COUNCIL REGULATION (EC) No 1763/2004

of 11 October 2004

imposing certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60, 301 and 308 thereof,

Having regard to Common Position 2004/694/CFSP on further measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia [1],

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Whereas:

(1) The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by means of UN Security Council Resolutions 808 and 827 (1993), which are based on Chapter VII of the UN Charter. The ICTY has the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. The Security Council argued that the widespread and flagrant violations of humanitarian law occurring within the territory of the former Yugoslavia constituted a threat to international peace and security and that the establishment, as an ad hoc measure, of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would contribute to the restoration and maintenance of peace.

(2) On 28 August 2003, UN Security Council Resolution 1503 (2003) called on the ICTY to complete all work in 2010 and on all States to intensify cooperation with and render all necessary assistance to the ICTY, particularly to bring all fugitive indictees to the ICTY.

(3) Common Position 2004/694/CFSP stipulates that certain funds and economic resources should be frozen in support of effective implementation of the mandate of the ICTY. These additional restrictive measures should be used so as to control all dealings with funds and economic resources owned by persons indicted by the ICTY who are still at large and to ban any support they might receive from within the Community.

(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 these measures as far as the Community is concerned. For the purposes 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) For reasons of expediency, the Commission should be empowered to amend the Annexes to this Regulation.

(6) 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,

(7) The Treaty, in Articles 60 and 301, empowers the Council to take, under certain conditions, measures aimed at the interruption or reduction of payments or movement of capital and of economic relations with regard to third countries. The measures laid down in this Regulation, targeted at individual persons not directly linked to the government of a third country, are necessary to attain this objective of the Community and Article 308 of the Treaty empowers the Council to take such measures if no other specific powers are provided for in the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the following definitions shall apply:

1. '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;

[1] See page 52 of this Official Journal.

(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;

2. '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;

3. '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;

4. '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

1. All funds and economic resources belonging to, or owned or held by, natural persons indicted by the ICTY, and listed in Annex I, shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural persons listed in Annex I.

3. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to at paragraphs 1 and 2 shall be prohibited.

Article 3

By way of derogation from Article 2, 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 Article.

Article 4

By way of derogation from Article 2, the competent authorities of the Member States as listed in Annex II may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

(a) the funds or economic resources are subject of a judicial, administrative or arbitral lien established prior to 14 October 2004 or of a judicial, administrative or arbitral judgment rendered prior to that date;

(b) The funds or economic resources will be used exclusively to satisfy claims secured by such a lien or recognised as valid in such a judgment, within the limits set by applicable laws and regulations governing the rights of persons having such claims;

(c) The lien or judgment is not for the benefit of a person, entity or body listed in Annex I;

(d) Recognising the lien or judgment is not contrary to public policy in the Member State concerned.

The relevant competent authority shall inform the competent authorities of the other Member States and the Commission of any authorisation granted under this Article.

Article 5

Article 2(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 this Regulation,

provided that any such interest, other earnings and payments continue to be subject to Article 2(1).

Article 6

Article 2(2) shall not prevent the crediting of the frozen accounts by financial institutions that receive funds transferred by third parties to the account of the listed person or entity, provided that any such additions to such accounts will also be frozen. The financial institution shall inform the competent authorities about such transactions without delay.

Article 7

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 2, 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 8

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 a result of negligence.

Article 9

The Commission and the 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 judgments handed down by national courts.

Article 10

The Commission shall be empowered to:

(a) amend Annex I, taking into account the Council Decisions implementing Common Position 2004/694/CFSP, and

(b) amend Annex II on the basis of information supplied by Member States.

Article 11

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 12

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 13

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, 11 October 2004.

For the Council
The President
B. R. BOT

ANNEX I

List of persons referred to in Article 2

1. Ante GOTOVINA. Date of birth: 12 October 1955. Place of birth: island of Pasman, Zadar, Republic of Croatia.
2. Radovan KARADŽIĆ. Date of birth: 19 June 1945. Place of birth: Savnik, Serbia and Montenegro.
3. Ratko MLADIĆ. Date of birth: 12 March 1942. Place of birth: Kalinovik, Bosnia and Herzegovina.

ANNEX II

List of competent authorities referred to in Articles 3 and 4

BELGIUM

Service public fédéral des affaires étrangères, commerce extérieur et coopération au développement/Federale Overheidsdienst Buitenlandse Zaken, Buitenlandse Handel en Ontwikkelingssamenwerking
Egmont 1
Rue des Petits Carmes/Karmelietenstraat 19
B-1000 Bruxelles/Brussel

Service public fédéral des finances/Federale Overheidsdienst Financiën
Administration de la trésorerie/Administratie van de Thesaurie
Avenue des Arts/Kunstlaan 30
B-1040 Bruxelles/Brussel
Télécopieur/fax (32-2) 233 74 65
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CZECH REPUBLIC

Ministerstvo financí
Finanční analytický útvar
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111 21 Praha 1
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DENMARK

National Agency for Enterprise and Construction/Erhvervs- og Byggestyrelsen
Dahlerups Pakhus
Langelinie Allé 17
DK-2100 København Ø
Tlf. (45) 35 46 60 00
Fax (45) 35 46 60 01
E-mail: ebst@ebst.dk

GERMANY

Concerning freezing of funds / Einfrieren von Guthaben:

Deutsche Bundesbank
Servicezentrum Finanzsanktionen
Postfach
D-80281 München
Tel. (49-89) 2889 3800
Fax: (49-89) 350163 3800

Concerning goods / Waren:

Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA)
Frankfurter Straße 29—35
D-65760 Eschborn
Tel. (49-6196) 9 08-0
Fax: (49-6196) 9 08-800

ESTONIA

Finantsinspektsioon
Sakala 4
15030 Tallinn
Tel: (372-6) 680 500
Faks: (372-6) 680 501

GREECE

A. *Freezing of Assets*

Ministry of Economy and Finance
General Directory of Economic Policy
Address: 5 Nikis Str.
GR-101 80 Athens
Tel. (30-210) 33 32 786
Fax (30-210) 33 32 810

A. *Δέσμευση κεφαλαίων*

Υπουργείο Οικονομίας και Οικονομικών
Γενική Διεύθυνση Οικονομικής Πολιτικής
Διεύθυνση: Νίκης 5
GR-101 80 Αθήνα
Τηλ. (30-210) 33 32 786
Φαξ (30-210) 33 32 810

B. *Import- Export restrictions*

Ministry of Economy and Finance
General Directorate for Policy Planning and Management
Address: 1 Kornaroy Str.
GR-105 63 Athens
Tel. (30-210) 32 86 401-3
Fax (30-210) 32 86 404

B. *Περιορισμοί εισαγωγών-εξαγωγών*

Υπουργείο Οικονομίας και Οικονομικών
Γενική Διεύθυνση Σχεδιασμού και Διαχείρισης Πολιτικής
Διεύθυνση: Κορνάρου 1
GR-105 63 Αθήνα
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Φαξ (30-210) 32 86 404

SPAIN

Dirección General del Tesoro y Política Financiera
Subdirección General de Inspección y Control de Movimientos y Capitales
Ministerio de Economía
Paseo del Prado, 6
E-28014 Madrid
Tel. (34) 912 09 95 11

Subdirección General de Inversiones Exteriores
Ministerio de Economía
Paseo de la Castellana, 162
E-28046 Madrid
Tel. (34) 913 49 39 83

FRANCE

Ministère de l'économie, des finances et de l'industrie
Direction générale des douanes et des droits indirects
Cellule embargo — Bureau E2
Téléphone (33-1) 44 74 48 93
Télécopieur (33-1) 44 74 48 97

Ministère de l'économie, des finances et de l'industrie
Direction du Trésor
Service des affaires européennes et internationales
Sous-direction E
139, rue de Bercy
F-75572 Paris Cedex 12
Téléphone (33-1) 44 87 72 85
Télécopieur (33-1) 53 18 96 37

Ministère des affaires étrangères

— Direction de la coopération européenne
Sous-direction des relations extérieures de la Communauté
Téléphone (33-1) 43 17 44 52
Télécopieur (33-1) 43 17 56 95

— Direction générale des affaires politiques et de sécurité
Service de la politique étrangère et de sécurité commune
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IRELAND

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United Nations Section
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ITALY

Ministero degli Affari esteri
Direzione generale per i paesi dell'Europa
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Ministero dell'Economia e delle finanze
Dipartimento del Tesoro
Comitato di Sicurezza finanziaria
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CYPRUS

OFFICE OF THE ATTORNEY GENERAL
OF THE REPUBLIC OF CYPRUS
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Address: Apelli Street 1
1403 Nicosia, Cyprus

LATVIA

Latvijas Republikas Ārlietu ministrija
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LITHUANIA

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3, rue de la Congrégation
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HUNGARY

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NETHERLANDS

Ministerie van Financiën
Directie Financiële Markten, afdeling Integriteit
Postbus 20201
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Fax 0031 703427984

AUSTRIA

Oesterreichische Nationalbank
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POLAND

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PORTUGAL

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