



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 07.12.1999  
COM(1999) 662 final

Proposal for a

**COUNCIL REGULATION**

**concerning a flight ban and a freeze of funds in respect of the Taliban of Afghanistan**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

- (1) The United Nations Security Council decided on 15 October 1999 that economic and financial sanctions should be applied as of 14 November 1999 against the Taliban (of Afghanistan) if it would refuse to hand over Usama bin Laden without further delay to appropriate authorities in a country where he has been indicted, or to appropriate authorities in a country where he will be returned to such a country, or to appropriate authorities in a country where he will be arrested and effectively brought to justice. (Cf. UNSC Resolution 1267 (1999).)
- (2) The specific sanctions provided for in the Resolution are a flight ban and a freeze of funds. Both types of measures fall within the competence of the European Community, and, therefore, the Council will have to adopt an implementing Regulation on the basis of a proposal of the Commission.
- (3) The present proposal of the Commission for a Council Regulation follows closely the provisions of the UNSC Resolution. But, in view of the direct applicability of the Council Regulation, formulations and definitions of terms have necessarily to be more precise than in the Resolution. In order to make the Regulation immediately effective, the Regulation should also contain provisions to the effect that penalties/sanctions for violations of the Regulation, to be applied by the competent authorities of the Member States, can be applied immediately.
- (4) The UNSC Resolution does provide for very few exceptions. Authorisations for exceptions will be granted only by the said UNSC sanctions committee. This leaves no discretion for granting of authorisations by the competent authorities of the Member States or the Commission.
- (5) The European Community provides humanitarian assistance, food aid and aid to uprooted people in Afghanistan. These activities are implemented by Non-Governmental Organisations and International Organisations and do not benefit the Taliban in a way that would be prohibited under the proposed Regulation. Member States may find themselves in a similar situation. Nevertheless, in view of obtaining legal security from the start, the Commission will verify with the competent authorities of the United Nations to which extent such and similar activities might need an authorisation of the said Sanctions Committee.
- (6) Where authorisations should be granted in respect of activities by natural or legal persons covered by the proposed Regulation, it is deemed most efficient to minimise the number of authorities involved in the obtaining of authorisations from the UNSC sanctions committee. Therefore, requests for authorisations should be transmitted to the sanctions committee preferably through the services of the Commission, particularly in cases of activities of the EC as such. Only in cases of urgency and where only one Member State is involved should requests for authorisations be made through the competent authority of that Member State. The proposed Community procedure will contribute significantly to the necessary transparency of the implementation of the sanctions regime. On the other hand, the Sanctions Committee should adopt as soon as possible its procedures and mechanisms for granting authorisations, including a standardised document to that effect. These procedures, mechanisms and document models should preferably be part of this Regulation, and the Commission will, therefore, take the necessary steps to that effect.

- (7) As far as the timing of this proposal is concerned, the Commission expects the Council to recognise the fact that on 14 November 1999 the Taliban had not handed over Usama bin Laden. Therefore, there should be as little time lost between that date and the date of entry into force of the proposed Regulation. To the extent that the UN Security Council or the sanctions committee have not themselves taken all the necessary steps to make the resolution effective, the Regulation should provide for procedures to integrate any subsidiary decisions of the UN Security Council or sanctions committee.

Proposal for a

## COUNCIL REGULATION

### **concerning a flight ban and a freeze of funds in respect of the Taliban of Afghanistan**

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 Common Position 1999/727/CFSP of 15 November 1999 adopted by the Council on the basis of Article 15 of the Treaty on European Union, concerning restrictive measures against the Taliban (<sup>1</sup>),

Having regard to the proposal from the Commission,

Whereas:

- (1) On 15 October 1999 the Security Council of the United Nations adopted Resolution 1267 (1999). In paragraph 2 of this Resolution the Security Council demands that the Taliban without delay hands over Usama bin Laden to the authorities mentioned in that paragraph;
- (2) In paragraph 3 of said Resolution the Security Council decided that a flight ban and a freeze of funds as set out in paragraph 4 shall be imposed on 14 November 1999 unless the Security Council decides that the Taliban has fully complied with the obligation set in said paragraph 2;
- (3) The measures set out in paragraph 4 of Resolution 1267 (1999) 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, such territory being deemed to encompass, for the purposes of this Regulation, the territories of the Member States to which the Treaty is applicable, under the conditions laid down in that Treaty;
- (4) The Security Council called for application of these measures notwithstanding the existence of any right or obligation conferred or imposed by any international agreement signed, any contract entered into or any licence or permit granted before 14 November 1999;
- (5) In order to create maximum legal certainty within the Community, names and other relevant data with regard to persons and bodies and aircraft falling under the scope of

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<sup>1</sup> OJ L 294, 16.11.1999, p. 1.

the Resolution should be made publicly known. Appropriate procedures should be established within the Community in this respect;

- (6) Authorisations for exemptions to the freeze of funds and to the flight ban will only be granted by the Committee established under Resolution 1267 (1999) and provisions should be made for obtaining such authorisations from that Committee;
- (7) Since the measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(2)</sup>, they should be adopted by use of the management procedure provided for in Article 4 of that Decision;
- (8) Competent authorities of the Member States should, where necessary, be empowered to obtain relevant information to ensure compliance with this Regulation;
- (9) In view of the call by the Security Council for bringing proceedings against persons and entities that violate the measures imposed and for imposing appropriate penalties, 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) The Security Council calls for the application of the measures 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 the relevant paragraphs of its Resolution 1267 (1999). As a consequence, a corresponding provision should be made with respect to the present Regulation.
- (11) There is a need for the 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, and to co-operate with the said Committee, including by supplying information to it,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

For the purpose of this Regulation:

1. Taliban means: the Taliban of Afghanistan at any level (its members as well as its agencies, bodies or organs) and those companies, undertakings, institutions, including financial institutions, and entities, that are owned or controlled by the Taliban, and any successors to such companies, undertakings, institutions, 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 or being under the protection thereof;
2. Funds means: financial assets and economic benefits of any kind, including, but not necessarily limited to, cash, cheques, claims on money, drafts, money orders and other payment instruments; deposits with financial institutions or other entities,

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<sup>2</sup> OJ L 184, 17.7.1999, p. 23.

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.

3. 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;
4. 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;
5. 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.
6. Taliban Sanctions Committee means: the Committee established by United Nations Security Council 1267 (1999).

## *Article 2*

1. Any person or any body listed in Annex I to this Regulation shall be deemed to be falling under the definition of Taliban contained in Article 1 (1).
2. Any person, company, undertaking, institution, body or entity, located within the territory of Afghanistan and listed in Annex II to this Regulation, shall be deemed *not* to be falling under the definition of Taliban contained in Article 1 (1).
3. In cases where a natural or legal person holds or acquires well-founded evidence that a person, company, undertaking, institution or entity is covered by the definition of the Taliban, but does not appear on the lists of Annex I, such person shall, before entering with that person, company, undertaking, institution or entity into any commercial transaction or activity covered by Articles 3 or 5, submit the evidence to the competent authorities of the Member States listed in Annex V. The competent authorities will examine all evidence made available to them. If they consider the evidence available as insufficient and are not able to confirm in writing within five working days after the said submission that the intended transaction or activity is prohibited under this Regulation, the transaction or the activity will not constitute a violation of this Regulation, until a definitive determination has been made on the basis of new or additional evidence, and this determination has been published in the Official Journal of the European Communities.

## *Article 3*

1. All funds belonging to or owned or controlled, directly or indirectly, by the Taliban shall be frozen.
2. No funds shall be made available, directly or indirectly, to or for the benefit of the Taliban.

## *Article 4*

Without prejudice to the Community rules concerning confidentiality and to the provisions of Article 284 of the Treaty, 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 5*

It shall be prohibited for any aircraft owned, leased and/or operated by or on behalf of the Taliban to take off from or land in the territory of the Community.

Any aircraft listed in Annex II to this Regulation shall be deemed to be aircraft owned, leased or operated by or on behalf of the Taliban.

#### *Article 6*

1. Article 3 shall not apply to funds exclusively used for the purposes approved by the United Nations Security Council and for which the Taliban Sanctions Committee has granted an authorisation in accordance with the procedures set out in Annex IV.
2. Article 5 shall not apply to flights for which the Taliban Sanctions Committee has granted an authorisation in accordance with the procedures set out in Annex IV.
3. No other exceptions to Article 3 and 5 shall be authorised.
4. Requests for authorisations by the Taliban Sanctions Committee shall be forwarded to this Committee through the competent services of the Commission listed in Annex V. In urgent cases and where no competent authorities of other Member States have to be involved, a request shall be forwarded by the competent authority of the Member State involved and listed in Annex V. The services of the Commission and competent authorities of the Member States shall inform each other immediately of any request made and of the decision of the Taliban Sanctions Committee thereon.
5. Any authorisation by the Taliban Sanctions Committee for an exemption shall be valid throughout the Community.

#### *Article 7*

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 3, 5 and 6 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 State concerned and/or the Commission as listed in Annex V.

#### *Article 8*

1. In accordance with the provisions of Article 9(2), the Commission shall be empowered to
  - (a) amend Annexes I and II if it has obtained conclusive evidence that the amendments are in accordance with the provisions of Articles 1 and 2.
  - (b) amend Annex III if it has obtained conclusive evidence that the amendment is in accordance with the provisions of Article 5.
2. The Commission shall also be empowered to
  - (a) supply to and receive from the Taliban Sanctions Committee all relevant information with regard to the implementation of this Regulation;
  - (b) amend Annexes I, III and IV on the basis of determinations made by the United Nations Security Council or the Taliban Sanctions Committee;



(c) amend Annex V on the basis of information supplied by the competent authorities within the Community.

#### *Article 9*

1. The Commission shall be assisted by the Committee instituted by Article 8 of Council Regulation (EC) No 2271/96<sup>(3)</sup>.
2. Where reference is made to this paragraph, the management procedure laid down in Article 4 of Decision 1999/468/EC shall apply, in compliance with Article 7(3) thereof.
3. The period provided for in Article 4(3) of Decision 1999/468/EC shall be one month.

#### *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*

Without prejudice to the provisions of Articles 6 and 7, 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 (3) and 4, and in respect of violation and enforcement problems or judgements handed down by national courts.

#### *Article 12*

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 13*

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 shall be those determined by the Member States in accordance with

(a) Article 12 of Council Regulation (EC) No 1294/1999<sup>(4)</sup> in cases of violations of Articles 3, 4 and, where appropriate, 7 of this Regulation, and

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<sup>3</sup> OJ L 309, 29.11.1996, p.1

<sup>4</sup> OJ L 153, 19.6.1999, p. 66

(b) Article 6 of Council Regulation (EC) No 2151/1999 <sup>(5)</sup> in cases of violation of Articles 5 and, where appropriate 7 of this Regulation.

*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 or is doing business within the Community.

*Article 15*

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*

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<sup>5</sup> OJ L 264, 12.10.1999, p. 3

## ANNEX I

List of persons or bodies referred to in Article 2 (1)

1. TALIBAN, Afghanistan
2. TALEBAN, Afghanistan
3. ISLAMIC EMIRATE OF AFGHANISTAN, Afghanistan
4. ISLAMIC MOVEMENT OF TALIBAN, Afghanistan
5. TAHRIKE ISLAMI'A TALIBAN, Afghanistan
6. TALIBAN ISLAMIC MOVEMENT, Afghanistan
7. TALIBANO ISLAMI TAHRİK, Afghanistan
8. ARIANA AFGHAN AIRLINES, Afghan Authority Building, P.O. Box 76, Ansari Watt, Kabul, Afghanistan
9. BAKHTAR AFGHAN AIRLINES, Afghan Authority Building, P.O. Box 76, Ansari Watt, Kabul, Afghanistan
10. AFGHAN NATIONAL BANK, Jade Ibn Sina, Kabul, Afghanistan
11. BANK E. MILLIE AFGHAN, Jade Ibn Sina, Kabul, Afghanistan
12. BANK OF AFGHANISTAN, Jade Ibn Sina, Kabul, Afghanistan
13. BANKE MILLIE AFGHAN, Jade Ibn Sina, Kabul, Afghanistan
14. CENTRAL BANK OF AFGHANISTAN, Jade Ibn Sina, Kabul, Afghanistan
15. DA AFGHANISTAN BANK, Jade Ibn Sina, Kabul, Afghanistan
16. THE AFGHAN STATE BANK, Jade Ibn Sina, Kabul, Afghanistan
17. OMAR, Mohammed, Commander of the Faithful ("Amir al-Munineed"), Kandahar, Afghanistan; born in 1950; born at Ho Tak, Kandahar Province, Afghanistan

## **ANNEX II**

List of persons or bodies located within the territory of Afghanistan, and not covered by the definition of Taliban in Article 2 (2)

### **ANNEX III**

List of aircraft owned, leased or operated by or on behalf of the Taliban referred to in Article 5

## **ANNEX IV**

Procedures and requirements established by the Taliban Sanctions Committee referred to in Articles 6 and 8

## **ANNEX V**

List of competent authorities of the Member States and of the Commission referred to in Articles 2(3), 6 and 7