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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
Subject: Sanctions Guidelines – update

1. On 8 December 2003, the Council approved the Sanctions Guidelines¹. The latest reviewed and updated text of the Guidelines was adopted by the Council on 18 December 2017².
2. On 24 April 2018, RELEX (Sanctions Formation) agreed on further elements concerning the definition of "financing and financial assistance" which is included in paragraph 59a of the draft consolidated Sanctions Guidelines set out in the Annex to this note.
3. In view of the above, the Permanent Representatives Committee is invited to:
 - confirm the agreement on the draft consolidated Sanctions Guidelines, as set out in Annex to this note;
 - recommend that the draft consolidated Sanctions Guidelines be forwarded to the Council for adoption.

¹ Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy (doc. 15579/03).

² Doc. 15598/17.

**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 CFSP³ has shown that it is desirable to standardise implementation and to strengthen methods of implementation. These guidelines⁴ address a number of general issues and present standard wording and common definitions that may be used in the legal instruments implementing restrictive measures. However, they do not address the political process leading to the decision to impose or repeal such restrictive measures⁵.

The main steps leading to the adoption of European Union autonomous restrictive measures, as well as respective roles of different actors in this process are set out in the Recommendations for working methods for EU autonomous sanctions in Annex I to this document⁶.

Moreover, the EU has developed Best Practices on Effective Implementation of Financial Restrictive Measures⁷, where recommendations are given for an effective implementation of restrictive measures in accordance with applicable legislation.

³ See EEAS website, list of restrictive measures in force
http://eeas.europa.eu/cfsp/sanctions/index_en.htm

⁴ First version of the guidelines was adopted by the Council on 8 December 2003 (doc. 15579/03); updated versions were agreed on 1 December 2005 (doc. 15114/05) and on 22 December 2009 (doc. 17464/09).

⁵ As regards policy aspects, it is recalled that the Council on 14 July 2004 adopted basic principles on the use of restrictive measures (sanctions) (doc. 10198/1/04).

⁶ Doc. 18920/12.

⁷ Doc. 8666/1/2008 REV 1.

II. Principles

A. Objectives

2. Within the framework of the Common Foreign and Security Policy, the Council may decide to impose restrictive measures against third countries, entities or individuals. These measures must be consistent with CFSP objectives, as set out in Article 21 of the Treaty on European Union (TEU).
3. Certain restrictive measures are imposed by the Council in implementation of Resolutions adopted by the UN Security Council under Chapter VII of the UN Charter. In the case of measures implementing UN SC Resolutions, the EU legal instruments will need to adhere to those Resolutions. However, it is understood that the EU may decide to apply measures that are more restrictive. When the adoption of restrictive measures in the framework of UN is not possible, the European Union should encourage broader support of the international community for its autonomous measures.
4. 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, in line with the objectives set out in the CFSP Council Decision. Accordingly, the EU will adapt the restrictive measures as a result of developments with regard to the objectives of the CFSP Council Decision. 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. The EU and its Member States should actively and systematically communicate on EU sanctions, including with the targeted country and its population.

5. 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. The EU should seek to ensure that objectives are consistent with wider EU/UN and regional policies and measures.
6. 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.

B. Legal issues

7. As indicated above, the Council imposes restrictive measures within the framework of the CFSP. The Council first adopts a CFSP Decision under Article 29 of the TEU. The measures foreseen in that Council Decision are either implemented at EU or at national level. Measures such as arms embargoes or restrictions on admission are implemented directly by the Member States, which are legally bound to act in conformity with CFSP Council Decisions. Other measures interrupting or reducing, in part or completely, economic relations with a third country, including measures freezing funds and economic resources, are implemented by means of a Regulation, adopted by the Council, acting by qualified majority, on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, under Article 215 of Treaty on the Functioning of the European Union. The European Parliament has to be informed. Such Regulations are binding and directly applicable throughout the EU, and they are subject to judicial review by the Court of Justice and the General Court in Luxembourg. CFSP Council Decisions providing for restrictive measures against natural and legal persons are also subject to judicial review.

8. 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 the Treaty on the Functioning of the European Union, this may include references to any relevant UN Security Council resolution, or other applicable provisions of international law. For reasons of clarity and transparency, efforts should be made to present these references as fully as possible.
9. The introduction and implementation of restrictive measures must always be in accordance with international law. They must respect human rights and fundamental freedoms, in particular due process and the right to an effective remedy. The measures imposed must always be proportionate to their objective.
10. As indicated above, the restrictive measures should, in particular, be drafted in light of the obligation under Article 6(3) TEU for the EU to respect fundamental rights, as guaranteed by the European Convention on Human Rights and as they result from the constitutional traditions common to the Member States, as general principles of Union law.
11. The restrictive measures should also respect the international obligations of the Union and its Member States, 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.
12. If EU measures are in conflict with the international obligations of the Union or its Member States, a common approach for dealing with such conflicts may have to be developed.

C. Targeted measures

13. The measures taken should target those identified as responsible for the policies or actions that have prompted the EU decision to impose restrictive measures and those benefiting from and supporting such policies and actions. Such targeted measures are more effective than indiscriminate measures and minimise adverse consequences for those not responsible for such policies and actions.
14. The measures used in a specific situation will vary depending on the objectives of the restrictive measures and their likely effectiveness in achieving these objectives under the particular circumstances, reflecting the EU's targeted and differentiated approach. They include, *inter alia*, freezing of funds and economic resources, restrictions on admission, arms embargoes, embargoes on equipment that might be used for internal repression, other export restrictions, import restrictions, and flight bans. A ban on the provision of financial services, including in connection with bans on the export of certain products, has also been used as well as investment bans. In this context, sectoral bans or measures to prevent the misuse of equipment, technology or software for monitoring and interception of the Internet or of other forms of communication have also been used.

D. Lists of targeted persons and entities

15. The listing of targeted persons and entities must respect fundamental rights, as stipulated by the Treaty on European Union. In particular, due process rights of the persons and entities to be listed must be guaranteed in full conformity with the jurisprudence of the Court of Justice of the European Union, inter alia with regard to the rights of defence and the principle of effective judicial protection.
16. The decision to subject a person or entity to targeted 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 measures freezing funds and economic resources, both where persons are listed in the framework of measures against one or more third states, as well as where measures target individuals and entities in their own right.
17. Proposals for listing must be accompanied by accurate, up-to-date and defensible statements of reasons. A series of recommendations has been included in the Working Methods for EU autonomous sanctions as out in Annex I to the present document, which also covers issues concerning notification and information about the right to make views known as well as practical issues for listings and de-listings.
18. In cases where CFSP Council Decisions provide for restrictive measures targeting not only those responsible for certain policies or actions, but also members of their families, their children under 18 should not, in principle, be targeted.
19. Persons, entities or organisations targeted by financial sanctions should be clearly identified in the Annex in order to make sure that the scope of the sanctions is defined precisely.

20. 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. It cannot be excluded that in some cases the funds of a person will be frozen or admission will be refused, where this was not intended, due to identifiers that match with those of a designated persons. Member States and the Commission should have procedures in place that ensure that their findings on claims concerning alleged mistaken identity are consistent. The EU Best Practices on Effective Implementation of Financial Restrictive Measures⁸ give some recommendations to that end.
21. In order to improve the effectiveness of restrictive measures, as many specific identifiers as possible should be available at the moment of identification and published at the moment of adoption of the restrictive measures. Identifying information for individuals and entities should be standardised as far as possible. With regard to natural persons listed, the information should aim to include in particular names (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) standard), aliases, sex, date and place of birth, nationality and current address, identification or passport number. With regard to groups, legal persons or 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. A model template is attached to these Guidelines.
- 21a. When economic operators or others screen with regards to the asset freeze measures, information regarding aliases included in the identifying information could be taken into account as follows:
- (i) Strong aliases: high-quality aliases deemed as having a high significance for identification. The economic operators and others are expected to screen under the strong aliases.

⁸ 8666/1/08 REV 1.

(ii) Weak aliases: low-quality aliases deemed as having a low significance for identification. These weak aliases are used particularly to help economic operators and others to confirm the identification of the targeted person.

(iii) When no indication is provided, the alias provided for should be considered as a strong alias.

A weak alias is deemed as having a low significance for identification that may generate a large volume of false hits when it is run through a computer-based screening system. Weak aliases are used particularly to help economic operators or others to confirm the identification of the targeted person.

If a distinction between a weak and a strong alias is made at the level of the UN, it should be reproduced in the EU legal texts. For EU autonomous listings, the qualification of a strong or weak alias should be subject to a case by case assessment.

22. The EU should strive 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. After designation of a person or entity, a regular review of identifiers should take place in order to specify and extend them, 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. Updates of the lists with additional identifying information will be adopted as provided for in the basic act.

23. With regard to the measures imposing travel restrictions, the Member State holding the Presidency of the Council of the EU at the time of the adoption of the instrument containing the lists will be responsible for entering the data in the SIS. If that Member State is unable to enter the data in the SIS because it does not have access to the SIS or does not participate in this part of the *Schengen acquis*, it will be for the Member State holding the Presidency in the following half-year to enter the data. The Member State which entered the alert will also be responsible for the alert. It will in particular be responsible for any necessary updates, corrections and/or deletions, at any time⁹.
24. In order to assist the private sector to implement financial restrictions the Commission launched in June 2004 a website which provides, *inter alia*, a consolidated list of persons and entities subject to financial sanctions and an overview of the restrictive measures in force¹⁰.

E. Exemptions

25. 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 in particular basic needs of targeted persons, legal fees, extraordinary expenses or, where applicable, humanitarian needs or international obligations, including as host nations of international organisations or the OSCE, with regard to the various restrictive measures taken.
26. 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).

⁹ See document 8665/08.

¹⁰ http://eeas.europa.eu/cfsp/sanctions/index_en.htm

27. If an exemption request for the release or making available of funds and economic resources concerns an activity prohibited under the legal instrument concerned (and not covered by a prior contracts clause or a similar exemption provision), the competent authority should refuse the exemption. This also applies if the relevant exemption provision does not explicitly provide for a refusal in such situations.
28. In cases where, by way of exception, funds or economic resources may be released so as to enable a targeted person, entity or body to fulfil an obligation arising from a prior contract (see standard wording in paragraph 86), such an exemption covers, 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 provided the account was opened before the date of designation of the targeted entity. The competent authorities should use their discretion in such a way as to impose appropriate conditions to ensure that the accounts will not continue to be used on a “business-as-usual” basis.

F. Exchange of information and reporting requirements

29. The competent authorities of the Member States and the Commission each have specific tasks as regards the implementation and application of the restrictive measures. In order to ensure that such measures are applied in a coherent manner, including exemptions granted, exchange of relevant information between all concerned, in accordance with the provisions of each CFSP Decision and Regulation, is essential. The EU legal instruments should make provision for such exchange. Member States are invited to communicate to the EEAS and to the Commission data collected in applying these exemptions in order to improve the quality of the identifiers referred to above.

30. When Regulations implementing restrictive measures make provision that specific tasks are to be carried out by competent authorities of Member States, the authorities designated as competent by each Member State are either listed in an Annex to the Regulation, or indicated in an indirect way by listing in an Annex to the Regulation the web-pages of each Member State where information about its relevant competent authorities can be found.

G. Expiration or review of restrictive measures¹¹

31. 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.

32. Regular assessments of sanctions regimes by the relevant preparatory bodies of the Council, assisted, where appropriate, by the EEAS, the Commission and HoMs, should permit the adjustment of the measures, as needed, in function of the developments with regard to the stated objectives and the effectiveness of the measures in that respect.

33. 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.

34. When the criteria or specific objectives of the measure have not been met the restrictive measures should continue, except in cases where the Council decides otherwise. 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. 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).

¹¹ The paragraphs in this section primarily deal with EU autonomous sanctions. For the implementation of UN decided sanctions, see under H. below, in particular paragraph 42.

35. 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 when their objectives have been met. The time limit therefore would be an occasion to revisit the restrictive measures regime and to assess whether the objectives have been met.
36. In cases where the CFSP legal instrument contains an expiration date, an expiration date in the Regulation implementing the CFSP legal instrument should normally be avoided:
- since the Regulations implement the CFSP act, they have to be repealed, if the CFSP legal instrument ceases to be applicable¹². Regulations should be repealed at the same time as or immediately after the CFSP legal act ceases to apply. If, in exceptional cases, the Regulations have to be repealed with retroactive effect, it is desirable that this time period is kept as short as possible.
 - if a 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.
37. It is, therefore, preferable to have the Regulation continue in force, until it is repealed. For the sake of clarity and transparency, the adoption of a consolidated text¹³ should be considered in cases where CFSP Decisions or Regulations have been amended at least three times.¹⁴

¹² See Article 215 of the Treaty on the Functioning of the European Union.

¹³ The adoption of a consolidated text would have the effect of recommencing the deadline for bringing legal challenges to the act.

¹⁴ The Publications Office regularly publishes consolidated versions of basic instruments of EU legislation in the Official Journal, including acts concerning restrictive measures, which can be accessed through EUR-Lex. These are intended as a documentation tool and carry no legal value. It should be noticed that the recitals of the amending acts are normally not included in the consolidations.

H. Implementation of UN Security Council Resolutions

New measures

38. The UN Charter grants the Security Council powers to decide restrictive measures binding for all UN members¹⁵ in order to maintain or restore international peace and security. 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. 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 where lists of designated persons and entities need to be updated in order to implement new UN designations, the necessary amendments to the EU legal acts should be adopted with the minimum possible delay.
39. 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 34 TEU.
40. The current legislative procedure requires the adoption of a CFSP legal instrument and an implementing Council Regulation based on the Treaty on the Functioning of the European Union, based on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission.

¹⁵ See Article 25 and Chapter VII of the UN Charter.

41. With a view to presentation of draft CFSP legal instruments and of joint High Representative and Commission proposals for Council Regulations immediately after adoption of UN Security Council Resolutions, prompt exchange of information regarding draft Security Council Resolutions is important. This approach should enable the Council to adopt the CFSP legal instrument and the Regulation without undue delay, preferably at the same time or with minimum time delay between the two instruments.
42. 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.
43. In order to provide EU missions in New York with regular information on the issues encountered in the implementation of UN restrictive measures in the EU, feedback notes will be brought to the attention of EU missions meeting in the framework of the Article 34 coordination in New York. A regular dialogue between EU missions in Brussels and New York and EU and UN Institutions should be encouraged, including through joint seminars, in order to enhance understanding of the issues involved. The circulation to EU missions in Brussels of reports from the sanctions meetings held in New York within the framework of the Article 34 coordination are important in this regard.
44. In view of the binding nature of UN Security Council Resolutions, the effective implementation of UN measures requires immediate legislative action. A specific situation exists when the Security Council decides on measures which expire on a particular date. In such a situation, the use of an expiry date in the EU legal acts is not appropriate since the Security Council will normally renew the measure just before the expiry date. However, an indication should be given that the measures will be amended or repealed, as appropriate, in accordance with determinations made by the Security Council.

Expiration or repeal of measures

45. Where the EU applies restrictive measures in implementation of Security Council Resolutions only, it is not appropriate for the implementing legal instruments to remain in place when the Security Council has decided the measures should be lifted, and therefore the restrictive measures should be repealed within the minimum possible delay.

Exemptions

46. 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 38 is relevant, including with regard to humanitarian exemptions for the purpose of satisfying basic needs of targeted persons.

Reporting

47. In cases where UN Security Council Resolutions provide for a reporting obligation, a common EU report to the UN could also be submitted on the measures taken at EU level. In such cases, national and common reporting would be complementary.

I. Competences

48. 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 European Union to interrupt or to reduce economic or financial relations with the third country in question.

The Union can adopt legislative implementation measures through a Regulation based on Article 215 of the Treaty on the Functioning of the European Union. Where the Union has no competence it is up to each of the Member States to adopt the necessary legislation or implementing measures.

49. Where restrictive measures are being considered, a case by case assessment needs to be made of the European Union competence, taking into account the attribution of powers to the Union provided for in the Treaties. The practice is that the Council indicates in the CFSP instrument that "Further action by the Union is needed to implement certain measures" to enable the High Representative of the Union for Foreign Affairs and Security Policy and the Commission to propose a Regulation implementing the measures falling within the remit of the Union. 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.
50. Where the European Union has the necessary competences to adopt a Regulation implementing the restrictive measures, it provides that Member States must lay down rules on penalties applicable to infringements of the provisions of the Regulation and take all measures necessary to ensure that they are implemented.

J. Jurisdiction

51. EU restrictive measures should only apply in situations where links exist with the EU. Those situations, as set out in paragraph 88 of this document, cover the territory of the European Union, aircrafts or vessels of Member States, nationals of Member States, companies and other entities incorporated or constituted under Member States' law or any business done in whole or in part within the European Union.
52. The EU will refrain from adopting legislative instruments having extra-territorial application in breach of international law. 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 law¹⁶.

¹⁶ Regulation (EC) No 2271/96 and Joint Action 96/668/CFSP of 22 November 1996 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, pp. 1 and 7).

K. Compliance

53. Member States should take appropriate measures to ensure that restrictive measures are complied with.
54. An entity incorporated in an EU Member State may not, inter alia, use a company that it controls as a tool to circumvent a prohibition, including where that company is not incorporated in the EU, nor may this entity give instructions to such effect.
55. It is considered appropriate for an entity incorporated in the EU to inform, where relevant, companies that it controls of new EU restrictive measures in order for these measures to be fully taken into account when defining business policies.

I. Ownership and control

Ownership

- 55a. 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 it¹⁷. If this criterion is satisfied, it is considered that the legal person or entity is owned by another person or entity.

Control

- 55b. 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 alia¹⁸:

¹⁷ Criterion as in definition provided for in Regulation 2580/2001.

¹⁸ Criteria as in definition provided for in Regulation 2580/2001.

- (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;
- (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 right¹⁹;
- (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.

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.

55c. The fulfilment of the above criteria of ownership or control may be refuted on a case by case basis.

¹⁹ Including, for example, by means of a front company.

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

55d. 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.

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.
- (d)

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.

55e. 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.

III. Non-liability

55f. The above elements are without prejudice to clauses on non-liability in the relevant legal acts.

IV. Information sharing

55g. As provided in the relevant EU Regulations²⁰ 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.

55h. 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.

V. Proposals for listing

55i. 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.

²⁰ 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.

L. Outreach and Communication

56. The effectiveness of EU restrictive measures is strengthened by the adoption of similar measures by third countries. In principle therefore it is preferable for sanctions to be adopted in the framework of the UN. Where this is not possible, the EU should seek the broadest possible support from the international community to exert pressure on the targeted country.
57. When adopting autonomous sanctions, the EU should, through outreach, , actively seek cooperation and if possible adoption of similar measures by relevant third countries in order to minimize substitution effects and strengthen the impact of restrictive measures. In particular, candidate countries should be systematically invited to align themselves with the measures imposed by the EU. In addition, the issue of uniform and consistent interpretation and effective implementation of UN sanctions regimes should regularly be included in consultations with key partners. EU delegations should be fully involved in this process.
58. The EU and its Member States should actively and systematically communicate on EU sanctions, in order to give them visibility and avoid any misperception, in particular from the local civilian population. Such communication will also ensure the maximum political impact of the measures. Common messages should be discussed in the relevant geographical working party in consultation with the RELEX working party with regard to the legal, technical and horizontal consequences of the measures.

III. Standard wording for legal instruments

The standard wording set out in this Chapter should be used for all relevant legal instruments concerning EU restrictive measures, except if it is necessary to use different wording in order to implement a UN Security Council Resolution correctly.

The standard provisions on exemptions should be adapted, where appropriate.

A. Definitions

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

59. The term "*technical assistance*" shall mean²¹:

"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".

59a. The term "*financing and financial assistance*" shall mean:

"any action, irrespective of the particular means chosen, whereby the person, entity or body concerned, conditionally or unconditionally, disburses or commits to disburse its own funds or economic resources, including but not limited to grants, loans, guarantees, suretyships, bonds, letters of credit, supplier credits, buyer credits, import or export advances and all types of insurance and reinsurance, including export credit insurance. Payment as well as terms and conditions of payment of the agreed price for a good or a service, made in line with normal business practice, do not constitute financing or financial assistance".

²¹ Joint Action 2000/401/CFSP (OJ L 159, 30.6.2000, p. 216).

60. 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:

"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.*

"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.

61. The following definitions have been used by the Council regarding the freezing of economic resources 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."

62. 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"*²²

B. Arms embargoes

Equipment covered by the embargo

63. There is a need for a uniform EU regime when imposing an arms embargo. Common Position 2008/944/CFSP²³, adopted on 8 December 2008, 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 2000²⁴. Unless otherwise specified, arms embargoes should be interpreted as covering at least all goods and technology on the EU Common List of Military Equipment.

64. 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 428/2009²⁵. 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.

²² Art 2(1) of Council Regulation (EC) No 428/2009 of 5 May 2009 (OJ L134, 29.5.2009, p.1).

²³ OJ L 335, 13.12.2008, p.99.

²⁴ 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. An updated version of the list, adopted by the Council on 27.2.2012, has been published in OJ C 85, 22.3.2012, p. 1.

²⁵ OJ L 134, 29 May 2009, p. 1.

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 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 428/2009.

65. Standard wording for a provision imposing an arms embargo could read:

“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

66. 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.

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

CD + Reg.

“It shall be prohibited:

- (a) to provide technical assistance, brokering services²⁶ 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 natural or legal person, entity or body in, or for use in (country);*
- (b) to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance for any sale, supply, transfer or export of arms and related materiel, or for the provision of related technical assistance, brokering services and other services directly or indirectly to any person, entity or body in, or for use in (country).*
- (c) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to at points (a) or (b).”*

Exemptions

68. 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 materiel intended for institution building, as appropriate.

²⁶ 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).

69. 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.
70. Standard wording for a provision on exemptions to bans on exports of arms and related equipment could read:

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

- a) 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 and the EU, or for EU and UN crisis management operations;*
- b) the sale, supply, transfer or export of demining equipment and materiel for use in demining operations;*
- c) the provision of financing and financial assistance related to such equipment or to such programmes and operations,*
- d) the provision of technical assistance related to such equipment or to such programmes and operations,*

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

71. In cases where there is a UN or EU institution building programme or an EU or UN crisis management operation which would also require the export of lethal equipment, the above provision would need to be complemented with the addition of "*and materiel intended for...*" in indent a).

As appropriate, institution building programmes and crisis management operations conducted by regional and sub-regional organisations may be added to the exemption in indent a).

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.

72. 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 or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only."

C. Restrictions on equipment used for internal repression and other specific imports or exports

73. If a policy of internal repression is at the basis of the imposition of restrictive measures, a ban on exports and related services, such as maintenance and repair, 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 repression²⁷.

²⁷ The list focuses on items which might be used for internal repression and which are very close to items listed in the EU Common Military List; it does not cover items listed in the EU Common Military List; it does not cover items controlled by Regulation (EC) No 1236/2005 (the "Anti-Torture-Regulation"). With respect to problems in defining an adequate borderline between controlled equipment and equipment typical for consumer or leisure type activities, the list contains no entries for goods which may belong to standard consumer and leisure time activities.

74. Standard wording for restrictions on equipment used for internal repression could read:

"It shall be prohibited:

- a) to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex I, whether or not originating in the Union, to any natural or legal person, entity or body in, or for use in [name of state];*
- b) to provide technical assistance related to the equipment referred to at point (a), directly or indirectly to any natural or legal person, entity or body in, or for use in [name of state];*
- c) to provide financing or financial assistance related to the equipment referred to at point (a), directly or indirectly to any natural or legal person, entity or body in, or for use in [name of state];*
- d) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in points (a), (b) or (c).*

75. It can also be appropriate to impose restrictive measures to prevent the misuse of equipment, technology or software for monitoring and interception of the Internet or of other forms of communication.

76. Other lists such as a list of petroleum and petroleum products have been developed within the EU framework²⁸. 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. The lists of goods which are subject to a specific export/import ban could, if appropriate, be described taking into account the descriptions used in Council Regulation (EEC) No 2658/87. If this is not possible and if appropriate, the goods could be described in a way which allows the correlation with the descriptions used in Council Regulation (EEC) No 2658/87.
77. 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)

78. Several CFSP legal acts foresee a ban on admission of specific nationals of third countries that are listed in an annex to the legal instrument.
79. Regulation (EC) No 539/2001 lists the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement²⁹. Third country nationals specified in CFSP Decisions as subject to a travel ban and who need a visa to enter the EU will not be granted a visa if they apply for one. They must in any event be denied entry if they present themselves at an external border. Where no visa requirement exists, or a long term visa or residence permit has been issued, restrictions on admission may require national action³⁰.

²⁸ See Annex I to Regulation (EC) No 1705/1998 (OJ L 215, 1.8.1998, p. 1)

²⁹ OJ L 81, 21.3.2001, p. 1. The list was amended on several occasions.

³⁰ Discussions are currently ongoing regarding the creation of an electronic consolidated list of persons subject to a EU travel ban.

80. Standard wording 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;
(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; or
(iv) under the 1929 Treaty of Conciliation (Lateran pact) concluded by the Holy See (State of the Vatican City) and Italy.*
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. *The Council shall be duly informed in all cases where a Member State grants an exemption pursuant to paragraphs 3 or 4.*
6. *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 and those promoted or hosted by the European Union, or hosted by a Member State holding the Chairmanship in office of the OSCE, where a political dialogue is conducted that directly promotes the policy objectives of restrictive measures, including democracy, human rights and the rule of law in (country).*

7. *A Member State wishing to grant exemptions referred to in paragraph 6 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 two working days 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.*
8. *In cases where pursuant to paragraphs 3, 4, 6 and 7, 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."*

81. It is understood that where a person who is subject both to an asset freeze and to a travel ban receives an authorisation granted by a Member State pursuant to paragraphs 3, 4, 6 and 7 of the above standard Article, Member States are not obliged to seize funds carried by that person and which that person may reasonably require for the purpose of the visit for which he has received that authorisation.

E. Financial restrictions

82. Standard wording for freezing of funds through legal text based on Article 215 of the Treaty on the Functioning of the European Union could read:

- "1. *All funds and economic resources belonging to, owned, held or controlled by [individual members of the Government of (country) and] any natural or legal person, entity or body [associated with them]³¹ as listed in Annex X shall be frozen.*
2. *No funds or economic resources shall be made available, directly or indirectly³², to or for the benefit of natural or legal persons, entities or bodies listed in Annex X."*

³¹ These parts of the text may, in some cases, not be applicable (e.g. in the case of measures targeting terrorists).

³² It is noted that submitting and forwarding the necessary documents to a listed bank for the purpose of their final transfer to a person, entity or body that is not listed, to trigger payments allowed, does not constitute making funds available.

Exemptions

83. Standard wording for an article containing exemptions from the freezing of funds and the prohibition of making funds or economic resources available could read³³:

"1. By way of derogation from Article (freezing of funds and economic resources of listed persons and entities), the competent authorities, as indicated on the websites listed in Annex Y, may authorise the release of certain frozen funds or economic resources or the making available of certain funds or economic resources, under such conditions as it deems appropriate, after having determined that the funds or economic resources concerned are:

- (a) necessary to satisfy the basic needs of natural or legal persons, entities or bodies listed in Annex X, and dependent family members of such natural persons, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges,*
- (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 the relevant competent authority has notified the grounds on which it considers that a specific authorisation should be granted, to the competent authorities of the other Member States and the Commission at least two weeks prior to the authorisation,*

³³ In cases of implementation of mandatory UNSC resolutions (see paragraph 44) the wording may have to be adapted.

- (e) *to be paid into or from an account of a diplomatic mission or consular post or an international organization enjoying immunities in accordance with international law, insofar as such payments are intended to be used for official purposes of the diplomatic mission or consular post or international organization,*³⁴
- (f) *necessary to ensure human safety or environmental protection."*

Member States shall inform the other Member States and the Commission of any authorisation granted under this article.

2. *Article .. (prohibition of making funds or economic resources available to listed persons and entities) 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 Decision /Regulation or*
 - (c) *payments due under judicial, administrative or arbitral decisions rendered in a EU Member State or enforceable in the Member State concerned and*
- 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)."*

³⁴ Insofar as restrictive measures might have an effect on diplomatic missions and members of their staff enjoying privileges and immunities (notably in cases where they hold accounts with designated banks), the necessary steps must be taken to ensure that such missions and their staff members are not hindered as a consequence in the performance of their official functions, in accordance with Article 25 of the 1961 Vienna Convention on Diplomatic Relations.

84. Standard wording for an article on the crediting of frozen accounts could be the following:

Reg.

"Article ... (prohibition of making funds or economic resources available to listed natural or legal persons, entities or bodies) shall not prevent the crediting of the frozen accounts by financial or credit institutions that receive funds transferred by third parties to the account of the listed person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the competent authorities about such transactions without delay."

85. Standard wording for a specific article containing exemptions from the freezing of funds and the prohibition of making funds or economic resources available when these funds or economic resources are subject to a judicial, administrative or arbitral decision could read:

"By way of derogation from Article ... (freezing funds and economic resources of listed natural or legal persons, entities or bodies), the competent authorities of the Member States, as listed in Annex Y, may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

(a) the funds or economic resources are subject of an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in Article ... (freezing funds and economic resources of and prohibition of making funds or economic resources available to listed natural or legal persons, entities or bodies) was listed in Annex X or of a judicial or administrative decision rendered in the EU, or a judicial decision enforceable in the Member State concerned, prior to or after that date;

(b) the funds or economic resources will be used exclusively to satisfy claims secured by such a decision or recognised as valid in such a decision, within the limits set by applicable laws and regulations governing the rights of persons having such claims;

(c) the decision is not for the benefit of a person, entity or body listed in Annex X;

(d) recognising the decision is not contrary to public policy in the Member State concerned.

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

86. Standard wording for a specific article containing an exemption for prior contracts could read:

By way of derogation from Article ... (freezing of funds and economic resources of listed persons, entities and bodies) and provided that a payment by a person, entity or body listed in Annex X is due under a contract or agreement that was concluded by, or an obligation that arose for the person, entity or body concerned, before the date on which that person, entity or body had been designated, the competent authorities of the Member States, as indicated on the websites listed in Annex Y, may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources, provided that the competent authority concerned has determined that:

(i) the funds or economic resources shall be used for a payment by a person, entity or body listed in Annex X ;

(ii) the payment is not in breach of Article ... (prohibition of making available funds or economic resources to listed persons, entities and bodies);

Option 1 - The Member State concerned shall, at least [x weeks] prior to the grant of each authorisation, notify the other Member States and the Commission of that determination and its intention to grant an authorisation."

Option 2 - The Member State concerned shall notify within [x weeks] the other Member States and the Commission of that determination and of each authorisation granted"

Option 3 - The Member State concerned shall notify the other Member States and the Commission of these determinations and of the number and nature of authorisations granted at [x-monthly intervals]

87. Possible wording for a specific article containing an exemption for humanitarian needs, to be included only if considered warranted by actual circumstances related to the targeted country/regime and to be adapted where necessary, could read:

By way of derogation from Article ... (freezing of funds and economic resources of listed persons and entities), the competent authorities in the Member States as identified on the websites listed in Annex ... may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the provision of such funds or economic resources are necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations from xxx.

The Member State concerned shall inform the other Member States and the Commission of any authorisations granted under this Article within four weeks following the authorisation.

F. Non-liability clause

Standard wording for a specific article containing a non-liability clause could read:

1. *The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person, entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen or withheld as a result of negligence.*

2. *Actions by natural or legal persons, entities or bodies shall not give rise to liability of any kind on their part, if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in this Regulation.*

G. No claims Clause

Possible wording for a specific article containing a no claims clause, to be adapted where necessary, could read:

1. *No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:
 - (a) *designated persons, entities or bodies listed in Annex X or Y or Z*
 - (b) *any other xxx person, entity or body, including the xxxx.*
 - (c) *any person, entity or body acting through or on behalf of one of the persons, entities or*
*bodies referred to in points (a) or (b).**
2. *In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the person seeking the enforcement of that claim.*
3. *This Article is without prejudice to the right of the persons, entities and bodies referred to in paragraph 1 to judicial review of the legality of the non-performance of contractual obligations in accordance with this Regulation.*

H. Jurisdiction

88. 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:

Reg.

"This Regulation shall apply:

(a) within the territory of the Union, including its airspace;

(b) on board any aircraft or any vessel under the jurisdiction of a Member State;

(c) to any person inside or outside the territory of the Union who is a national of a Member State;

(d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated or constituted under the law of a Member State;

(e) to any legal person, entity or body in respect of any business done in whole or in part within the Union."

I. Infringements

89. The Regulations imposing restrictive measures contain provisions regarding penalties to be taken in case of infringement. Standard wording for this issue:

Reg.

"1. The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties 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.*”

90. 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.

J. Expiry/Review

CD

91. Standard wording for an expiration clause in the case of EU autonomous sanctions could read:

“This Decision 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.”

92. Standard wording for a review clause in the case of EU autonomous sanctions could read:

CD

Decision shall be reviewed ... after its adoption and every ... thereafter. It shall be repealed if the Council deems that its objectives have been met.”

93. Standard wording for an amendment/repeal clause in the case of implementation of UN Security Council resolutions

CD

“This Decision shall be amended or repealed as appropriate, in accordance with determinations made by the Security Council.”

IV. Monitoring and evaluation of restrictive measures

94. 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. In order to ensure adequate follow-up to EU decisions to impose restrictive measures, a specific Council body has been set up dedicated to exchanging experience and developing best practice in the implementation and application of restrictive measures. Thus the Foreign Relations Counsellors Working Party meets regularly in its specific 'Sanctions formation' (RELEX/Sanctions), reinforced as necessary including with experts from capitals. The mandate of the Relex/Sanctions formation is the following³⁵:

- 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 circumvention 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;

³⁵ Mandate of RELEX/Sanctions is set out in doc. 5603/04.

- 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.

The Relex/Sanctions formation has notably identified EU best practices for effective implementation of financial restrictive measures³⁶.

95. 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.

³⁶ 8666/1/2008 REV 1.

Recommendations for working methods for EU autonomous sanctions

Restrictive measures against third countries, individuals or entities are an essential foreign policy tool of the EU in pursuing its objectives in accordance with the principles of the Common Foreign and Security Policy. In general terms, restrictive measures are imposed to bring about a change in policy or activity by the targeted country, part of a country, government, entities or individuals. They are preventive, non-punitive, instruments which should allow the EU to respond swiftly to political challenges and developments. Sanctions should be used as part of an integrated and comprehensive policy approach involving political dialogue, complementary efforts and other instruments. The EU and its Member States should actively and systematically communicate on EU sanctions, including with the targeted country and its population.

The measures should target the policies and the means to conduct them and those identified as responsible for the policies or actions that have prompted the EU decision to impose sanctions. Such targeted measures should minimise adverse consequences for those not responsible for such policies and actions, in particular the local civilian population or legitimate activities in or with the country concerned. The political objectives and criteria of the restrictive measures should be clearly defined in the legal acts. This would allow the EU to identify the conditions for amending or lifting the sanctions. The type of measures will vary depending on their objectives and their expected effectiveness in achieving these objectives under the particular circumstances, reflecting the EU's targeted and differentiated approach.

Restrictive measures must respect human rights and fundamental freedoms, in particular due process and the right to an effective remedy in full conformity with the jurisprudence of the EU Courts. The measures imposed must be proportionate to their objectives.

The uniform and consistent interpretation and effective implementation of the restrictive measures is essential to ensure their effectiveness in achieving the desired political objective.

The European External Action Service (EEAS) should have a key role in the preparation and review of sanctions regimes as well as in the communication and outreach activities accompanying the sanctions, in close cooperation with Member States, relevant EU delegations and the Commission.

Proposals for restrictive measures

1. Proposals for restrictive measures, including proposals for listings or de-listings, in respect of country-specific EU autonomous sanctions should be submitted by the Member States or by the EEAS. These proposals should form part of the broader policy approach agreed by the Council. In principle they should be distributed by COREU with the appropriate level of classification.
2. The political aspects and broader parameters of the proposals should then be discussed in the relevant regional working party assisted by sanctions experts from the EEAS and experts from the Commission and the Council Legal Service. Where appropriate, the Political and Security Committee will discuss the proposals and provide political orientation to the working parties concerned, notably on the type of measures selected for further proceedings.
3. The Heads of Missions (HoMs) located in the country(ies) concerned will be invited to provide, where appropriate, their advice on proposals for restrictive measures or additional designations. Equally, the Commission services will be invited to provide, where appropriate, their advice on specific measures which would fall under the competence of the Union.
4. All the legal, technical and horizontal aspects of the proposed restrictive measures should be discussed in RELEX. The proposals for the Council Decision introducing the restrictive measures and for the Council Regulation defining the specific measures falling under the competence of the Union will be presented in RELEX for discussion, respectively by the EEAS and the Commission. Preferably, the two legal acts should be submitted to COREPER and formally adopted by the Council at the same time, or with minimum time delay between the two instruments.

Proposals for listings

Identifiers

5. Proposals for autonomous listings should be clear and unequivocal. In particular they shall aim to include sufficient details (identifiers) so that the listing decision, once it has entered into effect, can be effectively implemented by economic operators and national authorities (e.g. banks, consulates). Identifying information is also crucial to ensure that restrictive measures do not affect non targeted persons and entities. With regard to natural persons, the information shall aim to include in particular names (where available also in the original language and with appropriate transliteration), including aliases, date and place of birth, nationality, passport and identity card numbers, gender, address, if known, and function or profession. With regard to groups, legal persons or entities such information shall aim to include names, place and date of registration, registration number and place of business. The date of designation should also be included. A model template is attached.
6. It is primarily the responsibility of those submitting the proposal to provide such identifiers. Other delegations should contribute to this process. Input from the HoMs located in the country(ies) concerned will be requested, where appropriate.

Reasons for listing

7. Proposals for autonomous listings should include individual and specific reasons for each listing. The purpose of the reasons is to state, as concretely as possible, why the Council considers, in the exercise of its discretion, that the person, group or entity concerned falls under the designation criteria defined by the relevant legal act, taking into consideration the objectives of the measures as expressed in its introductory paragraphs.
8. It is primarily the responsibility of those submitting the proposal to provide such reasons. Other delegations should contribute to this process. Input from the HoMs located in the country(ies) concerned will be requested, where appropriate.

9. The reasons for listings will be finalised by the RELEX working party on the basis of the elements discussed in the regional working party. If needed, RELEX may request additional information from the regional working party in order to ensure that listings are legally sound and properly substantiated.
10. These reasons should, in principle, be set out in a separate column in the Annex to the legal act containing the list of persons, groups and entities subject to restrictive measures. As this act will be published in the Official Journal, these reasons should be capable of being made public. In exceptional cases, where it is considered that the reasons for the listing are not suitable for publication, because of considerations of privacy and security, the reasons will need to be addressed separately to the person, group or entity concerned.

Notification of listing

11. The notification of the decision and of the reasons justifying the listing is achieved by means of a letter, where appropriate, or through the publication of a notice in the Official Journal (C series) on the same day as the publication of the legal act in question indicating that the Council will transmit the reasons for listing on request. A model notice is attached. The notification will inform the persons, groups and entities concerned about their right to present observations and to request a review of the decision taken by the Council as well as of their right to challenge the Council's decision before the General Court in accordance with the relevant provisions in the EU treaties.

Deliberations of the working party

12. If necessary, the competent working party may be reinforced by experts from other Council working parties.
13. The deliberations of the working party are confidential. This is particularly important in cases where the restrictive measures would impose an asset freeze. Adequate steps should be taken to ensure the confidentiality of the proceedings, notably with regard to the distribution of proposals.

14. The Chair of the working party concerned will organise meetings as and when necessary; once discussed in the working party, the Chair could seek approval of proposed listings or de-listings using the silence procedure at working party level. Delegations should be given sufficient time to examine proposals before they are discussed, bearing in mind the agreed political imperatives that may drive the timetable for a proposal. Legal acts on a urgent matter may be adopted by written procedure.

Review of the measures

15. The review of EU autonomous sanctions or EU additions to UN sanctions should take place at regular intervals and in accordance with the provisions of the relevant legal acts. Regular assessments of sanctions regimes by the relevant working party and RELEX, assisted by the EEAS, the Commission and HoMs, should permit the adjustment of the measures, as needed, in function of the developments with regard to the stated objectives and the effectiveness of the measures in that respect.
16. The uniform and consistent interpretation and effective implementation of the restrictive measures is an essential element ensuring their effectiveness in order to achieve the desired political objectives. Member States shall inform each other of the measures taken under the relevant legal acts and shall supply each other with any other relevant information at their disposal in connection with these acts, in particular information in respect of violation and enforcement problems and judgments of national courts. Information on accounts and amounts frozen should also be provided in line with relevant legal requirements. In addition, Member States shall inform each other of any derogation granted in accordance with the procedures foreseen in the legal acts. The Commission and the EEAS should be fully involved in this process. The Council Legal Service should inform the relevant working party and the RELEX working party of any relevant judgment by the EU courts.
17. The established forum of the RELEX Sanctions formation and the informal so-called “Sanctions Forum” should be used by Member States and their experts in order to address interpretation and implementation issues.

Processing requests for de-listings

18. Individual requests for de-listing should be processed, as soon as they arrive, in accordance with the applicable legal instrument and EU Best Practices for the effective implementation of restrictive measures.³⁷
19. The General Secretariat of the Council will act as a mailbox for de-listing requests. Any observations or requests for reconsideration of a listing, with supporting documentation, are to be forwarded in writing to the Council of the European Union in accordance with the review process foreseen in the relevant sanctions regime and as explained in the accompanying notice published in the OJ or notification letter where the address is available.
20. When the Council Secretariat receives such requests, it will forward them to the competent regional working party for consideration on the basis of a preliminary analysis prepared by the EEAS and the Council Legal Service. The legal, technical and horizontal aspects of the requests for de-listing and the EU reply will be discussed in the RELEX working party.

Outreach and communication

21. The effectiveness of restrictive measures is directly related to the adoption of similar measures by third countries. In principle therefore it is preferable for sanctions to be adopted in the framework of the UN. Where this is not possible, the aim should be to bring as much as possible of the international community to exert pressure on the targeted country.

³⁷ Para 17 in doc. 8666/1/08.

22. When adopting autonomous sanctions, the EU should, through outreach, actively seek cooperation and if possible adoption of similar measures by relevant third countries in order to minimize substitution effects and strengthen the impact of restrictive measures. In particular, candidate countries should be systematically invited to align themselves with the measures imposed by the EU. In addition, the issue of uniform and consistent interpretation and effective implementation of UN sanctions regimes should regularly be included in consultations with key partners. EU delegations should be fully involved in this process.
23. The EU and its Member States should actively and systematically communicate on EU sanctions, in order to give them visibility and avoid any misperception, in particular from the local civilian population. Such communication will also ensure the maximum political impact of the measures. Common messages should be discussed in the relevant geographical working party in consultation with the RELEX working party with regard to the legal, technical and horizontal consequences of the measures.
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**Templates to be used as a model for listing persons, groups and entities
subject to restrictive measures**

A. Template to be used as a model for listing persons subject to restrictive measures

Surname, First Name (where available also in the original language and with appropriate transliteration):

Alias:

Date of birth:

Place of birth (town, country):

Nationality:

Passport or ID Number (including country that issued and date and place of issue):

Gender:

Address (No, street, postal code, town, country):

Function or profession:

Other information (e.g. name of father and mother, fiscal number, telephone or fax number):

B. Template to be used as a model for listing groups and entities subject to restrictive measures

Name:

Place of registration:

Date of registration:

Registration number:

Principal place of business:

Other information :



MODEL NOTICE

Council of the European Union

The following information is brought to the attention of the persons, entities and bodies that appear in the Annex to Council Decision [*number*] of [*date*].³⁸

The Council of the European Union has determined that the persons, entities and bodies that appear on the above-mentioned list fulfil the criteria set out in Article of Council Regulation (EC) xxxx/200X of jj/mm/dd concerning³⁹, and they have consequently been included, by the decision referred to above, in Annex XX of that Regulation . That Regulation provides i. a. for a freezing of all funds, other financial assets and economic resources belonging to the persons, entities or bodies concerned and that no funds, other financial assets and economic resources may be made available to them, whether directly or indirectly.

The attention of the persons, entities and bodies concerned is drawn to the possibility of making an application to the competent authorities of the relevant Member State(s) as indicated in the web-sites in Annex XX of the Regulation, in order to obtain an authorisation to use frozen funds for basic needs or specific payments (cf. Articles XX of the Regulation).

The persons, entities or bodies concerned may submit a request to the Council, together with supporting documentation, that the decision to include them on the above-mentioned list should be reconsidered.

³⁸ OJ L ...

³⁹ OJ L ...

Any such requests should be sent to the following address: Council of the European Union, General Secretariat, DG C Coordination Unit, Rue de la Loi 175, B-1048 Brussels.

The attention of the persons and entities concerned is also drawn to the possibility of challenging the Council's decision before the General Court of the European Union, in accordance with the conditions laid down in Article 275, 2nd paragraph, and Article 263, 4th and 6th paragraphs, of the Treaty on the Functioning of the European Union.

List of equipment which might be used for internal repression

Equipment for internal repression envisaged by Article (X)

1. Fire-arms, ammunition and related accessories therefor, as follows:
 - 1.1 Firearms not controlled by ML 1 and ML 2 of the EU Common Military List;
 - 1.2 Ammunition specially designed for the firearms listed in 1.1 and specially designed components therefor;
 - 1.3 Weapon-sights not controlled by the EU Common Military List.
2. Bombs and grenades not controlled by the EU Common Military List.
3. Vehicles as follows:
 - 3.1 Vehicles equipped with a water cannon, specially designed or modified for the purpose of riot control;
 - 3.2 Vehicles specially designed or modified to be electrified to repel borders;
 - 3.3 Vehicles specially designed or modified to remove barricades, including construction equipment with ballistic protection;

- 3.4 Vehicles specially designed for the transport or transfer of prisoners and/or detainees;
- 3.5 Vehicles specially designed to deploy mobile barriers;
- 3.6 Components for the vehicles specified in 3.1 to 3.5 specially designed for the purposes of riot control.

Note 1 This item does not control vehicles specially designed for the purposes of fire-fighting.

Note 2 For the purposes of item 3.5 the term "vehicles" includes trailers.

- 4. Explosive substances and related equipment as follows:
 - 4.1 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);
 - 4.2 Linear cutting explosive charges not controlled by the EU Common Military List;
 - 4.3 Other explosives not controlled by the EU Common Military List and related substances as follows:
 - a. amatol;
 - b. nitrocellulose (containing more than 12,5 % nitrogen);
 - c. nitroglycol;
 - d. pentaerythritol tetranitrate (PETN);
 - e. picryl chloride;
 - f. 2,4,6-trinitrotoluene (TNT).

5. Protective equipment not controlled by ML 13 of the EU Common Military List as follows:
- 5.1 Body armour providing ballistic and/or stabbing protection;
 - 5.2 Helmets providing ballistic and/or fragmentation protection, anti-riot helmets, anti-riot shields and ballistic shields.
- Note This item does not control:*
- equipment specially designed for sports activities;
 - equipment specially designed for safety of work requirements.
6. Simulators, other than those controlled by ML 14 of the EU Common Military List, for training in the use of firearms, and specially designed software therefor.
7. Night vision, thermal imaging equipment and image intensifier tubes, other than those controlled by the EU Common Military List.
8. Razor barbed wire.
9. Military knives, combat knives and bayonets with blade lengths in excess of 10cms.
10. Production equipment specially designed for the items specified in this list.
11. Specific technology for the development, production or use of the items specified in this list.