Fight against terrorism: specific restrictive measures directed against certain persons and entities associated with Osama bin Laden, the Al-Qaida network and the Taliban

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Opinion of the European Data Protection Supervisor (EDPS) on the proposal for a Council Regulation 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 EDPS welcomes the intention of the Commission's proposal to address the recent case law of the Court of Justice by enhancing the listing procedure and by taking explicitly into account the right to the protection of personal data, which represents a crucial factor in ensuring the legitimacy and efficiency of the restrictive measures taken by the Commission.

He also welcomes the references in the preamble to the need to apply the Regulation in accordance with the fundamental right to the protection of personal data and that the proposal explicitly recognizes in its recitals the applicability of data protection rules, and in particular of Regulation (EC) No 45/2001, to the processing of personal data in this area.

As a general remark, the EDPS would like to stress that Regulation (EC) No 45/2001 lays down a series of obligations for controllers as well as rights for data subjects which shall apply even when they are not explicitly mentioned by the proposal. However, in some cases, it may be desirable to provide further details about the application — and possible exemptions and restrictions — of data protection obligations and rights in the area of restrictive measures.

The EDPS welcomes ***Articles 7a and 7c*** to the extent in which they enhance the respect of fundamental rights by providing means for the persons concerned to be informed about the reasons for inclusion in the list. To recall, Article 7a deals with the procedures to list and de-list natural or legal persons and Article 7c provides for a specific procedure applying to those which have been included in the list before 3 September 2008. However, the EDPS points out that these provisions do not exclude similar obligations arising from Regulation (EC) No 45/2001. In this perspective, the EDPS recommends the legislator to consider whether to clarify explicitly in the proposal the exemptions to data protection principles that may be necessary, such as for example the need to **postpone the information notice** pursuant to Article 12 until the provisional decision has been taken.

The EDPS considers that ***Article 7d*** on the data subjects' right of access, supervisory tasks and judicial remedies, by making the release of confidential documents subject to the consent of the originator, may impinge on the data subject's right of access to his or her personal data as laid down in Regulation (EC) No 45/2001. It may also impinge on the possibility of the EDPS, as well as of the Court of Justice, having access to personal data contained in classified information in order to effectively perform their respective tasks. In this context, the EDPS urges the legislator to amend this provision, in particular by replacing the word 'released' with 'publicly disclosed'.

The EDPS welcomes ***Article 7e*** on legal grounds for processing, categories of data processed, appointment of controller to the extent to which it aims at providing a legal basis for processing of

personal data, pursuant to Regulation (EC) No 45/2001. However, he recommends some amendments so as to ensure that data processed are used for specific purposes and are relevant, and that the role of the controller is in line with Regulation (EC) No 45/2001.

He goes on to recall that possible transfers to third countries and international organisations should be in line with Article 9 of Regulation (EC) No 45/2001, with a view to ensuring an adequate protection of these data. In this regard, specifications in the proposal as well as arrangements with the UN may be needed.

Lastly, the EDPS notes that the proposal leaves unprejudiced the liability which may arise in case of unlawful processing and publication of personal data, that a prior checking pursuant to Article 27 of Regulation (EC) No 45/2001 may be necessary, and that he expects to be consulted with regard to further legislative proposals and administrative measures in this area.