



EUROPEAN COMMISSION

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

Brussels, 16.9.2011
COM(2011) 565 final

2011/0241 (NLE)

Joint Proposal for a

COUNCIL REGULATION

**amending Regulation (EC) No 194/2008 renewing and strengthening the restrictive
measures in respect of Burma/Myanmar**

EXPLANATORY MEMORANDUM

Council Regulation (EC) No 194/2008 provides for certain measures to be taken in relation to Burma/Myanmar, including restrictions on certain exports from Burma/Myanmar and a freezing of the assets of certain individuals and entities.

By Council Decision 2011/239/CFSP of 12 April 2011¹ amending Council Decision 2010/232/CFSP renewing restrictive measures against Burma/Myanmar, the Council has agreed on certain amendments.

The High Representative of the EU for Foreign Affairs and Security Policy and the Commission propose to amend Council Regulation (EC) No 194/2008 accordingly.

Additionally, the provisions in Regulation (EC) No 194/2008 relating to amendment to the lists of targeted persons and entities should 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.

¹ OJ L 101 , 15 April 2011, p. 24 .

Joint Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 194/2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar

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 2011/239/CFSP of 12 April 2011² amending Decision 2010/232/CFSP renewing restrictive measures against Burma/Myanmar,

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

Whereas:

- (1) Council Regulation (EC) No 194/2008 of 25 February 2008 renewing and strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 817/2006³ provides for certain measures to be taken in relation to Burma/Myanmar, including restrictions on certain exports from Burma/Myanmar and a freezing of the assets of certain individuals and entities.
- (2) By Decision 2011/239/CFSP, the Council has made amendments to Decision 2010/232/CFSP⁴. Certain of the amendments, in particular those relating to the freezing of funds of certain individuals and entities, require further action by the Union.
- (3) Council Regulation (EC) No 194/2008 should be amended accordingly.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 194/2008 is amended as follows:

- (1) Article 11 is replaced by the following:

² OJ L 101, 15 April 2011, p. 24

³ OJ L 66, 10.3.2008, p. 1.

⁴ OJ L 105, 27.4.2010, p. 32.

“Article 11

1. All funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities and bodies listed in Annex VI 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 VI.
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. The prohibition set out in paragraph 2 shall not give rise to liability of any kind on the part of the natural or legal persons or entities concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe this prohibition.”

(2) The following Article 11a is inserted:

“Article 11a

1. Annex VI shall include
 - (a) senior members of the former State Peace and Development Council (SPDC), Burmese authorities in the tourism sector, senior members of the military, the Government or the security forces who formulate, implement or benefit from policies that impede Burma/Myanmar's transition to democracy, and members of their families;
 - (b) senior serving members of the Burmese military and members of their families;
 - (c) natural or legal persons, entities or bodies associated with persons referred to in point (a) and (b).
2. Annex VI 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;
 - (c) the grounds for listing.

3. Annex VI 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 18 is replaced by the following:

“Article 18

1. The Commission shall be empowered to:
 - (a) amend Annex IV on the basis of information supplied by Member States; and
 - (b) amend Annexes V, VI and VII on the basis of decisions taken in respect of Annex I, II and III to Council Decision 2010/232/CFSP.
2. The Commission shall state, in Annex VI, the grounds for its decision to include an entry in that Annex, and shall draw its decisions to the attention of the listed persons, entities and bodies through the publication of a notice, providing such person, entity or body as has been listed with an opportunity to submit observations.
3. Where such observations are submitted, the Commission shall review its decision in light of the observations and any other relevant information and inform the person, entity or body accordingly.
4. 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 V, VI and VII 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.
5. 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 VI to this Regulation. Such data shall not be made public or exchanged.
6. For the purposes of this Regulation, the Commission unit listed in Annex IV is designated as “controller” for the Commission within the meaning of Article

⁵

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

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