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PROPOSAL

from:	Commission/High Representative
dated:	17 May 2013
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Subject:	Joint Proposal for a Council Regulation amending Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo

Delegations will find attached a proposal from the Commission and the High Representative of the EU for Foreign Affairs and Security Policy, submitted under a covering letter from Mr Jordi AYET PUIGARNAU to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: JOIN(2013) 17 final



EUROPEAN
COMMISSION

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

Brussels, 17.5.2013
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Joint Proposal for a

COUNCIL REGULATION

amending Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo

EXPLANATORY MEMORANDUM

- (1) Council Regulation (EC) No 1183/2005 gives effect to Council Decision 2010/788/CFSP and provides for certain measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, including a freezing of their assets.
- (2) By Council Decision 2012/811/CFSP of 20 December 2012 amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo, the Council amended the criteria for listing of natural or legal persons, entities or bodies in the Annex of that Decision in line with UNSCR 2078 (2012) of 28 November 2012.
- (3) Regulation (EC) No 1183/2005 should also be amended to take account of the requirement for legal safeguards provided for in Art 215(3) TFEU and the jurisprudence of the European Court of Justice.
- (4) These measures fall within the scope of the Treaty on the Functioning of the European Union and regulatory action at the level of the Union is therefore necessary in order to give effect to it, in particular with a view to ensuring its uniform application by economic operators in all Member States.
- (5) The High Representative of the Union for Foreign Affairs and Security Policy and the European Commission should propose to amend Regulation (EC) No 1183/2005 accordingly.

Joint Proposal for a

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amending Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo

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 2010/788/CFSP of 20 December 2010 concerning restrictive measures against the Democratic Republic of the Congo and repealing Common Position 2008/369/CFSP¹,

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

Whereas:

- (1) Council Regulation (EC) No 1183/2005 of 18 July 2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo² gives effect to measures provided for in Decision 2010/788/CFSP. Annex I to Regulation (EC) No 1183/2005 lists the natural and legal persons, entities and bodies covered by the freezing of funds and economic resources under that Regulation.
- (2) United Nations Security Council Resolution (UNSCR) 2078 (2012) of 28 November 2012 amended the criteria for the designation of persons and entities to be subject to the restrictive measures set out in paragraphs 9 and 11 of UNSCR 1807 (2008).
- (3) On 20 December 2012, the Council adopted Decision 2012/811/CFSP³ amending Decision 2010/788/CFSP in accordance with UNSCR 2078 (2012).
- (4) Regulation (EC) No 1183/2005 should also be amended to take account of the requirement for legal safeguards provided for in Art 215(3) TFEU and the jurisprudence of the European Court of Justice.
- (5) In order to ensure uniform conditions for the implementation of this Regulation implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) 182/2011 of the European

¹ OJ L 336, 21.12.2010, p. 30.

² OJ L 193, 23.7.2005, p. 1.

³ OJ L 101, 15.4. 2011, p. 24.

Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers⁴.

- (6) These measures fall within the scope of the Treaty on the Functioning of the European Union and regulatory action at the level of the Union is therefore necessary in order to give effect to it, in particular with a view to ensuring its uniform application by economic operators in all Member States.
- (7) Council Regulation (EC) No 1183/2005 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1183/2005 is amended as follows:

- (1) The following Article 2a is inserted:

“Article 2a

1. Annex I shall include the natural or legal persons, entities or bodies designated by the Sanctions Committee or the United Nations Security Council as:
 - (a) persons or entities acting in violation of the arms embargo and related measures as referred to in Article 1 of Decision 2010/788/ CFSP and Article 2 of Regulation (EC) No 889/2005⁵,
 - (b) political and military leaders of foreign armed groups operating in the Democratic Republic of the Congo (DRC) who impede the disarmament and the voluntary repatriation or resettlement of combatants belonging to those groups,
 - (c) political and military leaders of Congolese militias receiving support from outside the DRC, who impede the participation of their combatants in disarmament, demobilisation and reintegration processes,
 - (d) political and military leaders operating in the DRC and recruiting or using children in armed conflict contrary to applicable international law,
 - (e) individuals or entities operating in the DRC and committing serious violations involving the targeting of children or women in situations of armed conflict, including killing and maiming, sexual violence, abduction, and forced displacement,
 - (f) individuals or entities obstructing the access to or the distribution of humanitarian assistance in the eastern part of the DRC,

⁴ OJ L 55, 28.2.2011, p.13.

⁵ OJ L 152, 15.6.2005, p. 1.

- (g) individuals or entities illegally supporting armed groups in the eastern part of the DRC through illicit trade of natural resources, including gold,
 - (h) individuals or entities acting on behalf of or at the direction of a designated individual or entity owned or controlled by a designated individual,
 - (i) individuals or entities who plan, sponsor or participate in attacks against peacekeepers of the United Nations Organization Stabilization Mission in the DRC (MONUSCO).
2. Annex I shall include only the following information on listed natural or legal persons, entities or bodies:
 - (a) for identification purposes: in the case of natural persons, 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; in the case of legal persons, entities or bodies, name, place and date of registration, registration number and place of business.
 - (b) the date on which the natural or legal person, entity or body has been included in Annex I;
 - (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.”
- (2) Article 9 is replaced by the following:

“Article 9

1. The Commission shall be empowered to:
 - (a) amend Annex I on the basis of determinations made by either the Sanctions Committee or the United Nations Security Council; and
 - (b) amend Annex II on the basis of information supplied by Member States.
2. 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 for the purpose of the effective implementation of this Regulation.
3. The Commission shall state, in Annex I, the grounds for its decision to include an entry in that Annex, and shall communicate its decisions, including the grounds for the listing to the listed persons, entities or bodies if the address is known or, if the address is not known, draw its decisions to the attention of the

listed persons, entities or bodies through the publication of a notice in the Official Journal of the European Union, providing such person, entity or body with an opportunity to submit observations.

4. Persons, entities or bodies which were included in Annex I before the entry into force of this Regulation and continue to be listed, may also submit observations to the Commission.
5. Where observations are submitted or where substantial new evidence is presented, the Commission shall forward the observations or evidence submitted to the Sanctions Committee.
6. The Commission shall review its decision in light of the observations submitted and any other relevant information, following the procedure referred to in Article 9(a)(2), and inform the person, entity or body of the outcome of the review. The result of the review shall also be forwarded to the Sanctions Committee.”

(3) The following Article 9a is inserted:

“Article 9a

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011⁶.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.”

(4) The following Article 9b is inserted:

“Article 9b

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 of Annex I;
 - (b) including the contents of Annex I in the electronic, consolidated list of persons, groups and entities subject to EU financial sanctions available on the website⁷;
 - (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.
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

⁶ OJ L 55, 28.2.2011, p.13.

⁷ http://eeas.europa.eu/cfsp/sanctions/consol-list_en.htm

necessary for the preparation of Annex I to this Regulation. 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” 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 2

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*