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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.2.2008
COM(2008) 126 final

Proposal for a

COUNCIL REGULATION

**imposing certain restrictive measures on the illegal authorities of the island of Anjouan
in the Union of the Comoros**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. Considering the situation on the island of Anjouan in the Comoros, and in view of the measures taken by the Peace and Security Council of the African Union and its request to the EU for support, the Council decided, on XX/XX/2008, to impose restrictive measures on the illegal authorities of Anjouan and certain associated persons who are obstructing the process of reconciliation and threatening peace and security in the Comoros.
2. Common Position 2008/XXX/CFSP provides inter alia for the freezing of the funds and economic resources of the persons specified by the Council.
3. The freezing of funds and economic resources of designated persons falls within the scope of the Treaty. The Commission therefore proposes to implement it by means of a Council Regulation.
4. This Regulation should be accompanied by a notice regarding procedures for updating the lists of persons subject to the restrictive measures.

Proposal for a

COUNCIL REGULATION

imposing certain restrictive measures on the illegal authorities of the island of Anjouan in the Union of the Comoros

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301 thereof,

Having regard to Common Position 2008/XXX/CFSP concerning restrictive measures against the illegal authorities of the island of Anjouan in the Union of the Comoros¹,

Having regard to the proposal from the Commission,

Whereas:

- (1) On 25 October 2007, by letter addressed to the Secretary General/High Representative, the President of the African Union Commission asked for the support of the European Union and its Member States in the enforcement of the sanctions imposed by the Peace and Security Council of the African Union on the illegal authorities of Anjouan and certain associated persons.
- (2) Common Position 2008/XXX/CFSP provides for restrictive measures to be imposed on the illegal authorities of Anjouan and certain associated persons. The restrictive measures provided for in Common Position 2008/XXX/CFSP include freezing funds and economic resources belonging to the persons concerned.
- (3) This measure falls within the scope of the Treaty establishing the European Community. Accordingly, notably with a view to ensuring their uniform application by economic operators in all Member States, Community legislation is necessary to implement them as far as the Community is concerned.
- (4) For reasons of expediency, the Commission should be empowered to publish and amend the list of persons, entities and bodies whose funds and economic resources should be frozen.
- (5) This Regulation should enter into force on the day of its publication to ensure the effectiveness of the measures for which it provides,

¹ OJ L XXX, XXX.2008, p. XX.

HAS ADOPTED THIS REGULATION:

Article 1

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;
 - (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 Community’ means the territories of the Member States 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 and 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 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.
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 or entities concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe this prohibition.

Article 3

1. Article 2(2) shall not apply to the addition to frozen accounts of:
 - (a) interest or other remuneration on those accounts;
 - (b) payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to the provisions of this Regulation,provided that any such interest, other earnings and payments continue to be subject to Article 2(1).
2. Article 2(2) shall not prevent financial or credit institutions in the Community from crediting frozen accounts where they receive funds transferred by third parties to the account of a listed natural or legal person, entity or body, provided that any additions to such accounts are also frozen. The financial or credit institution shall inform the competent authorities about such transactions without delay.

Article 4

1. 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, provided 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;
 - (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.

Article 5

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 implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen as a result of negligence.

Article 6

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 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 shall forward such information, directly or through these competent authorities, to the Commission;
 - (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.

Article 7

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 violations and enforcement problems and judgments handed down by national courts.

Article 8

1. The Commission shall be empowered to:
 - (a) amend Annex I on the basis of decisions taken in respect of the Annex to Common Position 2008/.../CFSP;
 - (b) amend Annex II on the basis of information supplied by Member States.
2. A notice shall be published regarding the procedures for submitting information in relation to Annex I¹.

¹ OJ C [...], [...], p. [...].

Article 9

1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. Such sanctions shall 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 10

1. Member States shall designate the competent authorities referred to in this Regulation and identify them in, or through, the websites listed in Annex I.
2. Member States shall notify the Commission of their competent authorities without delay after the entry into force of this Regulation and shall notify it of any subsequent changes.

Article 11

This Regulation shall apply:

- (a) within the territory of the Community, 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 Community 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 Community.

Article 12

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 persons, entities and bodies referred to in Articles 2, 3 and 4

Organisation	Mohamed Bacar
Sex	M
Function	Self-proclaimed president, colonel
Place of birth	Barakani
Date of birth	5.5.1962
Passport No:	01AB01951/06/160, date of issue: 1.12.2006
Organisation	Jaffar Salim
Sex	M
Function	"Interior Minister"
Place of birth	Mutsamudu
Date of birth	26.06.1962
Passport No:	06BB50485/20 950, date of issue: 1.2.2007
Organisation	Mohamed Abdou Madi
Sex	M
Function	"Cooperation Minister"
Place of birth	Mjamaoué
Date of birth	1956
Passport No:	05BB39478, date of issue: 1.8.2006
Organisation	Ali Mchindra
Sex	M
Function	"Education Minister"
Place of birth	Cuvette
Date of birth	20.11.1958
Passport No:	03819, date of issue: 3.7.2004
Organisation	Houmadi Souf
Sex	M
Function	"Civil Service Minister"
Place of birth	Sima
Date of birth	1963
Passport No:	51427, date of issue: 4.3.2007
Organisation	Rehema Boinali
Sex	M
Function	"Energy Minister"
Place of birth	
Date of birth	1967
Passport No:	540355, date of issue: 7.4.2007

Organisation	Dhoihirou Halidi
Sex	M
Function	Cabinet Secretary, person associated with the illegal government of Anjouan
Place of birth	Bambao Msanga
Date of birth	8.3.1965
Passport No:	64528, date of issue: 19.9.2007
Organisation	Abdou Bacar
Sex	M
Function	Lieutenant-Colonel, person associated with the illegal government of Anjouan
Place of birth	Barakani
Date of birth	2.5.1954
Passport No:	54621, date of issue: 23.4.2007

ANNEX II

Websites for information on the competent authorities referred to in Articles 4, 6 and 10 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:

Commission of the European Communities
Directorate-General for External Relations
Directorate A. Crisis Platform and Policy Coordination in CFSP
Unit A.2. Crisis Management and Peace Building
CHAR 12/108
B-1049 Brussels
Telephone: (32-2) 296.61.33/295.55.85
Fax: (32-2) 299.08.73

**Notice to be published in the C series of the Official Journal on the same day as
publication of the Regulation**

Notice for the attention of the persons, entities and bodies on the lists provided for in Articles 2, 3 and 4 of Council Regulation (EC) No XXX/2008 imposing certain restrictive measures on the illegal authorities of the island of Anjouan in the Union of the Comoros³

The Council of the European Union has established that the persons, entities and bodies listed in Annex I are:

- (a) members of the illegal government of Anjouan;
- (b) natural or legal persons, entities or bodies associated with them.

Consequently, the Council has decided to enter these persons, entities and bodies on the list in Annex I.

Council Regulation (EC) No XXX/2008 provides for the freezing of all funds, other financial assets and economic resources belonging to the persons, entities and bodies listed in Annex I and that no funds and economic resources may be made available to them, whether directly or indirectly.

The attention of the persons, entities and bodies listed in Annex I is drawn to the possibility of making an application to the competent authorities of the relevant Member State(s) as indicated in the websites listed in Annex II to the Regulation in order to obtain an authorisation to use frozen funds for essential needs or specific payments in accordance with Article 4 of that Regulation.

The persons, entities and bodies concerned may submit at any time a request to the Council, together with any supporting documentation, that the decision to include and maintain them on the lists referred to above should be reconsidered, to the following address: Council of the European Union (Attn: XXXX), rue de la Loi 175 B-1048 Brussels.

Such requests will be considered when they are received. In this respect, the attention of the persons, entities and bodies concerned is drawn to the regular review by the Council of the lists according to Article XXX of Common Position 2008/XXX/CFSP.

The attention of the persons, entities and bodies concerned is also drawn to the possibility of challenging the Council's decision before the Court of First Instance of the European Communities, in accordance with the conditions laid down in Article 230(4) and (5) of the Treaty establishing the European Community.

³ OJ L [...], [...], p. [...].