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EUROPEAN COMMISSION

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

Brussels, 21.12.2010  
COM(2010) 806 final

2010/0391 (NLE)

Joint proposal for a

**COUNCIL REGULATION**

**concerning restrictive measures directed against certain persons, entities and bodies  
threatening the peace, security or stability of the Republic of Guinea-Bissau**

## EXPLANATORY MEMORANDUM

- (1) Council Decision 2010/[...]/CFSP of [...] provides for the adoption of restrictive measures against certain individuals, entities and bodies who seek to prevent or block a peaceful political process, or who take action that undermines the stability in the Republic of Guinea-Bissau. This concerns in particular those who played a leading role in the mutiny of 1 April 2010 and whose actions continue to be aimed at undermining the rule of law and the primacy of civilian power.
- (2) These measures include the freezing of funds and economic resources of the natural or legal persons, entities and bodies listed in the annex to the CFSP Decision. The High Representative of the EU for Foreign Affairs and Security Policy and the Commission propose to give effect to these measures by means of a Regulation based on Article 215 of the Treaty on the Functioning of the European Union (TFEU).
- (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**

**concerning restrictive measures directed against certain persons, entities and bodies threatening the peace, security or stability of the Republic of Guinea-Bissau**

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/[...]/CFSP of [...] concerning restrictive measures against the Republic of Guinea-Bissau,

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

After consulting the European Data Protection Supervisor,

Whereas:

- (1) Council Decision 2010/[...]/CFSP of [...] provides for the adoption of restrictive measures against certain persons, entities and bodies who seek to prevent or block a peaceful political process, or who take action that undermines the stability in the Republic of Guinea-Bissau. This concerns in particular those who played a leading role in the mutiny of 1 April 2010 and whose actions continue to be aimed at undermining the rule of law and the primacy of civilian power. These measures include the freezing of funds and economic resources of the natural or legal persons, entities and bodies listed in the Annex to the Decision.
- (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.
- (4) Council Decision 2010/[...]/CFSP 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 Annex 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>1</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>2</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*

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

- (a) '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;

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

<sup>2</sup> OJ L 281, 23.11.1995, p. 31.

- (vi) letters of credit, bills of lading, bills of sale;
- (vii) documents evidencing an interest in funds or financial resources;
- (b) ‘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;
- (c) ‘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;
- (d) ‘freezing of economic resources’ means preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;
- (e) ‘territory of the Union’ means the territories to which the Treaty is applicable, under the conditions laid down in the Treaty.

#### *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 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.
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.

#### *Article 3*

1. Annex I shall consist of natural or legal persons, entities and bodies who, in accordance with Article 2(1) of Council Decision 2010/[...]/CFSP of [...], have been identified by the Council as either (i) engaging in or providing support for acts that threaten the peace, security or stability of the Republic of Guinea-Bissau or (ii) associated with such persons, entities or bodies.
2. Annex I 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 5(1)(a) and 6(1)(b);
  - (c) the grounds for listing.

3. 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 4*

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 to satisfy the basic needs of persons listed in Annex I, 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 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; or
  - (d) necessary for extraordinary expenses, provided in this case 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.
2. The relevant Member State shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

#### *Article 5*

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, 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 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; and
  - (d) recognising the lien or judgment is not contrary to public policy in the Member State concerned.
2. The relevant Member State shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

#### *Article 6*

1. Article 2(2) shall not apply to the addition to frozen accounts of:
- (a) interest or other earnings on those accounts; or
  - (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 2 has been included in Annex I,
- provided that any such interest, other earnings, payments or financial instruments are frozen in accordance with Article 2(1).
2. 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.

#### *Article 7*

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. 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.

#### *Article 8*

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 accounts and amounts frozen in accordance with Article 2, to the competent authority in the Member State where they are



resident or located, as listed in Annex II, and shall transmit such information, either directly or through the competent authority listed in Annex II, to the Commission; and

- (b) co-operate with that competent authority in any verification of this information.
2. 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 9*

The Commission and Member States shall immediately inform each other 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 judgments handed down by national courts.

#### *Article 10*

1. The Commission shall be empowered to:
- (a) amend Annex I on the basis of decisions taken in respect of the Annex to Council Decision 2010/[...]/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, 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 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 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 to this Regulation;

- (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 Commission website<sup>3</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 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.

#### *Article 11*

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 the Commission of those rules without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

#### *Article 12*

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.

#### *Article 13*

This Regulation shall apply:

- (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;

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<sup>3</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)

- (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.

*Article 14*

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**

**List of natural and legal persons, entities or bodies referred to in Articles 2(1) and 2(2)**

*(To be completed by Council)*

**ANNEX II**

**List of competent authorities in the Member States referred to in Articles 4(1), 5(1) and 8(1) and address for notifications to the European Commission**

*(To be completed by the Member States)*

A. Competent authorities in each Member State:

BELGIUM

BULGARIA

CZECH REPUBLIC

DENMARK

GERMANY

ESTONIA

IRELAND

GREECE

SPAIN

FRANCE

ITALY

CYPRUS

LATVIA

LITHUANIA

LUXEMBOURG

HUNGARY

MALTA

NETHERLANDS

AUSTRIA

POLAND

PORTUGAL

ROMANIA

SLOVENIA

SLOVAKIA

FINLAND

SWEDEN

UNITED KINGDOM

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

European Commission

Foreign Policy Instruments Service

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