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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

on the proposal for a Council regulation imposing certain specific restrictive measures against certain persons suspected of involvement in the assassination of former Lebanese Prime Minister Rafiq Hariri
(COM(2005)0614 - 15098/2005 – C6-0434/2005 – 2005/0234(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Jean-Marie Cavada

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council regulation on imposing certain specific restrictive measures against certain persons suspected of involvement in the assassination of former Lebanese Prime Minister Rafiq Hariri
(COM(2005)0614 - 15098/2005 – C6-0434/2005 – 2005/0234(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the Commission proposal to the Council (COM(2005)0614 - 15098/2005)[1],

– having regard to common position 2005/888/CFSP[2],

– having regard to Article 60 and Article 301 of the EC Treaty,

– having regard to Article 308 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0434/2005),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2006),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

5. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission	Amendments by Parliament

Amendment 1
Citation 1 a (new)

[1] Not yet published in OJ.
[2] OJ L 327, 14.12.2006, p. 26.

Having regard to the Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy, adopted by the Council on 12 December 2005,

Justification

An explicit reference to the Council's guidelines to the Member States should also be included in every act providing for restrictive measures against specific persons.

A reference of this kind is in keeping with the requirements of transparency, even if the Council treats them simply as interpretative, non-binding documents. It should be noted that a first version was adopted in 2003 and that this second version takes into account the experience gained by Community and national institutions over recent years. The document is accessible on the register of Council documents at the following address: http://register.consilium.eu.int/pdf/en/05/st15/st15114.en05.pdf.

Amendment 2
Article 2, paragraphs 1 and 2

1. All funds and economic resources belonging to, owned, held or controlled by the natural or legal persons, entities or bodies ***listed in Annex I*** shall be frozen.	1. All funds and economic resources belonging to, or owned or held by, the natural or legal persons, entities or bodies ***which appear on the list drawn up by the Commission pursuant to Article 8*** shall be frozen.
2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies ***listed in Annex I***.	2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies ***which appear on the list drawn up by the Commission pursuant to Article 8***.

Justification

The list referred to in this article is drawn up by the Sanctions Committee on the basis of Chapter VII of the UN Charter and may not be modified by Member States or by international organisations such as the Community and the Union, which are considered by the UN to be regional organisations. Including the list in a Community act and publishing it in the Official Journal is, therefore, a mandatory act with no possibility of alteration. That being the case, it has the characteristics of an implementing measure that could be entrusted directly to the Commission.

Amendment 3
Article 8, paragraph 1

1. The Commission shall be empowered to:	1. The Commission***, after consulting the European Parliament,*** shall be empowered to:
(a) amend ***Annex I*** on the basis of determinations made by the Sanctions Committee; and	(a) ***draw up and*** amend on the basis of determinations made by the Sanctions Committee ***a list of natural or legal persons, entities or bodies referred to in Article 2 whose funds and economic resources should be frozen, to correct the list if it is proven to contain an error***; and
(b) amend Annex ***II*** on the basis of information supplied by Member States.	(b) amend ***the*** Annex on the basis of information supplied by Member States.
	The Commission shall supply prior information, in confidence, to the committee of the European Parliament responsible for civil liberties, justice and home affairs and that responsible for development concerning the drawing-up and amendment of the list referred to in the first paragraph, point (a).

Justification

See the justification for Amendment 2

Amendment 4
Annex I

This annex is deleted.

Justification

See the justification for Amendment 2.

EXPLANATORY STATEMENT

Context

On 14 February 2005, a serious terrorist attack in Beirut (Lebanon) claimed the lives of 23 people, including the former Lebanese Prime Minister Rafiq Hariri, and injured dozens of others. The European Parliament[1], expressing the view that Rafiq Hariri was not only one of the most influential politicians but also one of the most devoted to the reconciliation process in Lebanon and a strong supporter of the withdrawal of foreign troops from his country, vigorously condemned the attack and called for swift progress by the inquiry that was immediately set up by the UN Security Council.

The UN International Independent Investigation Commission, led by Mr Detlev Mehlis, submitted to the Security Council a first report[2], which was acknowledged by the Security Council on 31 October 2005 in the form of resolution 1636 (2005). This report was recently followed by a second report by the Investigation Commission, whose mandate had been extended in the interim[3].

For its part, the Council of the European Union, in its Conclusions of 7 November 2005 on Syria and Lebanon, deplored the clear indication that Syria had not cooperated fully with the investigating team and called on Syria to cooperate unconditionally with the investigators. These Conclusions were followed by a common position under the common foreign and security policy[4] providing for the adoption of specific restrictive measures against persons suspected of involvement in Mr Hariri's assassination.

The Community procedure for freezing assets

These restrictive measures include the obligation (with certain exceptions) to prevent entry into or transit through their territory as well as the requirement to freeze all funds and economic resources belonging to suspected persons.
As has happened in other comparable situations, such as in the recent cases of Côte d'Ivoire[5] and Sudan, implementation of the Council's common position in the Community requires a Community measure with the following legal basis:

- Article 301, which allows the Council to adopt by qualified majority urgent measures necessary to implement 'a common position or […] a joint action adopted according to the

[1] Resolution P6_TA(2005)0046 of 23 February 2005 on the European Union's relations with the Mediterranean region, and Resolution P6_TA(2005)0076 of 10 March 2005 on the situation in Lebanon.
[2] The first report of the International Independent Investigation Commission is numbered by the UN as S/2005/662 (see http://daccessdds.un.org/doc/UNDOC/GEN/N05/563/67/PDF/N0556367.pdf?OpenElement); the second report, submitted in December, is numbered S/2005/775 (see http://daccessdds.un.org/doc/UNDOC/GEN/N05/636/79/PDF/N0563679.pdf?OpenElement).
[3] On 15 December 2005, the Security Council adopted resolution 1644 (2005) extending the mandate of the Investigation Commission.
[4] Council Common Position 2005/888/CFSP of 12 December 2005 concerning specific restrictive measures against certain persons suspected of involvement in the assassination of former Lebanese Prime Minister Rafiq Hariri (see: http://europa.eu.int/eur-lex/lex/LexUriServ/site/fr/oj/2005/l_327/l_32720051214fr00260027.pdf).
[5] P6_TA(2005)0047.

provisions of the Treaty on European Union relating to the common foreign and security policy';
- Article 60, which, pursuant to Article 301, allows for urgent measures to be taken against citizens of third countries concerning the movement of capital and payments;
- Article 308, which allows the same measures to be taken against individuals and non-governmental organisations. Adding this third legal basis makes it possible to fill a gap left by Articles 60 and 301 and, at the same time, to involve the European Parliament in the decision-making process.

Restrictive measures that may be disputed

In terms of form, both the Commission proposal and the Council position (which contains only minor changes) follow the pattern of the provisions laid down in the 'Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy' adopted by the Council on 3 December 2003 and revised on 12 December 2005[1].
However, the formal status of these guidelines is unclear because they consist not only of understandings (such as the definition of 'funds' and of 'economic resources') but also of rules on permissible derogations on humanitarian grounds, an issue raised several times by the European Parliament when it has considered analogous measures aimed at freezing the funds of terrorist organisations[2].
In these conditions, it would at the very least be appropriate to give them greater publicity in order to avoid disputes by persons affected by EU measures.
Indeed, such disputes are more than likely and have already been the subject of several proceedings before the Court of First Instance, which recently ruled on the first two sets of proceedings (cases T-306/01 and T-315/01)[3] in its judgment of 21 September 2005 on Regulation (EC) no 881/2002.

[1] Accessible on the Council register at: http://register.consilium.eu.int/pdf/en/05/st15/st15114.en05.pdf .
[2] See in particular:
- the opinion of 13 December 2001 on the draft Council regulation on specific restrictive measures directed against certain persons and entities with a view to combating international terrorism (4765/3/22001 - C5-0665/2001 - 2001/0228(CNS))
http://www.europarl.eu.int/omk/sipade3?SAME_LEVEL=1&LEVEL=3&NAV=X&DETAIL=&PUBREF=-//EP//TEXT+TA+20011213+ITEMS+DOC+XML+V0//EN
- the resolutions adopted on 7 February 2002: (P5_TA(2002)0055) European Parliament resolution on the Council's decision of 27 December 2001 on measures to combat terrorism, and (P5_TA(2002)0048) European Parliament resolution on the progress made in 2001 in implementing the area of freedom, security and justice provided for in Article 2, fourth indent, of the Treaty on European Union
- the opinion adopted on 11 April 2002 on the proposal to freeze the assets of the Al-Qa'ida terrorist network (COM(2002)0117 - C5-0132/2002 - 2002/0059(CNS))
- the opinion of 16 September 2004 on the proposal for a Council regulation imposing certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY) (COM(2004)0348 - SN 2057/2004 – C6-0041/2004 – 2004/0114(CNS))
http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//TEXT+TA+P6-TA-2004-0009+0+DOC+XML+V0//EN&LEVEL=3&NAV=X .
[3] A second group of cases, currently being dealt with, concerns the restrictive measures taken by the Community against persons and entities involved in terrorism, but not linked to Osama bin Laden, Al-Qa'ida or the Taliban, and not specifically identified by the Security Council.

In its first judgment, the Court of First Instance recognised the competence of the Council under both the first and the second pillars and took the opportunity to affirm **the primacy of UN law over Community law, while recalling that the former must respect the principle of *jus cogens*,** understood as a peremptory norm of public international law from which neither the Member States nor the bodies of the United Nations may derogate. It includes, in particular, the mandatory provisions intended to secure universal protection of fundamental human rights.
In particular, the Court of First Instance found that the freezing of funds provided for by the contested regulation did not infringe the applicants' fundamental rights as protected by *jus cogens*. Indeed, the contested regulation makes express provision for possible derogations, at the request of interested persons, allowing access to funds necessary to cover basic expenses. It is therefore neither the purpose nor the effect of those measures to subject the applicants to inhuman or degrading treatment.
It should be noted that this judgment has been the subject of two appeals (C-402/05 P (Kadi v Council and Commission) and C-415/05 P (Yusuf and Al Barakaat International Foundation v Council)). **Therefore, the Court of Justice will have to rule on the questions of principle raised by the Court of First Instance, and the judgment of the Court of Justice will thus provide a point of reference for the institutions' actions in this area.**

The procedure

It may be noted that the regulation assigns a significant role to the Commission[1], which will be expected to update, pursuant to Article 8:
- on the basis of information supplied by the Council, the list of persons whose assets should be frozen (Annex I),
- on the basis of information supplied by Member States, the list of authorities with the power to decide on exemptions, particularly on humanitarian grounds (Annex II).

As regards the procedure to be adopted for the purpose of drawing up the lists, it is by no means apparent that, as things stand, Sanctions Committees set up by the Security Council are always in a position to check the reliability of sources with a view to including or removing given particular persons/bodies. **In order to improve the reliability of such lists, appropriate checking/and or correction procedures should therefore be provided for, as should minimum guarantees for the persons targeted, at least at the initiative of those States which are members both of the Sanctions Committees and of the EU.**

It may be worth recalling that the latter have an obligation to cooperate in good faith with the EU and with the other Member States, as provided for in Article 19 of the Treaty on European Union, which lays down that: 'Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed.' This requirement is all the more necessary in these situations because, once adopted, the list imposes on the EU institutions and the Member States legally binding obligations which can be enforced by the courts in Strasbourg and Luxembourg. Clearly, the obligation to cooperate in good faith which applies in relation to the Security Council also applies in relation to Sanctions Committees set up by the Security Council. It would therefore be extremely

[1] Which already manages most of the executive operations; in this regard, see documentation at: http://europa.eu.int/comm/external_relations/cfsp/sanctions/index.htm.

desirable for close contacts to be established between Members of the Union in cases concerning nationals of EU Member States not represented on the Security Council or nationals of the Community itself (since, once adopted within the Union, it is the Community's responsibility which applies).

Secondly, the rapporteur considers that the Sanctions Committee should be able to consider as a matter of urgency requests concerning humanitarian exemptions, particularly when they are put forward by EU Member States which are also members of the Sanctions Committee. Such States should not be able to apply less stringent criteria within the Sanctions Committee than they are required to apply within the EU. From this point of view, it is to be welcomed that, in accordance with what the European Parliament called for during previous consultation procedures, Articles 3 and 4 of the proposal for a regulation lay down that in urgent cases the authorities of the Member State concerned may apply humanitarian exemptions in advance (a principle implicitly accepted by Article 60(2) of the EC Treaty).

It may be recalled in this context that the report of the High-level Panel submitted to the Secretary-General of the United Nations in December 2004 makes recommendations for improving sanctions procedures (see particularly Recommendation 51[1]).

As regards the structure of the proposal for a regulation, it seems contrary to the Treaty to submit to Parliament for consultation a text containing an empty annex, even if it is intended to include information that is to a certain extent declaratory in nature. **According to the case law of the Court of Justice, Parliament must receive all the information necessary to enable it to deliver an opinion.**

Thus, in order to avoid actions being brought for infringements of essential procedural requirements (as has already happened in connection with the publication of other lists of the same nature), the most reasonable solution would be to delete the annex from the body of the regulation and stipulate that it should be drawn up as an implementing measure by the Commission and that Parliament's appropriate committees should be informed about it in advance (if appropriate, in confidence).

The rapporteur has therefore tabled amendments in line with the above on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

[1] 'Sanctions committees should improve procedures for providing humanitarian exemptions and routinely conduct assessments of the humanitarian impact of sanctions. The Security Council should continue to strive to mitigate the humanitarian consequences of sanctions.' Report 'A more secure world: our shared responsibility', report to the Secretary-General of the United Nations by the High-level Panel on Threats, Challenges and Change in December 2004 - http://daccessdds.un.org/doc/UNDOC/GEN/N04/602/32/PDF/N0460232.pdf?OpenElement.