

Proposal for a Council Regulation concerning certain restrictive measures in respect of certain members of the Government of Zimbabwe

(2003/C 20 E/02)

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(Submitted by the Commission on 11 February 2002)

EXPLANATORY MEMORANDUM

The Council has expressed serious concern about the situation in Zimbabwe, in particular the recent escalation of violence and intimidation of political opponents and the harassment of the independent press. It has noted that the Government of Zimbabwe has not taken effective measures to improve the situation as called for by the European Council in Laeken last December.

The Council has further expressed serious concern about recent legislation in Zimbabwe which, if enforced, would seriously infringe the freedom of speech, assembly and association and violate the norms and standards for free and fair elections.

In view of the above Common Position 2002/.../CFSP provides that certain restrictive measures should be implemented against Zimbabwe by means of in particular freezing of funds and a ban on exports on repression equipment.

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 2002/.../CFSP,

Having regard to the proposal from the Commission,

Whereas:

(1) The Council has expressed serious concern about the situation in Zimbabwe, in particular the recent escalation of violence and intimidation of political opponents and the harassment of the independent press. It has noted that the Government of Zimbabwe has not taken effective measures to improve the situation as called for by the European Council in Laeken last December.

(2) The Council has further expressed serious concern about recent legislation in Zimbabwe which, if enforced, would seriously infringe the freedom of speech, assembly and association and violate the norms and standards for free and fair elections.

(3) Common Position 2002/.../CFSP provides that certain restrictive measures should be implemented against

certain members of the Government of Zimbabwe, in particular freezing of funds, financial asset or economic resources and a ban on exports on repression equipment.

(4) These measures fall under the scope of the Treaty and, therefore, notably with a view to avoiding distortion of competition, Community legislation is necessary to implement the said measures as far as the territory of the Community is concerned. For the purpose of this Regulation, the territory of the Community is deemed to encompass the territories of the Member States to which the Treaty is applicable, under the conditions laid down in that Treaty.

HAS ADOPTED THIS REGULATION:

Article 1

For the purpose of this Regulation:

1. 'Funds, financial assets or economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

2. Freezing of funds means: preventing any move, transfer, alteration, use of 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.

Article 2

Without prejudice to the powers of the Member States in the exercise of their public authority, the provision to Zimbabwe of technical training or assistance related to the provision, manufacture, maintenance or use of arms and related material of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned shall be prohibited.

Article 3

1. All funds, financial assets or economic resources belonging to any natural or legal persons, entities or bodies engaged in activities that undermine democracy, human rights and the rule of law in Zimbabwe and listed in Annex I, shall be frozen.

2. No funds, financial assets or economic resources shall be made available directly or indirectly to or for the benefit of persons, entities or bodies listed in Annex I.

Article 4

1. Notwithstanding the applicable rules concerning reporting, confidentiality and professional secrecy natural and legal persons, entities and bodies shall:

- (a) provide immediately to the Commission any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 3. In particular information in respect of funds owned or controlled by persons listed in Annex 1 during the period of 6 months before the entry into force of this Regulation shall be provided;
- (b) cooperate with competent authorities in any verification of this information;
- (c) inform immediately the Commission on any transaction or activity where there is reasonable doubt about its compatibility with the provisions of this Regulation.

2. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

3. Any information directly received by the Commission shall be made available to the competent authorities of the Member States concerned.

Article 5

Article 3 shall not apply to

- (a) the crediting of frozen accounts on the condition that any additions shall be frozen
- (b) the use of frozen funds for

— essential human needs of a natural person included in Annex I such as payments for foodstuffs, medicines, the rent or mortgage for the family residence and fees and charges concerning medical treatment of members of that family, to be fulfilled within the Community;

— payment of taxes, compulsory insurance premiums and fees for public utility services such as gas, water, electricity and telecommunications to be paid in the Community;

— payment of charges due to a financial institution in the Community for the maintenance of accounts;

The Commission shall be informed of any payment made under this paragraph and of conclusive evidence of the fulfilment of the conditions and the purposes. Such evidence shall be kept available for at least 5 years for inspection by competent authorities.

Article 6

It shall be prohibited, knowingly and intentionally, to sell supply, export or ship, directly or indirectly, equipment which might be used for internal repression as listed in Annex II to any person, entity or body for the purpose of any business carried on in or operated from the territory of Zimbabwe.

Article 7

The Commission shall be empowered:

- To amend Annex I taking into account decisions in respect of the Annex of Common Position 2002/.../CFSP.

Article 8

The participation, knowingly and intentionally, in related activities the object or effect of which is, directly or indirectly to promote the transactions or activities referred to in article 4 or to circumvent the provisions of this Regulation shall be prohibited.

Article 9

The Commission and the Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with 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 10

The freezing in good faith of funds, financial assets or economic resources according to this Regulation by an institution or person or by an employee or director of such an institution or person shall not involve the institution or person or directors or employees in liability of any kind.

Article 11

Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed. Such sanctions shall be effective, proportionate and dissuasive.

Article 12

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 elsewhere who is a national of a Member State, and
- to any legal person, entity or body which is incorporated or constituted under the law of a Member State.

Article 13

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

This Regulation shall apply for a renewable 6 month period after that date.

It shall be kept under constant review.

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

*ANNEX I***LIST OF PERSONS, ENTITIES AND BODIES REFERRED TO IN ARTICLE 2**

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ANNEX II

EQUIPMENT FOR INTERNAL REPRESSION ENVISAGED BY ARTICLE 6

The list below does not comprise the articles that have been specially designed or modified for military use and that are covered by the arms embargo confirmed by the common position 96/635/CFSP.

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

Specially designed fingerprint equipment.

Power controlled searchlights.

Construction equipment provided with ballistic protection.

Hunting knives.

Specially designed production equipment to make shotguns.

Ammunition hand-loading equipment.

Communications intercept devices.

Solid-state optical detectors.

Image-intensifier tubes.

Telescopic weapon sights.

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

1. signal pistols;
2. air- and cartridge-powered guns designed as industrial tools or humane animal stunners.

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

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

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

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.

Water cannon and specially designed or modified components therefor.

Vehicles equipped with a water cannon.

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

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

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.

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.

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.

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

— TV or X-ray inspection equipment.

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

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).

Equipment and devices designed for explosive ordnance disposal; except:

1. bomb blankets;
2. containers designed for folding objects known to be, or suspected of being improvised explosive devices.

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

Software specially designed and technology required for all listed items.

Linear cutting explosive charges.

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)

Software specially designed and technology required for all listed items.
