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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

on the proposal for a Council regulation imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire
(COM(2004)0842 – 15518/2004 – C6-0023/2005 – 2004/0286(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Jean-Marie Cavada

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

Page

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION 5

EXPLANATORY STATEMENT.....8

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council regulation imposing certain specific restrictive measures directed against certain persons and entities in view of the situation in Côte d'Ivoire (COM(2004)0842 – 15518/2004 – C6-0023/2005 – 2004/0286(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the Commission proposal to the Council (COM(2004)0842)[1],

– having regard to the Council text (15518/2004)[2]

– having regard to Articles 60 and 301 of the EC Treaty,

– having regard to Article 308 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0023/2005),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Development and the Committee on Economic and Monetary Affairs (A6-0000/2005),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission	Amendments by Parliament
	Amendment 1 Recital 3 a (new)
	(3a) The Member States of the European Union that are also members of the United Nations Security Council should

[1] OJ C ... / Not yet published in OJ.
[2] Text can be viewed at http://register.consilium.eu.int/pdf/en/04/st15/st15518.en04.pdf

ensure that fundamental rights are fully respected, especially when measures pursuant to United Nations Security Council Resolution 1572(2004) are adopted or amended, and should duly inform the other Member States of the Union and the Community institutions of any measures that may affect the Community legal order.

Amendment 2
Recital 3 b (new)

(3b) When applying measures pursuant to United Nations Security Council Resolution 1572(2004), the Community must ensure that they are coordinated with the procedures applicable under the EU-ACP Partnership Agreement signed in Cotonou (Benin) on 23 June 2000[1], in particular Articles 8 and 96 thereof.

Amendment 3
Article 2, paragraph 1

(1) All funds and economic resources owned, or controlled, directly or indirectly, by the natural or legal persons, entities or bodies listed ***in Annex I*** shall be frozen.	(1) All funds and economic resources owned, or controlled, directly or indirectly, by the natural or legal persons, entities or bodies ***on a list drawn up by the Commission pursuant to Article 10*** shall be frozen.

[1] OJ L 317, 15.12.2000, p. 3.

Amendment 4
Article 10, point a

a) amend ***Annex I*** on the basis of determinations made by either the United Nations Security Council or the Sanctions Committee; and	a) ***draw up and*** amend on the basis of determinations made by either the United Nations Security Council or the Sanctions Committee; ***a list of natural or legal persons, entities or bodies whose funds and economic resources are to be frozen*** and

Amendment 5
Article 10, point b

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

Amendment 6
Article 10, subparagraph 1 a (new)

	The Commission shall inform the chairmen of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Development of the European Parliament in advance and confidentially of the drawing-up and amending of the list referred to in subparagraph 1, point a.

EXPLANATORY STATEMENT

Context

1. On 15 November 2004, the United Nations Security Council, acting pursuant to Chapter VII of the United Nations Charter, adopted Resolution 1572/2004[1] in which it decided on a series of measures to tackle the threat to peace in Côte d'Ivoire.

These measures, which are compulsory for all the member states of the UN, focus in particular on:

- (paragraph 7) preventing the direct or indirect supply, sale or transfer to Côte d'Ivoire of arms or any related materiel;
- (paragraph 9) preventing the entry into or transit through their territories of all persons who constitute a threat to the peace and national reconciliation process in Côte d'Ivoire, and any other person determined as responsible for serious violations of human rights and international humanitarian law in Côte d'Ivoire or who incites publicly hatred and violence. The list of individuals in question will be drawn up by a Sanctions Committee established under Article 14 of this resolution;
- (paragraph 11) freezing the funds on their territories relating to the persons designated by the Committee established by paragraph 14 and preventing any persons within their territories from making any funds, financial assets or economic resources available to these persons or entities or for their benefit.

2. The Council of the Union began implementing Resolution 1572/04 by adopting a 'common position' on 13 December 2004 under the common foreign and security policy (second pillar)[2] in which:

- it established bans at Union level relating to arms trafficking and border controls and,
- as the institution responsible for incorporating into Community law the list of persons to be established in line with Article 4 of Resolution 1572/04, it delegated this task to the Commission (as, in principle, it would not offer any margin of political discretion). It should be noted, however, that the annex to the common position contains no names but simply the instruction '*to be completed after designation by the Committee established by paragraph 14 of United Nations Security Council Resolution 1572 (2004).*'

3. As has been the case in comparable situations in the past, the application within the Community of the Council Common Position requires a Community measure, the legal basis for which would be:
- Article 301, which provides for the Council to adopt by qualified majority urgent measures necessary for '*a common position or ... a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy*';
- Article 60, which, pursuant to Article 301, allows for urgent measures to be taken on the

[1] http://daccessdds.un.org/doc/UNDOC/GEN/N04/607/38/PDF/N0460738.pdf?OpenElement
[2] OJ L 368, 15.12.04, available at:
http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/l_368/l_36820041215en00500053.pdf

movement of capital and on payments as regards citizens of the third countries concerned;
- Article 308, which allows the same measures to be taken with regard to individuals and non-governmental organisations (in this specific case, most likely with regard to individuals in Côte d'Ivoire with links to rebels). Adding this third legal basis makes it possible to fill the gaps left by Articles 60 and 301 and, at the same time, involve the European Parliament in the decision-making process.

The proposal submitted to Parliament

4. In terms of form, both the Commission proposal and the Council position (which contains only minor changes) follow the pattern of the provisions under 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[1] on the basis of several years' experience in this area. This is particularly true of the definition of 'funds' and 'economic resources' and the wording of the derogations permitted for humanitarian reasons, to which the European Parliament paid special attention when it examined similar measures aimed at freezing the funds of terrorist organisations[2].
It should be highlighted that the regulation allocates a significant role to the Commission[3], which, in line with Article 10, will have the task of updating:
- the list of persons whose funds are to be frozen (Annex 1), on instructions from the Security Council;
- the list of authorities able to agree exemptions, including for humanitarian reasons (Annex 2), on the basis of information from the Member States.

Information relating to financial sanctions will be published in the Official Journal and made available to the public, in particular to banking establishments, by means of a general list of persons and goods affected by sanctions of this kind[4].

Possible improvements to the procedure

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[1] Available in the Council register at: http://register.consilium.eu.int/pdf/fr/03/st15/st15579.fr03.pdf

[2] See in particular:
- opinion of 13 December 2001 on the Draft Council regulation on specific restrictive measures directed against certain persons and entities with a view to combating international terrorism (4765/3/22001 - C5-0665/2001 - 2001/0228(CNS)) http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//TEXT+TA+20011213+ITEMS+DOC+XML+V0//FR&LEVEL=3&NAV=X
- the resolutions adopted on 7 February 2002: European Parliament resolution on the Council's decision of 27 December 2001 on measures to combat terrorism (P5_TA(2002)0055) and 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 (P5_TA(2002)0048)
- opinion adopted on 11 April 2002 on the proposal to freeze the funds of the Al-Qaida terrorist network (COM(2002)0117 - C5-0132/2002 - 2002/0059(CNS))
- opinion of 16 September 2004 on the 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) (COM(2004)0348 - SN 2057/2004 – C6-0041/2004 – 2004/0114(CNS)) http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//TEXT+TA+P6-TA-2004-0009+0+DOC+XML+V0//FR&LEVEL=3&NAV=X

[3] The Commission already manages most executive activities; see the documents at: http://europa.eu.int/comm/external_relations/cfsp/sanctions/index.htm

[4] Available at: http://europa.eu.int/comm/external_relations/cfsp/sanctions/list/consol-list.htm.
This list was drawn up in collaboration with: BANKING FEDERATION OF THE EUROPEAN UNION, EUROPEAN SAVINGS BANKS GROUP, EUROPEAN ASSOCIATION OF COOPERATIVE BANKS, EUROPEAN ASSOCIATION OF PUBLIC BANKS et EUROPEAN ASSOCIATION OF PUBLIC BANKS AND FUNDING AGENCIES

5. Although there have been improvements in relation to past measures and the objective and content of the measures designed to maintain or restore peace in Côte d'Ivoire deserve strong support, it is regrettable that the Commission and the Council have not considered some of the more general suggestions submitted by Parliament during previous consultations.

6. Firstly, with regard to the procedure for drawing up the lists, it is not clear whether, as matters stand, the Sanctions Committee appointed by the Security Council will always be able to check the reliability of sources for including or removing the individuals or entities in question. In order to improve the lists' reliability, appropriate checking and/or correction mechanisms and minimum guarantees would need to be put in place for the individuals targeted, at least on the initiative of the members of the Sanctions Committee that are also EU Member States. It would be useful to stress the obligation of these countries to cooperate loyally with the EU and the other Member States, as required under Article 19 of the TEU, according to which '*Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed*.' This requirement is all the more important in this situation because, once the list has been adopted, the EU institutions and Member States will be answerable to the European Court of Human Rights and the Court of Justice. The obligation of loyal cooperation that applies to the Security Council naturally also applies to the Sanctions Committee established by the former. It would, therefore, be most helpful if there could be close communication among EU Member States in the event of citizens of an EU Member State not represented in the Security Council or the Community itself being concerned (since it will be the responsibility of the Community as a whole once the list is adopted within the Union). Furthermore, in the specific case of Côte d'Ivoire, the Union could also look at the possibility of linking the UN sanctions with the equivalent EU mechanism provided for under Article 96 of the Cotonou Agreement between the Community and the ACP States.

7. Secondly, the Sanctions Committee should be able to examine as a matter of urgency the requests for humanitarian exemptions, especially when they are recommended by EU Member States that are also members of the Sanctions Committee. The latter would not be able to apply less stringent criteria in this second body than they are obliged to apply within the Union. From this point of view, it is to be welcomed that, in line with Parliament's requests during previous consultations, Articles 3 and 4 of the proposal for a Council Regulation provide for the possibility for the authorities of the Member State concerned to apply humanitarian exemptions in advance in emergencies (a principle implicitly recognised by Article 60(2) of the EC Treaty).

8. In terms of the structure of the proposal for a Council Regulation, it seems contrary to the Treaty to submit for Parliament's consultation a text containing a blank annex (according to Court of Justice case-law, Parliament must have access to all the necessary information for it to deliver an opinion).

If proceedings for infringements of an essential procedural requirement (a problem that has arisen on the publication of similar lists in the past) are to be avoided, the most sensible solution would be to omit the annex from the body of the regulation, making sure that it is adopted by the Commission as an implementing measure and that the parliamentary committee responsible is duly informed in advance (confidentially if necessary).