COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.4.2004
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2004/0114 (CNS)

C6-0041/04

Proposal for a

COUNCIL REGULATION

imposing certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY)

(presented by the Commission)

EXPLANATORY MEMORANDUM

(1) On 16 April 2003, the Council adopted Common Position 2003/280/CFSP which provides that Member States have to take the necessary measures to prevent the entry into, or transit through, their territories of certain persons who are engaged in activities which help persons at large to evade justice for crimes for which the International Criminal Tribunal for the former Yugoslavia (ICTY) has indicted them or are otherwise acting in a manner which could obstruct the ICTY's effective implementation of its mandate. These restrictive measures were renewed by Common Position 2004/293/CFSP of 30 March 2004.

(2) When renewing these restrictive measures, Member States indicated that they will adopt a Common Position on further measures and invited the Commission to submit a proposal for a Regulation on the freezing of certain funds and economic resources in support of the effective implementation of the mandate of the ICTY. The draft Common Position provides for the Council to adopt a list of those persons indicted by ICTY whose funds and economic resources should be frozen.

(3) The ICTY has the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. This Tribunal was established by means of UN Security Council Resolutions 808 and 827 (1993), which are based on Chapter VII of the UN Charter. The Security Council argued that the widespread and flagrant violations of humanitarian law occurring within the territory of the former Yugoslavia constituted a threat to international peace and security and that the establishment as an *ad hoc* measure of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would contribute to the restoration and maintenance of peace.

(4) On 28 August 2003, the UN Security Council adopted Resolution 1503 (2003), which calls on all States to intensify cooperation with and render all necessary assistance to the ICTY, particularly to bring all fugitive indictees to the ICTY.

(5) The Commission proposes to adopt legislation based on Articles 60, 301 and 308 of the EC Treaty. The persons, groups and entities whose funds and economic resources should be frozen are not part of a regime of a third country, and the objective of the restrictive measures is to help to preserve international peace and security. Their position under the Treaty is therefore similar to that of the persons, groups and entities whose funds and economic resources are frozen because of indication of involvement in international terrorism (Regulations (EC) Nos 2580/2001 and 881/2002).

(6) The proposed provisions and set-up are in line with recent Regulations imposing financial restrictions, and in particular with the relevant provisions of Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe.

(7) In order to prevent, in so far as possible, before the proposed Regulation enters into force, funds and economic resources that should be frozen from being moved, the Commission asks for the contents thereof not to be disclosed to the public before the Regulation is approved by the Council and published in the Official Journal of the European Union.

2004/0114 (CNS)

Proposal for a

COUNCIL REGULATION

imposing certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60, 301 and 308 thereof,

Having regard to Common Position 2004/… /CFSP on further measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia,[1]

Having regard to the proposal from the Commission,[2]

Having regard to the opinion of the European Parliament,[3]

Whereas:

(1) The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by means of UN Security Council Resolutions 808 and 827 (1993), which are based on Chapter VII of the UN Charter. The ICTY has the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. The Security Council argued that the widespread and flagrant violations of humanitarian law occurring within the territory of the former Yugoslavia constituted a threat to international peace and security and that the establishment as an *ad hoc* measure of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would contribute to the restoration and maintenance of peace.

(2) On 28 August 2003, UN Security Council Resolution 1503 (2003) called on the ICTY to complete all work in 2010 and on all States to intensify cooperation with and render all necessary assistance to the ICTY, particularly to bring all fugitive indictees to the ICTY.

(3) Common Position 2004/…/CFSP stipulates that certain funds and economic resources should be frozen in support of effective implementation of the mandate of the ICTY. This additional restrictive measure should be used so as to control all dealings with

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1 OJ L , , p. .
2 OJ C , , p. .
3 OJ C , , p. .

funds and economic resources owned by persons indicted by the ICTY who are still at large and to ban any support they might receive from within the Community.

(4) The freezing of funds and economic resources falls within the scope of the Treaty and, therefore, in order to avoid any distortion of competition, Community legislation is necessary to implement this measure as far as the Community is concerned. For the purposes of this Regulation, the territory of the Community should be deemed to encompass the territories of the Member States to which the Treaty is applicable, under the conditions laid down in that Treaty.

(5) For reasons of expediency, the Commission should be empowered to amend the Annexes to this Regulation.

(6) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

1. For the purposes of this Regulation, the following definitions shall apply:

(1) "funds" means financial assets and benefits of every kind, including but not limited to:

(a) cash, cheques, claims on money, drafts, money orders and other payment instruments;

(b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;

(c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;

(d) interest, dividends or other income on or value accruing from or generated by assets;

(e) credit, right of set-off, guarantees, performance bonds or other financial commitments;

(f) letters of credit, bills of lading, bills of sale;

(g) documents evidencing an interest in funds or financial resources;

(h) any other instrument of export financing;

(2) "freezing of funds" means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management;

(3) "economic resources" means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services;

(4) "freezing of economic resources" means preventing their use to obtain funds, goods or services in any way, including, but not limited to, the selling, hiring or mortgaging of them.

2. Nothing in this Regulation shall be construed as preventing the crediting of the frozen accounts by financial institutions that receive funds transferred by third parties to the account of the listed person or entity, provided that any additions to such accounts are also frozen. The financial institutions shall immediately inform the competent authorities of such transactions.

Article 2

1. All funds and economic resources belonging to, or owned or held by, natural persons indicted by the ICTY, and listed in Annex I, shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural persons listed in Annex I.

3. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to at paragraphs 1 and 2 shall be prohibited.

Article 3

1. By way of derogation from Article 2, the competent authorities of the Member States as listed in Annex II may authorise the release of certain frozen funds or economic resources or the making available of certain frozen funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources concerned are:

(a) necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

(b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;

(c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources;

(d) necessary for extraordinary expenses, provided that the relevant competent authority has notified the grounds on which it considers that a specific authorisation should be granted to all other competent authorities and the Commission at least two weeks prior to the authorisation.

The relevant competent authority shall inform the competent authorities of the other Member States and the Commission of any authorisation granted under this paragraph.

2. Article 2(2) shall not apply to the addition to frozen accounts of:

(i) interest or other earnings on those accounts; or

(ii) payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to this Regulation,

provided that any such interest, other earnings and payments continue to be subject to Article 2(1).

Article 4

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy and to the provisions of Article 284 of the Treaty, natural and legal persons, entities and bodies shall:

(a) supply immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 2, to the competent authorities of the Member States listed in Annex II where they are resident or located, and shall transmit such information, directly or through these competent authorities, to the Commission;

(b) cooperate with the competent authorities listed in Annex II in any verification of this information.

2. Any additional information directly received by the Commission shall be made available to the competent authorities of the Member State concerned.

3. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

Article 5

The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen as a result of negligence.

Article 6

The Commission and the Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with any other relevant information at their disposal in connection with this Regulation, in particular information in respect of violation and enforcement problems and judgments handed down by national courts.

Article 7

The Commission shall be empowered to:

(a) amend Annex I, taking into account the Council decisions implementing Common Position 2004/…/CFSP, and

(b) amend Annex II on the basis of information supplied by Member States.

Article 8

The Member States shall lay down the rules on sanctions applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The sanctions provided for must be effective, proportionate and dissuasive.

The Member States shall notify those rules to the Commission without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 9

This Regulation shall apply:

(a) within the territory of the Community, including its airspace;

(b) on board any aircraft or any vessel under the jurisdiction of a Member State;

(c) to any person inside or outside the territory of the Community who is a national of a Member State;

(d) to any legal person, group or entity which is incorporated or constituted under the law of a Member State;

(e) to any legal person, group or entity doing business within the Community.

Article 10

This Regulation shall enter into force on the day 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

ANNEX I

List of persons referred to in Article 2

(1) Ante GOTOVINA. Date of birth: 12 October 1955. Place of birth: island of Pasman, Zadar, Croatia.

(2) Radovan KARADZIC. Date of birth: 19 June 1945. Place of birth: Savnik, Montenegro, Serbia and Montenegro.

(3) Ratko MLADIC. Date of birth: 12 March 1942. Place of birth: Kalinovik, Bosnia-Herzegovina.

ANNEX II

List of competent authorities referred to in Articles 3 and 4

(to be completed)

BELGIUM

CZECH REPUBLIC

DENMARK

GERMANY

ESTONIA

GREECE

SPAIN

FRANCE

IRELAND

ITALY

CYPRUS

LATVIA

LITHUANIA

LUXEMBOURG

HUNGARY

MALTA

NETHERLANDS

AUSTRIA

POLAND

PORTUGAL

SLOVENIA

SLOVAKIA

FINLAND

SWEDEN

UNITED KINGDOM

EUROPEAN COMMUNITY

Commission of the European Communities

Directorate-General for External Relations

Directorate CFSP

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