

Amended proposal for a Council Regulation on specific restrictive measures directed against certain persons and entities with a view to combating terrorism ⁽¹⁾

(2002/C 75 E/19)

COM(2001) 713 final — 2001/0228(CNS)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 30 November 2001)

⁽¹⁾ OJ C 25 E, 29.1.2002, p. 474.

INITIAL PROPOSAL

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) The European Council at its extraordinary meeting on 21 September 2001 declared that terrorism is a real challenge to the world and to Europe and that the fight against terrorism will be a priority objective of the European Union.

(2) The European Council declared that combating the funding of terrorism is a decisive aspect of the fight against terrorism and called upon the Council to take the necessary measures to combat any form of financing for terrorist activities.

(3) The European Council asked the Council to evaluate systematically the European Union's relations with third countries in the light of support which those countries might give to terrorism.

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Unchanged

Having regard to the Treaty establishing the European Community, and in particular Articles 60, 301 and 308 thereof,

Unchanged

(4) In its Resolution 1373 (2001), the Security Council of the United Nations decided on 28 September 2001 that all States should implement a freezing of funds and other financial assets or economic resources as against persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of such acts.

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| <p>(4) The measures provided for in this Regulation, when taken at the level of the European Union, will ensure a rapid and more coherent application, and optimal effectiveness of these measures throughout the Community, while at the same time preventing a distortion of competition or negative effects on the functioning of the common market.</p> <p>(5) For the purpose of preventing circumvention of the provisions of this Regulation, restrictions should also be imposed on intra-Community payments and movements of capital.</p> <p>(6) The measures provided for in this Regulation should not lead to disproportionate damage to the interests of the Community and, therefore, provision should be made for decisions on exceptions to be taken in accordance with procedures which minimise the risks to the interests of the Community.</p> <p>(7) A procedure should also be provided for amending the annexes to this Regulation.</p> <p>(8) Since the measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾, they should be adopted by use of the management procedure provided for in Article 4 of that Decision.</p> <p>(9) Circumvention of this Regulation should be countered by an adequate system of information, and where appropriate, remedial measures, including additional Community legislation.</p> | <p>(5) In addition, the Security Council decided that measures should be taken to prohibit that funds and other financial assets or economic resources would be made available for the benefit of such persons, and to prohibit that financial or other related services are rendered for the benefit of such persons.</p> <p>(6) This Regulation is a measure needed at Community level and complementary to administrative and judicial procedures regarding terrorist organisations in the European Union and third countries.</p> <p>(7) The measures provided for in this Regulation, when taken at the level of the European Union, will ensure a rapid and more coherent application, and optimal effectiveness of these measures throughout the Community, while at the same time preventing a distortion of competition or negative effects on the functioning of the common market.</p> <p>Deleted</p> <p>(8) With a view to protecting the interests of the Community, where appropriate, a procedure should be laid down to take specific or general decisions on exceptions.</p> <p>(9) A procedure should also be provided for amending the annexes to this Regulation.</p> <p>(10) Since the measures necessary for the implementation of this Regulation are management measures within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾, they should be adopted by use of the management procedure provided for in Article 4 of that Decision.</p> <p>(11) Circumvention of this Regulation should be countered by an adequate system of information, and where appropriate, remedial measures, including additional Community legislation.</p> |
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⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

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- (10) The competent authorities of the Member States should, where necessary, be empowered to ensure compliance with this Regulation.
- (11) The Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive. It is desirable that those sanctions can be imposed as from the date of entry into force of this Regulation.
- (12) The Commission and the Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation.
- (13) It is necessary for this Regulation to enter into force as a matter of urgency.
- (14) The Treaty does not provide, for the adoption of this Regulation, powers other than those under Article 308,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

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- (12) The competent authorities of the Member States should, where necessary, be empowered to ensure compliance with this Regulation.
- (13) The Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties must be effective, proportionate and dissuasive. It is desirable that those sanctions can be imposed as from the date of entry into force of this Regulation.
- (14) The Commission and the Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation.
- (15) It is necessary for this Regulation to enter into force as a matter of urgency.
- (16) The Treaty does not provide, for the adoption of certain provisions of this Regulation, powers other than those under Article 308,

Unchanged

1. 'Funds' means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.

Unchanged

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3. 'Financial services' means: any service of a financial nature, including all insurance and insurance-related services, and all banking and other financial services (excluding insurance) as follows:

Insurance and insurance-related services

- (i) Direct insurance (including co-insurance):

(A) life

(B) non-life

- (ii) Reinsurance and retrocession;

- (iii) Insurance intermediation, such as brokerage and agency;

- (iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

- (v) Acceptance of deposits and other repayable funds;

- (vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

- (vii) Financial leasing;

- (viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

- (ix) Guarantees and commitments;

- (x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(A) money market instruments (including cheques, bills, certificates of deposits);

(B) foreign exchange;

(C) derivative products including, but not limited to, futures and options;

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(D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(E) transferable securities;

(F) other negotiable instruments and financial assets, including bullion.

(xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(xii) Money broking;

(xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

(xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

4. 'Terrorism' means: any of the following acts:

(a) an act which constitutes an offence within the scope of and as defined in one of the following treaties:

(i) Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970;

(ii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971;

(iii) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973;

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- (iv) International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979;
 - (v) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980;
 - (vi) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988;
 - (vii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988;
 - (viii) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1998;
 - (ix) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.
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- (b) an act intended to cause death or serious bodily injury to a civilian, or to any other person not taking part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act;
 - (c) an attempt to commit an act as set forth in subparagraphs (a) and (b);
 - (d) participation as an accomplice in an act as set forth in subparagraphs (a), (b) and (c);
 - (e) organising or directing others to commit an act as set forth in subparagraphs (a), (b) and (c);
 - (f) intentional contribution to the commission of one or more acts as set forth in subparagraphs (a), (b) and (c) by a group of persons acting with a common purpose, if such contribution is made either

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(i) with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an act as set forth in subparagraphs (a) and (b), or

(ii) in the knowledge of the intention of the group to commit an act as set forth in subparagraphs (a) and (b).

5. 'Owning a legal person, entity or body' means: being in possession of 50 % or more of the proprietary rights of a legal person, entity or body, or having a majority interest therein;

6. 'Controlling a legal person, entity or body' means any of:

(a) having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of a legal person, entity or body;

(b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person, entity or body who have held office during the present and previous financial year;

(c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person, entity or body, a majority of shareholders' or members' voting rights in that legal person, entity or body;

(d) having the right to exercise a dominant influence over a legal person, entity or body, pursuant to an agreement entered into with that legal person, entity or body, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person, entity or body permits its being subject to such agreement or provision;

(e) having the power to exercise the right to exercise a dominant influence referred to at (d), without being the holder of that right;

(f) having the right to use all or part of the assets of a legal person, entity or body;

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Article 2

Unchanged

1. Except as permitted under Articles 7 and 8:

(a) all funds held by a natural or legal person, entity or body listed in Annex I shall be frozen;

(a) all funds belonging to, or owned or held

(i) by a natural person committing, or attempting to commit, any act of terrorism;

(ii) by a legal person, entity or body committing, or attempting to commit, any act of terrorism;

(iii) by a legal person, entity or body owned or controlled by one or more natural or legal persons, entities or bodies referred to in subparagraphs (i) and (ii); or

(iv) by a natural or legal person, entity or body facilitating the commission of acts of terrorism or acting on behalf of or at the direction of one or more natural or legal persons, entities or bodies referred to in subparagraphs (i) and (ii);

shall be frozen, if the natural or legal person, entity or body to which the funds belong, or by which the funds are owned or held, is listed in Annex I;

(b) no funds shall be made available, directly or indirectly, to or for the benefit of a natural or legal person, entity or body listed in Annex I.

Unchanged

2. The Council, acting by qualified majority on a proposal from the Commission, shall adopt amendments to Annex I.

2. The Council, acting by unanimity on a proposal from the Commission, shall adopt amendments to Annex I.

3. The Council shall, at as early a date as possible, amend the text of the Annex to ensure that names of natural or legal persons, entities and bodies listed therein have sufficient particulars appended to permit effective identification of specific human beings, legal persons, entities or bodies, thus facilitating the exculpation of those bearing the same or similar names.

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Article 3

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

Article 4

1. The participation, knowingly and intentionally, in related activities, the object or effect of which is, directly or indirectly, to circumvent Articles 2 and 3 shall be prohibited.

2. Any information that the provisions of this Regulation are being, or have been, circumvented shall be notified to the competent authorities of the Member States listed in Annex II and/or to the Commission.

Article 5

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

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Unchanged

Except as permitted under Articles 7 and 8, it shall be prohibited to engage in or to continue the provision of financial services to or for the benefit of a natural or legal person, entity or body listed in Annex I.

Unchanged

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy and to the provisions of Article 284 of the Treaty, banks, other financial institutions, insurance companies, and other bodies and persons shall:

- provide immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 2 and transactions executed pursuant to Articles 7 and 8:
- to the competent authorities of the Member States listed in Annex II where they are resident or located, and
- directly or through these competent authorities to the Commission; and
- cooperate with the competent authorities listed in Annex II in any verification of this information.

2. Any information directly received by the Commission shall be made available to the competent authorities of the Member States concerned.

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Article 6

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

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

Article 7

Article 2 shall not apply to:

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

Article 8

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

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Unchanged

In cases where there exists a reasonable suspicion that a natural or legal person, entity or body is either engaged in an act of terrorism, or acting on behalf or for the benefit of a natural or legal person, entity or body listed in Annex I, but does not appear on that list, any natural or legal person shall, before entering into activities otherwise prohibited by this Regulation, obtain written confirmation from the relevant competent authorities of the Member States listed in Annex II that such a person, entity or body is deemed to be neither engaged in any act of terrorism nor acting on behalf or for the benefit of a natural or legal person, entity or body listed in Annex I.

If the competent authorities do not provide such written confirmation within 10 working days, and fail to inform the requesting person that an investigation which may take up to two months, will be opened, the natural or legal person, entity or body shall be deemed not to be acting on behalf or for the benefit of a natural or legal person, entity or body listed in Annex I.

The competent authorities shall immediately inform the Commission of any request received pursuant to this Article and of their decision on it.

Unchanged

1. Article 2 shall not apply to the addition to frozen accounts of interest due on those accounts.

2. The competent authorities of the Member States listed in Annex II may grant specific authorisations, under such conditions as they deem appropriate in order to prevent the financing of acts of terrorism, for

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

Unchanged

1. With a view to the protection of the interests of the Community, which include the interests of its citizens and residents, specific or general authorisations to unfreeze funds, to make funds available or to render financial services may be granted in accordance with the procedure referred to in Article 9(2).

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

Deleted

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

Unchanged

3. The Commission shall be empowered, on the basis of information supplied by Member States, to amend Annex II.

Article 9

Unchanged

1. The Commission shall be assisted by the committee instituted by Regulation (EC) No 2271/96.

2. Where reference is made to this paragraph, the management procedure laid down in Articles 4 and 7 of Decision 1999/468/EC shall apply.

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

Article 10

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

Article 11

The Commission and the Member States shall immediately and fully inform each other of the measures taken under this Regulation and supply each other with the relevant information at their disposal in connection with this Regulation, notably information received in accordance with Articles 4, 5 and 6, and in respect of violation and enforcement problems or judgements handed down by national courts.

Article 12

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

Pending the adoption, where necessary, of any legislation to this end, the sanctions to be imposed where the provisions of this Regulation are infringed shall be those determined by the Member States in accordance with Article 13 of Regulation (EC) No 467/2001 ⁽¹⁾, Article 8 of Regulation (EC) No 2488/2000 ⁽²⁾ or Article 7 of Regulation (EC) No 1081/2000 ⁽³⁾, whichever may be more severe.

⁽¹⁾ OJ L 67, 9.3.2001, p. 1.

⁽²⁾ OJ L 287, 14.11.2000, p. 19.

⁽³⁾ OJ L 122, 24.5.2000, p. 29.

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Article 13

This Regulation shall apply:

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

Article 14

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

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

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

2. The Commission shall present, within a period of one year from the entry into force of this Regulation, a report on the impact of this Regulation and, if necessary, make proposals to amend this Regulation.

Unchanged

ANNEX I

LIST OF NATURAL OR LEGAL PERSONS, ENTITIES AND BODIES REFERRED TO IN ARTICLE 2

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

ANNEX II

LIST OF COMPETENT AUTHORITIES REFERRED TO IN ARTICLES 4, 6 AND 8