External policy: freezing of funds and economic resources of persons designated by the United Nations as impeding the peace process in the Darfur region in Sudan

2005/0068(CNS) - 18/07/2005 - Final act

PURPOSE: to impose certain restrictive measures against persons impeding the peace process and breaking international law in the Darfur region of Sudan.

LEGISLATIVE ACT: Council Regulation 1184/2005/EC imposing certain specific restrictive measures directed against certain persons impeding the peace process and breaking international law in the conflict in the Darfur region in Sudan.

BACKGROUND: in view of the fact that the Government of Sudan, rebel forces and all armed groups have failed to comply with their commitments and the demands of the Security Council, the United Nations, in 2005, issued Resolution 1591 (2005) which imposes certain additional restrictive measures in respect of the Sudan.

For its part, the Council adopted, also in 2005, Common Position 2005/411/CFSP, which implements the freezing of funds and economic resources of those persons designated by the UN as impeding the peace process, who constitute a threat to stability in Darfur and region, who commit violations of international humanitarian or human rights law or other atrocities, who violate the arms embargo and/or who are responsible fore certain offensive military flights in and over the Darfur region. It is necessary that these measures be implemented uniformly by all economic operators in all of the EU Member States. The purpose of this Regulation, therefore, is to implement the UN measures – and measures set out in the Council's common position – into Community legislation.

CONTENT: this Regulation, in Annex I, lists the names of all natural and legal persons entities and bodies to whom this Regulation applies. The list itself will be completed after the persons and entities have been registered by the UN "Sanctions Committee" as established by UN Resolution 1591 (2005). All funds and economic resources belonging to, owned, held or controlled by those listed will be frozen.

No funds or economic resources will be made available to those listed in Annex I. By way of derogation, the Member States may authorise the release of certain frozen funds if it is: a) necessary for basic expenses (such as food, rent or medicines etc.); b) intended exclusively for the payment of professional fees (such as legal services); or c) intended exclusively for the payment of fees for the routine holding or maintenance of the frozen funds. Any funds released by way of derogation must be notified to both the UN and the Commission.

In other derogations, the Regulations specifies that the Member States may authorise the releases of certain frozen funds or economic resources if: the funds are subject to a judicial, administrative or arbitral lien – established prior to 29 March 2005; the funds will be used exclusively to satisfy claims secured by such a lien or recognised as valid; the lien or judgement does not benefit either a person or entity listed in the Regulation; if the lien is not contrary to public policy and if the lien has been notified by the Member State to the UN Sanctions Committee.

The provisions of this Regulation will not prevent financial or credit institutions from crediting the accounts that receive funds transferred by third parties - on condition that any addition to the accounts of the frozen assets is also frozen. The financial or credit institutions will need to inform the authorities of such transactions without delay.

The Regulation also provides that, without prejudice to rules on reporting, confidentiality and professional secrecy, legal and natural persons and/or bodies will be obliged to supply immediate information to the authorities, as well as co-operate with the authorities, on any of the provisions set out in this Regulation.

The Commission will be empowered to amend Annex I based on decisions made by the UN Sanction Committee. The Member States will be responsible for laying down the rules on penalties which will apply to infringements of the Regulation. Lastly, the Regulation will apply: within the territory of the Community (including its airspace); on board any aircraft or vessel under the jurisdiction of a Member State; to any person inside or outside the territory of the Community who is a national of a Member State; to any legal person, entity or body which is incorporated under the law of a Member State; and to any legal person, entity or body in respect of any business done within the Community.

ENTRY INTO FORCE: 23 July 2005.