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WORKING DOCUMENT

on the freezing of the assets of persons being prosecuted by the International Criminal Tribunal for the former Yugoslavia

Committee on Civil Liberties, Justice and Home Affairs

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Background

1. On 28 August 2003, with a view to supporting the strategy being pursued by the International Criminal Tribunal for the former Yugoslavia[1], the UN Security Council urged Member States, inter alia, *'to consider imposing measures against individuals and groups or organisations assisting indictees at large to continue to avoid justice, including measures designed to restrict the travel and freeze the assets of such individuals, groups or organisations'* (sixth recital of Resolution 1503 (2003)[2].

2. Since this resolution is based on Chapter VII of the UN Charter[3] entitled: 'ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION', the Council of the European Union reached agreement in May 2004 on a common position under the common foreign and security policy whereby the Union agreed to act in response to the Security Council's request. The draft common position identified the persons whose assets should be frozen as a matter of priority, and the Council reserved the right to update the list thereof, using the same method, in the light of the activities of the ICTY.

3. Since, pursuant to Article 301 of the EC Treaty[4], this common position has to be converted into Community law, the Commission has submitted a proposal for a regulation which provides for assets to be frozen throughout the Community. Since this constitutes an exception to the free movement of capital, the legal basis is also Article 60(1) of the EC Treaty[5].

   The draft regulation is also based on Article 308 of the EC Treaty (implicit powers of the Community) on the grounds that, in the light of the strict interpretation given by the Council, the measures provided for in Article 301 refer to third countries and not to natural persons. This approach had already been used for the adoption of Regulations (EC) 2580/2001 and 881/2002[6], which concerned the freezing of the assets of terrorist organisations.

4. Recourse to Article 308 of the EC Treaty made consultation of the European Parliament obligatory. A decision was taken that Parliament should be consulted in accordance with the urgent procedure provided for in Rule 134 of the Rules of Procedure, with a view to a vote being taken at the September 2004 part-session.

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[1] The ICTY was established by the UN Security Council in 1993 on the basis of Chapter VII of the UN Charter. Its mandate is to prosecute the serious breaches of international humanitarian law committed in the former Yugoslavia after 1 January 1991.

[2] Document accessible at http://www.un.org/english/docs/sc under the heading 'Resolutions'.

[3] See http://www.un.org/aboutun/charter/chapter7.htm.

[4] Article 301 of the EC Treaty reads: *'Where it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary urgent measures.'*

[5] Article 60(1) of the EC Treaty reads: *'If, in the cases envisaged in Article 301, action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in Article 301, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.'*

[6] Published respectively in OJ L 344, 28.12.2001, p. 70 and OJ L 139, 29.5.2002, p. 9.

When it consulted Parliament on the draft regulation, the Council also forwarded a copy of the guidelines that it had drawn up when it was debating the Commission proposal.

Observations relating to the substance of the proposals submitted to the EP

The Council initiative supplements other measures already taken by the Council to stop the movement of indictees wanted by the ICTY for ten years[1].

With regard to the form, both the Commission proposal and the Council guidelines (which are identical except for a few minor changes) are based on the model provisions set out in the *'Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy'* adopted by the Council on 3 December 2003[2] on the basis of the experience in this field that it has acquired over several years.

That applies in particular to the definition of 'funds' and economic resources and, especially, to the wording of the derogations admissible on humanitarian grounds to which the European Parliament devoted specific attention when it was considering similar measures designed to freeze the funds of terrorist organisations[3].

It should be noted that the draft regulation entrusts a significant role to the Commission[4], which will have the task of updating:

- in response to an instruction from the Council, the list of persons whose assets should be frozen (Annex 1), and

- in response to an instruction from the Member States, the list of authorities which may determine derogations, in particular for humanitarian purposes (Annex 2).

[1] Common Position 2003/280/CFSP, OJ L 101, 23.4.2003, p. 22, renewed the following year by Common Position 2004/293/CFSP, OJ L 94, 31.3.2004, p. 65. The latter Common Position was supplemented by Council Decision 2004/528/CFSP, OJ L 233, 2.7.2004, p. 15.
[2] Accessible on the Council register at: http://register.consilium.eu.int/pdf/en/03/st15/st15579.en03.pdf.
[3] See, in particular:
- its opinion dated 13 December 2001 on the draft Council regulation on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (4765/3/2001 - C5-0665/2001 - 2001/0228(CNS)), http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//TEXT+TA+20011213+ITEMS+DOC+XML+V0//EN&LEVEL=3&NAV=X,
- the resolutions adopted on 7 February 2002 (P5_TA(2002)0055): European Parliament resolution on the Council Decision of 27 December 2001 on measures to combat terrorism and (P5_TA(2002)0048) European Parliament resolution on the progress made in 2001 towards the establishment of the area of freedom, security and justice provided for in Article 2, fourth indent, of the TEU,
- the opinion adopted on 11 April 2002 on the proposal concerning the freezing of the assets of persons associated with the Al-Qaida terrorist network (COM(2002) 117 - C5-0132/2002 - 2002/0059(CNS)).
[4] The Commission already manages most executive activities: in this connection, see the documentation accessible at http://europa.eu.int/comm/external_relations/cfsp/sanctions/index.htm.

The information relating to these two annexes will be made accessible to the public and, in particular, to banking establishments, principally by the publication of a general list of the persons and assets subject to sanctions of this nature[1].

From a procedural point of view, since two texts on the same subject have been referred to Parliament, the parliamentary committee concerned will have to decided which of the two texts it wishes to adopt as the basic text to be submitted to the House (application, mutatis mutandis, of Rule 41(4) of the Rules of Procedure[2]). Since the Council's guidelines constitute the more recent text and are available in all the official languages, it is proposed that they should be selected as the basic text.

In the light of the observations set out above, the text might be adopted without amendment under the simplified procedure (Rules 43 and 131 of the Rules of Procedure).

[1] Accessible on the Internet at http://europa.eu.int/comm/external_relations/cfsp/sanctions/list/consol-list.htm. This list has been compiled in cooperation with the following establishments: BANKING FEDERATION OF THE EUROPEAN UNION, EUROPEAN SAVINGS BANKS GROUP, EUROPEAN ASSOCIATION OF COOPERATIVE BANKS, EUROPEAN ASSOCIATION OF PUBLIC BANKS - EUROPEAN ASSOCIATION OF PUBLIC BANKS AND FUNDING AGENCIES.

[2] Rule 41(4) reads: *'Where two or more proposals (originating from the Commission and/or the Member States) with the same legislative objective have been submitted to Parliament simultaneously or within a short period of time, Parliament shall deal with them in a single report. In its report, the committee responsible shall indicate to which text it has proposed amendments and it shall refer to all other texts in the legislative resolution.'*