Restrictive measures in respect of Zimbabwe

2009/0111(CNS) - 29/07/2009 - Legislative proposal

PURPOSE: to amend Council Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe.

PROPOSED ACT: Council Regulation.

BACKGROUND: on 18 February 2002, the Council decided to impose restrictive measures in respect of Zimbabwe in response to the serious violations of human rights, including violations of the freedoms of opinion, association and peaceful assembly in that country (Common Position 2002/145/CFSP). In view of its continuing concern about the human rights situation in Zimbabwe, the Council has adopted Common Position 2004/161/CFSPto extend and amend the restrictive measures in respect of Zimbabwe.

Common Position 2004/161/CFSP stipulated that the freezing of funds and economic resources would apply to "individual members of the Government of Zimbabwe and any natural or legal persons, entities or bodies associated with them" as listed in the Annex to the Common Position. By means of Common Position 2008/632/CFSP, the Council broadened this scope by adding "any other natural or legal persons whose activities seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe".

In order to implement the amended Common Position, this Regulation should provide for the freezing of funds and economic resources of natural and legal persons, entities and bodies that are **not linked to the governing regime of Zimbabwe**. In view of this, the legal basis of this Regulation should include not only Articles 60 and 301, but also Article 308 of the EC Treaty, in line with the case-law of the Court of Justice.

Moreover, a provision is proposed to provide clarity on the **handling of classified information** which may be provided in support of decisions taken in respect of the Annex to the Common Position.

This Regulation respects the **fundamental rights** and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably the right to an effective remedy and to a fair trial, the right to property and the right to protection of personal data. It should be applied in accordance with those rights and principles.

The purpose of Regulation (EC) No 314/2004 is to bring about an end to the serious violations of human rights in Zimbabwe by applying restrictive measures against the Government of Zimbabwe, those who bear prime responsibility for and those who commit such violations.

Regulation (EC) No 314/2004 concerning certain restrictive measures in respect of Zimbabwe implements several restrictive measures provided for by Common Position 2004/161/CFSP, including the **freezing of funds and economic resources** of certain natural or legal persons, entities and bodies. It is necessary to align the scope of the freezing of funds and economic resources of Regulation (EC) No 314/2004 with Common Position 2004/161/CFSP.

CONTENT: Regulation (EC) No 314/2004 implements the restrictive measures provided for in Common Position 2004/161/CFSP. Therefore, the main purpose of this proposal is to align the Regulation with the amended Common Position.

In order to implement Common Position 2004/161/CFSP, as amended, this Regulation should provide for the freezing of funds and economic resources of natural and legal persons, entities and bodies **who are not linked to the governing regime** of Zimbabwe. In view of this, the legal basis of this Regulation should include not only Articles 60 and 301, but also Article 308 of the EC Treaty, in line with the case-law of the Court of Justice.

Moreover, a provision is proposed to provide clarity on the **handling of classified information** which may be provided in support of decisions taken in respect of the Annex to Common Position 2004/161 /CFSP.

In order to create **maximum legal certainty** within the Community, the names and other relevant data with regard to natural or legal persons, entities and bodies, whose funds and economic resources should be frozen in accordance with Regulation (EC) No 314/2004, **should be made publicly known**. Processing by the Commission of relevant data relating to criminal offences committed by listed natural persons, and to criminal convictions or security measures concerning such persons should be authorised subject to appropriate specific safeguards.

This proposal also comprises certain **amendments of a technical nature**, such as aligning the definition of funds and Article 13 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.