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Proposal for a

COUNCIL REGULATION

concerning certain restrictive measures in respect of Eritrea

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

Proposal for a

COUNCIL REGULATION

concerning certain restrictive measures in respect of Eritrea

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 215(1) and (2) thereof,

Having regard to Council Decision 2010/127/CFSP of 1 March 2010 concerning restrictive measures against Eritrea¹,

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

Whereas:

- (1) On 1 March 2010, the Council adopted Council Decision 2010/127/CFSP concerning restrictive measures against Eritrea and implementing United Nations Security Council Resolution (UNSCR) 1907(2009).
- (2) The restrictive measures against Eritrea include a prohibition on the provision of technical assistance, training, financial and other assistance relating to military activities, as well as a prohibition on the procurement or obtaining of such technical assistance, training, financial and other assistance from Eritrea.
- (3) Council Decision 2010/127/CFSP also provides for the inspection of certain cargoes to and from Eritrea and, in the case of aircraft and vessels, for the supply of additional pre-arrival and pre-departure information in respect of goods brought into or out of the Union. This information must be provided in accordance with the provisions on entry and exit summary declarations of Council Regulation (EEC) No 2913/1992 of 12 October 1992 establishing the Community Customs Code².
- (4) Furthermore, Council Decision 2010/127/CFSP provides for financial restrictive measures against persons and entities designated by the United Nations Security Council or by the competent Sanctions Committee, as well as a prohibition on the supply, sale or transfer, of weapons and military equipment to those designated persons and entities and on the provision of related assistance and services. These restrictive measures should be imposed against individuals and entities, including but not limited to the Eritrean political and military leadership, and governmental and

¹ OJ L 51, 2.3. 2010, p19

² OJ L 302, 19.10.1992, p. 1

parastatal entities, designated by the UN as violating the arms embargo established in UNSCR 1907 (2009), as providing support from Eritrea to armed opposition groups which aim to destabilise the region, as obstructing the implementation of UNSCR 1862 (2009) concerning Djibouti, as harbouring, financing, facilitating, supporting, organising, training or inciting individuals or groups to perpetrate acts of violence or terrorist acts against States other than Eritrea, or their citizens in the region, or as obstructing the investigations or work of the Monitoring Group re-established by UNSCR 1853 (2008).

- (5) 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, legislation at the level of the Union is necessary in order to implement them as far as the Union is concerned.
- (6) For reasons of expediency, the Commission should be empowered to amend the Annexes to this Regulation on the basis of pertinent notification or information by the UN Security Council, the relevant UN Sanctions Committee and Member States, as appropriate.
- (7) The list of persons and entities to be subject to the restrictive measures, as set out in Annex I to this Regulation, should include the grounds for listing. The procedure for amending the list of natural and legal persons, entities and bodies to whom the restrictive measures apply should include the publication of a notice, in order to enable the listed persons, entities and bodies to exercise their right to be heard. Where observations are submitted, or where substantial new evidence is presented, the Commission, assisted by a Committee, should review its decision in light of those observations and inform the person, entity or body concerned accordingly.
- (8) 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 the Regulation, should be made public. 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 data³ 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 data⁴.
- (9) Member States should determine the penalties applicable to infringements of the provisions of this Regulation. The penalties provided for should be proportionate, effective and dissuasive.
- (10) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union⁵ and notably the right to an effective remedy and to a fair trial, the right to property and the

³ OJ L 8, 12.1.2001, p. 1.

⁴ OJ L 281, 23.11.1995, p. 31.

⁵ 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.

- (11) This Regulation also fully respects the obligations of Member States under the Charter of the United Nations and the legally binding nature of UN Security Council Resolutions.
- (12) 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) ‘technical assistance’ means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services, including verbal forms of assistance;
- (b) ‘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;
- (c) ‘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;

- (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 their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;
- (f) ‘Sanctions Committee’ means the Committee of the UN Security Council established pursuant to UN Security Council Resolution 751 (1992) and expanded by UNSCR 1844 (2008) and UNSCR 1907 (2009);
- (g) ‘territory of the Union’ means the territories to which the Treaty on the Functioning of the European Union is applicable, under the conditions laid down in the Treaty, including their airspace.

Article 2

It shall be prohibited:

- (a) to provide technical assistance related to military activities and to the provision, manufacture, maintenance and use of arms and of related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, directly or indirectly, to any natural or legal person, entity or body in, or for use in, Eritrea;
- (b) to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance for any sale, supply, transfer or export of arms and related materiel, or for the provision of related technical assistance and brokering services directly or indirectly to any natural or legal person, entity or body in, or for use in, Eritrea;
- (c) to obtain, directly or indirectly, technical assistance related to military activities, and to the provision, manufacture, maintenance and use of arms and of related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, from any natural or legal person, entity or body in Eritrea;
- (d) to obtain, directly or indirectly, financing or financial assistance related to military activities , including in particular grants, loans and export credit insurance for any sale, supply, transfer or export of arms and related materiel, or for the provision of related technical assistance and brokering services directly or indirectly, from any natural or legal person, entity or body in Eritrea;
- (e) to participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibitions referred to in points (a), (b), (c) and (d).

Article 3

1. In order to ensure the strict implementation of Article 1 of Council Decision 2010/127/CFSP, all goods brought into or leaving the customs territory of the Union on cargo aircraft and merchant vessels to and from Eritrea shall be made subject to pre-arrival or pre-departure information to be submitted to the competent authorities of the Member States concerned.
2. The rules governing the obligation to provide pre-arrival or pre-departure information, in particular the time limits to be respected and data required, shall be as determined in the relevant provisions concerning entry and exit summary declarations as well as customs declarations set out in Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁶, and in Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92⁷.
3. Furthermore, the person who brings the goods, or who assumes responsibility for the carriage of the goods on cargo aircraft and merchant vessels to and from Eritrea, or their representatives, shall declare whether the goods are covered by the Common Military List of the European Union⁸ and, if their export is subject to authorisation, specify the particulars of the export licence granted.
4. Until 31 December 2010 the entry and exit summary declarations and the required additional elements referred to in this Article may be submitted in written form using commercial, port or transport documentation, provided that they contains the necessary particulars.
5. As from 1 January 2011, the required additional elements referred to in this Article shall be submitted either in written form or using the entry and exit summary declarations as appropriate.

Article 4

1. All funds and economic resources belonging to, owned, held or controlled by natural or legal persons, entities or 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. Annex I shall include the natural and legal persons, entities and bodies designated by the UN Security Council or by the Sanctions Committee in conformity with paragraphs 15 and 18(b) of UNSCR 1907 (2009).

⁶ OJ L 302, 19.10.1992, p. 1.

⁷ OJ L 253, 11.10.1993, p. 1.

⁸ OJ C 65, 19.3.2009, p. 1

5. Annex I shall include the grounds for listing of listed persons, entities and bodies and the date of designation by the UN Security Council or the Sanctions Committee.
6. Annex I shall also include, where available, information on listed natural persons, for the purpose of identifying sufficiently the persons concerned. Such information shall only include:
 - (a) surname and given names, including alias names and titles, if any;
 - (b) date and place of birth;
 - (c) nationality;
 - (d) passport and identity card numbers;
 - (e) fiscal and social security numbers;
 - (f) gender;
 - (g) address or other information on whereabouts;
 - (h) function or profession.
7. Annex I may also include information as set out above on family members of the persons listed, provided that this information is necessary in a specific case for the sole purpose of verifying the identity of the listed natural person concerned.

Article 5

1. By way of derogation from Article 4, the competent authorities in the Member States, as indicated in the websites listed in Annex II, may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, 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; or
 - (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources;

Provided that the competent authority has notified the Sanctions Committee of that determination and its intention to grant an authorisation, and in the absence of a negative decision by the Sanctions Committee within three working days of such notification.

2. By way of derogation from Article 4, 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, after having determined that the funds or economic resources are necessary for extraordinary expenses, provided that such determination has been notified to the Sanctions Committee by the Member State concerned and that the determination has been approved by that Committee.
3. The relevant Member State shall inform the other Member States and the Commission of any authorisation granted under paragraphs 1 and 2.

Article 6

By way of derogation from Article 4, 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 the subject of a judicial, administrative or arbitral lien established before the date of adoption of UNSCR 1907 (2009) or of a judicial, administrative or arbitral judgement 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; and
- (e) the Sanctions Committee has been notified by the Member State of the lien or judgment.

Article 7

1. Article 4(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 4 has been designated by the Sanctions Committee or the Security Council;provided that any such interest, other earnings and payments continue to be subject to Article 4(1).
2. Article 4(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.

Article 8

1. It shall be prohibited:
 - (a) to provide technical assistance related to military activities and to the provision, manufacture, maintenance and use of arms and of related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, directly or indirectly, to any natural or legal person, entity or body listed in Annex 1;
 - (b) to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance for any sale, supply, transfer or export of arms and related materiel, or for the provision of related technical assistance and brokering services directly or indirectly to any person, entity or body listed in annex 1.
2. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the prohibition referred to in paragraph 1 shall be prohibited.

Article 9

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 implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen as a result of negligence.
2. The prohibitions set out in Article 2 (b) and (d), Article 4 (2) and Article 8 (1) (b) shall not give rise to liability of any kind on the part of the natural and legal persons, entities and bodies concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe these prohibitions.

Article 10

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 4, to the competent authorities of the Member States, as listed in Annex II, where they are resident or located, and shall transmit such information, directly or through these competent authorities, to the Commission;

- (b) cooperate with the competent authorities, as 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 11

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 12

1. The Commission shall be empowered to amend Annex I on the basis of determinations by the United Nations Security Council or the Sanctions Committee.
2. Where the United Nations Security Council or the Sanctions Committee decides to list a natural or legal person, entity or body for the first time, the Commission shall take a decision on the amendment of Annex I without delay.
3. The Commission shall also without delay publish a notice regarding the modalities for submitting information in relation to Annex I, providing the natural or legal persons, entities or bodies listed in Annex 1 with the opportunity to express their views.
4. Where observations are submitted, the Commission shall review its decision referred to in paragraph 2 in the light of those observations and after following the procedure referred to in Article 13(2). Those observations shall be forwarded to the Sanctions Committee. The Commission shall communicate the results of its review to the person, entity or body concerned. The result of the review shall also be forwarded to the Sanctions Committee.
5. Where the United Nations decides to delist a natural or legal person, entity or body, or to amend the identifying data of a listed natural or legal person, entity or body, the Commission shall amend Annex I accordingly.
6. Without prejudice to the rights and obligations of the Member States under the Charter of the United Nations, the Commission shall maintain all necessary contacts with the Sanctions Committee and the United Nations of Security Council for the purpose of the effective implementation of this Regulation. The Commission shall notably forward any amendments to Annex I to the Sanctions Committee.

Article 13

1. The Commission shall be assisted by a committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 999/468/EC shall apply.
3. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

Article 14

The Commission shall be empowered to amend Annex II on the basis of information supplied by Member States.

Article 15

1. The Commission shall process personal data in order to carry out its tasks under this Regulation. These tasks 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 website⁹;
 - (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. 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 grounds for listing 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.
3. 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.

Article 16

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.

⁹ http://ec.europa.eu/external_relations/cfsp/sanctions/consol-list_en.htm

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 17

1. Member States shall designate the competent authorities referred to in this Regulation and identify them in, or through, the websites listed in Annex II.
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 amendment thereto.
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 18

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.

Article 19

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

Natural and legal persons, entities or bodies referred to in Articles 4, 5, 6, 7, 8, 12 and 15

ANNEX II

Websites for information on the competent authorities referred to in Articles 5(2), 6, 7 and 10 and address for notifications to the European Commission

(To be completed by the 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 CFSP

Unit A.2. Crisis Management and Conflict Prevention

CHAR 12/106

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