



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.12.2002
COM(2002) 745 final

Proposal for a

COUNCIL REGULATION

concerning certain restrictive measures in respect of Somalia

(presented by the Commission)

EXPLANATORY MEMORANDUM

- (1) On 23 January 1992 the United Nations Security Council adopted resolution 733(1992), imposing a general and complete embargo on all deliveries of weapons and military equipment to Somalia (hereinafter referred to as “the arms embargo”).
- (2) On 19 June 2001 the United Nations Security Council adopted resolution 1356(2001), permitting certain exemptions to the arms embargo.
- (3) On 22 July 2002 the United Nations Security Council adopted resolution 1425(2002), extending the arms embargo to prohibit the direct or indirect supply to Somalia of technical advice, financial and other assistance, and training related to military activities.
- (4) On xx. December 2002 the Council adopted Common Position 2002/.../CFSP¹, concerning restrictive measures against Somalia.
- (5) Certain of 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 relevant decisions of the Security Council 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.

¹ OJ L, [...], [...], p. [...]

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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 2002/.../CFSP of ... December 2002²,

Having regard to the proposal from the Commission³,

Whereas:

- (1) On 23 January 1992 the United Nations Security Council adopted resolution 733(1992), imposing a general and complete embargo on all deliveries of weapons and military equipment to Somalia (hereinafter referred to as “the arms embargo”).
- (2) On 19 June 2001 the United Nations Security Council adopted resolution 1356(2001), permitting certain exemptions to the arms embargo.
- (3) On 22 July 2002 the United Nations Security Council adopted resolution 1425(2002), extending the arms embargo by prohibiting the direct or indirect supply to Somalia of technical advice, financial and other assistance, and training related to military activities.
- (4) Certain of 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 relevant decisions of the Security Council 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.
- (5) The Commission and the Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation, and co-operate with the Committee established by paragraph 11 of UNSCR 733(1992), in particular by supplying information to it.
- (6) Violations of the provisions of this Regulation should be subject to sanctions and Member States should impose appropriate sanctions to that end. It is, moreover, desirable that sanctions for violations of the provisions of this Regulation can be imposed on the date of entry into force of this regulation and that, if there is prima

² OJ L, [...], [...], p. [...]

³ OJ C [...], [...], p.[...].

facie evidence, Member States institute proceedings against any persons, entities or bodies under their jurisdiction that have violated any of the provisions.

HAS ADOPTED THIS REGULATION:

Article 1

Without prejudice to the powers of the Member States in the exercise of their public authority, it shall be prohibited

- to provide financing or financial assistance, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of arms and related materiel, to any person, entity or body in Somalia and to any other person, entity or body for the purpose of any business carried on in, or operated from, the territory of Somalia.
- to grant, sell, supply or transfer, directly or indirectly, technical advice, assistance or training related to military activities, including in particular training and assistance related to the manufacture, maintenance and use of arms and related materiel of all types, to any person, entity or body in Somalia and to any other person, entity or body for the purpose of any business carried on in, or operated from, the territory of Somalia.

Article 2

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

Article 3

1. Article 1 shall not apply to

- the provision of financing and financial assistance for the sale, supply, transfer or export of non-lethal military equipment intended solely for humanitarian or protective use,
- the provision of technical advice, assistance or training related to such non-lethal equipment,

if such activities have been approved in advance by the Committee established by paragraph 11 of Resolution 751 (1992) of the Security Council of the United Nations.

2. Article 2 shall not apply to the participation in activities the object or effect of which is to promote activities that have been approved by that Committee.

Article 4

Without prejudice to the rights and obligations of the Member States under the Charter of the United Nations, the Commission shall maintain all necessary contacts with said the Security

Council Committee mentioned in article 3(1) for the purpose of the effective implementation of this Regulation.

Article 5

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 6

This Regulation shall apply notwithstanding any rights conferred or obligations imposed by any international agreement signed or any contract entered into or any licence or permit granted before the entry into force of this Regulation.

Article 7

1. 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.

Pending the adoption, where necessary, of any legislation to this end, the sanctions to be imposed where the provisions of this Regulation are infringed, shall be those determined by the Member States in order to give effect to Article 7 of Regulation (EC) No 1318/2002⁴.

2. Each Member State shall bring proceedings against any natural or legal person, entity or body under its jurisdiction, where there is a *prima facie* case of violation of any of the prohibitions laid down in this Regulation by such person, entity or body.

Article 8

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 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.

⁴ OJ L 194, 23.7.2002, p. 1.

Article 9

This Regulation shall enter into force on the day following that 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.

Done at Brussels,

For the Council
The President