Council Regulation (EU) No 1286/2009 of 22 December 2009 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban

COUNCIL REGULATION (EU) No 1286/2009

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amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215(2) thereof,

Having regard to Council Common Position 2002/402/CFSP of 27 May 2002 concerning restrictive measures against Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them[(1)],

Having regard to the joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission,

Whereas:

(1) Common Position 2002/402/CFSP provides, *inter alia*, that the European Community is to take certain restrictive measures, including the freezing of funds and economic resources, in accordance with Resolutions 1267 (1999), 1333 (2000) and 1390 (2002) of the Security Council of the United Nations.

(2) The freezing of funds and economic resources has been implemented by means of 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[(2)].

(3) An article providing for certain exceptions was inserted in that Regulation by means of Council Regulation (EC) No 561/2003 of 27 March 2003[(3)]. The non-objection period referred to in that Article should be brought in line with UN Security Council Resolution 1735 of 22 December 2006.

(4) Following the judgment of the Court of Justice of the European Communities of 3 September 2008 in Joined Cases C-402/05 P and C-415/05 P: Judgment of the Court (Grand Chamber) of 3 September 2008 — Yassin Abdullah Kadi, Al Barakaat International Foundation v Council of the European Union, Commission of the European Communities, United Kingdom of Great Britain and Northern Ireland, Regulation (EC) No 881/2002 should be amended to provide for a listing procedure ensuring that the fundamental rights of the defence and in particular the right to be heard are respected.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) No 1286/2009. (See end of Document for details)*

(5) The revised procedure should include providing to the listed person, entity, body or group the reasons for listing as transmitted by the UN Al Qaida and Taliban Sanctions Committee, so as to give the listed person, entity, body or group an opportunity to express his, her or its views on those reasons. The purpose of Regulation (EC) No 881/2002 is to freeze the funds and economic resources of persons, entities, bodies and groups included in the Al Qaida and Taliban list drawn up by the UN. As the relevant UN Security Council Resolutions provide that such freezing has to take place 'without delay', such a measure must, by its very nature, take advantage of a surprise effect. Therefore, the Commission should be able to take a decision before informing the person, entity, body or group concerned of the reasons for listing. The reasons for listing should, however, be notified to that person, entity, body or group without delay, after that decision has been published, to give the person, entity, body or group concerned an opportunity to make effectively his, her or its point of view known.

(6) While the Commission should endeavour to notify the reasons for listing directly to the person, entity, body or group concerned, such notification may not be possible in some cases due to incomplete contact details or the complete absence thereof. In such cases, a notice should be published in the *Official Journal* to inform those concerned of the applicable procedures.

(7) Where observations are submitted, the Commission should review its decision in the light of those observations and in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(4)]. The review should be carried out following the regulatory procedure, considering the important political responsibilities involved and the sensitive nature of the international efforts in countering terrorism.

(8) The same procedure should apply as regards persons, entities, bodies and groups listed before 3 September 2008, in order to respect their rights of defence and in particular their right to be heard.

(9) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union[(5)] and notably the right to an effective remedy and to a fair trial, the right to property and the right to the protection of personal data. This Regulation should be applied in accordance with those rights and principles.

(10) This Regulation also fully respects the obligations of Member States under the Charter of the United Nations and the legally binding nature of UN Security Council Resolutions.

(11) The purpose of Regulation (EC) No 881/2002 is to prevent terrorist crimes, including terrorist financing, in order to maintain international peace and security. In order to create maximum legal certainty within the Union, the names and other relevant data for identifying natural or legal persons, entities, bodies or groups, whose funds must be frozen in accordance with Regulation (EC) No 881/2002 should be made publicly known.

(12) Any processing of personal data of natural persons under this Regulation should observe Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[6] and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[7].

(13) It is appropriate to clarify the meaning of certain words and to align certain parts of Regulation (EC) No 881/2002 with more recent standard wording for Regulations on restrictive measures.

(14) Regulation (EC) No 881/2002 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 881/2002 is hereby amended as follows:

1. In Article 1:

(a) Point 3 shall be replaced by the following:

3. "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 funds to be used, including portfolio management;;

(b) The following points are added:

5. "Sanctions Committee" means the Committee of the UN Security Council established pursuant to UN Security Council Resolution 1267 (1999) concerning Al Qaida and the Taliban;

6. "Statement of reasons" means the publicly releasable portion of the statement of case as provided by the Sanctions Committee and/or, where applicable, the narrative summary of reasons for listing as provided by the Sanctions Committee.;

2. Article 2 is replaced by the following:

Article 2

1 All funds and economic resources belonging to, owned, held or controlled by a natural or legal person, entity, body or group listed in Annex I, shall be frozen.

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

3 Annex I shall consist of natural and legal persons, entities, bodies and groups designated by the UN Security Council or by the Sanctions Committee as being associated with Usama bin Laden, the Al-Qaida network and the Taliban.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) No 1286/2009. (See end of Document for details)*

4 The prohibition set out in paragraph 2 shall not give rise to liability of any kind on the part of the natural or legal persons, entities, bodies or groups concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe these prohibitions.;

3. In Article 2a(1), point (c) is replaced by the following:

(c) (i) in the case of a determination under point (a)(i), (ii) or (iii), the Sanctions Committee has not objected to the determination within three working days of notification; or

(ii) in the case of a determination under point (a) (iv), the Sanctions Committee has approved the determination.;

4. The following Article is inserted:

Article 2b

Article 2(2) shall not prevent financial or credit institutions in the Union from crediting frozen accounts where they receive funds transferred to the account of a listed natural or legal person, entity, body or group, 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.;

5. Article 3 is replaced by the following:

Article 3

Without prejudice to the powers of Member States in the exercise of their public authority, it shall be prohibited to provide, directly or indirectly, technical advice, assistance or training related to military activities, including in particular training and assistance related to the manufacture, maintenance and use of arms and related materiel of all types, to any natural or legal person, entity, body or group listed in Annex I.;

6. The second subparagraph of Article 5(1)(a) is replaced by the following:

In particular, available information in respect of funds or economic resources owned or controlled by persons designated by the United Nations Security Council or the Sanctions Committee and listed in Annex I during the period of six months before the entry into force of this Regulation shall be provided;;

7. Article 6 is replaced by the following:

Article 6

The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person, entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen, or not made available, as a result of negligence.;

8. In Article 7, paragraph 1 is replaced by the following:

1. The Commission shall be empowered to:

a amend Annex I, where necessary in accordance with the procedure referred to in Article 7b(2), and

b amend Annex II on the basis of information supplied by Member States.;