Fight against terrorism: specific restrictive measures directed against certain persons and entities associated with Osama bin Laden, the Al-Qaida network and the Taliban

2009/0055(CNS) - 22/04/2009 - Legislative proposal

PURPOSE: to amend Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Osama bin Laden, the AlQaida network and the Taliban.

PROPOSED ACT: Council Regulation.

BACKGROUND: on 27 May 2002, the Council adopted Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Osama bin Laden, the Al-Qaida network and the Taliban. It implements some elements of UN Security Council Resolutions 1267(1999) and 1390(2002) and in particular freezes the funds and economic resources of individuals and entities included in a list drawn up by the UN for this purpose.

On 3 September 2008, the Court of Justice annulled Regulation (EC) No 881/2002, in so far as it concerned Mr Yassin Abdullah Kadi and Al Barakaat International Foundation. The Court of Justice held that the Community authority deciding to freeze the funds and economic resources of an individual or entity in accordance with Regulation (EC) No 881/2002 must communicate the grounds on which that decision is based to the individual or entity concerned, in order to observe the rights of defence, in particular the right to be heard, and the right to judicial review. In order to comply with the Court's judgment, the EU sought from the Sanctions Committee the relevant statements of reasons on which the two parties were listed and communicated those to the parties for comments. Following an evaluation of the comments, the Commission adopted a new Regulation maintaining Mr Kadi and Al Barakaat International Foundation on the list of individuals and entities subject to the freezing of funds and economic resources.

It is considered necessary to amend Regulation (EC) No 881/2002 to codify these new elements and to provide for a procedure respecting fundamental rights that will be followed as regards individuals and entities newly listed by the UN.

CONTENT: the new procedure is based on the procedure applied for the purpose of implementing Council Regulation (EC) No 2580/2001 on specific restrictive measures against certain persons and entities with a view to combating terrorism, which concerns the terrorism list drawn up by the EU itself, set out in Council document 10826/1/27 of 28 June 2007

The new procedure would be as follows:

- upon notification by the UN Sanctions Committee of a new listing decision and the statement of reasons, the Commission will take a provisional decision to freeze the funds and economic resources of the individual or entity concerned;
- in parallel, the Commission will send the statement of reasons to the individual or entity concerned without delay, in order to give him, her or it an opportunity to express his, her or its views;

- the Commission will examine the views that have been expressed and consult an advisory committee of experts of the Member States before taking the final decision.

Amendments to the list of entities and individuals: in order to ensure that fundamental rights are respected, it is also necessary to address the position of individuals and entities already listed. UN Security Council Resolution 1822 foresees a review of all names included in the UN list on 30 June 2008. This UN review should be completed by 30 June 2010. If the UN decides to de-list an individual or entity, de-listing at Community level should, as before, take place without delay and not be subject to making a request for de-listing to a Community Institution.

Classification and data protection: given the subject matter, the United Nations or a third State may deem it necessary to provide classified information to the Community Institution in support of the decision made. A provision is proposed to provide clarity on the handling of such information. A provision is also needed to provide clarity on the applicable rules for processing of personal data of listed individuals, and in particular for processing of data relating to offences, criminal convictions or security measures under this Regulation.

Specific provisions: this proposal also comprises certain additional provisions, such as updating Article 2a of Regulation (EC) No 881/2002 to take account of paragraph 15 of UN Security Council Resolution 1735(2006) which extends the non-objection period that applies when Member States consult the UN on granting of exemptions for basic expenditure, to three working days. It also contains certain amendments of a technical nature, such as aligning the definition of freezing of funds and Article 11 on Community jurisdiction with the standard wording set out in the Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy.

BUDGETARY IMPLICATIONS: the proposal has no implication for the Community budget.