



Federal Office of Economics and Export Control

**Information Leaflet on
Embargo Measures
- Irrespective of Countries -
to Combat Terrorism**

BAFA

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I. Introduction

Based on resolutions of the United Nations Security Council, the European Union adopted regulations with a view to combat terrorism. These regulations shall apply immediately in all Member States of the European Union and, without requiring national implementation measures, must be observed by all states regardless of whether the individuals, groups, undertakings and entities mentioned in the lists are located in Germany or any other country. These regulations may be divided in two groups:

1. Measures against certain persons and entities associated with Osama bin Laden, the Al-Qaida network or the Taliban. The basis is the Regulation (EC) No. 881/2002 of 27.05.2002 (OJ EU No. L 139, page 9) with numerous updates.
2. Measures against other persons and entities suspected of terrorism. The basis is the Regulation (EC) No. 2580/2001 of 27.12.2001 (OJ EU No. L 344, page 70) with numerous updates.

With regard to the competence of the Federal Office of Economics and Export Control (BAFA) for granting exceptional licences for the supply of economic resources, BAFA publishes an Information Leaflet on Embargo Measures Irrespective of Countries to Combat Terrorism. This revised Information Leaflet substitutes the Information Leaflet on Embargo Measures to Combat Terrorism of 01 May 2004 and takes into account the amendments and updates of subsequent EC Regulations which were adopted to fight against terrorism.

Content

- I. Introduction
- II. The regulations against Osama bin Laden, Al-Qaida and the Taliban
- III. The regulations against other persons and entities suspected of terrorism
- IV. How to handle the lists of names and the data bank of the European Union
- V. Sanctions in case of violations
- VI. Information and contact addresses

This Information Leaflet wants to contribute to more clarity and information about the major content of the regulations. For this purpose, the Information Leaflet contains an overview of the essential content of the restrictions and prohibitions imposed as well as hints on how to handle the lists of names, followed by an enumeration of further contact addresses and helpful web sites.

The Leaflet explains the state of affairs and the legal situation at the time of its publication on 28th September 2005, not claiming to be complete. The content of the Information Leaflet is furthermore subject to a deviating interpretation by courts and prosecuting authorities and is not legally binding.

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

The basis of the regulations as against Osama bin Laden, Al-Qaida and the Taliban is the Resolution 1390 (2002) of the United Nations Security Council of 16 January 2002. This resolution aims at adopting certain measures to combat terrorism and is directed against individuals, groups and entities contained in the list of names drawn up by the Sanctions Committee of the United Nations. This list of names is updated in regular periods by the Sanctions Committee and can be viewed in the internet at

www.un.org/Docs/sc/committees/1267/1267ListEng.htm

An access to this site is also possible from a link of BAFA' s Homepage (www.ausfuhrkontrolle.info). Please use the keywords "Links", "Allgemeine Liste" "Vereinte Nationen (Liste Res. 881/2002)" on BAFAS' s Homepage.

The list of the Sanctions Committee is divided into 5 sections and broken down to individual persons, groups, undertakings and entities. The 5th section names the individuals, groups, undertakings and entities which were deleted from the list in the meantime. The list which is available as a pdf- and html-document is provided with a "search" function.

The above resolution of the United Nations Security Council was implemented by the Regulation (EC) No. 881/2002 of 27.05.2002. Thereby the European Union adopted embargo measures against persons and groups associated with Osama bin Laden, the Al-Qaida network and the Taliban. As already mentioned, the regulations have immediate legal effect in all EU Member States regardless of whether the individuals, groups, undertakings or entities are located in Germany or any other country.

Below you find 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, entities and undertakings listed in Annex I to the above-mentioned regulation are frozen.

The term "freezing" means preventing any use of the funds or economic resources that would result in any change in their amount, or preventing to obtain funds, goods or services in any way. It should be noted that it applies to financial assets that are not necessarily owned by the listed persons. Moreover, it is sufficient that these funds and economic resources are subject to the power of disposal of these persons.

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

This prohibition is to be understood in a comprehensive manner and refers to any type of financial assets and economic advantages. This does not only include funds or other financial assets, but all advantages that can be used for obtaining funds, goods or services. The term economic resources includes any type of goods.

Examples:

Payment of money in cash, wage, purchasing price, rent, etc.; to lodge a cheque; repurchase of a commodity against refunding of purchasing price.

The term "economic resources" is not confined to tangible assets, but comprises anything that can be sold or transferred for payment. In addition, the term economic resources includes all documents embodying a commercial value, or rights to goods or claims. Such documents must not be given to or issued for the benefit of listed persons.

Examples:

Warehouse warrants, warehouse receipts

Furthermore, it should be taken into consideration that the prohibition does not only refer to the direct but also indirect supply of financial assets. An indirect supply of financial assets means that the payment does not go directly to the listed person but to a third person, consequently, it results in a preferential treatment of that person.

Example:

Within a tripartite relationship a listed person orders the supply of goods or funds to a third person and, as a result, the debts of the listed person are settled in full.

3. Any knowing and intentional participation in activities circumventing the restrictions under number 1 and 2 is prohibited.

It is also prohibited to knowingly and intentionally participate in activities resulting in a circumvention of the freezing of funds or financial resources, or providing the listed person with pecuniary advantages or in another way.

4. Recognition of exceptions

Where funds or economic resources are required for purposes detailed in Art. 2a of Regulation No. 561/2003 of 27.03.2003 amending Regulation No. 881/2002 (OJ EU No. L 82 page 1), the competent authority may grant, upon request, an exception to the above-mentioned prohibitions. Without such an authorisation it is not permitted to make available funds and economic resources to the person in question even if the pre-conditions of an exception are fulfilled. The licence may only be granted if

- the financial assets are necessary to cover basic expenses, for instance payments for foodstuffs, rent, medicines and medical treatment, etc.,
- the financial assets are intended exclusively for payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services;

- the financial assets are intended exclusively for payment of fees or service charges for the routine holding or maintenance of frozen funds or frozen economic resources.

The authorisation of an exception is granted exclusively by the competent authorities in agreement with the Sanctions Committee of the United Nations Security Council.

In Germany the Deutsche Bundesbank is responsible for the granting of exceptional licences for funds and BAFA is responsible for economic resources.

5. Arms embargo

In addition, an arms embargo was imposed against the individuals, groups and entities listed in Annex I to the Regulation No. 881/2002. This arms embargo bases on the EU Council Common Position of 27.05.2002 (2002/402/CFSP, published in EU OJ No. L 139, p. 4) and contains the prohibition of the direct and indirect supply, sale and transfer of arms, other military equipment and related technical advice, assistance or training.

6. Duty of information

Besides this, it should be noted that all natural and legal persons are obliged to provide all relevant information about contacts with listed persons to the competent authorities. The duty of information also concerns payments and transfer of financial assets made prior to the entry into force of the regulation.

The provisions of this regulation, as amended, are exclusively directed against Osama bin Laden, members of the Al-Qaida network and the Taliban as well as other individual persons, groups, undertakings and institutions associated with them in accordance with Annex I of Regulation No, 881/2002.

This regulation has been amended by 53 EC regulations up to now. These 53 amendments - which are also published at our Homepage at www.ausfuhrkontrolle.info - essentially contain only an adjustment of the lists of names of those individuals, groups and entities (Annex I of the above regulation) which are subject to the prohibitions and restrictions contained in regulation No. 881/2002 to the list of the United Nations Sanctions Committee. Further amendments and updates of the regulation and particularly of the list of names (Annex I of this Regulation) will certainly follow. Current amendments of these regulations are published immediately on our web sites at www.ausfuhrkontrolle.info. There you will also find the previous 53 amendments of the regulation No. 881/2002.

A consolidated version of the list of names may be viewed at the above-mentioned web sites of the United Nations Sanctions Committee or the data bank of the European Union (as described in Section IV).

III. The Regulations Against Other Individuals and Entities Suspected of Terrorism (Regulation No. 2580/01 with Amendments)
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Based on the Resolution 1373 (2201) of the United Nations Security Council, the European Union adopted the Regulation (EC) No. 2580/2001 of 27.12.2001 to impose embargo measures on persons and entities who commit, or attempt to commit, terrorist acts or who participate in or facilitate the commission of such acts and who are not associated with Osama bin Laden, the Al-Qaida network or the Taliban (and therefore, do not appear in the list of names of regulation 881/2002). The Regulation (EC) No. 2580/2001 which is directly applicable in all EU Member States contains the following restrictions:

- 1. All funds, other financial assets and economic resources of the listed individuals, groups, entities and undertakings are frozen.**
- 2. No funds, other financial assets, economic resources or financial services must be made available to the listed individuals, groups, entities and undertakings.**
- 3. The participation, knowingly and intentionally, in activities circumventing items 1 and 2 is prohibited.**
- 4. All natural and legal persons are obliged to provide the competent authorities with information about persons mentioned in the list of names.**

The prohibitions and restrictions explained in section II apply correspondingly to the items 1 to 4 above.

5. Recognition of exceptions

Where funds are required for purposes detailed in Art. 5 of Regulation No. 2589/2001, the competent authority may grant upon request an exception to the above-mentioned prohibitions. Without such an authorisation it is not permitted to make available funds, economic resources or financial services to the person in question even if the conditions of an exception are fulfilled. The authorisation may only be granted if

- the frozen funds are necessary for essential human needs (see Art. 5 para. 2 Regulation 2580/2001), for instance payments for foodstuffs, rent, medicines etc.,
- payments from frozen accounts for taxes, compulsory insurance premiums of fees for public utility services (gas, water, electricity, telecommunications), or
- payment of charges due to a financial institution for the maintenance of accounts.

Besides this, the competent authorities are entitled under Art. 6 of the Regulation to unfreeze funds or economic resources, and to grant specific authorisations for making

funds, economic resources and financial services available, subject to the conditions provided for.

An exception may only be granted by the authorities designated for this purpose.

In Germany the Deutsche Bundesbank is responsible for granting authorisations for funds, BAFA is in charge of economic resources and the Federal Financial Supervisory Authority (BAFin) is responsible for granting authorisations for financial services.

The provisions of Regulation No. 2580/2001, as amended, are directed against individual persons, groups, entities and institutions in accordance with an independent list of names adopted in connection with this regulation. The form of the list of names differs from the list of the regulation against Osama bin Laden, the Al-Qaida network or the Taliban. Therefore the peculiarities of the list of names annexed to Regulation No. 2580/2001 are explained as follows:

The list referring to Regulation No. 2580/2001 is established, continuously reviewed and amended by Council Common Positions of the European Union.

The list of names contains names marked with an asterisk *).

Where the name is marked with an asterisk *), the prohibitions and restrictions laid down in section II of this Information Leaflet do not apply. The Member States are only obliged to provide full administrative and legal assistance of justice and police for the purpose of identification and seizure of those persons.

Where, however, the name is **not** marked with an asterisk *), the prohibitions and restrictions referred to in section II of this Information Leaflet apply unrestrictedly. The list of names not marked with an *) is also published separately with reference to Art. 2 para. 3 of Regulation No. 2580/2001 in a decision of the Council.

Another difference to the lists of names annexed to the regulations against Osama bin Laden, the Al-Qaida network or the Taliban is that the list of names of regulation 2580/2001 is always published completely after each amendment. When comparing the names, it is sufficient to only refer to the latest version of the list. The list of names presently in force can be found in the Annex to the Council Common Position 2005/427/CFSP of 06 June 2005 as well as in Council Decision 2005/428/CFSP of 06.06.2005. They are available at our Homepage at www.ausfuhrkontrolle.info or may be viewed via the data bank of the European Union (see below IV).

IV. How to Handle the Lists of Names and the Data Bank of the European Union

As already mentioned in the introduction, the measures to combat terrorism base on two different foundations. This distinction has also effects - as explained in sections II and III - on the legal foundations and the publication method of the relevant lists of names.

Looking at the company' s internal compliance with the duty to check the lists of names, no general statements are possible because it depends on the export control within each company. However, it is urgently required to update the lists in regular periods, regardless of the individual situation in each company.

The European Union established a data bank containing all individuals, groups and entities subject to financial sanctions. This data bank includes all persons mentioned in the lists of names to combat terrorism as well as persons subject to financial sanctions as a result of other embargo measures.

The address of this **data bank of the European Union** is as follows:

www.europa.eu.int/comm/external_relations/cfsp/sanctions/list/consol-list.htm

After opening this page, please select the link: C: Financial sanctions in force: Electronic list.

The above EU web site may also be reached via a link on BAFA' s Homepage. Please use the keywords "Links", "Allgemeine Links", "EU-Embargos", "EU-Finanzsanktionen".

V. Sanctions in Case of Violations

Infringements of the prohibitions and restrictions explained in sections II and III are subject to punishment and are treated like embargo violations.

Relevant penal provisions are sect. 34 para. 4, para. 7 and para. 8 of the Foreign Trade and Payments Act (AWG). Intentional violations may be punished with a prison sentence of no less than two years. In less serious cases a prison sentence of three months to five years may be imposed. In case of negligent actions a prison sentence up to three years or a fine may be imposed.

VI. Information Material and Contact Addresses

1. The **Resolutions of the United Nations Security Council** may be viewed at:

www.un.org/Depts/german/index.html in German language

www.un.org/site/index.html in English language

2. The **list of names of the United Nations Sanctions Committee** is published at:

www.un.org/Docs/sc/committees/1267/1267ListEng.htm

This web site may also be reached via a link on BAFA' s Homepage. Please use the keywords "Links", "Allgemeine Links", "Vereinte Nationen/Liste Res. 881/2002".

3. The **Official Journals of the European Union** may be viewed at:

www.europa.eu.int/eur-lex

4. The **data bank of the European Union** described in section IV of this Information Leaflet can be found at:

www.europa.eu.int/comm/external_relations/cfsp/sanctions/list/consol-list.htm

Then use the link: C: Financial sanctions in force: Electronic list.

The above EU web site may also be accessed via a link from BAFA' s Homepage. Please use the keywords "Links", "Allgemeine Links", "EU-Embargos", "EU-Finanzsanktionen".

5. In case of questions on payment transactions and the freezing of funds you may get further information at www.bundesbank.de, the Homepage of the **Deutsche Bundesbank**.
6. In case of questions about insurance you may consult the web sites of the **Federal Financial Supervisory Authority (BaFin)** at www.bafin.de.
7. The **Federal Office of Economics and Export Control (BAFA)** may be contacted at:

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65760 Eschborn
Phone: 06196 / 908 - 0
Fax: 06196 / 908 - 800
Email: poststelle@bafa.bund.de
Internet: www.ausfuhrkontrolle.info
8. The **Federal Ministry of Economics and Labour (BMWA)**, division VB2 may be contacted at:

Phone: 030 / 2014 - 9
Fax: 030 / 2014 - 5358

