COUNCIL OF THE EUROPEAN UNION

Brussels, 21/12/2004

13851/4/04 REV 4

PESC 885
COTER 67
RELEX 468
FIN 472

DECLASSIFICATION

of document :	13851/03/04 REV 3 RESTREINT UE
dated :	21/12/04
new classification :	NONE
Subject :	EU Best Practices - Effective Implementation of Financial Restrictive Measures targeting terrorist persons, groups or entities

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

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

COUNCIL OF
THE EUROPEAN UNION

Brussels, 02 December 2004

13851/3/04
REV 3

RESTREINT UE

PESC 885
COTER 67
RELEX 468
FIN 472

WORKING DOCUMENT

From :	Presidency
To :	Delegations
Subject :	EU Best Practices - Effective Implementation of Financial Restrictive Measures targeting terrorist persons, groups or entities

Delegations will find attached a revised version of the Best Practices document from the Presidency, taking into account the comments made by delegations at the meeting of the Relex/Sanctions formation on 25 November. The adjusted or inserted parts are in bold print.

COREPER will be invited to take note of it as a *living document*.

EU Best Practices
for the effective implementation of restrictive measures

Introduction

The Council on 8 December 2003 adopted Guidelines on implementation and evaluation of restrictive measures in the framework of the CFSP. These Guidelines suggested that a specific Council body be dedicated to the monitoring and follow up of such restrictive measures. Subsequently, on 26 February 2004 COREPER mandated the Foreign Relations Counsellors Working Party, in addition to its existing mandate, to carry out the monitoring and evaluation of EU restrictive measures, while meeting periodically in a specific Sanctions formation, reinforced as necessary including with experts from capitals. The mandate for this formation includes the development of best practices among Member States in implementation of restrictive measures.

It should be noted that these Best Practices are to be considered *recommendations* for developing an effective implementation of restrictive measures in accordance with national legislation.

In its meetings on 15 September, 27 October and 25 November, the RELEX/Sanctions formation discussed *EU Best Practices for the effective Implementation of Financial Restrictive Measures targeting terrorist persons, groups or entities*, resulting in the attached document. An effective fight against the financing of terrorism depends a great deal on the proper and swift implementation of targeted restrictive measures within national legal frameworks as well as national financial systems. The importance of the development of Best Practices in this field was highlighted by the EU Co-ordinator for counter-terrorism, Mr Gijs DE VRIES, at the Seminar on the prevention of the financing of terrorism on 22 September 2004 in Brussels.

With a view to improve the effectiveness of the implementation of financial sanctions, pivotal work has already been done by the Financial Action Task Force (FATF) in its interpretative note to its Special Recommendation III on freezing and confiscating terrorist assets as well as in its document on International Best Practices for freezing of terrorist assets. In this context, it is noted that the ten new Member States are not members of FATF.

The intention of this paper is not to duplicate existing work but to identify key elements in the implementation of sanctions taking into account

- the specific situation within the European Union's legal system
- the review of the current state of implementation of these sanctions conducted by the Council preparatory body that monitors the implementation of all EU sanctions.
- the importance of emphasising some already existing best practices that reflect current priorities of Member States.

These *EU Best Practices for the effective Implementation of Financial Restrictive Measures targeting terrorist persons, groups or entities* will be kept under constant review. This document constitutes a first start. Best Practices with regard to restrictive measures in general could be added at a later stage, as appropriate.

Best Practices

Effective implementation of Financial Restrictive Measures

targeting terrorist persons, groups or entities

1. National laws and regulations

In addition to legislation adopted by the Community[1] and in line with FATF International Best Practices, Member States should have in place the necessary legislative framework, laws or regulations to freeze funds (financial assets) and economic resources of terrorist persons, groups and entities and to prohibit the transfer of funds and economic resources to such persons, groups and entities, by way of administrative measures and/or through the use of judicial freezing orders having equivalent effects.

The legislative, administrative or judicial measures should prohibit making funds and economic resources available to the person, group or entity designated as terrorists in the absence of prior approval by the competent authorities.

Such measures ~~should~~ enable the national authorities to order and obtain the freezing without delay of all financial assets and economic resources belonging to, or owned or held by, the person, group or entity designated as terrorists, and located in the Member State concerned and could also target terrorist groups and persons having their roots, main activities and objectives within the European Union. Legislation of this kind or judicial orders could also provide a basis for freezing measures pending decision-making on EU measures transposing UNSC resolutions.

[1] Regulations (EC) No 2580/2001 and 881/2002, which are directly applicable.

2. Administrative and judicial freezing and confiscation

- Member States should take the necessary measures to seize and confiscate terrorist assets. To that end, they should implement the framework Decision on the Execution of Orders Freezing Property and Evidence in a timely fashion and implement the Draft Framework Decision on the Execution of Confiscation Orders as soon as it has been adopted by the Council. The Member States should also implement the 1999 UN Convention for the Suppression of the Financing of Terrorism. This recommendation is ~~also~~ in line with FATF recommendation III.

- In general terms, administrative freezing could be considered as primarily an act providing the basis for comprehensively preventing all uses made of frozen funds and economic resources and of all transactions by a person, group or entity, designated by a competent authority, aimed at preventing terrorist financing and terrorist acts.

- Judicial freezing[2], however, could be considered primarily as an action in preparation of confiscation, which is part of a criminal law procedure in the Member State concerned or, in case of requests for assistance in criminal matters, in another Member State or a third country. A judicial freezing order can be made with respect to property subject to an administrative freezing and may rely on evidence which has been obtained in the administrative process. In other cases, a judicial freezing order will however take place without previous administrative freezing.

[2] **Several delegations pointed out the differences in terminology in national legislation. In German legislation "Judicial freezing" should be understood as a preventive measure initiated by a competent authority whereas seizing is the result of a criminal procedure.**

3. *Identification of designated persons or entities*

In order to improve the effectiveness of administrative restrictive measures, and to avoid unnecessary problems caused by homonyms or near-identical names (possibility of "mistaken identity"), as many specific identifiers as possible, including in particular name, sex, date and place of birth, nationality and address, should be available at the moment of identification and published at the moment of adoption of the restrictive measure.

After designation of a person or entity, a constant review of identifiers should take place in order to specify and extend them, involving all those who can contribute to this effort. Procedures should be in place to ensure this constant review.

The formats of the listing of persons or entities and their identifiers should be harmonised.

4. *Claims concerning mistaken identity*

If the information on a designated natural person is limited to that person's name, implementation of designation may in practice prove to be problematic due to the potentially lengthy list of possible positive targets. This highlights the urgency of further identifiers. However, even if additional identifiers are provided, distinguishing between such persons may still be difficult. It cannot be excluded that in some cases the funds of a person will be mistakenly frozen due to identifiers that match with those of a designated person. Member States and the Commission should have procedures in place that ensure that their findings on claims concerning alleged mistaken identity are consistent in this regard.

a) investigation by the competent authorities

When a natural person, who is subject to an asset freeze, claims that, despite similarity of names and possibly other matching identifiers, she or he is *not* a natural person designated pursuant to Common Position 2001/931/CFSP or pursuant to UNSC Resolutions 1267(1999) and 1390(2002) concerning the Taliban and Al-Qaida and included in the list annexed to Regulation (EC) No 881/2002, and/or when a credit or financial institution, or another relevant actor, has doubts whether their customer is the same person as the person designated, the competent authorities of the Member State to whom the claim or query is addressed should be informed of this potential case of mistaken identity. The competent authorities should examine the claim[3].

b) affirmative conclusion with regard to mistaken identity

Where the competent authorities conclude after examination of the matter that, taking all relevant facts and circumstances into account, the person affected by the freezing/seizure measure is *not* the designated person, they should inform the respective credit or financial institution(s) and any other relevant actor(s) accordingly.

In such a case, the competent authorities should also supply other Member States with this information as well as the Commission, when relevant, in particular in light of the possibility that the person concerned will be confronted with similar problems in other Member States.

[3] **In cases of designation pursuant to UNSCRs 1267 and 1390, it may be difficult for the competent authorities to conclude such an examination alone; in such cases the procedure set out in (c) (ii) should be followed.**

c) uncertainty regarding claims

(i) in cases pursuant to Common Position 2001/931/CFSP

In case the competent authorities are *not* able to establish the correctness of the claim, and the claim is not manifestly unfounded, Member States and the Commission should, when relevant, be informed of that claim and the matter should be discussed in Council, possibly on the basis of further information to be provided by the State that made the proposal for designation of the person, or by the Heads of Mission in the third country concerned, as appropriate, with a view to determining whether this is indeed a case of mistaken identity.

(ii) in cases pursuant to UNSC Resolutions 1267(1999) and 1390(2002) concerning Al-Qaida and the Taliban and included in the list annexed to Regulation (EC) No 881/2002

In case the competent authorities are *not* able to establish the correctness of the claim, and the claim is not manifestly unfounded, Member States and the Commission should be informed of that claim, when relevant. The UN Sanctions Committee, and where possible through that Committee, the State that made the proposal for designation should be consulted by the Member State that investigated the claim or by the Commission. Where appropriate, the matter could be referred to that Committee for an authoritative finding. Any such authoritative finding should be communicated to Member States and the Commission.

d) If a court or tribunal has made a decision on any claims regarding mistaken identity, it should be communicated to the Member States and the Commission.

5. Co-ordination and co-operation

Member States should ensure efficient national co-ordination and communication mechanisms between all relevant government agencies, bodies and services with competence in the fight against the financing of terrorism, such as ministries, financial intelligence units, financial supervisors, intelligence and security services, the office of the public prosecutor and other law enforcement bodies, as appropriate.

The coordination should allow for expeditious input of intelligence, and follow up to this input by other actors involved. Further to this, investigations should focus, where possible, on identified high risk situations. Such *intelligence-driven and risk-based approach* could improve effectiveness.

Member States will exchange information with other Member States, the Commission, Europol, the UNSC Committee established pursuant to Resolution 1267 (1999) concerning Al-Qaida and the Taliban and the UNSC Counter-Terrorism Committee, as appropriate.

6. Expertise Groups

Member States could consider the establishment of special expertise groups composed of supervisory authorities, law enforcement agencies and other relevant actors. Such expert groups could conduct general in-depth analysis of relevant facets of terrorism financing and of patterns of terrorist financing in order to enhance the efficiency and effectiveness of the fight against terrorist financing. Subjects could include possible abuse of charitable organisations and use of front organisations or alternative remittance systems. These are in line with FATF recommendations VIII and VI respectively. Member States will subsequently seek to develop procedures to share findings gathered by such expert groups with each other and other relevant partners.

7. Analysis of financial accounts

Member States should ensure that financial transactions linked to the accounts of designated persons, groups or entities are analysed by the appropriate agencies or services. The results of these analyses should, to the extent legally possible, be shared with other states, international organisations, and relevant EU bodies such as Europol. For this, Member States should have procedures in place.

8. Interaction and dialogue with the private sector

Member States should develop structured dialogue and co-operation with relevant private organisations within their jurisdiction, such as credit and financial institutions, on the implementation of financial sanctions, in order to ensure effective implementation, optimise the instrument of restrictive measures, and limit the administrative burden for these organisations to the extent possible.

The Commission and, as appropriate, the Council, will also pursue a dialogue at the EU level with relevant financial organisations on implementation issues as well as legislative issues. In this context, Member States will also endeavour to provide the financial sector with adequate (and timely) input and feedback, where possible also of an intelligence nature. They should also endeavour to provide these organisations with up-to-date information on patterns of terrorist financing.

Member States could consider channels for providing directions and advice to the financial regulators as well as credit and financial institutions.

9. Dissemination of information to others than the financial sector

Member States should make organisations of economic operators other than those in the financial sector and the public aware of the existence of financial restrictive measures, in particular in view of the prohibition on making funds and economic resources available to those designated, and explain the modalities of these measures.

10. Evaluation

Member States should endeavour to have in place appropriate national procedures for evaluating the effectiveness of their national performance regarding the fight against the financing of terrorism. In such an evaluation, results from dialogue with the private sector should be taken into account. Results of such evaluations should be exchanged in the RELEX/Sanctions formation, when relevant.

11. Application tools

The Commission should continue to ensure access for the public (in particular credit and financial institutions) to the "electronic-Consolidated Targeted Financial Sanctions List (e-CTFSL)" as established by the Commission and the European credit sector.

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

Member States should ensure access for the public (in particular credit and financial institutions) to relevant information concerning designations or judicial orders, e.g. with regard to so-called internal terrorists.