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EUROPEAN COMMISSION

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Proposal for a

COUNCIL REGULATION (EU) No ../2010

amending Regulation (EC) No 1763/2004 imposing certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY)

(presented jointly by the Commission and the High Representative of the EU
for Foreign Affairs and Security Policy)

EXPLANATORY MEMORANDUM

- (1) Council Regulation (EC) No 1763/2004, as last amended by Commission Regulation (EC) No 895/2008, imposes certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY) in accordance with Common Position 2004/694/CFSP.
- (2) It is appropriate to align Regulation (EC) No 1763/2004 with recent developments in sanctions practice regarding drafting of provisions on freezing of funds, the identification of competent authorities, liability for certain infringements, protection of personal data and drafting of the article on Union jurisdiction.
- (3) For the sake of clarity, several Articles to which amendments need to be made should be published in full.

Proposal for a

COUNCIL REGULATION (EU) No .. /2010

amending Regulation (EC) No 1763/2004 imposing certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY)

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 Common Position 2004/694/CFSP of 11 October 2004 on further measures in support of the effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY)¹,

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 Regulation (EC) No 1763/2004 of 11 October 2004 imposing certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY)² provides for the freezing of the funds and economic resources belonging to, or owned or held by, certain natural persons indicted by the ICTY, in accordance with Common Position 2004/694/CFSP.
- (2) It is appropriate to align Regulation (EC) No 1763/2004 with recent developments in sanctions practice regarding the drafting of provisions on freezing of funds, the identification of competent authorities, liability for certain infringements, protection of personal data and drafting of the article on Union jurisdiction. For the sake of clarity, several Articles to which amendments need to be made should be republished in full.
- (3) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union³ and notably the right to an effective remedy and to a fair trial, the right to property and the

¹ OJ L 315, 14.10.2004, p. 52.

² OJ L 315, 14.10.2004, p. 14.

³ OJ C 364, 18.12.2000, p. 1.

right to protection of personal data. This Regulation should be applied in accordance with those rights and principles.

- (4) Any processing of personal data of natural persons under this Regulation 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 data⁴ 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 data⁵.
- (5) Regulation (EC) No 1763/2004 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1763/2004 is amended as follows:

- (1) In Article 1, point 1 is replaced by the following:

‘funds’ means financial assets and benefits of every kind, including but not limited to:

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
- (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
- (d) interest, dividends or other income on or value accruing from or generated by assets;
- (e) credit, right of set-off, guarantees, performance bonds or other financial commitments;
- (f) letters of credit, bills of lading, bills of sale;
- (g) documents evidencing an interest in funds or financial resources;”

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

⁴ OJ L 8, 12.1.2001, p. 1.

⁵ OJ L 281, 23.11.1995, p. 31.

“Article 2

1. All funds and economic resources belonging to, or owned, held or controlled by natural persons indicted by the ICTY, and 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 any natural person 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 at paragraphs 1 and 2 shall be prohibited.
 4. The prohibition set out in paragraph 2 shall not give rise to liability of any kind on the part of the natural or legal persons, entities or 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 this prohibition.”
- (3) Article 3 is replaced by the following:

“Article 3

1. By way of derogation from Article 2, the competent authorities in the Member States, as indicated in the websites 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 concerned 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 that the Member State concerned has notified 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 before the authorisation.
 2. Member States shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.”
- (4) Article 4 is replaced by the following:

“Article 4

1. By way of derogation from Article 2, the competent authorities in the Member States, as indicated in the websites 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 are subject of a judicial, administrative or arbitral lien established prior to the date on which the natural person 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 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;
 - (d) Recognising the lien or judgment is not contrary to public policy in the Member State concerned.
 2. Member States shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.”
- (5) Article 6 is replaced by the following:

“Article 6

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 competent authorities about such transactions without delay.”

- (6) Article 7 is replaced by the following:

“Article 7

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall:
 - (a) supply immediately the competent authorities indicated in the websites listed in Annex II, in the country where they are resident or located, with any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 2, and, directly or indirectly, supply such information to the Commission; and
 - (b) cooperate with the competent authorities indicated in the websites listed in Annex II 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.”

(7) The following Article 10a is inserted:

“Article 10a

1. The Commission shall process personal data in order to carry out its tasks under this Regulation. These tasks shall include:

- (a) preparing amendments of Annex I to this Regulation;
- (b) consolidating the contents of Annex I in the electronic, consolidated list of persons, groups and entities subject to EU financial sanctions available on the Commission website⁶;
- (c) processing of information concerning the grounds for listing; and
- (d) 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.

2. Annex I shall only include the following information on listed natural persons:

- (a) surname and given names, including alias names and titles, if any;
- (b) date and place of birth;
- (c) nationality;
- (d) passport and ID card numbers;
- (e) fiscal and social security numbers;
- (f) sex;
- (g) address or other information on whereabouts;
- (h) function or profession;
- (i) the date of designation referred to in Article 5(ii).

3. Annex I may also include information on family members of the persons listed, provided that the inclusion of this information is necessary in a specific case for the sole purpose of verifying the identity of the listed natural person in question.

4. 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

⁶ http://ec.europa.eu/external_relations/cfsp/sanctions/list/consol-list.htm

preparation of a statement of reasons and review of the views on it expressed by the natural person concerned, subject to appropriate specific safeguards. Such data shall not be made public or exchanged.

5. For the purposes of this Regulation, the Commission unit listed in Annex II is designated as “controller” 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.”
- (8) The following Article 11a is inserted:

“Article 11a

1. Member States shall designate the competent authorities referred to in Articles 3, 4 and 7 and identify them in the websites as listed in Annex II. Member States shall notify the Commission of any changes to the addresses of their websites listed in Annex II before such changes take effect.
 2. Member States shall notify the Commission of their competent authorities, including their contact details, by 15 July 2010 and shall notify it without delay of any subsequent amendment.”
- (9) Article 12 is replaced by the following:

“Article 12

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;
 - (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.”
- (10) Annex II is replaced by the text in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the third 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

“ANNEX II

**Websites for information on the competent authorities referred to in Articles 3, 4 and 7,
and address for notifications to the European Commission**

(to be completed by Member States)

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

Address for notifications to the European Commission:

European Commission

DG External Relations

Directorate A. Crisis Platform and Policy Coordination in Common Foreign and Security Policy

Unit A2. Crisis Response and Peace Building

CHAR 12/106

B-1049 Bruxelles/Brussel (Belgium)

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