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Subject: Guidelines on implementation and evaluation of restrictive measures (sanctions)
 in the framework of the EU Common Foreign and Security Policy

Delegations will find attached Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, as agreed by the Foreign Relations Counsellors Working Party on 1 December 2005.

**GUIDELINES ON IMPLEMENTATION AND EVALUATION OF
RESTRICTIVE MEASURES (SANCTIONS) IN THE FRAMEWORK OF
THE EU COMMON FOREIGN AND SECURITY POLICY**

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I. Introduction

1. The European Union's extensive experience in designing, implementing, enforcing and monitoring restrictive measures (sanctions) in the framework of the CFSP¹ has shown that it is desirable to standardise implementation and to strengthen methods of implementation. These guidelines² address a number of general issues and present standard wording and common definitions that may be used in the legal instruments implementing restrictive measures. However, they do not address the political process leading to the decision to impose or repeal such restrictive measures³.

Moreover, the EU has developed Best Practices on Effective Implementation of Financial Restrictive Measures⁴, where recommendations are given for an effective implementation of restrictive measures in accordance with applicable legislation.

¹ See Commission website, list of restrictive measures in force
[http://europa.eu.int/comm/external_relations/cfsp/sanctions/measures.htm]

² First version of the guidelines was adopted by the Council on 8 December 2003 (doc. 15579/03); an updated version was adopted on 16 March 2005 (doc. 6749/05).

³ As regards policy aspects, it is recalled that the Council on 14 July 2004 adopted basic principles on the use of restrictive measures (sanctions) (doc. 10198/1/04).

⁴ doc. 15115/05

II. Principles

A. Objectives

2. Within the framework of the Common Foreign and Security Policy, the Council may decide to impose restrictive measures against third countries, entities or individuals. These measures must be consistent with CFSP objectives, as set out in Article 11 of the Treaty on European Union (TEU).
3. Certain restrictive measures are imposed by the Council in implementation of Resolutions adopted by the UN Security Council under Chapter VII of the UN Charter. In the case of measures implementing UN SC Resolutions, the EU legal instruments will need to adhere to those Resolutions. However, it is understood that the EU may decide to apply measures that are more restrictive.
4. In general terms, restrictive measures are imposed by the EU to bring about a change in policy or activity by the target country, part of country, government, entities or individuals, in line with the objectives set out in the Common Position. Accordingly, the EU will repeal/adapt the restrictive measures as a function of positive developments in light of its objectives. Where possible and consistent with the European Union's overall strategy towards the third country concerned, the legal instruments imposing restrictive measures may refer to incentives to encourage the required change in policy or activity. It will be important to ensure that such incentives do not reward non-compliance.
5. The objective of each measure should be clearly stated and consistent with the Union's overall strategy in the area concerned. Both the overall strategy and the specific objective should be recalled in the introductory paragraphs of the Council legal instrument through which the measure is imposed. The restrictive measures do not have an economic motivation.

6. The legal instruments will be subject to regular review in order to assess the efficiency of the adopted restrictive measures with regard to the objectives stated. The review will be conducted by the relevant Council working parties and committees, on the basis of EU Heads of Mission reports where relevant.

B. Legal issues

7. As indicated above, the Council imposes restrictive measures within the framework of the CFSP. The Council first adopts a Common Position under Article 15 of the TEU. The measures foreseen in that Common Position are either implemented at EC or at national level. Measures such as arms embargoes or restrictions on admission are implemented directly by the Member States, who are legally bound to act in conformity with EU Common Positions. Other measures interrupting or reducing, in part or completely, economic relations with a third country, including measures freezing funds and economic resources, are implemented by means of an EC Regulation, adopted by the Council on a proposal from the Commission and based on the provisions of the Treaty establishing the European Community (TEC)⁵. Such Regulations are binding and directly applicable throughout the EC, and they are subject to judicial review by the Court of Justice and Court of First Instance of the EC in Luxembourg.
8. When imposing restrictive measures, the legal context of the measures should be set out. In addition to relevant provisions of the Treaty on European Union and Treaty establishing the European Community, this may include references to any relevant UN Security Council resolution, or other applicable provisions of international law.
9. The introduction and implementation of restrictive measures must always be in accordance with international law. They must respect human rights and fundamental freedoms, in particular due process and the right to an effective remedy. The measures imposed must always be proportionate to their objective.

⁵ Article 301 in conjunction with Article 60 TEC. In some cases, Article 308 TEC may also be necessary as a legal basis.

10. As indicated above, the restrictive measures should, in particular, be drafted in light of the obligation under Article 6(2) TEU for the EU to respect fundamental rights, as guaranteed by the European Convention on Human Rights and as they result from the constitutional traditions common to the Member States, as general principles of Community law.
11. The restrictive measures should also respect the international obligations of the European Community and its Member States, in particular the WTO Agreements. The General Agreement on Tariffs and Trade (GATT) and on Trade in Services (GATS) apply when restrictive measures affect trade in goods or services with third countries. Article XXI of GATT allows for import and export restrictions which are either applicable to arms and military equipment, or imposed in pursuance of obligations under the United Nations Charter for the maintenance of international peace and security. Article XIV bis of GATS provides for a similar exception. Measures restricting trade which do not fall under these categories, have to meet the conditions laid down in Article XX of GATT and Article XIV of GATS, respectively, and, in some cases, could be incompatible with WTO rules.
12. If EU measures are in conflict with the international obligations of the EC or its Member States, a common approach for dealing with such conflicts may have to be developed.
13. When deciding on restrictive measures it is important to consider which measure or package of measures is most appropriate.

C. Targeted measures

14. The measures taken should target those identified as responsible for the policies or actions that have prompted the EU decision to impose restrictive measures. Such targeted measures are more effective than indiscriminate measures and minimise adverse consequences for those not responsible for such policies and actions.

15. The measures used against a particular regime will vary depending on the objectives of the restrictive measures and their likely effectiveness. They include, *inter alia*, freezing of funds and economic resources, restrictions on admission, arms embargoes, embargoes on equipment that might be used for internal repression, other export restrictions, import restrictions, and flight bans. On one occasion, a ban on the provision of financial services has also been used ⁶.
16. In designing and implementing its legal instruments, the EU can draw on its own experience in designing and implementing restrictive measures regimes and on the work carried forward in other fora, e.g. the Interlaken, Bonn – Berlin and Stockholm processes, as well as the experiences of the UN in this field.

D. Lists of targeted persons and entities

17. The need to respect fundamental rights implies, in particular, that proper attention is given to the protection and observance of the due process rights of the persons to be listed.
18. The decision to subject a person or entity to targeted restrictive measures requires clear criteria, tailored to each specific case, for determining which persons and entities may be listed, which should also be applied for the purpose of removal from the list. These clear criteria will be set out in the CFSP legal instrument. This applies in particular with regard to measures freezing funds and economic resources, both where persons are listed in the framework of measures against one or more third states, as well as where measures target individuals and entities in their own right.
19. In cases where Common Positions provide for restrictive measures targeting not only those responsible for certain policies or actions, but also members of their families, their children under 18 should not, in principle, be targeted. Furthermore, in principle adult children over 18 should not be targeted as offspring of their father or mother, but on the basis of their own responsibility for relevant policies or actions.

⁶ Council Regulation (EC) No 2580/01 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344, 28.12.2001, p. 70).

20. Identifying information is crucial to ensure that targeted restrictive measures do not impact on non-targeted persons and entities, in particular to assist the private sector to implement such measures. It cannot be excluded that in some cases the funds of a person will be frozen or admission will be refused, where this was not intended, due to identifiers that match with those of a designated persons. Member States and the Commission should have procedures in place that ensure that their findings on claims concerning alleged mistaken identity are consistent. The EU Best Practices on Effective Implementation of Financial Restrictive Measures⁷ give some recommendations to that end.
21. In order to improve the effectiveness of restrictive measures, as many specific identifiers as possible should be available at the moment of identification and published at the moment of adoption of the restrictive measures. Identifying information for individuals and entities should be standardised as far as possible. With regard to natural persons listed the information should aim to include in particular surname, first name, alias, sex, date and place of birth, nationality and address, identification or passport number. With regard to groups, legal persons or entities the information should aim to include in particular the full name, principal place of business, place of registration of office, date and number of registration. A model template is attached to these Guidelines.
22. The EU should strive in all cases to ensure that the identifying information provided at the time of the inclusion of a person on a list should be sufficiently precise to allow for an unambiguous identification of the targeted person. After designation of a person or entity, a constant review of identifiers should take place in order to specify and extend them, involving all those who can contribute to this effort, in particular the EU Heads of Mission in the third country concerned, Member States' competent authorities and agencies and financial institutions. Updates of the lists with additional identifying information will be adopted as provided for in the basic act.

⁷ doc. 15115/05.

23. In order to assist the private sector to implement financial restrictions the Commission launched in June 2004 a website which provides, *inter alia*, a consolidated list of persons and entities subject to financial sanctions⁸ and an overview of the restrictive measures in force⁹.

E. Exemptions

24. It is important that the legal instruments on financial restrictions, restrictions on admission and other restrictive measures make provision for appropriate exemptions to take account of humanitarian needs of targeted persons and, where applicable, international obligations, including as host nations of international organisations or the OSCE, with regard to the various restrictive measures taken.
25. The competent authorities should grant exemptions on a case by case basis, which will allow them to assess all interests concerned and to impose conditions to ensure that the exemptions do not frustrate or circumvent the objective of the restrictive measure. The exemptions should be granted on the basis of the relevant legislative instruments. If there are grounds to grant an exemption from one restrictive measure (e.g. financial restrictions) this does not by default justify granting an exemption from another measure (e.g. restrictions on admission) which affects the person or entity concerned (cf. section III: A, D and E).

F. Exchange of information and reporting requirements

26. The competent authorities of the Member States and the Commission each have specific tasks as regards the implementation and application of the restrictive measures. In order to ensure that such measures are applied in a coherent manner, exchange of relevant information between all concerned, in accordance with the provisions of each Common Position and Regulation, is essential. The EU legal instruments should make provision for such exchange.

⁸ http://europa.eu.int/comm/external_relations/cfsp/sanctions/list/consol-list.htm

⁹ http://europa.eu.int/comm/external_relations/cfsp/sanctions/measures.htm

G. Expiration or review of restrictive measures

27. Taking the specific objective of each measure and all other relevant considerations into account, the Council should keep the situation under review and schedule a specific review whenever the political context has changed.
28. Where it is considered appropriate, specific criteria that have to be met for repeal of the restrictive measures can be set out in the legal instrument, but normally proper definition of the specific objective of the measure will be sufficient.
29. When the criteria or specific objectives of the measure have not been met the restrictive measures should continue, except in cases where the Council decides otherwise. The CFSP legal instrument should therefore either have an expiration date or a review clause, as decided by the Council, so as to ensure that the need for renewal of restrictive measures is discussed within an appropriate period of time. The expiration or review date could be decided taking into account relevant facts and considerations (e.g. dates of future elections or peace negotiations which might bring about a change in the political context).
30. If the CFSP legal instrument sets out an expiration date for restrictive measures the Council should develop an understanding about their renewal. To be effective restrictive measures should be lifted according to their objectives, not according to time limits. The time limit therefore would be an occasion to revisit the restrictive measures regime and to assess whether the objectives have been met.

31. In cases where the CFSP legal instrument contains an expiration date, the need for an expiration date in Regulations implementing the CFSP legal instrument is nonetheless not self-evident;
- since the Regulations implement the CFSP act, they have to be repealed, if the CFSP legal instrument ceases to be applicable¹⁰. In such a situation, the Regulations can be repealed with retroactive effect, but it is desirable that this period is kept as short as possible.
 - if a subsequent CFSP legal instrument renews the measures, amending the expiration date of the Regulation or adopting a new one containing the same legal provisions constitutes a mere administrative burden which should be avoided. Especially where last minute decisions on renewal are made, there may be a period during which the measures are not applicable pending amendment or adoption of a Regulation¹¹.

It is, therefore, preferable to have the Regulation continue in force, until it is repealed.

32. For the sake of clarity and transparency, the publication of a consolidated text should be considered in cases where Common Positions or Regulations have been amended at least three times.

¹⁰ See Articles 60 and 301 of the EC Treaty.

¹¹ The implementation of UN restrictive measures in relation to Liberia constitutes an example. See Regulations (EC) No 1030/2003 (OJ L 150, 18.6.2003, p. 1) and (EC) No 1318/2002 (OJ L 194, 23.7.2002, p. 1).

H. Implementation of UN Security Council Resolutions

New measures

33. The UN Charter grants the Security Council powers to decide in a manner binding for all UN members¹² which restrictive measures have to be taken in order to maintain or restore international peace and security, if there is a threat to the peace, a breach of the peace, or an act of aggression. It is important that the EU implement such UN restrictive measures as quickly as possible. Speed is particularly important in the case of asset freezes where funds can move quickly. In such cases, each Member State could consider the possibility of interim national measures with regard to financial measures (see Art. 60(2) TEC). The EU should aim to have the necessary implementing legislation in place without delay and within 30 days of the adoption of the UNSC Resolution at the latest. In cases in which the Commission has received a mandate to update lists of targeted persons or entities annexed to Council Regulations, it should aim to adopt the respective Commission Regulations within three working days after the adoption of the updated UN lists.
34. EU members of the UN Security Council will seek to ensure that, to the greatest extent possible, and without prejudice to their responsibilities under the UN Charter, EU concerns and implementation needs are taken into consideration when negotiating the UNSCR in question, in accordance with Article 19 TEU.

¹² See Article 25 and Chapter VII of the UN Charter.

35. The current legislative procedure requires the adoption of a CFSP legal instrument and an implementing Council Regulation based on the EC Treaty, based on a Commission proposal.
36. The Commission has in several cases presented a proposal for a Council Regulation immediately after adoption of the Security Council Resolution, but before adoption of the CFSP legal instrument. This approach enables the Council to adopt the CFSP legal instrument and the Regulation at the same time, but it should be noted that it requires that the Commission receives all relevant information on the draft Resolution prior to adoption of the Security Council Resolution so as to give it sufficient time to assess to what extent and subject to which terms and conditions the measures should be implemented by means of a Council Regulation. Similar arguments will apply to the drafting of the CFSP legal instruments.
37. Standard wording for legislative texts will be conducive to more rapid implementation of UN restrictive measures. When the EU implements UN restrictive measures the use of standard wording and common definitions must be adapted to the UNSC Resolution.
38. In order to provide EU missions in New York with regular information on the issues encountered in the implementation of UN restrictive measures in the EU, feedback notes will be brought to the attention of EU missions meeting in the framework of the Article 19 coordination in New York.
39. In view of the binding nature of UN Security Council Resolutions, the use of an expiration date is not appropriate when restrictive measures are imposed in application of a Security Council Resolution.

Renewal of temporary measures

40. A specific situation exists when the Security Council decides on measures which expire by a particular date. In such a situation, correct implementation of the UN measures requires immediate legislative action, if the measures are renewed just before the expiration date. In order to prevent expiration of the restrictive measures in cases where renewal is called for, the Council should not copy the expiration date in the implementing Regulation.

Expiration or repeal of measures

41. It is equally important to repeal restrictive measures swiftly in response to UN decisions on this point. Where the EU applies restrictive measures in implementation of Security Council Resolutions only, it is not proper for the implementing legal instruments to remain in place when the Security Council has decided the measures should be lifted. Where necessary, the legislative instruments can be repealed with retroactive effect; it is desirable that this period is kept as short as possible.

Exemptions

42. Chapter VII UNSC Resolutions are mandatory under international law. In the case of EU implementation of restrictive measures decided by the Security Council through a resolution, it will therefore only be possible to include exemptions if they are in line with the Resolution. In this respect, paragraph 34 is relevant, including with regard to humanitarian exemptions for the purpose of satisfying basic needs of targeted persons.

Reporting

43. In cases where UN Security Council Resolutions provide for a reporting obligation, a common EU report to the UN could also be submitted on the measures taken at EU level. In such cases, national and common reporting would be complementary.

I. Competences

44. The purpose of the CFSP legal instrument is to state which restrictive measures are considered necessary to meet its objectives and provide the basis for an action by the Community to interrupt or to reduce economic or financial relations with the third country in question. The European Community can adopt legislative implementation measures through a Regulation based on Articles 60 and 301 of the EC Treaty. In some cases, the Regulation has been based on Articles 60, 301 and 308¹³. Where the Community has no competence it is up to each of the Member States to adopt the necessary legislation or implementing measures.
45. Where restrictive measures are being considered, a case by case assessment needs to be made of Community competence, taking the EC Treaty's attribution of powers to the Community into account. The current practice is that the Council indicates in the CFSP instrument that "action by the Community is needed to implement certain measures" to enable the Commission to propose a Regulation implementing the measures falling within the remit of the Community. Where precision is needed to ensure that all measures are implemented in time, the CFSP instrument should indicate expressly how each measure or part of measure will be implemented.

¹³ Council Regulation (EC) No 2580/2001, of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344, 28.12.2001, p. 70).

Other examples are

- Council Regulation (EC) No 881/2002, of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ L 139, 29.5.2002, p. 9).
- Council Regulation (EC) No 1763/2004 of 11 October 2004 imposing certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY) (OJ L 315, 14.10.2004, p. 14).
- Council Regulation (EC) No 174/05 of 31 January 2005 imposing restrictions on the supply of assistance related to military activities to Côte d'Ivoire (OJ L 29, 2.2.2005, p. 5),
- Council Regulations (EC) No 889/2005 of 13 June 2005 and 1183/2005 of 18 July 2005 imposing an arms embargo and a freeze of assets against the DRC (OJ L 152, 15.6.2005, p.1 and OJ L 193, 23.7.2005, p. 1),
- and Council Regulation (EC) No 1184/2005 of 18 July 2005 imposing certain specific restrictive measures directed against certain persons impeding the peace process and breaking international law in the conflict in the Darfur region in Sudan (OJ L 193, 2.7.2005, p. 9).

46. Where the Community has the necessary competences to adopt a Regulation implementing the restrictive measures, it provides that Member States must lay down rules on penalties applicable to infringements of the provisions of the Regulation and take all measures necessary to ensure that they are implemented.

J. Jurisdiction

47. The EU has condemned the extra-territorial application of third country's legislation imposing restrictive measures which purports to regulate the activities of natural and legal persons under the jurisdiction of the Member States of the European Union, as being in violation of international law¹⁴. Accordingly, it will refrain from adopting legislative instruments having extra-territorial application in breach of international law.

¹⁴ Regulation (EC) No 2271/96 and Joint Action 96/668/CFSP of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (OJ L 309, 29.11.1996, pp. 1 and 7).

III. Standard wording for legal instruments

The standard wording set out in this Chapter should be used for all relevant legal instruments concerning EU restrictive measures, except if it is necessary to use different wording in order to implement a UN Security Council Resolution correctly.

The standard provisions on exemptions should be adapted, where appropriate.

A. Definitions

For the purposes of EU restrictive measures, the following definitions will apply. Further definitions will be worked out as necessary.

48. The term "*technical assistance*" shall mean¹⁵:

"any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; technical assistance includes verbal forms of assistance".

49. Over the years freezing of funds has been ordered, and bans on making funds available to listed persons and entities have been imposed, based on the following definitions:

"funds" means financial assets and benefits of every kind, including but not limited to:

(a) cash, cheques, claims on money, drafts, money orders and other payment instruments;

(b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;

¹⁵ Joint Action 2000/401/CFSP (OJ L 159, 30.6.2000, p. 216).

- (c) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;*
- (d) interest, dividends or other income on or value accruing from or generated by assets;*
- (e) credit, right of set-off, guarantees, performance bonds or other financial commitments;*
- (f) letters of credit, bills of lading, bills of sale;*
- (g) documents evidencing an interest in funds or financial resources.*

"freezing of funds" means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management.

50. The following definitions have been used by the Council regarding the freezing of economic resources and could continue to be used in EU legal instruments, as appropriate.

"economic resources" means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.

"freezing of economic resources" means preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them."

51. The term "*dual use good*" shall mean:

*"items, including software and technology, which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses, and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices"*¹⁶

B. Arms embargoes

Equipment covered by the embargo

52. Currently, CFSP legal instruments imposing arms embargoes refer to different lists of equipment. Therefore, different regimes apply to different countries. There is a need for a uniform EU regime when imposing an arms embargo. The *EU Code of Conduct on Arms Exports*¹⁷, adopted on 8 June 1998, defines the criteria Member States apply for their exports control policy concerning arms. For this purpose a common list of military equipment was agreed in 2000¹⁸. Unless otherwise specified, arms embargoes should be interpreted as covering at least all goods and technology on the EU Common List of Military Equipment.

53. The common list of military equipment does not include items which can be used for both civil and military purposes. Exports of such dual-use items are controlled in accordance with Council Regulation (EC) No 1334/2000¹⁹. This Regulation foresees that, in deciding whether or not to grant an export authorisation, the Member States shall take into account, *inter alia*, their obligations under sanctions imposed by a legal instrument adopted by the Council or by a decision of the OSCE or by a binding resolution of the Security Council of the United Nations.

¹⁶ Art 2.a of Council Regulation (EC) No 1334/2000 of 22 June 2000 (OJ L159 of 30.6.2000).

¹⁷ Document 8675/2/98 REV 2.

¹⁸ List attached to Council Declaration of 13 June 2000, issued on the occasion of the adoption of the common list of military equipment covered by the European Union code of conduct on arms export, OJ C 191, 8 July 2000. An updated version of the list, adopted by the Council on 25.4.2005, has been published in OJ C 127, 25.5.2005, p.1.

¹⁹ OJ L 159, 30 June 2000, p. 1. Last amended by Council Regulation (EC) No 1504/2004 of 19 July 2004 (OJ L 281, 31.8.2004, p. 1).

By its very nature (dual-use) a number of the goods listed have entirely legitimate applications e.g. cryptographic products used in banking, equipment that can be used in hospitals, factories, universities, offshore oil fields. An outright ban might thus have implications that go well beyond the initial objective and be wholly inappropriate. In most cases, a ban on exports of dual-use items, including when they would be used for civil purposes, is, therefore, likely to be disproportionate unless applied with qualifications and scope for appropriate exemptions (evidence of legitimate purpose). If an embargo on such items is nevertheless considered appropriate, the legal instrument should refer to the common list of dual-use items attached to Regulation (EC) No 1334/2000.

54. Standard wording for a provision imposing an arms embargo could read:

“The sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, to (country) by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft, shall be prohibited whether originating or not in their territories.”

Technical assistance and other services relating to military activities

55. When imposing an autonomous EU embargo on arms, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, a prohibition on providing technical assistance relating to such equipment should normally also be provided. In addition, a ban on financing of or providing financial assistance for arms exports could strengthen the arms embargo.

56. Wording of a standard article could be as follows:

CP + Reg.

"It shall be prohibited:

(a) to provide technical assistance, brokering services²⁰ and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, directly or indirectly to any natural or legal person, entity or body in, or for use in (country);

(b) to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of arms and related materiel, or for the provision of related technical assistance, brokering services and other services directly or indirectly to any person, entity or body in, or for use in (country).

(c) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to at points (a) or (b)."

Exemptions

57. It may be appropriate to allow exemptions to the ban on exports of arms and related equipment for humanitarian purposes as, in post-conflict areas, certain types of controlled equipment can make important contributions to the safety of the civilian population and to economic reconstruction. These exemptions should normally be limited to non-lethal military equipment and to exports of protective clothing for personal use. They may include de-mining equipment and materiel intended for institution building, as appropriate.

²⁰ Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering (OJ L 156 of 25.6.2003, p. 79).

58. It is desirable that exemptions on exports of non-lethal military equipment, like all others, be dealt with on a case-by-case basis, taking full account of the criteria set out in the Code of Conduct and other EU texts and legal instruments. Member States will require adequate safeguards against misuse of such exports and, where appropriate, provisions for repatriation of the equipment.

59. Standard wording for a provision on exemptions to bans on exports of arms and related equipment could read:

"1. Article ... shall not apply to:

- a) the sale, supply, transfer or export of non-lethal military equipment intended solely for humanitarian or protective use, or for institution building programmes of the UN, the EU and the Community, or for EU and UN crisis management operations;*
- b) the sale, supply, transfer or export of demining equipment and materiel for use in demining operations;*
- c) the provision of financing and financial assistance related to such equipment or to such programmes and operations,*
- d) the provision of technical assistance related to such equipment or to such programmes and operations,*

on condition that such exports have been approved in advance by (competent authority)."

60. In cases where there is a UN, EU or Community institution building programme or an EU or UN crisis management operation which would also require the export of lethal equipment, the above provision would need to be complemented with the addition of *"and materiel intended for..."* in indent a).

As appropriate, institution building programmes and crisis management operations conducted by regional and sub-regional organisations may be added to the exemption in indent a).

In the case of UN institution building programmes, the sale, supply, transfer or export of such materiel could be subject to approval by the relevant UN Sanctions Committee.

61. Standard wording for a provision on protective clothing could read as follows:

"Article ... shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to (country) by United Nations personnel, personnel of the EU, the Community or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only."

C. Restrictions on equipment used for internal repression and other specific imports or exports

62. If a policy of internal repression is at the basis of the imposition of restrictive measures, a ban on exports and related services, such as maintenance and repair, of certain equipment is appropriate. EU legal instruments could refer to or use an agreed list when deciding an embargo on exports of items that could be used for internal repression. A list is annexed which, if the Council so decides, defines the scope of the specific export restriction for equipment which might be used for internal repression²¹.

63. Standard wording for restrictions on equipment used for internal repression could read:

"It shall be prohibited:

- a) *to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex I, whether or not originating in the Community, to any natural or legal person, entity or body in, or for use in [name of state];*

²¹ The list focuses on items which might be used for internal repression and which are very close to items listed in the EU Common Military List; it does not cover items listed in the EU Common Military List; it does not cover items controlled by Regulation (EC) No 1236/2005 (the "Anti-Torture-Regulation"). With respect to problems in defining an adequate borderline between controlled equipment and equipment typical for consumer or leisure type activities, the list contains no entries for goods which may belong to standard consumer and leisure time activities.

- b) *to provide technical assistance related to the equipment referred to at point (a), directly or indirectly to any natural or legal person, entity or body in, or for use in [name of state];*
- c) *to provide financing or financial assistance related to the equipment referred to at point (a), directly or indirectly to any natural or legal person, entity or body in, or for use in [name of state];*
- d) *to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in points (a), (b) or (c).*

64. Other lists such as a list of petroleum and petroleum products have been developed within the EU framework²². Future lists defining the scope of specific export or import control regimes may constitute a useful reference for specific export or import bans, if it is considered necessary to ban all trade of the specific, controlled category in relation to a particular country, in order to achieve the objectives of the CFSP.

65. The exemptions from such measures should be sufficient to allow humanitarian action where appropriate and to take full account of the objective of the restrictive measures.

D. Restrictions on admission (visa or travel ban)

66. Several CFSP Common Positions foresee a ban on admission of specific nationals of third countries that are listed in an annex to the legal instrument.

67. Regulation (EC) No 539/2001 lists the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement²³. Third country nationals specified in CFSP Common Positions as subject to a travel ban and who need a visa to enter the EU will not be granted a visa if they apply for one. They must in any event be denied entry if they present themselves at an external border. Where no visa requirement exists, or a long term visa or residence permit has been issued, restrictions on admission may require national action²⁴.

²² See Annex I to Regulation (EC) No 1705/1998 (OJ L 215, 1.8.1998, p. 1)

²³ OJ L 81, 21.3.2001, p. 1. The list was last amended in 2003; see Regulation (EC) No 453/2003, OJ L 69, 13.3.2003, p. 10.

²⁴ Discussions are currently ongoing regarding the creation of an electronic consolidated list of persons subject to a EU travel ban.

68. Standard wording for an article regarding a visa/travel ban and exemptions therefrom could read as follows:

1. *"Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of the persons listed in the Annex, (indication of criteria/categories, if not already specified in the text);*
2. *Paragraph 1 will not oblige a Member State to refuse its own nationals entry into its territory.*
3. *Paragraph 1 shall be without prejudice to the cases where a Member State is bound by an obligation of international law, namely:*
 - (i) as a host country of an international intergovernmental organisation;*
 - (ii) as a host country to an international conference convened by, or under the auspices of, the United Nations; or*
 - (iii) under a multilateral agreement conferring privileges and immunities; or*
 - (iv) under the 1929 Treaty of Conciliation (Lateran pact) concluded by the Holy See (State of the Vatican City) and Italy.*
4. *Paragraph 3 shall be considered as applying also in cases where a Member State is host country of the Organisation for Security and Cooperation in Europe (OSCE).*
5. *The Council shall be duly informed in all cases where a Member State grants an exemption pursuant to paragraphs 3 or 4.*
6. *Member States may grant exemptions from the measures imposed in paragraph 1 where travel is justified on the grounds of urgent humanitarian need, or on grounds of attending intergovernmental meetings, including those promoted by the European Union, or hosted by a Member State holding the Chairmanship in office of the OSCE, where a political dialogue is conducted that directly promotes democracy, human rights and the rule of law in (country).*

7. *A Member State wishing to grant exemptions referred to in paragraph 6 shall notify the Council in writing. The exemption will be deemed to be granted unless one or more of the Council Members raises an objection in writing within two working days of receiving notification of the proposed exemption. In the event that one or more of the Council members raises an objection, the Council, acting by a qualified majority, may decide to grant the proposed exemption.*

8. *In cases where pursuant to paragraphs 3, 4, 6 and 7, a Member State authorizes the entry into, or transit through, its territory of persons listed in the Annex, the authorization shall be limited to the purpose for which it is given and to the persons concerned thereby."*

69. It is understood that where a person who is subject both to an asset freeze and to a travel ban receives an authorisation granted by a Member State pursuant to paragraphs 3, 4, 6 and 7 of the above standard Article, Member States are not obliged to seize funds carried by that person and which that person may reasonably require for the purpose of the visit for which he has received that authorisation.

E. Financial restrictions

70. Standard wording for freezing of funds through legal text based on Articles 60 and 301 (and Article 308, where appropriate) of the TEC could read:

"1. All funds and economic resources belonging to, owned, held or controlled by [individual members of the Government of (country) and] any natural or legal person, entity or body [associated with them] ²⁵ as listed in Annex (X) shall be frozen.

²⁵ These parts of the text may, in some cases, not be applicable (e.g. in the case of measures targeting terrorists).

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex (X)."

Exemptions

71. Standard wording for an article containing exemptions from the freezing of funds and the prohibition of making funds or economic resources available could read:

"1. The competent authority may authorise the release of certain frozen funds or economic resources or the making available of certain funds or economic resources, under such conditions as it deems appropriate, after having determined that the funds or economic resources concerned are:

- (a) Necessary to satisfy the basic needs of persons listed in Annex (X) and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges,*
- (b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services,*
- (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources,*

(d) necessary for extraordinary expenses, provided that (competent authority) has notified the grounds on which it considers that a specific authorisation should be granted, to (the other competent authorities and the Commission) at least two weeks prior to the authorisation."

The competent authority shall inform the competent authorities of the other Member States and the Commission of any authorisation granted under this article.

2. Article .. (the prohibition against making funds or economic resources available) shall not apply to the addition to frozen accounts of:

(a) interest or other earnings on those accounts; or

(b) payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to the provisions of this Common Position/Regulation and

provided that any such interest, other earnings and payments continue to be subject to Article .. (freezing of funds and economic resources of listed persons and entities)."

72. Standard wording for an article on the crediting of frozen accounts could be the following:

Reg.

"Article ...(Reference to Article prohibiting making funds or economic resources available to listed natural or legal persons, entities or bodies) shall not prevent the crediting of the frozen accounts by financial or credit institutions that receive funds transferred by third parties to the account of the listed person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the competent authorities about such transactions without delay."

73. Standard wording for a specific article containing exemptions from the freezing of funds and the prohibition of making funds or economic resources available when these funds or economic resources are subject to a prior judicial, administrative or arbitral lien could read:

“By way of derogation from Article ... (the requirement to freeze funds and economic resources), the competent authorities of the Member States, as listed in Annex (Y) , may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

- (a) the funds or economic resources are subject of a judicial, administrative or arbitral lien established prior to ... (date of entry into force of the Regulation) or of a judicial, administrative or arbitral judgment rendered prior to that date;*
- (b) the funds or economic resources will be used exclusively to satisfy claims secured by such a lien or recognised as valid in such a judgment, within the limits set by applicable laws and regulations governing the rights of persons having such claims;*
- (c) the lien or judgment is not for the benefit of a person, entity or body listed in Annex (X);*
- (d) recognising the lien or judgement is not contrary to public policy in the Member State concerned.*

The competent authority will inform the competent authorities of the other Member States and the Commission of any authorisation granted under this Article.”

F. Jurisdiction

74. The standard clause setting out to what extent the restrictive measures should apply in situations where links exist with the EU as well as with other members of the international community could read:

Reg.

"This Regulation shall apply:

- within the territory of the Community, including its airspace;*
- on board any aircraft or any vessel under the jurisdiction of a Member State;*
- to any person inside or outside the territory of the Community who is a national of a Member State;*
- to any legal person, entity or body which is incorporated or constituted under the law of a Member State;*
- to any legal person, entity or body in respect of any business done in whole or in part within the Community."*

G. Infringements

75. The Regulations imposing restrictive measures contain provisions regarding penalties to be taken in case of infringement. Standard wording for this issue:

Reg.

"1. The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

2. The Member States shall notify these rules to the Commission without delay after entry into force of the Regulation and shall notify it of any subsequent amendment."

76. It is desirable that the restrictive measures are implemented as soon as possible. To that end, Member States shall aim at having in place the rules referred to in the paragraph above within 30 days, following their respective national procedures. The Member States could also consider adopting national rules which set sanctions for infringement of Regulations imposing restrictive measures which will apply by default.

H. Expiry/Review²⁶

CP

77. Standard wording for an expiration clause could read:

“This Common Position shall apply for a ... period. It shall be kept under constant review. It shall be renewed, or amended as appropriate, if the Council deems that its objectives have not been met.”

78. Standard wording for a review clause could read:

CP

“This Common position shall be reviewed ... after its adoption and every ... thereafter. It shall be repealed if the Council deems that its objectives have been met.”

²⁶ At present, most EU sanctions texts imposing visa bans and freezing of funds have expiration dates, whereas arms embargoes tend to have review clauses.

IV. Monitoring and evaluation of restrictive measures

79. The effectiveness of EU restrictive measures – and also the EU’s credibility – hinges to a large degree on restrictive measures being implemented and enforced promptly and without exceptions in all Member States. In order to ensure adequate follow-up to EU decisions to impose restrictive measures, a specific Council body has been set up dedicated to exchanging experience and developing best practice in the implementation and application of restrictive measures. Thus the Foreign Relations Counsellors Working Party meets regularly in its specific 'Sanctions formation' (RELEX/Sanctions), reinforced as necessary including with experts from capitals. The mandate of the Relex/Sanctions formation is the following²⁷:

- Exchanging information and experiences on the implementation of specific restrictive measures regimes imposed by the EU;
- Contributing to developing best practices among Member States in implementation of restrictive measures;
- Collecting all information available on alleged circumvention of EU restrictive measures and other international sanctions regimes of interest to the EU by targeted states, persons and entities;
- Exchanging information and experience, including with third states and international organisations as appropriate, on the implementation of international sanctions regimes of interest to the EU;
- Assisting in evaluating the results and difficulties in the implementation of restrictive measures regimes;
- Exchanging views on ways and means to ensure the efficiency of management of restrictive measures regimes, including of their humanitarian provisions;
- Examining all relevant technical issues relating to the implementation of EU restrictive measures.

The Relex/Sanctions formation has notably identified EU best practices for effective implementation of financial restrictive measures²⁸.

²⁷ Mandate of RELEX/Sanctions is set out in doc. 5603/04.

²⁸ Doc. 15115/05.

80. Both the CFSP legal instruments and the EC Regulations should provide for regular reporting on the implementing measures and enforcement actions taken by Member States to give effect to the restrictive measures. Monitoring at EU level should enable a more consistent assessment as to whether the restrictive measures are having the impact they need to be effective. This is crucial where autonomous measures are at issue, since it provides the basis for decisions on the need for improvement of legal texts and, to some extent, for those on the usefulness of maintaining the measures.

ANNEX I

List of equipment which might be used for internal repression

Equipment for internal repression envisaged by Article (X)

1. Fire-arms, ammunition and related accessories therefor, as follows:
 - 1.1 Firearms not controlled by ML 1 and ML 2 of the EU Common Military List;
 - 1.2 Ammunition specially designed for the firearms listed in 1.1 and specially designed components therefor;
 - 1.3 Weapon-sights not controlled by the EU Common Military List.
2. Bombs and grenades not controlled by the EU Common Military List.
3. Vehicles as follows:
 - 3.1 Vehicles equipped with a water cannon, specially designed or modified for the purpose of riot control;
 - 3.2 Vehicles specially designed or modified to be electrified to repel borders;
 - 3.3 Vehicles specially designed or modified to remove barricades, including construction equipment with ballistic protection;
 - 3.4 Vehicles specially designed for the transport or transfer of prisoners and/or detainees;
 - 3.5 Vehicles specially designed to deploy mobile barriers;
 - 3.6 Components for the vehicles specified in 3.1 to 3.5 specially designed for the purposes of riot control.

Note 1 This item does not control vehicles specially designed for the purposes of fire-fighting.

Note 2 For the purposes of item 3.5 the term "vehicles" includes trailers.

4. Explosive substances and related equipment as follows:
 - 4.1 Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor; except those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflaters, electric-surge arresters of fire sprinkler actuators);
 - 4.2 Linear cutting explosive charges not controlled by the EU Common Military List;
 - 4.3 Other explosives not controlled by the EU Common Military List and related substances as follows:
 - a. amatol;
 - b. nitrocellulose (containing more than 12,5 % nitrogen);
 - c. nitroglycol;
 - d. pentaerythritol tetranitrate (PETN);
 - e. picryl chloride;
 - f. 2,4,6-trinitrotoluene (TNT).
 5. Protective equipment not controlled by ML 13 of the EU Common Military List as follows:
 - 5.1 Body armour providing ballistic and/or stabbing protection;
 - 5.2 Helmets providing ballistic and/or fragmentation protection, anti-riot helmets, anti-riot shields and ballistic shields.
- Note This item does not control:*
- *equipment specially designed for sports activities;*
 - *equipment specially designed for safety of work requirements.*
6. Simulators, other than those controlled by ML 14 of the EU Common Military List, for training in the use of firearms, and specially designed software therefor.
 7. Night vision, thermal imaging equipment and image intensifier tubes, other than those controlled by the EU Common Military List.

8. Razor barbed wire.
9. Military knives, combat knives and bayonets with blade lengths in excess of 10cms.
10. Production equipment specially designed for the items specified in this list.
11. Specific technology for the development, production or use of the items specified in this list.

ANNEX II

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

List referred to in Article(s) ..., ..

A. Template to be used as a model for listing persons subject to restrictive measures ¹

Surname, First Name:

Alias:

Sex:

Title, Function:

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

Date of birth:

Place of birth (town, country):

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

Nationality:

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

¹ Some of these headings may have more than one entry.

B. Template to be used as a model for listing groups and entities subject to restrictive measures ²

Name

Place of registration

Date of registration

Registration number

Principal place of business

Other information

² Some of these headings may have more than one entry.