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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION concerning restrictive measures in view of activities undermining the stability and political transition of Sudan

COUNCIL DECISION (CFSP) 2023/...

of ...

**concerning restrictive measures in view of activities
undermining the stability and political transition of Sudan**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

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

Whereas:

- (1) On 30 May 2005, the Council adopted Common Position 2005/411/CFSP¹ that integrated the measures imposed by Council Common Position 2004/31/CFSP² and the measures to be implemented pursuant to United Nations Security Council Resolution (UNSCR) 1591 (2005) into a single legal document.
- (2) On 18 July 2011, the Council adopted Decision 2011/423/CFSP³ imposing restrictive measures against Sudan and South Sudan.
- (3) On 10 July 2014, the Council adopted Decision 2014/450/CFSP⁴ that integrated into a single legal document the restrictive measures imposed by Decision 2011/423/CFSP, insofar as these measures concerned Sudan.

¹ Council Common Position 2005/411/CFSP of 30 May 2005 concerning restrictive measures against Sudan and repealing Common Position 2004/31/CFSP (OJ L 139, 2.6.2005, p. 25).
² Council Common Position 2004/31/CFSP of 9 January 2004 concerning the imposition of an embargo on arms, munitions and military equipment on Sudan (OJ L 6, 10.1.2004, p. 55).
³ 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).
⁴ 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 (OJ L 203, 11.7.2014, p. 106).

- (4) On 15 April 2023, the Security Council of the United Nations issued a statement in which it expressed deep concern over the military clashes between the Sudanese Armed Forces and the Rapid Support Forces. The members of the Security Council urged the parties to immediately cease hostilities and restore calm, and called on all actors to return to dialogue to resolve the current crisis in Sudan. The members of the Security Council also stressed the importance of maintaining humanitarian access.
- (5) On 19 April 2023, the High Representative of the Union for Foreign Affairs and Security Policy (the ‘High Representative’) issued a statement on behalf of the Union on the latest developments in Sudan in which the Union and its Member States strongly condemned the fighting between the Sudanese Armed Forces and the Rapid Support Forces. That statement noted that the outbreak of hostilities undermined efforts to restore the transition towards a civilian-led democratic government. The Union called on all actors to comply with international humanitarian law and implement an immediate cessation of hostilities without pre-conditions. The Union welcomed and supported collective regional and international coordinated mediation efforts, including those of the United Nations, the African Union, the Intergovernmental Authority on Development and the League of Arab States.
- (6) On 2 June 2023, the Security Council of the United Nations issued a statement in which it emphasised the need for the parties to immediately cease hostilities, facilitate humanitarian access and establish a permanent ceasefire arrangement and to resume the process towards reaching a lasting, inclusive and democratic political settlement in Sudan.

- (7) On 5 July 2023, the High Representative issued a statement on behalf of the Union on the latest developments in Sudan in which the Union strongly condemned the ongoing fighting and the continuing refusal of the parties to the conflict to seek a peaceful solution. The Union called on all actors to allow and facilitate the delivery of humanitarian assistance and to ensure safe, timely and unhindered access for humanitarian operations by all stakeholders. The Union deplored the loss of lives and gross violations of international law, including international human rights law and international humanitarian law. The Union expressed, in particular, concern at reports of large-scale attacks on civilians and civilian areas, including on the basis of ethnicity, in particular in Darfur, with horrific reports of widespread sexual and gender based violence, targeted killings, forced displacement and steady weaponisation of militias. The Union reiterated the need to urgently implement an immediate cessation of hostilities, without pre-conditions. The Union stated that a lasting ceasefire must be brokered without delay. The Union also stated that it will continue to engage with key partners, including Sudanese civilian and political figures as well as civil society actors, on a return to meaningful talks about a credible peaceful solution to the conflict based on inclusive dialogue. The Union also stated that it will continue to support collective regional and international coordinated mediation efforts under the leadership of the African Union and the Intergovernmental Authority on Development to urgently restore peace and contribute to stability and the restoration of the political process.

- (8) In its statement of 5 July 2023, the Union further expressed its readiness to consider the use of all the means at its disposal, including restrictive measures, to contribute to putting an end to the conflict and encourage peace.
- (9) While recalling the non-punitive character of its restrictive measures, the Union remains ready to adapt the use of the instruments at its disposal to any positive developments in the situation on the ground.
- (10) In view of the gravity of the situation, it is appropriate to adopt a dedicated framework of restrictive measures in view of activities undermining the stability and political transition of Sudan.
- (11) The Council underlines the importance of avoiding negative consequences from the imposition of restrictive measures for the general population and the already fragile economy of Sudan.
- (12) Further action by the Union is needed in order to implement certain measures,

HAS ADOPTED THIS DECISION:

Article 1

1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of:
 - (a) natural persons responsible for, or having engaged directly or indirectly in, providing support to, or benefitting from, actions or policies that threaten the peace, stability or security of Sudan;
 - (b) natural persons obstructing or undermining efforts to resume the political transition in Sudan;
 - (c) natural persons obstructing the delivery of, access to, or distribution of humanitarian assistance in Sudan, including attacks on health and humanitarian workers and the seizure and destruction of humanitarian or health infrastructure and assets;
 - (d) natural persons planning, directing or committing acts in Sudan that constitute serious human rights violations or abuses or violations of international humanitarian law, including killings and maimings, rape and other serious forms of sexual and gender-based violence, abduction and forced displacement;
 - (e) natural persons associated with the persons designated under points (a) to (d); as listed in the Annex.

2. Paragraph 1 shall not oblige a Member State to refuse its own nationals entry into its territory.
3. Paragraph 1 shall be without prejudice to the cases where a Member State is bound by an obligation of international law, namely:
 - (a) as a host country of an international intergovernmental organisation;
 - (b) as a host country to an international conference convened by, or under the auspices of, the United Nations;
 - (c) under a multilateral agreement conferring privileges and immunities; or
 - (d) under the 1929 Treaty of Conciliation (Lateran pact) concluded by the Holy See (State of the Vatican City) and Italy.
4. Paragraph 3 shall also apply in cases where a Member State is host country of the Organization for Security and Cooperation in Europe (OSCE).
5. The Council shall be duly informed in all cases where a Member State grants an exemption pursuant to paragraphs 3 or 4.

6. Member States may grant exemptions from the measures imposed under paragraph 1 where travel is justified on the grounds of urgent humanitarian need or on grounds of attending intergovernmental meetings or meetings promoted or hosted by the Union, or hosted by a Member State holding the Chairmanship in office of the OSCE, where a political dialogue is conducted that directly promotes the policy objectives of the restrictive measures, including support for the stability and political transition of Sudan.
7. Member States may also grant exemptions from the measures imposed under paragraph 1 where entry or transit is necessary for the fulfilment of a judicial process.
8. A Member State wishing to grant exemptions referred to in paragraph 6 or 7 shall notify the Council in writing. The exemption shall be deemed to be granted unless one or more Member States raise an objection in writing within two working days of receiving notification of the proposed exemption. Should one or more Member States raise an objection, the Council, acting by qualified majority, may decide to grant the proposed exemption.
9. Where, pursuant to paragraphs 3, 4, 6, 7 and 8, a Member State authorises the entry into, or transit through its territory of persons listed in the Annex, the authorisation shall be limited to the purpose for which it is given to the person concerned thereby.

Article 2

1. All funds and economic resources belonging to, owned, held or controlled by:
 - (a) natural or legal persons, entities or bodies responsible for, or having engaged directly or indirectly in, providing support to, or benefitting from, actions or policies that threaten the peace, stability or security of Sudan;
 - (b) natural or legal persons, entities or bodies obstructing or undermining efforts to resume the political transition in Sudan;
 - (c) natural or legal persons, entities or bodies obstructing the delivery of, access to, or distribution of humanitarian assistance in Sudan, including attacks on health and humanitarian workers and the seizure and destruction of humanitarian or health infrastructure and assets;
 - (d) natural or legal persons, entities or bodies involved in planning, directing or committing acts in Sudan that constitute serious human rights violations or abuses or violations of international humanitarian law, including killings and maimings, rape and other serious forms of sexual and gender-based violence, abduction and forced displacement;
 - (e) natural or legal persons, entities or bodies associated with the persons designated under points (a) to (d), as listed in the Annex;

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 the Annex.
3. By way of derogation from paragraphs 1 and 2, 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 the persons listed in the Annex 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 and the reimbursement of incurred expenses associated with the provision of legal services;
 - (c) intended exclusively for the payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources;
 - (d) necessary for extraordinary expenses, provided that the competent authority has notified the competent authorities of the other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted, at least two weeks prior to the authorisation; or

- (e) to be paid into or from an account of a diplomatic mission or consular post or an international organisation enjoying immunities in accordance with international law, insofar as such payments are intended to be used for official purposes of the diplomatic mission or consular post or international organisation.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this paragraph within two weeks of the authorisation.

4. By way of derogation from paragraph 1, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, provided that the following conditions are met:

- (a) the funds or economic resources are the subject of an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in paragraph 1 was listed in the Annex, or of a judicial or administrative decision rendered in the Union, 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 the Annex; and

- (d) recognition of the decision is not contrary to public policy in the Member State concerned.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this paragraph within two weeks of the authorisation.

- 5. Paragraph 1 shall not prevent a natural or legal person, entity or body listed in the Annex from making a payment due under a contract or agreement entered into, or an obligation that arose, prior to the date on which such natural or legal person, entity or body was listed therein, provided that the Member State concerned has determined that the payment is not, directly or indirectly, received by a natural or legal person, entity or body referred to in paragraph 1.
- 6. Paragraph 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 prior to the date on which those accounts became subject to the measures provided for in paragraphs 1 and 2; or
 - (c) payments due under judicial, administrative or arbitral decisions rendered in the Union or enforceable in the Member State concerned;

provided that any such interest, other earnings and payments remain subject to the measures provided for in paragraph 1.

7. Paragraphs 1 and 2 shall not apply to the provision, processing or payment of funds, other financial assets or economic resources or to the provision of goods and services, which are necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs where such assistance and other activities are carried out by:
- (a) the United Nations, including its programmes, funds and other entities and bodies, as well as its specialised agencies and related organisations;
 - (b) international organisations;
 - (c) humanitarian organisations having observer status with the United Nations General Assembly and members of those humanitarian organisations;
 - (d) bilaterally or multilaterally funded non-governmental organisations participating in the United Nations Humanitarian Response Plans, Refugee Response Plans, other United Nations appeals or humanitarian clusters coordinated by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA);
 - (e) organisations and agencies to which the Union has granted the Humanitarian Partnership Certificate or which are certified or recognised by a Member State in accordance with national procedures;
 - (f) Member States' specialised agencies; or
 - (g) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (f) while and to the extent that they are acting in those capacities.

8. In cases not covered by paragraph 7 and by way of derogation from paragraphs 1 and 2 of this Article, the competent authorities of a Member State may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions they deem appropriate, after having determined that the provision of such funds or economic resources is necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs.
9. In the absence of a negative decision, a request for information or a notification for additional time from the competent authority within five working days of the date of receipt of a request for authorisation under paragraph 8, the authorisation shall be considered granted.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this Article within four weeks of such authorisation.

Article 3

1. The Council, acting by unanimity upon a proposal from a Member State or from the High Representative of the Union for Foreign Affairs and Security Policy (the 'High Representative'), shall establish and amend the list in the Annex.

2. The Council shall communicate the decision referred to in paragraph 1, including the grounds for the listing, to the natural or legal person, entity or body concerned, either directly, if the address is known, or through the publication of a notice, providing that natural or legal person, entity or body with an opportunity to present observations.
3. Where observations are submitted, or where substantial new evidence is presented, the Council shall review the decision referred to in paragraph 1 and inform the natural or legal person, entity or body concerned accordingly.

Article 4

1. The Annex shall include the grounds for listing the natural and legal persons, entities and bodies referred to in Articles 1 and 2.
2. The Annex shall contain, where available, the information necessary to identify the natural or legal persons, entities or bodies concerned. With regard to natural persons, such information may include: names and aliases; date and place of birth; nationality; passport and identity card numbers; gender; address, if known; and function or profession. With regard to legal persons, entities or bodies, such information may include: names; place and date of registration; registration number; and place of business.

Article 5

1. The Council and the High Representative may process personal data in order to carry out their tasks under this Decision, in particular:
 - (a) as regards the Council, for preparing and making amendments to the Annex;
 - (b) as regards the High Representative, for preparing amendments to the Annex.
2. The Council and the High Representative shall process, where applicable, 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 the Annex.
3. For the purposes of this Decision, the Council and the High Representative are designated as ‘controller’ within the meaning of point (8) of Article 3 of Regulation (EU) 2018/1725¹ of the European Parliament and of the Council, in order to ensure that the natural persons concerned can exercise their rights under that Regulation.

¹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Article 6

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 Decision, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, in particular a claim for extension or payment of a bond, guarantee or indemnity, in particular 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 the Annex;
- (b) any natural or legal person, entity or body acting through or on behalf of one of the natural or legal persons, entities or bodies referred to in point (a).

Article 7

It shall be prohibited to participate, knowingly or intentionally, in activities the object or effect of which is to circumvent the prohibitions set out in this Decision.

Article 8

In order to maximise the impact of the measures set out in this Decision, the Union shall encourage third States to adopt restrictive measures similar to those provided for in this Decision.

Article 9

1. This Decision shall apply until ... [12 months from the date of adoption of this decision].

This Decision shall be kept under constant review. It shall be renewed, or amended as appropriate, if the Council deems that its objectives have not been met.

2. The exceptions referred to in Article 2(7), (8) and (9) as regards Article 2(1) and (2) shall be reviewed at regular intervals and at least every 12 months or at the urgent request of any Member State, the High Representative, or the Commission following a fundamental change in circumstances.

Article 10

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at ...,

For the Council

The President

ANNEX

[...]

