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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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## 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>1</sup> (hereinafter the Guidelines). 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 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 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 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>1</sup> Council document 15579/03, last updated by doc. 11205/12.

In this paper, the term ‘exemption’ refers to uses which are not prohibited by the Regulations, whilst ‘derogation’ refers to uses which are prohibited unless authorised by a competent authority<sup>2</sup>. In this paper, the words ‘shall’, ‘must’ and ‘is obliged to’ refer to legal obligations whether imposed by EU Regulations or other international, Union 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.

**A. Designation and identification of persons and entities subject to targeted restrictive measures**

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

5. In order to improve the effectiveness of financial restrictive 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 should be available at the moment of identification and published at the moment of adoption of the restrictive measure. With regard to natural persons, the information should aim to include, in particular, surname and first name (where available also in the original language), with appropriate transliteration as provided for in travel documents or transliterated according to the International Civil Aviation Organisation (ICAO) standards, aliases, sex, date and place of birth, nationality, address, identification or passport number. In any case, ICAO-standard transliteration should be present at all times and in all language versions of the legal act imposing the restrictive measures. With regard to 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.

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<sup>2</sup> Exceptions from EU sanctions usually take the form of derogations or exemptions. Derogations mean that a restricted (prohibited) action can be carried out only after the NCA has granted an authorisation. Exemptions mean that a restriction does not apply when the purpose of the action coincides with the scope of the exemption; as a result, persons falling within the purview of the exemption can carry out the action at hand without any delay.

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 EU Heads of Missions 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. Member States, the Commission, the EEAS and the Council should cooperate to refute a positive match that is due to the lack of sufficient identifiers.

9. As a rule, economic operators should be advised to refrain from entering into business relations with any person or entity that the available identifiers fully match unless it is clear that it is not the same as the designated person or entity. The Member States, the Commission, the EEAS and the Council should share information if they have identified a non-designated person or entity that has identifiers that fully match with the identifiers of the listed person or entity. The limited availability of identifiers cannot justify dealings with a designated person or entity.
- 9a. However, it is also important to make sure that natural persons whom the available identifiers fully match, but who claim they are not the intended target of the restrictive measures, are not deprived of funds necessary to their basic needs<sup>3</sup> while the investigations described in paragraphs 10 to 16 below are being carried out. A different approach would lead to treating persons who may eventually prove not to be targeted by the restrictive measures more strictly than persons who are actually targeted by such measures, to the extent that the latter can benefit from the usual derogations to satisfy their basic needs.
- 9b. Such natural persons should e.g. be permitted to open a new bank account, but their funds in this account should proactively be treated as frozen by the respective economic operators while further investigations are carried out (see paragraphs 10 to 16 below) as to whether the natural person is designated. During this interim period, the natural persons concerned should be in a position to obtain the relevant authorisations from the national competent authority. However, if it turns out at a later date, that they are not designated and an authorisation is not required, then the asset freeze will fall away and authorisations will no longer be necessary. The economic operators can invoke the protection of the non-liability clause (see paragraph 37 below) against possible claims that they wrongly froze the assets of a non-designated person.

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<sup>3</sup> An example may be where a refugee requires access to a bank account in order to receive social welfare payments.

*a) investigation by the competent authorities*

10. 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 financial institution where the funds or economic resources were frozen or the competent authority as identified on the websites listed in the annexes of the EU regulations. 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.
11. 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>4</sup>.
12. In both cases the competent authorities should examine the claim or query<sup>5</sup>.

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<sup>4</sup> Sometimes the immigration authorities will be the competent authorities.

<sup>5</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.

*b) Affirmative conclusion with regard to mistaken identity*

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 *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, the Commission, the EEAS and the Council in particular in light of the possibility that the person/entity concerned will be confronted with similar problems in other Member States.
14. 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**

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, the Commission and the EEAS 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.



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

16. 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*

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

**III. De-listing**

*a) de-listing with regard to EU autonomous sanctions*

18. 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, emergence of further evidence, 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.

19. When considering a request for de-listing<sup>6</sup>, 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.
20. 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.
21. Listed persons and entities may institute proceedings against an act addressed to them<sup>7</sup>. Such proceedings are heard in the General Court of the EU. An appeal against the judgment of the General Court is heard by the European Court of Justice.<sup>8</sup>

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<sup>6</sup> For procedural details on de-listing requests with regard to EU autonomous measures see the Guidelines, Annex I, paragraphs 19 and 20.

<sup>7</sup> The Court of Justice of the EU has decided that a third State can also qualify as a ‘legal person’ directly affected by EU sanctions, and can bring an action for annulment even though the EU has no reciprocal right before the courts of third States (*Venezuela v. Council*, C-872/19 P)

<sup>8</sup> For example, the Court of Justice decided on an appeal that where an EU listing decision is adopted and subsequently renewed pursuant to proceedings against the listed person by a third State, the EU needs to show that the person benefits in such third State from a level of protection, as regards the rights of defence and effective judicial review, which is equivalent to the protection afforded within the EU (*Azarov v. Council*, C-530/17 P).

22. The annulment of the acts imposing restrictive measures against a person or entity does not take effect immediately after the judgment made by the Court unless explicitly stated in the judgment. The effects of any acts that have been annulled in the first instance are maintained until expiry of the period for bringing an appeal to the European Court of Justice (two months and ten days from notification of the judgment). During that period, the relevant EU institution can remedy the infringements established by adopting, if appropriate, new restrictive measures with respect to the persons and entities concerned. Alternatively, the EU institution can bring an appeal, in which case the listing remains in full force pending the appeal. After that period of two months and ten days, the restrictive measures against this person or entity will end or could remain in full force, depending on whether or not the institution or other actors decide to take any of the steps mentioned above.

*b) de-listing in the UN (focal point, Ombudsperson)*

23. On 19 December 2006 the Security Council of the UN adopted resolution 1730 (2006) by which a focal point to receive de-listing requests was established by the Secretary-General within the Secretariat. Petitioners, other than those whose names are inscribed on the Al-Qaida Sanctions List, can submit de-listing requests either through the focal point or through their State of residence or citizenship. Petitioners whose names are inscribed on the Al-Qaida Sanctions List can submit their de-listing requests through the Office of the Ombudsperson.<sup>9</sup>
24. If a person is de-listed from the UN sanctions list, relevant amendments are made to the corresponding legal acts of the EU.

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<sup>9</sup> For procedural details on delisting requests with regard to the UN measures, see <http://www.un.org/sc/committees>.

## ***B. Financial restrictive measures***

### **I. Legislative framework**

25. EU regulations imposing freezing measures are directly applicable in EU Member States and are not required to be transposed into national law. However, sanctions regulations require that Member States adopt legislation providing for penalties for breaching restrictive measures. They also provide that Member States shall designate the competent authorities referred to in the regulations and identify them on the websites listed in annexes thereto, which may imply implementation measures at the national level. In addition to legislation adopted by the Union, Member States should, if necessary, have in place additional legislative framework, laws or regulations to freeze funds and financial assets and economic resources of persons and entities subject to restrictive measures on national level, including persons or entities involved in terrorist acts, 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 Recommendation 6 on targeted financial sanctions related to terrorism and terrorism financing<sup>10</sup>.
26. Such measures should enable the national authorities to order and obtain the freezing without delay of all funds and economic resources belonging to, or owned, controlled or held by, the designated person or entity within the jurisdiction of 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>11</sup>

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<sup>10</sup> FATF standards comprise the Forty Recommendations on Combating Money Laundering and the Financing of Terrorism & Proliferation, available at <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/fatf%20recommendations%202012.pdf>

<sup>11</sup> Without prejudice to the adoption of an EU regulation on restrictive measures against EU internal terrorist, based on Article 75 of the TFEU.

27. The following parts set out best practices for implementation of Union freezing measures and can also provide relevant guidance on implementation of national freezing measures.

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

28. 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 or entity, designated by a competent authority. Administrative freezing is to be distinguished from judicial freezing, seizure and confiscation which cannot be imposed within the scope of restrictive measures, only as a national enforcement measure.
29. If the national legislation on penalties applicable in case of breaching sanctions provides for it<sup>12</sup>, preventive freezing, seizure and confiscation may be applied as a penalty for infringing restrictive measures.

## **III. Scope of financial restrictive measures**

30. Financial restrictive measures, in the context of EU Regulations, consist of:
- freezing 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.
31. The terms ‘freezing of funds’, ‘freezing of economic resources’, ‘funds’ and ‘economic resources’ are defined and exemptions and derogations to the measures are provided in each Regulation. Some standard wording for this purpose is set out in the Guidelines.

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<sup>12</sup> Sanctions regulations require that Member States adopt legislation providing for penalties for breaching restrictive measures, see paragraph 19.

32. Financial restrictive measures do not involve a change in ownership of the frozen funds and economic resources and are not punitive measures.
33. Once in force, the Regulations imposing freezing measures override all incompatible contractual arrangements. Thus Regulations shall apply notwithstanding any rights conferred by or obligations provided for in any contract entered into before their entry into force and shall preclude the completion of acts which implement contracts concluded before the entry into force of the Regulations<sup>13</sup>.
34. The freezing covers all funds and economic resources belonging to or owned by designated persons and entities, and also to those held or controlled by such persons and entities. 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.

The notions of ownership and control in the context of the prohibition on making funds and economic resources available are developed in section B part VIII.

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<sup>13</sup> Judgment in Möllendorf, C-117/06, EU:C:2007:596, paragraph 62.

35. In principle, the freezing 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.
36. 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.

#### *Non-liability*

37. No person or entity carrying out freezing, while acting without negligence and in good faith that such action is in accordance with a Regulation, shall be held liable<sup>14</sup> vis-à-vis the affected person or entity. Actions of persons and entities may not give rise to liability if the persons or entities did not know or did not have reasonable cause to suspect that it would infringe restrictive measures. To this effect a non-liability clause has been included in most Regulations as well as standard wording has been elaborated in Part III G of the Guidelines.

#### *No claims*

38. 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. The onus of proving that satisfying such a claim for damages is not prohibited is on the person seeking the enforcement of that claim. To this effect a no claims clause has been included in several Regulations as well as standard wording has been elaborated in Part III H of the Guidelines.

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<sup>14</sup> Including criminally, see judgment in Mohsen Afrasiabi and others, C-72/11, EU:C:2011:874, paragraph 55).

#### IV. Role of economic operators and citizens

39. Regulations imposing freezing measures apply, *inter alia*, to EU legal entities and other economic operators, including financial and credit institutions, doing business in whole or in part in the EU, and to EU nationals.
40. Anti-money laundering legislation imposes certain requirements on certain businesses and professions to verify the identity of customers and to refrain from anonymous transactions in certain circumstances. In some instances, the Regulations imposing financial restrictive measures may create additional obligations on economic operators to 'know their customers'. For that purpose, refer also to Section B Part VIII on ownership and control.
41. All persons and entities subject to the Union jurisdiction are obliged to inform the competent authorities of any information at their disposal which would facilitate the application of the financial restrictive 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.



## V. Use of information by competent authorities

42. 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, as provided for in relevant Regulations or under relevant national legislation, competent authorities are permitted to exchange the information with, *inter alia*:
- the Commission, the Council, the EEAS 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 financial restrictive measures or to prevent money laundering, credit and financial institutions.
43. Competent authorities should not be prevented from sharing information, in accordance with their national law, with the relevant authorities of relevant third states and among each other, where necessary for the purpose of assisting the recovery of misappropriated assets. The Regulations provide that the competent authorities and the Commission are to share relevant information with each other.<sup>15</sup>

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<sup>15</sup> See, for example, Paragraph 3 of Article 9 of the Council Regulation (EU) No 270/2011 of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt.

## VI. Funds

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

44. 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.
45. All uses of, and dealings with, funds, 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.
46. 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.
47. 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.

48. 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>16</sup>.

b) Making funds available to a designated person or entity

49. 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 unless it is authorised by the competent authority pursuant to the relevant derogation provided for in the Regulation (see also Part X on derogations).

50. However, interest accruing to a frozen account can be added and payments already due under prior contracts, agreements or obligations can be added to that account without prior authorisation<sup>17</sup>.

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<sup>16</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.

<sup>17</sup> See Guidelines, paragraph 83, sub paragraph 2.

51. Apart from these cases, 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<sup>18</sup>. 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.
52. National laws can define procedures on how to deal with the funds subject to an attempted transfer which is in breach of restrictive measures.

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<sup>18</sup> See Guidelines, paragraph 84.

## VII. Economic resources

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

53. 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 (e.g. funds, goods or services) from economic resources. Preventing consumptive, personal use of economic resources is neither desirable nor intended.
54. 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.
55. 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.
56. 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

57. 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.
58. 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 Part X on derogations).
59. 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>19</sup>.
60. 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.

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<sup>19</sup> Judgment in Möllendorf, EU:C:2006:596, paragraphs 51, 56, 58 and 59.

61. 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.

## **VIII. Ownership and control**

### ***Ownership***

62. The criterion to be taken into account when assessing whether a legal person or entity is owned by another person or entity is the possession of more than 50% of the proprietary rights of an entity or having majority interest in it<sup>20</sup>. If this criterion is satisfied, it is considered that the legal person or entity is owned by another person or entity.

### ***Control***

63. The criteria to be taken into account when assessing whether a legal person or entity is controlled by another person or entity, alone or pursuant to an agreement with another shareholder or other third party, could include, inter alia:
- (a) having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity;
  - (b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or entity who have held office during the present and previous financial year;
  - (c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person or entity, a majority of shareholders' or members' voting rights in that legal person or entity;

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<sup>20</sup> Criterion as in definition provided for in Regulation 2580/2001.

- (d) having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person or entity permits its being subject to such agreement or provision;
- (e) having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right<sup>21</sup>;
- (f) having the right to use all or part of the assets of a legal person or entity;
- (g) managing the business of a legal person or entity on a unified basis, while publishing consolidated accounts;
- (h) sharing jointly and severally the financial liabilities of a legal person or entity, or guaranteeing them.

64. If any of these criteria are satisfied, it is considered that the legal person or entity is controlled by another person or entity, unless the contrary can be established on a case by case basis.

65. The fulfilment of the above criteria of ownership or control may be refuted on a case by case basis.

***Making indirectly available funds or economic resources to designated persons and entities***

66. If the ownership or control is established in accordance with the above criteria, the making available of funds or economic resources to non-listed legal persons or entities which are owned or controlled by a listed person or entity will in principle be considered as making them indirectly available to the latter, unless it can be reasonably determined, on a case-by-case basis using a risk-based approach, taking into account all of the relevant circumstances, including the criteria below, that the funds or economic resources concerned will not be used by or be for the benefit of that listed person or entity.

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<sup>21</sup> Including, for example, by means of a front company.



The criteria to be taken into account include, *inter alia*:

- (a) the date and nature of the contractual links between the entities concerned (for instance sales, purchase, or distribution contracts);
- (b) the relevance of the sector of activity of the non-listed entity for the listed entity;
- (c) the characteristics of the funds or economic resources made available, including their potential practical use by, and ease of transfer to, the listed entity.

67. An economic resource will not be considered to have been for the benefit of a listed person or entity merely because it is used by a non-listed person or entity to generate profits which might be in part distributed to a listed shareholder.
68. It is to be noted that the indirect making available of funds or economic resources to listed persons or entities may also include the making available of these items to persons or entities which are not owned or controlled by listed entities.

#### ***Non-liability***

69. The above elements are without prejudice to clauses on non-liability in the relevant legal acts.

### *Information sharing*

70. As provided in the relevant EU Regulations<sup>22</sup> and in order to facilitate the carrying out of the above assessments Member States have an obligation under EU law to share relevant information at their disposal. Where a competent authority of a Member State has information that a non-listed legal person or entity is owned or controlled by a listed person or entity or any information which might affect the effective implementation of the prohibition on the indirect making available of funds or economic resources, the Member State concerned should, subject to national law, share relevant information with the other Member States and the Commission.
71. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, an economic operator who is aware that a non-listed legal person or entity is owned or controlled by a listed person or entity should inform the competent authority of the relevant Member State and the Commission either directly or through the Member State.

### *Proposals for listing*

72. Where appropriate the Member State concerned should also propose to list the legal person or entity that is established to be owned or controlled by an already listed person or entity.

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<sup>22</sup> For example, Articles 40 and 44 of Regulation (EU) n° 267/2012 concerning restrictive measures against Iran and Articles 29 and 30 of Regulation (EU) n° 36/2012 concerning restrictive measures in view of the situation in Syria.

## **IX. Designated legal entities**

73. 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.
74. In cases where an asset freeze applies to the funds and economic resources of a credit or financial institution, the release of funds from accounts of non-targeted persons or entities held in the targeted credit or financial institution is covered by the "prior contracts" derogation, provided the account was opened before the date of designation of the targeted entity.<sup>23</sup>
75. If the activities of a designated legal entity are to continue and in order to prevent abuse of funds, 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 freezing of funds and economic resources and the prohibition to make funds and economic resources available. 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.

## **X. Derogations**

76. While acting consistently with the letter and spirit of the Regulations, the competent authority shall take into account fundamental rights of designated persons and entities when granting derogations. In line with the specific derogations provided for in the relevant Regulations, the competent authorities may consider the following:

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<sup>23</sup> Paragraph 28 of the Guidelines.

- basic needs of designated persons, including in relation to payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- right of defence in relation to expenses associated with the provision of legal services;
- right of ownership of the designated person or entity (as the freezing of assets does not affect the ownership of the designated person or entity, but the ability to use the funds);
- right of ownership of the non-designated legal person or entity where the frozen funds are held;
- right of ownership of both the designated person or entity and a non-designated person or entity in relation to contracts concluded between them before the designation;
- international law on diplomatic and consular relations;
- human safety and environmental protection; or
- humanitarian purposes, such as, for example, delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations from a targeted country.

77. Financial restrictive 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<sup>24</sup>. An authorisation is also required to make welfare benefits available to a designated person.

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<sup>24</sup> Deductions for social security and taxes may be authorised under the derogation for basic expenses (see Guidelines, paragraph 83, sub paragraph 1).

***Transfer of funds between EU credit and financial institutions and credit and financial institutions in a third state in relation to certain obligatory or emergency fees***

78. Where regulations prohibit the transfer of funds between EU financial and credit institutions on the one hand and credit and financial institutions in a third state on the other hand, charges for services rendered by the government of that third state in connection with over flights or emergency landings of aircrafts owned or operated by a person registered in the EU should be effected provided that (i) the payment is not made to, directly or indirectly, or for the benefit of a designated person or entity and (ii) the payment respects any notification or authorisation obligations as specified in applicable legal acts.
79. Where regulations prohibit the transfer of funds between EU financial and credit institutions on the one hand and credit and financial institutions in a third state on the other hand, charges for services rendered for emergency entry into a port of that third state by ships owned or operated by a person registered in the EU should be effected provided that (i) the payment is not made to, directly or indirectly, or for the benefit of a designated person or entity and (ii) the payment respects any notification or authorisation obligations as specified in applicable legal acts.

**XI. Guidance when considering requests for derogations**

80. 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.

81. Funds transferred by or on behalf of a listed person or entity from non-EU banks in relation to a payment to an EU national or entity for a service or good delivered before the person / entity that requests the transfer was listed may in principle be authorised, provided that a case by case assessment revealed that: (i) the transfer is destined for an EU national/entity (ii) the transfer is a payment for a service or good delivered before the person / entity that requests the transfer was listed (iii) the payment is not made to or for the benefit of a listed person or entity (iv) the payment is not made in circumvention of restrictive measures.
82. 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 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).
83. A person or entity wishing to make funds or economic resources available to a designated person or entity must request authorisation, except specific cases when making funds or economic resources available falls under an exemption by the applicable Regulation. 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<sup>25</sup> the freezing measures.

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<sup>25</sup> See also judgment in *Mohsen Afrasiabi and others* EU:C:2011:874 paragraphs 60–62 and 68. On the interpretation of the wording "knowingly and intentionally" used with regard to circumvention, see the same judgment, paragraph 68. The Court found that the cumulative requirements of knowledge and intent are met where an operator deliberately seeks the objective or effect of circumvention or is at least aware that its participation may produce such effect – and accepts that possibility.

84. 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 derogation. Thus, for example, direct bank transfers are preferable to cash payments.
85. 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.
86. Regulations oblige competent authorities to inform the person making the request and other Member States whether the request has been granted<sup>26</sup>. This information sharing allows Member States to co-ordinate the granting of derogations in situations where a designated person has frozen funds or economic resources in more than one Member State.

### *Humanitarian authorisations*

- 86a. To respond to urgent and changing needs on the ground, the competent authorities should treat requests for authorisations for humanitarian purposes with priority, where appropriate, and ensure that the applicants are aware of the process, contact points and the indicative time-line of the authorisation procedure.

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<sup>26</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.

Applicants should explain the urgency and underlying humanitarian purpose in their applications to competent authorities.

**C. Prohibitions on the provisions of goods**

87. When a regulation provides for an authorisation regime and so requires, the competent authority should inform the other competent authorities and the Commission of rejected authorisation requests. Some regulations do not explicitly provide for an obligation to notify rejected authorisations requests, but the competent authorities should still aim to notify rejected authorisations requests to minimise the risks of distorting competition in the internal market.

**D. Co-ordination and co-operation**

88. 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 restrictive measures, 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.
89. 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.



90. Member States should also exchange information with, inter alia, other Member States, the Commission, the EEAS, 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 UNSC Counter-Terrorism Committee, as appropriate.<sup>27</sup>
91. 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.

#### *Analysis of financial accounts*

92. Member States should ensure that financial transactions linked to the accounts of designated persons 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. Some regulations explicitly provide for an analysis of suspicious transactions by the competent authorities after notification by financial institutions.<sup>28</sup>

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<sup>27</sup> See also paragraph 17 of Annex I to the Guidelines (informal forum for discussion on implementation issues).

<sup>28</sup> Refer to Article 30 (6) (d) of the Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010.

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

93. 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.
94. The Commission and, as appropriate, the EEAS and 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.
95. 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*

96. 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*

97. 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.
98. The Commission should ensure that the list is kept up to date.

99. 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.
100. The Commission ensures access for the public to a number of additional tools aimed at facilitating the understanding and sharing of information.

*EU Sanctions Map*

101. The interactive EU Sanctions Map allows the public to check directly all EU restrictive measures in place and the corresponding EU Regulations. It also displays, through a filter system, the lists of individuals and entities subject to freezing measures and/or restrictions on admission (travel ban). Furthermore, the tool also provides access to resolutions adopted by the United Nations Security Council and the decisions and regulations transposing those resolutions into EU law. The EU Sanctions Map also contains a list of the national competent authorities in the Member States that are responsible for the implementation of EU sanctions.
102. The ease of use of the tool makes it an effective source of information.
103. It is available on the following link: <https://sanctionsmap.eu>.
104. Furthermore, the EU Sanctions Map allows the public to subscribe to receive email notifications whenever a new Consolidated List of Travel Bans and/or a new Consolidated List of Financial Sanctions is published.

## *EU Sanctions Whistleblower Tool*

105. There are two ways to report sanctions violations: 1) by sending an email to relex-sanctions@ec.europa.eu, or 2) by sending a message through the EU sanctions whistleblower tool.
106. This tool enhances the effectiveness of EU sanctions by allowing for the reporting of possible violations of sanctions to the Commission in a secure and anonymous way. The information provided may concern concrete examples, facts, circumstances regarding individuals, entities and third countries involved. It can also concern a matter of suspicion, or attempts to circumvent EU sanctions.
107. The tool can be accessed by using the following URL: <https://EUsanctions.integrityline.com>.
108. The Commission has set up a contact point at EU level for humanitarian aid in environments subject to sanctions. While this tool has been created in the context of the Covid-19 pandemic, it continues to be in place in order to disseminate and facilitate as necessary the work of economic and humanitarian operators on the ground.

## *Evaluation*

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

110. Member States should endeavour to have in place appropriate national procedures to evaluate, in particular, the effectiveness of national performance regarding the application of restrictive measures, taking into account, *inter alia*, results from dialogue with the private sector.<sup>29</sup>

111. Results of such evaluations should be exchanged in the RELEX/Sanctions formation, when relevant.

### ***E. Horizontal sanctions regimes***

112. More recently, the European Union has adopted so-called ‘horizontal sanctions regimes’, with a thematic scope. These regimes are not geographically delimited and make it possible to impose restrictive measures against individuals and entities for activities that meet specific listing criteria, irrespective of where they took place. They cover the areas of chemical weapons, cyber-attacks, terrorism and human rights.

#### *Chemical weapons*

113. This regime was established in 2018. It aims to support the effective implementation and universalisation of the Chemical Weapons Convention by taking specific measure against those responsible for the proliferation or use of chemical weapons, at a time of increasing chemical attacks.

114. The restrictive measures consist of an asset freeze, a prohibition to make funds and economic resources available, and a ban on entry into the EU, against persons and/or entities directly responsible for the development and use of chemical weapons as well as those who provide financial, technical or material support to such persons and entities, and those who assist, encourage or are associated with them.

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<sup>29</sup> In line with Recommendation No 6 and 7 of the International Standards On Combating Money Laundering And The Financing Of Terrorism & Proliferation.

## *Cyber-attacks*

115. This regime was established in 2019 and allows the designation of individuals and entities responsible for or involved in cyber-attacks threatening the EU or its Member States.

With this regime, the EU is equipped with a further tool to strengthen its resilience and its ability to protect the integrity and security of the EU, its Member States and their citizens against cyber-threats and malicious cyber-activities. The restrictive measures consist of an asset freeze, a prohibition to make funds and economic resources available and a ban on entry into the EU of persons and/or entities responsible for cyber-attacks or attempted cyber-attacks, as well as those involved in or providing financial, technical or material support for these attacks and those who assist, encourage, facilitate or are associated with them.

## *Terrorism*

116. Two regimes enable the Council to take restrictive measures in the field of counter-terrorism.

117. The terrorism-related regime adopted in 2016 allows the EU to take autonomous restrictive measures against individuals and entities linked to ISIL/Da'esh or Al Qaida. Before that, the restrictive measures could be applied only to those listed by the UN Security Council.

With a view to implementing UNSC Resolution 1373(2001), the European Union established, in December 2001, a list of persons, groups and entities involved in terrorist acts and subject to restrictive measures, set down in Common Position 2001/931/CFSP (“CP 931”). CP 931 lays down the criteria for listing and identifies the actions that constitute terrorist acts for these purposes. The initial inclusion on the list has to be based on a decision by a competent authority of a Member State, or a third country, regarding the persons, groups or entities concerned.

*Serious human rights violations and abuses*

118. This regime was adopted in 2020 and allows for the designation of individuals, entities and bodies – including state and non-state actors – responsible for serious human rights violations and abuses.

It covers, inter alia, genocide, crimes against humanity, torture and other cruel, inhuman or degrading treatment or punishment, slavery, extrajudicial, summary or arbitrary executions and killings, enforced disappearance of persons, arbitrary detentions and arrests, and other serious human rights violations or abuses. It thus makes it possible to widely target perpetrators of such violations and abuses, whether they are individuals or entities, state actors or non-state actors.

Restrictive measures consist of an asset freeze, a prohibition to make funds and economic resources available and a ban on entry into the EU.

119. The operational aspects of these regimes are similar to the so-called geographical regimes and the various stages of designation, identification and compliance remain the same. The Commission's tools (Chapter V) remain available to economic and humanitarian operators in order to secure a uniform interpretation by all.