

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.05.2005
COM(2005) 227 final

2005/0101 (CNS)

Proposal for a

COUNCIL REGULATION

imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo

(presented by the Commission)

EXPLANATORY MEMORANDUM

(1) In view of the continuing illicit flow of weapons within and into the Democratic Republic of the Congo, the UN Security Council, acting under Chapter VII of the Charter of the United Nations, adopted Resolution 1596 (2005) of 18 April 2005, amending the arms embargo imposed by UN Security Council Resolution 1493 (2003) and taking additional restrictive measures in respect of the Democratic Republic of the Congo. The additional restrictive measures concern restrictions on admission and financial restrictive measures against persons designated by the competent United Nations Sanctions Committee as acting in violation of the arms embargo imposed against the Democratic Republic of the Congo.

(2) In order to implement the restrictive measures set out in UN Security Council Resolution 1596 (2005), the Council has adopted Common Position 2005/XXX/CFSP.

(3) The freezing of funds and economic resources foreseen by Common Position 2005/XXX/CFSP falls within the scope of the Treaty. The Commission proposes to implement these measures in the Community by means of a Council Regulation.

(4) The proposed measures are similar to those imposed by means of Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and by means of Regulation (EC) No 1763/2004 imposing certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY), to give but two examples.

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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 2005/xxx/CFSP of xx.xx 2005 concerning restrictive measures against the Democratic Republic of the Congo,[1]

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

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

Whereas:

(1) In view of the continuing illicit flow of weapons within and into the Democratic Republic of the Congo, the UN Security Council, acting under Chapter VII of the Charter of the United Nations, adopted Resolution 1596 (2005) of 18 April 2005, hereinafter referred to as UNSCR 1596 (2005), providing, inter alia, for financial restrictive measures against persons designated by the competent United Nations Sanctions Committee as acting in violation of the arms embargo imposed against the Democratic Republic of the Congo by United Nations Security Council Resolutions 1493 (2003) and 1596 (2005).

(2) Common Position 2005/XXX/CFSP provides, inter alia, for implementation of the financial restrictive measures against persons designated by the competent United Nations Sanctions Committee.

(3) Those measures fall within the scope of the Treaty. In order to avoid any distortion of competition Community measures are therefore necessary to implement them 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 the Treaty.

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

(5) 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.

(6) The Treaty, in Articles 60 and 301, empowers the Council to take, under certain conditions, measures aimed at the interruption or reduction of payments or movement

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1 OJ L […] […], p. […]
2 OJ C […] […], p.[…]
3 OJ C […] […], p. […]

of capital and of economic relations with regard to third countries. The measures laid down in this Regulation, targeted also at individual persons not directly linked to the government of a third country, are necessary to attain this objective of the Community and Article 308 of the Treaty empowers the Council to take such measures if no other specific powers are provided for in the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. 'Sanctions Committee' means the Committee of the Security Council of the United Nations which was established pursuant to paragraph 8 of UNSCR 1533 (2004);

2. '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;

3. '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;

4. '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;

5. '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.

Article 2

1. All funds and economic resources belonging to, or owned or held by, the natural or legal persons, entities or bodies 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 or legal persons, entities or bodies 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 in paragraphs 1 and 2 shall be prohibited.

Article 3

1. By way of derogation from Article 2 and provided that the Member State concerned has notified its intention to the Sanctions Committee and the Sanctions Committee has not objected within two working days of such notification, 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.

2. 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, after having determined that the funds or economic resources are necessary for extraordinary expenses, provided that determination has been notified by the Member State to the Sanctions Committee and that the determination has been approved by that Committee.

Article 4

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, if the following conditions are met:

(a) the funds or economic resources are subject of a judicial, administrative or arbitral lien established prior to 18 April 2005 or of a judicial, administrative or arbitral judgment rendered prior to that date;

(b) the funds or economic resources will be used exclusively to satisfy claims secured by such a lien or recognised as valid in such a judgment, within the limits set by applicable laws and regulations governing the rights of persons having such claims;

(c) the lien or judgment is not for the benefit of a person, entity or body listed in Annex I;

(d) recognising the lien or judgment is not contrary to public policy in the Member State concerned;

(e) the lien or judgement has been notified by the Member State to the Sanctions Committee.

Article 5

1. Article 2(2) shall not apply to the addition to frozen accounts of interest or other earnings on those accounts, or 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 are frozen in accordance with Article 2(1).

   Any person making a payment due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to this Regulation shall inform the competent authorities.

2. Article 2(2) shall not prevent the crediting of the frozen accounts by financial or credit institutions that receive funds transferred by third parties to the account of the listed person, entity or body, provided that any such additions to such accounts will also be frozen. The financial or credit institutions shall inform the competent authorities about such transactions without delay.

Article 6

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 paragraphs 1 and 2 shall be used only for the purposes for which it was provided or received.

Article 7

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 result of negligence.

Article 8

The Commission and 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 9

1. The Commission shall be empowered to:

   (a) amend Annex I on the basis of determinations made by the Sanctions Committee;

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

2. Without prejudice to the rights and obligations of the Member States under the Charter of the United Nations, the Commission shall maintain all necessary contacts with the Sanctions Committee for the purpose of the effective implementation of this Regulation.

Article 10

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

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 11

This Regulation shall apply

(a) within the territory of the Community, including its airspace and on board any aircraft or any vessel under the jurisdiction of a Member State;

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

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

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

Article 12

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 natural and legal persons, entities or bodies referred to in Article 2

ANNEX II

List of competent authorities referred to in Articles 3, 4, 5 and 6

(to be completed by the Member States)

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 Common Foreign and Security Policy (CFSP) and European Security and Defence Policy (ESDP): Commission Coordination and contribution

Unit A.2: Legal and institutional matters, CFSP Joint Actions, Sanctions, Kimberley Process

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