

Technical Note: Proposal for a Regulation of the European Parliament and of the Council protecting against the effects of the extra-territorial application of legislation adopted by a third country [...] (recast), Brussels, 6.2.2015

The purpose of this proposal made by the European Commission is to undertake a codification of Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom. The new Regulation will supersede the various acts incorporated in it, fully preserving the content of the acts being codified.

At the same time, it also makes certain amendments to Articles 5 and 12 of Regulation (EC) No 2271/96, with a view to delegating powers to the Commission.

Summary¹ of the Regulation (EC) No 2271/96:

The aim of the Regulation is to protect the economic and/or financial interests of natural or legal persons against the effects of the extra-territorial application of legislation. The laws in question are specified in the Annex to the Regulation. The protection concerns international trade and/or the movement of capital and related commercial activities between the Union and third countries.

According to the Regulation, extra-territorial application of laws, regulations and other legislative instruments enacted by third countries violate international law and impede the attainment of the aforementioned objectives of the Union. Thus, it is necessary to protect the established legal order by removing, neutralising, blocking or otherwise countering the effects of the foreign legislation concerned.

This Regulation applies to the following persons (Article 11):

1. any natural person being a resident² in the Union and a national of a Member State;
2. any legal person incorporated within the Union;
3. nationals of the Member States established outside the Community and to shipping companies established outside the Community and controlled by nationals of a Member State, if their vessels are registered in that Member State in accordance with its legislation³;
4. any other natural person being a resident in the Union, unless that person is in the country of which he is a national.

Any of these persons whose economic and financial interests are affected by foreign legislation must inform the Commission accordingly within 30 days from the date on which it obtained such information. (Article 2)

If a court or tribunal or an administrative authority located outside the Community handed down a decision giving effect, directly or indirectly, to the laws specified in the Annex, it would not be recognised or enforceable in any manner (Article 3). The persons referred to in this Regulation shall not comply with any requirement or prohibition based on the laws specified in the Annex. Nonetheless, a person may be authorised to comply with the said requirements or prohibitions in extent that non-compliance would seriously damage their interests or those of the Union. The

¹The summary is based on the information provided on the official web-site of the European Union, Summaries of EU legislation, http://europa.eu/legislation_summaries/internal_market/single_market_capital/124400_en.htm, retrieved on 24.02.2015

² For the purposes of paragraph 1, 'being a resident in the Union' means being legally established in the Union for a period of at least six months within the 12-month period immediately prior to the date on which, under this Regulation, an obligation arises or a right is exercised.

³ Article 1 (2) of Council Regulation (EEC) No 4055/86

Commission shall submit a draft of the appropriate measures. The Commission should be empowered to adopt delegated acts for establishing criteria for such authorisation. (Article 5)

Any persons concerned shall be also entitled to recover any damages caused by the application of the laws with extraterritorial effect. (Article 6)

The Member States determine the sanctions to be imposed in the event of breach of any relevant provisions of this Regulation. (Article 9)

The Regulation is directly applicable in all Member States.

According to the Annex, the Regulation concerns the following US legal acts and “actions based thereon or resulting therefrom” (Article 1):

1. 'National Defense Authorization Act for Fiscal Year 1993', Title XVII 'Cuban Democracy Act 1992', sections 1704 and 1706
2. 'Cuban Liberty and Democratic Solidarity Act of 1996'
3. 'Iran and Libya Sanctions Act of 1996'
4. 1 CFR (Code of Federal Regulations) Ch. V (7-1-95 edition) Part 515 - Cuban Assets Control Regulations, subpart B (Prohibitions), E (Licenses, Authorizations and Statements of Licensing Policy) and G (Penalties)

New in the Regulation:

According to the Regulation (EU) No 182/2011⁴, the Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU for the purpose of amending Annex I to this Regulation [list of laws] as well as “for establishing criteria for the authorisation of persons to comply fully or partially with any requirement or prohibition, including requests of foreign courts, in cases where non-compliance would seriously damage their interests or those of the Union”.

This power to adopt delegated acts conferred on the Commission for a period of five years from 20 February 2014 and can be extended. The European Parliament or the Council can also revoke it. (Article 12)

The Commission should carry out appropriate consultations, including at expert level, to consultations, inform European Parliament and the Council, and shall be assisted by the Committee on Extra-territorial Legislation. According to the Regulation (EU) No 182/2011, this committee should be composed of representatives of the Member States.

Implementing powers should be conferred on the Commission.

Articles 5 and 12 of the Regulation were modified accordingly.

Status of the Regulation: Proposal submitted by the Commission to the Council and the European Parliament on 6.02.2015. Awaiting committee [INTA] decision in the European Parliament.

⁴ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).