EUROPEAN
COMMISSION

HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 19.10.2020
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2020/0305 (NLE)

Joint Proposal for a

COUNCIL REGULATION

concerning restrictive measures against serious human rights violations and abuses

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On XXX the Council adopted Decision (CFSP) 2020/XXX, which establishes a framework for targeted restrictive measures to address serious human rights violations and abuses worldwide. The Council Decision provides for a travel ban, the freezing of funds and economic resources of, and the prohibition to make funds and economic resources available to persons, entities or bodies responsible for, providing support to or otherwise involved in serious human rights violations or abuses as well as those associated with the natural and legal persons, entities and bodies covered. Persons, entities and bodies subject to the restrictive measures are listed in the Annex to Decision (CFSP) 2020/XXX.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof, further action by the Union is needed in order to implement Decision (CFSP) 2020/XXX.

The High Representative of the Union for Foreign Affairs and Security Policy and the European Commission should make a proposal for a Regulation concerning restrictive measures against serious human rights violations and abuses.

2020/0305 (NLE)

Joint Proposal for a

COUNCIL REGULATION

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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 (CFSP) 2020/XXX concerning restrictive measures against serious human rights violations and abuses[1],

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

Whereas:

(1) On XXX the Council adopted Decision (CFSP) 2020/XXX, which establishes a framework for targeted restrictive measures to address serious human rights violations and abuses worldwide. The Council Decision provides for a travel ban, the freezing of funds and economic resources of and the prohibition to make funds and economic resources available to natural and legal persons, entities or bodies responsible for, providing support to or otherwise involved in serious human rights violations or abuses as well as those associated with the natural and legal persons, entities and bodies covered. Persons, entities and bodies subject to the restrictive measures are listed in the Annex to Decision (CFSP) 2020/XXX. The Council Decision emphasises the importance of international human rights law and of the interaction between international human rights law and international humanitarian law when considering the application of targeted restrictive measures.

(2) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to an effective remedy, the right to defence, and the right to the protection of personal data. This Regulation should be applied in accordance with those rights.

(3) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission.

(4) For the implementation of this Regulation, and in order to ensure 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 are to be frozen in accordance with this Regulation should be made public. Any processing of personal data should comply with Regulations (EU) 2016/679[2] and (EU) 2018/1725[3] of the European Parliament and of the Council.

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1 OJ L , , p. .

2 OJ L 119, 4.5.2016, p. 1.

3 OJ L 295, 21.11.2018, p. 39.

(5) Member States and the Commission should inform each other of the measures taken pursuant to this Regulation and of other relevant information at their disposal in connection with this Regulation.

(6) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and make sure that they are implemented. Those penalties should be effective, proportionate and dissuasive,

HAS ADOPTED THIS REGULATION:

Article 1

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

(a) '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 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;

(b) '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;

(c) 'competent authorities' refers to the competent authorities of the Member States as identified on the websites listed in Annex II;

(d) '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;

(e) '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;

(f) '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;

(g) 'funds' means financial assets and benefit 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 showing evidence of an interest in funds or financial resources;

(h) '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. This Regulation applies to the following acts:

(a) Genocide,

(b) Crimes against humanity,

(c) Serious human rights violations or abuses, i.e.:

(i) Torture and other cruel, inhuman or degrading treatment or punishment,

(ii) Slavery,

(iii) Extrajudicial, summary or arbitrary executions and killings,

(iv) Enforced disappearance of persons,

(v) Arbitrary arrests or detentions,

(d) Other violations or abuses of human rights, including but not limited to:

(i) Trafficking in human beings,

(ii) Sexual and gender-based violence,

(iii) Violations or abuses of freedom of peaceful assembly and of association,

(iv) Violations or abuses of freedom of opinion and expression,

(v) Violations or abuses of freedom of religion or belief,

to the extent that those violations or abuses are widespread, systematic or otherwise serious;

2. For the purposes of applying paragraph 1, regard should be had to customary international law and widely accepted instruments of international law, such as:

(a) the International Covenant on Civil and Political Rights,

(b) the International Covenant on Economic, Social and Cultural Rights,

(c) the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,

(d) the International Convention on the Elimination of All Forms of Racial Discrimination,

(e) the Convention on the Elimination of All Forms of Discrimination against Women,

(f) the Convention on the Rights of the Child,

(g) the International Convention for the Protection of All Persons from Enforced Disappearance,

(h) the Convention on the Rights of Persons with Disabilities,

(i) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,

(j) the Convention for the Protection of Human Rights and Fundamental Freedoms,

(k) the Rome Statute of the International Criminal Court.

3. For the purposes of this Regulation, natural or legal persons, entities or bodies may include:

(a) State actors;

(b) other actors exercising effective control or authority over a territory;

(c) other non-State actors under the conditions laid down in Article 1(4) of Council Decision (CFSP) 2020/XXX.

Article 3

1. All funds and economic resources belonging to, owned, held or controlled by any natural or legal person, entity or body 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, as identified by the Council in accordance with Article 3 of Decision (CFSP) 2020/XXX:

(a) natural or legal persons, entities or bodies, who are responsible for acts described in Article 2(1);

(b) natural or legal persons, entities or bodies, who provide financial, technical, or material support for or are otherwise involved in acts described in Article 2(1), including by planning, directing, ordering, assisting, preparing, facilitating, or encouraging such acts;

(c) natural or legal persons, entities or bodies, who are associated with the natural or legal persons, entities or bodies covered by points (a) and (b) of this paragraph;

Article 4

1. By way of derogation from Article 3, 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, after having determined that the funds or economic resources concerned are:

   (a) 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 food, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

   (b) intended exclusively for the payment of reasonable professional fees or the reimbursement of incurred expenses associated with the provision of legal services;

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

   (d) necessary for extraordinary expenses, provided that the relevant competent authority has notified the competent authorities of the other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted, at least two weeks prior to the authorisation; or

   (e) to be paid into or from an account of a diplomatic or consular mission or an international organisation enjoying immunities in accordance with international law, insofar as such payments are intended to be used for official purposes of the diplomatic or consular mission or international organisation.

2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1 within two weeks of the authorisation.

Article 5

1. By way of derogation from Article 3, 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, after having determined that the provision of such funds or economic resources is necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations.

2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1 within four weeks of the authorisation.

Article 6

1. By way of derogation from Article 3(1), the competent authorities of 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 are the subject of an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in Article 3 was listed in Annex I, or of a judicial or administrative decision rendered in the Union, or a judicial decision enforceable in the Member State concerned, prior to or after that date;

(b) the funds or economic resources will be used exclusively to satisfy claims secured by such a decision or recognised as valid in such a decision, within the limits set by applicable laws and regulations governing the rights of persons having such claims;

(c) the decision is not for the benefit of a natural or legal person, entity or body listed in Annex I; and

(d) recognition of the decision is not contrary to public policy in the Member State concerned.

2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1 within two weeks of the authorisation.

Article 7

1. By way of derogation from Article 3(1) 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 was included in Annex I, 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 will be used for a payment by a natural or legal person, entity or body listed in Annex I; and

(b) the payment is not in breach of Article 3(2).

2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1 within two weeks of the authorisation.

Article 8

1. Article 3(2) shall not prevent the crediting of 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 3(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 3 was included in Annex I; or

(c) payments due under judicial, administrative or arbitral decisions rendered in a Member State or enforceable in the Member State concerned,

provided that any such interest, other earnings and payments remain subject to the measures provided for in Article 3(1).

Article 9

1. Natural persons as listed in Annex I shall be prevented from entering into, or transiting through, the territory of a Member State.

2. Paragraph 1 shall not oblige a Member State to refuse its own nationals entry into its territory.

Article 10

1. By way of derogation from Article 9, the competent authorities of the Member States may authorise, under such conditions as they deem appropriate, the entry into or transit through the territory of a Member State of the natural persons listed in Annex I provided that:

   (a) such entry or transit is required by an obligation of international law binding on the Member State in question:

      (i) as a host country of an international intergovernmental organisation;

      (ii) as a host country to an international conference convened by, or under the auspices of, the United Nations;

      (iii) under a multilateral agreement conferring privileges and immunities; or

      (iv) pursuant to the 1929 Treaty of Conciliation (Lateran Pact) concluded by the Holy See (Vatican City State) and Italy.

   (b) the Member State is host country of the Organization for Security and Co-operation in Europe (OSCE).

2. The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

3. An authorisation granted pursuant to this Article shall be strictly limited to the purpose for which it is given and to the natural persons directly concerned thereby.

Article 11

1. By way of derogation from Article 9, the competent authorities of the Member States may authorise, under such conditions as they deem appropriate, the entry into or transit through the territory of a Member State of the natural persons listed in Annex I provided that such entry or transit is:

   (a) justified on the grounds of urgent humanitarian need, or on grounds of attending intergovernmental meetings or meetings promoted or hosted by the Union, or hosted by a Member State holding the Chairmanship in office of the OSCE, where a political dialogue is conducted that directly promotes the policy objectives of restrictive measures, including the ending of serious human rights violations and abuses and the furthering of human rights; or

   (b) necessary for the fulfilment of a judicial process.

2. The Member State concerned shall notify the other Member States and the Commission in writing of its intention to grant an authorisation under this Article. if a Member State or the Commission raise an objection in writing within two working days of receiving the notification, the Council, acting by a qualified majority, may decide to grant the proposed authorisation.

3. An authorisation granted pursuant to this Article shall be strictly limited to the purpose for which it is given and to the natural persons directly concerned thereby.

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 3(1), to the competent authority of the Member State where they are resident or located, and transmit such information, directly or through the Member State, to the Commission; and

   (b) cooperate with the competent authority in any verification of the information referred to in point (a).

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 Article 3.

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 measures 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) 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 natural or legal 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 in respect of:

(a) funds frozen under Article 3 and authorisations granted under Articles 4, 5, 6 and 7;

(b) 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 Council in respect of the Annex to Council Decision (CFSP) 2020/XXX; and

(b) amend Annex II on the basis of information supplied by Member States.

2. The Commission shall communicate the decision referred to in paragraph 1, including the grounds for the listing, to the natural or legal person, entity or body concerned if the address is known or, if the address is not known, draw its decisions to the attention of the natural or legal person, entity or body concerned 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 paragraph 1, and inform the natural or legal person, entity or body of the outcome of the review.

Article 18

1. Annex I shall include the grounds for the listing of natural or legal persons, entities or bodies concerned.

2. Annex I shall contain, where available, the information necessary to identify the natural or legal persons, entities or bodies concerned. With regard to natural persons, such information may include: names and aliases; date and place of birth; nationality; passport and identity card numbers; gender; address, if known; and function or profession. With regard to legal persons, entities or bodies, such information may include names, place and date of registration, registration number and place of business.

Article 19

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 the rules referred to in paragraph 1 without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 20

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 to Annex I;

   (b) adding the contents of Annex I to the electronic, consolidated list of persons, groups and entities subject to Union financial sanctions and to the interactive sanctions map, both publicly available;

   (c) processing 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. 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 3(8) of Regulation (EU) 2018/1725 in relation to the processing activities necessary to accomplish the tasks referred to in paragraph 1.

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 this 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 any aircraft or vessel under the jurisdiction of a Member State;

(c) to any natural 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 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