



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.4.2004
COM(2004) 226 final

Proposal for a

COUNCIL REGULATION

**strengthening the restrictive measures in respect of Burma/Myanmar and repealing
Regulation (EC) No 1081/2000**

(presented by the Commission)

EXPLANATORY MEMORANDUM

- (1) On 28 October 1996, the Council imposed certain restrictive measures against Burma/Myanmar by Common Position 1996/653/CFSP in view of the political situation in that country. These measures were subsequently extended and amended by Common Position 2000/346/CFSP and Common Position 2003/297/CFSP, expiring on 29 April 2004.
- (2) Some of the restrictive measures imposed against Burma/Myanmar were implemented in the Community by Regulation (EC) No 1081/2000.
- (3) In view of its continuing concern about the human rights situation in Burma/Myanmar, the Council has decided in its Common Position 2004/.../CFSP to extend and strengthen the restrictive measures in respect of Burma/Myanmar.
- (4) In view of this, it is desirable to publish a new Regulation.

Proposal for a

COUNCIL REGULATION

strengthening the restrictive measures in respect of Burma/Myanmar and repealing Regulation (EC) No 1081/2000

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 renewing restrictive measures in respect of Burma/Myanmar¹,

Having regard to the proposal from the Commission²,

Whereas:

- (1) On 28 October 1996, the Council, concerned at the absence of progress towards democratisation and at the continuing violation of human rights in Burma/Myanmar, imposed certain restrictive measures against Burma/Myanmar by Common Position 1996/653/CFSP³. In view of continued severe and systematic violations of human rights by the Burmese authorities, and in particular continuing and intensified repression of civil and political rights, and the failure of those authorities to take steps towards democracy and reconciliation, the restrictive measures against Burma/Myanmar were subsequently extended several times, most recently by Common Position 2003/297/CFSP on Burma/Myanmar⁴, which is due to expire on 29 April 2004. Some of the restrictive measures imposed against Burma/Myanmar were implemented at Community level by Council Regulation 1081/2000⁵.
- (2) The military regime of Burma/Myanmar is still engaging in serious violations of human rights, including the failure to take action to eradicate the use of forced labour, and it has up to now failed to enter into substantive discussions with the democratic movement concerning a process leading to national reconciliation, respect for human rights and democracy. Moreover, the continuing detention of Daw Aung San Suu Kyi and other members of the National League for Democracy supports the conclusion that the overall political situation has deteriorated. Therefore, Common Position 2004/.../CFSP stipulates that the restrictive measures against the military regime in Burma/Myanmar and those who benefit most from its misrule and those who actively

¹ OJ L [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ L 287, 8.11.1996, p. 1.

⁴ OJ L 106, 29.4.2003, p. 36, as last amended by Council Decision 2003/907/CFSP (OJ L 340, 24.12.2003, p. 81).

⁵ OJ L 122, 24.5.2000, p. 29, as last amended by Commission Regulation (EC) No 2297/2003 (OJ L 340, 24.12.2003, p. 37).

frustrate the process of national reconciliation, respect for human rights and democracy should be maintained and strengthened.

- (3) 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 and economic resources of members of the Government of Burma/Myanmar and of any natural or legal persons, entities or bodies associated with them.
- (4) 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.
- (5) It is desirable to align with 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 and economic resources.
- (6) As regards the obligations of a credit or financial institution that receives funds transferred by third parties to the account of a listed person or entity, it should be noted that the prohibition against making funds or economic resources available shall not prevent the provisional crediting of the frozen account until the competent authorities have made a decision whether they approve the crediting or whether the funds should be the object of enforcement action against the third party that transferred them. Pending such decision the crediting should not be disclosed to the listed person or entity concerned.
- (7) For the sake of clarity, a new text containing all the relevant provisions as amended should be adopted, replacing Regulation (EC) No 1081/2000, which should be repealed.
- (8) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force on the day of its publication,

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, claims on money, 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 Burma/Myanmar;
- (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 Burma/Myanmar;
- (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 natural or legal person, entity or body in, or for use in Burma/Myanmar;
- (b) to grant, sell, supply or transfer technical assistance related to the equipment referred to at point (a), directly or indirectly to any natural or legal person, entity or body in, or for use in Burma/Myanmar;
- (c) to provide financing or financial assistance related to the equipment referred to at point (a), directly or indirectly to any natural or legal person, entity or body in, or for use in Burma/Myanmar;
- (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. Authorisations referred to in paragraph 1 may only be granted prior to the activity for which they are requested.

Article 5

Articles 2 and 3 shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Burma/Myanmar 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 Burma/Myanmar 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 1081/2000 or this Regulation,

provided that any such interest, other earnings and payments 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 or the refusal to make funds or economic resources available, carried out in good faith on the basis 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

Regulation (EC) No 1081/2000 is hereby repealed.

Article 15

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

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 boarders 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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GERMANY

Concerning financing and financial assistance:

Deutsche Bundesbank
Servicezentrum Finanzsanktionen
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Concerning technical assistance and other services:

Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA)
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ANNEX III

List of persons referred to in Article 6