Basic information

2009/0055(CNS) CNS - Consultation procedure Regulation	Procedure lapsed or withdrawn
Fight against terrorism: specific restrictive measures directed against certain persons and entities associated with Osama bin Laden, the Al-Qaida network and the Taliban **Subject** 7.30.20 Action to combat terrorism	

Key players

Council of the European Union	
European Commission	**Commission DG** / **Commissioner** External Relations / FERRERO-WALDNER Benita

Key events

Date	Event	Reference	Summary
22/04/2009	Legislative proposal published	COM(2009)0187	Summary
14/07/2009	Committee referral announced in Parliament		

Technical information

Procedure reference	2009/0055(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the European Union TFEU 215
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	LIBE/7/00294

Documentation gateway

Council of the EU

Document type	Reference	Date	Summary
Supplementary legislative basic document	12883/2009	04/09/2009	Summary
Supplementary legislative basic document	17354/2009	13/01/2010	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2009)0187	22/04/2009	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	JOC_2009_276_R_0001_01 OJ C 276 17.11.2009, p. 0001	28/07/2009	Summary

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

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

2009/0055(CNS) - 22/04/2009 - Legislative proposal

PURPOSE: to amend Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Osama bin Laden, the AlQaida network and the Taliban.

PROPOSED ACT: Council Regulation.

BACKGROUND: on 27 May 2002, the Council adopted Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Osama bin Laden, the Al-Qaida network and the Taliban. It implements some elements of UN Security Council Resolutions 1267(1999) and 1390(2002) and in particular freezes the funds and economic resources of individuals and entities included in a list drawn up by the UN for this purpose.

On 3 September 2008, 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. The Court of Justice held 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, in order to observe the rights of defence, in particular the right to be heard, and the right to judicial review. In order to comply with the Court' s judgment, the EU sought from the Sanctions Committee the relevant statements of reasons on which the two parties were listed and communicated those to the parties for comments. Following an evaluation of the comments, the Commission adopted a new Regulation maintaining Mr Kadi and Al Barakaat International Foundation on the list of individuals and entities subject to the freezing of funds and economic resources.

It is considered necessary to amend Regulation (EC) No 881/2002 to codify these new elements and to provide for a procedure respecting fundamental rights that will be followed as regards individuals and entities newly listed by the UN.

CONTENT: the new procedure is based on the procedure applied for the purpose of implementing Council Regulation (EC) No 2580/2001 on specific restrictive measures against certain persons and entities with a view to combating terrorism, which concerns the terrorism list drawn up by the EU itself, set out in Council document 10826/1/27 of 28 June 2007

The new procedure would be as follows:

- upon notification by the UN Sanctions Committee of a new listing decision and the statement of reasons, the Commission will take a provisional decision to freeze the funds and economic resources of the individual or entity concerned;
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- in parallel, the Commission will send the statement of reasons to the individual or entity concerned without delay, in order to give him, her or it an opportunity to express his, her or its views;
- the Commission will examine the views that have been expressed and consult an advisory committee of experts of the Member States before taking the final decision.

Amendments to the list of entities and individuals: in order to ensure that fundamental rights are respected, it is also necessary to address the position of individuals and entities already listed. UN Security Council Resolution 1822 foresees a review of all names included in the UN list on 30 June 2008. This UN review should be completed by 30 June 2010. If the UN decides to de-list an individual or entity, de-listing at Community level should, as before, take place without delay and not be subject to making a request for de-listing to a Community Institution.

Classification and data protection: given the subject matter, the United Nations or a third State may deem it necessary to provide classified information to the Community Institution in support of the decision made. A provision is proposed to provide clarity on the handling of such information. A provision is also needed to provide clarity on the applicable rules for processing of personal data of listed individuals, and in particular for processing of data relating to offences, criminal convictions or security measures under this Regulation.

Specific provisions: this proposal also comprises certain additional provisions, such as updating Article 2a of Regulation (EC) No 881/2002 to take account of paragraph 15 of UN Security Council Resolution 1735(2006) which extends the non-objection period that applies when Member States consult the UN on granting of exemptions for basic expenditure, to three working days. It also contains certain amendments of a technical nature, such as aligning the definition of freezing of funds and Article 11 on Community jurisdiction with the standard wording set out in the Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy.

BUDGETARY IMPLICATIONS: the proposal has no implication for the Community budget.

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2009/0055(CNS) - 28/07/2009 - Document attached to the procedure

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.

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

2009/0055(CNS) - 13/01/2010 - Supplementary legislative basic document

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).

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

2009/0055(CNS) - 04/09/2009 - Supplementary legislative basic document

The Council has presented an amended version of the draft 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 main amendments concern the following issues:

- **widen the definition of "terrorist group"** as it is defined in Article 2(1) of Council Framework Decision 2002/475/JHA on combating terrorism. To this effect, Annex I of the proposal 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;
- **better information**: 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. 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;
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prohibition of all kinds of assistance to military activities: a new article stipulates that 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;

- **amendment to the UN's Security Council list**: where the United Nations decide to de-list a natural or legal person, entity, body or group, or to amend the identifying data of a listed person, entity, body or group, the Commission shall amend Annex I accordingly;
- **treatment of classified information**: if the United Nations or a State submits classified information, the Commission shall treat such information in accordance with Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 and, where applicable, the agreement on the security of classified information concluded between the European Union and the submitting State. Documents classified at a level corresponding to 'EU Top Secret', 'EU Secret' or 'EU Confidential' shall not be released without the consent of the originator;
- **processing data relating to criminal offences**: the Commission may process relevant data relating to criminal offences committed by listed natural persons, and to criminal convictions or security measures concerning such persons, only to the extent that such processing is necessary for the preparation of a statement of reasons and review of the views on it expressed by the natural person concerned, subject to appropriate specific safeguards. Such data shall not be made public or exchanged.