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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 and actions based thereon or resulting therefrom (recast)**



## EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying the law of the Union so as to make it clearer and more accessible to citizens, thus giving them new opportunities and the chance to make use of the specific rights it gives them.

This aim cannot be achieved so long as numerous provisions that have been amended several times, often quite substantially, remain scattered, so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

For this reason a codification of rules that have frequently been amended is also essential if the law is to be clear and transparent.

2. On 1 April 1987 the Commission decided<sup>1</sup> to instruct its staff that all acts should be codified after no more than ten amendments, stressing that this is a minimum requirement and that departments should endeavour to codify at even shorter intervals the texts for which they are responsible, to ensure that their provisions are clear and readily understandable.
3. The Conclusions of the Presidency of the Edinburgh European Council (December 1992) confirmed this<sup>2</sup>, stressing the importance of codification as it offers certainty as to the law applicable to a given matter at a given time.

Codification must be undertaken in full compliance with the normal procedure for the adoption of acts of the Union.

4. The purpose of this proposal 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<sup>3</sup>. The new Regulation will supersede the various acts incorporated in it<sup>4</sup>, fully preserving the content of the acts being codified. At the same time, it is also appropriate to make certain substantive amendments to Articles 5 and 12 of Regulation (EC) No 2271/96, with a view to delegating powers to the Commission for establishing the criteria for the application of a provision contained in the second paragraph of Article 5 of that Regulation. Therefore, the proposal is being presented in the form of a recast.
5. The recast proposal was drawn up on the basis of a preliminary consolidation, in 22 official languages, of Regulation (EC) No 2271/96 and the instruments amending it, carried out by the Publications Office of the European Union, by means of a data-processing system. Where the Articles have been given new numbers, the correlation between the old and the new numbers is shown in a table set out in Annex III to the recast Regulation.

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<sup>1</sup> COM(87) 868 PV.

<sup>2</sup> See Annex 3 to Part A of the Conclusions.

<sup>3</sup> Entered in the legislative programme for 2014.

<sup>4</sup> See Annex II to this proposal.



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 and actions based thereon or resulting therefrom (recast)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty  $\boxtimes$  on the Functioning of the European Union  $\boxtimes$  , and in particular Article  $\boxtimes$  64  $\boxtimes$  ,  $\boxtimes$  Article 207(2)  $\boxtimes$  and  $\boxtimes$  Article 352  $\boxtimes$  thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>5</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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↓ new

- (1) Council Regulation (EC) No 2271/96<sup>6</sup> has been substantially amended several times<sup>7</sup>. Since further amendments are to be made, that Regulation should be recast in the interests of clarity.

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↓ 2271/96 recital 1 (adapted)

- (2) The objectives of the  $\boxtimes$  Union  $\boxtimes$  include contributing to the harmonious development of world trade and to the progressive abolition of restrictions on international trade.

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↓ 2271/96 recital 2 (adapted)

- (3) The  $\boxtimes$  Union  $\boxtimes$  endeavours to achieve to the greatest extent possible the objective of free movement of capital between Member States and third countries, including the removal of any restrictions on direct investment — including investment in real estate — establishment, the provision of financial services or the admission of securities to capital markets.

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<sup>5</sup> OJ C [...], [...], p. [...].

<sup>6</sup> 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 (OJ L 309, 29.11.1996, p. 1).

<sup>7</sup> See Annex II.



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↓ 2271/96 recital 3 (adapted)

- (4) A third country has enacted certain laws, regulations and other legislative instruments which purport to regulate activities of natural and legal persons under the jurisdiction of the Member ☒ States ☒.
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↓ 2271/96 recital 4

- (5) By their extra-territorial application such laws, regulations and other legislative instruments violate international law and impede the attainment of the aforementioned objectives.
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↓ 2271/96 recital 5 (adapted)

- (6) Such laws, regulations and other legislative instruments, and actions based thereon or resulting therefrom affect or are likely to affect the established legal order and have adverse effects on the interests of the ☒ Union ☒ and the interests of natural and legal persons exercising rights under the Treaty ☒ on the Functioning of the European Union (TFEU) ☒.
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↓ 2271/96 recital 6 (adapted)

- (7) Under those exceptional circumstances, it is necessary to protect the established legal order, the interests of the ☒ Union ☒ and the interests of the said natural and legal persons ☒ at Union level ☒, in particular by removing, neutralising, blocking or otherwise countering the effects of the foreign legislation concerned.
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↓ 2271/96 recital 7

- (8) The request to supply information under this Regulation does not preclude a Member State from requiring information of the same kind to be provided to the authorities of that State.
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↓ 2271/96 recital 8

- (9) The Council has adopted the Joint Action 96/668/CFSP<sup>8</sup> in order to ensure that the Member States take the necessary measures to protect those natural and legal persons whose interests are affected by the aforementioned laws and actions based thereon, insofar as those interests are not protected by this Regulation.

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<sup>8</sup> Joint Action of 22 November 1996 adopted by the Council on the basis of Articles J.3 and K.3 of the Treaty on European Union concerning measures protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (96/668/CFSP) (OJ L 309, 29.11.1996, p. 7).



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↓ 37/2014 Art. 1 and Annex .6  
(adapted)  
⇒ new

- (10) 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 ☒ 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 ☒. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (11) ☒ In order to ensure uniform conditions for ☒ the implementation of ☒ this ☒ Regulation, ☒ implementing powers should be conferred on the Commission ☒. Those ☒ powers ☒ should be ☒ exercised ☒ in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>9</sup>.

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↓ 2271/96 recital 11 (adapted)

- (12) For the adoption of certain provisions of this Regulation the ☒ TFEU ☒ does not provide powers other than those of Article ☒ 352 ☒.

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↓ 2271/96 (adapted)

HAVE ADOPTED THIS REGULATION:

### *Article 1*

This Regulation provides protection against and counteracts the effects of the extra-territorial application of the laws, regulations and other legislative instruments ☒ specified in Annex I ☒ , and of actions based thereon or resulting therefrom, where such application affects the interests of persons, referred to in Article 11, engaging in international trade and/or the movement of capital and related commercial activities between the ☒ Union ☒ and third countries.

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↓ 37/2014 Art. 1 and Annex .6(1)  
(adapted)

The Commission shall be empowered to adopt delegated acts in accordance with Article 12 to add to Annex I laws, regulations or other legislative instruments of third countries having extraterritorial application and causing adverse effects on the interests of the Union and the interests of natural and legal persons exercising rights under the ☒ TFEU ☒, and to delete laws, regulations or other legislative instruments when they no longer have such effects.

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<sup>9</sup> 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).



### *Article 2*

Where the economic and/or financial interests of any person referred to in Article 11 are affected, directly or indirectly, by the laws specified in Annex I or by actions based thereon or resulting therefrom, that person shall inform the Commission accordingly within 30 days from the date on which it obtained such information. Insofar as the interests of a legal person are affected, ~~the~~ obligation to inform the Commission applies to the directors, managers and other persons with management responsibilities.

At the request of the Commission, such person shall provide all information relevant for the purposes of this Regulation in accordance with the request from the Commission within 30 days from the date of the request.

All information shall be submitted to the Commission either directly or through the competent authorities of the Member States. Should the information be submitted directly to the Commission, the Commission will inform immediately the competent authorities of the Member States in which the person who gave the information is resident or incorporated.

### *Article 3*

All information supplied in accordance with Article 2 shall only be used for the purposes for which it was provided.

Information which is by nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. It shall not be disclosed by the Commission without the express permission of the person providing it.

Communication of such information shall be permitted where the Commission is obliged or authorised to do so, in particular in connection with legal proceedings. Such communication must take into account the legitimate interests of the person concerned that his or her business secrets should not be divulged.

This Article shall not preclude the disclosure of general information by the Commission. Such disclosure shall not be permitted if it is incompatible with the original purpose of such information.

In the event of a breach of confidentiality, the originator of the information shall be entitled to obtain that it be deleted, disregarded or rectified, as the case may be.

### *Article 4*

No judgment of a court or tribunal and no decision of an administrative authority located outside the Union giving effect, directly or indirectly, to the laws specified in Annex I or to actions based thereon or resulting therefrom, shall be recognised or be enforceable in any manner.

### *Article 5*

No person referred to in Article 11 shall comply, whether directly or through a subsidiary or other intermediary person, actively or by deliberate omission, with any requirement or prohibition, including requests of foreign courts, based on or resulting, directly or indirectly, from the laws specified in Annex I or from actions based thereon or resulting therefrom.



Persons may be authorised, in accordance with Article 7(b) and ☐ the procedure referred to in Article ☐ 8, to comply fully or partially to the extent that non-compliance would seriously damage their interests or those of the ☐ Union ☐. ~~The criteria for the application of this provision shall be established in accordance with the procedure set out in Article 8.~~ When there is sufficient evidence that non-compliance would cause serious damage to a natural or legal person, the Commission shall expeditiously submit to the committee referred to in Article 8 (1) a draft of the appropriate measures to be taken under the terms of ☐ this ☐ Regulation.

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The Commission shall be empowered to adopt delegated acts in accordance with Article 12 to establish the criteria for the application of the second paragraph of this Article.

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### Article 6

Any person referred to in Article 11 who is engaging in an activity referred to in Article 1 shall be entitled to recover any damages, including legal costs, caused to that person by the application of the laws specified in Annex I or by actions based thereon or resulting therefrom.

Such recovery may be obtained from the natural or legal person or any other entity causing the damages or from any person acting on its behalf or intermediary.

Regulation (EU) No 1215/2012 of the European Parliament and of the Council<sup>10</sup> shall apply to proceedings brought and judgments given under this Article. Recovery may be obtained on the basis of the provisions of Sections 2, 3, 4, 6 and 7 of Chapter II of that Regulation , as well as in accordance with Article 67 of that Regulation , through judicial proceedings instituted in the Courts of any Member State where that person, entity, person acting on its behalf or intermediary holds assets.

Without prejudice to other means available and in accordance with applicable law, the recovery could take the form of seizure and sale of assets held by those persons, entities, persons acting on their behalf or intermediaries within the ☐ Union ☐, including shares held in a legal person incorporated within the ☐ Union ☐.

### Article 7

For the implementation of this Regulation the Commission shall:

- (a) inform the European Parliament and the Council immediately and fully of the effects of the laws, regulations and other legislative instruments and ensuing actions mentioned in Article 1, on the basis of the information obtained under this Regulation, and make regularly a full public report thereon;
- (b) grant authorisation under the conditions ☐ referred to ☐ in Article 5 and, when laying down the time limits with regard to the delivery by the Committee of its

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<sup>10</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).



opinion, take fully into account the time limits which have to be complied with by the persons which are to be subject of an authorisation;

- (c) publish a notice in the *Official Journal of the European* ☒ Union ☒ on the judgments and decisions to which Articles 4 and 6 apply;
- (d) publish in the *Official Journal of the European* ☒ Union ☒ the names and addresses of the competent authorities of the Member States referred to in ☒ the third paragraph of ☒ Article 2.

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↓ 37/2014 Art. 1 and Annex .6(3) (adapted)
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#### Article 8

1. For the purpose of implementing Article 7(b), the Commission shall be assisted by the Committee on Extra-territorial Legislation. Implementing acts shall be adopted in accordance with the examination procedure referred to in paragraph 2 of this Article. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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↓ 2271/96 (adapted)
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#### Article 9

Each Member State shall determine the sanctions to be imposed in the event of breach of any relevant provisions of this Regulation. Such sanctions must be effective, proportional and dissuasive.

#### Article 10

The Commission and the Member States shall inform each other of the measures taken under this Regulation and of all other relevant information pertaining to this Regulation.

#### Article 11



1. This Regulation shall apply to:



- a) any natural person being a resident in the ☒ Union ☒ and a national of a Member State;
- b) any legal person incorporated within the ☒ Union; ☒
- c) any natural or legal person referred to in Article 1 (2) of Council Regulation (EEC) No 4055/86<sup>11</sup>;
- d) any other natural person being a resident in the ☒ Union ☒, unless that person is in the country of which he is a national;

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<sup>11</sup> Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries (OJ L 378, 31.12.1986, p. 1).





- e) any other natural person within the  Union , including its territorial waters and air space and in any aircraft or on any vessel under the jurisdiction or control of a Member State, acting in a professional capacity.



 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. 

↓ 37/2014 Art. 1 and Annex .6(4)  
⇒ new



#### Article 12

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 1  and in Article 5  shall be conferred on the Commission for a period of five years from 20 February 2014. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 1  and in Article 5  may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 1  and Article 5  shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by four months at the initiative of the European Parliament or of the Council.



#### Article 13

Regulation (EC) No 2271/96 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.



*Article 14*

This Regulation shall enter into force on the ☒ twentieth ☒ 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 European Parliament  
The President*

*For the Council  
The President*