

July 30, 1996
No. 47/96

4.21.2(103)

EUROPEAN COMMISSION PROPOSES EU ANTI-BOYCOTT LAW

The European Commission has formally proposed an anti-boycott regulation to neutralize the impact of the new US Helms-Burton law and any similar future laws on European economic interests. The proposal would prevent European companies from complying with Helms-Burton and enable them to recover amounts awarded against them by US courts as a result of the law. The Council, which must approve the proposed Regulation unanimously, can decide to apply it to other extraterritorial laws besides Helms-Burton in future. In addition, the Commission has begun gathering information required to create a 'watch list' of US citizens and companies that file law suits against European firms.

Sir Leon Brittan, Vice-President of the European Commission, commented: "Europeans and Americans share a continuing desire to help turn Cuba into a responsible member of the international community. But the Cuba Liberty and Democratic Solidarity Act is not the right way to achieve that goal. Instead it offends and attacks America's trusted allies, damages business confidence in the US and beyond and establishes a dangerous precedent that the United States itself will come to regret if other countries follow it in future. President Bill Clinton has taken the welcome but limited step of delaying the right to file lawsuits for six months. But the purported extraterritorial reach of the law remains and European companies are already being hurt. That is why we cannot remain inactive when this Sword of Damocles hangs over European companies and individuals. Today the Commission has responded swiftly to the Ministers' unanimous condemnation of the law by proposing a Regulation that will outlaw the Helms-Burton Act in Europe, forbid companies from complying with it and give them the right to counter-sue anywhere in the EU if awards are made against them in the US courts".

The aim of this proposed anti-boycott Regulation would be to provide protection against and counteract the effects of the extraterritorial application of the Cuban Liberty and Democratic Solidarity (Libertad) Act, or any actions resulting from it. This includes other legislative instruments that may stem from the law. It would forbid any person or company from complying with those laws, whether through a subsidiary or an intermediary, and whether actively or by omission. Exemptions could be granted if non-compliance risked seriously damaging the company's interests or those of the EU. Member states themselves would be responsible for imposing "effective, proportional and dissuasive" penalties on companies found in breach of the Regulation.

The anti-boycott Regulation would be fully binding on all EU member states. It would apply throughout the territory of the EU, and would cover any natural or legal person, private or public, resident or incorporated in the EU.

The Council may add or delete laws from the proposal. For this to happen, the Commission would have to submit a new proposal to the Council. The Regulation will be based on Articles 113 and 235 of the Treaty and would have to be approved unanimously by the Council.

It would require companies to notify the Commission of all information about how their economic and financial interests were being affected directly or indirectly by the extraterritorial laws listed in the Regulation. Full confidentiality would be guaranteed.

It would determine that any legal judgement delivered by a court outside the EU that gave effect to those extraterritorial laws would neither be recognized nor enforceable.

Amounts awarded against EU companies could be recovered anywhere in the EU, so long as it was established that they result from the extraterritorial measures listed in the anti-boycott Regulation.

Watch list

In a separate decision the Commission took action to follow up on another of the measures identified by EU Foreign Ministers - the establishment of a watch list. As a first step the Commission decided to publish a notice in the Official Journal inviting parties to submit any information which they consider relevant to the compilation of a watch list of US companies or citizens filing Title III actions.

Background

On July 15 the Council, while reaffirming its concern to promote democratic reform in Cuba, condemned the extraterritorial nature of the Helms-Burton law and identified a list of options for retaliation, including a WTO dispute panel, visa restrictions, a watch/list of US companies filing law suits against European firms, and anti-boycott legislation.

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