



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 18.05.1999
COM(1999) 249 final

Proposal for a

COUNCIL REGULATION (EC)

**concerning a freeze of funds and a ban on investment in relation to the Federal
Republic of Yugoslavia (FRY)**

(presented by the Commission)

EXPLANATORY MEMORANDUM

The Council decided on 26 April 1999 that the sanctions against the Federal Republic of Yugoslavia and the Republic of Serbia should be extended. These extensions include the extension of the scope of the freeze of funds held abroad by the Governments of the Federal Republic of Yugoslavia and of the Republic of Serbia, an extension of the ban on investment, and a prohibition of the provision of export finance by the private sector.

The present proposal of the Commission envisages implementing the decisions of the Council by extending the scope of the provisions of Council Regulations (EC) No's 1295/98 and 1607/98, concerning the freezing of funds held abroad by the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, respectively a ban on investment in the Republic of Serbia.

The approach followed by the Commission is the one outlined in its discussion paper of January 1999 on Strengthening the Economic and Financial Sanctions against the Federal Republic of Yugoslavia (FRY) and the Republic of Serbia.

Consequently the Commission proposes to extend the definition of funds and to include in the definition of Governments of the FRY and/or Serbia those companies, undertakings, institutions and entities that are owned or controlled by these governments as well as persons acting on behalf or for the benefit thereof. It is also proposed to limit the prohibition of export finance by the private sector to a prohibition to make such financing available to the said governments, companies, undertakings, institutions, entities or persons.

In respect of the investment ban it is proposed to prohibit acquiring or extending any participation in, ownership of or control of real estate, company, undertaking, institution or entity in the Republic of Serbia or owned or controlled by the same governments, companies, undertakings, institutions, entities or persons.

Whereas the extension of the scope of the freeze of funds and of the investment ban, and the prohibition on export finance will increase the risks of circumvention but also increase the need for exceptions, the Commission proposes the establishment of a management committee that will assist the Commission in taking the appropriate decisions in respect of the implementation of the proposed Regulation.

In order to increase the transparency of Community legislation, the Commission proposes to replace Regulations (EC) No's 1295/98 and 1607/98 by the presently proposed Regulation, which will still incorporate the main elements of the former Regulations.

Proposal for a

COUNCIL REGULATION (EC)

concerning a freeze of funds and a ban on investment in relation to the Federal Republic of Yugoslavia (FRY)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301,

Having regard to Common Positions 98/326/CFSP of 7 May 1998¹ and 98/374/CFSP of 8 June 1998² defined by the Council on the basis of Article J.2 of the Treaty on European Union, concerning respectively the freezing of funds held abroad by the Governments of the Federal Republic of Yugoslavia (FRY) and the Republic of Serbia, and the prohibition of new investment in Serbia, and to Common Position 99/.../CFSP of ... May 1999 defined by the Council on the basis of Article 15 of the Treaty on European Union, concerning additional restrictive measures against the Federal Republic of Yugoslavia (FRY),³

Having regard to the proposal from the Commission,

- (1) Whereas the Council, on 8 and 26 April 1999, in the light of the continued violation by the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia of the relevant United Nations Security Council resolutions and of the pursuance of their extreme and criminally irresponsible policies, including repression against citizens, which constitute serious violations of human rights and international humanitarian law, expressed its strong and continuing support for maximum pressure from the international community on President Milosevic and his regime;
- (2) Whereas an extension of the scope of the present legal framework concerning the freezing of funds held abroad by the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia, and concerning the prohibition of new investment in the Republic of Serbia will significantly increase the pressure on those governments;
- (3) Whereas, therefore, the scope of the provisions of this legal framework should be extended to cover certain assets, other than funds and financial resources, which may generate funds or other financial resources for the governments concerned, and to cover companies, undertakings, institutions and entities

¹ OJ L 143, 14.5.98, p. 1

² OJ L 165, 10.6.1998, p. 1

³ OJ L ..., ... 1999, p. ...

owned or controlled by those governments, as well as persons acting for or on behalf of those governments, as well as the acquiring or extending of a participation in, ownership of or control of real estate or companies, undertakings, institutions or entities which are owned or controlled by the Government of the Federal Republic of Yugoslavia or of the Republic of Serbia;

- (4) Whereas the measures contained in this Regulation should be proportionate to the objectives pursued by the Council with regard to the Kosovo crisis and the measures should not lead to severe damage to the interests of the Community;
- (5) Whereas, therefore, allowance should be made for decisions on exceptions according to procedures which minimise the risks to the interests of the Community;
- (6) Whereas a procedure should also be provided for amending the Annexes to this Regulation;
- (7) Whereas circumvention of this Regulation should be countered by an adequate system of information, and where appropriate, remedial measures, including additional Community legislation;
- (8) Whereas competent authorities of the Member States should, where necessary, be empowered to ensure compliance with this Regulation;
- (9) Whereas it is desirable that sanctions for violations of the provisions of this Regulation can be imposed as of the date of entry into force of this Regulation;
- (10) Whereas there is a need for Commission and Member States to inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation;
- (11) Whereas for reasons of transparency and simplicity the main provisions of Regulations (EC) No's 1295/98⁴ and 1607/98⁵ have been incorporated in this Regulation, and, therefore Regulations (EC) No's 1295/98 and 1607/98 can be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

For the purpose of this Regulation:

1. 'Government of the FRY' means: the Government of the Federal Republic of Yugoslavia, at any level, its agencies, bodies or organs, and companies, undertakings, institutions and entities owned or controlled by that government, including all financial institutions and state-owned and socially-

⁴ OJ L 178, 23.6. 1998, p. 33

⁵ OJ L 209, 25.7.1998, p. 16

owned entities organised in the Federal Republic of Yugoslavia as of 26 April 1999, any successors to such entities, and their respective subsidiaries and branches, wherever located, and any persons acting or purporting to act for or on behalf of any of the foregoing.

2. 'Government of the Republic of Serbia' means: the Government of the Republic of Serbia, at any level, its agencies, bodies or organs, and companies, undertakings, institutions and entities owned or controlled by that government, including all financial institutions and state-owned and socially-owned entities organised in the Republic of Serbia as of 26 April 1999, any successors to such entities, and their respective subsidiaries and branches, wherever located, and any persons acting or purporting to act for or on behalf of any of the foregoing.
3. 'Funds' means: financial assets and economic benefits of any kind, including, but not necessarily limited to, cash, cheques, drafts, money orders and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, derivatives contracts; interest, dividends or other income on or value accruing from or generated by assets; credit, right of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export-financing.
4. '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.
5. 'Owning a company, undertaking, institution or entity' means: being in possession of 50 % or more of the proprietary rights of a company, undertaking, institution or entity or having a majority interest therein.
6. 'Controlling a company, undertaking, institution or entity' means:
 - a) having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of a company, undertaking, institution or entity;
 - (b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a company, undertaking, institution or entity who have held office during the present and previous financial year;
 - (c) controlling alone, pursuant to an agreement with other shareholders in or members of a company, undertaking, institution or entity, a majority of shareholders' or members' voting rights in that company, undertaking, institution or entity;

(d) having the right to exercise a dominant influence over a company, undertaking, institution or entity, pursuant to an agreement entered into with that company, undertaking, institution or entity, or to a provision in its memorandum or articles of association, where the law governing that company, undertaking, institution or entity permits its being subject to such agreement or provision;

(e) having the power to exercise the right to exercise a dominant influence referred to at (d), without being the holder of that right;

(f) having the right to use all or part of the assets of a company, undertaking, institution or entity;

(g) managing a company, undertaking, institution or entity on a unified basis, while publishing consolidated accounts;

(h) sharing jointly and severally the financial liabilities of a company, undertaking, institution or entity, or guaranteeing them.

Article 2

1. Any person listed in Annex 1 to this Regulation shall be deemed to be a person acting or purporting to act for or on behalf of the Government of the FRY or the Government of the Republic of Serbia.
2. Companies, undertakings, institutions or entities, located outside the territory of the Federal Republic of Yugoslavia and listed in Annex 2 to this Regulation, shall be deemed to be owned or controlled by the Government of the FRY or the Government of the Republic of Serbia.
3. Companies, undertakings, institutions or entities, located within the territory of the Federal Republic of Yugoslavia and listed in Annex 3 to this Regulation, shall be deemed not to be owned or controlled by the Government of the FRY or the Government of the Republic of Serbia.
4. In cases where there exists a reasonable expectation that a person, company, undertaking, institution or entity is covered by the definitions of Government of the FRY or Government of the Republic of Serbia, but does not appear on the lists of Annex 1 and 2, any natural or legal person shall obtain written confirmation from the relevant competent authorities of the Member States listed in Annex 4 that such a person, company, undertaking, institution or entity is not covered by those definitions before entering into activities otherwise prohibited by the provisions of this Regulation. If the competent authorities do not provide such written confirmation within 4 working days, the person, company, undertaking, institution or entity shall be deemed not to be covered by this Regulation for the purposes of the intended activities.

Article 3

Except as permitted under the provisions of Articles 6 and 7:

- (a) All funds held outside the territory of the Federal Republic of Yugoslavia and belonging to the Government of the FRY and/or to the Government of the Republic of Serbia shall be frozen.
- (b) No funds shall be made available, directly or indirectly, to or for the benefit of, either or both, those Governments.

Article 4

1. It shall be prohibited to acquire or extend any participation in, ownership of or control of a company, undertaking, institution or entity
 - within the Republic of Serbia, or
 - wherever else located, registered or incorporated, and owned or controlled by the Government of the FRY or the Government of the Republic of Serbia,in exchange or not, for the supply or provision of tangible or intangible goods, services or technology (including patents), capital, debt relief or other financial resources.
2. It shall also be prohibited to engage in or continue activities facilitating, promoting or otherwise enabling the acquisition or extension of a participation in, ownership of or control over such companies, undertakings, institutions or entities.

Article 5

1. The participation, knowingly and intentionally, in related activities, the object or effect of which is, directly or indirectly, to circumvent the provisions of Articles 2, 3 and 4 shall be prohibited.
2. Any information that the provisions of this Regulation are being, or have been circumvented shall be notified to the competent authorities of the Member States and/or the Commission as listed in Annex 4.

Article 6

Without prejudice to the Community rules concerning confidentiality and to the provisions of Article 284, the competent authorities of the Member States shall have the power to require banks, other financial institutions, insurance companies, and other bodies and persons to provide all relevant information necessary for ensuring compliance with this Regulation.

Article 7

Article 2 shall not apply to funds exclusively used for the following purposes:

- (1) Payment for current expenses, including salaries of local staff, of embassies, consular posts or diplomatic missions of the Government of the Federal Republic of Yugoslavia or the Serbian Government within the Community;
- (2) Transfers from the Community to natural persons resident in the Federal Republic of Yugoslavia of social security or pension payments as well as the transfer of other payments to protect entitlements in the area of social insurance.
- (3) Payments in cash in Yugoslav dinars or one of the currencies of the Member States within the territory of the Republic of Yugoslavia.

Article 8

1. In accordance with the provisions of Article 9 of this Regulation the Commission shall be empowered
 - (a) to amend the Annexes to this Regulation;
 - (b) with a view to the protection of the interests of the Community, to grant specific or general authorisations
 - (i) to unfreeze funds or make funds available for the benefit of the Government of the FRY or the Government of the Republic of Serbia;
 - (ii) to acquire or extend a participation in, ownership of or control over a company, undertaking, institution or entity referred to in Article 4.

For the purpose of this Article, the interests of the Community to be protected may include, without being limited to, democratisation projects or humanitarian activities by the European Community or the Member States; the provision of essential services and notably transit services by the Federal Republic of Yugoslavia, the Republic of Serbia or the Republic of Montenegro; the protection of employment within the Community; the provision of legal services in accordance with the relevant Human Rights Conventions.

2. Any request by a legal or natural person for an authorisation referred to in paragraph 1(b) of this Article, or for an amendment of Annexes 1, 2 or 3 to this Regulation, shall be made to the Commission through the appropriate competent authorities of the Member States, listed in Annex 4 to this Regulation.

Article 9

For the purposes of the implementation of Article 8, the Commission shall be assisted by the Committee composed of the representatives of the Member States and chaired by the representative of the Commission, established under Council Regulation (EC) No 2271/96⁶, in accordance with the following provisions.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver the opinion on the draft within a time limit, which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205 (2) of the Treaty in the case of decisions, which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures, which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided for a period not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

Article 10

The committee referred to in Article 9 may examine any question concerning the application of this Regulation, which may be raised either by the chairman or by a representative of a Member State.

Article 11

The Commission and the Member States shall inform each other of the measures taken under this Regulation and supply each other with the relevant information at their disposal in connection with this Regulation, notably information received in accordance with Articles 2, 5 and 6, and in respect of violation and enforcement problems or judgements handed down by national courts.

Article 12

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.

⁶ OJ L 309, 29.11.1996, p.1

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 accordance with Article 6 of Council Regulation (EC) No 1295/98 or Article 3 of Council Regulation (EC) No 1607/98.

Article 13

Council Regulations (EC) No's 1295/98 and 1607/98 are hereby repealed.

Article 14

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,
- to any body which is incorporated or constituted under the law of a Member State.

Article 15

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.

Done at Brussels,

For the Council
The President

ANNEX 1

**Persons acting or purporting to act for or on behalf of the Governments of the
Federal Republic of Yugoslavia or the Republic of Serbia**

ANNEX 2

Companies, undertakings, institutions or entities owned or controlled by the Governments of the Federal Republic of Yugoslavia or the Republic of Serbia (not located in the Federal Republic of Yugoslavia)

ANNEX 3

Companies, undertakings, institutions or entities located within the Federal Republic of Yugoslavia not owned or controlled by the Governments of the Federal Republic of Yugoslavia or the Republic of Serbia

ANNEX 4

List of competent authorities referred to in Articles 2(4), 5(2) and 8(2)

BELGIUM

Ministère des finances

Trésorerie

avenue des Arts 30

B-1040 Bruxelles

Fax (32 2) 233 75 18

DENMARK

Danish Agency for Trade and Industry

Tagensvej 137

DK-2200 Copenhagen N

Tel. (45) 35 86 86 86

Fax (45) 35 86 86 87

GERMANY

Bundesaufuhramt (BAFA)

Frankfurter Straße 29-35

D-65760 Eschborn

GREECE

Ministry of National Economy

Secretariat-General for International Economic Relations

Directorate-General for External Economic and Trade Relations

Director Th. Vlassopoulos

Ermou and Kornarou 1

GR-105 63 Athens

Tel. (31) 32 86 401-3

Fax (31) 32 86 404

SPAIN

Ministerio de Economía y Hacienda

Dirección General de Comercio Exterior

Paseo de la Castellana, 162

E-28046 Madrid

Tel. (34 91) 349 38 60

Fax (34 91) 457 28 63

FRANCE

Ministère de l'économie, des finances et de l'industrie

Direction générale des douanes et des droits indirects

Cellule embargo - Bureau E2

23bis, rue de l'Université

F-75700 Paris - cedex 07 S.P.

Tel. (33 1) 44 74 48 93

Fax (33 1) 44 74 48 97

IRELAND

Department of Public Enterprise

Aviation Regulation and International Affairs Division

44 Kildare Street

IRL-Dublin 2

Tel. (353 1) 604 10 50

Fax (353 1) 670 74 11

ITALY

Ministero del Commercio estero - Roma

Gabinetto

Tel. (39 6) 59 93 23 10

Fax (39 6) 59 64 74 94

LUXEMBOURG

Ministère des affaires étrangères

Direction des relations économiques internationales et de la coopération

BP 1602

L-1016 Luxembourg

NETHERLANDS

Ministerie van Financiën

Directie Wetgeving, Juridische en Bestuurlijke Zaken

Postbus 20201

NL-2500 EE Den Haag

Tel. (31 70) 342 82 27

Fax (31 70) 342 79 05

AUSTRIA

Bundesministerium für wirtschaftliche Angelegenheiten

Abteilung II/A/2

Landstrasser Hauptstraße 55-57

A-1030 Wien

Österreichische Nationalbank

Otto Wagnerplatz 3

A-1090 Wien

Tel. (43 1) 40 420

PORTUGAL

Ministério dos Negócios Estrangeiros

A/C Mónica Lisboa

Direcção-Geral dos Assuntos Multilaterais

Largo Rilvas

P-1300 Lisboa

FINLAND

Ulkoasiainministeriö

PL 176

SF-00161 Helsinki

Utrikesministeriet

PB 176

SF-00161 Helsingfors

SVERIGE

Riksåklageren

Box 16370

S-103 27 Stockholm

Tel. (46 8) 453 66 00

Fax (46 8) 453 66 99

Regeringskansliet

Utrikesdepartementet

Rättssekretariatet för EU-frågor

Fredsgatan 6

S-103 39 Stockholm

Tel. (46 8) 405 10 00

Fax (46 8) 723 11 76

UNITED KINGDOM

Export Control Organization

Department of Trade and Industry

Kingsgate House

66-74 Victoria Street

London SW1E 6SW

Tel. (44 171) 215 6740

Fax (44 171) 222 0612

COM(1999) 249 final

DOCUMENTS

EN

09 11 06 01

Catalogue number : CB-CO-99-245-EN-C

Office for Official Publications of the European Communities
L-2985 Luxembourg