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EUROPEAN COMMISSION

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

Brussels, 31.1.2011
COM(2011) 45 final

2011/0022 (NLE)

Joint proposal for a

COUNCIL REGULATION

**concerning restrictive measures directed against certain persons, entities and bodies in
view of the situation in Tunisia**

EXPLANATORY MEMORANDUM

- (1) Council Decision 2011/[...]/CFSP of [...] provides for the adoption of restrictive measures against persons responsible for the misappropriation of Tunisian State funds and who are thus depriving the Tunisian people of the benefits of the sustainable development of their economy and society and are at the same time undermining the development of democracy in the country.

- (2) These measures consist of a freezing of funds and economic resources of those persons 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 (2) of the Treaty on the Functioning of the European Union (TFEU).

Joint proposal for a

COUNCIL REGULATION

concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia

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 2011/[...]/CFSP of [...] concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Tunisia,

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 2011/[...]/CFSP of [...] provides for the freezing of funds and economic resources of certain persons responsible for the misappropriation of Tunisian State funds, and persons associated with them, who are thus depriving the Tunisian people of the benefits of the sustainable development of their economy and society and undermining the development of democracy in the country. These natural or legal persons, entities and bodies are 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.
- (4) 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.
- (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

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 data¹ 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 data².

- (6) 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;
 - (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;

¹ OJ L 8, 12.1.2001, p. 1.

² OJ L 281, 23.11.1995, p. 31.

- (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 of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty, including their airspace.

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 1(1) of Council Decision 2011/[...]/CFSP of [...], have been identified by the Council as being responsible for the misappropriation of Tunisian State funds, and natural or legal persons, entities and bodies associated with them.
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 on which the natural or legal person, entity or body has been included in Annex;
 - (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 and payments 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

By way of derogation from Article 2 and provided that a payment by a 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 person, entity or body concerned, before the date on which that person, entity or body had been designated, the competent authorities of the Member States, as indicated on the websites listed in Annex II, may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources, if the following conditions are met:

- (a) the competent authority concerned has determined that:
 - (i) the funds or economic resources shall be used for a payment by a person, entity or body listed in Annex I;
 - (ii) the payment is not in breach of Article 2 (2);
- (b) the Member State concerned has, at least two weeks prior to the grant of the authorisation, notified the other Member States and the Commission of that determination and its intention to grant an authorisation.

Article 8

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 9

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 indicated on the websites listed in Annex II, and shall transmit such information, either directly or through the Member States, 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 10

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 11

1. The Commission shall be empowered to:
 - (a) amend Annexes I on the basis of decisions taken in respect of Annex I to Council Decision 2011/XXX/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 submit observations.
3. Where observations or substantial new evidence are submitted, the Commission shall review its decision in the light of the observations and information submitted by the natural or legal person, entity or body included in Annex I and by the Member States.
4. 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 these annexes in the electronic, consolidated list of persons, groups and entities subject to EU financial sanctions available on the Commission website³;
 - (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. 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 12

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 13

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 14

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;

³ 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 15

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 Article 2(1)

(To be completed by Council)

ANNEX II

List of competent authorities in the Member States referred to in Articles 4(1), 5(1), 7 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

Tel.: (32 2) 295 55 85

Fax: (32 2) 299 08 73