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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.11.2009
COM(2009) 652 final

Proposal for a

COUNCIL REGULATION

imposing certain specific restrictive measures in respect of Guinea

EXPLANATORY MEMORANDUM

- (1) On 27 October 2009 the Council adopted Common Position 2009/788/CFSP in response to the violent crackdown by security forces on political demonstrators in Conakry on 28 September 2009, the reported human rights abuses following the crackdown and the violent repression and political stalemate in the country. The Common Position imposed an embargo on the export of arms to Guinea, and imposed a travel ban on 42 individuals named in the Annex to the Common Position, being members of the ruling NCDD and persons closely associated with them.
- (2) Council is preparing a subsequent CFSP Common Position calling for additional restrictive measures including (i) the freezing of funds and economic resources of the individuals and entities listed in the Annex to the Common Position; and (ii) a prohibition on the provision of technical and financial assistance and other services related to military activities to any person in Guinea.
- (3) These measures fall within the scope of the Treaty establishing the European Community. The Commission therefore proposes, in anticipation, a Regulation implementing these restrictive measures.
- (4) The restrictive measures adopted under this Regulation shall be implemented in full respect of fundamental rights, in particular in light of recent case law of the European Court of Justice.
- (5) Several provisions of the proposed Regulation are taken from the Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy¹.
- (6) The EU Best Practices for the Effective Implementation of Restrictive Measures² provide additional guidance for the application of the proposed measures.

¹ Council document No 15114/05.
² Council document No 8666/1/08.

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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 Council Common Position 2009/...../CFSP of [.....]concerning restrictive measures against Guinea,

Having regard to the proposal from the Commission,

After consulting the European Data Protection Supervisor,

Whereas:

- (1) Common Position 2009/....../CFSP provides for certain restrictive measures concerning members of the National Council for Democracy and Development (NCDD) and individuals associated with them, responsible for the violent repression of 28 September 2009 or the political stalemate in the country
- (2) These measures include the freezing of funds and economic resources of the natural or legal persons, entities and bodies listed in the Annex to the Common Position as well as a prohibition on the provision of technical and financial assistance and other services related to military activities to any person in Guinea or for use in Guinea.
- (3) These measures fall within the scope of the Treaty establishing the European Community and, therefore, notably with a view to ensuring their uniform application by economic operators in all Member States, Community legislation is necessary in order to implement them as far as the Community is concerned.
- (4) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably the right to an effective remedy and to a fair trial, the right to property and the right to protection of personal data. This Regulation should be applied in accordance with those rights and principles.
- (5) For the implementation of this Regulation some personal data concerning natural and legal persons, entities and bodies whose funds and economic resources must be frozen in accordance with this Regulation must be made public and treated in an appropriate manner under 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.

- (6) Provision should be made for the handling of classified information at the Commission.
- (7) 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) financial instruments listed in section C of Annex I of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ L 145, 30.4.2004, p1);
 - (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;

³ OJ L 8, 12.1.2001, p.1.

⁴ OJ L 281, 23.11.1995, p.31.

- (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) 'territory of the Community' means the territories to which the Treaty establishing the European Community is applicable, under the conditions laid down in the Treaty.

Article 2

It shall be prohibited:

- (a) to provide, directly or indirectly, technical assistance related to military activities, to goods and technology listed in the Common Military List of the European Union⁵, or related to the provision, manufacture, maintenance and use of goods included in that list to any natural or legal person, entity or body in, or for use in, Guinea;
- (b) to provide, directly or indirectly, financing or financial assistance related to military activities, or to goods and technology listed in the Common Military List of the European Union including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for any provision of related technical assistance to any natural or legal person, entity or body in, or for use in, Guinea;
- (c) to participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibitions referred to in points (a) and (b)

Article 3

1. All funds and economic resources belonging to, owned, held or controlled by the natural or 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 the natural or legal persons, entities or bodies listed in Annex I.
3. Annex I shall consist of natural or legal persons, entities and bodies who, in accordance with Article [...] of Common Position 2009/.../CFSP, have been identified by the Council as being:
 - (a) members of the National Council for Democracy and Development (NCDD);
 - (b) natural persons associated with them, responsible for the violent repression of 28 September 2009 or the political stalemate in Guinea, or
 - (c) legal persons, entities or bodies associated with natural persons at (a) and (b).

⁵ OJ C 65, 19.3.2009, p. 1.

4. 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.

Article 4

The prohibitions set out in Articles 2(b) and 3(2) shall not give rise to any liability of any kind on the part of the natural and legal persons, entities and 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 the prohibition in question.

Article 5

1. By way of derogation from Article 3, the competent authorities of the Member States as 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 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 in this case that the Member State has notified the grounds on which it considers that a specific authorisation should be granted to all other Member States and to the Commission at least two weeks prior to authorisation.
2. The relevant Member State shall inform the other Member States and the Commission of any authorisation granted under paragraph 1.

Article 6

By way of derogation from Article 3, a competent authority 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 in question are the subject of a judicial, administrative or arbitral lien established prior to the date on which the person, entity or body referred to in Article 3 was included in Annex I, or of a judicial, administrative or arbitral judgment rendered prior to that date;

- (b) the funds or economic resources in question 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 lien or judgment has been notified by the Member State to the Commission.

Article 7

1. Article 3(2) shall not apply to the addition to frozen accounts of:
 - (a) interest or other earnings on those accounts; or
 - (b) payments, and transfers of financial instruments 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 has been included in Annex I,provided that any such interest, other earnings, payments or financial instruments are frozen in accordance with Article 3(1).
2. Article 3(2) shall not prevent financial or credit institutions in the Community 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 relevant competent authority about any such transaction without delay.

Article 8

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.

Article 9

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 2, to the competent authority listed in Annex II for the country where they are resident or located and shall transmit such information, directly or through the competent authority listed in Annex II, to the Commission; and

- (b) co-operate with that competent authority 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 10

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 11

1. Annex I shall include only the following information on listed natural persons:
- (a) for identification purposes: 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;
 - (b) the date referred to in Articles 6(a) and 7(1)(b);
 - (c) the grounds for listing such as function or other sufficient due cause.
2. 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.

Article 12

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 2009/.../CFSP; and
 - (b) amend Annex II on the basis of information supplied by Member States.
2. The Commission shall state individual and specific reasons for the decisions taken pursuant to paragraph 1(a), providing the individual, entity or body concerned with an opportunity to express his, her or its view on the matter.
3. 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) including 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.
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 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.
 6. When the Commission receives classified information, it shall treat it in accordance with Commission Decision 2001/844/EC, ECSC, Euratom⁷ and, where applicable, the agreement on the security of classified information concluded between the European Union and the submitting State.
 7. Documents classified at a level corresponding to ‘TRES SECRET UE/EU TOP SECRET’, ‘SECRET UE’ or ‘CONFIDENTIEL UE’ shall not be released without the consent of the originator.

Article 13

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 those rules without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 14

Where there is, in this Regulation, 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.

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

⁷ OJ L 317, 3.12.2001, p. 1.

Article 15

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 16

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 and bodies referred to in Article 3

ANNEX II

List of competent authorities referred to in Articles 5, 6, 7(2) and 9 and address for notifications to the European Commission

(To be completed by the Member States)

A. Competent authorities in each Member State:

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

B. Address for notifications to or other communication with 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

B-1049 Bruxelles/Brussel

Belgium

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