



**COUNCIL OF
THE EUROPEAN UNION**

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REV 1**

**PESC 335
RELEX 160
FIN 309
COTER 43**

DECLASSIFICATION

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Subject : Fight against the financing of terrorism
- follow-up of EU measures implementing UNSCR 1373(2001)

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

RESTREINT UE



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"I" ITEM NOTE

from : Secretariat

to : COREPER

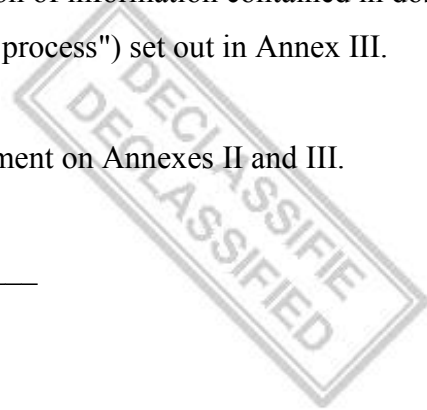
No prev. doc. 11336/02 PESC 326 RELEX 155 FIN 302 COTER 42 (RESTREINT)

Subject : Fight against the financing of terrorism
- follow-up of EU measures implementing UNSCR 1373(2001)

1. At its meetings on 27 June and 10 and 24 July 2002, the Permanent Representatives Committee examined a number of outstanding issues regarding the follow-up of EU measures implementing UNSCR 1373(2001).
2. On 27 June the Committee confirmed the mandate of the Clearing House as decided on 7 December 2001 and set out in Annex I.

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3. Following the Committee's discussion on 24 July, at its meetings on 2 and 4 September, the Relex Counsellors Working Group reached agreement on the working method of the Clearing House set out in Annex II and on the procedure regarding the need to ensure that the Council can prove that its decisions are taken after examination of information contained in dossiers submitted by Member States or third countries ("due process") set out in Annex III.
4. The Committee is therefore invited to confirm agreement on Annexes II and III.



DECISION OF THE PERMANENT REPRESENTATIVES COMMITTEE of 7 December 2001

The Permanent Representatives Committee has decided that the actual drafting and the revision (at least every six months) of the lists of persons, groups and entities to be subject to specific restrictive measures, which are to be annexed to Common Position 2001/931/CFSP and Regulation (EC) No 2580/2001, will be carried out on the basis of preparatory work done in an *ad hoc* forum (hereafter referred to as the "clearing house") constituted by the Member States, the Commission and the General Secretariat. Member States' delegations to the clearing house will consist of a maximum of 3 people.

The preparatory work will involve:

- collecting names, and the accompanying information, from all relevant sources of information, including external sources;
- checking whether these data meet the criteria and guarantees set out in Common Position 2001/931/CFSP;
- making proposals to the Permanent Representatives Committee, which will examine them with a view to forwarding them to the Council for approval.

Delegations will have 15 days to check the data, during which time they will submit the information received to their competent national authorities.

The initial lists of names of persons, groups and entities will be proposed by the clearing house at its meeting on 19 December 2001.

WORKING METHOD OF THE CLEARING HOUSE

To improve the working method of the Clearing House and based on present experience the following is specified:

I. Agenda

The Clearing House will meet with the following fixed/permanent agenda:

1. Information from the Presidency
2. List of individuals, groups and entities
 - a. New proposals
 - b. Maintaining/not maintaining
3. Any other business

II. Information related to meetings of the Clearing House

Information on expectations for up-coming meetings will be given orally by the Presidency in the Relex Group or in COREPER as appropriate.

Material from delegations or from third states to be addressed in an up-coming meeting of the Clearing House may be circulated in the following way (listed in priority order):

1. In the Clearing House (in session) either by the designating delegation itself, or by the Presidency, a Member State or the Commission if the proposal is put forward by a third state
2. In a Relex meeting. For the sake of clarity and to ensure distribution to all delegations such information should always be circulated by the Presidency/The Council Secretariat.

The mandate of 7 December 2001, confirmed by Coreper on 27 June 2002, stipulates: "*Delegations will have 15 days to check the data, during which time they will submit the information received to their competent national authorities.*". Exceptionally, a delegation may request that material, which could be a final finding and enforceable interim order by a court of a Member State, be considered within a shorter timeframe. Such a request should always be accompanied by a justification. A request of this nature does not prejudice the view taken on the issue in the Clearing House.

III. Proposals from third states

The Common Position lays down the criteria for listing individuals, groups or entities in Article 1, (4). When adopting the Common Position 931/01 and Regulation 2580/01 the Council made the following statement

The Council would also point out that, where the precise information or file material as referred to in the aforementioned Articles are provided by a third country (which is not an EU Member State), it will check in particular whether the case complies with the fundamental principles and procedures of the rule of law and respects human rights, inter alia the right to an effective remedy and to a fair trial, the presumption of innocence and the right not to be judged or punished twice for the same offence."

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This declaration should be taken into account when applying the criteria set out in Article 1 (4) of the Common Position.

When receiving a proposal from a third state the Presidency (preferably), or any other delegation, may conduct a first basic scrutiny of the proposal on its accordance with the criteria set out in Article 1(4) of the Common Position as well the abovementioned declaration. The Presidency/delegation may on this basis ask the third state for additional information that would be deemed necessary.

IV. Review

1. Article 1(6) of the Common Position stipulates that the review of names of persons and entities on the list shall be review regularly and at least every six months to ensure that there are grounds for keeping them on the list. This review will be conducted by the Clearing House under agenda item 2.b. of the fixed/permanent agenda mentioned under point I above. It should confirm that the criteria established in Art. 1(4) of Common Position 2001/931/CFSP continue to be met.

Any delegation may at any time request a name of a person or an entity to be reviewed with a view to maintaining or not maintaining it on the list. Any material related to such a request would be presented and distributed in accordance with the procedures described under point II above. Requests stemming from a third country would also follow the procedure outlined above in point II.

In the event that a competent authority, e.g. a jurisdiction of a Member State, takes a decision that may concern a person, group or entity that is listed under Common Position 2001/931/CFSP, a meeting of the Clearing House will be convened immediately to draw the necessary consequences¹.

To ensure the requirement of undertaking review at least every six months, the following procedure will be undertaken to facilitate review:

- a. For a listing originally stemming from a delegation the Presidency will under agenda item 1, as set out under point I above, inform the Clearing House that a review of a particular name of a person or entity could be considered at an up-coming meeting with a view to fulfil the requirement set in Article 1(6). Any delegation may offer information related to such a review in accordance with the procedures set out under point II.
- b. For a listing originally stemming from a third state the Presidency, through the Council Secretariat, will address this state with a standardised questionnaire requesting whether the designation is still relevant (yes/no) and/or whether new, up-dated or other additional information is available for maintaining the listing. Lack of a reply will be considered as a proposal for not maintaining the listing. The reply received (or not received) does not prejudice the outcome of deliberations of the Clearing House.

2. The review in accordance with Article 6 of the Common Position is conducted by Coreper.

¹ See also preambular paragraph 7 of the general approach reached by the Council (JHA) on 13 June 2002 (doc. 7756/4/02)

Procedure regarding the need to ensure that the Council can prove that its decisions are taken after examination of information contained in dossiers submitted by Member States or third countries ("due process")

An outcome of proceedings of COREPER will give an account of the procedure followed for including names on the list. The account will include, wherever possible, a summary of the information that forms the basis of a decision to include names on the list, taken in accordance with the criteria laid down in Article 1(4) of Common Position 2001/931/CFSP.

In addition the outcome of proceedings will record that a detailed and in-depth examination of all the relevant information contained in the files provided by Member States and/or third countries has taken place. The outcome of proceedings will also record that the files which have served for such a determination have been returned to the Member State/third country of origin once the Council decision is taken, in order to protect sensitive information

The following standard recital will be inserted in common positions updating Common Position 2002/931/CFSP :

"A list has been elaborated in compliance with the criteria laid down in Article 1(4) of Common Position 2002/931/CFSP".
