



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.1.2004
COM(2004) 37 final

Proposal for a

COUNCIL REGULATION

concerning certain restrictive measures in respect of Sudan

(presented by the Commission)

EXPLANATORY MEMORANDUM

- (1) In 1994 an embargo on arms, munitions and military equipment was imposed on Sudan by Council Decision 94/165/CFSP. The Council Decision makes no provision for exemptions to the arms embargo.
- (2) In the light of more recent practice and the Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, adopted by Council on 8 December 2003, the Council has deemed it appropriate to amend the Council Decision in order to allow for humanitarian exemptions to the current arms embargo, including equipment and materiel for mine clearance operations in Sudan.
- (3) In line with the Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, the Council has also decided to complement the embargo to include a ban on the provision of technical assistance, on brokering and other services related to military activities and to arms and related materiel, and on financial assistance related to military activities.
- (4) The embargo on certain assistance and services related to military activities, and on financial assistance for arms supplies and related technical assistance falls under the scope of the Treaty. The Commission proposes to implement it by means of a Council Regulation.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301 thereof,

Having regard to Council Common Position 2004/.../CFSP¹,

Having regard to the proposal from the Commission²,

Whereas:

- (1) In view of the ongoing civil war in Sudan, Common Position 2004/.../CFSP maintains the arms embargo imposed against that country by Common Position 94/165 CFSP³ and strengthens that embargo to include a ban on technical assistance and other services related to military activities, and on financial assistance related to military activities.
- (2) It also makes provision for humanitarian exemptions to the arms embargo, including equipment and materiel for mine clearance operations in Sudan.
- (3) The embargoes on certain technical and financial assistance fall within the scope of the Treaty. Therefore, notably with a view to avoiding distortion of competition, Community legislation is necessary to implement the said measures as far as the territory of the Community is concerned. For the purpose of this Regulation, the territory of the Community is deemed to encompass the territories of the Member States to which the Treaty is applicable, under the conditions laid down in that Treaty.
- (4) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must enter into force immediately,

¹ OJ L.....,.....2004, p...

² OJ C.....,.....2004, p. .

³ OJ L 075, 17.3.1994, p. 1

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the following definitions shall apply:

1. “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. Technical assistance includes verbal forms of assistance;
2. “brokering services” means activities negotiating, arranging or facilitating the sale, supply, transfer or export of arms and related materiel.

Article 2

It shall be prohibited

1. to grant, sell, supply or transfer technical assistance, brokering services and other 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 for the aforementioned, directly or indirectly to any person, entity or body in, or for use in Sudan;
2. to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of arms and related materiel, or for any grant, sale, supply, or transfer of related technical assistance, brokering services and other services, directly or indirectly to any person, entity or body in, or for use in Sudan.

Article 3

The participation, knowingly and intentionally, in activities the object or effect of which it is, directly or indirectly, to promote the transactions referred to in Article 2 shall be prohibited.

Article 4

1. By way of derogation from Article 2, the competent authorities of Member States as listed in the Annex, may authorise the provision of financing and financial assistance, technical assistance, brokering services and other services related to
 - a) non-lethal military equipment intended solely for humanitarian or protective use, or for institution building programmes of the UN, the EU and the Community;
 - b) materiel intended for EU and UN crisis management operations;
 - c) mine clearance equipment and materiel for use in mine clearance.

2. No authorisations shall be granted for activities that have already taken place.

Article 5

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

Article 6

Member States shall immediately inform each other and the Commission of the measures taken under this Regulation and shall supply each other with any other relevant information at their disposal in connection with this Regulation, in particular information in respect of violation and enforcement problems and judgements handed down by national courts.

Article 7

The Commission shall be empowered to amend the annex containing the list of competent authorities referred to in Article 4 on the basis of information supplied by Member States.

Article 8

The Member States shall lay down the rules on sanctions applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The sanctions provided for must be effective, proportionate and dissuasive.

The Member States shall notify these rules to the Commission without delay after entry into force of the Regulation and shall notify it of any subsequent amendment.

Article 9

This Regulation shall apply:

- a) within the territory of the Community, including its airspace;
- b) on board any aircraft or any vessel under the jurisdiction of a Member State;
- c) to any person elsewhere who is a national of a Member State;
- d) to any legal person, group or entity which is incorporated or constituted under the law of a Member State;
- e) to any legal person, group or entity doing business within the Community.

Article 10

This Regulation shall enter into force on the day following that 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

Annex

List of competent authorities referred to in Article 4

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