



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24.06.1998
COM(1998) 393 final

Proposal for a

COUNCIL REGULATION (EC)

concerning the prohibition of new investments in the Republic of Serbia

(presented by the Commission)

EXPLANATORY MEMORANDUM

The present proposal of the Commission for a prohibition of new investment in the Republic of Serbia follows from the adoption by the Council of Common Position 98/374/CFSP dealing with the Kosovo situation, and the actions to be taken in this respect in order to obtain the fulfilment by the Governments of the Federal Republic of Yugoslavia and of Serbia of solving the Kosovo problem.

Article 1 of the proposal provides a clear delimitation of the prohibition of new investment.

Article 2 prohibits the circumvention of the prohibition.

Articles 3 and 4 deal with a procedure for exceptions which can not yet be foreseen and for consultation on the application of the Regulation.

Articles 5-8 contain usual provisions regarding mutual information, sanctions to be imposed, and other measures ensuring full compliance with the Regulation.

Article 9 specifies the persons addressed by and the territorial scope of the Regulation.

Council Regulation (EC) No/98
of 1998
concerning the prohibition of new investments in the Republic of Serbia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 73g and 228a,

Having regard to Common Position 98/ 374/CFSP defined by the Council on the basis of Article J.2 of the Treaty on European Union on restrictive measures against the Federal Republic of Yugoslavia and the Republic of Serbia¹,

Having regard to the proposal from the Commission,

Whereas the said Common Position provides for a prohibition of new investments in the Republic of Serbia;

Whereas this measure falls under the scope of the Treaty establishing the European Community;

Whereas, therefore, and notably with a view to avoiding distortion of competition, Community legislation is necessary for the implementation of these measures, as far as the territory of the Community is concerned; whereas such territory is deemed to encompass, for the purposes of this Regulation, the territories of the Member States to which the Treaty establishing the European Community is applicable, under the conditions laid down in that Treaty;

Whereas procedures should be provided to authorise certain activities, otherwise prohibited ;

Whereas competent authorities of the Member States should, where necessary, be empowered to ensure compliance with this Regulation;

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;

¹ OJ L 165/98, 10.6.1998, p. 1

HAS ADOPTED THIS REGULATION :

Article 1

Without prejudice to the execution of contracts concluded before the entry into force of this Regulation, it shall be prohibited to obtain ownership or control, directly or indirectly, of any kind of asset in the Republic of Serbia, including:

- (i) an enterprise (being a legal person or any other entity constituted or organised under the applicable law of the Republic of Serbia, whether or not for profit, and whether private or government owned or controlled, including a corporation, trust, partnership, branch, joint venture, association or organisation);
- (ii) shares, stocks or forms of equity participation in an enterprise, and rights derived therefrom;
- (iii) bonds, debentures, loans and other forms of debt, and rights derived therefrom;
- (iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
- (v) claims to money and claims to performance;
- (vi) intellectual property rights;
- (vii) rights conferred pursuant to law or contract such as concessions, licenses, authorisations, and permits;
- (viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges.

Article 2

The participation, knowingly and intentionally in related activities, the object or effect of which is, directly or indirectly, to circumvent the provisions of Article 1 shall be prohibited.

Article 3

In accordance with the provisions of Article 4 the Commission shall be empowered to grant, on a case-by-case basis, authorisations for new investments in the Republic of Serbia, in particular for humanitarian reasons or for the protection of the interests of the Community.

Article 4

For the purposes of the implementation of Article 3, 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. 2271/96², 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 its 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 148 (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 the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of one month from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 5

Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed. Such sanctions must be effective, proportionate and dissuasive.

Article 6

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

² OJ L 309, 29.11.1996, p.1

Article 7

The Commission and the Member States shall inform each other of the measures taken under this Regulation and supply each other with other relevant information at their disposal in connection with this Regulation, such as breaches and enforcement problems, judgments handed down by national courts or decisions of relevant international fora.

Article 8

The committee referred to in Article 4 of this Regulation 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 9

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 10

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.

For the Council

The President

Done at

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DOCUMENTS

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