panied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 19

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities.*

Article 20

This Directive is addressed to the Member Sates.

Proposal for a Council Regulation (EC) protecting against the effects of the application of certain legislation of certain third countries, and actions based thereon or resulting therefrom

(96/C 296/04)

COM(96) 420 final — 96/0217(CNS)

(Submitted by the Commission on 31 July 1996)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 113 and 235 thereof,

Having regard to the proposal of the Commission,

Having regard to the opinion of the European Parliament,

Whereas it is an objective of the EC that there should be an open system of international trade and capital investment,

Whereas certain third countries have enacted or are likely to enact certain laws, regulations, and other legislative instruments which purport to regulate the activities of natural and legal persons under the jurisdiction of the Member States of the European Community;

Whereas by their extra-territorial application such laws, regulations and other legislative instruments violate international law;

Whereas these laws and actions based thereon or resulting therefrom, including regulations and other legislative instruments, affect or are likely to affect the established legal order and have adverse effects on the external economic interests of the EC and the interests of natural and legal persons exercising their rights in accordance with the common import and export regimes and on the principle of free movement of capital between the Community and third countries;

Whereas, under these exceptional circumstances, it is necessary to take action at the Community level protecting the established legal order and the external economic interests of the Community and the interests of these persons, in particular by removing, neutralizing, blocking or otherwise countering the effects of the foreign legislation concerned;

Whereas the Commission, in the implementation of this Regulation, should be assisted by a committee composed of representatives of the Member States;

Whereas this action takes the form of measures ancillary to the achievement of the objectives set out above;

Whereas the Treaty does not provide for the adoption of certain provisions of this Regulation powers other than those of Article 235,

HAS ADOPTED THIS REGULATION:

Article 1

Scope of protection

This Regulation provides protection against and counteracts the effects of the extra-territorial application of the laws specified in the Annex and of actions based

thereon or resulting therefrom, including regulations and other legislative instruments.

On the basis of a proposal of the Commission, the Council may add or delete laws to or from the Annex.

Article 2

Notifications

Any person shall notify to the European Commission (1) any information obtained by that person, with regard to the direct or indirect effects of the laws or actions mentioned in Article 1, on the economic and financial interests of that person.

Article 3

Confidentiality

All information supplied under this Regulation shall only be used for the purposes for which it was provided.

Information which is by nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. It shall not be disclosed by the Commission without the express permission of the person providing it.

Communication of such information shall be permitted where the Commission is obliged or authorised to do so, in particular in connection with legal proceedings. Such communication must take into account the legitimate interests of the person concerned that his or her business secrets should not be divulged.

This Article shall not preclude the disclosure of general information by the Commission.

Article 4

Non-recognition of judgements

No judgement of a court or tribunal located outside the Community giving effect, directly or indirectly, to the laws and actions mentioned in Article 1, shall be recognised or be enforceable in any manner.

Article 5

Non-compliance

No person shall comply, whether directly or through a subsidiary or other intermediary person, actively or by deliberate omission, with any requirement or prohibition, including requests of foreign courts, based on or resulting, directly or indirectly, from the laws and actions mentioned in Article 1.

Persons may be authorised, in accordance with the procedures provided in Articles 7 and 8, to comply fully or partially to the extent that non-compliance would seriously damage their interests or those of the Community.

Article 6

Recovery of damages

Any person shall be entitled to recover any amount obtained by any natural or legal person in whose favour a judgement by a non-Member State court or tribunal was given, to the extent that it is established before a court within the Community that the amount awarded was based on the laws and actions mentioned in Article 1.

Such recovery may be obtained from the natural or legal person in whose favour the judgement was given, or from any legal person incorporated in the Community and owned or controlled by such person (2).

Article 7

Management provisions

For the implementation of this Regulation the Commission shall:

(a) inform the Council regularly on the effects of the laws, regulations and other legislative instruments and ensuing actions mentioned in Article 1, on the basis of the information obtained under this Regulation, and to make yearly a full public report thereon;

(b) grant authorizations under the conditions set forth in Article 5;

(c) add or delete, where appropriate, references to secondary regulations or other legislative instruments deriving of the laws specified in the Annex, and falling under the scope of this Regulation;

(1) Information should be supplied to the following address: European Commission, Directorate General I, Rue de la Loi/Wetstraat 200, B-1049 Brussels.

(2) A legal person incorporated in the Community is:
— 'owned' by another natural or legal person if more than 50 per cent of the equity interest in it is beneficially owned by that person;
— 'controlled' by another natural or legal person if that other person has the power to name a majority of its directors or otherwise to legally direct its actions.

(d) to publish in the *Official Journal of the European Communities* the judgements to which Article 4 applies;

Article 8

For the purposes of the implementation of Article 7 (b) and (c), the Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith.

In that event the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

Article 9

General and final provisions

Each Member State shall determine the penalties to be imposed in the event of breach of the provisions of this Regulation. Such penalties must be effective, proportional and dissuasive.

Article 10

The Commission and the Member States shall inform each other of the measures taken to implement this Regulation and of all other relevant information pertaining to this Regulation.

Article 11

This Regulation shall apply within the territory of the Community, including its air space and in any aircraft or on any vessel under the jurisdiction or control of a Member State, and to any natural or legal person, private or public, resident or incorporated within the Community.

Article 12

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX

LAWS, REGULATIONS AND OTHER LEGISLATIVE INSTRUMENTS

referred to in Article 1

COUNTRY: UNITED STATES OF AMERICA

Acts

1. 'National Defense Authorization Act for Fiscal Year 1993', Title XVII — Cuban Democracy Act of 1992, section 1706.

2. 'Cuban Liberty and Democratic Solidarity Act' of 1996.

Regulations

1.31 CFR (Code of Federal Regulations) Ch. V (7-1-95 edition) Part 515 — Cuban Assets Control Regulations, subpart E — Licenses, Authorizations and Statements of Licensing Policy.