Resolution restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, in respect of Zimbabwe and in view of the situation in Somalia

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Following the debate which took place during the sitting of 15 December 2009, the European Parliament adopted a resolution tabled by the Committee on Civil Liberties, Justice and Home Affairs on restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, in respect of Zimbabwe and in view of the situation in Somalia.

The resolution follows the Case Kadi and Al Barakaat International Foundation v Council and Commission , where the Court of Justice annulled Regulation (EC) No 881/2002, in so far as it concerned Mr Yassin Abdullah Kadi and Al Barakaat International Foundation, and considered that the Community authority deciding to freeze the funds and economic resources of an individual or entity in accordance with Regulation (EC) No 881/2002 must communicate the grounds on which that decision is based to the individual or entity concerned. Parliament looks at three measures put forward by the Commission in respect of Al-Qaida, Zimbabwe and Somalia.

Need for a coherent and clear approach and proper involvement of Parliament: Parliament considers that a legal framework should be established under Article 75 TFEU for measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities, including for restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban. Such an approach would allow a proper level of democratic accountability through the intervention of Parliament by means of the **codecision procedure**. Due account should also be taken of the proper involvement of national parliaments.

With regard to future measures – such as restrictive measures in respect of Zimbabwe and certain specific restrictive measures directed against certain natural and legal persons, entities and bodies in view of the situation in Somalia, taken under Article 215(2) TFEU – the possibility of an **optional consultation of Parliament** should be taken into account. Such an approach could be considered in keeping with the spirit of the Treaty of Lisbon and in line with Parliament's previous (consultative) role in this area.

Parliament reiterates its request for a thorough evaluation of the implementation, on an annual basis, of the provisions prescribing restrictive measures and of their effectiveness, together with timely transmission of information to Parliament in such matters. It considers that sanctions should always be accompanied by clear benchmarks. It calls on the Commission to establish a network of independent experts tasked with advising the Council on specified matters related to sanctions and points out that it could be useful to consult NGOs on EU counter-terrorism policies in order to obtain valuable information on the situation in the field.

Members then make certain comments referring, inter alia, to the substance of the proposals put forward by the Commission under the former legal framework, which are now obsolete, having also in view the legal framework established by the Treaty of Lisbon. Any reference to Council Decision 1999/468/EC of

28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission should be considered obsolete.

On restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban: Parliament emphasises that the implementation of such measures must be accompanied at all times by strong and adequate safeguards and guarantees, taking into account the extremely severe consequences of 'blacklisting' for the individuals or organisations concerned. It also points out that, in relation to restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, Article 75 TFEU (the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure) applies.

Parliament recalls that listing and de-listing procedures for the UN and EU sanctions regimes have been strongly criticised as failing to provide satisfactory protection for fundamental rights (both procedural and substantive) and legal certainty. It welcomes the recent initiatives taken at EU level to remedy these shortcomings, but regrets that the Council in particular has shown limited ambition with regard to ensuring that the revised Regulation (EC) No 881/2002 respects the fundamental rights of the persons and entities concerned.

The resolution queries, in relation to the "statement of reasons" to be provided, whether either the Commission proposal or the Council text complies with the requirements of the judgment in the Case Kadi and Al Barakaat International Foundation v Council and Commission , which referred to the obligation to communicate the grounds on which, in such cases, the name of a person or entity is included in the list, taking into particular account the right of persons and entities concerned to be informed of the evidence against them.

Parliament goes on to emphasise that evidence in some cases is based primarily on information provided by intelligence services, which may be operating under specific national rules. It calls on national parliaments to exercise full oversight over their governments' activities. It also calls for a full and timely assessment of the effectiveness of the EU and UN "terrorist" sanctions regimes, noting with concern that "terrorist" sanctions appear to have had an adverse effect on conflict resolution and development efforts in numerous regions.

On Zimbabwe and Somalia: Parliament supports draft provisions in these areas, but queries the adequacy of the texts proposed by the Commission concerning information to be provided to listed persons – about the grounds on which names of persons or entities are included in a list and about their legal rights – in the light of the above-mentioned Case Kadi and Al Barakaat International Foundation v Council and Commission. It points out that Article 215 TFEU would apply to the measures in question, but that a series of conditions should be fulfilled: measures must, for example, be based on a proposal from the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy and the Commission must include the necessary provisions for legal safeguards.

On data protection aspects: Members welcome the new provisions in the Commission's proposal on the Al-Qaida text but draw attention to the comments of the EDPS regarding the protection of personal data, with particular reference to clarification of the exemptions from data protection principles that may be necessary and the right of access to classified information. These reservations on the part of the EDPS could apply mutatis mutandis to all three Commission proposals. Parliament observes that possible transfers of data to third countries and international organisations should comply with Article 9 of Regulation (EC) No 45/2001, with a view to ensuring adequate protection of the data in question. The proposal may need to include stipulations in this regard and arrangements with the UN may also be necessary.