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WORKING PAPER

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NOTE

From:	EEAS
To:	Working Party of Foreign Relations Counsellors
Subject:	Proposal for a Council Decision concerning restrictive measures against serious human rights violations and abuses – EEAS explanatory note

EUROPEAN EXTERNAL ACTION SERVICE



SG. AFFGEN. 8

Sanctions Policy Division

Brussels, 19 October 2020

Subject: Proposal for a Council Decision concerning restrictive measures against serious human rights violations and abuses – EEAS explanatory note

On 9 December 2019, the Foreign Affairs Council agreed on the political appropriateness of establishing an European Union (EU) global human rights sanctions regime and the High Representative tasked the European External Action Service (EEAS) to present a non-paper, taking into account the Ministerial discussion and written input from Member States, in order to take work forward.

On 16 June 2020, the Working Party on Human Rights (COHOM) agreed on the EEAS non-paper (*Elements for an EU global human rights sanctions regime*, EAS/0475/20).

The Proposal of the High Representative of the Union for Foreign Affairs and Security Policy to the Council for a Council Decision concerning restrictive measures against serious human rights violations and abuses has been developed on this basis with the following components.

Article 1 – Scope

Article 1 sets out the scope of the regime.

Article 1(1) – Definition

Article 1(1) provides the definition of acts targeted under this regime. To note that Article 1(1)(c) includes an exhaustive list of serious human rights violations or abuses whereas Article 1(1)(d) is a non-exhaustive list of other violations or abuses of human rights to the extent that those violations or abuses are widespread, systematic or otherwise serious. [REDACTED]

[REDACTED]

Article 1(2) – Sources of law

In form of a non-exhaustive list, Article 1(2) details the sources of law to which regard should be had when applying Article 1(1). [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Article 1(3) – State and non-State actors

Article 1(3) clarifies that natural or legal persons, entities or bodies may include state and non-State actors as well as other actors exercising effective control or authority over a territory. [REDACTED].

Article 1(4) – Specific elements for non-State actors

Article 1(4) lays out the specific elements which shall be taken into account when discussing listing proposals with regard to other non-State actors under Article 1(3)(c). [REDACTED].

Article 2 – Travel ban

The travel ban can apply to natural persons responsible for or otherwise involved in serious human rights violations or abuses as set out in Article 1(1). In line with standard practice, the listing of associated persons is included (e.g. also part of the cyber and chemical weapons Decisions).

[REDACTED], the exemptions and derogations provided are standard. They mirror those in other EU autonomous sanctions regimes (incl. in cyber and chemical weapons regimes) and are in line with the Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy.

Article 3 – Asset freeze

The asset freeze can apply to natural or legal persons, entities or bodies responsible for or otherwise involved in serious human rights violations or abuses as set out in Article 1(1). In line with standard practice, the listings of associated persons is included (e.g. also part of the cyber and chemical weapons Decisions).

Article 3(2) sets out the prohibition to make funds or economic resources available.

[REDACTED], the exemptions and derogations provided are standard. They mirror those in other EU autonomous sanctions regimes (incl. in cyber and chemical weapons regimes) and are in line with the Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy.

Article 4 – Derogation for humanitarian purposes

Article 4(1) allows Member States to derogate from the asset freeze (Article 3(1)) and the prohibition to make funds available (Article 3(2)) for humanitarian purposes.

Article 4(2) sets out the obligation to inform the other Member States and the Commission of any authorisations granted under this Article within four weeks following the authorisation.

Both paragraphs are based on the wording provided for in the Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions), especially point 87 thereof. A number of other EU sanctions regimes targeting violations or abuses of human rights also include such a derogation (Democratic Republic of Congo, Syria and Nicaragua).

The inclusion of the derogation provides additional legal certainty to humanitarian operators and Member States, allows the Council to avoid potential negative impact on humanitarian action and is in line with the 25 November 2019 conclusions on Humanitarian Assistance and International Humanitarian Law. In addition, lessons learnt from COVID-19 include that having an appropriate framework to grant humanitarian derogations is critical. It allows humanitarian actors to deliver aid, while tackling global shortage of supplies, closure of borders and re-allocation of resources to meet extraordinary needs. Existing humanitarian exceptions have allowed the EU to provide stronger defences on its sanctions regimes against scrutiny and misinformation launched by certain third countries.

Article 5 – Establishing and amending the Annex

Article 5(1) sets out the procedure for establishing and amending the Annex of the Decision. [REDACTED].

Other articles

Article 6 (statement of reasons and identifying information), Article 7 (data protection), Article 8 (no claims clause), Article 9 (third States), Article 10 (review) and Article 11 (entry into force) are standard articles and follow common practice for Decisions establishing sanctions regimes.

Preamble

Recital 1 recalls European Union values and its relation with the objectives of the EU's Common Foreign and Security Policy.

Recital 2 recalls the significant involvement of non-State actors in human rights abuses worldwide, States' primary responsibility to promote and protect human rights, as well as the universality, indivisibility, interdependence and interrelatedness of human rights. [REDACTED].

Recital 4 stresses the importance of international human rights law and of the interaction between international human rights law and international humanitarian law when considering the application of targeted restrictive measures under this Decision. It also recalls existing geographical restrictive measures regimes addressing human rights violations or abuses. [REDACTED].

Recital 5 highlights that these targeted measures are consistent with the Union's overall strategy in this area and add value to the Union's overall human rights toolbox.

[REDACTED]