Proposal for a Council Regulation (EEC) prohibiting the satisfying of claims with regard to contracts and transactions the performance of which was affected by the United Nations Security Council resolution 757 (1992) and related resolutions

(93/C 187/08)

COM(93) 283 final

(Submitted by the Commission on 24 June 1993)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Whereas, pursuant to Regulations (EEC) No 1432/92 [1], (EEC) No 2656/92 [2] and (EEC) No 990/93 [3], the Community has taken measures to prevent trade between the Community and the Federal Republic of Yugoslavia (Serbia and Montenegro);

Whereas, as a consequence of the embargo against the Federal Republic of Yugoslavia (Serbia and Montenegro), economic operators in the Community and third countries are exposed to the risk of claims by the Federal Republic of Yugoslavia (Serbia and Montenegro);

Whereas the United Nations Security Council has adopted resolution 757 (1992) of 30 May 1992 which, in its paragraph 9, deals with claims by the Federal Republic of Yugoslavia (Serbia and Montenegro) in relation to contracts and transactions the performance of which was affected by measures imposed by the Security Council pursuant to resolution 757 (1992) and related resolutions;

Whereas it is necessary to protect operators permanently against such claims and to prevent the Federal Republic of Yugoslavia (Serbia and Montenegro) from obtaining compensation for the negative effects of the embargo;

Whereas the Community and its Member States meeting in Political Cooperation have agreed that the Federal Republic of Yugoslavia (Serbia and Montenegro) must comply in full with the provisions of paragraph 9 of United Nations Security Council resolution 757 (1992) and consider that, in deciding whether to reduce or lift measures taken against the Federal Republic of Yugoslavia (Serbia and Montenegro), pursuant to paragraph 31 of Security Council resolution 820 (1993), particular account must be taken of any failure by the Federal Republic of Yugoslavia (Serbia and Montenegro) to comply with paragraph 9 of resolution 757 (1992);

Whereas the Community and its Member States meeting in Political Cooperation have agreed to resort to a Community instrument in order to ensure uniform implementation, throughout the Community, of paragraph 9 of United Nations Security Council resolution 757 (1992);

Whereas such uniform implementation is essential for achieving the aims of the Treaty establishing the European Economic Community and in particular for avoiding distortion of competition;

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

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation:

1. 'contract or transaction' means any transaction of whatever form and whatever the applicable law, whether comprising one or more contracts or similar obligations made between the same or different parties; for this purpose 'contract' includes a bond, financial guarantee and indemnity or credit whether legally independent or not and any related provision arising under or in connection with the transaction;

2. 'claim' means any claim, whether asserted by legal proceedings or not, made before or after the date of entry into force of this Regulation, under or in connection with a contract or transaction, and in particular includes:

   (a) a claim for performance of any obligation arising under or in connection with a contract or transaction;

   (b) a claim for extension or payment of a bond, financial guarantee or indemnity of whatever form;

   (c) a claim for compensation in respect of a contract or transaction;

[1] OJ No L 151, 3. 6. 1992, p. 1. Regulation as repealed by Regulation (EEC) No 990/93 of 28 April 1993.

[2] OJ No L 266, 12. 9. 1992, p. 27. Regulation as repealed by Regulation (EEC) No 990/93 of 28 April 1993.

[3] OJ No L 102, 28. 4. 1993, p. 14.

(d) a counterclaim;

(e) a claim for the recognition or enforcement, including by the procedure of exequatur, of a judgement, an arbitration award or an equivalent decision, wherever made or given;

3. 'measures decided on pursuant to United Nations Security Council resolution 757 (1992) and related resolutions' means measures of the United Nations Security Council or measures introduced by the European Communities or any State, country or international organization in conformity with, as required by, or in connection with the implementation of relevant decisions of the United Nations Security Council, or any action including any military action, authorized by the United Nations Security Council, in respect of the embargo of the Federal Republic of Yugoslavia (Serbia and Montenegro);

4. 'person or body in the Federal Republic of Yugoslavia (Serbia and Montenegro)' means:

(a) the State of the Federal Republic of Yugoslavia (Serbia and Montenegro) or any public authority thereof;

(b) any person in, or resident in the Federal Republic of Yugoslavia (Serbia and Montenegro);

(c) any body having its registered office or headquarters in the Federal Republic of Yugoslavia (Serbia and Montenegro);

(d) any body controlled, directly or indirectly, by one or more of the abovementioned persons or bodies.

Without prejudice to Article 2, performance of a contract or transaction shall also be regarded as having been affected by the measures decided on pursuant to United Nations Security Council resolution 757 (1992) and related resolutions where the existence or content of the claim results directly or indirectly from those measures.

Article 2

1. It shall be prohibited to satisfy or to take any step to satisfy a claim made by:

(a) a person or body in the Federal Republic of Yugoslavia (Serbia and Montenegro) or acting through a person or body in the Federal Republic of Yugoslavia (Serbia and Montenegro);

(b) any person or body acting, directly or indirectly, on behalf of or for the benefit of one or more persons or bodies in the Federal Republic of Yugoslavia (Serbia and Montenegro);

(c) any person or body taking advantage of a transfer or rights of, or otherwise claiming through or under, one or more persons or bodies in the Federal Republic of Yugoslavia (Serbia and Montenegro);

(d) any other person or body referred to in paragraph 9 of United Nations Security Council resolution 757 (1992);

(e) any person or body making a claim arising from or in connection with the payment of a bond or financial guarantee or indemnity to one or more of the abovementioned persons or bodies;

under or in connection with a contract or transaction the performance of which was affected, directly or indirectly, wholly or in part, by the measures decided on pursuant to United Nations Security Council resolution 757 (1992) and related resolutions.

2. This prohibition shall apply within the Community and to any national of a Member State and any body which is incorporated or constituted under the law of a Member State.

Article 3

Without prejudice to the measures decided on pursuant to United Nations Security Council resolution 757 (1992) and related resolutions, Article 2 shall not apply:

(a) to claims relating to contracts or transactions, with the exception of any bond, financial guarantee or indemnity, in respect of which the persons or bodies referred to in the said Article prove to a court in a Member State that the claim was accepted by the parties prior to the adoption of the measures decided on pursuant to United Nations Security Council resolution 757 (1992) and related resolutions, and that those measures have had no effect on the existence or content of the claim;

(b) to claims for payment under an insurance contract in respect of an event occurring prior to the adoption of the measures referred to in Article 2 or under an insurance contract where such insurance is compulsory under the law of a Member State;

(c) to claims for payment of sums paid into an account payment from which was blocked pursuant to the measures referred to in Article 2 provided that such payment does not concern sums paid under bonds in respect of contracts referred to in the said Article;

(d) to claims relating to contracts of employment subject to the law of any Member State;

(e) to claims for payment for goods which the persons or bodies referred to in Article 2 prove to a court in a Member State were exported prior to the adoption of the measures decided on pursuant to United Nations Security Council resolution 757 (1992) and related resolutions and that those measures have had no effect on the existence or content of the claim;

(f) to claims for sums which the persons or bodies referred to in Article 2 prove to a court in a Member State are due under any loan made prior to the adoption of the measures decided on pursuant to United Nations Security Council resolution 757 (1992) and related resolutions and that those measures have had no effect on the existence or content of the claim;

provided that the claim includes no amount, by way of interest, charge or otherwise, to compensate for the fact that performance was, as a result of those measures, not made in accordance with the terms of the relevant contract or transaction.

Article 4

In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by Article 2 shall be on the person seeking the enforcement of that claim.

Article 5

Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed.

Article 6

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.