



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 7 April 2009

**5657/2/09
REV 2**

**PESC 109
RELEX 66
FIN 26
JAI 36**

NOTE

from : Presidency
to : Delegations

Subject : Presidency proposal to set up an informal virtual discussion forum for EU officials dealing with specific implementation, application and enforcement of restrictive measures

1. The restrictive measures agreed upon by the EU can apply in many different areas ranging from asset freezing and restrictions on admission to prohibitions concerning trade and services, and hence in different Member States, several authorities deal with the coordination of sanctions and their implementation, application and enforcement. As part of its mandate,¹ the RELEX/Sanctions should ensure exchange of information and experiences on the implementation of specific restrictive measures. For that purpose the Foreign Relations Counsellors Working Party meets in its “Sanctions formation”, reinforced with experts from capitals.
2. The effectiveness of EU restrictive measures depends on their truly prompt and consistent implementation, application and enforcement by all authorities involved in different Member States (without prejudice to the need for action by economic operators). Officials dealing with implementation of specific restrictive measures may be interested in information on whether a similar case has been dealt with by their counterparts.

¹ Mandate of RELEX/Sanctions is set out in doc 5603/04.

Very frequently the decision has to be taken in a rather limited time. On the other hand, they are fully aware of their own responsibility when taking a decision. In the decision-making falling solely on the competent authority of the Member State, prompt, informal and non-binding information on experience of other official and/or officials can be helpful.²

3. With a view to further enhancing the exchange of information and experiences on the specific implementation, application and enforcement of restrictive measures, the Presidency proposes to set up an informal virtual discussion forum for officials from Member States, the Commission and the General Secretariat of the Council. The purpose of this forum is to provide officials with an informal discussion forum operating daily where to exchange sanitized³ information on a voluntary basis by means of standard electronic mail. The exchanged information may contain namely personal and non-binding views of the official on how to interpret the EU legal acts or how to directly implement or apply them.
4. The choice of the means is driven by the need for a quick and simple method of exchange of information. Therefore it has to be stressed that the information due to be exchanged through this mailing forum must have sanitized character, i.e., the scope of information provided by the official when asking advice from other officials shall be only that necessary for the explanation of the question. Certainly the information provided must be sufficient to permit those asked to understand the case in question.
5. The basis for this informal discussion forum is voluntary. Different Member States apply different division of areas of responsibility among their competent authorities according to the type of restrictive measures (financial sanctions, trade restrictions, travel bans...). It shall be, therefore, on the discretion of the respective Member State how many officials would like to join the informal discussion forum (and whose email addresses might be entered in the contact list). It is obvious that involvement of officials dealing directly with the implementation of specific restrictive measures and their active participation is crucial for the efficient functioning of the informal discussion forum.

² In the context of other EU policies, experts dealing with implementation exchange experiences on a daily basis. It has to be noted that, in the absence of an appropriate forum, certain EU sanctions experts have been exchanging experiences on financial sanctions implementation in a different forum (dedicated to a different EU policy) and using the respective mailing list.

³ I.e. not containing any information on the specific case e.g. account numbers, personal data of the entity involved, identifiers of the listed person etc.

Foreign Relations Counsellors, experts from the Commission and the General Secretariat of the Council will also be involved in the forum, as appropriate.

6. The voluntary character of the informal discussion forum regards also its effective operation. Firstly, the official, when making a brief and simple question and accompanying it with background information to the extent necessary, is acting voluntarily. Secondly, the official receiving the question is never obliged to answer it and may provide the information he considers relevant. Thirdly, it has to be highlighted that the informal character of the discussion forum is crucial. That implies, among others, that the advice and/or information provided by the official/officials shall be regarded as not binding.
7. The advice/information provided by the official in his/her email expresses solely the opinion of that official and it may not be considered as an opinion or position of the relevant Institution or Member State. Officials providing their views shall be deemed to state their personal views only unless they explicitly state otherwise. For good order they may add an explicit disclaimer to their email.

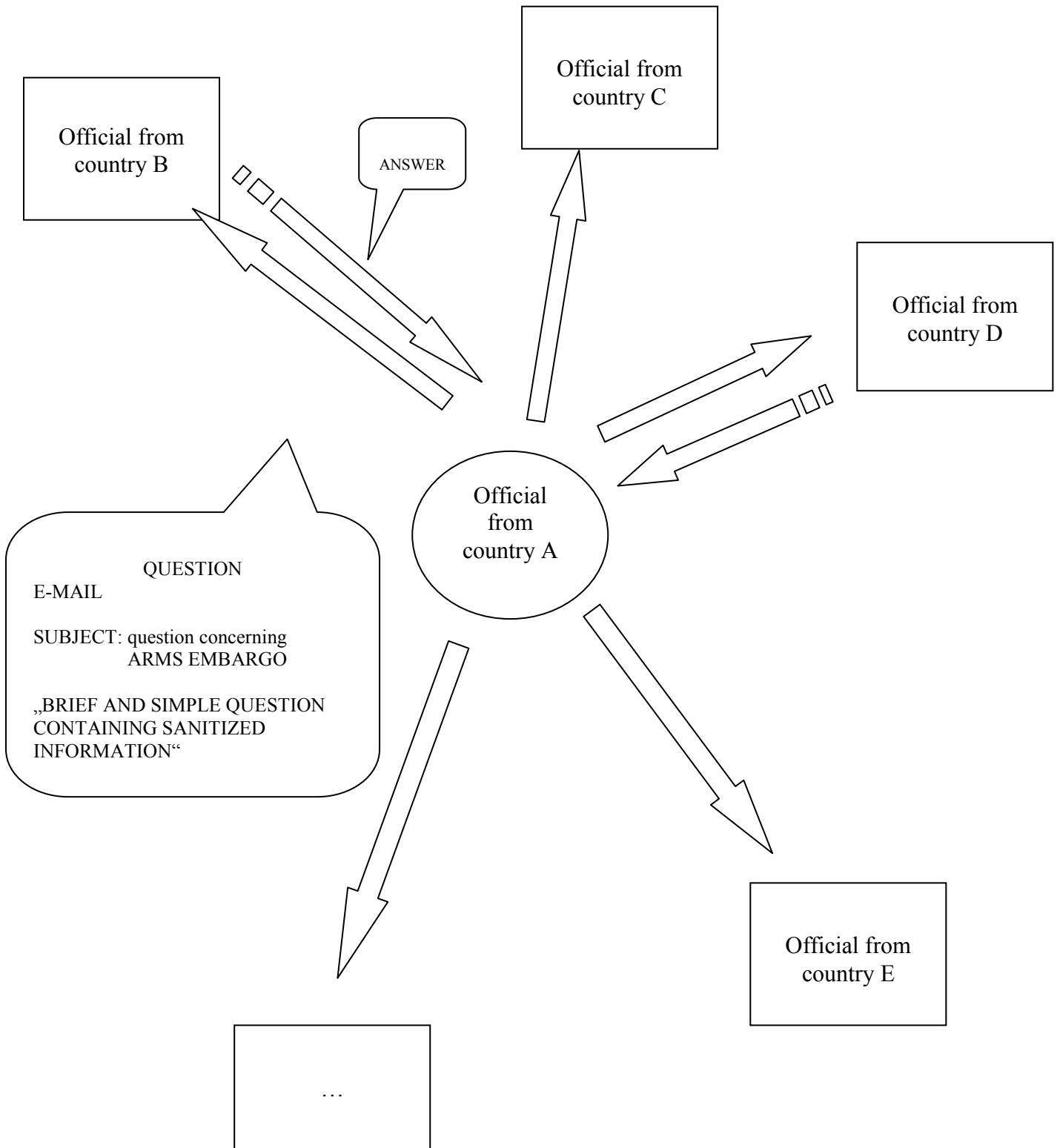
However, the officials mailing questions or answers should take into account the fact that Member States and the Institutions may be obliged to disclose their messages in accordance with national legislation on access to public administration files or with Regulation (EC) No 1049/2001.

8. The discussion forum is informal.
9. The contact list of officials shall consist of email addresses, obviously, for reasons of privacy concerns officials may subscribe anonymous email addresses in the list. Nevertheless, the name of the official sending the email should be always stated in the email. In order to ensure efficient functioning of the informal discussion forum, each current Presidency shall manage the contact list and provide updating of the list.

10. Because of the number of areas where restrictive measures can apply, and thus the number of officials dealing with them, it is suggested to state in the subject of each and every email the area of application of restrictive measures (e.g. freezing of assets, arms embargo, visa ban...). Officials mailing questions or answers may give their telephone numbers in the email.

11. The RELEX/Sanctions may, in due course, evaluate the functioning of this informal discussion forum on the basis of exchange of emails.

DIAGRAM OF INFORMAL VIRTUAL DISCUSSION FORUM



SIMPLIFIED EXAMPLE OF DISCUSSION VIA EMAIL

Question:

Exporter from country A sold abroad goods to non-listed entity. This entity declared in publicly available sources that it was owned, held or controlled by listed entity. Would you consider this situation as an infringement or circumvention of restrictive measures?

Answer:

Yes, according to the Regulation No 000/0000 we consider this situation as an indirect support (making available, indirectly, funds or economic resources) to the entity listed.
