



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 10 February 2014

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PROPOSAL

from: Commission/High Representative
dated: 10 February 2014

No Cion doc.: JOIN(2014) 5 final

Subject: Joint Proposal for a Council Regulation concerning restrictive measures in view of the situation in the Central African Republic

Delegations will find attached a proposal from the Commission and the High Representative of the EU for Foreign Affairs and Security Policy, submitted under a covering letter from Mr Jordi AYET PUIGARNAU to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: JOIN(2014) 5 final



HIGH REPRESENTATIVE OF THE
EUROPEAN UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 10.2.2014
JOIN(2014) 5 final

2014/0040 (NLE)

Joint Proposal for a

COUNCIL REGULATION

concerning restrictive measures in view of the situation in the Central African Republic

EXPLANATORY MEMORANDUM

- (1) On 23 December 2013, the Council adopted Decision 2013/798/CFSP concerning restrictive measures against the Central African Republic providing for arms embargo, in accordance with the United Nations Security Council Resolution (UNSCR) 2127 (2013) of 5 December 2013.
- (2) On 13 January 2014 the High Representative of the Union for Foreign Affairs and Security Policy and the Commission made a proposal for a Regulation concerning restrictive measures in view of the situation in the Central African Republic. The Council decided to suspend acting on this proposal pending the adoption of a new UNSCR by the United Nations Security Council.
- (3) On 28 January 2014, the United Nations Security Council adopted Resolution 2134 (2014) which extended and clarified the arms embargo imposed by UNSCR 2127 (2013) and provided for the freezing of funds and economic resources of certain persons engaging in or providing support for acts that undermine the peace, stability or security of the Central African Republic.
- (4) Further action by the Union is needed in order to implement UNSCR 2134 (2014).
- (5) The Council is preparing a decision amending Decision 2013/798/CFSP to give effect to UNSCR 2134 (2014).
- (6) The High Representative of the Union for Foreign Affairs and Security Policy and the Commission should therefore make a new proposal for a Regulation concerning restrictive measures in view of the situation in the Central African Republic. The proposal of 13 January 2014 should be withdrawn.

Joint Proposal for a

COUNCIL REGULATION

concerning restrictive measures in view of the situation in the Central African Republic

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 2013/798/CFSP¹ of 23 December 2013 concerning restrictive measures in against the Central African Republic,

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) United Nations Security Council Resolution (UNSCR) 2127 (2013) of 5 December 2013 and UNSCR 2134 (2014) of 28 January 2014, Council Decision 2013/798/CFSP, as amended by Decision 2014/.../CFSP², provides for an arms embargo against the Central African Republic and the freezing of funds and economic resources of certain persons engaging in or providing support for acts that undermine the peace, stability or security of the Central African Republic.
- (2) The measures provided for in UNSCR 2127 (2013) and UNSCR 2134 (2014) fall within the scope of the Treaty on the Functioning of the European Union and, therefore, notably with a view to ensuring their uniform application by economic operators in all Member States, regulatory action at the level of the Union is necessary in order to implement them.
- (3) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably the right to an effective remedy and to a fair trial and the right to the protection of personal data. This Regulation has to be applied in accordance with those rights.
- (4) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011³.
- (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

¹ OJ L 352, 24.12.2013, p. 51.

²

³ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13).

in accordance with this Regulation, must be made public. Any processing of personal data should comply with Regulation (EC) No 45/2001⁴ and Directive 95/46/EC⁵.

- (6) In order to ensure that the measures provided for in this Regulation are effective, it 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;
- (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 this 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;

⁴ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁵ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

- (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 Committee of the United Nations Security Council which was established pursuant to paragraph 57 of United Nations Security Council Resolution UNSCR 2127 (2013);
- (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;

Article 2

1. It shall be prohibited:
 - (a) to provide, directly or indirectly, technical assistance or brokering services related to the goods and technology listed in the Common Military List of the European Union⁶ (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 the Central African Republic or for use in the Central African Republic;

⁶ OJ C 69, 18.3.2010, p. 19.

- (b) to provide, directly or indirectly, financing or financial assistance related to the sale, supply, transfer or export of goods and technology listed in the Common Military List, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance, for any sale, supply, transfer or export of such items, or for any provision of related technical assistance or brokering services to any person, entity or body in the Central African Republic or for use in the Central African Republic;
- (c) 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 the Central African Republic or for use in the Central African Republic.

Article 3

By derogation from Article 2, the prohibitions laid down therein shall not apply to the provision of technical assistance, financing or financial assistance or brokering services intended solely for the support of or use by the Mission for the consolidation of peace in Central African Republic (MICOPAX), the African-led International Support Mission to the Central African Republic (MISCA), the United Nations Integrated Peacebuilding Office in the Central African Republic (BINUCA) and its guard unit, the African Union-Regional Task Force (AU-RTF), the French forces deployed in the Central African Republic and the European Union operation in the Central African Republic (EUFOR RCA).

Article 4

By way of derogation from Article 2, provided that the provision of such technical assistance or brokering services, financing or financial assistance has been approved in advance by the Sanctions Committee, the prohibitions laid down in that Article shall not apply to:

- (a) the provision of technical assistance or brokering services related to non-lethal military equipment intended solely for humanitarian or protective use;
- (b) the provision of technical assistance, financing or financial assistance to the sale, supply, transfer or export of goods and technology listed in the Common Military List or for any provision of related technical assistance or brokering services.

Article 5

1. All funds and economic resources belonging to, owned, held or controlled by any natural or legal person, entity or bodies as 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 natural or legal persons, entities or bodies listed in Annex I.
3. Annex I shall include natural or legal persons, entities and bodies identified by the Sanctions Committee as:
 - (a) engaging in or providing support for acts that undermine the peace, stability or security of the Central African Republic, including acts that threaten or violate transitional agreements, or that threaten or impede the political transition

process, including a transition toward free and fair democratic elections, or that fuel violence;

- (b) acting in violation of the arms embargo established in paragraph 54 of UNSCR 2127 (2013), or as having directly or indirectly supplied, sold, or transferred to armed groups or criminal networks in the Central African Republic, or as having been the recipient of arms or any related materiel, or any technical advice, training, or assistance, including financing and financial assistance, related to violent activities of armed groups or criminal networks in the Central African Republic;
 - (c) involved in planning, directing, or committing acts that violate international human rights law or international humanitarian law, as applicable, or that constitute human rights abuses or violations, in the Central African Republic, including acts involving sexual violence, targeting of civilians, ethnic- or religious-based attacks, attacks on schools and hospitals, and abduction and forced displacement;
 - (d) recruiting or using children in armed conflict in the Central African Republic, in violation of applicable international law;
 - (e) providing support for armed groups or criminal networks through the illicit exploitation of natural resources, including diamonds and wildlife and wildlife products, in the Central African Republic;
 - (f) obstructing the delivery of humanitarian assistance to the Central African Republic, or access to, or distribution of, humanitarian assistance in the Central African Republic;
 - (g) involved in planning, directing, sponsoring, or conducting attacks against UN missions or international security presences, including BINUCA, MISCA, EUFOR RCA and the other forces who support them;
 - (h) leaders of, have provided support to, or acted for or on behalf of or at the direction of, an entity designated by the Sanctions Committee;
 - (i) acting on behalf of or at the direction of persons, entities or bodies listed under points (a) to (h).
4. Annex I shall include only the following information on listed natural or legal persons, entities or bodies:
- (a) for identification purposes: in the case of natural persons, surname and given names (including alias names and titles, if any); date and place of birth; nationality; passport and identity card numbers; tax and social security numbers; sex; address or other information on whereabouts; function held or profession; in the case of legal persons, entities or bodies, name, place and date of registration, registration number and place of business.
 - (b) the date on which the natural or legal person, entity or body has been included in Annex I;
 - (c) the grounds for listing.
5. Annex I may also include information on family members of the persons listed, provided that the inclusion of this information is considered to be necessary in a specific case for the sole purpose of verifying the identity of the listed natural person in question.

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, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, provided that the following conditions are met:

- (a) the competent authority concerned has determined that the funds or economic resources are:
 - (i) necessary to satisfy the basic needs of natural or legal persons, entities or bodies listed in Annex I, and dependent 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 five working days of notification.

Article 8

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 competent authority concerned has determined that the funds or economic resources are necessary for extraordinary expenses, and provided that the Member State concerned has notified the Sanctions Committee of that determination and the Sanctions Committee has approved that determination.

Article 9

By way of derogation from Article 5, the competent authorities in 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 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 I, 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 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 10

1. By way of derogation from Article 5 and provided that a payment by a natural or legal person, entity or body listed in Annex I is due under a contract or agreement that was concluded by, or an obligation that arose for the natural or legal person, entity or body concerned, before the date on which that natural or legal person, entity or body had been designated by the UN Security Council or the Sanctions Committee, the competent authorities of the Member States may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources, provided that the competent authority concerned has determined that:
 - (a) the funds or economic resources shall be used for a payment by a natural or legal person, entity or body listed in Annex I;
 - (b) the payment is not in breach of Article 5(2) ; and
 - (c) the Sanctions Committee has been notified by the relevant Member State of the intention to grant an authorisation 10 working days in advance.

Article 11

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 onto the account of a listed natural or legal person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the relevant competent authority about any such transaction without delay.
2. Article 5(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 before the date on which the natural or legal person, entity or body referred to in Article 5 has been included in Annex I; or
 - (c) payments due under judicial, administrative or arbitral lien or judgment, as referred to in Article 9; and

provided that any such interest, other earnings and payments are frozen in accordance with Article 5(1).

Article 12

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall:
 - (a) supply immediately any information which would facilitate compliance with this Regulation, such as information on accounts and amounts frozen in

accordance with Article 5, to the competent authority of the Member State where they are resident or located, and shall transmit such information, directly or through the Member State, to the Commission; and

- (b) co-operate with the competent authority in any verification of this information.
2. Any additional information received directly by the Commission shall be made available to the Member States.
 3. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

Article 13

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Articles 2 and 5.

Article 14

1. The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen or withheld as a result of negligence.
2. Actions by natural or legal persons, entities or bodies shall not give rise to any liability of any kind on their part if they did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibitions set out in this Regulation.

Article 15

1. 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 Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly 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 Annex I;
 - (b) any natural or legal person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in point (a).
2. In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the natural or legal person, entity or body seeking the enforcement of that claim.
3. This Article is without prejudice to the right of the natural or legal persons, entities and bodies referred to in paragraph 1 to judicial review of the legality of the non-performance of contractual obligations in accordance with this Regulation.

Article 16

1. The Commission and Member States shall inform each other of the measures taken under this Regulation and share any other relevant information at their disposal in connection with this Regulation, in particular information:
 - (a) in respect of funds frozen under Article 5 and authorisations granted under Articles 7, 8 and 9;
 - (b) in respect of violation and enforcement problems and judgments handed down by national courts.
2. The Member States shall immediately inform each other and the Commission of any other relevant information at their disposal which might affect the effective implementation of this Regulation.

Article 17

1. The Commission shall be empowered to:
 - (a) amend Annex I on the basis of decisions taken by the Sanctions Committee; and
 - (b) amend Annex II on the basis of information supplied by Member States.
2. The Commission shall state, in Annex I, the grounds for its decision to include an entry in that Annex, and shall communicate its decisions, including the grounds for the listing to the listed natural or legal persons, entities or bodies if the address is known or, if the address is not known, draw its decisions to the attention of the listed natural or legal persons, entities or bodies through the publication of a notice in the Official Journal of the European Union, providing such natural or legal person, entity or body with an opportunity to submit observations.
3. Where observations are submitted or where substantial new evidence is presented, the Commission shall review its decision in light of the observations submitted and any other relevant information, following the procedure referred to in Article 18(2), and inform the natural or legal person, entity or body of the outcome of the review.

Article 18

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 19

1. The Commission shall process personal data in order to carry out its tasks under this Regulation. These tasks include:
 - (a) preparing and making amendments of Annex I;
 - (b) including the contents of Annex I in the electronic, consolidated list of persons, groups and entities subject to EU financial sanctions available on the website⁷;

⁷ http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm

- (c) processing of information on the impact of the measures of this Regulation such as the value of frozen funds and information on authorisations granted by the competent authorities.
2. The Commission may process 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 Annex I to this Regulation. Such data shall not be made public or exchanged.
3. For the purposes of this Regulation, the Commission service listed in Annex II is designated as “controller” for the Commission within the meaning of Article 2(d) of Regulation (EC) No 45/2001, in order to ensure that the natural persons concerned can exercise their rights under Regulation (EC) No 45/2001.

Article 20

1. Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.
2. Member States shall notify these rules to the Commission without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 21

1. Member States shall designate the competent authorities referred to in this Regulation and identify them on the websites listed in Annex II. Member States shall notify the Commission of any changes in the addresses of their websites listed in Annex II.
2. Member States shall notify the Commission of their competent authorities, including the contact details of those competent authorities, without delay after the entry into force of their Regulation, and shall notify it of any subsequent amendment.
3. Where this Regulation sets out a requirement to notify, inform or otherwise communicate with the Commission, the address and other contact details to be used for such communication shall be those indicated in Annex II.

Article 22

This Regulation shall apply:

- (a) within the territory of the Union, including its airspace;
- (b) on board of any aircraft or any vessel under the jurisdiction of a Member State;
- (c) to any person inside or outside the territory of the Union who is a national of a Member State;
- (d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the Union.

Article 23

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council
The President*