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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 723/2000
of 6 April 2000
amending Regulation (EC) No 1294/1999 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 thereof,

Having regard to Common Position 98/326/CFSP of 7 May 1998 concerning the freezing of funds held abroad by the Governments of the Federal Republic of Yugoslavia (FRY) and the Republic of Serbia ⁽¹⁾, Common Position 98/374/CFSP of 8 June 1998 concerning the prohibition of new investment in Serbia ⁽²⁾, and Common Position 1999/318/CFSP of 10 May 1999 concerning additional restrictive measures against the Federal Republic of Yugoslavia (FRY) ⁽³⁾,

Having regard to the proposal from the Commission,

Whereas:

- (1) The Council adopted Regulation (EC) No 1294/1999 of 15 June 1999 concerning a freeze of funds and a ban on investment in relation to the Federal Republic of Yugoslavia (FRY) ⁽⁴⁾.
- (2) The Council has agreed to maintain its overall policy framework of applying maximum pressure on President Milosevic through the strengthening of the sanctions targeted at the regime, without penalising the Serb people.
- (3) Investments and financial relations in relation to the FRY, especially the Province of Kosovo and the Republic of Montenegro, may be increased by creating greater legal certainty regarding the real targets of the sanctions.
- (4) Under these circumstances, the effectiveness of the existing financial sanctions should be enhanced, *inter alia*, by closing any loopholes that may exist and improving the enforcement.

- (5) At the same time the sanctions regime should be adapted with a view to reducing the negative impact on the interests of the Community without diminishing the impact on the targeted natural and legal persons,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1294/1999 shall be amended as follows:

1. The following recital shall be added to the preamble:

'(12) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (*).

(* OJ L 184, 17.7.1999, p. 23.'

2. Points 1 and 2 of Article 1 shall be replaced by the following:

'1. *Government of the FRY shall mean:*

- the Government of the Federal Republic of Yugoslavia at any level, its agencies, bodies or organs,
- any company, undertaking, institution, including any financial institution, and entity owned or controlled by that Government,
- any socially-owned entity organised in the Federal Republic of Yugoslavia,
- any successor to such companies, undertakings, institutions and entities as of 26 April 1999,
- any subsidiary or branch, wherever located, of such companies, undertakings, institutions and entities, and
- any person acting or purporting to act for or on behalf of any of the foregoing.

⁽¹⁾ OJ L 143, 14.5.1998, p. 1.

⁽²⁾ OJ L 165, 10.6.1998, p. 1.

⁽³⁾ OJ L 123, 13.5.1999, p. 1.

⁽⁴⁾ OJ L 153, 19.6.1999, p. 63.

2. *Government of the Republic of Serbia shall mean:*

- the Government of the Republic of Serbia at any level, its agencies, bodies or organs,
- any company, undertaking, institution, including any financial institution, and entity owned or controlled by that Government,
- any socially-owned entity organised in the Republic of Serbia,
- any successor to such companies, undertakings, institutions and entities as of 26 April 1999,
- any subsidiary or branch, wherever located, of such companies, undertakings, institutions and entities, and
- any person acting or purporting to act for or on behalf of any of the foregoing.

3. Article 2 shall be replaced by the following:

'Article 2

1. Any person listed in Annex I 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 listed in Annex II shall be deemed to be owned or controlled by the Government of the FRY or the Government of the Republic of Serbia.

Annex II concerns only companies, undertakings, institutions or entities located, registered or incorporated outside the territory of the FRY.

3. Companies, undertakings, institutions or entities located, registered or incorporated in the Province of Kosovo shall be deemed to be neither owned or controlled by the Government of the FRY or the Government of the Republic of Serbia nor socially owned except for those listed in Annex IV.

4. Companies, undertakings, institutions or entities located, registered or incorporated in the Republic of Montenegro shall be deemed to be neither owned or controlled by the Government of the FRY or the Government of the Republic of Serbia nor socially owned except for those listed in Annex V.

5. In the rest of the FRY:

- companies, undertakings, institutions or entities located, registered or incorporated in the FRY, with the exception of the Province of Kosovo and the Republic of Montenegro, and listed in Annex VI shall be deemed to be neither owned or controlled by the Government of the FRY or the Government of the Republic of Serbia nor socially owned,

- all other companies, undertakings, institutions or entities located, registered or incorporated in the FRY, with the exception of the Province of Kosovo and the Republic of Montenegro, shall be deemed to be owned or controlled by the Government of the FRY or the Government of the Republic of Serbia or to be socially owned.

6. Nothing in this Article shall discharge any natural or legal person from its obligations to exercise due diligence in respect of acting in conformity with the provisions of this Regulation.'

4. Article 6 shall be replaced by the following:

'Article 6

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy and to the provisions of Article 284 of the Treaty, banks, other financial institutions, insurance companies, and other bodies and persons shall:

- provide immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 3 and transactions executed pursuant to Articles 7 and 8:

- to the competent authorities of the Member States listed in Annex III where they are resident or located, and

- directly or through these competent authorities to the Commission,

- cooperate with the competent authorities listed in Annex III in any verification of this information.

2. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

3. Any information directly received by the Commission shall be made available to the competent authorities of the Member States concerned.'

5. In Article 7:

- paragraph 4 shall be replaced by the following:

'4. Article 3(2), and Article 4 shall apply neither to projects within the Province of Kosovo nor to acquisitions of any new, or extension of any existing, participation in, ownership of or control over real estate, a company, undertaking, institution or entity located, registered or incorporated in that province, if such projects, acquisitions or extensions of such participation serve the reconstruction of Kosovo, the return of refugees, or economic and regional cooperation, and are officially approved or recognised as such by UNMIK, and/or the Community or its Member States.'

— the following paragraph shall be added:

'5. For any payment made under paragraphs 1, 2, 3 or 4, and for any acquisition or extension of participation made under paragraphs 3 or 4, conclusive evidence of the fulfilment of the conditions and the purposes shall be kept available for one year for inspection by the competent authorities listed in Annex III.'

6. In Article 8:

— paragraphs (1) and (2) shall be replaced by the following:

'1. In accordance with the provisions of Article 9, the Commission shall be empowered:

(a) to amend Annexes I, II, IV, V and VI;

(b) to grant individual 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; or

(ii) to acquire or extend a participation in, ownership of or control over real estate, a company, undertaking, institution or entity referred to in Article 4;

if not to do so would cause damage to the interests of the Community.

2. When amending Annex VI with a view to the inclusion of a company, undertaking, institution or entity located within the FRY with the exception of the Province of Kosovo and the Republic of Montenegro, the Commission shall take due account of the following:

(a) evidence that such a company, undertaking, institution or entity is able to withhold from the Government of the FRY and the Government of the Republic of Serbia, its revenues obtained from transactions with natural or legal persons within the Community;

(b) evidence that such a company, undertaking, institution or entity is engaged in transactions with natural or legal persons within the Community not exceeding, on a monthly basis, a value of EUR 100 000;

(c) evidence that the activities of such a company, undertaking, institution or entity do not cover the following sectors: banking and financial services, energy and fuel supply, production of or trade in military or police equipment, transport, petrochemicals, iron and steel.

3. (a) Those companies, undertakings, institutions or entities which fulfil the criterion in paragraph 2(b), and those in sectors not listed in paragraph 2(c), shall be presumed to be eligible for inclusion in Annex VI unless substantial grounds for non-inclusion are found.

(b) If there is conclusive evidence that any company, undertaking, institution or entity does not meet the criteria in paragraph 2(b) or paragraph 2(c) but does meet the criterion in paragraph 2(a), such a company, undertaking, institution or entity shall be presumed to be eligible for inclusion in Annex VI unless substantial grounds for non-inclusion are found.

4. Any request by a legal or natural person for an authorisation referred to in paragraph 1(b) or for an amendment of Annexes I, II, IV, V or VI shall be made through the competent authorities of the Member States listed in Annex III.

The competent authorities of the Member States shall verify, to the fullest extent possible, the information provided by the persons making a request.'

— the previous paragraph 3 shall become paragraph 5.

7. Article 9 shall be replaced by the following:

'Article 9

1. For the purposes of implementing Article 8(1) to (4), the Commission shall be assisted by the Committee established under Regulation (EC) No 2271/96 (*).

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at 10 working days.

3. The Committee shall adopt its rules of procedure.

(*) OJ L 309, 29.11.1996, p. 1.'

8. Article 10 shall be replaced by the following:

'Article 10

The Committee referred to in Article 9 shall examine all questions concerning the application of this Regulation, which may be raised either by the chairman or by a representative of a Member State.

The Committee shall regularly review the effectiveness of the provisions of this Regulation and the Commission shall, on the basis of that review, report regularly to the Council.'

Article 2

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

Article 1(3) shall be applicable as from 15 May 2000.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 6 April 2000.

For the Council

The President

J. GAMA
