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THE EUROPEAN UNION**

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from : Secretariat  
to : Permanent Representatives Committee/COUNCIL  
Subject : Guidelines on implementation and evaluation of restrictive measures (sanctions)  
in the framework of the EU Common Foreign and Security Policy

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1. The European Union's extensive experience in designing, implementing, enforcing and monitoring restrictive measures (sanctions) in the framework of the CFSP<sup>1</sup> has shown that there is a need to improve a number of aspects so as to allow expeditious and effective action. To that end, it is desirable to standardise implementation and to strengthen methods of implementation. These guidelines address a number of general issues and present standard wording and common definitions for use in the legal instruments used to implement restrictive measures.
2. The Working Party of Foreign Relations Counsellors agreed on the draft Guidelines as set out in Annex I at their meeting on 3 December 2003.
3. The Political and Security Committee at its meeting on 2 December 2003 had a first discussion on the use of restrictive measures in the framework of the CFSP and agreed on the draft Council conclusions as set out in Annex II.

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<sup>1</sup> Notably arms embargoes, financial restrictions and restrictions on admission, *cfr* "Liste des mesures négatives appliquées par l'Union Européenne à l'égard de pays tiers", updated 4 July 2003, EU Council website – CFSP section.

4. In the light of the foregoing, the Permanent Representatives Committee is invited to:

- confirm agreement on the draft guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy as set out in Annex I;
- recommend that the Council adopt them;
- confirm agreement on the draft Council conclusions as set out in Annex II and recommend that the Council adopt them.

**GUIDELINES ON IMPLEMENTATION AND EVALUATION OF  
RESTRICTIVE MEASURES (SANCTIONS) IN THE FRAMEWORK OF  
THE EU COMMON FOREIGN AND SECURITY POLICY**

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## ***I. Introduction***

1. The European Union's extensive experience in designing, implementing, enforcing and monitoring restrictive measures (sanctions) in the framework of the CFSP<sup>1</sup> has shown that there is a need to improve a number of aspects so as to allow expeditious and effective action. To that end, it is desirable to standardise implementation and to strengthen methods of implementation. These guidelines address a number of general issues and present standard wording and common definitions for use in the legal instruments used to implement restrictive measures.
2. A more long-term approach to the application of restrictive measures could be envisaged by following through the entire process from imposition of restrictive measures, through effective monitoring of their application, to developing a more consistent approach for reporting and assessing the effectiveness of the restrictive measures. This document also suggests some improvements in the fields of monitoring and evaluation of implementation and enforcement once the Council has decided on those restrictive measures. However, it does not address the political process leading to the decision to impose or repeal such restrictive measures.
3. In the case of implementation of UN restrictive measures, the EU legal instruments will need to adhere strictly to the relevant Security Council Resolutions. However, it is understood that the EU may decide to apply measures that are more restrictive.

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<sup>1</sup> Notably arms embargoes, financial restrictions and restrictions on admission, *cfr "Liste Des mesures negatives appliquées par l'Union Européenne à l'égard de pays tiers"*, updated 4 July 2003, EU Council website – CFSP section.

## *II. Basic principles*

### Objectives

1. Within the framework of the Common Foreign and Security Policy, the Council may decide to impose restrictive measures against third countries, entities or individuals. They must pursue CFSP objectives, as set out in Article 11 of the Treaty on European Union.
2. In general terms, restrictive measures are imposed by the EU to bring about a change in policy or activity by the target country, part of country, government, entities or individuals. Accordingly, the EU will repeal/adapt the restrictive measures as a function of positive developments in light of its objectives. Where possible and consistent with the European Union's overall strategy towards the third country concerned, the legal instruments imposing restrictive measures may refer to incentives to encourage the required change in policy or activity. It will be important to ensure that such incentives do not reward non-compliance.
3. The objective of each measure should be clearly stated and consistent with the Union's overall strategy in the area concerned. Both the overall strategy and the specific objective should be recalled in the introductory paragraphs of the Council legal instrument through which the measure is imposed. The restrictive measures do not have an economic motivation.
4. The legal instruments will be subject to regular review in order to assess the efficiency of the adopted restrictive measures with regard to the objectives stated. The review will be conducted by the relevant Council working parties and committees, on the basis of EU Heads of Mission reports where relevant.

### Legal issues

5. The introduction and implementation of restrictive measures must always be in accordance with international law and the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.

6. When imposing restrictive measures, the legal context of the measures should be set out. In addition to relevant provisions of the Treaty on European Union and Treaty establishing the European Community, this may include references to any relevant UN Security Council resolution, or other applicable provisions of international law.
7. The restrictive measures should respect the international obligations of the European Community and its Member States, including in particular the WTO Agreements. The General Agreement on Tariffs and Trade (GATT) and on Trade in Services (GATS) apply when restrictive measures affect trade in goods or services with third countries. Article XXI of GATT allows for import and export restrictions which are either applicable to arms and military equipment, or imposed in pursuance of obligations under the United Nations Charter for the maintenance of international peace and security. Article XIV bis of GATS provides for a similar exception. Measures restricting trade which do not fall under these categories, have to meet the conditions laid down in Article XX of GATT and Article XIV of GATS, respectively, and, in some cases, could be incompatible with WTO rules.
8. If EU measures are in conflict with the international obligations of the EC or its Member States, a common approach for dealing with such conflicts may have to be developed.
9. When deciding on restrictive measures it is important to consider which measure or package of measures is most appropriate. It is a general principle of law that measures must be proportionate in view of their objective.

#### Targeted measures

10. It is desirable that the measures taken target as closely as possible those responsible for the policies or actions that have prompted the EU decision to impose restrictive measures also to take account of the humanitarian consequences they could entail. As a result, the measures are "targeted measures" in nearly all cases, i.e. restrictive measures that do not affect all transactions of a particular category with a third country, but rather the portion of such transactions which involves a well-defined category of persons and entities. Targeted measures increase efficiency of the measures and minimise their human consequences. Examples include financial restrictions, freezing of funds and restrictions on admission.

11. The measures used against a particular regime will need to vary depending on the objectives of the restrictive measures and likely effectiveness of particular measures. They include, inter alia, arms embargoes, embargoes on equipment that might be used for internal repression, other export restrictions, import restrictions, a ban on flights and restrictions on admission.
12. In designing and implementing its legal instruments, the EU can draw on its own experience in designing and implementing restrictive measures regimes and on the work carried forward in other fora, e.g. the Interlaken, Bonn – Berlin and Stockholm processes, as well as the experiences of the UN in this field.

#### Lists of targeted persons and entities

13. EU decisions and procedures must respect human rights and fundamental freedoms; this implies, in particular, that proper attention is given to the protection and observance of the due process rights of the persons to be listed. This is important also because targeted restrictive measures are taken through legal instruments that may be subject to judicial review<sup>1</sup>.
14. Measures taken should target those responsible for the policies or actions that have prompted the EU's decision to impose restrictive measures. Deciding that a person or entity should be subject to restrictive measures requires clear criteria, tailored to each specific case, for determining which persons and entities may be listed, which should also be applied for the purpose of removal from the list. These clear criteria will be set out in the CFSP legal instrument. This applies in particular with regard to financial measures, both in the case of listing of persons in the framework of measures against one or more third states, as well as in cases where measures target individuals and entities in their own right.
15. Identifying information is crucial to ensure that targeted restrictive measures do not impact on non-targeted persons and entities, in particular to assist the private sector to implement such measures. This should include as far as possible dates of birth, place of birth, pseudonyms, passport details, addresses of residence (and of incorporation in case of legal entities) and,

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<sup>1</sup> In the case of EC Regulations and Decisions, Article 230 of the EC Treaty.

where appropriate, names of adult family members of the person to be listed. Additional identifiers may be added at a later stage. The EU should aim in all cases to ensure that the identifying information provided at the time of the inclusion of a person on a list should be sufficiently precise to allow for an unambiguous identification of the targeted person. Identifying information for individuals and entities should be standardised as far as possible.

### Exemptions

16. It is important that the legal instruments on financial restrictions, restrictions on admission and other restrictive measures make provision for appropriate exemptions to take account of humanitarian needs of targeted persons and, where applicable, international obligations, including as host nations of international organisations or the OSCE, with regard to the various restrictive measures taken.
17. The competent authorities should grant exemptions on a case by case basis, which will allow them to assess all interests concerned and to impose conditions to ensure that the exemptions do not frustrate or circumvent the objective of the restrictive measure. The exemptions should be granted on the basis of the relevant legislative instruments. If there are grounds to grant an exemption from one restrictive measure (e.g. financial restrictions) this does not by default justify granting an exemption from another measure (e.g. restrictions on admission) which affects the person or entity concerned (cf. section III: A, D and E).

### Expiration or review of restrictive measures

18. Taking the specific objective of each measure and all other relevant considerations into account, the Council should keep the situation under review and schedule a specific review whenever the political context has changed.
19. Where it is considered appropriate, specific criteria that have to be met for repeal of the restrictive measures can be set out in the legal instrument, but normally proper definition of the specific objective of the measure will be sufficient.

20. When the criteria or specific objectives of the measure have not been met the restrictive measures should continue. The CFSP legal instrument should therefore either have an expiration date or a review clause, as decided by the Council, so as to ensure that the need for renewal of restrictive measures is discussed within an appropriate period of time <sup>1</sup>. The expiration or review date could be decided taking into account relevant facts and considerations (e.g. dates of future elections or peace negotiations which might bring about a change in the political context).
21. If the CFSP legal instrument sets out an expiration date for restrictive measures the Council should develop an understanding about their renewal. To be effective restrictive measures should be lifted according to their objectives, not according to time limits. The time limit therefore would be an occasion to revisit the restrictive measures regime and to assess whether the objectives have been met.
22. In cases in which the CFSP legal instrument would contain an expiration date, the need for an expiration date in Regulations implementing the CFSP legal instrument is nonetheless not self-evident;
- since the Regulations implement the CFSP act, they have to be repealed, if the CFSP legal instrument ceases to be applicable <sup>2</sup>. In such a situation, the Regulations can be repealed with retroactive effect, but it is desirable that this period is kept as short as possible.
  - if subsequent CFSP legal instrument renews the measures, amending the expiration date of the Regulation or adopting a new one containing the same legal provisions constitutes a mere administrative burden which should be avoided. Especially where last minute decisions on renewal are made, there may be a period during which the measures are not applicable pending amendment or adoption of a Regulation. <sup>3</sup>

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<sup>1</sup> At present, most EU sanctions texts imposing visa bans and assets freezes have expiration dates, whereas arms embargoes tend to have review clauses.

<sup>2</sup> See Articles 60 and 301 of the EC Treaty

<sup>3</sup> The implementation of UN restrictive measures in relation to Liberia constitutes an example. See Regulations (EC) No 1030/2003 (OJ L 150, 18.6.2003, p. 1) and (EC) No 1318/2002 (OJ L 194, 23.7.2002, p. 1).

It is, therefore, preferable to have the Regulation continue in force, until it is repealed.<sup>1</sup>

23. Standard wording for an expiration clause could therefore be:

*“This Common Position shall apply for a ... period. It shall be kept under constant review. It shall be renewed, or amended as appropriate, if the Council deems that its objectives have not been met.”*

24. Standard wording for a review clause could read:

*“This Common position shall be reviewed ... after its adoption and every ... thereafter. It shall be repealed if the Council deems that its objectives have been met.”*

### Implementation of UN Security Council Resolutions

#### *New measures*

25. The UN Charter grants the Security Council powers to decide in a manner binding for all UN members<sup>2</sup> which restrictive measures have to be taken in order to maintain or restore international peace and security, if there is a threat to the peace, a breach of the peace, or an act of aggression. It is important that the EU implement such UN restrictive measures as quickly as possible. Speed is particularly important in the case of asset freezes where funds can move quickly. In such cases, each Member State could consider the possibility of interim national measures with regard to financial measures (see Art. 60.2 TEC). The EU should aim to have the necessary implementing legislation in place without delay and within 30 days of the adoption of the UNSC Resolution at the latest. In cases in which the Commission has received a mandate to update lists of targeted persons or entities annexed to Council Regulations, it should aim to adopt the respective Commission Regulations within three working days after the adoption of the updated UN lists.

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<sup>1</sup> See Regulation (EC) No 1081/2000 prohibiting the sale, supply and export to Burma/Myanmar of equipment which might be used for internal repression or terrorism, and freezing the funds of certain persons related to important governmental functions in that country (OJ L 122, 24. 5. 2000, p. 29).

<sup>2</sup> See Article 25 of the UN Charter.

26. EU members of the UN Security Council will seek to ensure that, to the greatest extent possible, and without prejudice to their responsibilities under the UN Charter, EU concerns and implementation needs are taken into consideration when negotiating the UNSCR in question, in accordance with Article 19 TEU.
27. Legal security and transparency considerations militate against general legal instruments creating rights and obligations for the private sector by mere reference to any other instrument, which does not have direct effect in the EU legal order. The current legislative procedure requires the adoption of a CFSP legal instrument and an implementing Council Regulation based on the EC Treaty, based on a Commission proposal.
28. The Commission has in several cases presented a proposal for a Council Regulation immediately after adoption of the Security Council Resolution, but before adoption of the CFSP legal instrument. This approach enables the Council to adopt the CFSP legal instrument and the Regulation at the same time, but it should be noted that it requires that the Commission receives all relevant information on the draft Resolution prior to adoption of the Security Council Resolution so as to give it sufficient time to assess to what extent and subject to which terms and conditions the measures should be implemented by means of a Council Regulation. Similar arguments will apply to the drafting of the CFSP legal instruments.
29. Standard wording for legislative texts will be conducive to more rapid implementation of UN restrictive measures. When the EU implements UN restrictive measures the use of standard wording and common definitions must be adapted to the UNSC Resolution.
30. In view of the binding nature of UN Security Council Resolutions, the use of an expiration date is not appropriate when restrictive measures are imposed in application of a Security Council Resolution.

### *Renewal of temporary measures*

31. A specific situation exists, when the Security Council decides on measures which expire by a particular date. In such a situation, correct implementation of the UN measures requires immediate legislative action, if the measures are renewed just before the expiration date. In order to prevent expiration of the restrictive measures in cases where renewal is called for, the Council should not copy the expiration date in the implementing Regulation <sup>1</sup>.

### *Expiration or repeal of measures*

32. It is equally important to repeal restrictive measures swiftly in response to UN decisions on this point. Where the EU applies restrictive measures in implementation of Security Council Resolutions only, it is not proper for the implementing legal instruments to remain in place when the Security Council has decided the measures should be lifted. Where necessary, the legislative instruments can be repealed with retroactive effect; it is desirable that this period is kept as short as possible.

### *Exemptions*

33. Chapter VII UNSC Resolutions are mandatory under international law. In the case of EU implementation of restrictive measures decided by the Security Council through a resolution, it will therefore only be possible to include exemptions if they are in line with the Resolution. In this respect, paragraph 26 is relevant, including with regard to humanitarian exemptions for the purpose of satisfying basic needs of targeted persons.

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<sup>1</sup> See Regulation (EC) No 1081/2000 prohibiting the sale, supply and export to Burma/Myanmar of equipment which might be used for internal repression or terrorism, and freezing the funds of certain persons related to important governmental functions in that country (OJ L 122, 24.5.2000, p. 29), which implements (non-UN) measures which have been renewed (and supplemented) several times.

## Competences

34. The purpose of the CFSP legal instrument is to state which restrictive measures are considered necessary to meet its objectives and provide the basis for an action by the Community to interrupt or to reduce economic or financial relations with the third country in question. The European Community can adopt legislative implementation measures through a Regulation based on Articles 60 and 301 of the EC Treaty. In some cases, the Regulation has been based on Articles 60, 301 and 308<sup>1</sup>. Where the Community has no competence it is up to each of the Member States to adopt the necessary legislation or implementing measures.
35. Where restrictive measures are being considered, a case by case assessment needs to be made of Community competence, taking the EC Treaty's attribution of powers to the Community into account. The current practice is that the Council indicates in the CFSP instrument that "action by the Community is needed to implement certain measures" to enable the Commission to propose a Regulation implementing the measures falling within the remit of the Community. Where precision is needed to ensure that all measures are implemented in time, the CFSP instrument should indicate expressly how each measure or part of measure will be implemented.
36. Where the Community has the necessary competences to adopt a Regulation implementing the restrictive measures, it provides that Member States must lay down rules on sanctions applicable to infringements of the provisions of the Regulation and take all measures necessary to ensure that they are implemented.

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<sup>1</sup> Council Regulation (EC) No 2580/2001, of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344, 28.12.2001, p. 70) and Council Regulation (EC) No 881/2002, of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ L 139, 29.5.2002, p. 9).

## Jurisdiction

37. The EU has condemned the extra-territorial application of third country's legislation imposing restrictive measures which purports to regulate the activities of natural and legal persons under the jurisdiction of the Member States of the European Union, as being in violation of international law.<sup>1</sup> Accordingly, it will refrain from adopting legislative instruments having extra-territorial application in breach of international law.

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<sup>1</sup> Joint Action of 22 November 1996 concerning measures protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (OJ L 309, 29.11.1996, p. 7).

### **III. Standard wording for legal instruments**

#### **A. Definitions**

For the purposes of EU restrictive measures, the following definitions will apply. Further definitions will be worked out as necessary.

1. The term "*technical assistance*" shall mean<sup>1</sup>:

*"any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; technical assistance includes verbal forms of assistance".*

2. Over the years freezing of funds has been ordered, and bans on making funds available to listed persons and entities have been imposed, based on the following definitions<sup>2</sup>:

*"funds" means financial assets and benefits of every kind, including but not limited to:*

- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;*
- (b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;*
- (c) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;*
- (d) interest, dividends or other income on or value accruing from or generated by assets;*
- (e) credit, right of set-off, guarantees, performance bonds or other financial commitments;*
- (f) letters of credit, bills of lading, bills of sale;*
- (g) documents evidencing an interest in funds or financial resources;*
- (h) any other instrument of export-financing.*

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<sup>1</sup> Joint Action 2000/401/CFSP, (OJ L 159, 30.6.2000, p. 216).

<sup>2</sup> See e.g. Regulations (EC) No 2488/2000 maintaining the freeze of funds in relation to Mr Milosevic and those persons associated with him (OJ L 287, 14.11.2000, p. 19) and (EC) No 1081/2000 prohibiting the sale, supply and export to Burma/Myanmar of equipment which might be used for internal repression or terrorism, and freezing the funds of certain persons related to important governmental functions in that country (OJ L 122, 24.5.2000, p. 29).

*"freezing of funds" means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management.*

3. More recently, the freezing of economic resources has become an issue. In this regard, the following definitions have been used <sup>1</sup> by the Council and could continue to be used in EU legal instruments, as appropriate.

*"economic resources" means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.*

*"freezing of economic resources" means preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them."*

Notably as a result of the large definition of economic resources, which covers all property other than funds, enforcement practice concerning freezing of economic resources may differ among Member States. The EU should work towards a common understanding on these issues.

4. The term *"dual use good"* shall mean:

*"items, including software and technology, which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses, and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices"<sup>1</sup>*

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<sup>1</sup> See Regulations (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ L 139, 29.5.2002, p. 9) and (EC) No 1210/2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96 (OJ L 169, 8.7.2003, p. 6).

## B. Arms embargoes

### *Equipment covered by the embargo*

5. Currently, CFSP legal instruments imposing arms embargoes refer to different lists of equipment. Therefore, different regimes apply to different countries. There is a need for a uniform EU regime when imposing an arms embargo. The *EU Code of Conduct on Arms Exports*<sup>2</sup>, adopted on 8 June 1998, defines the criteria Member States apply for their exports control policy concerning arms. For this purpose a common list of military equipment was agreed in 2000.<sup>3</sup> Unless otherwise specified, arms embargoes should be interpreted as covering at least all goods and technology on the EU Common List of Military Equipment.
6. The common list of military equipment does not include items which can be used for both civil and military purposes. Exports of such dual-use items are controlled in accordance with Council Regulation (EC) No 1334/2000<sup>4</sup>. This Regulation foresees that, in deciding whether or not to grant an export authorisation, the Member States shall take into account, *inter alia*, their obligations under sanctions imposed by a legal instrument adopted by the Council or by a decision of the OSCE or by a binding resolution of the Security Council of the United Nations.
7. By its very nature (dual-use) a number of the goods listed have entirely legitimate applications e.g. cryptographic products used in banking, equipment that can be used in hospitals, factories, universities, offshore oil fields. An outright ban might thus have implications that go well beyond the initial objective and be wholly inappropriate. In most cases, a ban on exports of dual-use items, including when they would be used for civil purposes, is, therefore, likely to be

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<sup>1</sup> Art 2.a of Council Regulation 1334/2000 of 22 June 2000 (OJ L159 of 30.6.2000).

<sup>2</sup> Document 8675/2/98.

<sup>3</sup> List attached to Council Declaration of 13 June 2000, issued on the occasion of the adoption of the common list of military equipment covered by the European Union code of conduct on arms export, OJ C 191, 8 July 2000. The relevant Council Working Group should be asked to adapt this list to the decisions taken within the framework of the Wassenaar arrangement in a timely manner.

<sup>4</sup> OJ L 159, 30 June 2000, p. 1. Last amended by Council Regulation (EC) No 149/2003 of 27 January 2003 (OJ L 30, 5.2.2003, p. 1).

disproportionate unless applied with qualifications and scope for appropriate exemptions (evidence of legitimate purpose). If an embargo on such items is nevertheless considered appropriate, the legal instrument should refer to the common list of dual-use items attached to Regulation (EC) No 1334/2000.

8. Standard wording for a provision imposing an arms embargo could read<sup>1</sup>:

*“The sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, to (country) by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft shall be prohibited whether originating or not in their territories.”*

*Technical assistance and other services relating to military activities*

9. When imposing an autonomous EU embargo on arms, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, a prohibition on providing technical assistance relating to such equipment should normally also be provided. In addition, a ban on financing of or providing financial assistance for arms exports could strengthen the arms embargo.

10. Wording of a standard article could be as follows:

*“It shall be prohibited:*

- *to grant, sell, supply, or transfer technical assistance, brokering services<sup>2</sup> and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, directly or indirectly to any person, entity or body in, or for use in (country);*

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<sup>1</sup> Based on Council Common Position 2002/960/CFSP, of 10 December, concerning restrictive measures against Somalia (OJ L 334, 11.12.2002, p. 1).

<sup>2</sup> Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering (OJ L 156 of 25.6.2003, p. 79).

- *to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of arms and related materiel, directly or indirectly to any person, entity or body in, or for use in (country)."*

### *Exemptions*

11. It may be appropriate to allow exemptions to the ban on exports of arms and related equipment for humanitarian purposes as, in post-conflict areas, certain types of controlled equipment can make important contributions to the safety of the civilian population and to economic reconstruction. These exemptions should normally be limited to non-lethal military equipment and to exports of protective clothing for personal use. They may include de-mining equipment and material intended for institution building, as appropriate.
12. It is desirable that exemptions on exports of non-lethal military equipment, like all others, be dealt with on a case-by-case basis, taking full account of the criteria set out in the Code of Conduct and other EU texts and legal instruments. Member States will require adequate safeguards against misuse of such exports and, where appropriate, provisions for repatriation of the equipment.
13. Standard wording for a provision on exemptions to bans on exports of arms and related equipment could read:

*"Article ... shall not apply to:*

- *the sale, supply, transfer or export of non-lethal military equipment intended solely for humanitarian or protective use, or for institution building programmes of the UN, the EU and the Community, or of materiel intended for EU and UN crisis management operations;*
- *the provision of financing and financial assistance related to such equipment,*
- *the provision of technical assistance related to such equipment,*

*on condition that such exports have been approved in advance by (competent authority)."*

14. In cases where there is a UN, EU or Community institution building programme which would also require the export of lethal equipment, the above provision would need to be complemented with the addition of the mention of “materiel intended for...” in the first indent. In the case of UN institution building programmes, the sale, supply, transfer or export of such materiel could be subject to approval by the relevant UN Sanctions Committee.

15. Standard wording for a provision on protective clothing could read as follows:

*"Article ... shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to (country) by United Nations personnel, personnel of the EU, the Community or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only."*

C. Restrictions on specific imports or exports

16. If a policy of internal repression is at the basis of the imposition of restrictive measures, a ban on exports of certain equipment is appropriate. EU legal instruments could refer to or use an agreed list when deciding an embargo on exports of items that could be used for internal repression. A list is annexed which, if the Council so decides, defines the scope of the specific export restriction for equipment which might be used for internal repression<sup>1</sup>. It should be used for this purpose, until it has been reviewed as appropriate.

17. Other lists such as a list of petroleum and petroleum products have been developed within the EU framework.<sup>2</sup> Future lists defining the scope of specific export or import control regimes may constitute a useful reference for specific export or import bans, if it is considered necessary to ban all trade of the specific, controlled category in relation to a particular country, in order to achieve the objectives of the CFSP.

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<sup>1</sup> See Annex I to Regulation (EC) No 1081/2000 (OJ L 122, 24.5.2000, p. 29) and Annex II to Regulation (EC) No 310/2002 (OJ L 50, 21.2.2002, p. 4).

<sup>2</sup> See Annex I to Regulation (EC) No 1705/1998 (OJ L 215, 1.8.1998, p. 1)

18. The exemptions from such measures should be sufficient to allow humanitarian action where appropriate and to take full account of the objective of the restrictive measures.

D. Restrictions on admission (visa or travel ban)

19. Several CFSP Common Positions foresee a ban on admission of specific nationals of third countries that are listed in an annex to the legal instrument.

20. Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement<sup>1</sup>, provides the basis for controls on admission of foreigners. Where a listed country's nationals need visas to enter the EU, a ban on admission can be immediately applied on the basis of this Regulation. Where no visa requirement exists under Regulation (EC) No 539/2001, restrictions on admission may require national action.

21. Standard wording<sup>2</sup> for an article regarding a visa/travel ban and exemptions therefrom could read as follows:

1. *"Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of the persons listed in the Annex, (indication of criteria/categories, if not already specified in the text);*
2. *Paragraph 1 will not oblige a Member State to refuse its own nationals entry into its territory.*
3. *Paragraph 1 shall be without prejudice to the cases where a Member State is bound by an obligation of international law, namely:*
  - (i) as a host country of an international intergovernmental organisation;*

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<sup>1</sup> OJ L 81, 21.3.2001, p. 1.

<sup>2</sup> As first agreed by the Council in Common Position 2003/115/CFSP of 18 February 2003 (restrictive measures against Zimbabwe)

- (ii) as a host country to an international conference convened by, or under the auspices of, the United Nations; or*
- (iii) under a multilateral agreement conferring privileges and immunities.*

*The Council shall be duly informed in each of these cases.*

- 4. Paragraph 3 shall be considered as applying also in cases where a Member State is host country of the Organisation for Security and Cooperation in Europe (OSCE).*
- 5. Member States may grant exemptions from the measures imposed in paragraph 1 where travel is justified on the grounds of urgent humanitarian need, or on grounds of attending intergovernmental meetings, including those promoted by the European Union, where a political dialogue is conducted that directly promotes democracy, human rights and the rule of law in (country).*
- 6. A Member State wishing to grant exemptions referred to in paragraph 5 shall notify the Council in writing. The exemption will be deemed to be granted unless one or more of the Council Members raises an objection in writing within 48 hours of receiving notification of the proposed exemption. In the event that one or more of the Council members raises an objection, the Council, acting by a qualified majority, may decide to grant the proposed exemption.*
- 7. In cases where pursuant to paragraphs 3, 4, 5 and 6, a Member State authorizes the entry into, or transit through, its territory of persons listed in the Annex, the authorization shall be limited to the purpose for which it is given and to the persons concerned thereby."*

E. Financial restrictions

22. Standard wording for freezing of assets through legal text based on articles 60 and 301 of the TEC could read <sup>1</sup>:

*"1. All funds and economic resources belonging to individual members of the Government of (country) and to any natural or legal persons, entities or bodies associated with them as listed in Annex (X), shall be frozen.*

*2. No funds or economic resources shall be made available directly or indirectly to or for the benefit of natural or legal persons, entities or bodies listed in Annex (X)."*

*Exemptions*

23. Standard wording <sup>2</sup> for an article containing exemptions from the freezing of funds and the prohibition of making funds or economic resources available could be the following:

*"1. The competent authority may authorise the release of certain frozen funds or economic resources or the making available of certain frozen funds or economic resources, under such conditions as it deems appropriate, after having determined that the funds or economic resources concerned are:*

*(a) necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges,*

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<sup>1</sup> Notably with the purpose of minimising evasion from the sanctions, the Council may decide, on a case by case basis, to include on the list natural or legal persons, entities or bodies associated with individuals listed in Annex (X).

<sup>2</sup> Based on Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban (OJ L 139, 29.5.2002, p. 9), as amended by Regulation (EC) No 561/2003 (OJ L 82, 29.3.2003, p. 1). See also Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344, 28.12.2001, p. 7).

- (b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services,*
- (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources,*
- (d) necessary for extraordinary expenses, provided that (competent authority) has notified the grounds on which it considers that a specific authorisation should be granted, to (the other competent authorities and the Commission) at least two weeks prior to the authorisation."*

*The competent authority will inform the competent authorities of the other Member States and of the Commission of any authorisation granted under this article.*

2. *Article .. (the prohibition against making funds or economic resources available) shall not apply to the addition to frozen accounts of:*

- (a) interest or other earnings on those accounts; or*
- (b) payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to the provisions of this Regulation,*

*provided that any such interest, other earnings and payments continue to be subject to Article .. (freezing of funds and economic resources of listed persons and entities)."*

24. As regards the scope of the addition to the frozen account, this language will need to be adapted as necessary to reflect the situation of persons or entities targeted by the EU measures.

25. The prohibition against making funds or economic resources available shall not prevent the crediting of the frozen accounts by financial institutions that receive funds transferred by third parties to the account of the listed person or entity, provided that any additions to such accounts will also be frozen. The financial institution should inform the competent authorities about such transactions.

## F. Jurisdiction

26. The standard clause setting out to what extent the restrictive measures should apply in situations where links exist with the EU as well as with other members of the international community could read as follows:

*"This Regulation shall apply:*

- within the territory of the Community, including its airspace;*
- on board any aircraft or any vessel under the jurisdiction of a Member State;*
- to any person elsewhere who is a national of a Member State;*
- to any legal person, group or entity which is incorporated or constituted under the law of a Member State;*
- to any legal person, group or entity doing business within the Community."*

## G. Infringements

27. The Regulations imposing restrictive measures contain provisions regarding sanctions to be taken in case of infringement. Standard wording for this issue could read as follows:

*"1. The Member States shall lay down the rules on sanctions applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The sanctions provided for must be effective, proportionate and dissuasive.*

*2. The Member States shall notify these rules to the Commission without delay after entry into force of the Regulation and shall notify it of any subsequent amendment."*

28. It is desirable that the restrictive measures are implemented as soon as possible. To that end, Member States shall aim at having in place the rules referred to in the paragraph above within 30 days, following their respective national procedures. The Member States could also consider adopting national rules which set sanctions for infringement of Regulations imposing restrictive measures which will apply by default.

#### *IV. Monitoring and evaluation of restrictive measures*

1. The effectiveness of EU restrictive measures – and also the EU’s credibility – hinges to a large degree on restrictive measures being implemented and enforced promptly and without exceptions in all Member States. However, the existing mechanisms to oversee implementation and enforcement by Member States have often proved not satisfactory. In many cases, neither the Council nor the Commission has had the kind of information which would enable them to assess whether CFSP legal instruments or Regulations imposing restrictive measures are in fact being implemented and enforced.
2. In order to address this situation and to ensure adequate follow-up to EU decisions to impose restrictive measures, a specific Council body should be dedicated to exchanging experience and developing best practice in the implementation and application of restrictive measures. This could be done by establishing a ‘Sanctions’ formation of the Foreign Relations Counsellors Working party. The Foreign Relations Counsellors Working party would therefore meet periodically in ‘Sanctions formation’ (RELEX/ Sanctions), reinforced as necessary including with experts from capitals.
3. This Council body shall have the following mandate:
  - Exchanging information and experiences on the implementation of specific restrictive measures regimes imposed by the EU;
  - Contributing to developing best practices among Member States in implementation of restrictive measures;
  - Collecting all information available on alleged circumventions of EU restrictive measures and other international sanctions regimes of interest to the EU by targeted states, persons and entities;
  - Exchanging information and experience, including with third states and international organisations as appropriate, on the implementation of international sanctions regimes of interest to the EU;
  - Assisting in evaluating the results and difficulties in the implementation of restrictive measures regimes;

- Exchanging views on ways and means to ensure the efficiency of management of restrictive measures regimes, including of their humanitarian provisions;
  - Examining all relevant technical issues relating to the implementation of EU restrictive measures.
4. The activities of this Council body as set out above shall be conducted without prejudice to the competences of the Member States and the Commission<sup>1</sup>.
5. Both the CFSP legal instruments and the EC Regulations should provide for regular reporting on the implementing measures and enforcement actions taken by Member States to give effect to the restrictive measures. Monitoring at EU level should enable a more consistent assessment as to whether the restrictive measures are having the impact they need to be effective. This is crucial where autonomous measures are at issue, since it provides the basis for decisions on the need for improvement of legal texts and, to some extent, for those on the usefulness of maintaining the measures.

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<sup>1</sup> Articles 227 and 228 of the EC Treaty and Council Decision 1999/468/EC (OJ L 184, 17.7.1999, p. 23).

## V. *Further work to be done*

The following issues need to be addressed to complement, supplement or better define provisions in this document:

- a) Appropriate Council bodies should further examine, in the light of experience acquired, the definitions given in this paper and elaborate as necessary other sanctions related definitions, such as the term ‘paramilitary’<sup>1</sup>;
- b) Appropriate Council bodies should consider further the issue of a standard list of identifiers for targeted individuals and entities, including transcription of non-EU alphabets;
- c) In the case of EU restrictive financial measures against persons, groups and entities involved in terrorist acts – measures which fall under UNSCR 1373 and therefore do not directly transpose UN lists - , specific criteria and procedures were elaborated in CP 2001/931. Application of measures of this kind to individuals and groups other than those involved in terrorist acts is until now untested territory, although the possibility was raised in the framework of “further measures” against individuals who assist ICTY indictees (as foreseen in the GAERC conclusions of 14 April 2003). It raises various questions, in particular regarding the justification to be provided for such measures. Further work should therefore be done to explore the feasibility of measures of this kind;
- d) The Relex/Sanctions formation should begin work swiftly to commence exchange of information and experience between Member States on implementation issues, notably with regard to freezing of economic resources and the ban on providing financial assistance in the context of arms embargoes;
- e) Appropriate Council bodies should also examine to what extent the expiration or repeal of restrictive measures continues to have an impact on e.g. contracts whose performance was prohibited by the measures;
- f) Further reflection will need to be given on the impact of EU restrictions on admission (visa and travel bans) within the Schengen framework;
- g) Developments regarding legal safeguards for individuals or entities affected by targeted sanctions will need to be closely followed.

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<sup>1</sup> Definitions of such terms as ‘import’, ‘export’, ‘supply’, ‘transit’, in the context of sanctions may need to be addressed.

## **Annex: list of equipment which might be used for internal repression**

Equipment for internal repression envisaged by Article (X)

The list below does not comprise the articles that have been specially designed or modified for military use

1. Helmets providing ballistic protection, anti-riot helmets, anti-riot shields and ballistic shields and specially designed components therefor.
2. Specially designed fingerprint equipment.
3. Power controlled searchlights.
4. Construction equipment provided with ballistic protection.
5. Hunting knives.
6. Specially designed production equipment to make shotguns.
7. Ammunition hand-loading equipment.
8. Communications intercept devices.
9. Solid-state optical detectors.
10. Image-intensifier tubes.
11. Telescopic weapon sights.

12. Smooth-bore weapons and related ammunition, other than those specially designed for military use, and specially designed components therefor; except:
  1. signal pistols;
  2. air- and cartridge-powered guns designed as industrial tools or humane animal stunners.
13. Simulators for training in the use of firearms and specially designed or modified components and accessories therefor.
14. Bombs and grenades, other than those specially designed for military use, and specially designed components therefor.
15. Body armour, other than those manufactured to military standards or specifications, and specially designed components therefor.
16. All-wheel-drive utility vehicles capable of off-road use that have been manufactured or fitted with ballistic protection, and profiled armour for such vehicles.
17. Water cannon and specially designed or modified components therefor.
18. Vehicles equipped with a water cannon.
19. Vehicles specially designed or modified to be electrified to repel borders and components therefor specially designed or modified for that purpose.
20. Acoustic devices represented by the manufacturer or supplier as suitable for riot-control purposes, and specially designed components therefor.
21. Leg-irons, gang-chains, shackles and electric-shock belts, specially designed for restraining human beings; except:
  - handcuffs for which the maximum overall dimension including chain does not exceed 240 mm when locked.

22. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an incapacitating substance (such as tear gas or pepper sprays), and specially designed components therefor.
23. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (including electric-shocks batons, electric shock shields, stun guns and electric shock dart guns (tasers)) and components therefor specially designed or modified for that purpose.
24. Electronic equipment capable of detecting concealed explosives and specially designed components therefor; except:
  - TV or X-ray inspection equipment.
25. Electronic jamming equipment specially designed to prevent the detonation by radio remote control of improvised devices and specially designed components therefor.
26. Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor; except:
  - those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflaters, electric-surge arresters of fire sprinkler actuators).
27. Equipment and devices designed for explosive ordnance disposal; except:
  1. bomb blankets;
  2. containers designed for folding objects known to be, or suspected of being improvised explosive devices.
28. Night vision and thermal imaging equipment and image intensifier tubes or solid state sensors therefor.
29. Software specially designed and technology required for all listed items.

30. Linear cutting explosive charges.

31. Explosives and related substances as follows:

- amatol,
- nitrocellulose (containing more than 12,5 % nitrogen),
- nitroglycol,
- pentaerythritol tetranitrate (PETN),
- picryl chloride,
- tinitorphenylmethylnitramine (tetryl),
- 2,4,6-trinitrotoluene (TNT)

32. Software specially designed and technology required for all listed items.

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**Restrictive Measures (Sanctions) in the framework of EU Common Foreign and Security Policy**

The Council approved guidelines on the implementation and evaluation of restrictive measures (sanctions). Restrictive measures, clearly defined in their scope and objectives, can be a valuable policy instrument to be used in conjunction with the wide range of instruments now at the disposal of the EU in pursuit of its Common Foreign and Security Policy objectives.

The Council asked the SG/HR and the competent Council bodies, in association with the Commission, to develop the policy framework for more effective use of the instrument, with a view to a discussion on the issue under the Irish Presidency.

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