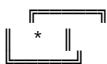


22 October 1996

A4-0329/96



REPORT

on the proposal for a Council Regulation (EC) on protecting against the effects of the application of certain legislation of certain third countries, and actions based thereon or resulting therefrom (COM(96)0420 - C4-0519/96 - 96/0217(CNS))

Committee on External Economic Relations

Rapporteur: Mr Peter Kittelmann

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By letter of 4 October 1996 the Council consulted Parliament, pursuant to Articles 113 and 235 of the EC Treaty, on the proposal for a Council Regulation (EC) on protecting against the effects of the application of certain legislation of certain third countries, and actions based thereon or resulting therefrom.

At the sitting of 21 October 1996 the President of Parliament announced that he had referred this proposal to the Committee on External Economic Relations as the committee responsible and to the Committee on Foreign Affairs, Security and Defence Policy and the Committee on Legal Affairs and Citizens' Rights for their opinions.

At its meeting of 25 September 1996 the Committee on External Economic Relations had appointed Mr Kittelmann rapporteur.

It considered the Commission proposal and the draft report at its meetings of 25 September 1996, 9 October 1996 and 22 October 1996.

At the last meeting it adopted the draft legislative resolution unanimously.

The following took part in the vote: De Clercq, chairman; Sainjon and Pex, vice-chairmen; Kittelmann, rapporteur, Cot (for Imbeni, pursuant to Rule 138(2)), Elchlepp, Falconer, Ferrer, Konecny, Kreissl-Dörfler, Malerba, Mann Erika, Miranda de Lage, Posselt (for Valdivielso de Cué), Rübzig (for Moorhouse), Schwaiger, Smith, Tindemans (for Verwaerde) and Wiersma (for Moniz).

The opinion of the Committee on Foreign Affairs, Security and Defence Policy is attached. The Committee on Legal Affairs and Citizens' Rights will not deliver an opinion.

The report was tabled on 22 October 1996.

The deadline for tabling amendments is Wednesday, 23 October 1996 at noon.

A
LEGISLATIVE PROPOSAL

Proposal for a Council Regulation (EC) on protecting against the effects of the application of certain legislation of certain third countries, and actions based thereon or resulting therefrom (COM(96)0420 - C4-0519/96 - 96/0217(CNS))

The proposal is approved with the following amendments:

| Commission text(1) | Amendments |
|--|---|
| | |
| | (Amendment 1) Article 1 (2) |
| On the basis of a proposal of the Commission, the Council may add or delete laws to or from the Annex. | On the basis of a proposal of the Commission and the <u>opinion of the European Parliament</u> , the Council may add or delete laws to or from the Annex. |
| | (Amendment 2) Article 7 (a) |
| a. inform the Council regularly on 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 to make yearly a full public report thereon; | a. inform the Council <u>and the European Parliament</u> regularly on 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 to make yearly a full public report thereon; |
| | (Amendment 3) Article 8 |
| For the purpose of the implementation of paragraphs b. and c. of Article 7, the Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission. | For the purpose of the implementation of paragraphs b. and c. of Article 7, the Commission shall be assisted by <u>an advisory</u> committee composed of the representatives of the Member States and chaired by the representative of the Commission. |

(1) OJ C 296, 8.10.1996, p. 10

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighed in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith.

In that event the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down, if necessary by a vote, according to the urgency of the matter.

The opinion shall be recorded in the minutes; each Member State shall also be entitled to require its point of view to be recorded in the minutes.

The Commission shall take the opinion of the committee into account as far as possible. It shall inform the committee of the extent to which it has taken its opinion into account.

DRAFT LEGISLATIVE RESOLUTION

Legislative resolution embodying Parliament's opinion on the proposal for a Council Regulation (EC) on protecting against the effects of the application of certain legislation of certain third countries, and actions based thereon or resulting therefrom (COM(96)0420 - C4-0519/96 - 96/0217(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council, COM(96)0420 - 96/0217(CNS)¹⁾,
 - having been consulted by the Council pursuant to Articles 113 and 235 of the EC Treaty (C4-0519/96),
 - having regard to Rule 58 of its Rules of Procedure,
 - having regard to the report of the Committee on External Economic Relations and the opinion of the Committee on Foreign Affairs, Security and Defence Policy (A4-0329/96),
1. Approves the Commission proposal, subject to Parliament's amendments;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 189a(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 5. Instructs its President to forward this opinion to the Council and Commission.

¹⁾ OJ C 296, 8.10.1996, p. 10.

B
EXPLANATORY STATEMENT

1. The proposal for a regulation on protecting against the effects of the application of certain legislation of certain third countries, and actions based thereon or resulting therefrom, tabled by the Commission²⁾, takes into account the guidelines set at the 15 July meeting of the Council, which identified a range of measures to be deployed by the EU in response to the US "Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996" (Helms Burton Act).

A revised version of the Commission proposal³⁾ extends the effects of the proposed regulation to the "Iran and Libya Sanctions Act of 1996" (d'Amato Act).

The European Parliament was consulted on 4 October 1996, and urgency was requested by Council, in view of a decision to be taken at its session of 28 October 1996. In its letter requesting Parliament's opinion⁴⁾, the Council indicated its intention to modify the legal base of the Commission proposal, as well as the committee procedure provided for in article 8. The Council also announced that a common action within CFSP would be adopted in parallel with the regulation.

2. The European Parliament in its resolution of 24 May 1996⁵⁾ had already condemned the Helms-Burton Act "and all the unilateral measures adopted in the US against world free trade" had called on the Commission "to propose a regulation imposing a ban on compliance with such measures", and had called on the Council and the Commission "to pursue - and deepen - the dialogue with the USA in accordance with the Transatlantic Declaration, not least with regard to relations with countries such as Cuba, Iran and Libya, and to consider joint actions in accordance with Title V of the Treaty on European Union".

On July 15, the Council of the EU adopted the following conclusions:

"The Council, while reaffirming its concern to promote democratic reform in Cuba, recalled the deep concern expressed by the European Council over the extraterritorial effects on the "Cuban Liberty and Democratic Solidarity (Liberdad)" Act adopted by the United States and similar pending legislation regarding Iran/Libya. It noted the widespread international objections to this legislation. It called upon President Clinton to waive the provisions of Title III and expressed serious concern at the measures already taken to implement Title VI of the Act.

The Council identified measures which could be deployed by the EU in response to the damage to the interests of the EU companies resulting from the implementation of the Act. Among these are the following:

²⁾ COM(96) 420 fin., 31.07.1996.

³⁾ COM(96) 420 fin. 2, 13.09.1996.

⁴⁾ C4-0519/96.

⁵⁾ C 166, 10.6.1996, p. 277.

- a move to a WTO dispute settlement panel,
- changes in the procedures governing entry by representatives of US companies to EU Member States,
- the use/introduction of legislation within the EU to neutralise the extraterritorial effects of the US legislation,
- the establishment of a watch list of US companies filing Title III actions".

On July 16, President Clinton suspended implementation for six months of Title III of the Act, which allows US citizens or companies to sue foreign companies that "traffic" in US property in Cuba confiscated by Fidel Castro's regime.

On August 5, President Clinton signed into law the d'Amato Act.

In its September 4 meeting, the European Parliament had a debate on the subject of the US measures, which showed, in your rapporteur's opinion, a wide agreement on the need for the Union to take prompt and effective countermeasures.

On September 30, having concluded fruitless consultations with the US under the WTO dispute settlement procedure, the EU requested that a WTO panel be constituted in order to examine the US legislation.

On October 16, the decision to set up a panel was delayed by the opposition of the US, but presumably only until the next meeting of the Dispute Settlement Body (November 20).

3. It is impossible to analyze, in this context, the details of the procedures set out in the proposal for a regulation. It should be pointed out, however that the case under examination highlights the fact that an EU approach to such trade policy problems is by far more effective than action by the various Member States: this precedent should be borne in mind when revising national and Union competencies in the sector of external economic relations within the IGC process.

Furthermore, while the general aim of the regulation is to be supported, certain points will have to be delucidated; in particular, it is not clear how the proposal will apply to the d'Amato act, where the damage to EU interest stems mainly from the obstacles to future investments by EU companies.

On the institutional side, however, the European Parliament should

- a) safeguard its rights and ensure that it receives the best possible information on implementation aspects (see Ams. 1 and 2),
- b) substitute an advisory committee to the management committee, in order to speed up implementation and defend the Commission's executive role (Am. 3),
- c) strongly protest with Council on the unnecessary two-month delay between the Commission proposal and Parliament's consultation: such procedures, which force Parliament to act under time pressure, have become, regrettably, a routine practice by Council,

- d) make sure that its competencies under the CFSP are safeguarded, in view of the common action to be taken.

22 October 1996

OPINION
(Rule 147)

for the Committee on External Economic Relations

on the proposal for a Council Regulation on protecting against the effects of the application of certain legislation of certain third countries, and actions based thereon or resulting therefrom (COM(96)0420 - C4-0519/96) (Kettlemann report)

Committee on Foreign Affairs, Security and Defence Policy

Draftsman: Luciano Pettinari

PROCEDURE

At its meeting of 25 September 1996 the Committee on Foreign Affairs, Security and Defence Policy appointed Mr Pettinari draftsman.

At its meeting of 22 October 1996 it considered the draft opinion and adopted the conclusions as a whole unanimously.

The following were present for the vote: Fernández-Albor, chairman; Daskalaki, García Arias (for Lang), Glante (for Balfe), Gomolka, Kristoffersen, Lenz, Maij-Weggen (for Poettering), Newens, Oostlander, Sakellariou, Sauquillo (for Barón Crespo pursuant to Rule 138(2) of the Rules of Procedure), Schroedter (for Cohn-Bendit), Stevens, Terrón I Cusi (for Mendiluce) and Titley.

EXPLANATORY STATEMENT

1. The European Parliament has always unequivocally condemned unilateral and extraterritorial trade measures by the United States, the spirit and letter of which breach the rules laid down by the World Trade Organization (WTO).

2. In the case of Cuba, this general condemnation has been voiced in the unanimous adoption of a number of clearly worded resolutions, such as that of 16 September 1993 (Melandri report) on the embargo against Cuba and the Torricelli Act, in which it called on the US authorities to revoke these unilateral measures so as to encourage greater trade with Cuba which, in the light of the various positions adopted by the Commission, Council and European Parliament, is the best way of helping the Cuban economy open up to international trade. The principle of extraterritorial measures was also condemned in the Commission communication to the Council and the European Parliament on relations between the European Union and Cuba (COM(95)0306), as well as in the corresponding Newens report, which 'upholds the right of European entrepreneurs to develop legitimate trading relations' with Cuba and calls on 'the United States not to implement measures designed to impose penalties on those who trade with Cuba'.

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Another important parliamentary debate was held in May 1996 in Strasbourg, when the Commission made a statement strongly condemning the adoption of the Helms-Burton Act on Cuba and the planned adoption of the D'Amato Act on Libya and Iran. Parliament's resolution of 24 May 1996 (B4-0658/96) calls on 'the Commission to propose a regulation imposing a ban on compliance' with US extraterritorial measures.

3. At its meeting of 15 July 1996, the Council finally decided to introduce legislation to combat the extraterritorial effects of US legislation, following the example of Great Britain and Canada, in response to the unacceptable commercial and political provocation of the Helms-Burton Act, which had brought transatlantic relations to their lowest ebb. It is true that President Bill Clinton has postponed the most controversial provisions of the Helms-Burton Act until January 1997, but this fails to address the fact that the very existence of this law is unacceptable in principle, while the subsequent adoption of the D'Amato Act on Libya and Iran calls for an urgent response from Europe. On 21 August 1996, the Council issued a Presidency declaration on behalf of the European Union concerning the D'Amato Act, in which it requests 'the US administration to reflect on the effects of the new legislation, in particular its capacity to damage the international trading system and urges it to work with its partners to protect and promote an open international trading environment'.

4. Also to be welcomed is the Council's decision to establish a panel within the WTO on the Helms-Burton and D'Amato legislation with a view to securing the repeal of these extraterritorial measures.

5. The regulation protecting against the effects of the application of certain legislation of certain third countries under consideration here is therefore a reflection of Europe's political determination to oppose these US measures, which are prompted more by electoral considerations than anything else. The regulation is totally in keeping with the political position set out by the European Parliament and as such should certainly be approved, the only regret being that it was not drawn up before the Helms-Burton and D'Amato legislation.

6. The text of the proposal prompts a number of political considerations:

- the United States must under no circumstances be allowed to think that they can impose their trade policy on third countries and all unilateral and extraterritorial instruments should therefore be rejected; in this connection, a welcome should be given to the provision in the regulation under which the Council and the Commission, with the approval of the European Parliament, can extend the effects of the regulation to any legislation by any country which resembles the Helms-Burton or D'Amato Acts;

- Europe and the United States are deeply divided as to what is the most appropriate general policy to pursue in order to foster reform in Cuba. It is clear that the European Union has opted for the path of dialogue, as shown by the negotiations for the conclusion of a framework cooperation agreement between the EC and Cuba, even though these talks have been suspended for the moment. The difference of opinion is at political level and it is solely at this level that the transatlantic dialogue should be conducted, while the United States must not think that the Member States will necessarily fall in line behind its policies;

- the same principle holds true for Iran and Libya, two countries which are radically different from Cuba both in terms of the problems involved and their geopolitical significance. The European Union is engaged in a 'critical dialogue' with Iran, about which the European Parliament has frequently expressed

doubts, but which is part of Europe's efforts to take an independent political line which its transatlantic partner should respect; the same is true for Libya and it is to be hoped that the conditions can be created for the country to take part in the Euro-Mediterranean dialogue launched in Barcelona.

7. To summarize, Europe's efforts to pursue a common foreign and security policy and a common trade policy are perfectly legitimate and beyond reproach and no one should think such efforts can be conditioned or inspired by motives other than the pursuit of the European Union's legitimate political and commercial interests.

CONCLUSIONS

The European Parliament's Committee on Foreign Affairs, Security and Defence Policy therefore recommends that the proposal for a Council regulation protecting against the effects of the application of certain legislation of certain third countries, and actions based thereon or resulting therefrom, should be adopted as a matter of urgency.