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COMET 1

#### 'I' ITEM NOTE

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From:	Foreign Relations Counsellors Working Party
To:	Permanent Representatives Committee
No. prev. doc.:	10826/1/07 REV 1
Subject:	Fight against the financing of terrorism – Establishment of a Council Working Party on restrictive measures to combat terrorism (COMET WP)

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1. On 27 June 2007 the Permanent Representatives Committee endorsed the mandate, practical arrangements and revised working methods of the Working Party on implementation of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (the CP 931 Working Party) (doc. 10826/1/07 REV 1).
2. On 20 September 2016, the Council adopted Decision (CFSP) 2016/1693 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them and repealing Common Position 2002/402/CFSP, as well as Regulation (EU) 2016/1686 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them.

3. On 12 September 2016, the Foreign Relations Counsellors Working Party (RELEX) agreed that the assessment of the impact and functioning of Council Decision 2016/1693/CFSP and examination of appropriate possible improvements should be entrusted to the CP 931 Working Party with an enlarged scope. RELEX also agreed that the name, mandate, practical arrangements and the working methods of the CP 931 Working Party should be adapted accordingly.
4. In several meetings in November 2016, RELEX discussed the name, enlarged mandate, practical arrangements and working methods of the working party with an enlarged scope. On 22 November 2016, RELEX reached agreement on the draft mandate and practical arrangements for the work of the Council Working Party on restrictive measures to combat terrorism (COMET WP) and the revised working methods as set out in Annexes I and II respectively.
5. Coreper, having noted the above, is invited to:
  - endorse the mandate and practical arrangements for the work of the Council working party with an enlarged scope, as set out in Annex I;
  - endorse the revised working methods, as set out in Annex II;
  - agree to make the mandate, practical arrangements and working methods public.

## **Establishment of a Council Working Party on restrictive measures to combat terrorism**

### **Name**

The Working Party on implementation of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism ("COCOP") is renamed "Working Party on restrictive measures to combat terrorism" (hereafter referred to as the "COMET WP").

### **Mandate**

The terms of reference of the "COMET WP" are to:

- examine and evaluate information with a view to listing and de-listing of persons, groups, undertakings and entities , as well as assess whether the information available meets the criteria set out in Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and Articles 2(2) and 3(3) and (4) of Decision (CFSP) 2016/1693 (EU autonomous restrictive measures against ISIL (Da'esh) and Al-Qaida);
- make recommendations for listings and de-listings under Common Position 2001/931/CFSP and Articles 2(2) and 3(3) and (4) of Decision (CFSP) 2016/1693 to be reflected in the necessary proposals for legal acts from the High Representative for Foreign Affairs and Security Policy (HR) or by a Member State which will be examined by the Foreign Relations Counsellors Working Party (RELEX) and endorsed by the Permanent Representatives Committee with a view to their adoption by the Council; and

- prepare the regular review of the lists as foreseen respectively in Article 1(6) of Common Position 2001/931/CFSP and in Article 6(2) of Decision (CFSP) 2016/1693;
- assess the impact and functioning of Common Position 2001/931/CFSP and Council Decision 2016/1693/CFSP and suggest, as appropriate, possible improvements.

### **Practical arrangements**

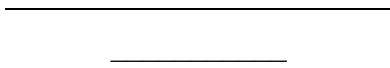
The following practical arrangements will be put in place:

- as stipulated in Annex II, point 3 of Council Decision 2009/908/EU the COMET WP is chaired by the six-monthly Council Presidency<sup>1</sup>;
- meetings will be held in a secured environment so as to enable discussion up to SECRET UE, and will be held as and when necessary;
- adequate steps will be taken to ensure the confidentiality of the proceedings of the COMET WP;
- the date of the meeting, agenda and organisational details will be classified RESTREINT UE;
- the COMET WP will meet whenever circumstances require, but at least once every semester;

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<sup>1</sup> Council Decision 2009/908/EU laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council (OJ L 322, 9.12.2009, p. 28).

- the Council Secretariat will hold any documents relevant for the listing or de-listing of persons, groups, undertakings or entities. Such documents will, if appropriate, bear an EU or national classification marking. The rules on public access to Council documents apply <sup>2</sup>.



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<sup>2</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

**Working methods of the Working Party on restrictive measures to combat terrorism (the COMET WP)**

1. The task of the Working Party on restrictive measures to combat terrorism (the "COMET WP") is to prepare the implementation of and suggest, as appropriate, possible improvements to Common Position 2001/931/CFSP on the application of specific measures to combat terrorism<sup>3</sup> and of Articles 2(2) and 3(3) and (4) of Council Decision (CFSP) 2016/1693 concerning restrictive measures against ISIL (Da'esh) and Al-Qaida and persons, groups, undertakings and entities associated with them. The COMET WP will examine proposals for listings and de-listings of persons, groups, undertakings and entities, and will prepare the regular reviews of the lists as foreseen respectively in Article 1(6) of the Common Position 2001/931/CFSP and in Article 6(2) of Decision (CFSP) 2016/1693.

**Initial proposals for listings**

2. In the case of Common Position 2001/931/CFSP, initial proposals for listings may be made by Member States; or by Member States or the High Representative for Foreign Affairs and Security Policy (HR) regarding listings on the basis of decision(s) by third States' competent authorities. Initial proposals for listings should include initial draft statements of reasons and specify the decision(s) of the national competent authorities and national procedures used as a basis for the listing proposed, as well as the relevant legal framework of domestic law in relation to Common Position 2001/931/CFSP requirements.

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<sup>3</sup> OJ L 344, 28.12.2001, p. 93.

3. When a listing proposal under Common Position 2001/931/CFSP is based on a decision by a competent authority of a third State, the EEAS or the relevant Member State will carry out a first basic scrutiny of the proposal in accordance with the criteria set out in Article 1(4) of the Common Position<sup>4</sup>. The EEAS or the Member State will also gather relevant information regarding the legal and procedural safeguards, including judicial or administrative review, available in that third State to ensure respect for the rights of defence of the person, group or entity concerned. The EEAS or the Member State may on this basis ask the third State for additional information deemed necessary. When applying the listing criteria to listing proposals based on a decision by a competent authority of a third State, the COMET WP will check in particular whether the proposal complies with the abovementioned fundamental principles and procedures.
4. Initial proposals for listing of persons, groups, undertakings and entities under Articles 2(2) and 3(3) and (4) of Council Decision (CFSP) 2016/1693 may be submitted by Member States or the HR. They should include initial draft statements of reasons. The COMET WP will examine whether the information provided meets the criteria set out in Articles 2(2) and 3(3) of Decision (CFSP) 2016/1693<sup>5</sup>.
5. All relevant information should be presented to the COMET WP in support of pending or new proposals for listings under Common Position 2001/931/CFSP or Decision (CFSP) 2016/1693.

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<sup>4</sup> Common Position 2001/931/CFSP constitutes the CFSP basis for the adoption of Council Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.

<sup>5</sup> Articles 1(2), 3(3) and (4) of Decision (CFSP) 2016/1693 constitute the CFSP basis for the adoption of Regulation (EU) 2016/1686.

## **Exchange of information among Member States**

6. Member States will exchange within the COMET WP information regarding any new facts and developments with regard to previous listings, in particular with regard to the national procedures which led to the adoption of the decision referred to in Article 1(4) of Common Position 2001/931/CFSP.
7. Member States may also exchange information on their national systems governing the listing of persons, groups, undertakings or entities. This information exchange could notably:
  - address any new legislative, regulatory or administrative developments and national measures taken for the implementation and enforcement of Common Position 2001/931/CFSP, Regulation (EU) No 2580/2011, Council Decision (CFSP) 2016/1693 and Regulation (EU) 2016/1686;
  - include national listings on terrorism-related grounds.

## **Handling of Proposals**

8. Material from Member States or, in the context of Common Position 2001/931/CFSP, material originating from third States in support of pending or new proposals, or material from listed persons, groups, undertakings and entities that have requested a de-listing, will be circulated to delegations for discussion in the COMET WP.
9. Delegations will have 15 calendar days to check the material and to allow them to forward the information received to their competent national authorities. Exceptionally, the EEAS or a delegation may put forward a justified request to shorten this deadline. A request of this nature does not prejudice the view taken on the issue in the COMET WP.



10. The meetings of COMET WP will be convened by the Presidency on its own initiative or at the request of the EEAS or of a Member State. Delegations will be notified of the meeting at least 15 calendar days in advance. The notice of the meeting will include information on which individual, group, undertaking or entity will be discussed and on what legal basis (Common Position 2001/931/CFSP or Decision (CFSP) 2016/1693). Exceptionally, the EEAS or a delegation may put forward a justified request to shorten the deadline. A request of this nature does not prejudice the view taken on the issue in the COMET WP.
11. If it has been established that a terrorist group, undertaking or entity which is already listed has re-named itself, and that the re-naming did not change the character, and in particular the terrorist objectives, of that group, undertaking or entity, the COMET WP will recommend that the new name be added to the original listing as an alias.
12. The Presidency, on its own initiative or at the request of a Member State or the EEAS, may decide to invite a representative from competent bodies, institutions or agencies to attend the meeting of the COMET WP to make a presentation of background information in order to facilitate discussion on a particular subject. Such bodies, institutions or agencies include notably the following: Europol, Eurojust and the EU Intelligence Analysis Centre (EU INTCEN). Delegates from other relevant Council working parties (for example the Working Party on Visas, the Working Party on Terrorism (International Aspects) - COTER, Working Party on Terrorism - TWP, the Schengen Working Party) may be invited to attend meetings of COMET WP.
13. The COMET WP will make recommendations for listing and de-listing to be reflected in the necessary proposals for legal acts from the HR or by Member States, which will be examined by the Foreign Relations Counsellors Working Party (RELEX) and endorsed by the Permanent Representatives Committee (COREPER) with a view to their adoption by the Council.

14. An appropriate level of confidentiality should be ensured in the follow-up in RELEX and COREPER, and in any deliberations in other Council instances.

### **Statement of reasons**

15. For each person, group, undertaking and entity listed under Common Position 2001/931/CFSP or Decision (CFSP) 2016/1693, the Council will provide a statement of reasons, which will be sufficiently detailed to allow those listed to understand the reasons for their listing and to allow the EU Courts to exercise their power of review where a legal challenge is brought against the listing.
16. The statement of reasons will make clear how the criteria provided for in the underlying legal act (Common Position 2001/931/CFSP or Decision (CFSP) 2016/1693) have been met.
17. The draft statement of reasons will be prepared by the proposing Member State or the EEAS . Each statement of reasons will then be discussed by the COMET WP on a case-by-case basis. The statement of reasons will then be examined by the Foreign Relations Counsellors Working Party (RELEX) and endorsed by COREPER with a view to its adoption by the Council. After adoption by the Council, the statement of reasons will be kept on the Council's file with the possibility for the listed person, group, undertaking or entity concerned or his/her/its legal representatives to have access to it.

18. With regard to listings under Common Position 2001/931/CFSP, the statement of reasons will specify elements in relation to the national decision taken with reference to Article 1(4) of Common Position 2001/931/CFSP, including the information on the national authority/authorities which took the decision, the nature of the decision and the facts to which it relates, the applicable national definition of terrorism, the national decision-making procedures leading to the decision, as well as the review process attached to it, and the Council's assessment of how the alleged acts relate to the definition of terrorist acts in Article 1(3) of the Common Position.
19. Persons, groups and entities subject only to Article 4 of Common Position 2001/931/CFSP are those marked with an \* in Common Position 2009/468/CFSP.

### **Notification**

20. After a listing decision has been taken by the Council, the General Secretariat of the Council will inform each person, group, undertaking and entity listed under Council Regulations (EC) No 2580/2001 or (EU) 2016/1693, by sending a letter to his/her/its address, wherever the address is available, after entry into force of the listing decision. The letter will include the following standard elements:
  - (a) A description of the restrictive measures taken and a mention of the possibility to grant derogations under Article 5 of Council Regulation (EC) No 2580/2001 or Article 5 of Council Regulation (EU) 2016/1693, as appropriate. A reference to the relevant legal acts as published in the Official Journal will be included in the letter and the attention of those listed will be drawn to the possibility of addressing requests to the competent national authorities for an authorisation to use frozen funds for essential needs or specific payments.

- (b) The Council's statement of reasons for the listing of the person, group, undertaking or entity concerned.
  - (c) Reference to the possibility for the person, group, undertaking or entity to send a request to the Council with supporting documents for their listing to be reconsidered. Where appropriate, a deadline will be specified.
  - (d) Reference to the possibility of challenging the Council's decision before the General Court of the European Union, in accordance with the conditions laid down in Article 275, 2nd paragraph, and Article 263, 4th and 6th paragraphs, of the Treaty on the Functioning of the European Union, insofar as the listing has given rise to travel restrictions and/or an asset freeze.
  - (e) Request for consent of the listed persons, groups, undertakings and entities to give public access to the statement of reasons.
21. In addition, a notice will be published in the 'C' series of the Official Journal ('Information and Notices') informing the persons, groups, undertakings and entities of the elements set out in paragraphs 20(a), (c), (d) and (e) above. The purpose of the notice is also to inform the persons, groups, undertakings and entities whose address is not known of the possibility to obtain the Council's statement of reasons concerning them.

## **Review procedure**

22. Pursuant to Article 1(6) of Common Position 2001/931/CFSP, listing decisions taken by the Council will be reviewed at regular intervals and at least every six months. Pursuant to Article 6(2) of Decision (CFSP) 2016/1693, the measures referred to in Article 2(2) and Article 3(3) and (4) will be reviewed at regular intervals and at least every twelve months. Those review processes involve the following steps:

- (a) As specified in the procedures for notification set out in paragraphs 20 and 21, the persons, groups, undertakings and entities are informed through the statement of reasons of the specific information that forms the basis for the Council's decision to list and are invited to make their views known for the purposes of the review.
- (b) Member States will inform each other about any new facts and developments with regard to the national procedures which led to the adoption of the decision referred to in Article 1(4) of Common Position 2001/931/CFSP. The EEAS will request from relevant third States details of any changes or developments related to the decision of their competent authority on which a listing is based. Any new facts and developments concerning decisions of competent authorities of third States will be circulated to Member States for consideration. The COMET WP will carry out a thorough assessment as to whether the grounds for listings under Article 1(4) of Common Position 2001/931/CFSP for each listing are still valid. If, in the course of this assessment, the COMET WP considers that the new information presented requires an amendment to the statement of reasons, it will recommend that the statement of reasons be updated accordingly.
- (c) The COMET WP will also carry out a thorough assessment as to whether the grounds for listings under Article 2(2) and Article 3(3) and (4) of Decision (CFSP) 2016/1693 for each listing are still valid, taking into account all relevant considerations, including *inter alia* the person's, group's, undertaking's or entity's record of involvement in terrorist acts and the current status of the group, undertaking or entity. Any new information presented by a Member State or a listed person, group, undertaking or entity will be examined by the COMET WP. If, in the course of this assessment, the COMET WP considers that the new information presented requires an amendment to the statement of reasons, it will recommend that the statement of reasons be updated accordingly.

- (d) Following its assessment under point b or c above, the COMET WP will make recommendations to be reflected in the relevant legal acts, including a new consolidated list of persons, groups, undertakings and entities.
- (e) The persons, groups, undertakings and entities concerned will be informed of the outcome, as specified in the procedures for notification set out in paragraphs 20 and 21.
23. Independently of the above review process, the Council can, at any time, adopt a decision to add additional persons, groups, undertakings or entities to the list, or decide on de-listings, without adopting a new consolidated list. The procedure outlined in paragraphs 6 to 14 is applicable. Any such decision will subsequently be reflected in a new consolidated list adopted on the occasion of the next regular review by the Council.

### **Requests for de-listing**

24. Requests for a de-listing can be made at any time by listed persons, groups, undertakings and entities, any Member State, or a third State in the case of a listing under Common Position 2001/931/CFSP based on a decision by a competent authority of that third State, by submitting information in support of such a request. Requests for de-listing will be discussed in the COMET WP as a matter of priority.

Requests for de-listing are to be sent in writing to the following address:

Council of the European Union  
General Secretariat  
DG C 1C  
Rue de la Loi/Wetstraat 175  
1048 Bruxelles/Brussel  
BELGIQUE/BELGIË

E-mail: [sanctions@consilium.europa.eu](mailto:sanctions@consilium.europa.eu)

25. De-listing is necessary if the criteria for listing are no longer met. De-listing may also be necessary or appropriate in other cases, e.g. death of a listed person or the liquidation of a listed entity.
26. Where the General Secretariat of the Council receives a letter from a listed person, group, undertaking or entity or their legal representative contesting their listing, it will acknowledge receipt of the letter.
27. The letter, together with a copy of any supporting documents submitted, will be distributed to delegations with a view to discussion in the COMET WP. The procedure outlined in paragraphs 6 to 14 is applicable.

#### **Communication with listed persons, groups, undertakings and entities or their representatives**

28. The General Secretariat of the Council will manage communications with listed persons, groups, undertakings and entities exclusively in writing and will assist the Presidency and the EEAS in following up any requests for reconsideration by listed persons, groups or entities, as well as in preparing the regular reviews.
29. These working methods will be kept under constant review.

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