

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 3.2.2004
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Proposal for a

COUNCIL REGULATION

concerning certain restrictive measures in respect of Zimbabwe

(presented by the Commission)

EXPLANATORY MEMORANDUM

(1) On 18 February 2002, the Council decided to impose restrictive measures in respect of Zimbabwe in response to the serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly in that country (Common Position 2002/145/CFSP).

(2) Some of the restrictive measures imposed against Zimbabwe were implemented in the Community by Regulation (EC) No 310/2002, which is due to expire on 20 February 2004.

(3) In view of its continuing concern about the human rights situation in Zimbabwe, the Council has decided in its Common Position 2004/…/CFSP to extend and amend the restrictive measures in respect of Zimbabwe.

(4) In view of this, it is desirable to publish a new regulation, which should enter into force on 20 February 2004 at the latest.

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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 Council Common Position 2004/…/CFSP concerning restrictive measures in respect of Zimbabwe[1],

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

Whereas:

(1) By means of Common Position 2002/145/CFSP of 18 February 2002 concerning restrictive measures against Zimbabwe[3], the Council expressed serious concern about the situation in Zimbabwe and in particular about serious violations of human rights by the Government of Zimbabwe, including violations of the freedoms of opinion, of association and of peaceful assembly. In view of this, it imposed certain restrictive measures, which are subject to annual review. Some of the restrictive measures imposed against Zimbabwe were implemented at Community level by Council Regulation (EC) No 310/2002;[4] the period of that Regulation's application was extended until 20 February 2004 by Regulation (EC) No 313/2003[5].

(2) The Council continues to consider that the Government of Zimbabwe is still engaging in serious violations of human rights. Therefore, for as long as the violations occur, the Council deems it necessary to maintain restrictive measures against the Government of Zimbabwe and those who bear prime responsibility for such violations.

(3) Accordingly, Common Position 2004/…/CFSP provides for an extension and amendment of the restrictive measures provided for by Common Position 2002/145/CFSP.

(4) The restrictive measures provided for by Common Position 2004/…/CFSP include inter alia a ban on technical assistance, financing and financial assistance related to military activities, a ban on the export of equipment which might be used for internal repression, and the freezing of funds, financial assets and economic resources of

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1 OJ L …, …, p. ...

2 OJ C …, …, p. …

3 OJ L 50, 21.2.2002, p. 1, as last amended by Common Position 2003/115/CFSP (OJ L 46, 20.2.2003, p. 30).

4 OJ L 50, 21.2.2002, p. 4, as last amended by the 2003 Act of Accession.

5 OJ L 46, 20.2.2003, p. 6.

members of the Government of Zimbabwe and of any natural or legal persons, entities or bodies associated with them.

(5) These measures fall within the scope of the Treaty and, therefore, in order to avoid any distortion of competition, Community legislation is necessary to implement them as far as the Community is concerned. For the purpose 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 that Treaty.

(6) It is desirable to align on recent practice the provisions concerning the ban on technical assistance, financing and financial assistance related to military activities, and those concerning the freezing of funds, financial assets and economic resources.

(7) This Regulation amends and extends the restrictive measures contained in Regulation (EC) No 310/2002, which it should replace immediately on the latter's expiry,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. "technical assistance" means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services. Technical assistance includes verbal forms of assistance;

2. "funds" means financial assets and benefits of every kind, including but not limited to:

   (a) cash, cheques, monetary claims, 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

It shall be prohibited:

(a) to grant, sell, supply or transfer technical assistance related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, directly or indirectly to any person, entity or body in, or for use in Zimbabwe;

(b) to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of arms and related materiel, directly or indirectly to any person, entity or body in, or for use in Zimbabwe;

(c) to participate, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote the transactions referred to at points (a) or (b).

Article 3

It shall be prohibited:

(a) knowingly and intentionally, to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex I, whether or not originating in the Community, to any person, entity or body in, or for use in Zimbabwe;

(b) to grant, sell, supply or transfer technical assistance related to the equipment referred to at point (a), directly or indirectly to any person, entity or body in, or for use in Zimbabwe;

(c) to provide financing or financial assistance related to the equipment referred to at point (a), directly or indirectly to any person, entity or body in, or for use in Zimbabwe;

(d) to participate, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote the transactions referred to at points (a), (b) or (c).

Article 4

1. By way of derogation from Articles 2 and 3 the competent authorities of Member States as listed in Annex II may authorise:

   (a) the provision of financing and financial assistance and technical assistance related to:

      (i) non-lethal military equipment intended solely for humanitarian or protective use, or for institution-building programmes of the United Nations, the European Union and the Community;

      (ii) materiel intended for European Union and United Nations crisis-management operations;

   (b) the sale, supply, transfer or export of equipment listed in Annex I intended solely for humanitarian or protective use, and the provision of financial assistance, financing and technical assistance related to these transactions.

2. No authorisations shall be granted for activities that have already taken place.

Article 5

Articles 2 and 3 shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Zimbabwe by United Nations personnel, personnel of the European Union, the Community or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

Article 6

1. All funds and economic resources belonging to individual members of the Government of Zimbabwe and to any natural or legal persons, entities or bodies associated with them as listed in Annex III, 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 III.

3. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote the transactions referred to at 1 and 2 shall be prohibited.

Article 7

1. By way of derogation from Article 6, 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;

(d) necessary for extraordinary expenses, provided that the relevant competent authority has notified the grounds on which it considers that a specific authorisation should be granted, to all other competent authorities and the Commission at least two weeks prior to the authorisation.

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

2. Article 6 (2) shall not apply to the addition to frozen accounts of:

(i) interest or other earnings on those accounts; or

(ii) payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to the provisions of Regulation (EC) No 310/2002 or, in the absence of such a date, prior to the corresponding date of this Regulation.

This rule is subject to the proviso that any such interest, other earnings and payments shall continue to be subject to Article 6 (1).

Article 8

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 6, 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 9

The freezing of funds and economic resources, carried out in good faith 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 10

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 judgements handed down by national courts.

Article 11

The Commission shall be empowered to:

(a) amend Annex II on the basis of information supplied by Member States,

(b) amend Annex III on the basis of decisions taken in respect of the Annex to Common Position 2004/…/CFSP.

Article 12

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

The 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 13

This Regulation shall apply:

(a) within the territory of the Community, including its airspace;

(b) on board any aircraft or any vessel under the jurisdiction of a Member State;

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

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

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

Article 14

This Regulation shall enter into force on 21 February 2004.

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 equipment which might be used for internal repression as referred to in Article 3

The list below does not comprise the articles that have been specially designed or modified for military use.

1. Helmets providing ballistic protection, anti-riot helmets, anti-riot shields and ballistic shields and specially designed components therefor.

2. Specially designed fingerprint equipment.

3. Power controlled searchlights.

4. Construction equipment provided with ballistic protection.

5. Hunting knives.

6. Specially designed production equipment to make shotguns.

7. Ammunition hand-loading equipment.

8. Communications intercept devices.

9. Solid-state optical detectors.

10. Image-intensifier tubes.

11. Telescopic weapon sights.

12. Smooth-bore weapons and related ammunition, other than those specially designed for military use, and specially designed components therefor; except:

- signal pistols;

- air- and cartridge-powered guns designed as industrial tools or humane animal stunners.

13. Simulators for training in the use of firearms and specially designed or modified components and accessories therefor.

14. Bombs and grenades, other than those specially designed for military use, and specially designed components therefor.

15. Body armour, other than those manufactured to military standards or specifications, and specially designed components therefor.

16. All-wheel-drive utility vehicles capable of off-road use that have been manufactured or fitted with ballistic protection, and profiled armour for such vehicles.

17. Water cannon and specially designed or modified components therefor.

18. Vehicles equipped with a water cannon.

19. Vehicles specially designed or modified to be electrified to repel borders and components therefor specially designed or modified for that purpose.

20. Acoustic devices represented by the manufacturer or supplier as suitable for riot-control purposes, and specially designed components therefor.

21. Leg-irons, gang-chains, shackles and electric-shock belts, specially designed for restraining human beings; except:

- handcuffs for which the maximum overall dimension including chain does not exceed 240 mm when locked.

22. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an incapacitating substance (such as tear gas or pepper sprays), and specially designed components therefor.

23. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (including electric-shocks batons, electric shock shields, stun guns and electric shock dart guns (tasers)) and components therefor specially designed or modified for that purpose.

24. Electronic equipment capable of detecting concealed explosives and specially designed components therefor; except:

- TV or X-ray inspection equipment.

25. Electronic jamming equipment specially designed to prevent the detonation by radio remote control of improvised devices and specially designed components therefor.

26. Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor; except:

- those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflaters, electric-surge arresters of fire sprinkler actuators).

27. Equipment and devices designed for explosive ordnance disposal; except:

- bomb blankets;

- containers designed for folding objects known to be, or suspected of being improvised explosive devices.

28. Night vision and thermal imaging equipment and image intensifier tubes or solid state sensors therefor.

29. Software specially designed and technology required for all listed items.

30. Linear cutting explosive charges.

31. Explosives and related substances as follows:

- amatol,
- nitrocellulose (containing more than 12,5 % nitrogen),
- nitroglycol,
- pentaerythritol tetranitrate (PETN),
- picryl chloride,
- tinitorphenylmethylnitramine (tetryl),
- 2,4,6-trinitrotoluene (TNT)

32. Software specially designed and technology required for all listed items.

ANNEX II

List of competent authorities referred to in Article 4, 7 and 8

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Service public fédéral des affaires étrangères, commerce extérieur et coopération au développement

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ARE 4e o division, service des licences
Avenue du Général Leman 60
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Kunstlaan 9
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ANNEX III

List of persons referred to in Article 6