

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.4.2006
COM(2006) 190 final

Proposal for a

# COUNCIL REGULATION

## concerning restrictive measures against President Lukashenko and certain officials of Belarus

(presented by the Commission)

## EXPLANATORY MEMORANDUM

(1) On 24 March 2006, the European Council decided, reacting to the Presidential elections in Belarus of 19 March 2006 and related events, that restrictive measures should be applied against those responsible for the violation of international electoral standards and against those responsible for the crackdown on civil society and democratic opposition.

(2) As Council is preparing a CFSP Common Position calling for measures freezing the funds and economic resources of the officials concerned and for a prohibition against making funds and economic resources available to the officials concerned, the Commission proposes, in anticipation, a Regulation implementing such restrictive measures.

(3) The Belarus officials against whom the proposed measures should be applied, will be identified by Council on the basis of Common Position 2006/…/CFSP. As that list is binding for the Community, the proposed Regulation makes explicit that Annex I can be amended on the basis of decisions taken in respect of the Annexes to Common Position 2006/…/CFSP only.

(4) Several provisions of the proposed Regulation are taken from the Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy[1].

(5) The EU Best Practices for the Effective Implementation of Restrictive Measures[2] provide additional guidance for the application of the proposed measures.

[1] Council document No 15114/05.
[2] Council document No 15115/05.

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# COUNCIL REGULATION

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THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Common Position 2006/…/CFSP[3], which supplements Common Position 2006/276/CFSP concerning restrictive measures against certain officials of Belarus and repealing Common Position 2004/661/CFSP,

Having regard to the proposal from the Commission[4],

Whereas:

(1) On 24 March 2006, the European Council deplored the failure of the Belarus authorities to meet OSCE commitments to democratic elections, considered that the Presidential elections of 19 March 2006 were fundamentally flawed and condemned the action of the Belarus authorities of that day in arresting peaceful demonstrators exercising their legitimate right of free assembly to protest at the conduct of the Presidential elections. The European Council therefore decided that restrictive measures should be applied against those responsible for the violation of international electoral standards and against those responsible for the crackdown on civil society and democratic opposition.

(2) Common Position 2006/…/CFSP provides that the funds and economic resources of President Lukashenko and certain officials of the government of Belarus that have been identified for this purpose should be frozen.

(3) These measures fall within the scope of the Treaty and, therefore, notably with a view to ensuring their uniform application by economic operators in all Member States, Community legislation is necessary to implement them as far as the Community is concerned.

(4) It is desirable to clarify the relationship between the obligations under this Regulation and other, contractual obligations that may be in conflict with the former.

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[3] OJ L

[4] OJ C , , p. .

(5) Member States should determine the penalties applicable to infringements of the provisions of this Regulation. The penalties provided for should be proportionate, effective and dissuasive.

(6) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must enter into force immediately,

HAS ADOPTED THIS REGULATION:

*Article 1*

For the purpose 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.

(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 use of the funds, 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, by selling, hiring or mortgaging them.

(5) “territory of the Community” means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty.

*Article 2*

1. All funds and economic resources belonging to, owned, held or controlled by President Lukashenko and certain other officials of Belarus as 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 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. The competent authority of a Member State, as listed in Annex II, may authorise the release of certain frozen funds or economic resources or the making available of certain funds or economic resources, under such conditions as it deems appropriate, after having determined that the funds or economic resources concerned are:

   (a) necessary to satisfy the basic needs of persons listed in Annex I and their dependent family members, 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, or

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

2. If the competent authority of a Member State, as listed in Annex II, determines that the release of certain frozen funds or economic resources or the making available of certain funds or economic resources is necessary for extraordinary expenses, it shall notify the grounds on which it considers that a specific authorisation should be granted, to the other competent authorities and the Commission at least two weeks prior to the authorisation, so as to have their prior opinion on the draft authorisation. It may authorise the release of certain frozen funds or economic resources or the making available of certain funds or economic resources, under such conditions as it deems appropriate, once these consultations have been completed.

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

*Article 4*

1. Article 2(2) shall not apply to the addition to frozen accounts of interest or other earnings on those accounts; provided that any such interest, other earnings and payments continue to be subject to Article 2(1).

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

*Article 5*

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, 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 6*

1. 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.

2. Without prejudice to the international agreements concluded by the Community, this Regulation shall derogate from any rights conferred and any obligations imposed by any contract or agreement signed or entered into before or after the entry into force of this Regulation and from any licence or permit granted before or after the entry into force of this Regulation, with the exception of authorisations granted in accordance with this Regulation.

*Article 7*

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 8*

The Commission shall be empowered to:

(a) amend Annex I on the basis of decisions taken in respect of the Annexes to Common Position 2006/…/CFSP; and

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

*Article 9*

1. The 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.

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

*Article 10*

This Regulation shall apply:

- within the territory of the Community, including its airspace;

- on board any aircraft or any vessel under the jurisdiction of a Member State;

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

- to any legal person, entity or body which is incorporated or constituted under the law of a Member State;

- to any legal person, entity or body in respect of any business done in whole or in part within the Community.

*Article 11*

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**

## ANNEX II

**List of competent authorities**

*(to be completed by 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

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