



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from: General Secretariat of the Council
to: Delegations
Subject : Plenary Session of the European Parliament, 15 December 2009 : **Oral questions to the Council and to the Commission - Restrictive measures affecting the rights of individuals following the entry into force of the Lisbon Treaty**

Ms Bozkurt (S&D, NL), author of the oral question, considered that the European Union should defend its values, notably democracy and fundamental freedoms, while continuing to fight against terrorism. She referred to the type of information used for putting names of individuals or entities on terrorist related activities lists, and considered that rights of defence were not respected in such a procedure. She invited the Commission to revise the procedures for including individuals on such lists and considered that, as proposed by the LIBE Committee and the Legal Service of the Parliament, the appropriate legal basis for adopting these restrictive measures was Article 75 TFEU.

Mr Michel (ALDE, BE) agreed that Article 75 TFEU was the appropriate legal basis for these measures and recalled the importance of data protection and of the need to respect the rights of defence of individuals affected by these measures. According to Mr Michel, sanctions against Zimbabwe and Somalia should not become an obstacle to the provision of humanitarian aid to these countries.

Ms Striffler (EPP, FR) welcomed the new powers of the European Parliament in the Justice and Home Affairs area, but regretted that the provisions of the Lisbon Treaty related to restrictive measures were not in accordance with what she called the "spirit of the treaty".

Ms Striffler also stressed the importance of a firm and adequate response to terrorism and of targeted measures against those threatening the stability of Somalia. She also considered that individuals and entities linked to the Zimbabwean authorities should be subject to severe restrictive measures by the European Union.

Ms Malmström, President of the Council, recalled that restrictive measures against third countries, individuals or entities were an important tool of the European Union in pursuit of its policy goals in accordance with the United Nations Charter and with the principles and objectives of the CFSP, as set out in Article 21 TEU. She also stressed the importance of a comprehensive dialogue with the third countries concerned and recalled the different type of restrictive measures the European Union was called to adopt. Ms Malmström explained the legal reasons why Article 215 TFEU was the correct legal basis for restrictive measures and recalled that the introduction and implementation of restrictive measures had to be in accordance with international law. Moreover, according to her, sanctions had to respect human rights and fundamental freedoms, in particular due process rights and the right to effective judicial protection. Furthermore, the measures had to be proportionate to their objective. Ms Malmström also mentioned that these procedures were kept under constant review and adapted where necessary and that, in doing so, the Council had taken into account the views expressed by the European Parliament, in particular in the Resolution adopted last year on the evaluation of EU sanctions as part of the EU's actions and policies in the area of human rights.

Mrs Ashton, High Representative for Foreign Affairs and Security Policy, in the name of the Commission, delivered the speech set out in [Annex](#).

For the political groups, the following speakers took the floor:

- Mr Melo (EPP-ED, PT) recalled that the European Parliament's powers in the area of Justice and Home Affairs had been reinforced by the Lisbon Treaty, but he regretted the restrictive interpretation of the Treaty adopted by the Council and the Commission on restrictive measures related to terrorism.
- Ms Flašíková Beňová (S&D, SK) referred to the protection of Human Rights and to the need to have the European Parliament fully involved in the adoption of restrictive measures, notably for reasons of transparency and democratic legitimacy.

- Ms Flautre (Greens/EFA, FR) also advocated the involvement of the European Parliament in the adoption of restrictive measures and referred to Mr Dick Martin's report in the Council of Europe Parliamentary Assembly on the measures adopted by the European Union in the fight against terrorism.
- Mr Clark (EFD, UK) referred to the specific situation of the Sikh minority.
- Mr Brons (NI, UK) questioned the need to include the Taliban on the terrorist list, since they had no expansionist policy.

Other speakers also questioned the legal basis used by the Commission for its proposal and regretted that the European Parliament was simply informed about restrictive measures. The balance between security measures and the protection of individual rights was also addressed by several speakers.

In her closing remarks, Ms Malmström recalled that Article 215 TFEU required that the European Parliament be informed about restrictive measures. She recalled that when action related to third countries was required, the European Parliament did not have the same powers as in the internal field. She also announced that the Council would keep the European Parliament informed on the implementation of sanctions.

Ms Ashton recalled the role of the European Court of Justice in protecting individual rights, and stressed the importance of legal certainty and good interinstitutional cooperation in this area.

Speech by Ms Ashton, High Representative for Foreign Affairs and Security Policy, in the name of the Commission

Mr President, as the Presidency said, the questions you have put forward raise important issues in relation to the future management of restrictive measures or sanctions in the EU. Following the entry into force of the Lisbon Treaty we now have to make a choice as regards the legal base for the proposed Regulation which amends the Al-Qa'ida and Taliban Sanctions Regulation. Our view is as follows:

Firstly, the new Treaty has added a specific provision to the article in the former EC Treaty on foreign policy-related restrictive measures or sanctions. Article 215(2) provides a new legal base for restrictive measures against natural or legal persons and groups or non-state entities. It expands the scope of the former Article 301 and should be applied as the legal base for amendment of the Al-Qa'ida and Taliban Sanctions Regulation.

Secondly, Article 215 applies when there is a Common Foreign and Security Policy (CFSP) decision. The Al-Qa'ida and Taliban Sanctions Regulation implements a CFSP decision which requires that regulations be made to implement certain UN Security Council resolutions. These resolutions are binding for EU Member States under international law.

Thirdly, we consider that a double legal base – Article 215(2) and Article 75 – is not workable. That is because the objectives, scope and procedures of the two articles are different. I note that Parliament's Legal Affairs Committee and legal advisers have made the same assessment. In conclusion, it is our view that the new Treaty has provided specificity and clarity on the legal base for restrictive measures against natural or legal persons and groups or non-state entities. Article 215 addresses the role of Parliament and Council and the legislator should not deviate from the Treaty.

We were also asked to provide information on fundamental rights-related improvements in the work of UN Sanctions Committees.

The proposed amendment of the Al-Qa'ida and Taliban Sanctions Regulation implements the findings of the European Court of Justice in the Kadi case. In that judgment the Court made a number of comments on ways to improve the listing procedures applied by the UN Al-Qa'ida and Taliban Sanctions Committee. The points made by the Court are the motivation to amend the listing procedures of the regulation.

A number of UN Security Council resolutions have set out the procedures for handling the sanctions list at UN level. Most recently, UN Security Council Resolution 1822 provided that a summary of reasons should be made available on the UN Al-Qa'ida and Taliban Sanctions Committee's website in connection with each listed person, and provided for a review of all names on the list by 30 June 2010, with provision for regular review thereafter. The resolution demanded that the relevant state take measures to inform the listed person of their listing, the reasons for it and information about exemptions and delisting requests.

The approach in Resolution 1822 has since been replicated in Resolution 1844 on sanctions in relation to Somalia and in Resolution 1857 in relation to Democratic Republic of Congo. Resolution 1822 provides for a review of the measures contained in it after 18 months. That period expires at the end of this year. Work is ongoing in connection with the review but the Commission is not in a position to indicate what changes to the procedures the UN Security Council will decide.