



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 September 2006

**11905/06
EXT 1**

**PESC 732
COTER 31
RELEX 505**

PARTIAL DECLASSIFICATION

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Subject : Targeted sanctions: review of designations at the request of persons included in
the EU terrorism list

Delegations will find attached the declassified section of the above-mentioned document.



ANNEX

**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 July 2006

**11905/06
EXT 1 (27.09.2006)**

**PESC 732
COTER 31
RELEX 505**

NOTE

from : Secretariat
to. : Delegations

Subject : Targeted sanctions: review of designations at the request of persons included in the EU terrorism list

Delegations will find attached a note on targeted sanctions (Review of designations at the request of persons included in the EU terrorism list) submitted by the Commission with a view to the RELEX/Sanctions formation meeting on 24 July 2006.

Targeted sanctions: review of designations at the request of persons included in the EU terrorism list

Introduction

1. The EU Best Practices for the effective implementation of restrictive measures (Council document 10533/06) state *inter alia*:

“19. A transparent and effective de-listing procedure is essential to the credibility and legitimacy of restrictive measures. Such a procedure could also improve the quality of listing decisions. De-listing could be appropriate in various cases, including evidence of mistaken listing, a relevant subsequent change in facts, emergence of further evidence, the death of a listed person or the liquidation of a listed entity. Essentially de-listing is appropriate wherever the criteria for listing are no longer met.

When considering a request for de-listing, all relevant information should be taken into account.

Apart from submission of requests for de-listing, a regular review, as provided for in the relevant legal act, involving all Member States, shall take place in order to examine whether there remain grounds for keeping a person or entity on the list.

While preparing such regular reviews, the State that proposed the listing should be asked for its opinion on the need to maintain the designation and all Member States should consider if they have additional relevant information to put forward. Any decision to de-list should be implemented as swiftly as possible.”

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4. The persons included in the lists are directly and individually concerned by CFSP decisions designating them for the purpose of application of restrictive measures. Article 46 of the Treaty on European Union excludes jurisdiction of the Court of Justice of the EC and of the Court of First Instance of the EC as regards CFSP Common Positions and CFSP Decisions. The designated person can, however, appeal against the Community legislation implementing the measures, such as Regulation (EC) No 2580/2001 and the Council Decisions implementing Article 2(3) of that Regulation.

5. Article 41, Right to good administration, of the Charter of Fundamental Rights of the European Union, signed at Nice on 7 December 2000, provides:

“1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

— the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

— the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

— the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.”

Article 47, Right to an effective remedy and to a fair trial, of that Charter provides:

“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”

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1

¹ See in this regard in particular the draft Constitution, Article III-376, second paragraph. Article III-376:

“The Court of Justice of the European Union shall not have jurisdiction with respect to Articles I-40 and I-41 and the provisions of Chapter II of Title V concerning the common foreign and security policy and Article III-293 insofar as it concerns the common foreign and security policy.

However, the Court shall have jurisdiction to monitor compliance with Article III-308 and to rule on proceedings, brought in accordance with the conditions laid down in Article III-365(4), reviewing the legality of European decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter II of Title V.”

Review and the right to be heard

7. **NOT DECLASSIFIED** The Court of First Instance **NOT DECLASSIFIED** stating:

“ .. it is unarguable that to have heard the applicants before they were included in that list would have been liable to jeopardise the effectiveness of the sanctions and would have been incompatible with the public interest objective pursued. A measure freezing funds must, by its very nature, be able to take advantage of a surprise effect and to be applied with immediate effect. Such a measure cannot, therefore, be the subject-matter of notification before it is implemented.”¹

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¹ Judgement of 21 September 2005 in Case T-306/01, Ahmed Ali Yusuf and Al Barakaat International Foundation v. Council and Commission, par. 308.

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9. Common Position 2001/931/CFSP provides that the list will be reviewed at least every six months, **NOT DECLASSIFIED**

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16. As regards the UN Al Qaeda and Taliban list, Resolution 1617 requires that the UN Al Qaeda and Taliban Sanctions Committee be provided with a statement of case describing the basis of the proposal. Paragraph 6 states in this regard:

“6. *Decides* that the statement of case ... may be used by the Committee in responding to queries from Member States whose nationals, residents or entities have been included on the Consolidated List; decides also that the Committee may decide on a case-by-case basis to release the information to other parties, with the prior consent of the designating State, for example, for operational reasons or to aid the implementation of the measures; decides also that States may continue to provide additional information which shall be kept on a confidential basis within the Committee unless the submitting State agrees to the dissemination of such information”

17. The fourth report of the Analytical Support and Sanctions Monitoring Team for Al Qaeda and Taliban sanctions (S/2006/154) suggested that further guidance be given on this matter:

“27. ... the Team recommends that the Committee provide additional guidance for the “statement of the case” required under resolution 1617 (2005) In the Team’s view, a successful listing is most often linked to a complete and thorough account of the basis for listing, including the nature of the subject’s association with Al-Qaida or the Taliban. The Team believes that successful listings generally are factual, avoid unsupported allegations or broad assumptions and reference supporting evidence or documentation to the greatest extent possible. To speed up the approval process, States might be encouraged to provide the Committee with any available supporting evidence or documentation, such as arrest warrants, existing Interpol notices, indictments or judicial decisions or transcripts.

28. To strengthen paragraph 6 of Security Council resolution 1617 (2005), the Team also proposes that States be encouraged to submit a statement of the case that could be publicly released, or at least revealed to requesting States or organizations (such as Interpol) upon the Committee’s approval. States could submit a separate, confidential statement of the case, where necessary. In any event, the Team believes that all statements of the case submitted should be labelled by States as “confidential” or “non-confidential”, so that the Committee knows whether or not they can be released, if necessary.”

18. Article 52(1) EU Charter provides:

“Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.”

19. **NOT DECLASSIFIED** Article 253 of the EC Treaty provides that Regulations, Directives and Decisions adopted jointly by the European Parliament and the Council, and such acts adopted by the Council or the Commission, shall state the reasons on which they are based, without making any exceptions.

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Article 19, last paragraph, of the Statute of the Court of Justice makes the following arrangement on this point:

“Only a lawyer authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area may represent or assist a party before the Court.”

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FROM THIS POINT UNTIL THE END OF THE DOCUMENT (page 14):

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