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EUROPEAN COMMISSION

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

Brussels, 10.1.2011  
COM(2011) 7 final

2011/0005 (NLE)

Joint proposal for a

**COUNCIL REGULATION**

**amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire**

## EXPLANATORY MEMORANDUM

- (1) Council Decision 2010/656/CFSP of 29 October 2010 provides for the application of restrictive measures against certain persons, entities and bodies who have been designated by the UN Security Council or a Sanctions Committee in accordance with UN Security Council Resolution 1572 (2004) concerning Côte d'Ivoire. Taking into account the current situation in Côte d'Ivoire the CFSP Decision was amended on 22 December 2010 to provide for restrictive measures against certain persons not designated by the UN, who are obstructing the process of peace and national reconciliation in Côte d'Ivoire and in particular those who are jeopardising the proper outcome of the electoral process, as well as against legal persons, entities or bodies owned or controlled by such persons and persons, entities or bodies acting on their behalf or at their direction.
- (2) The High Representative of the EU for Foreign Affairs and Security Policy and the Commission propose to freeze the funds and economic resources of the relevant natural or legal persons, entities and bodies by means of a Regulation based on Article 215 of the Treaty on the Functioning of the European Union (TFEU) and to amend Council Regulation (EC) No 560/2005 to that end.
- (3) Article 291(2) TFEU provides that, where uniform conditions for implementing legally binding Union acts such as Regulations based on Article 215 TFEU are needed, those acts shall confer implementing powers on the Commission or, in duly justified specific cases, on the Council.
- (4) The CFSP Decision provides for the Council to make available a statement of reasons to a listed individual, entity or body, for the opportunity to respond, and for a review procedure to be followed, when a natural or legal person, entity or body is included in the Annex to that Decision or when new evidence is presented. This is with a view to ensuring respect, in particular, for the rights of the defence and the right to judicial review. These rights should also be respected by the Regulation.
- (5) The Court of Justice has jurisdiction to review the decisions to designate a natural or legal person, entity or body pursuant to both the CFSP Decision and the Regulation in accordance with Article 275 and 263 TFEU, respectively.

Proposal for a

## **COUNCIL REGULATION**

**amending Regulation (EC) No 560/2005 imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215(2) thereof,

Having regard to Council Decision 2010/656/CFSP of 29 October 2010 renewing the restrictive measures against Côte d'Ivoire<sup>1</sup> as last amended by Council Decision 2011/.../CFSP of ... 2011<sup>2</sup>,

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

After consulting the European Data Protection Supervisor,

Whereas:

- (1) Council Decision 2010/656/CFSP as amended provides for the adoption of restrictive measures against certain persons who, while not designated by the UN Security Council or the Sanctions Committee, are obstructing the process of peace and national reconciliation in Côte d'Ivoire and in particular those who are jeopardising the proper outcome of the electoral process, as well as against legal persons, entities or bodies owned or controlled by such persons and persons, entities or bodies acting on their behalf or at their direction.
- (2) These measures 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 should be applied in accordance with those rights and principles.

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<sup>1</sup> OJ L 285, 30.10.2010, p. 28.

<sup>2</sup> OJ L ..., ...2011, p. ... .

- (4) Council Decision 2010/656/CFSP as amended requires the communication of the decision, including the grounds for listing, to a listed person, entity or body, and provides for the opportunity to respond, and for a review procedure to be followed, when a natural or legal person, entity or body included in the Annexes to that Decision submits observations or when new evidence is presented. This is with a view to ensuring respect, in particular, for the rights of the defence and the right to judicial review. These rights should also be respected by the Regulation.
- (5) It is appropriate to empower the Commission to amend the list of persons, entities and bodies whose funds and economic resources should be frozen. It should review its listing decisions in light of the observations and information submitted by the natural or legal person, entity or body concerned and by the Member States.
- (6) 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 in accordance with this Regulation, must be made public. Any processing of personal data should respect 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<sup>3</sup> and 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<sup>4</sup>.
- (7) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must enter into force immediately,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Regulation (EC) No 560/2005 is amended as follows:

- (1) Article 2 is replaced by the following:

#### *“Article 2*

1. All funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex I or in Annex IA shall be frozen.
2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annex I or in Annex IA.

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<sup>3</sup> OJ L 8, 12.1.2001, p. 1.

<sup>4</sup> OJ L 281, 23.11.1995, p. 31.

3. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1 and 2 shall be prohibited.
4. Annex I shall consist of the natural or legal persons, entities and bodies referred to in Article 5(1)(a) of Council Decision 2010/656/CFSP as amended.
5. Annex IA shall consist of the natural or legal persons, entities and bodies referred to in Article 5(1)(b) of Council Decision 2010/656/CFSP as amended.”

(2) The following Article is inserted:

*“Article 2a*

1. Annexes I and IA shall include only the following information on listed natural persons:
  - (a) for identification purposes: 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;
  - (b) the date referred to in Articles 4(a) and 6(b);
  - (c) the grounds for listing.
2. Annexes I and IA 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.”

(3) Articles 3 and 4 are replaced by the following:

*“Article 3*

1. By way of derogation from Article 2, the competent authorities in the Member States as listed in Annex II 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 for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
  - (b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;

- (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources.

If it concerns a person, entity or body listed in Annex I the competent authorities shall notify their intention to authorise access to such funds and economic resources to the Sanctions Committee. They shall not authorise such access if they have received a negative decision by the Sanctions Committee within two working days of such notification.

2. By way of derogation from Article 2 and provided it concerns a person, entity or body listed in Annex I, the competent authorities in the Member States as listed in Annex II 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 necessary for extraordinary expenses, provided that they have notified that determination to the Sanctions Committee and that the determination has been approved by that Committee, under the conditions envisaged by paragraph 14(e) of UN Security Council Resolution 1572 (2004).
3. By way of derogation from Article 2 and provided it concerns a person, entity or body listed in Annex IA, the competent authorities in the Member States as listed in Annex II 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 necessary for extraordinary expenses, provided that the Member State has notified the grounds on which it considers that a specific authorisation should be granted to all other Member States and to the Commission at least two weeks prior to authorisation.

#### *Article 4*

By way of derogation from Article 2, the competent authorities in the Member States as listed in Annex II 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 2 became subject to this Regulation, 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 or in Annex IA;

- (d) recognising the lien or judgment is not contrary to public policy in the Member State concerned; and
  - (e) if it concerns a person, entity or body listed in Annex I, the competent authorities have notified the lien or judgment to the Sanctions Committee.”
- (4) Article 7 is replaced by the following:

*“Article 7*

Article 2(2) shall not prevent financial or credit institutions in the Union from crediting frozen accounts where they receive funds transferred to 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.”

- (5) The following Article is inserted:

*“Article 9a*

The prohibition set out in Article 2(2) shall not give rise to any liability of any kind on the part of the natural and legal persons, entities and bodies who made funds or economic resources available if they did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibition in question.”

- (6) Article 11 is replaced by the following:

*“Article 11*

1. The Commission shall be empowered to:
  - (a) amend Annex I on the basis of determinations made by the UN Security Council or the Sanctions Committee;
  - (b) amend Annex IA on the basis of decisions taken in respect of Annex II to Council Decision 2010/656/CFSP; and
  - (b) amend Annex II on the basis of information supplied by Member States.
2. The Commission shall communicate its decision to the natural or legal person, entity or body included in Annex I or in Annex IA, either directly, if the address is known, or through the publication of a notice, providing such 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 Commission shall forward the observations or evidence submitted to the Sanctions Committee if it concerns Annex I. If it concerns Annex IA it shall forward them to the Africa working party of the Council requesting each Member State to submit its observations and, where

appropriate, further information. The period for submission of observations and further information shall not exceed three months.

4. The Commission shall review its decision in light of the observations and information submitted by the natural or legal person, entity or body included in Annex I or Annex IA and the Member States.

The Commission shall inform the natural or legal person, entity or body of the outcome of the review.

5. 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 and Annex IA to this Regulation;
  - (b) including the contents of these annexes in the electronic, consolidated list of persons, groups and entities subject to EU financial sanctions available on the Commission website<sup>5</sup>;
  - (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.
6. 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 or of Annex IA to this Regulation concerned. Such data shall not be made public or exchanged.
7. For the purposes of this Regulation, the Commission unit 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.”

- (7) The following Article is inserted:

*“Article 12a*

Where there is, in this Regulation, 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.”

- (8) Article 13 is replaced by the following:

*“Article 13*

This Regulation shall apply:

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<sup>5</sup> [http://ec.europa.eu/external\\_relations/cfsp/sanctions/consol-list\\_en.htm](http://ec.europa.eu/external_relations/cfsp/sanctions/consol-list_en.htm)

- (a) within the territory of the Union, including its airspace;
  - (b) on board 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 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.”
- (9) The text set out in Annex I is inserted into Regulation (EC) No 560/2005 as Annex IA.
- (10) Annex II to Regulation (EC) No 560/2005 is amended as set out in Annex II.

#### *Article 2*

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*  
[...]

**ANNEX I**

**“ANNEX IA**

**List of natural and legal persons, entities or bodies not designated by the UN Security Council or the Sanctions Committee, referred to in Articles 2, 4 and 7**

*(To be completed by Council)”*

**ANNEX II**

**Annex II (List of competent authorities referred to in Articles 3, 4, 5, 7 and 8) to Regulation (EC) No 560/2005 is amended as follows:**

The section ‘European Community’ is replaced by the following:

“Address for notifications to or other communication with the European Commission:

European Commission

Foreign Policy Instruments Service

Unit FPIS.2

CHAR 12/106

B-1049 Bruxelles/Brussel

Belgium

E-mail: [relex-sanctions@ec.europa.eu](mailto:relex-sanctions@ec.europa.eu)

Tel.: (32 2) 295 55 85

Fax: (32 2) 299 08 73”