



**COUNCIL OF
THE EUROPEAN UNION**

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DECLASSIFICATION

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Subject : Fight against the financing of terrorism

- implementation of Common Position 2001/931/CFSP

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

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

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"I" ITEM NOTE

From : Foreign Relations Counsellors working party
To : Coreper

Subject : Fight against the financing of terrorism
- implementation of Common Position 2001/931/CFSP

1. On 2 March 2005 the Permanent Representatives Committee approved a list of suggestions¹ aiming at improving the procedures of an *ad hoc* forum (hereafter referred to as the "clearing house"). These suggestions complemented the working methods of the clearing house agreed by Coreper in September 2002².

2. On 12 July 2006, the Permanent Representatives discussed the need to improve listing and de-listing procedures concerning restrictive measures against individuals, groups and entities involved in terrorist acts. Since then work has been taken forward on a number of other issues related to the procedures of the clearing house, in particular on
 - assessment of new proposals for listing and de-listing;
 - motivation: the need for a statement of reasons;
 - notification and requests for de-listing
 - the six-monthly review.

¹ see doc. 6691/05 RESTREINT UE

² doc. 11693/02 RESTREINT UE

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3. With regard to the need for a statement of reasons, on 31 October 2006 Coreper endorsed the principle that a statement of reasons, which would include a number of specific elements, be established for each individual, person, group or entity subject to the freezing of funds ³.
4. Furthermore, on 20 December 2006 procedures for informing each person, group and entity listed under Council Regulation (EC) N° 2580/2001 and publication of a notice in the 'C' series of the Official Journal were established ⁴.
5. Finally, on 22 March 2007, Coreper endorsed the recommendations by the Foreign Relations Counsellors working party (RELEX) to strengthen the Review Procedure foreseen in Article 1(6) of Common Position 2001/931/CFSP and Article 2(3). of Council Regulation (EC) N° 2580/2001. ⁵
6. Against this background, delegations considered it appropriate to establish a formal Council working party charged with the implementation of Council Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and to adapt the working methods of the clearing house, in order to take account of these new developments.
7. On 13 June 2007, the Foreign Relations Counsellors Working Party (RELEX Working Party) reached agreement on the draft mandate and practical arrangements for the work of the new Council working party and the revised working methods as set out in Annexes I and II respectively.
8. With respect to the procedures outlined in Annex II and in light of the adverse consequences for persons, groups or entities of being on the list, the RELEX Working Party noted the possibility of the Court of First Instance under Article 76a of its Rule of Procedure "*to decide (...), having regard to the particular urgency and circumstances of the case, to adjudicate under an expedited procedure*".

³ Doc. 14421/06 RESTREINT UE.

⁴ Doc. 16803/06 RESTREINT UE.

⁵ Doc. 5905/07 RESTREINT UE (partially declassified)

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6. Coreper, having noted the above, is invited to endorse
- the mandate and practical arrangements for the work of the new Council working party, set out in Annex I;
 - the revised working methods, set out in Annex II, which will be made public.



Establishment of a Council Working Party on implementation of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism

Name

"Working Party on implementation of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism" (hereafter referred to as "CP 931 WP").

Mandate

The terms of reference of the "CP 931 WP" are to:

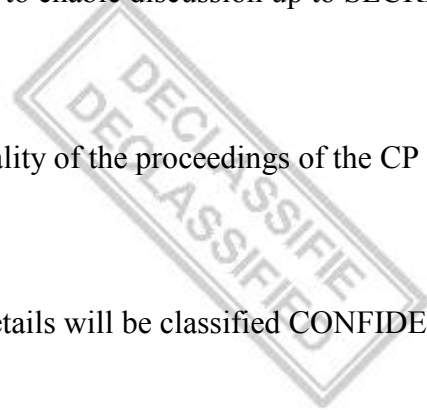
- examine and evaluate information with a view to listing and de-listing of persons, groups and entities pursuant to Common Position 2001/931/CFSP;
- assess whether the information meets the criteria set out in Common Position 2001/931/CFSP and in the Council's statement agreed when the Common Position was adopted;
- prepare the regular review of the list as foreseen in Article 1(6) of the Common Position;
- and make recommendations for listings and de-listings to be reflected in the necessary legal instruments, which will be endorsed by the Permanent Representatives Committee with a view to their adoption by the Council.

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Practical arrangements

The following practical arrangements will be put in place :

- meetings will be held in a secured environment so as to enable discussion up to SECRET UE, and will be held as and when necessary;
- adequate steps will be taken to ensure the confidentiality of the proceedings of the CP 931 WP;
- the date of the meeting, agenda and organisational details will be classified CONFIDENTIEL UE;
- the Council Secretariat will hold any documents relevant for the listing or de-listing of persons, groups or entities. Such documents will, if appropriate, bear an EU or national classification marking. The rules on public access to Council documents apply ⁶.



⁶ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

Working methods of the Working Party on implementation of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism

1. The task of the Working Party on the implementation of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism ("CP 931 WP") is to prepare the implementation of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism ⁷ (hereafter the "Common Position"). The CP 931 WP will examine proposals for listings and de-listings of persons, groups and entities, and will prepare the regular review of the list as foreseen in Article 1(6) of the Common Position.

Proposals for designations

2. Proposals for designation of persons, groups and entities may be submitted by Member States or third States (preferably through the Presidency in the latter case). The CP 931 WP will examine whether the information provided meets the criteria set out in Articles 1(3) and 1(4)⁸ of the Common Position ⁹.
3. All relevant information should be presented to the CP 931 WP in support of pending or new proposals.

⁷ OJ L 344, 28.12.2001, p. 93.

⁸ While Article 1(3) defines the meaning of the terms 'terrorist act' and 'terrorist group' for the purposes of the Common Position, Article 1(4) stipulates that the "list in the annex shall be drawn up on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons, groups and entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds."

⁹ This Common Position is the CFSP act which constitutes the prerequisite for the adoption of Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.

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4. The Common Position lays down the criteria for listing persons, groups or entities in Article 1 (4). When applying these criteria to proposals from a third State (which is not an EU Member State), the CP 931 WP will check in particular whether the proposal complies with the fundamental principles and procedures of the rule of law and respects human rights, inter alia the right to an effective remedy and to a fair trial, the presumption of innocence and the right not to be judged or punished twice for the same offence.
5. When receiving a proposal from a third state the Presidency (preferably), or any delegation, will carry out a first basic scrutiny of the proposal in accordance with the criteria set out in Article 1(4) of the Common Position as well as with the abovementioned fundamental principles and procedures. The Presidency/delegation may on this basis ask the third state for additional information deemed necessary.
6. When a proposal has been made by a Member State, and a decision to list has not been taken within 12 months, the Presidency will ask the Member State in question to inform the CP 931 WP whether it wishes to maintain its request and to provide more information as necessary.
7. When a proposal has been made by a third state, and a decision to list has not been taken within 12 months, the Presidency will ask the third state whether it wishes to maintain its request and to provide further supporting information as necessary. If the request is maintained, the CP 931 WP will consider whether any further action is necessary on the basis of the supporting information provided, and the Presidency will inform the third state as appropriate.

Exchange of information among Member States

8. Member States will inform each other about any new facts and developments with regard to previous listings as well as with regard to the national procedures which led to the adoption of the decision referred to in Article 1(4) of the Common Position.

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Handling of Proposals

9. Material from Member States or third states in support of pending or new proposals or material from designated persons, groups and entities that request de-listing, will be circulated to delegations for discussion in the CP 931 WP.
10. Delegations will have 15 days to check the material, during which time they will submit the information received to their competent national authorities. Exceptionally, a delegation may put forward a justified request to shorten the deadline. A request of this nature does not prejudice the view taken on the issue in the CP 931 WP.
11. The Presidency, on an ad hoc basis or at the request of a Member State, will notify delegations, 15 days in advance of a CP 931 WP meeting, that a particular individual, group or number of groups will be discussed. Exceptionally, a delegation may put forward a justified request to shorten the deadline. A request of this nature does not prejudice the view taken on the issue in the CP 931 WP.
12. If it has been established that a terrorist group or entity already listed has re-named itself, and that the re-naming did not change the character, and in particular the terrorist objectives, of the group or entity, the CP 931 WP may recommend that the new name be added to the original listing as an alias.
13. The Presidency, on its own initiative or at the request of a Member State, may decide to invite a representative from EUROPOL to attend the meeting of the CP 931 WP to make a presentation of background information in order to facilitate discussion on a particular subject.
14. The Presidency, on its own initiative or at the request of a Member State, may decide to invite the General Secretariat of the Council (Situation Centre) to make a presentation of background information in order to facilitate discussion on a particular subject.

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15. The CP 931 WP will make recommendations for listing and de-listing to be reflected in the necessary legal instruments¹⁰, which will be endorsed by the Permanent Representatives Committee with a view to their adoption by the Council.
16. Adequate steps will be taken to ensure the confidentiality of the proceedings of the CP 931 WP.

Statement of reasons

17. For each person, group and entity listed under Council Regulation (EC) N° 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism¹¹, the Council will provide a statement of reasons, which will be sufficiently detailed to allow those listed to understand the reasons for their listing and to allow the Community Courts to exercise their power of review where a formal challenge is brought against the listing.
18. The statement of reasons will make clear how the criteria provided for in the Common Position have been met and will begin with a statement that the person, group or entity concerned is involved in terrorist acts within the meaning of Article 1 (2) and (3) of that Common Position. It will include the following specific elements:
 - a) Terrorist act or acts committed with reference to Article 1(3);
 - b) Nature or identification of the competent authority or authorities which took a decision in respect of the person or entity concerned;
 - c) Type of decision taken with reference to Article 1(4);
 - d) If not otherwise clear, whether the individual, group or entity falls within Article 2(3) (i), (ii), (iii) or (iv) of Council Regulation (EC) No 2580/2001.

¹⁰ A Common Position pursuant to Article 15 and 34 of the TEU (updating Common Position 2001/931/CFSP) and a Council Decision pursuant to Article 2(3) of Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.

¹¹ OJ L 344, 28.12.2001, p. 70.

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19. The draft of the statement of reasons will be prepared by the Council Secretariat in consultation with the proposing Member State. Each statement of reasons will then be discussed by the CP 931 WP on a case-by-case basis, taking into account the need for confidentiality. The statement of reasons will then be approved by the Council after endorsement by the Permanent Representatives Committee.

Notification

20. After a listing decision has been taken by the Council, the Council Secretariat will inform, with the assistance of the proposing State(s), each person, group and entity listed under Council Regulation (EC) No 2580/2001, by sending a letter to his/her/its address, wherever that is practicably possible, after entry into force of the listing decision. The letter will include the following standard elements:
- a) a description of the restrictive measures taken, and a mention of the humanitarian exemptions available as mentioned in Article 5(2) of Council Regulation (EC) No 2580/2001. A copy of the measures set out in the Official Journal should be enclosed, including the list of competent authorities in the Member States (as appears in the Annex to Regulation (EC) No 2580/2001), so that those listed can identify the competent authorities to which they should address any requests for humanitarian exemptions.
 - b) The Council's statement of reasons for the listing of the person, group or entity concerned.
 - c) Reference to the possibility for the person, group or entity to send a file to the Council with supporting documents, asking for their listing to be reconsidered. Where appropriate, a deadline will be specified.
 - d) Reference to the possibility of an appeal to the Court of First Instance in accordance with the conditions laid down in Article 230 of the EC Treaty, insofar as the listing has given rise to an asset freeze.

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e) Request for consent of the listed persons, groups and entities to give public access to the statement of reasons.

21. In addition, a notice will be published in the 'C' series of the Official Journal ('Information and Notices') informing the persons, groups and entities listed under Council Regulation (EC) No 2580/2001, of the elements set out in para. 20 a), c), d) and e) above. This notice also serves to inform the persons, groups and entities whose address is not known of the possibility to obtain the Council's statement of reasons concerning them. The information contained in the notice may also be provided through the Council's internet site and a Council press release.

Review procedure

22. Pursuant to Article 1 (6) of the Common Position listing decisions taken by the Council will be reviewed at regular intervals and at least every six months. This review process involves the following steps.
23. As described in paragraphs 20 and 21, the persons, groups and entities listed under Council Regulation (EC) No 2580/2001 are informed via the statement of reasons of the specific information that forms the basis for the Community decision and are invited to make their views known for the purposes of the review.
24. Member States will inform each other about any new facts and developments with regard to the national procedures which led to the adoption of the decision referred to in Article 1 (4) of the Common Position. Any new facts and developments concerning decisions of competent authorities of third States will also be circulated to Member States for consideration.

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25. At least every six months, the CP 931 WP will carry out a thorough assessment as to whether the grounds for each listing are still valid, taking into account all relevant considerations, including *inter alia* the person's, group's or entity's past record of involvement in terrorist acts, the current status of the group or entity and the perceived future intentions of the person, group or entity. To this end, any new information presented by a Member State, a third State or a listed person, group or entity will be examined by the CP 931 WP. If, in the course of this assessment, the CP 931 WP considers that the new information presented requires an amendment to a statement of reasons, it will recommend that this statement of reasons be updated accordingly.
26. Following its assessment, the CP 931 WP will make recommendations to be reflected in the necessary legal instruments, containing a new consolidated list of persons, groups and entities, which will be endorsed by the Permanent Representatives Committee with a view to their adoption by the Council.
27. The persons, groups and entities concerned will be informed thereof as set out in paragraphs 20 and 21.
28. Independently of the above review process, the Council can, at any time, adopt an individual decision on new listings or de-listings of persons, groups or entities. The procedure outlined in paragraphs 9-16 is applicable. Any such decision would subsequently be reflected, as appropriate, in the new list adopted after the next regular review by the Council.¹²

¹² Pending the adoption of a new list to be established after the next regular review, it would always be possible to publish meanwhile a version of the complete list including all the newly added persons, groups and entities, in the 'C' series of the Official Journal, for information purposes.

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Requests for de-listing

29. Requests for a de-listing can be made at any time by listed persons, groups and entities, a Member State or the third State which had originally proposed the listing in question, by submitting information in support of such a request. Requests for de-listing will be discussed in the CP 931 WP as a matter of priority. All requests for de-listing are to be forwarded in writing to the Council of the European Union (Attn: CP 931 designations), 175 rue de la Loi, B-1048 Brussels.
30. De-listing is appropriate wherever the criteria for listing set out in the Common Position are no longer met. De-listing may also be appropriate in other cases, e.g. the death of a listed person or the liquidation of a listed entity.
31. Where the Council Secretariat receives a letter from a designated person, group or entity, or a legal representative of a person, group or entity on the list, challenging a designation, receipt of the letter will be acknowledged by the Secretariat.
32. The letter, together with a copy of any supporting documents submitted, will be distributed to delegations with a view to discussion in the CP 931 WP. The procedure outlined in paragraphs 9 to 16 is applicable.

Communication with designated persons, groups and entities or their representatives

33. The General Secretariat of the Council will manage communications with designated persons, groups and entities exclusively in writing and assist the Presidency in following up any requests for reconsideration by designated persons, groups or entities, as well as in preparing the regular review.