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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On 13 January 2010, the Council presented a new version of the draft 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 new text is in every respect similar in substance to the text presented by the Council in September 2009 (refer to the summary of 04/09/2009).

The purpose of this new proposal is to **change the legal basis** of the text proposed to base the proposal on the new Treaty on the Functioning of the European Union (Lisbon Treaty), and in particular **Article 215 (paragraph 2)**.

To recall, the main points of the proposal can be summarised as follows:

Right to be heard: following the judgment of the Court of Justice 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) Regulation (EC) No 881/2002 is 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**.

The revised procedure includes providing to the listed person, entity, body or groups 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 will 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. Where observations are submitted, the Commission should review its decision following the regulatory procedure, considering the important political responsibilities involved and the sensitive nature of the international efforts in countering terrorism, following which a definitive decision to freeze the funds shall be taken.

Charter of Fundamental Rights: the draft amending Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union1 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.

Processing of personal data: any processing of personal data of natural persons under this Regulation should observe the provisions applicable to the protection of individuals with regard to the processing of personal data and on the free movement of such data (in particular in accordance with Regulation (EC) No 45/2001 and Directive 95/46/EC of the European Parliament and of the Council).