



Council of the
European Union

**Brussels, 17 March 2026
(OR. en)**

**10665/96
DCL 1**

USA 36

DECLASSIFICATION

of document:	10665/96 RESTREINT UE/EU RESTRICTED
dated:	15 October 1996
new status:	Public
Subject:	Draft Council Regulation (EC) protecting against the effects of the application of certain legislation of certain third countries, and actions based thereon or resulting therefrom

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

10665/96

RESTREINT

USA 36

REPORT

from :the Presidency

to :the Permanent Representatives Committee

No. prev. doc.: 10510/96 USA 35

No. Cion prop.:9573/96 COMER 78 USA 26 + ADD 1

Subject: **Draft Council Regulation (EC) protecting against the effects of the application of certain legislation of certain third countries, and actions based thereon or resulting therefrom**

At its meeting on 14 October 1996, the Transatlantic Relations Working Group cleaned up the text of the draft Regulation to a certain extent (see Annex). There remain, however, a number of issues which touch upon the essence and the operational impact of the draft Regulation and which will have to be addressed by COREPER:

1. One delegation proposed the introduction of provisions assuring European defendants in a US lawsuit of a swift decision on a possible waiver authorizing them to comply with requests made by a US Court. This problem is related with Articles 5, 7 and 8.
2. Several delegations, in different ways, raised the question of whether and how independent subsidiaries, incorporated within the Community, of a US company which has caused damages through action under the Helms-Burton Act should be held responsible for recovery of such damages. The present text of Article 6 paragraph 3, which is intended as a compromise, foresees that not the subsidiary itself but only shares held by the US parent company could be seized.

3. One delegation proposed to broaden the definition of persons to whom the Regulation should apply in such a way as to cover all nationals of Member States, wherever they may be, and all persons within the territory of the Community. Article 11 of the draft Regulation contains a definition covering the operational Articles 2, 5 and 6.

4. The Working Group discussed ways of covering relevant specificities of the procedure under the D'Amato Act by

- additional wording already introduced into Article 6 paragraph 2, which exposes US activities contemplated in the D'Amato Act more clearly to recovery of damages;
- a Council declaration which would express the Council's intention to take appropriate counter measures when the D'Amato Act is being applied.

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**Draft Council Regulation ^(a)
protecting against the effects of the application of certain legislation
of certain third countries, and actions based thereon
or resulting therefrom**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 73c, 113 and 235 thereof,

Having regard to the proposal of the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas the objectives of the European Community include contributing to the harmonious development of world trade and to the progressive abolition of restrictions on international trade;

Whereas the Community endeavours to achieve to the greatest extent possible the objective of free movement of capital between Member States and third countries, including the removal of any restrictions on direct investment - including investment in real estate - establishment, the provision of financial services or the admission of securities to capital markets;

Whereas certain third countries have enacted or are likely to enact certain laws, regulations, and other legislative instruments which purport to regulate activities of natural and legal persons under the jurisdiction of the Member States of the European Community;

⁽¹⁾Opinion delivered on, OJ No.

^(a)UK : scrutiny reservation.

Whereas by their extra-territorial application such laws, regulations and other legislative instruments violate international law and impede the attainment of the aforementioned objectives;

Whereas these laws and actions based thereon or resulting therefrom, including regulations and other legislative instruments, affect or are likely to affect the established legal order and have adverse effects on the interests of the Community and the interests of natural and legal persons exercising rights under the Treaty establishing the European Community;

Whereas, under these exceptional circumstances, it is necessary to take action at Community level protecting the established legal order, the interests of the Community and the interests of the said persons, in particular by removing, neutralising, blocking or otherwise countering the effects of the foreign legislation concerned;

Whereas the request to supply information under this Regulation does not preclude a Member State from requiring information of the same kind to be provided to the authorities of that State;

Whereas the Council has adopted Joint Action Nr. ... of in order to ensure that the Member States take the necessary measures to protect those persons whose interests are affected by the aforementioned laws and actions based thereon, insofar as those interests are not protected by the present Regulation;

Whereas the Commission, in the implementation of this Regulation, should be assisted by a committee composed of representatives of the Member States;

Whereas the actions foreseen in the present Regulation are necessary to attain objectives of the Treaty establishing the European Community;

Whereas for the adoption of certain provisions of this Regulation the Treaty does not provide powers other than those of Article 235;

HAS ADOPTED THIS REGULATION:

Article 1
Scope of protection

This Regulation provides protection against and counteracts the effects of the extra-territorial application of the laws specified in the Annex of this Regulation and of actions based thereon or resulting therefrom, including regulations and other legislative instruments, where such application affects the interests of persons, referred to in the first sentence of Article 11, engaging in international trade and/or the movement of capital to and from third countries and related commercial activities.

Acting in accordance with the relevant provisions of the Treaty and notwithstanding the provisions of Article 7 (para c), the Council may add or delete laws to or from the Annex to this Regulation.

Article 2 (a)
Notifications

Where the economic and/or financial interests of any person referred to in the first sentence of Article 11 are affected, directly or indirectly, by the laws specified in the Annex or by actions based thereon or resulting therefrom, that person shall inform the Commission accordingly within 30 days from the date on which it obtained such information ; insofar as the interests of a legal person are affected, this obligation applies to the directors, managers and other persons with management responsibilities. ⁽¹⁾

At the request of the Commission, such person shall provide all information relevant for the purposes of this Regulation in accordance with the request of the Commission within 30 days from the date of the request.

⁽¹⁾Information should be supplied to the following address: European Commission, Directorate General I, Rue de la Loi/Wetstraat 200, 1049 Brussels.

^(a)UK : reservation ; S : waiting reservation.

All information shall be submitted to the Commission either directly or through the competent authorities of the Member States. Should the information be submitted directly to the Commission, the Commission will inform immediately the competent authorities of the Member State in which the person who gave the information is resident or incorporated.

Article 3
Confidentiality

All information supplied in accordance with Article 2 shall only be used for the purposes for which it was provided.

Information which is by nature confidential or which is provided on a confidential basis shall be covered by the obligation of professional secrecy. It shall not be disclosed by the Commission without the express permission of the person providing it.

Communication of such information shall be permitted where the Commission is obliged or authorised to do so, in particular in connection with legal proceedings. Such communication must take into account the legitimate interests of the person concerned that his or her business secrets should not be divulged.

This Article shall not preclude the disclosure of general information by the Commission. Such disclosure shall not be permitted if this is incompatible with the original purpose of such information.

In the event of a breach of confidentiality, the originator of the information shall be entitled to obtain that it be deleted, disregarded or rectified, as the case may be.

Article 4 ^(a)

Non-recognition of judgements

No judgement of a court or tribunal and no decision of an administrative authority located outside the Community giving effect, directly or indirectly, to the laws specified in the Annex or to actions based thereon or resulting therefrom, shall be recognised or be enforceable in any manner.

Article 5 ^{(1) (b)}

Non-compliance

No person referred to in the first sentence of Article 11 shall comply, whether directly or through a subsidiary or other intermediary person, actively or by deliberate omission, with any requirement or prohibition, including requests of foreign courts, based on or resulting, directly or indirectly, from the laws specified in the Annex or from actions based thereon or resulting therefrom.

Persons may be authorised, in accordance with the procedures provided in Articles 7 and 8, to comply fully or partially to the extent that non-compliance would seriously damage their interests or those of the Community. The criteria for the application of this provision shall be established in accordance with the procedure set out in Article 8.

⁽¹⁾Council and Commission statement to the Council minutes :

"The Council and the Commission state that nothing in the Regulation prohibits nor subjects to sanctions the transmission, on a purely factual basis, of pieces of information to persons referred to in Article 1 of the Regulation concerning any occurrence which could have adverse effects on their economic and financial interests."

[introduced following a suggestion by the Belgian delegation]

^(a)UK : waiting reservation.

^(b)GR//UK : reservation

Article 6 ^(a)

Recovery of damages

Any person referred to in the first paragraph of Article 1 shall be entitled to recover any damages, including legal costs, caused to that person by the application of the laws specified in the Annex or by actions based thereon or resulting therefrom.

Without prejudice to the right under existing international conventions on jurisdiction to institute proceedings in another State, such recovery may be obtained from the natural or legal person or any other entity causing the damages including through facilitating the implementation of the laws specified in the Annex or of actions based thereon or resulting therefrom, through judicial proceedings instituted in any Member State where that person or entity holds assets.

Without prejudice to other means available and in accordance with applicable law, the recovery could take the form of seizure and sale of assets held by those persons or entities within the Community, including shares held in a legal person incorporated within the Community.

Management provisions

Article 7

For the implementation of this Regulation the Commission shall :

- (a) inform the Council immediately and fully on the effects of the law, regulations and other legislative instruments and ensuing actions mentioned in Article 1, on the basis of the information obtained under this Regulation, and to make regularly a full public report thereon ;
- (b) ^(b)grant authorization under the conditions set forth in Article 5 ;

^(a)D/E/UK : reservation ; P : scrutiny reservation ; I : waiting reservation

^(b)UK : reservation.

- (c) add or delete, where appropriate, references to secondary regulations or other legislative instruments deriving of the laws specified in the Annex, and falling under the scope of this Regulation ;
- (d) publish a notice in the Official Journal of the European Communities on the judgements and decisions to which Articles 4 and 6 apply ;
- (e) publish in the Official Journal of the European Communities the names and addresses of the competent authorities of the Member States referred to in Article 2.

Article 8 ^(a)

For the purposes of the implementation of paragraphs (b) and (c) of Article 7, the Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

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 two weeks from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

^(a)UK : reservation.

General and final provisions

Article 9

Each Member State shall determine the sanctions to be imposed in the event of breach of the provisions of Articles 2 or 5 ^(a) of this Regulation. Such sanctions must be effective, proportional and dissuasive.

Article 10

The Commission and the Member States shall inform each other of the measures taken under this Regulation and of all other relevant information pertaining to this Regulation.

Article 11 ^(b)

This Regulation shall apply to any natural or legal person, private or public, resident or incorporated within the Community, and to those nationals of the Member States and companies referred to in Article 1 paragraph 2 of Council Regulation (EEC) No. 4055/86 ⁽¹⁾.

It shall apply within the territory of the Community, including its territorial waters and air space and in any aircraft or on any vessel under the jurisdiction or control of a Member State.

⁽¹⁾OJ No. L 378 of 31.12.1986, page 1.

^(a)D : reservation

^(b)UK : reservation and alternative proposal

"This Regulation shall apply to any natural or legal person, private or public, who is a national of a Member State or incorporated within the Community, and to those nationals of the Member States referred to in Article 1 paragraph 2 of Council Regulation (EEC) No. 4055/86.

It shall in addition apply to any other person within the territory of the Community, including its territorial waters and air space and in any aircraft, or on any vessel under the jurisdiction or control of a Member State."

Article 12

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.

Done at, 1996

For the Council
The President

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LAWS, REGULATIONS AND OTHER LEGISLATIVE INSTRUMENTS

referred to in Article 1

COUNTRY:UNITED STATES OF AMERICA

ACTS

1."National Defense Authorization Act for Fiscal Year 1993", Title XVII - Cuban Democracy Act of 1992, section 1706

[summary of content] ^(a)

2."Cuban Liberty and Democratic Solidarity Act of 1996"

[summary of content] ^(a)

3."Iran and Libya Sanctions Act of 1996"

[summary of content] ^(a)

REGULATIONS

1.31 CFR (Code of Federal Regulations) Ch. V (7-1-95 edition) Part 515 - Cuban Assets Control Regulations, subpart E - Licenses, Authorizations and Statements of Licensing Policy.

[summary of content] ^(a)

^(a)FIN : waiting reservation