



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 24 April 2008**

**8666/1/08  
REV 1**

**PESC 464  
RELEX 245  
CONUN 40  
FIN 157  
COARM 33  
COTER 21**

**"I" ITEM NOTE**

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From : Foreign Relations Counsellors Working Party (RELEX Working Party)  
To : Committee of Permanent Representatives (2nd Part)

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No. prev. doc. : 11679/07 PESC 880 RELEX 551 CONUN 41 COARM 52 COTER 60 COAFR  
237 COASI 92 COMAG 25 COMEM 118 COMEP 25 COEST 217 COWEB 127  
FIN 348

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Subject : Restrictive measures (Sanctions)  
- Update of the EU Best Practices for the effective implementation of restrictive  
measures

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1. On 19 July 2007, the Committee of Permanent Representatives took note of the updated EU Best Practices paper (doc. 11679/07).
2. The EU Best Practices paper is kept under constant review. If the recommendations contained in the paper are amended, the EU Best Practices paper should be revised.
3. On 9 April 2008, the Relex/Sanctions formation Working Party agreed on a document containing suggestions by the Presidency for adding text regarding the interpretation of the Court of the term 'making economic resources available', used in legal acts on sanctions, to be included in the EU Best Practices paper (see doc. 6085/1/08 REV 1).

4. On 21 April 2008, the Relex Working Party agreed that the EU Best practices paper should be updated, so as to include the interpretive language agreed by the Relex/Sanctions Formation Working Party.
  
5. In these circumstances, the Committee of Permanent representatives is invited to take note of the EU Best practices paper, updated with the interpretive language referred to above<sup>1</sup>, as set out in the Annex.

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<sup>1</sup> See paragraphs 28 and 49.

**EU Best Practices**  
**for the effective implementation of restrictive measures**

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## Introduction

1. On 8 December 2003, the Council adopted Guidelines on implementation and evaluation of restrictive measures in the framework of the CFSP<sup>2</sup>. These Guidelines suggested that a specific Council body be dedicated to the monitoring and follow up of such restrictive measures. Subsequently, on 26 February 2004 COREPER mandated the Foreign Relations Counsellors Working Party, in addition to its existing mandate, to carry out the monitoring and evaluation of EU restrictive measures, while meeting periodically in a specific Sanctions formation, reinforced as necessary including with experts from capitals. The mandate for this formation includes the development of best practices among Member States in implementation of restrictive measures.
2. The intention is to keep this paper under constant review, notably with a view to adding best practices with regard to the implementation of other restrictive measures.
3. The Best Practices are to be considered non exhaustive *recommendations* of a general nature for effective implementation of restrictive measures in accordance with applicable Community/Union law and national legislation. They are not legally binding and should not be read as recommending any action which would be incompatible with applicable Community/Union or national laws, including those concerning data protection.
4. The intention of the paper is not to duplicate existing work but to identify key elements in the implementation of sanctions taking into account
  - the specific situation within the European Union's legal system,
  - the review of the current state of implementation of sanctions conducted by RELEX/Sanctions formation,
  - the importance of emphasising some already existing best practices that reflect current priorities of Member States.

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<sup>2</sup> Document 15579/03, last updated by doc. 15114/05.

## **A. Targeted restrictive measures: designation and identification**

### **I. Identification of designated persons or entities**

5. In order to improve the effectiveness of administrative freezing measures and restrictions on admission, and to avoid unnecessary problems caused by homonyms or near-identical names (possibility of “mistaken identity”), as many specific identifiers as possible, including in particular surname, first name, alias, sex, date and place of birth, nationality, address, identification or passport number, should be available at the moment of identification and published at the moment of adoption of the restrictive measure. For entities, the information should aim to include in particular the full name, principal place of business, place of registration of office, date and number of registration.
6. After designation of a (natural or legal) person or entity, a constant review of identifiers should take place in order to specify and extend them, involving all those who can contribute to this effort. Procedures should be in place to ensure this constant review, involving all those who can contribute to this effort, in particular the EU Heads of Mission in the third country concerned, Member States' competent authorities and agencies, and financial institutions. With regard to measures targeting foreign regimes, each incoming Presidency could invite the relevant local EU Presidencies to review, and where possible amend and/or complement, the identifying information of the designated persons or entities. Updates of the lists with additional identifying information will be adopted as provided for in the basic act.
7. The formats of the listing of persons or entities and their identifiers should be harmonised.

## II. Claims concerning mistaken identity

8. If the information on a designated person or entity is limited to that person's/entity's name, implementation of designation may in practice prove to be problematic due to the potentially lengthy list of possible positive targets. This highlights the urgency of further identifiers. However, even if additional identifiers are provided, distinguishing between designated and non-designated persons or entities may still be difficult. It cannot be excluded that in some cases the funds of a person/entity who was not the intended target of the restrictive measures will be frozen, or a person excluded from the territory of the Member States of the EU, due to identifiers that match with those of a designated person/entity. Member States and the Commission should have procedures in place that ensure that their findings on claims concerning alleged mistaken identity are consistent in this regard.

### *a) investigation by the competent authorities*

9. If a person/entity whose funds or economic resources are frozen claims that he or she is not the intended target of the restrictive measures, he or she should contact the competent authority. If a credit or financial institution, or another economic operator, queries whether a customer is in fact a designated person/entity, they should use all sources available to them to establish that customer's identity. If they cannot solve the query, the economic operator should inform the competent authorities of the relevant Member State.
10. If a person seeking entry to the EU claims not to be designated pursuant to restrictive measures, and/or when the border/immigration authorities, after having used all sources available to them to establish the identity of that person, query whether this person is in fact the person designated, the border/immigration authorities should inform the competent authorities of the relevant Member State of the claim or query<sup>3</sup>.

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<sup>3</sup> Sometimes the immigration authorities will be the competent authorities.

11. In both cases the competent authorities should examine the claim or query<sup>4</sup>.

*b) affirmative conclusion with regard to mistaken identity*

12. Where the competent authorities conclude after examination of the matter that, taking all relevant facts and circumstances into account, the person/entity concerned is *not* the designated person/entity, they should inform the person/entity of the finding and/or the economic operators or border/immigration authorities involved. Where appropriate, they should also inform other Member States and the Commission in particular in light of the possibility that the person/entity concerned will be confronted with similar problems in other Member States.

13. Where the competent authorities conclude after examination of the matter that, taking all relevant facts and circumstances into account, the person/entity concerned *is* the designated person/entity, they should inform, as appropriate, the person/entity of the finding and/or the economic operators or border/immigration authorities involved.

*c) uncertainty regarding claims*

**(i) cases concerning EU autonomous restrictive measures**

14. In case the competent authorities are *not* able to establish the correctness of the claim of mistaken identity, and the claim is not manifestly unfounded, Member States and the Commission should, when relevant, be informed of that claim and the matter should be discussed in Council, possibly on the basis of further information to be provided by the State that made the proposal for designation of the person, or by the EU Heads of Mission in the third country concerned, as appropriate, with a view to determining whether this is indeed a case of mistaken identity.

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<sup>4</sup> In cases of designation pursuant to UNSCRs it may be difficult for the competent authorities to conclude such an examination alone; in such cases the procedure set out in (c) (ii) should be followed.

(ii) **cases concerning restrictive measures imposed pursuant to UN Security Council Resolutions**

15. In case the competent authorities are *not* able to establish the correctness of the claim of mistaken identity, and the claim is not manifestly unfounded, Member States and the Commission should be informed of that claim, when relevant. The UN Sanctions Committee established by the relevant UNSC Resolution, and where possible, through that Committee, the State that made the proposal for designation, should be consulted by the Member State that investigated the claim or by the Commission. Where appropriate, the matter could be referred to that Committee for an authoritative finding. Any such authoritative finding should be communicated to Member States and the Commission.

*d) judicial findings*

16. If a court or tribunal of a Member State has made a decision on any claims regarding mistaken identity, it could be communicated by the competent authorities of that State to all other Member States and the Commission.



### III. De-listing

17. A transparent and effective de-listing procedure is essential to the credibility and legitimacy of restrictive measures. Such a procedure could also improve the quality of listing decisions. De-listing could be appropriate in various cases, including evidence of mistaken listing, a relevant subsequent change in facts<sup>5</sup>, emergence of further evidence, the death of a listed person or the liquidation of a listed entity. Essentially de-listing is appropriate wherever the criteria for listing are no longer met.

When considering a request for de-listing, all relevant information should be taken into account. Apart from submission of requests for de-listing, a regular review, as provided for in the relevant legal act, involving all Member States, shall take place in order to examine whether there remain grounds for keeping a person or entity on the list.

While preparing such regular reviews, the State that proposed the listing should be asked for its opinion on the need to maintain the designation and all Member States should consider if they have additional relevant information to put forward. Any decision to de-list should be implemented as swiftly as possible.

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<sup>5</sup> *E.g. de-listing could be appropriate in the case of law enforcement measures, such as the inclusion of persons in Witness Protection Schemes.*

## ***B. Freezing measures***

### **Laws and regulations**

18. In addition to legislation adopted by the Community, Member States should have in place the necessary legislative framework, laws or regulations to freeze funds (financial assets) and economic resources of persons and entities subject to restrictive measures, including terrorist persons and entities, and to prohibit the making available of funds and economic resources to or for the benefit of such persons and entities, in particular by way of administrative freezing measures and/or through the use of judicial freezing orders having equivalent effects. This should be in line with relevant FATF standards, particularly Special Recommendation III on Terrorist Financing<sup>6</sup>.
19. Such measures should enable the national authorities to order and obtain the freezing without delay of all funds (financial assets) and economic resources belonging to, or owned, controlled or held by, the designated person or entity located in the Member State concerned and could also target persons and entities having their roots, main activities and objectives within the European Union. They should also provide a basis for freezing measures pending decision-making on EU measures implementing UNSC resolutions<sup>7</sup>.
20. Section C sets out best practices for implementation of Community measures and can also provide relevant guidance on implementation of national freezing measures.

### **Administrative and judicial freezing, seizure and confiscation**

21. In general terms, administrative freezing could be considered as primarily an act providing the basis for comprehensively preventing all uses made of frozen funds and economic resources and of all transactions by a person, group or entity, designated by a competent authority.

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<sup>6</sup> FATF standards comprise the Forty Recommendations on Money Laundering and the Nine Special Recommendations on Terrorist Financing, available at <http://www.fatf-gafi.org>

<sup>7</sup> See Article 60 (2) of the Treaty establishing the European Community.

22. Judicial freezing<sup>8</sup>, however, could be considered primarily as an action preparatory to confiscation, which is part of a criminal law procedure in the Member State concerned<sup>9</sup> or, in case of requests for assistance in criminal matters, in another Member State or a third country. A judicial freezing order can be made with respect to property subject to an administrative freezing and may rely on evidence which has been obtained in the administrative process. In other cases, a judicial freezing order will however be made without previous administrative freezing (See Framework Decision 2003/577/JHA on the Execution of Orders Freezing Property and Evidence<sup>10</sup>).
23. In the specific case of terrorism, Member States should also take the necessary measures to seize and/or confiscate terrorist assets. To that end, they should implement Framework Decision 2005/212/JHA on the Execution of Confiscation Orders<sup>11</sup> in a timely fashion. Member States should also implement the 1999 UN Convention for the Suppression of the Financing of Terrorism.

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<sup>8</sup> Several delegations pointed out the differences in terminology in national legislation. For example, the German terminology for an action preparatory to confiscation, which is part of a criminal law procedure, is “seizure”.

<sup>9</sup> A preventive system of judicial seizing and confiscation of assets can also be applied outside the specific case of criminal proceedings in certain Member States.

<sup>10</sup> OJ L 196, 2.8.2003, p. 45.

<sup>11</sup> OJ L 68, 15.3.05, p. 49.

## **C. Modalities of administrative freezing of funds and economic resources**

### **I. Scope of administrative freezing**

24. Administrative freezing measures, in the context of EC Regulations, consist of:
- a freeze of funds and economic resources of designated persons and entities, and
  - a prohibition on making funds and economic resources available to such persons and entities.
25. The terms ‘freezing of funds’, ‘freezing of economic resources’, ‘funds’ and ‘economic resources’ are defined and exceptions and exemptions to the measures are provided in each Regulation. Some standard wording for this purpose is set out in the Guidelines on implementation and evaluation of restrictive measures in the framework of the CFSP<sup>12</sup>.
26. In this paper, the term ‘exception’ refers to uses which are not prohibited by the Regulations, whilst ‘exemption’ refers to uses which are prohibited unless authorised by a competent authority. In this paper, the words ‘shall’, ‘must’ and ‘is obliged to’ refer to legal obligations whether imposed by freezing Regulations or other international, Community or national law; the word ‘should’ refers to best practice; and the words ‘might’ and ‘may’ refer to suggestions which could be appropriate, depending on the circumstances and other relevant laws and procedures.
27. Administrative freezing measures do not involve a change in ownership of the frozen funds and economic resources. Any person or entity complying with the obligations under the Regulations shall not be held liable vis-à-vis a designated person or entity for any damage that may be suffered by the latter as a result. No person or entity carrying out a freeze, while acting without negligence and in good faith that such action is in accordance with a Regulation, shall be held liable vis-à-vis the affected person or entity<sup>13</sup>.

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<sup>12</sup> Document 15114/05.

<sup>13</sup> Nearly all Regulations include specific provisions to this effect with the exception of Regulation (EC) No 2488/2000 maintaining a freeze of funds in relation to Mr Milosevic and those persons associated with him, and Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.

28. Once in force, the Regulations imposing freezing measures override all incompatible contractual arrangements. Thus where Regulations provide that they shall apply notwithstanding any rights conferred by or obligations provided for in any contract entered into before their entry into force, this precludes the completion of acts which implement contracts concluded before the entry into force of the Regulations.<sup>14</sup>
29. The freeze covers all funds and economic resources belonging to or owned by designated persons and entities, and also to those held or controlled by the latter. Holding or controlling should be construed as comprising all situations where, without having a title of ownership, a designated person or entity is able lawfully to dispose of or transfer funds or economic resources he, she or it does not own, without any need for prior approval by the legal owner. A designated person is considered as holding or controlling funds or economic resources, *inter alia*, if he or she:
- (a) has banknotes or debt certificates issued to bearer,
  - (b) has movable goods on his or her premises which he or she owns jointly with a non-designated person or entity,
  - (c) has received full or similar powers to represent the owner, allowing him or her to order the transfer of funds he or she does not own (e.g. for the purpose of managing a specific bank account), or
  - (d) is a parent or guardian administering a bank account of a minor in accordance with the applicable national law.
30. In principle, the freeze should not affect funds and economic resources which are neither owned by or belonging to, nor held or controlled by designated persons and entities. Thus, for example, the funds and economic resources of the non-designated employer of a designated person are not covered, unless they are controlled or held by that person. In the same vein, the funds and economic resources of a non-designated entity having separate legal personality from a designated person or entity are not covered, unless they are controlled or held by the designated person or entity. However, even so, funds and economic resources jointly owned by a designated person or entity and a non-designated one are in practice covered in their entirety.

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<sup>14</sup> See judgment of the Court of Justice of the European Communities of 11 October 2007 in Case C-117/06 (Möllendorf), paragraph 62.

The non-designated person or entity may subsequently request an authorisation to use such funds and economic resources, which may include severing the joint ownership so that person's share can be unfrozen.

## **II. Role of economic operators and citizens**

31. Regulations imposing freezing measures apply, *inter alia*, to EU legal entities and other economic operators doing business in the EU, including financial and credit institutions, and EU nationals.
32. Anti-money laundering legislation and other legislation impose certain requirements on certain businesses and professions to verify the identity of customers and to refrain from anonymous transactions in certain circumstances. The Regulations imposing freezing measures do not create any additional obligations on economic operators to 'know their customers'.
33. All persons and entities subject to the Community's jurisdiction are obliged to inform the competent authorities of any information at their disposal which would facilitate the application of the freezing measures. This includes details of any accounts frozen (account holder, number, value of funds frozen), and other details which may be useful e.g., data on the identity of designated persons or entities and, where appropriate, details of incoming transfers resulting in the crediting of a frozen account in accordance with the specific arrangements for financial and credit institutions, attempts by customers or other persons to make funds or economic resources available to a designated person or entity without authorisation, and information that suggests the freezing measures are being circumvented. They are also obliged to co-operate with competent authorities in verification of information. Where appropriate, they could also provide details concerning persons and entities having names that are very similar or identical to designated parties.

### III. Use of information by competent authorities

34. The Regulations provide that competent authorities may use the information they receive only for the purposes for which it was provided. These purposes include ensuring the effective implementation of the measures and law enforcement and, where provided in the Regulation, co-operation with the relevant UN sanctions committee. Thus competent authorities are permitted to exchange the information with, *inter alia*:

- the Commission and the competent authorities of other Member States,
- law enforcement authorities, relevant courts and tribunals in charge of enforcement of the Regulations imposing freezing measures and anti-money laundering legislation,
- other investigating and prosecuting authorities,
- the competent UN sanctions committee, and,
- to the extent necessary for the application of the freezing measures or to prevent money laundering, credit and financial institutions.

35. The Regulations provide that the competent authorities and the Commission are to share relevant information with each other.

#### IV. Funds

##### a) Freezing of funds belonging to, owned, held or controlled by a designated person or entity

36. The freezing of funds, unlike confiscation, does not affect the ownership of the funds concerned. Persons that hold or control funds owned by a designated person or entity (e.g. if the funds have been handed over to a credit institution as collateral) are not required to cease such holding or control, or to obtain an authorisation to continue it.
37. All uses of, and dealings with, funds, including transfers of ownership, moving and alterations such as portfolio management, and whether by the designated person or another person holding or controlling such funds, require prior authorisation. Joint ownership of the funds does not negate this requirement, even though third party property as such is not frozen by the Regulations.
38. Creditors of a designated person or entity may, without authorisation, transfer to any non-designated person their financial claims (i.e. claims that represent a financial benefit) against the designated person or entity. The designated person or entity, however, needs an authorisation to transfer his or her financial claim against any other person or entity to any other person.
39. The exercise of a right of set-off by a designated person or entity, or by a non-designated person or entity in respect of a claim against a designated person or entity, is prohibited unless there is prior authorisation.
40. The Regulations do not authorise confiscation of cash and funds carried by a designated person; such confiscation may be appropriate in certain circumstances as a matter of national law. However, the authorities are obliged to prevent those funds from being moved, transferred, altered, used, accessed or dealt with in a way prohibited by the Regulations. When authorities are aware that a designated person is carrying cash or other funds, they may well have powers within the existing legal framework, such as anti-terrorism and anti-money laundering laws. Member States may be obliged to respect privileges and immunities conferred as a matter of international law on a designated person, which may limit possible actions<sup>15</sup>.

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<sup>15</sup> For example, if the designated person is travelling to the headquarters of an international organisation and specific provisions of the relevant headquarters agreement apply.



b) Making funds available to a designated person or entity

41. Making funds available to a designated person or entity, be it by way of payment for goods and services, as a donation, in order to return funds previously held under a contractual arrangement, or otherwise, is generally prohibited in the absence of an authorisation granted by the competent authority pursuant to the relevant Regulation (see also paragraphs 54 to 61 on humanitarian exemptions).
42. However, interest accruing to a frozen account and payments already due under prior contracts, agreements or obligations can be added to that account without prior authorisation<sup>16</sup>.
43. A third party initiating the transfer of funds to a designated person needs prior authorisation. A financial or credit institution in the EU that receives funds transferred by a third party to a frozen account is permitted to credit such funds to it without prior authorisation. If a person transfers funds to a frozen account without prior authorisation, but claims it was an error, he or she will have to seek an authorisation for the return of the funds, allowing the competent authority to verify his or her version. However, a financial institution can, without authorisation, rectify in its accounting systems its own accidental transfer of funds to a frozen account.

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<sup>16</sup> Regulation (EC) No 2488/2000 is not explicit on this point.

## V. Economic resources

### a) Freezing of economic resources belonging to, owned, held or controlled by a designated person or entity

44. Economic resources are frozen so as to prevent their use as a parallel or surrogate currency, and avoid circumvention of the freezing of funds. Competent authorities should therefore concentrate on preventing targeted persons and entities from obtaining financial or economic benefits (i.e. funds, goods or services) from economic resources. Preventing consumptive, personal use of economic resources is neither desirable nor intended.
45. Personal use of frozen economic resources (e.g. living in one's own house or driving one's own car) by a designated person is not prohibited by the Regulations and does not require an authorisation. Assets which are only suitable for personal use or consumption, and therefore cannot be used by a designated person to obtain funds, goods or services, do not fall within the definition of 'economic resources'. Therefore they are not covered by the Regulations and no authorisation is required to make them available to a designated person.
46. However, if use of frozen economic resources amounts to an economic activity which could result in the designated person obtaining funds, goods or services (e.g. if the designated person seeks to let his or her house or to operate his or her car as a taxi), it will require prior authorisation.
47. All uses of economic resources providing funds, goods or services to the designated person, whether such use is by the designated person or another person holding or controlling such funds, require prior authorisation. Joint ownership of the economic resource does not negate this requirement, even though third party property as such is not frozen by the Regulations.

b) Making economic resources available

48. Making economic resources available to a designated person or entity, including by gift, sale, barter, or returning economic resources held or controlled by a third party to a designated owner, is prohibited in the absence of an authorisation granted by the competent authority pursuant to the relevant Regulation. Making available assets which are only suitable for personal use or consumption, and therefore cannot be used by a designated person to obtain funds, goods or services, does not amount to 'making economic resources available' in the sense of the Regulations and therefore does not require an authorisation (see also paragraphs 54 to 61 on humanitarian exemptions).
49. The term 'making economic resources available', which is not defined in the Regulations, has been interpreted by the Court of Justice as having a wide meaning. Rather than denoting a specific legal category of act, it encompasses all the acts necessary under the applicable national law if a person is effectively to obtain full power of disposal in relation to the economic resource concerned. The prohibition on making economic resources available applies to any mode of making available an economic resource, whatever the consideration. The fact that economic resources are made available against payment of a consideration which may be regarded as adequate is therefore irrelevant.<sup>17</sup>
50. The freezing measures do not require persons that hold or control economic resources owned by a designated person or entity (e.g. if a lease on movable property has been granted or movable goods have been handed over as collateral) to return such economic resources to their owner, and no authorisation is required to continue such holding or controlling. However, since such economic resources are frozen, any new contractual arrangement concerning their use or any dealing with them requires prior authorisation.
51. Domestic supplies of utilities such as gas, electricity, water and telephone lines are not prohibited by the Regulations, owing to their consumptive nature and consequent lack of transferability.

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<sup>17</sup> See Judgment of the Court of Justice of the European Communities of 11 October 2007 in Case C-117/06 (Möllendorf), paragraphs 51, 56, 58 and 59.

## VI. Designated legal entities

52. Where a legal entity is designated and freezing measures have to be applied, its continued existence as such is not prohibited. In the case of a business, freezing its assets will affect its operation and have direct consequences for third parties such as employees, creditors and others who may have nothing to do with the reason that the entity was listed. Business conducted with such an entity will generally involve either making funds or economic resources available to it, or a change in the form of its funds or economic resources, both of which are prohibited and require prior authorization by the competent authorities.
53. If the activities of a designated legal entity are to continue and in order to prevent abuse for funding of terrorist activities, appropriate conditions, that need to be elaborated, have to be imposed. These conditions may include measures which ensure that the entity is administered in a way which will not undermine the freeze of funds and economic resources and the prohibition to make funds and economic resources available<sup>18</sup>. It remains open to MS to study further how to put this into practice. In order to again operate freely without any restrictions, de-listing is required.

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<sup>18</sup> See Fourth report of the Analytical Support and Sanctions Monitoring Team, Para 59. Doc. S/2006/154

## VII. Humanitarian exemptions

54. This section addresses only the application of the so-called humanitarian exemption, which should help to ensure that the basic needs of designated persons can be satisfied, and does not consider other exemptions (e.g. for legal expenses or extraordinary expenses)<sup>19</sup>.
55. While acting consistently with the letter and spirit of the Regulations, the competent authority shall take into account fundamental rights when granting exemptions to cover basic needs.
56. Freezing measures do not affect a designated person's freedom to engage in work. However, payment for that work requires an authorisation. The competent authority should make appropriate investigations (e.g. confirming the employment) and include appropriate conditions to prevent circumvention. Authorisation in such circumstances should normally require payments to be made to a frozen account. Any payment in cash should be authorised explicitly. Any authorisation should also permit normal deductions for social security and taxes. An authorisation is also required to make welfare benefits available to a designated person.

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<sup>19</sup> There are no such exemptions in Regulation (EC) No 1210/2003 concerning certain specific restrictions on economic and financial relations with Iraq.

## VIII. Guidance when considering requests for exemptions

57. Designated persons and entities can request an authorisation to use their frozen funds or economic resources, for example to satisfy a creditor. However, designated persons and entities cannot invoke the freezing measures as an excuse for defaulting, if they have not sought an authorisation.
58. Interested parties can also request authorisations for access to frozen funds or economic resources in accordance with national procedures. The designated person should, to the extent possible, be informed of such requests. The authorisation procedure does not remove the need for ordinary procedures to determine the validity of claims against a designated person or entity<sup>20</sup> and an authorisation does not confer title. In considering such requests, the competent authorities should, *inter alia*, take into account evidence provided by the creditor and the designated person or entity as to whether there is a legal obligation (contractual or statutory) to provide the funds or economic resources, and consider if there is any risk of circumvention (e.g. if creditor's links with the designated person or entity are such as to raise suspicions).
59. A person or entity wishing to make funds or economic resources available to a designated person or entity must request authorisation. In considering such requests, the competent authorities should, *inter alia*, take into account any evidence provided on the justification for the request, and whether the applicant's links with the designated person or entity are such as to suggest that both of them might work together to circumvent the freezing measures.
60. When considering requests for authorisation to use frozen funds or economic resources or to make available funds or economic resources, competent authorities should make whatever further investigation they deem appropriate in the circumstances, which may include consulting any other Member States with an interest. Also, competent authorities should consider conditions or safeguards in order to avoid released funds or economic resources being used for any purposes incompatible with the purpose of the exemption. Thus, for example, direct bank transfers may be preferable to cash payments.

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<sup>20</sup> i.e. by a national Court or other competent body.

Appropriate conditions or limits should also be considered where necessary (e.g. on the quantity or the re-sale value of funds or economic resources that may be made available each month) when granting an authorisation, taking into account the criteria set out in the Regulations. All authorisations should be granted in writing and prior to use of or making available of the funds or economic resources concerned.

61. Regulations oblige competent authorities to inform the person making the request and other Member States whether the request has been granted<sup>21</sup>. This information sharing allows Member States to co-ordinate the granting of exemptions in situations where a designated person has frozen funds or economic resources in more than one Member State.

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<sup>21</sup> Regulation (EC) No 2580/2001 also requires this information to be provided to any other person, body or entity known to be directly concerned. This may represent best practice even where not required by the Regulations.

**D. Prohibitions on the provisions of goods or services**

62. In the context of prohibitions concerning the provision of goods or services, "in, or for use in country X" <sup>22</sup> could be interpreted as "*in or for use in country X, or to end-users in country X via third parties (e.g. front companies) in other countries*".

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<sup>22</sup> See for example articles 2 and 5 of Council Regulation (EC) No 423/2007 concerning restrictive measures against Iran (OJ L 103, 20.4.2007).



## **E. Co-ordination and co-operation**

63. Member States should ensure efficient national co-ordination and communication mechanisms between all relevant government agencies, bodies and services with competence in the field of sanctions or in the fight against the financing of terrorism, such as ministries, financial intelligence units, financial supervisors, intelligence and security services, judicial authorities, the office of the public prosecutor and other law enforcement bodies, as appropriate.
64. The coordination should allow for expeditious input of intelligence, and follow up to this input by other actors involved. Further to this, investigations should focus, where possible, on identified high risk situations. Such *intelligence-driven and risk-based approach* could improve effectiveness.
65. Member States should also exchange information with, *inter alia*, other Member States, the Commission, Europol, Eurojust, FATF, Sanctions Committees established by the UN Security Council (including the Committee established pursuant to Resolution 1267 (1999) concerning Al-Qaida and the Taliban) and the UNSC Counter-Terrorism Committee, as appropriate.
66. Co-ordination and information sharing procedures should be arranged to ensure that information which could provide the basis for a proposal for listing or de-listing is passed on without unnecessary delay. Such procedures should be established on the national level within Member States as well as between Member States and, where appropriate, between the EU, third states, the UN and other relevant international organisations."

### *Expertise Groups*

67. In relation to the fight against terrorist financing, Member States could consider the establishment of special expertise groups composed of supervisory authorities, law enforcement agencies and other relevant actors. Such expert groups could conduct general in-depth analysis of relevant facets of terrorism financing and of patterns of terrorist financing in order to enhance the efficiency and effectiveness of the fight against terrorist financing.

Subjects could include possible abuse of non-profit organisations and use of front organisations or alternative remittance systems. These are in line with FATF Special Recommendations VIII and VI respectively. Member States will subsequently seek to develop procedures to share findings gathered by such expert groups with each other and other relevant partners.

#### *Analysis of financial accounts*

68. Member States should ensure that financial transactions linked to the accounts of designated persons, groups or entities are analysed by the appropriate agencies or services. The results of these analyses should, to the extent legally possible, be shared with other states, international organisations, and relevant EU bodies such as Europol concerning terrorist financing. For this, Member States should have procedures in place.

#### *Interaction and dialogue with the financial sector on freezing measures*

69. Member States should develop structured dialogue and co-operation with relevant private organisations within their jurisdiction, such as credit and financial institutions, on the implementation of freezing measures, in order to ensure effective implementation, optimise the instrument of restrictive measures, and seek to ease the administrative burden for these organisations to the extent possible.

70. The Commission and, as appropriate, the Council, will also pursue a dialogue at the EU level with relevant financial organisations on implementation issues as well as legislative issues. In cases of terrorist financing, Member States will also endeavour to provide the financial sector with adequate (and timely) input and feedback, where possible also of an intelligence nature, and up-to-date information on patterns of terrorist financing.

71. Member States could consider channels for providing directions and advice to the financial regulators as well as credit and financial institutions.

#### *Dissemination of information on freezing measures to other persons*

72. Member States should make organisations of economic operators other than those in the financial sector and the public aware of the existence of financial restrictive measures, in particular in view of the prohibition on making funds and economic resources available to those designated, and explain the modalities of these measures.

#### *Application tools*

73. The Commission should continue to ensure access for the public (in particular credit and financial institutions) to the “electronic-Consolidated Targeted Financial Sanctions List (e-CTFSL)” as established by the Commission and the European credit sector.

74. The Commission should ensure that the list is kept up to date.

75. Member States should, as appropriate, ensure access for the public (in particular credit and financial institutions and other relevant economic operators) to relevant information concerning national measures, including designations and judicial orders, e.g. with regard to so-called internal terrorists.

#### *Evaluation*

76. Evaluation of the effectiveness of EU restrictive measures is important and should take into account feed-back from, for example, Member States, the Commission, EU Heads of Mission, customs authorities, the private sector, the UN and other relevant institutions.

77. Member States should endeavour to have in place appropriate national procedures to evaluate, in particular, the effectiveness of national performance regarding the fight against the financing of terrorism, taking into account, *inter alia*, results from dialogue with the private sector.
78. Results of such evaluations should be exchanged in the RELEX/Sanctions formation, when relevant<sup>23</sup>.
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<sup>23</sup> See also paragraph 34 of the Guidelines on Implementation and Evaluation of Restrictive Measures.