



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 30 April 2013

9068/13

LIMITE

**PESC 475
RELEX 347
CONUN 53
COARM 76
FIN 229**

"I/A" ITEM NOTE

From General Secretariat of the Council
To : Committee of Permanent Representatives/Council
Subject : Guidelines on implementation and evaluation of restrictive measures (sanctions)
in the framework of the EU Common Foreign and Security Policy
- new elements

1. On 8 December 2003, the Council approved Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy¹. The Guidelines address a number of general issues and set out standard wording and common definitions that may be used in the legal instruments implementing restrictive measures. The latest reviewed and updated text of the Guidelines was adopted by the Council on 25 June 2012².
2. On 21 December 2012, the Council requested the Foreign Relations Counsellors Working Party (RELEX) to agree on a uniform interpretation of the prohibition on making available indirectly to listed persons or entities funds or economic resources through persons or entities owned or controlled by the listed persons or entities.

¹ 15579/03.

² 11205/12.

3. On 31 January 2013, RELEX agreed on elements to be included in the Guidelines concerning the prohibition on making available indirectly to listed persons or entities funds or economic resources through persons or entities owned or controlled by the listed persons or entities³ on the basis of a joint input by the Commission and European External Action Service (EEAS). Those elements were adopted by the Council on 12 February 2013.
4. In RELEX discussions in January 2013, delegations agreed on the need to revert to the notion of ownership or control of entities by listed persons or entities with a view to reaching a common understanding. An agreement on the notion of ownership or control was reached after discussions in RELEX on 22, 25, 27 March and on 15, 18, 25 and 29 April 2013 based on a joint non-paper by Commission services and the EEAS. The text set out in the Annex combines the elements adopted by the Council on 12 February 2013 with the notion of ownership and control as agreed by RELEX on 30 April 2013.
5. During discussions RELEX recalled that the elements agreed for the Guidelines, as set out in Annex, do not create a requirement to obtain authorisations from competent authorities.
6. Delegations also agreed to revert to the issue of the making available of funds in the light of the fact that funds are easily transferrable, difficult to trace and thus pose a particular risk.
7. In view of the above, the Permanent Representatives Committee is invited to:
 - confirm the agreement on the elements to be included in the Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, as set out in Annex;
 - recommend that they be forwarded to the Council for adoption.

³ 5993/13.

Elements for inclusion in the Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy (doc. 11205/12) under subheading "Compliance", after paragraph 55

I. Ownership and control

Ownership

1. The criterion to be taken into account when assessing whether a legal person or entity is owned by another person or entity is the possession of more than 50% of the proprietary rights of an entity or having majority interest in it⁴. If this criterion is satisfied, it is considered that the legal person or entity is owned by another person or entity.

Control

2. The criteria to be taken into account when assessing whether a legal person or entity is controlled by another person or entity, alone or pursuant to an agreement with another shareholder or other third party, could include, inter alia⁵:
 - (a) having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity;
 - (b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or entity who have held office during the present and previous financial year;
 - (c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person or entity, a majority of shareholders' or members' voting rights in that legal person or entity;

⁴ Criterion as in definition provided for in Regulation 2580/2001.

⁵ Criteria as in definition provided for in Regulation 2580/2001.

- (d) having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person or entity permits its being subject to such agreement or provision;
- (e) having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right⁶;
- (f) having the right to use all or part of the assets of a legal person or entity;
- (g) managing the business of a legal person or entity on a unified basis, while publishing consolidated accounts;
- (h) sharing jointly and severally the financial liabilities of a legal person or entity, or guaranteeing them.

If any of these criteria are satisfied, it is considered that the legal person or entity is controlled by another person or entity, unless the contrary can be established on a case by case basis.

3. The fulfilment of the above criteria of ownership or control may be refuted on a case by case basis.

II. Making indirectly available funds or economic resources to designated persons and entities

4. If the ownership or control is established in accordance with the above criteria, the making available of funds or economic resources to non-listed legal persons or entities which are owned or controlled by a listed person or entity will in principle be considered as making them indirectly available to the latter, unless it can be reasonably determined, on a case-by-case basis using a risk-based approach, taking into account all of the relevant circumstances, including the criteria below, that the funds or economic resources concerned will not be used by or be for the benefit of that listed person or entity.

The criteria to be taken into account include, *inter alia*:

- (a) the date and nature of the contractual links between the entities concerned (for instance sales, purchase, or distribution contracts);

⁶ Including, for example, by means of a front company.

- (b) the relevance of the sector of activity of the non-listed entity for the listed entity;
- (c) the characteristics of the funds or economic resources made available, including their potential practical use by, and ease of transfer to, the listed entity.

An economic resource will not be considered to have been for the benefit of a listed person or entity merely because it is used by a non-listed person or entity to generate profits which might be in part distributed to a listed shareholder.

- 5. It is to be noted that the indirect making available of funds or economic resources to listed persons or entities may also include the making available of these items to persons or entities which are not owned or controlled by listed entities.

III. Non-liability

- 6. The above elements are without prejudice to clauses on non-liability in the relevant legal acts.

IV. Information sharing

- 7. As provided in the relevant EU Regulations⁷ and in order to facilitate the carrying out of the above assessments Member States have an obligation under EU law to share relevant information at their disposal. Where a competent authority of a Member State has information that a non-listed legal person or entity is owned or controlled by a listed person or entity or any information which might affect the effective implementation of the prohibition on the indirect making available of funds or economic resources, the Member State concerned should, subject to national law, share relevant information with the other Member States and the Commission.

⁷ For example, Articles 40 and 44 of Regulation (EU) n° 267/2012 concerning restrictive measures against Iran and Articles 29 and 30 of Regulation (EU) n° 36/2012 concerning restrictive measures in view of the situation in Syria.

8. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, an economic operator who is aware that a non-listed legal person or entity is owned or controlled by a listed person or entity should inform the competent authority of the relevant Member State and the Commission either directly or through the Member State.

V. Proposals for listing

9. Where appropriate the Member State concerned should also propose to list the legal person or entity that is established to be owned or controlled by an already listed person or entity.
