

Instruction booklet

Non-country-specific embargo measures to combat terrorism





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I. Introduction

The European Community has enacted regulations to combat terrorism on the basis of UN Security Council resolutions. These regulations apply directly in all member states of the European Union and must be complied with by all persons, without there being any need for national legislation, irrespective of whether the persons, groups, entities or companies cited in the name lists are located in Germany or elsewhere. The rules can be subdivided into two sections:

1. Measures against certain persons and organisations linked to Osama bin Laden, the Al-Qaida network or the Taliban. The basis for this is Regulation (EC) no. 881/2002 of 27 May 2002 (OJ EC No. L 139 p. 9), with numerous amendments.
2. Measures against other persons and organisations suspected of terrorism. The basis for this is Regulation (EC) no. 2580/2001 of 27 December 2001 (OJ EC No. L 344 p. 70), with several amendments.

The Federal Office of Economics and Export Control (BAFA) is responsible for issuing exceptional licences for the provision of economic resources; it publishes an instruction booklet on non-country-specific embargo measures to combat terrorism. This updated instruction booklet replaces the booklet on non-country-specific embargo measures to combat terrorism of 1 April 2009 and explains the factual and legal situation as of 27 August 2009.

This instruction booklet aims to provide explanations and to set out the key elements of the regulations. To this end, the booklet contains a presentation of the main substance of the restrictions and prohibitions imposed, and suggestions for how to use the name lists, as well as a listing of further contact addresses and helpful websites.

It does not claim to be exhaustive. The content of this instruction booklet is subject to the reservation that courts and prosecution agencies may arrive at a different interpretation; it is not legally binding. The English translation is unofficial and is provided for information purposes only.

II. Regulations against Osama bin Laden, Al-Qaida and the Taliban (Regulation (EC) No. 881/2002 and amendments)

The basis for the EC regulations against Osama bin Laden, Al-Qaida and the Taliban is UN Security Council Resolution 1390 (2002) of 16 January 2002. This resolution provides for the imposition of certain measures to combat terrorism and is directed against persons, groups and entities contained in the name list of the UN Sanctions Committee. This name list, which is kept continually updated by the Sanctions Committee, can be viewed online at

<http://www.un.org/sc/committees/1267/consolist.shtml>

You can also access the website via a link from the BAFA homepage (www.ausfuhrkontrolle.info). On the homepage, click on “Externe Links”, “Allgemeine Internetseiten zum Thema Ausfuhrkontrolle”, “Vereinte Nationen (consolidated list by the 1267 Committee)”.

The list of the Sanctions Committee is subdivided into four sections: individuals, groups, undertakings and entities. The list comes in pdf, xml and html format, and is searchable.

The above-mentioned UN Security Council Resolution is implemented by Regulation (EC) No. 881/2002 of 27 May 2002. In this Regulation, the European Union has adopted embargo measures against persons and organisations linked to Osama bin Laden, the Al-Qaida network or the Taliban. As already mentioned, the Regulation is directly applicable law in force in all EU member states. It applies to the individuals, groups, entities or undertakings cited in the name lists, irrespective of whether they are located in Germany or elsewhere.

There now follows a more detailed description of the content of Regulation (EC) No. 881/2002 and its amendments:

1. Funds and economic resources of the individuals, groups, undertakings and entities listed in Annex I of the above-mentioned regulation are frozen.

The term “frozen” means that any form of use of the funds or the economic resources for the purpose of altering the amount of money or the acquisition of funds, goods or services is to be prevented. It should be noted that these assets do not have to be in the possession of the listed persons. Rather, it is sufficient for these persons to have the power of disposal over these funds and economic resources.

2. No funds and economic resources may be made available to the individuals, groups, undertakings and entities listed in Annex I of the above-mentioned regulation.

This prohibition should be understood in an all-embracing sense and refers to all types of financial assets and economic advantages. Thus, it embraces not only funds or other financial assets, but all advantages which can be used to obtain funds, goods or services. In particular, the concept of economic resources embraces all types of tradable goods.

Examples:

Disbursement of cash, wages, purchase prices, rents, etc.; provision of a cheque; return of a good against reimbursement of purchase price; delivery of a good; rental of commercial property

The concept of the economic resource is not restricted to physical objects. Rather, this concept covers everything which can be sold or transferred for money. Furthermore, the concept of economic resource embraces all documents which embody the value of a good or evidence an interest in goods or claims. Such documents are similarly prohibited from being handed out to or made out in favour of listed persons.

Examples:

Warehouse receipts, warehouse certificates

Goods which are suitable solely for personal use or personal consumption and which therefore cannot be used by a listed person to obtain funds, goods or services are not covered by the concept of “economic resources”. They are therefore not covered by the regulations; their provision to listed persons is not prohibited.

Examples:

Rental of private residential property, sale of goods for private consumption

It must also be noted that assets may not be made available either directly or indirectly. Assets are made available indirectly if they are transferred not directly to the listed person but to a third party, which subsequently results in a benefit to the listed person.

Example:

In the context of a triangular relationship, goods or funds are provided to a third party on the instruction of a listed person, and the debts of the listed person are settled via this transfer.

3. Every knowing and intentional involvement in evasions of the restrictions cited in figures 1 and 2 is prohibited.

The knowing and intentional involvement in activities which result in the evasion of the freezing of funds or economic resources or in listed persons obtaining or otherwise benefiting from assets is prohibited.

4. Recognition of exceptions

To the extent that the funds or economic resources are needed for certain purposes listed in detail in Art. 2 a) of Regulation 561/2003 of 27 March 2003 amending Regulation (EC) No. 881/2002 (OJ EC No. L 82 p. 1), the competent authority can on application authorise exceptions from the above-mentioned prohibitions. Without such authorisation, funds and economic resources of the respective persons may not

be made available even if the preconditions for an exception are fulfilled. The authorisation can be issued if:

- the assets are needed for certain basic expenses. These might be expenses for the payment of foodstuffs, rents, medications, etc.,
- the assets solely serve the settlement or reimbursement of appropriate fees related to legal advice, or if
- the assets solely serve to cover administrative costs which have been caused by the freezing of the assets.

The authorisation of an exception shall be made only by the authorities cited here in agreement with the UN Security Council Sanctions Committee.

In Germany, the Deutsche Bundesbank is responsible for issuing exceptional authorisations for funds, and the BAFA for economic resources.

5. Arms embargo

Article 2 of the Common Position of the Council of the European Union of 27 May 2002 (2002/402/CFSP, OJ EC No. L 139, p. 4) obliges the member states to prohibit the direct or indirect delivery, sale and transfer of arms and related materiel and related technical advice, assistance and training. Section 69 d of the Foreign Trade and Payments Ordinance therefore provides for an arms embargo against the persons, groups and entities listed in Annex I to Regulation (EC) No. 881/2002; pursuant to Section 70 a (2) of the Foreign Trade and Payments Ordinance in conjunction with Section 34 (4) no. 1 of the Foreign Trade and Payments Act, violations are subject to criminal prosecution. The legislation also applies to Germans abroad.

6. Reporting requirement

It should also be noted that all natural and legal persons are obliged to report all information which would facilitate compliance with Regulation (EC) No. 881/2002 to the relevant authorities. The reporting requirement also affects payments and transfers of assets which occurred prior to the entry into force of the rules.

7. Name list

The provisions of this Regulation in the current version are directly solely against Osama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities linked to them pursuant to Annex I of Regulation (EC) 881/2002.

This Regulation has been continually amended. The amending regulations basically merely contain an update of the name lists of those persons, organisations and entities (Annex I of the Regulation) covered by the prohibitions and restrictions contained in Regulation (EC) No. 881/2002, in order to bring them into line with changes to the list of the UN Sanctions Committee. It is likely that there will be further changes and updates to the Regulation and in particular the name list (Annex I of the Regulation). Current changes to the Regulation are posted rapidly on our website www.ausfuhrkontrolle.info.

An almost up-to-date “consolidated” version of Regulation (EC) No. 881/2002 can be obtained via the following link: http://eur-lex.europa.eu/RECH_menu.do?ihmlang=de.

The consolidated list is an unofficial document in which the Regulation originally published in the Official Journal has been updated to accommodate the various changes made in the meantime.

Clicking on this link generates a search field; using the number of the document, you should click on the link “konsolidierte Fassung”. This produces the search field “Suche in konsolidierten Rechtsakten”, in which you should write the number of the Regulation, i.e. 0881, and the year, i.e. 2002, and then click on search. Select the first entry in the search results which offers a pdf file, and click on “pdf”. The

consolidated version of the Regulation should then appear. At present, the consolidated legal text includes alterations to the list up to the 104th Amending Regulation (EC) 184/2009 of 6 March 2009.

III. Regulations against other persons and organisations suspected of terrorism (Regulation (EC) No. 2580/2001 and amendments)

In Regulation (EC) no. 2580/2001 of 27 December 2001, on the basis of UN Security Council Resolution 1373 (2001), the European Union adopted embargo measures against persons and organisations who commit, or attempt to commit, terrorist acts or who participate in or facilitate the commission of such acts and are not linked to Osama bin Laden, the Al-Qaida network or the Taliban (and who are therefore not including in the name list of Regulation (EC) No. 881/2002). Regulation (EC) No. 2580/2001, which is also directly applicable law in all EU member states, provides for the following restrictions:

- 1. Funds, other financial assets and economic resources of the listed persons, groups, undertakings and entities are frozen.**
- 2. The listed persons, groups, undertakings and entities may not be provided with any funds, other financial assets, economic resources or financial services.**
- 3. Every knowing and intentional involvement in evasions of figures 1 and 2 is prohibited.**

With regard to the prohibitions and restrictions cited under 1-3 above, the comments made in Section II apply correspondingly.

4. Recognition of exceptions

To the extent that the funds are needed for certain purposes listed in detail in Art. 5 of Regulation 2580/2001, the relevant authority can on application authorise an exception from the above-mentioned prohibitions. Without such authorisation, funds, economic resources of and financial services for the respective persons may not be made available even if the preconditions of an exception are fulfilled. The authorisation can be issued if:

- the frozen funds are needed to cover basic needs. These might be (cf. Art. 5 (2) of Regulation (EC) No. 2580/2001) expenses for the payment of foodstuffs, rents, medications, etc.
- the frozen funds serve the settlement of taxes, compulsory insurance premiums or fees for public utilities (gas, water, electricity, telecommunications), or if
- the frozen funds serve the payment of bank charges.

Pursuant to Art. 6 of the Regulation, the competent authorities are furthermore entitled to release frozen funds or economic resources under the conditions cited there, and to authorise the provision of funds and economic resources and the provision of financial services.

Exceptions can only be authorised by the authorities designated for this purpose. In Germany, the Deutsche Bundesbank is responsible for funds, and the BAFA for economic resources.

5. Arms embargo

Article 4 of the Council Common Position of 27 December 2001 on combating terrorism (OJ EC No. L 344 p. 90) obliges the member states to suppress the delivery of weapons to terrorists. For this reason, Section 69 d of the Foreign Trade and Payments Ordinance imposes an arms embargo against terrorists, and violations are subject to criminal prosecution pursuant to Section 70 a of the Foreign Trade and Payments Ordinance in conjunction with Section 34 (4) no. 4 of the Foreign Trade and Payments Act. These provisions are based on the list of natural or legal persons, groups or corporations pursuant to Article 2 (3) of the current version of Regulation (EC) No. 2580/2001. The legislation also applies to Germans abroad.

6. Reporting requirement

All natural and legal persons are obliged to report to the relevant authorities without delay all information which would facilitate compliance with Regulation (EC) No. 2580/2001.

7. Name list

The provisions of the current version of Regulation (EC) No. 2580/2001 are directed against individuals, groups, undertakings and entities in line with the separate name list issued with reference to this Regulation. This name list is produced, regularly reviewed and revised by decisions of the Council of the European Union.

In contrast to the name lists of the regulations against Osama bin Laden, the Al-Qaida network or the Taliban, the name list of Regulation (EC) No. 2580/2001 is republished in full each time it is amended. When checking names, therefore, it is only necessary to take the latest version of the name list. The current name list can be viewed on our website www.ausfuhrkontrolle.info.

The annex to the Common Position 2001/931/CFSP, which is regularly updated by Common Positions of the Council of the European Union, contains a further name list. This name list does not impose any further-reaching obligations on companies. It contains an additional list of persons, groups and organisations marked with an asterisk *). The prohibitions and restrictions presented in Section II of this instruction booklet do not apply to them. Rather, the member states are obliged merely to provide the greatest possible mutual assistance of the justice and police systems in order to identify and seize these persons.

IV. The implementation of the sanctions and relevant assistance

1. General points

As stated in the introduction, the measures to combat terrorism are based on two separate legal instruments. This distinction has an effect – as explained in Sections II and III – on the legal basis and the way the relevant name lists are published.

The EC regulations issued to combat terrorism do not stipulate how it should be ensured that listed persons do not gain access to funds or economic resources. In particular, therefore, it is not possible to make generalised statements about in-house implementation by companies of the duty to comply with the prohibitions. In fact, this is in the interest of the specific company situation, which will require flexible solutions suited to the in-house procedures followed by each company. Irrespective of the individual situation of the individual company, however, it is necessary to bear in mind that the name lists are regularly updated.

2. Consolidated lists for Regulations (EC) No. 881/2002 and (EC) No. 2580/2001

The EU's database of legal documents provides access to "consolidated" versions of EC Regulations. "Consolidation" is the compilation of a legal instrument of the Community and amendments to it to form a single unofficial document. These consolidated versions are especially helpful if there have been numerous changes to the initial legal text, as is the case with e.g. Regulation (EC) No. 881/2002, since they facilitate an overview.

However, it is necessary to bear in mind that these consolidated versions exist merely as a source of information, and that no liability is assumed for their accuracy. Only the official publications in the Official Journal of the EU are legally binding.

A "consolidated" version of Regulation (EC) No. 881/2002 and the name list in Annex I can be obtained via the following link:

http://eur-lex.europa.eu/RECH_menu.do?ihmlang=de .

The document is searchable: cf. the guidelines in Section II.7. above.

At present, the consolidated legal text includes alterations to the list up to the 104th Amending Regulation (EC) 184/2009 of 6 March 2009.

You can access the consolidated text of Regulation (EC) N. 2580/2001 in the same way. This version includes all changes up to Council Decision 2007/868/EC of 20 December 2007.

3. The European Union's database

We believe that the easiest way to check the name lists is to use, free of charge, the EU's database, which lists all persons, organisations and entities against whom financial sanctions have been imposed. This database is regularly updated to take account of amendments to the legislation, and offers the following advantage compared with the consolidated legal texts: it brings together in a single database all persons listed in the name lists related to the combating of terrorism as well as persons against whom financial sanctions have been imposed in the course of other country-related embargo measures.

The database is only available in English and can be accessed at:

http://ec.europa.eu/external_relations/cfsp/sanctions/list/consol-list.htm

To use the database, it is worth using the current version of the Internet Explorer or Netscape Navigator, as not all browsers can display the website and the database.

Once you have entered the site, click on the link: *Current List view*. The database then appears, and can be searched alphabetically or using the browser search function.

You can also access the entire EU website via a link from the BAFA homepage. On the homepage, click on "Externe Links", "Allgemeine Internetseiten zum Thema Ausfuhrkontrolle", "Europäische Union (consolidated list)".

4. Recommendations on the implementation of sanctions

The European Union has also issued recommendations on the implementation of sanctions ("EU Best Practices for the effective implementation of restrictive measures"). This non-binding and non-exhaustive list of suggestions regarding interpretation can be found here:

<http://register.consilium.europa.eu/pdf/de/08/st08/st08666-re01.de08.pdf>

V. Sanctions in the case of violations

Violations of the prohibitions and restrictions set out in Sections II and III are subject to criminal prosecution and will be treated as a breach of the embargo.

The relevant regulations governing this criminal liability are Section 34 (4) no. 2, (5), (6) no. 4 and (7) of the Foreign Trade and Payments Act. Intentional violations can be punished by a prison sentence of between six months and five years. In especially serious cases, violations can be punished by a prison sentence of not less than two years. Attempted violations are punishable. In the case of negligence, a prison sentence of up to three years or a fine can be imposed. The violation of reporting requirements is in principle dealt with as an administrative offence pursuant to Sections 75 (5)i and (5)h of the Foreign Trade and Payments Ordinance.

VI. Information material, inquiries and contact addresses

- The **UN Security Council resolutions** can be viewed at:

http://www.un.org/Depts/german/sr/fs_sr_zwischenseite.html in German

<http://www.un.org/documents/scres.htm> in English

- The **name list of the UN Sanctions Committee** can be viewed at:

<http://www.un.org/sc/committees/1267/consolist.shtml>

- You can find **Official Journals of the European Union** at:

<http://eur-lex.europa.eu/JOIndex.do?ihmlang=de>

- You can find a **consolidated version of the name lists relating to Regulation (EC) No. 881/2002 and to Regulation (EC) No. 2580/2001** at:

http://eur-lex.europa.eu/RECH_menu.do?ihmlang=de .

Sections II.7. and IV.2. above provide details of how to search the website.

- The **database of the European Union** described in Section IV.3. above can be found at:

http://ec.europa.eu/external_relations/cfsp/sanctions/list/consol-list.htm

You can also find further information about how to use these database in the relevant section above.

- You can find the current version (9 March 2009) of the non-binding recommendations on the implementation of sanction measures of the Council of the European Union at:

<http://register.consilium.europa.eu/pdf/de/08/st08/st08666-re01.de08.pdf> .

- You can ask the **Deutsche Bundesbank** about restrictions on movements of capital and payments:

Servicezentrum Finanzsanktionen
80281 München

Tel. no.: 089 / 2889 - 3800

Fax no.: 069 / 709097- 3800

Email: sz.finanzsanktionen@bundesbank.de

Internet: <http://www.bundesbank.de/finanzsanktionen/finanzsanktionen.php>

- You can contact the Federal Office of Economics and Export Control (BAFA) at:

Frankfurter Straße 29 – 35
65760 Eschborn

Tel. no.: 06196 / 908 – 0

Fax no.: 06196 / 908 – 800

Email: poststelle@bafa.bund.de

Internet: www.ausfuhrkontrolle.info

- You can contact the Federal Ministry of Economics and Technology, Division VB2, at:

11019 Berlin

Tel. no.: 030 / 18615-0

Fax no.: 030 / 18615 – 7010

Email: info@bmwi.bund.de

Internet: www.bwmi.bund.de