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NOTE

From : Foreign Relations Counsellors Working Party
To : Political and Security Committee

No. prev. doc. 11054/07 PESC 808 RELEX 502 FIN 302 COTER 56

Subject : European Union autonomous sanctions:
- Recommendations for working methods for EU autonomous sanctions

1. On 27 June 2007, COREPER endorsed a series of practical recommendations for listings and de-listings in respect of country-specific EU autonomous sanctions or EU additions to UN sanctions (doc. 11054/07).
2. On 19 July 2011, the Political and Security Committee (PSC) held, on the basis of contributions presented by several Member States, a horizontal discussion on EU policy on restrictive measures (sanctions). PSC invited the Foreign Relations Counsellors Working Party (RELEX) and its Sanctions Formation to take work forward, based on Member States contributions and the PSC discussion, including to review implementation of the Sanctions Guidelines and best practices with a view to ensuring efficiency, effectiveness and quality of the legal acts, and report back to the PSC.

3. On 10 November 2011, the European External Action Service presented draft Recommendations for working methods for EU autonomous sanctions taking account of certain aspects raised in Member States' contributions. RELEX discussed the EEAS paper on 24 November, 5 and 15 December 2011. It reached agreement on Recommendations as set out in the Annex to this note on 16 December 2011.
4. It is to be noted that discussions in RELEX/Sanctions Formation concerning the updating of the Sanctions Guidelines are still on-going. It is understood that upon completion of the review of the Sanctions Guidelines, the present Recommendations would become their part. The issue of transliterations of names referred to in paragraph 5 of the Recommendations will be further addressed in the context of the review of the Sanctions Guidelines.
5. Considering the above:
 - PSC is invited to endorse the Recommendations set out in the Annex;
 - PSC is invited to recommend to COREPER to endorse those Recommendations.

Recommendations for working methods for EU autonomous sanctions

Restrictive measures against third countries, individuals or entities are an essential foreign policy tool of the EU in pursuing its objectives in accordance with the principles of the Common Foreign and Security Policy. In general terms, restrictive measures are imposed to bring about a change in policy or activity by the targeted country, part of a country, government, entities or individuals. They are preventive, non-punitive, instruments which should allow the EU to respond swiftly to political challenges and developments. Sanctions should be used as part of an integrated and comprehensive policy approach involving political dialogue, complementary efforts and other instruments. The EU and its Member States should actively and systematically communicate on EU sanctions, including with the targeted country and its population.

The measures should target the policies and the means to conduct them and those identified as responsible for the policies or actions that have prompted the EU decision to impose sanctions. Such targeted measures should minimise adverse consequences for those not responsible for such policies and actions, in particular the local civilian population or legitimate activities in or with the country concerned. The political objectives and criteria of the restrictive measures should be clearly defined in the legal acts. This would allow the EU to identify the conditions for amending or lifting the sanctions. The type of measures will vary depending on their objectives and their expected effectiveness in achieving these objectives under the particular circumstances, reflecting the EU's targeted and differentiated approach.

Restrictive measures must respect human rights and fundamental freedoms, in particular due process and the right to an effective remedy in full conformity with the jurisprudence of the EU Courts. The measures imposed must be proportionate to their objectives.

The uniform and consistent interpretation and effective implementation of the restrictive measures is essential to ensure their effectiveness in achieving the desired political objective.

The European External Action Service (EEAS) should have a key role in the preparation and review of sanctions regimes as well as in the communication and outreach activities accompanying the sanctions, in close cooperation with Member States, relevant EU delegations and the Commission.

Proposals for restrictive measures

1. Proposals for restrictive measures, including proposals for listings or de-listings, in respect of country-specific EU autonomous sanctions should be submitted by the Member States or by the EEAS. These proposals should form part of the broader policy approach agreed by the Council. In principle they should be distributed by COREU with the appropriate level of classification.
2. The political aspects and broader parameters of the proposals should then be discussed in the relevant regional working party assisted by sanctions experts from the EEAS and experts from the Commission and the Council Legal Service. Where appropriate, the Political and Security Committee will discuss the proposals and provide political orientation to the working parties concerned, notably on the type of measures selected for further proceedings.
3. The Heads of Missions (HoMs) located in the country(ies) concerned will be invited to provide, where appropriate, their advice on proposals for restrictive measures or additional designations. Equally, the Commission services will be invited to provide, where appropriate, their advice on specific measures which would fall under the competence of the Union.
4. All the legal, technical and horizontal aspects of the proposed restrictive measures should be discussed in RELEX. The proposals for the Council Decision introducing the restrictive measures and for the Council Regulation defining the specific measures falling under the competence of the Union will be presented in RELEX for discussion, respectively by the EEAS and the Commission. Preferably, the two legal acts should be submitted to COREPER and formally adopted by the Council at the same time, or with minimum time delay between the two instruments.

Proposals for listings

Identifiers

5. Proposals for autonomous listings should be clear and unequivocal. In particular they shall aim to include sufficient details (identifiers) so that the listing decision, once it has entered into effect, can be effectively implemented by economic operators and national authorities (e.g. banks, consulates). Identifying information is also crucial to ensure that restrictive measures do not affect non targeted persons and entities. With regard to natural persons, the information shall aim to include in particular names (where available also in the original language and with appropriate transliteration), including aliases, date and place of birth, nationality, passport and identity card numbers, gender, address, if known, and function or profession. With regard to groups, legal persons or entities such information shall aim to include names, place and date of registration, registration number and place of business. The date of designation should also be included. A model template is attached.

6. It is primarily the responsibility of those submitting the proposal to provide such identifiers. Other delegations should contribute to this process. Input from the HoMs located in the country(ies) concerned will be requested, where appropriate.

Reasons for listing

7. Proposals for autonomous listings should include individual and specific reasons for each listing. The purpose of the reasons is to state, as concretely as possible, why the Council considers, in the exercise of its discretion, that the person, group or entity concerned falls under the designation criteria defined by the relevant legal act, taking into consideration the objectives of the measures as expressed in its introductory paragraphs.

8. It is primarily the responsibility of those submitting the proposal to provide such reasons. Other delegations should contribute to this process. Input from the HoMs located in the country(ies) concerned will be requested, where appropriate.

9. The reasons for listings will be finalised by the RELEX working party on the basis of the elements discussed in the regional working party. If needed, RELEX may request additional information from the regional working party in order to ensure that listings are legally sound and properly substantiated.

10. These reasons should, in principle, be set out in a separate column in the Annex to the legal act containing the list of persons, groups and entities subject to restrictive measures. As this act will be published in the Official Journal, these reasons should be capable of being made public. In exceptional cases, where it is considered that the reasons for the listing are not suitable for publication, because of considerations of privacy and security, the reasons will need to be addressed separately to the person, group or entity concerned.

Notification of listing

11. The notification of the decision and of the reasons justifying the listing is achieved by means of a letter, where appropriate, or through the publication of a notice in the Official Journal (C series) on the same day as the publication of the legal act in question indicating that the Council will transmit the reasons for listing on request. The notification will inform the persons, groups and entities concerned about their right to present observations and to request a review of the decision taken by the Council as well as of their right to challenge the Council's decision before the General Court in accordance with the relevant provisions in the EU treaties.

Deliberations of the working party

12. If necessary, the competent working party may be reinforced by experts from other Council working parties.

13. The deliberations of the working party are confidential. This is particularly important in cases where the restrictive measures would impose an asset freeze. Adequate steps should be taken to ensure the confidentiality of the proceedings, notably with regard to the distribution of proposals.

14. The Chair of the working party concerned will organise meetings as and when necessary; once discussed in the working party, the Chair could seek approval of proposed listings or de-listings using the silence procedure at working party level. Delegations should be given sufficient time to examine proposals before they are discussed, bearing in mind the agreed political imperatives that may drive the timetable for a proposal. Legal acts on a urgent matter may be adopted by written procedure.

Review of the measures

15. The review of EU autonomous sanctions or EU additions to UN sanctions should take place at regular intervals and in accordance with the provisions of the relevant legal acts. Regular assessments of sanctions regimes by the relevant working party and RELEX, assisted by the EEAS, the Commission and HoMs, should permit the adjustment of the measures, as needed, in function of the developments with regard to the stated objectives and the effectiveness of the measures in that respect.

16. The uniform and consistent interpretation and effective implementation of the restrictive measures is an essential element ensuring their effectiveness in order to achieve the desired political objectives. Member States shall inform each other of the measures taken under the relevant legal acts and shall supply each other with any other relevant information at their disposal in connection with these acts, in particular information in respect of violation and enforcement problems and judgments of national courts. Information on accounts and amounts frozen should also be provided in line with relevant legal requirements. In addition, Member States shall inform each other of any derogation granted in accordance with the procedures foreseen in the legal acts. The Commission and the EEAS should be fully involved in this process. The Council Legal Service should inform the relevant working party and the RELEX working party of any relevant judgment by the EU courts.

17. The established forum of the RELEX Sanctions formation and the informal so-called “Sanctions Forum” should be used by Member States and their experts in order to address interpretation and implementation issues.

Processing requests for de-listings

18. Individual requests for de-listing should be processed, as soon as they arrive, in accordance with the applicable legal instrument and EU Best Practices for the effective implementation of restrictive measures.¹

¹ Para 17 in doc. 8666/1/08.

19. The General Secretariat of the Council will act as a mailbox for de-listing requests. Any observations or reconsideration of a listing, with supporting documentation, are to be forwarded in writing to the Council of the European Union in accordance with the review process foreseen in the relevant sanctions regime and as explained in the accompanying notice published in the OJ or notification letter where the address is available.

20. When the Council Secretariat receives such requests, it will forward them to the competent regional working party for consideration on the basis of a preliminary analysis prepared by the EEAS and the Council Legal Service. The legal, technical and horizontal aspects of the requests for de-listing and the EU reply will be discussed in the RELEX working party.

Outreach and communication

21. The effectiveness of restrictive measures is directly related to the adoption of similar measures by third countries. In principle therefore it is preferable for sanctions to be adopted in the framework of the UN. Where this is not possible, the aim should be to bring as much as possible of the international community to exert pressure on the targeted country.

22. When adopting autonomous sanctions, the EU should, through outreach, actively seek cooperation and if possible adoption of similar measures by relevant third countries in order to minimize substitution effects and strengthen the impact of restrictive measures. In particular, candidate countries should be systematically invited to align themselves with the measures imposed by the EU. In addition, the issue of uniform and consistent interpretation and effective implementation of UN sanctions regimes should regularly be included in consultations with key partners. EU delegations should be fully involved in this process.

23. The EU and its Member States should actively and systematically communicate on EU sanctions, in order to give them visibility and avoid any misperception, in particular from the local civilian population. Such communication will also ensure the maximum political impact of the measures. Common messages should be discussed in the relevant geographical working party in consultation with the RELEX working party with regard to the legal, technical and horizontal consequences of the measures.

Templates to be used as a model for listing persons, groups and entities subject to restrictive measures

A. Template to be used as a model for listing persons subject to restrictive measures

Surname, First Name (where available also in the original language and with appropriate transliteration):

Alias:

Date of birth:

Place of birth (town, country):

Nationality:

Passport or ID Number (including country that issued and date and place of issue):

Gender:

Address (No, street, postal code, town, country):

Function or profession:

Other information (e.g. name of father and mother, fiscal number, telephone or fax number):

B. Template to be used as a model for listing groups and entities subject to restrictive measures

Name:

Place of registration:

Date of registration:

Registration number:

Principal place of business:

Other information :
