



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

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"I/A" ITEM NOTE

From General Secretariat of the Council
To : Committee of Permanent Representatives/Council
Subject : Guidelines on implementation and evaluation of restrictive measures (sanctions)
in the framework of the EU Common Foreign and Security Policy
- new elements

1. On 8 December 2003, the Council approved Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy¹. The guidelines address a number of general issues and present standard wording and common definitions that may be used in the legal instruments implementing restrictive measures.
2. The Guidelines were further reviewed and updated on 25 June 2012².
3. On 21 December 2012, the Council requested the Foreign Relations Counsellors Working Party (RELEX) to agree on a uniform interpretation of the prohibition on making available indirectly to listed persons or entities funds or economic resources through persons or entities owned or controlled by the listed persons or entities.^o

¹ 15579/03.

² 11205/12.

4. Following its meetings on 24, 28, 29, 30 and 31 January 2013, RELEX agreed on elements to be included in the Guidelines concerning the prohibition on making available indirectly to listed persons or entities funds or economic resources through persons or entities owned or controlled by the listed persons or entities.
5. During discussions RELEX recalled that the elements agreed for the Guidelines, as set out in Annex, do not create a requirement to obtain authorisations from competent authorities.
6. In addition, delegations agreed on the need to revert to the notion of ownership or control of entities by listed persons or entities with a view to reaching a common understanding by 31 March 2013 for inclusion in the Guidelines.
7. Delegations also agreed to revert to the issue of the making available of funds in the light of the fact that funds are easily transferrable, difficult to trace and thus pose a particular risk.
8. In view of the above, the Permanent Representatives Committee is invited to:
 - confirm the agreement on the elements to be included in the Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, as set out in Annex;
 - recommend that they be forwarded to the Council for adoption.

Elements for inclusion in the Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy under subheading "Compliance" after paragraph 55

1. The making available of funds or economic resources to non-listed persons or entities which are owned or controlled by a listed person or entity will in principle be considered as making them indirectly available to the listed person or entity, unless it can be reasonably determined, on a case-by-case basis using a risk-based approach, taking into account all of the relevant circumstances, including the criteria below, that the funds or economic resources concerned will not be used by or be for the benefit of that listed person or entity.

The criteria to be taken into account include, *inter alia*:

- (a) the date and nature of the contractual links between the entities concerned (for instance sales, purchase, or distribution contracts);
- (b) the relevance of the sector of activity of the non-listed entity for the listed entity;
- (c) the characteristics of the funds or economic resources made available, including their potential practical use by, and ease of transfer to, the listed entity.

An economic resource will not be considered to have been for the benefit of a listed person or entity merely because it is used by a non-listed person or entity to generate profits which might be in part distributed to a listed shareholder.

2. It is to be noted that the indirect making available of funds or economic resources to listed persons or entities may also include the making available of these items to persons or entities which are not owned or controlled by listed entities.

3. The above elements are without prejudice to clauses on non-liability in the relevant legal acts.
 4. Member States are encouraged to share any relevant information at their disposal in relation to the implementation of the prohibition on the indirect making available of funds or economic resources, in particular where the ownership or controlling links are not public and/or in case of front companies, and consider, where appropriate, proposals for listings.
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