



## European Banking Industry Committee

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European Banking Federation (EBF) • European Savings Banks Group (ESBG) • European Association of Cooperative Banks (EACB) European Mortgage Federation (EMF) • European Federation of Building Societies (EFBS)  
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European Association of Public Banks (EAPB)

Mr. Eneko Landaburu  
Director-General  
Directorate General External Relations  
European Commission  
200, Rue de la Loi  
B-1049 BRUXELLES

Brussels, 3 August 2004

Subject: EBIC recommendations for improvements to EC Regulations in the field of embargo measures and financial sanctions

Dear Mr. Landaburu,

Over the past few years, the European Union has adopted several regulations imposing financial sanctions on governments of specific countries, on persons and on organisations. European credit institutions have always been willing to co-operate fully and to ensure a swift and efficient implementation of financial sanctions. However, they have sometimes encountered difficulties in the implementation of financial sanctions. Drawing on its members' experience in implementing sanctions, the European Banking Industry Committee (EBIC) would like to make some recommendations to improve the drafting, implementation and interpretation of EU financial sanctions regulations.

In this context, EBIC elaborated the enclosed recommendations which address the following points:

- The identification of persons or organisations targeted by financial sanctions should be improved
- The definition and handling of the “freezing of funds” should be improved and made more practicable without favouring targeted account/safe deposit holders.
- The notion of "circumvention of offences" should be clarified
- The legal security of banks and their staff should be improved by an exemption of liability when applying the regulations in good faith.
- The approach concerning financial sanction legislation should be more integrated through practicable and common definitions in all regulations.

The EU legal framework would be substantially improved if these proposals were given due consideration. This would undoubtedly allow all credit institutions to implement financial sanctions more swiftly, efficiently and with the necessary legal certainty while respecting the EU foreign and security policy objectives.

EBiC would be pleased to further discuss this issue with the European Commission and the Council and remains at your entire disposal to this effect.

Yours sincerely,



Ian Mullen

EBiC Chairman



Henning Schoppmann  
EAPB - Secretary General

On behalf of Udo Witte

Chairman of the EBiC  
Working Group on Anti-  
Money Laundering

**Annex: 1 document (EBiC recommendations)**



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Brussels, 20 July 2004

### **EUROPEAN BANKING INDUSTRY COMMITTEE'S RECOMMENDATIONS FOR IMPROVEMENTS TO EC REGULATIONS IN THE FIELD OF EMBARGO MEASURES AND FINANCIAL SANCTIONS**

#### I. General remarks

Over the past few years, the European Union has adopted several regulations<sup>1</sup> imposing financial sanctions on governments of specific countries, on persons and on organisations. The importance of financial sanctions has increased recently in view of the global fight against terrorism. Moreover, the use of financial sanctions is expected to increase in the future, as these measures which are often referred to as "smart actions" or "targeted measures" (i.e. in contrast to traditional economic sanctions vis-à-vis countries), constitute an instrument particularly suited for the EU Common Foreign and Security Policy (CFSP).

European credit institutions have always been willing to co-operate fully and to ensure a swift and efficient implementation of financial sanctions. However, they have sometimes encountered difficulties in the implementation of financial sanctions. Drawing on its members' experience in implementing sanctions, the European Banking Industry Committee (EBIC) would like to make some recommendations to improve the drafting, implementation and interpretation of EU financial sanctions regulations, especially in light of the recently adopted Council "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy" (Council Document 15579/03 of 3 December 2003 - hereinafter "the Council Guidelines"). As the "Council Guidelines" were drafted without consultation of the banking industry, EBIC would like to take this opportunity to submit the proposal of fostering a

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<sup>1</sup> See for instance:

- Council Regulation (EC) No 2488/2000 of 10 November 2000 maintaining a freeze of funds in relation to Mr. Milosevic and those persons associated with him
- Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism
- Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban
- Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq
- Council Regulation (EC) No 314/2004 of 19 February 2004 concerning certain restrictive measures in respect of Zimbabwe
- Council Regulation (EC) No 798/2004 of 26 April 2004 renewing the restrictive measures in respect of Burma/Myanmar
- Council Regulation (EC) No 872/2004 of 29 April 2004 concerning further restrictive measures in relation to Liberia



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regular dialogue between the banking industry and the European Union. Such a regular dialogue would optimise the instrument of financial sanctions and help the EU to efficiently and effectively achieve its foreign policy objectives.

It must be underlined that credit institutions are confronted with an enormous and increasing number of persons and entities subject to financial sanctions, thus giving rise to additional spelling and transcription issues. Such data overflows jeopardise the proper functioning of IT-structures in banks and represent an obstacle towards the establishment of an EU single payment area. We strongly believe that against the backdrop of sustained efforts of the past years to set up efficient and swift payment transaction systems, there is a serious risk of a structurally retrograde developments in this field. Therefore, the European Union should strike a balance and provide for adequate and focused information in order to avoid an over-burdening of the IT-systems currently put in place by the banks.

### II. Recommendations

#### **Recommendation 1: The identification of persons or organisations targeted by financial sanctions should be improved**

A swift and efficient implementation of sanctions is only possible if physical persons and organisations targeted by financial sanctions can be clearly identified by banks. To that end EBIC welcomes and commends the joint recent launch of the “electronic-Consolidated Targeted Financial Sanctions List (e-CTFSL)” by the European Commission and the banks as a first step. The e-CTFSL is a fully accessible consolidated database of all persons and entities subject to EU financial sanctions. However, the e-CTFSL as well as the lists provided by the EU in the annexes of various financial sanctions regulations still too often do not contain enough elements of information which could enable banks to properly identify sanctioned persons and organisations. Therefore, improvements should be made in order to deliver complete lists containing extensive and precise data of persons and organisations under sanctions. This would facilitate the identification enormously.

Complete lists of targeted physical persons and legal entities/organisations will ensure a swift freezing of their funds. It will also help avoiding four major problems:

- unnecessary delays in banks’ implementation of financial sanctions,
- banks freezing funds of innocent clients whose names appear to be the same as those of targeted persons,
- potential civil liability of banks which have applied financial sanctions to a client on a erroneous basis (in this context, the exemption from civil liability for implementing sanctions in good faith as provided in the most recent EU regulations is very helpful and ought to be included in all regulations of the EU-sanctions regime),
- potential criminal liability faced by financial institutions/ bank staff who have not properly implemented sanctions.



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Therefore, the information concerning physical persons and legal entities/organisations under sanctions should be as complete as possible. The information should at least contain the following points:

- For persons: surname, all the first names, date of birth (or at least year of birth), place of birth, citizenship, ID or passport number. Any additional information such as the title or profession, should be indicated too
- For legal entities and other organisations: full name of the entity, place of the registered office and address, registration number and date of registration of the company.

Guidance on matching standards would also be useful. For example, does a simple match on a surname constitute a real match or should there be a match on two fields or perhaps all fields? Where the match is only in one field and is a common forename and surname it will be difficult to eliminate a subject unless the authorities can provide further information. In this context, EBIC would like to promote the idea of banks taking a more risk-based approach concerning the matching issue.

Moreover, credit institutions are faced with an ever-increasing number of persons and entities subject to financial sanctions. As past experience shows, these lists tend to increase rapidly in volume without any regular official process of assessment, revision, verification or deletion of the data content. Efforts should therefore be made by the competent authorities (i.e. by EU, UN, national authorities) in order to check and to clean up those lists on a regular basis. In any case, credit institutions need relevant data in order to implement these sanctions. All redundant or irrelevant names and data should be removed in an orderly manner as such data overflows jeopardize the proper functioning of IT-structures.

Concerning names and alias names, existing differences in spellings between different language versions of the EU Official Journal, should be avoided. These differences - resulting from transcriptions of non-EU alphabets or unfortunate translations<sup>2</sup> impede an effective identification of targeted persons. Moreover, it represents a true legal problem as all the language versions of the EU Official Journal have the same degree of legal validity.

As previously mentioned EBIC very much welcomes the recent launch of the e-CTFSL. This database will enable banks to implement financial sanctions on a computerised basis with increased rapidity and efficiency. However, as financial sanctions are immediately applicable on the day of their publication in the EU Official journal, it is essential that the database be updated by the Commission on the same day as that of the publication in the Official Journal. Furthermore, EBIC considers that European credit institutions should benefit from an exemption of liability when

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<sup>2</sup> For instance, the list of targeted persons provided by regulation N°881/2002 contains some spelling differences in the 11 different language versions of the EU Official Journal. The most obvious example concerns the entry "Usama bin Laden": seven official denominations for "Usama bin Laden" co-exist in the different language versions of the EU Official Journal, but none of them contain these seven denominations (i.e. most of the language versions only contain 4 denominations). However, each language version of the EU Official Journal is deemed authentic and has the same value than the other language versions. This confused situation represents a serious weakness for uniform application of sanctions throughout the Union.



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applying the database in good faith. Such an exemption of liability similar to those provided when applying EU regulations in good faith, should be granted via an EU regulation.

As to the issue of data authenticity, EBIC maintains that the data published in the electronic version of the EU Official Journal should be deemed as authentic as the paper-based versions of the EU Official Journal. Such an approach would be consistent with the EU initiatives "eEurope" and "e-Government" and would also be in line with best practices in Member States where the electronic version of official publications is increasingly deemed authentic, often replacing the paper-based version.)

**Recommendation 2: The definition and handling of the “freezing of funds” should be improved and made more practicable without favouring targeted account/safe deposit holders.**

Credit institutions should be allowed to carry out ordinary management of frozen accounts in order to avoid unnecessary burdens (such as the establishment of suspense accounts). Therefore, the crediting of interest or funds on frozen accounts or safe deposits should be permitted as long as such additions of interest payments or funds are frozen immediately. Similarly, banks should be allowed to debit account management fees and overdraft interest from the account/safe deposit holder without any burdensome prior authorisation.

- **Allowing the crediting of frozen accounts**

Under EU financial sanctions, banks should be allowed to credit funds to accounts or deposits of sanctioned persons if such funds are frozen thereafter and, thus, not accessible to the person under sanctions. If these funds are not allowed to be credited to the frozen account or deposit, a bank may be legally obliged to return the funds to the originator who could then seek alternative ways to send these funds to the persons under sanctions. This would then lead to a circumvention of the political aim of the financial sanctions. Therefore only an unrestricted authorisation for crediting frozen accounts makes sense, as long as the credited funds are also frozen thereafter and not made available to the person under sanctions.

The present situation where the EU institutions apply the standard wording of the “Council Guidelines” in the Chapter III, Part E, n°23, paragraph 2, by itself cannot be considered as satisfactory. Indeed, the wording recommended by the Council only permits the crediting of frozen accounts for interest and other earnings on those accounts, or for payments due under contracts that were concluded prior to the sanctions - on the condition that such additions are immediately frozen. In addition to the strong arguments against a prohibition of the crediting of frozen accounts, we would like to underline the fact that banks cannot possibly determine whether incoming payments are based on contracts entered into prior to or after the sanctions. The Council itself recognised the counterproductive effects of such provision, as it considers in Chapter III, Part E, n° 25 of the Council



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Guidelines that it "shall not prevent the crediting of the frozen accounts by financial institutions that receive funds transferred by third parties to the account of the listed person or entity, provided that any additions to such accounts will also be frozen". The latest Regulation No 314/2004 of 19 February 2004 concerning certain restrictive measures in respect of Zimbabwe shows a good example of ill-conceived and contradictory provision as the wording of Article 7(2) of the Regulation is in conflict with the content of the declaration published as addendum.

Therefore, EU institutions should clarify this matter by explicitly allowing the crediting on frozen account in the regulations. As an example, we would favour the wording of article 5 of the Council Regulation No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq, which stipulates in a clear manner that "*the crediting of frozen accounts shall be allowed on the condition that any additions shall be frozen.*"

In this respect, EBIC welcomes the recent improvements provided by the latest regulations (i.e. article 8 of the Regulation No 798/2004 on Myanmar and article 7 of Regulation No 872/2004 on Liberia). Pursuant to these provisions, the crediting of frozen accounts is allowed without restrictions for financial institutions, provided that any additions are frozen immediately thereafter. However, financial institutions are obliged to inform the competent authorities about such transactions without delay. This practice should become the general rule for all financial sanctions' regulations.

- **Allowing the payment of fees for the ordinary management of accounts**

In addition, banks should be allowed to collect account management fees and overdraft interest from sanctioned account/safe deposit holders or debit such accounts/deposits in order to recover a bank's payment obligation vis-à-vis third parties. In such cases, it should be permitted to debit the funds of sanctioned persons for the banks' benefit in order to avoid unnecessary damage to the banks. Since it is the sanctioned person that has to pay in these cases, this cannot be against the political aim of the sanctions. Provisions in recent regulations which subject the payment of account management fees to a previous authorisation from the competent authorities in the Member States, would make the implementation of financial sanctions much more bureaucratic and cumbersome for credit institutions, without bringing any added-value to the political aim of financial sanctions. Credit institutions would be confronted with additional costs for two reasons: on the one hand, they would face serious difficulties - or even fail - to obtain the payment of account management fees; on the other hand, they would have to take these accounts away from the automatic fee debiting.

The recent improvements in this respect, especially in Regulation No 872/2004 on Liberia and Regulation No 798/2004 on Myanmar are welcomed by EBIC. Nevertheless, we would favour a general authorisation for the debiting of fees in the regulations. Indeed, EU regulations should explicitly allow for flexible rules which are harmonised with the needs of banking practice, as it was provided in Article 4 (b) of the former Council Regulation No 310/2002 of 18 February 2002 concerning certain restrictive measures in respect of Zimbabwe. Pursuant to that provision the freeze of funds "*shall not apply to (...) payment of charges due to a financial institution in the Community for the maintenance of accounts.*" This wording should be extended to also apply to the management



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fees of safe deposits, overdraft interest and debiting to recover a bank's payment obligation vis-à-vis third parties.

### **Recommendation 3: Competent national authorities should ensure rapid clarification, unfreezing and authorisation procedures.**

Because of problems arising when handling financial sanctions, the issue of close co-operation between credit institutions and Member States authorities is of paramount importance. Since only a swift co-operation from competent Member State authorities could optimise the efficiency of financial sanctions, EBIC recommends that the EC regulations should provide for strict time-frames for Member States authorities to react when credit institutions present a request - e.g. concerning clarification of the identity of individuals and organisations under sanctions. Accordingly, a competent Member State authority should react within a maximum period of three (3) working days when a bank asks for clarification of the identity of an individual/entity. Similarly, it is essential that a quick unfreezing procedure be put into place in cases where a bank would have frozen an account on an erroneous basis. Therefore, such an unfreezing authorisation should be granted by the competent Member States authorities within no longer than three (3) working days from the request of the bank. For this purpose, an easy access via fax, e-mail or telephone is needed to ensure that the guidance and unfreezing authorisations mentioned above could be quickly obtained. In case of authorisations granted via telephone, a written confirmation of the authorisations should follow within a maximum of three (3) working days.

Furthermore, when a regulation provides a regime of exceptions (e.g. for tax, social security or rental payments), it is equally important to have a quick authorisation procedure in place in all Member States. Long delays in authorisation procedures result in considerable administrative burden, legal uncertainty and operational risks for banks and their clients. Moreover, they fail to ensure the efficient implementation of financial sanctions. Therefore, authorities should react to the authorisation request within a maximum time limit of three (3) weeks and authorisations should be deemed granted if authorities fail to react within the stipulated time-frame.

These measures would provide for a minimum standard of legal certainty for credit institutions and their customers, thus allowing for a uniform application of financial sanctions in the internal market. Subject to any agreed criteria, silence on the part of the authorities should therefore be interpreted to indicate their consent.



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### **Recommendation 4 : The notion of "circumvention of offences" should be clarified**

Recent regulations imposing financial sanctions prohibit participation in activities "the object or effect of which is, directly or indirectly, to circumvent" the provisions of the regulation (e.g. Article 4 of regulation No 881/2002 with regard to the Taliban). As this provision is vague, it is very difficult to apply by credit institutions with a reasonable level of legal certainty. The wording of Article 2 of Regulation No 2488/2000 maintaining a freeze of funds in relation to Mr Milosevic which prohibits any participation "knowingly and intentionally" in activities the "object of which is, directly or indirectly" to circumvent the provisions of the Regulation would be much more preferable.

### **Recommendation 5 : The legal security of banks and their staff should be improved by an exemption of liability when applying the regulations in good faith.**

Financial sanction regulations should contain a provision which exempts banks and their employees from any liability for applying the regulations in good faith. Such an exemption of liability exists in other legal systems (e.g. in the United States), thus creating a competitive disadvantage for European credit institutions. Moreover, such an exemption is already provided for in Article 9 of the EU Directive 2001/97/EC on Prevention of the Use of the Financial System for the purpose of Money Laundering. The more recent regulations imposing financial sanctions provide such an exemption of liability (e.g. Article 6 of Regulation No 881/2002 on the Al-Qaida network, Article 9 of Regulation No 1210/2003 on Iraq or Article 9 of the Regulation No 314/2004 on Zimbabwe), which represents a clear improvement. EBIC therefore welcomes this move into the right direction and urges the EU institutions to further extend the use of this exemption of liability to every current and future sanctions regulation.

### **Recommendation 6 : The approach concerning financial sanction legislation should be more integrated through practicable and common definitions in all regulations.**

Regulations on financial sanctions adopted by the Council since 2000 have so far introduced improvements on a rather "piecemeal" and incremental basis. Banks operating within the Community are now forced to deal with different sets of measures designed to enforce Community legislation concerning financial sanctions in different legal environments. Such a development renders an effective monitoring of bank transactions extremely difficult and increases potential liability and operational risks for banks beyond acceptable levels. EBIC would therefore very much appreciate it if the European institutions could provide for common definitions and provisions in all regulations of the EU financial sanctions regime. Therefore, EBIC supports the adoption of an integrated framework regulation with a special focus on banking issues. Such a framework regulation should amend all



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regulations currently in force with a view to revise, update, improve problematic provisions as well as standardise them in line with the present recommendations.

EBIC noted with great interest the adoption of the Council Guidelines. These guidelines constitute a first step towards providing standard definitions and wording for future financial sanctions regulations - an initiative that must be welcomed. However, these guidelines present omissions, numerous weaknesses and sometimes cumbersome standard wordings regarding financial sanctions. The most obvious problem concerns the restrictions for the crediting of frozen accounts (see Recommendation 2 supra).

EU sanctions regulations should not implement UN resolutions by simply reproducing their guiding but condensed formulation of financial sanctions without giving due consideration to the needs of banking practice. Effective implementation, which is in line with the present EBIC recommendations, should be achieved by taking a more pragmatic, risk based and integrated approach. In this context EBIC seriously requests the Council and the Commission to rethink their approach as stated in the guidelines which essentially focuses on the translation of the exact wording of UN Resolutions and therefore clearly fails to address practical aspects of implementation at the level of financial institutions. Otherwise, EBIC calls upon the Council to support further improvements regarding UN resolutions, especially in the light of the UN Analytical Support and Sanctions Monitoring Team established by UN resolution 1526 (2004).

Finally, EBIC regrets that the Council Guidelines were adopted without any consultation with credit institutions which are ultimately responsible for implementing these sanctions. EBIC therefore urges the Council to improve these guidelines as well as the EU regulations in order to cope with the practical needs of the European credit sector. EBIC would be pleased to further discuss with the Council and the Commission on how to achieve such improvements and remains at their entire disposal to this effect.

The EU legal framework would be substantially improved if the above proposals were given due consideration. This would undoubtedly allow all credit institutions to implement financial sanctions more swiftly, efficiently and with the necessary legal certainty while respecting the EU foreign and security policy objectives.

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### **Annex**

#### **Introduction of EBiC**

EBiC is a co-operation of banking associations with a mandate to provide advice, assure a comprehensive consultation of market participants and ensure a representative industry view throughout the process of drafting, adopting, implementing and enforcing EU-financial legislation and thereby provide input for the European institutions and their relevant sectoral committees. It is amongst the declared aims of EBiC to advise the Commission on relevant legislative banking and cross-sectoral initiatives and any developments at Community level affecting the banking and financial services activities associated with the establishment of a European Single Market for financial services.

EBiC has been established by the main banking industry federations: the European Banking Federation (EBF), the European Savings Banks Group (ESBG), the European Association of Cooperative banks (EACB), the European Mortgage Federation (EMF), the European Federation of Building Societies (EFBS), the European Federation of Finance House Associations (Eurofinas) / the European Federation of Leasing Company Associations (Leaseurope), and the European Association of Public Banks (EAPB).