Member State, to:

a fly over the territory of Libya;

b make stops in the territory of Libya for any purpose; or

c operate any air service to or from Libya.

2 Paragraph 1 shall not apply to flights:

(i) the sole purpose of which is humanitarian, such as delivering or facilitating the delivery of assistance, including medical supplies, food, humanitarian workers and related assistance;

(ii) for evacuations from Libya;

(iii) authorised by paragraph 4 or 8 of UNSCR 1973 (2011); or

(iv) which are deemed by Member States, acting under the authorisation conferred in paragraph 8 of UNSCR 1973 (2011), to be necessary for the benefit of the Libyan people.

3 It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibition in paragraph 1.;

(3) in Article 6, paragraphs 1 and 2 are replaced by the following:

1. Annex II shall include the natural or legal persons, entities and bodies designated by the United Nations Security Council or by the Sanctions Committee in accordance with paragraph 22 of UNSCR 1970 (2011) or paragraphs 19, 22 or 23 of UNSCR 1973 (2011).

2 Annex III shall consist of natural or legal persons, entities and bodies, not covered by Annex II, who, in accordance with point (b) of Article 6(1) of Decision 2011/137/CFSP have been identified by the Council as being persons and entities involved in or complicit in ordering, controlling, or otherwise directing, the commission of serious human rights abuses against persons in Libya, including by being involved in or complicit in planning, commanding, ordering or conducting attacks, in violation of international law, including aerial bombardments, on civilian populations and facilities, or as being persons, entities or bodies that are Libyan authorities, or as being persons, entities or bodies that have violated or have assisted in violating the provisions of UNSCR 1970 (2011) or UNSCR 1973 (2011) or of this Regulation, or as being persons, entities or bodies acting for or on behalf or at the direction of any of the above, or entities or bodies owned or controlled by them or by persons, entities or bodies listed in Annex II.;

(4) the following Article is inserted: