Specific restrictive measures directed against certain natural and legal persons, entities and bodies in view of the situation in Somalia

2009/0114(CNS) - 29/07/2009 - Legislative proposal

PURPOSE: to impose restrictive measures on certain persons and entities in view of the Somalian situation.

PROPOSED ACT: Council Regulation.

BACKGROUND: on 20 November 2008, the UN Security Council adopted Resolution 1844(2008) confirming the general and complete arms embargo against Somalia and introducing further restrictive measures against those who provide support for acts that threaten the peace, security or stability of Somalia, those who have acted in violation of the arms embargo or who obstruct the delivery of humanitarian assistance to Somalia. The additional restrictive measures concern restrictions on admission and financial restrictive measures against individuals and entities designated by the competent United Nations Sanctions Committee. In addition to the general arms embargo in force, the Resolution introduces a specific ban on the direct or indirect supply, sale or transfer of weapons and military equipment and a specific ban on the provision of related assistance and services, to individuals and entities listed by the Committee.

Common Position 2009/138/CFSPconfirmed the restrictive measures which had been applied since 2002 and made provision for additional measures against individuals and entities identified by the United Nations Sanctions Committee. However, some of the measures provided for by Common Position 2009 /138/CFSP, namely the prohibition on providing technical and financial assistance to the individuals and entities listed by the UN Sanctions Committee, and the freezing of funds and economic resources of the said individuals and entities, fall within the scope of the Treaty establishing the European Community. Council Regulation (EC) No 147/2003 imposed a general ban on provision of assistance, training, or financial assistance related to military activities, to any person, entity or body in Somalia. The Commission proposes to implement the measures concerning individuals and entities listed by the UN Sanctions Committee, in the Community by means of a separate Council Regulation.

In order to cover all persons and entities listed by the Committee, the legal basis of the proposed Regulation must include Articles 60, 301 and 308 of the EC Treaty.

CONTENT: this proposal provides **that all funds and economic resources** belonging to, owned, held or controlled by natural or legal persons, entities or bodies listed in the Regulation shall be frozen. No funds or economic resources shall be made available, directly or indirectly, to them.

Annex I consists of natural and legal persons, entities and bodies designated by the UN Security Council or by the Sanctions Committee in conformity with UN Security Council Resolution 1844 (2008).

By way of **derogation**, the competent authorities in the Member States, as listed in Annex II, may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, if the following conditions are met: (a) the competent authority concerned has determined that the funds or economic resources are:

(i) necessary to satisfy the basic needs of persons listed in Annex I, and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment; etc.

The proposal also stipulates that it shall be prohibited to provide, directly or indirectly, any of the following to any natural or legal person, entity or body listed in Annex I: any technical assistance related to **military activities** or to the supply, sale, transfer, manufacture, maintenance or use of goods and technology included in the Common Military List of the European Union. It prohibits the financing or financial assistance related to military activities.

The following points should be noted:

- following the European court of Justice judgments in the case of Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council (joined cased C-402/05 P and C-415/05 P) the procedure proposed for amending Annex I includes the publication of a notice including advice on how to submit information in order to enable the individuals and entities listed to exercise their right to be heard. The notice will be published after the Commission decision listing a person or entity for the first time. Following the examination of any information submitted by a listed person or entity, the Commission should take a final decision in accordance with the Regulation;
- given the subject-matter, the United Nations or a third State may deem it necessary to provide classified information to the Commission in support of a decision made. A provision is also proposed to provide clarity on the handling of such information;
- Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data protects the right to privacy with respect to the processing of personal data. A provision is proposed 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 the Regulation.

IMPACT ASSESSMENT: not applicable.

BUDGETARY IMPLICATION: the proposed amendment has no implication for the Community budget.