



COMMISSION OF THE EUROPEAN COMMUNITIES

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2001/0228 (CNS)

Proposal for a

**COUNCIL REGULATION**

**on specific restrictive measures directed against certain persons and entities with a view to combating international terrorism**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

- (1) At its extraordinary meeting on 21 September 2001 the European Council declared that terrorism is a real challenge to the world and to Europe, and that the fight against terrorism will be a priority objective of the European Union. It also declared that combating the funding of terrorism is a decisive aspect of the fight against terrorism and called upon the Council to take the necessary measures to combat any form of financing for terrorist activities.
- (2) The proposed Regulation is intended to ensure a rapid and more coherent application, and optimal effectiveness, of these measures throughout the European Community. In order to prevent circumvention of the proposed measures, it is considered necessary to apply restrictions on intra-Community payments and movements of capital.
- (3) The proposed measures may have to be complemented in due course by additional measures, taking into account decisions made by the UN Security Council and experience with the application of the proposed measures. The Commission will make additional proposals where appropriate.

Proposal for a

**COUNCIL REGULATION**

**on specific restrictive measures directed against certain persons and entities with a view to combating international terrorism**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Whereas:

- (1) The European Council at its extraordinary meeting on 21 September 2001 declared that terrorism is a real challenge to the world and to Europe and that the fight against terrorism will be a priority objective of the European Union.
- (2) The European Council declared that combating the funding of terrorism is a decisive aspect of the fight against terrorism and called upon the Council to take the necessary measures to combat any form of financing for terrorist activities.
- (3) The European Council asked the Council to evaluate systematically the European Union's relations with third countries in the light of support which those countries might give to terrorism.
- (4) The measures provided for in this Regulation, when taken at the level of the European Union, will ensure a rapid and more coherent application, and optimal effectiveness of these measures throughout the Community, while at the same time preventing a distortion of competition or negative effects on the functioning of the common market.
- (5) For the purpose of preventing circumvention of the provisions of this Regulation, restrictions should also be imposed on intra-Community payments and movements of capital.
- (6) The measures provided for in this Regulation should not lead to disproportionate damage to the interests of the Community and, therefore, provision should be made for decisions on exceptions to be taken in accordance with procedures which minimise the risks to the interests of the Community.

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

- (7) A procedure should also be provided for amending the annexes to this Regulation.
- (8) Since the measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>3</sup>, they should be adopted by use of the management procedure provided for in Article 4 of that Decision.
- (9) Circumvention of this Regulation should be countered by an adequate system of information, and where appropriate, remedial measures, including additional Community legislation.
- (10) The competent authorities of the Member States should, where necessary, be empowered to ensure compliance with this Regulation.
- (11) The Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive. It is desirable that those sanctions can be imposed as from the date of entry into force of this Regulation.
- (12) The Commission and the Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation.
- (13) It is necessary for this Regulation to enter into force as a matter of urgency.
- (14) The Treaty does not provide, for the adoption of this Regulation, powers other than those under Article 308,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

For the purpose of this Regulation, the following definitions shall apply:

- (1) 'Funds' means financial assets and economic benefits of any kind, including, but not necessarily limited to, cash, cheques, claims on money, drafts, money orders and other payment instruments; deposits with financial institutions or other entities, balances on accounts, debts and debt obligations; publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, derivatives contracts; interest, dividends or other income on or value accruing from or generated by assets; credit, right of set-off, guarantees, performance bonds or other financial commitments; letters of credit, bills of lading, bills of sale; documents evidencing an interest in funds or financial resources, and any other instrument of export-financing.
- (2) 'Freezing of funds' means preventing any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount,

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<sup>3</sup> OJ L 184, 17.7.1999, p. 23.

location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management.

#### *Article 2*

1. Except as permitted under Articles 7 and 8:
  - (a) all funds held by a natural or legal person, entity or body listed in Annex I shall be frozen;
  - (b) no funds shall be made available, directly or indirectly, to or for the benefit of a natural or legal person, entity or body listed in Annex I.
2. The Council, acting by qualified majority on a proposal from the Commission, shall adopt amendments to Annex I.

#### *Article 3*

It shall be prohibited to engage in or to continue the provision of financial services to or for the benefit of a natural or legal person, entity or body listed in Annex I.

#### *Article 4*

1. The participation, knowingly and intentionally, in related activities, the object or effect of which is, directly or indirectly, to circumvent Articles 2 and 3 shall be prohibited.
2. Any information that the provisions of this Regulation are being, or have been, circumvented shall be notified to the competent authorities of the Member States listed in Annex II and/or to the Commission.

#### *Article 5*

Without prejudice to the Community rules concerning confidentiality and to Article 284 of the Treaty, the competent authorities of the Member States shall have the power to require banks, other financial institutions, insurance companies, and other bodies, entities and persons to provide all relevant information necessary for ensuring compliance with this Regulation.

#### *Article 6*

In cases where there exists a reasonable expectation that a person, company, undertaking, institution or entity is acting on behalf or for the benefit of a natural or legal person, entity or body listed in Annex I, but does not appear on that list, any natural or legal person shall, before entering into activities otherwise prohibited by this Regulation, obtain written confirmation from the relevant competent authorities of the Member States listed in Annex II that such a person, company, undertaking, institution or entity is not acting on behalf or for the benefit of a natural or legal person, entity or body listed in Annex I.

If the competent authorities do not provide such written confirmation within 10 working days, the person, company, undertaking, institution or entity shall be deemed not to be acting on behalf or for the benefit of a natural or legal person, entity or body listed in Annex I.

#### *Article 7*

Article 2 shall not apply to:

- (1) payments for essential human needs for be fulfilled within the Community;
- (2) addition to frozen accounts of interest due on those accounts;
- (3) payments of funds due under contracts, agreements or obligations which were concluded or arose prior to the entry into force of this Regulation provided that those payments are made into a frozen account within the Community.

#### *Article 8*

1. Specific or general authorisations to unfreeze funds or to make funds available with a view to the protection of the interests of the Community may be granted in accordance with the procedure referred to in Article 9(2).

Annex II may be amended in accordance with the same procedure.

2. Any request by a legal or natural person for an authorisation referred to in paragraph 1 shall be made to the Commission directly or through the appropriate competent authorities of the Member States listed in Annex II.

#### *Article 9*

1. The Commission shall be assisted by the committee instituted by Regulation (EC) No 2271/96.
2. Where reference is made to this paragraph, the management procedure laid down in Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be 10 working days.

#### *Article 10*

The committee referred to in Article 9 may examine any question concerning the application of this Regulation referred to it by the Chairman either on his own initiative or at the request of a Member State.

#### *Article 11*

The Commission and the Member States shall immediately and fully inform each other of the measures taken under this Regulation and supply each other with the relevant information at

their disposal in connection with this Regulation, notably information received in accordance with Articles 4, 5 and 6, and in respect of violation and enforcement problems or judgements handed down by national courts.

#### *Article 12*

Each Member State shall determine the sanctions to be imposed where the provisions of the Regulation are infringed. Such sanctions shall be effective, proportionate and dissuasive.

Pending the adoption, where necessary, of any legislation to this end, the sanctions to be imposed where the provisions of this Regulation are infringed shall be those determined by the Member States in accordance with Article 13 of Regulation (EC) No 467/2001<sup>4</sup>, Article 8 of Regulation (EC) No 2488/2000<sup>5</sup> or Article 7 of Regulation (EC) No 1081/2000<sup>6</sup>, whichever may be more severe.

#### *Article 13*

This Regulation shall apply:

- (1) within the territory of the Community including its airspace,
- (2) on board any aircraft or any vessel under the jurisdiction of a Member State,
- (3) to any person elsewhere who is a national of a Member State,
- (4) to any legal person, entity or body which is incorporated or constituted under the law of a Member State,
- (5) to any legal person, entity or body doing business within the Community.

#### *Article 14*

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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<sup>4</sup> OJ L 67, 9.3.2001, p. 1.

<sup>5</sup> OJ L 287, 14.11.2000, p. 19.

<sup>6</sup> OJ L 122, 24.5.2000, p. 29.

Done at Brussels, [...]

*For the Council*  
*The President*  
[...]

## ANNEX I

### **List of natural or legal persons, entities and bodies referred to in Article 2**

1. Al Qaida/Islamic Army
2. Abu Sayyaf Group
3. Armed Islamic Group (GIA)
4. Harakat ul-Mujahidin (HUM)
5. Al-Jihad (Egyptian Islamic Jihad)
6. Islamic Movement of Uzbekistan (IMU)
7. Asbat al-Ansar
8. Salafist group for Call and Combat (GSPC)
9. Libyan Islamic Fighting Group
10. Al-Itihaad al-Islamiya (AIAI)
11. Islamic Army of Aden
12. Usama Bin laden
13. Muhammad Atif (a.k.a. Subhi Abu Sitta, Abu Hafs Al Masri)
14. Sayf al-Adl
15. Shaykh Sai'id (a.k.a. Mustafa Muhammad Ahmad)
16. Abu Hafs the Mauritanian (aka, Mahfouz Ould al-Walid, Khalid Al-Shanqiti)
17. Ibn Al-Shaykh al-Libi
18. Abu Zubaydah (a.k.a. Zayn al-Abidin Muhammad Hussayn, Tariq)
19. Abd al-Hadi al-Iraqi (a.k.a. Abu Abdallah)
20. Ayman al-Zawahiri
21. Thirwat Salah Shihata
22. Tariq Anwar al-Sayyid Ahmad (a.k.a. Fathi, Amr al-Fatih)
23. Muhammad Salah (a.k.a. Nasr Fahmi Nasr Hasanayn)
24. Makhtab Al-Khidamat/Al Kifah
25. Wafa Humanitarian Organization

26. Al Rashid Trust

27. Mamoun Darkazanli Import-Export Company

**ANNEX II**

**List of competent authorities referred to in Articles 4, 6 and 8**