



COMMISSION OF THE EUROPEAN COMMUNITIES

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2004/0081 (CNS)

Proposal for a

**COUNCIL REGULATION**

**concerning the freezing of funds of the former Liberian President Charles Taylor and certain persons and entities associated with him**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

- (1) By means of its Resolution 1532 (2004) of 12 March 2004 the United Nations Security Council decided that funds and economic resources belonging to former Liberian President Charles Taylor and his immediate family members, and to close allies or associates as designated by the Committee of the Security Council established pursuant to paragraph 21 of Resolution 1521 (2003), should be frozen.
- (2) Accordingly, Common Position 2004/.../CFSP provides for the freezing of funds and economic resources of the former Liberian President Charles Taylor and his immediate family members, close allies or associates.
- (3) It is proposed to implement these measures, which fall within the scope of the Treaty, by means of a Council Regulation.

Proposal for a

## **COUNCIL REGULATION**

**concerning the freezing of funds of the former Liberian President Charles Taylor and certain persons and entities associated with him**

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/.../CFSP concerning the freezing of funds of the former Liberian President Charles Taylor and those persons and entities associated with him,<sup>1</sup>

Having regard to the proposal from the Commission,<sup>2</sup>

Having regard to the opinion of the European Parliament,<sup>3</sup>

Whereas:

- (1) United Nations Security Council Resolution 1532 (2004) of 12 March 2004 provides that funds and economic resources belonging to former Liberian President Charles Taylor and his immediate family members, and to close allies and associates as designated by the Committee of the Security Council established pursuant to paragraph 21 of Resolution 1521 (2003) should be frozen.
- (2) The actions and policies of former Liberian President Charles Taylor and other persons, in particular their depletion of Liberian resources and their removal from Liberia and secreting of Liberian funds and property from that country, have undermined Liberia's transition to democracy and the orderly development of its political, administrative, and economic institutions and resources.
- (3) In view of the negative impact on Liberia of the transfer abroad of misappropriated funds and assets, the return of such funds and assets to Liberia is needed.
- (4) Common Position 2004/.../CFSP provides for the implementation of the freezing of funds and economic resources of the former Liberian President Charles Taylor and his immediate family members, close allies and associates.
- (5) 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 them as far as the Community is concerned. For the purpose of this Regulation, the territory of

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

<sup>2</sup> OJ C , , p. .

<sup>3</sup> Opinion delivered on....

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.

- (6) The Common Position also provides that certain exemptions from the freezing requirement can be granted for humanitarian purposes or the satisfaction of liens or judgments entered prior to the date of Resolution 1532 (2004).
- (7) As regards the obligations of a credit or financial institution that receives funds transferred by third parties to the account of a listed person or entity, it should be noted that the prohibition against making funds or economic resources available shall not prevent the provisional crediting of the frozen account until the competent authorities have made a decision whether they approve the crediting or whether the funds should be the object of enforcement action against the third party that transferred them. Pending such decision the crediting should not be disclosed to the listed person or entity concerned.
- (8) 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,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

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

- (1) "Sanctions Committee" means: the Committee of the Security Council of the United Nations which was established pursuant to paragraph 21 of Resolution 1521 (2003);
- (2) "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;
  - (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;

- (3) "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;
- (4) "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;
- (5) "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 the following persons and entities, designated by the Sanctions Committee and listed in Annex I, shall be frozen:
  - (a) former Liberian President Charles Taylor and his immediate family members;
  - (b) senior officials of the former Taylor regime, and other close allies and associates;
  - (c) legal persons, bodies or entities owned or controlled, directly or indirectly by the persons referred to in subparagraphs (a) and (b); and
  - (d) any natural or legal person acting on behalf or at the direction of the persons referred to in subparagraphs (a) and (b).
2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex I.
3. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote the transactions referred to at 1 and 2 shall be prohibited.

## *Article 3*

1. 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, if the competent authority has 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,

provided it has notified the intention to authorise access to such funds and economic resources to the Sanctions Committee and has not received a negative decision by the Sanctions Committee within two working days of such notification.

2. 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, if the competent authority has determined that the funds or economic resources are necessary for extraordinary expenses, and provided that competent authority has notified that determination to the Sanctions Committee and that the determination has been approved by the Committee.

#### *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 12 March 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 referred to in Article 2;
- (d) Recognising the lien or judgment is not contrary to public policy in the Member State concerned;
- (e) The competent authority has notified the lien or judgment to the Sanctions Committee.

#### *Article 5*

The relevant competent authority shall inform the competent authorities of the other Member States and the Commission of any authorisation granted under Articles 3 and 4.

### *Article 6*

Article 2 (2) shall not apply to the addition to frozen accounts of:

- (a) interest or other earnings on those accounts; or
- (b) 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 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 result of negligence.

### *Article 9*

The Commission and 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 judgements handed down by national courts.

#### *Article 10*

The Commission shall be empowered to:

- (a) amend Annex I on the basis of determinations made by either the United Nations Security Council or the Sanctions Committee; 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,

*For the Council*  
*The President*



**ANNEX I**

**List of natural and legal persons, bodies or entities associated with former Liberian President Charles Taylor referred to in Article 2**

## **ANNEX II**

### **List of competent authorities referred to in Articles 3, 4, 5, 7 and 10**

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