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EUROPEAN COMMISSION

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

Brussels, 24.1.2011
COM(2011) 26 final

2011/0009 (NLE)

Joint proposal for a

COUNCIL REGULATION

**amending Regulation (EC) No 765/2006 concerning restrictive measures against
President Lukashenko and certain officials of Belarus**

EXPLANATORY MEMORANDUM

- (1) Council Decision 2010/639/CFSP of 25 October 2010 provides for the application of restrictive measures against, among others, persons responsible for the violations of international electoral standards in the presidential elections in Belarus on 19 March 2006, and the related crackdown on civil society and democratic opposition.
- (2) Following similar problems with the 19 December presidential elections, the High Representative of the EU for Foreign Affairs and Security Policy and the Commission propose to freeze the funds and economic resources of the persons responsible for the violations of international electoral standards and for the related crackdown on civil society and democratic opposition, and of those natural or legal persons, entities and bodies associated with them. This should be done by means of a Regulation based on Article 215 of the Treaty on the Functioning of the European Union (TFEU). To that end it is proposed to amend Council Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus.
- (3) Article 291(2) TFEU provides that, where uniform conditions for implementing legally binding Union acts such as Regulations based on Article 215 TFEU are needed, those acts shall confer implementing powers on the Commission or, in duly justified specific cases, on the Council.
- (4) The CFSP Decision provides for the Council to make available a statement of reasons to a listed individual, entity or body, for the opportunity to respond, and for a review procedure to be followed, when a natural or legal person, entity or body included in the Annexes to that Decision submits observations or when new evidence is presented. This is with a view to ensuring respect, in particular, for the rights of the defence and the right to judicial review. These rights should also be respected by the Regulation.
- (5) The Court of Justice has jurisdiction to review the decisions to designate a natural or legal person, entity or body pursuant to both the CFSP Decision and the Regulation in accordance with Article 275 and 263 TFEU, respectively.

Joint proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2010/639/CFSP of 25 October 2010 concerning restrictive measures against certain officials of Belarus¹ as amended by Council Decision 2011/.../CFSP of ... 2011²,

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

After consulting the European Data Protection Supervisor,

Whereas:

- (1) Council Decision 2010/639/CFSP as amended provides for the freezing of funds and economic resources of, *inter alia*, the persons who are responsible for the violations of international electoral standards in the presidential elections in Belarus on 19 December 2010, and the crackdown on civil society and democratic opposition, as well as of those natural or legal persons, entities or bodies associated with them.
- (2) 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, regulatory action at the level of the Union is necessary in order to implement them.
- (3) 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 and the right to the protection of personal data. This Regulation should be applied in accordance with those rights and principles.
- (4) Council Decision 2010/639/CFSP requires the communication of the decision, including the grounds for listing, to a listed person, entity or body, and provides for the opportunity to respond, and for a review procedure to be followed, when a natural or

¹ OJ L 280, 26.10.2010, p. 18.

² OJ L ..., ...2011, p.

legal person, entity or body included in the Annexes to that Decision submits observations or when new evidence is presented. This is with a view to ensuring respect, in particular, for the rights of the defence and the right to judicial review. These rights should also be respected by the Regulation.

- (5) It is appropriate to empower the Commission to amend the list of persons, entities and bodies whose funds and economic resources should be frozen. It should review its listing decisions in light of the observations and information submitted by the natural or legal person, entity or body concerned and by the Member States.
- (6) 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 are to be frozen in accordance with this Regulation, should be made public. Any processing of personal data 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.
- (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

Regulation (EC) No 765/2006 is amended as follows:

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

“Article 2

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 or in Annex IA 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 or in Annex IA.
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.

³ OJ L 8, 12.1.2001, p. 1.

⁴ OJ L 281, 23.11.1995, p. 31.

4. Annex I shall consist of the natural or legal persons, entities and bodies referred to in Article 2(1)(a) of Council Decision 2010/639/CFSP as amended.
5. Annex IA shall consist of the natural or legal persons, entities and bodies referred to in Article 2(1)(b) of Council Decision 2010/639/CFSP as amended.”

(2) The following Article is inserted:

“Article 2b

1. Annexes I and IA 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 Article 4(1)(b);
 - (c) the grounds for listing.
2. Annexes I and IA 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.”

(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 are:
 - (a) necessary to satisfy the basic needs of persons listed in Annex I or in Annex IA 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.

2. 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 are 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.
3. Member States shall inform the other Member States and the Commission of any authorisation granted under paragraph 1 or 2.”

(6) Article 8 is replaced by the following:

“Article 8

1. The Commission shall be empowered to:
 - (a) amend Annexes I and IA on the basis of decisions taken in respect of Annexes IV and V to Council Decision 2010/639/CFSP, respectively; and
 - (b) amend Annex II on the basis of information supplied by Member States.
2. The Commission shall communicate its decision to the natural or legal person, entity or body included in Annex I or in Annex IA, either directly, if the address is known, or through the publication of a notice, providing such natural or legal person, entity or body with an opportunity to present observations.
3. Where observations are submitted or where substantial new evidence is presented, the Commission shall forward the observations or evidence submitted to the Working Party on Eastern Europe and Central Asia of the Council requesting each Member State to submit its observations and, where appropriate, further information. The period for submission of observations and further information shall not exceed three months.
4. The Commission shall review its decision in light of the observations and information submitted by the natural or legal person, entity or body included in Annex I or Annex IA and the Member States.

The Commission shall inform the natural or legal person, entity or body of the outcome of the review.

5. 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 and Annex IA to this Regulation;

- (b) including the contents of these annexes in the electronic, consolidated list of persons, groups and entities subject to EU financial sanctions available on the Commission website⁵;
 - (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.
6. 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 Annex I or of Annex IA to this Regulation concerned. Such data shall not be made public or exchanged.
7. 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.”
- (7) The following Article is inserted:

“Article 9b

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.”

- (9) The text set out in Annex I is inserted into Regulation (EC) No 765/2006 as Annex IA.
- (10) Annex II to Regulation (EC) No 765/2006 is amended as set out in Annex II.

Article 2

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*

⁵ http://ec.europa.eu/external_relations/cfsp/sanctions/consol-list_en.htm

ANNEX I

“ANNEX IA

List of natural and legal persons, entities or bodies referred to in Article 2(1), 2(2) and 2(5)

(To be completed by Council)”

ANNEX II

Annex II (Websites for information on the competent authorities referred to in Articles 3, 4(2) and 5, and address for notifications to the European Commission) to Regulation (EC) No 765/2006 is amended as follows:

(1) The Annex heading is replaced by the following:

“Websites for information on the competent authorities referred to in Articles 3, 4(2), 5 and 8(7), and address for notifications to the European Commission”

(2) The section ‘Address for notifications to the European Commission’ is replaced by the following:

“Address for notifications to or other communication with the European Commission:

European Commission

Foreign Policy Instruments Service

Unit FPIS.2

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