Joint Opinion on the notifications for Prior Checking received from the Data Protection Officer of the Council of the European Union regarding the processing of personal data for restrictive measures with regard to the freezing of assets

Brussels, 07 May 2014 (2012-0724, 2012-0725, 2012-0726)

1. Proceedings

On 3 September 2012, the European Data Protection Supervisor ("**EDPS**") received three notifications for prior checking relating to the processing of personal data from the Data Protection Officer ("**DPO**") of the Council of the European Union ("**Council**") for the following processing operations:

- processing of personal data in the context of restrictive measures with a view to combating terrorism (Regulation (EC) 2580/2001) (case 2012-0724);
- processing of personal data in the context of EU autonomous restrictive measures (case 2012-0725);
- processing of personal data in the context of the implementation of UN restrictive measures by the EU (case 2012-0726).

The following documentation was attached to the notifications as examples of the notices published in the Official Journal (OJ) in the framework of restrictive measures:

- notice informing listed entities and persons of their listing under Regulation (EC) 2580/2001 (OJ C 334/1, 15.11.2011);
- notice informing listed entities and persons of their listing under EU autonomous measures against Syria (OJ C 186/5, 26.06.2012);
- notice informing listed entities and persons of their listing under the implementation of UN measures in view of the situation in Afghanistan (OJ C 186/3, 26.06.2012).

Given that the processing operations under the different instruments are closely related and have a similar purpose and procedures, the EDPS decided to address them in a Joint Opinion. This Joint Opinion only assesses the compatibility of measures with regard to asset freezing provided by the different (in general country-specific) Council regulations. It does not cover other restrictive measures contained in some of those regulations.

Because the cases were notified ex-post, i.e. when the processing operations were already in place, the deadline of two months for the EDPS to issue his Opinion pursuant to Article 27(4) of Regulation (EC) No 45/2001 (the "**Regulation**") does not apply. Questions were raised on 14 September 2012, to which the Council replied on 22 October 2012. On 20 November 2012, the

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EDPS called for a meeting to discuss the case, which took place on 16 January 2013. The same day, additional questions were sent to the controller, who replied on 18 February 2013. Further questions were asked on 10 April 2013, to which the Council replied on 30 April 2013, on 8 May 2013 and on 28 May 2013, to which the Council replied on 18 July 2013 and 23 September respectively. A meeting was held between the Council DPO and the EDPS on 8 January 2014 and further information was provided by the Council on 8 and 9 January 2014. The EDPS sent further questions to the Council on 8 January to which the Council responded on 12 February 2014. The draft Opinion was sent to the DPO for comments on 10 April 2014. The EDPS received a reply on 5 May 2014.

2. The facts

2.1. Introduction

The three notifications all refer to the processing of personal data in the context of restrictive measures, specifically measures of asset freezing applied to certain legal and natural persons, entities or bodies. The purpose of the freezing of assets is notably to combat any form of financing of terrorism (Regulation 2580/2001) or to freeze the resources of persons related to the regime in a third country or related to specific groups within a third country (country specific regulations). Such restrictive measures are decided in the framework of the Union's Common Foreign and Security Policy ("**CFSP**") pursuant to Chapter 2 of the Treaty on European Union ("**TEU**"), notably Article 29 TEU. The EU regulations on which the processing operations are based are directly applicable legislative instruments mostly based on Article 215 of the Treaty on the Functioning of the European Union ("**TFEU**").[1] They contain a list of persons subject to these measures either directly in the regulation or in an annex thereto. These EU regulations are based on Council Common Positions (prior to the entry into force of the Lisbon Treaty) or on Council Decisions (after the Lisbon Treaty).

This Joint Opinion deals only with the processing of data related to natural persons either as persons directly listed or who are mentioned as being related to a legal entity listed, as well as the legal representatives of listed persons/entities.

After the establishment or review of the list of persons subject to asset freezing measures, these EU regulations provide for the publication of these lists in the Official Journal. On that basis financial institutions then implement the asset freeze.

This Joint Opinion deals only with the Council's activities in this respect. The Commission's activities regarding restrictive measures, notably the management of the consolidated list of persons subject to asset freezing published on the internet, have already been prior-checked in a separate Opinion.[2] The Council has no role in managing this consolidated sanctions list.

In the context of asset freezing measures, personal data are processed by the Council to establish, review, update, rectify and publish lists of persons whose assets are to be frozen. Data may also be processed for communication with the listed persons and with the UN, the Member States and third countries in the follow-up to such measures, including a review procedure. This Opinion covers three different (groups of) regimes:

[1] The older regulations are based on either Articles 60 and 301 TEC or Articles 60, 301 and 308 TEC.
[2] EDPS prior check Opinion in case 2010-0426, issued on 22 February 2012.

2.1.1. The Regime under Regulation 2580/2001

For restrictive measures with a view to combating terrorism within the framework of Regulation 2580/2001, the Council establishes, reviews and amends a list of natural persons and entities who shall be subject to restrictive measures.

Member States can propose persons for listing, based on decisions taken by competent authorities at the national level (in particular information from judicial or equivalent authorities after a decision has been taken on the instigation of an investigation or prosecution of a (attempted) terrorist act). To this end, the proposing Member State provides reasons (e.g. national court decisions) why this person should be listed. These documents may include data on (suspected) criminal offences and other security measures. Such proposals for listing are shared between the Council, Member States' delegations, the Commission and the External Action Service (EEAS). Additional information pertaining to the person concerned can be submitted by the EEAS, the Commission or the UN. The Council then unanimously agrees on a list of persons based on the proposals of Member States. The Council relies on the information provided by the proposing Member State. As regards the statement of reasons (which provides the prohibited activity and a reference to the national decision to list the person), the appropriate preparatory body of the Council checks the legal soundness of the proposed statement of reasons and the Secretariat General of the Council checks if the statement satisfies the listing criteria. This list is updated at least twice a year. Afterwards, the list of persons subject to the sanctions is published in the Official Journal of the European Union as part of an act amending Regulation 2580/2001. The Commission takes part in all discussions in preparatory bodies and has access to all documents. Pursuant to Common Position 2001/931/CFSP a listing pursuant to Regulation 2580/2001 can also be based on an UN decision. However, currently none of listings are based on a UN decision.

2.1.2. The Regimes for "*EU autonomous measures*"

For EU autonomous measures a regulation providing for asset freezing measures is adopted based on a Council Decision on the basis of Article 215 TFEU. The Council notified the country-specific regulations which provide for EU autonomous measures for the following countries: (i) Belarus, (ii) Côte d'Ivoire, (iii) Egypt, (iv) Republic of Guinea, (v) Republic of Guinea-Bissau, (vi) Iran-Human Rights and Iran-Non-proliferation, (vii) Democratic People's Republic of Korea, (viii) Libya, (ix) Syria, (x) Tunisia, (xi) Zimbabwe.[3] While the details of the different country specific regulations vary slightly, the procedures to put them into practice are the same and can thus be analysed jointly. These regulations contain each a list of criteria as to which kind of persons should be listed as well as an annexed list of persons subjected to the restrictive measures. Member States (on the basis of proposals of the Member States) can propose persons for listing based on these criteria. The Council relies on the information provided by the proposing Member State, which can be completed with additional information gathered by the EEAS. As regards the statement of reasons submitted by the proposing Member State, the appropriate preparatory body of the Council checks the legal soundness of the proposed statement of reasons and the Secretariat General of the Council checks if the statement satisfies the listing criteria.

[3] For further information and full references please see point 3.3 on the lawfulness of the processing below. This Opinion is an umbrella opinion which should also cover processing operations with regard to *autonomous measures* concerning other countries, please see point 3.1 below.

2.1.3. The Regimes for the "*Implementation of UN restrictive measures*"

This regime comprises regulations adopted by the Council which are based on UN lists established by United Nations Security Council Resolutions or Decisions by the appropriate Sanctions Committees established by those Resolutions. Member States of the UN are obliged to implement these measures. While the EU is not a member of the UN, the Member States of the EU implement these UN measures through an EU regulation. While the details of the legal texts vary slightly, the procedures to put them into practice are the same and can thus be discussed jointly. According to the Council's notification, currently the EU regulations provide for asset freezing measures based on UN measures for the following countries: (i) Afghanistan, (ii) Côte d'Ivoire, (iii) Democratic Republic of Congo, (iv) Democratic People's Republic of Korea, (v) Iran-Non proliferation, (vi) Libya, (vii) Liberia, (viii) Somalia, (ix) Sudan and South Sudan.[4]

The personal data which is published by the Council has already before been published by the UN. No additional assessment is made by the Council.

Whenever the UN amends one of its sanctions lists, it publishes an updated version. The EEAS forwards this information to the Council and makes a proposal for an act amending the list annexed to the relevant Regulation based on this published list. The UN lists are included verbatim in the annexes of the relevant regulations; the Council does not perform additional checks on the accuracy of these data.

2.2. Description of the processing operations

The following part describes first the facts common for all processing operations for the three different regimes and indicates specificities of the regimes, if any.

Controller

In all three cases, the controller is the Council, here represented by the Director-General of Directorate-General C (Foreign Affairs, Enlargement, Civil Protection) of the General Secretariat of the Council of the European Union. The organisational unit entrusted with the practical processing of personal data is the Horizontal issues Unit (Unit 1C) in Directorate General C.

The purpose of the processing operations

The purpose of the processing operations based on the regulations is the establishment and reviewing of lists of persons subject to restrictive asset freezing measures and the collection of sufficient identifying information related to them as well as of grounds for listing/statements of reasons for designation of those persons concerned.

[4] For further information and full references please see point 3.3 on the lawfulness of the processing below. This Opinion is an umbrella opinion who should also cover processing operations with regard to *UN implementing measures* concerning other countries, please see point 3.1 below.

Data subjects

The data subjects concerned by all three regimes are:

- natural persons listed in the regulations or their annexes. For *Regulation 2580/2001* this measure concerns persons who "*commit or attempt to commit terrorist acts or who participate in, or facilitate the commission of such acts*" and who are thus subject to asset freezes. For the *EU autonomous measures* this concerns persons who fulfil the criteria as laid down in the respective regulations (e.g. persons who are *"responsible for the violation of international electoral standards"* in Belarus, persons *"who seek to prevent or block a peaceful political process"* or *"participated in the coup d'état of 12 April 2012"* in Guinea-Bissau, persons who *"are responsible for serious human rights violations"* in Iran, etc.) and who are thus subject to asset freezes. For the *UN implementing measures*, this concerns natural persons who are subject to asset freeze by the UN Security Council or the UN Sanctions Committee (e.g. the former Liberian President and persons associated to him, persons member of the Taliban or persons associated with them in Afghanistan, persons designated by the UN Sanctions Committee as acting in violation of the arms embargo imposed on the Democratic Republic of Congo, etc.);
- natural persons having the same name as a listed person and claiming not to be that person whose assets should be frozen;
- lawyers representing the listed (natural/legal) persons above.

The processing operations

Personal data are processed by the Council in the framework of asset freezing measures at the various stages; these processing operations are at least partly automated. The processing operations for all three regimes consist of:

- the collection of personal data on persons proposed for listing or already listed (for *Regulation 2850/2001* originating from Member States; for *EU autonomous measures* originating from Member States or Member States Missions or EU delegations through the EEAS; for the *implementation of UN measures* upon receipt of the UN list forwarded by the EEAS);
- the establishment of the lists of persons;
- the exchange and transfer of all the collected data to the Member States delegations in the Council's preparatory bodies, EEAS and the Commission;
- the publication of the list of designated persons in the Official Journal (for *EU autonomous measures* and the *implementation of UN measures* including the grounds for the listing/statement of reasons);
- the update or modification of the collected personal data;
- the storage of the collected data;
- the correspondence with listed natural persons or the legal representatives, including access to the file.

Categories of data

With regard to *Regulation 2580/2001* the following personal data are processed and published in the Official Journal:

- names and aliases,
- gender,
- dates and place of birth,
- nationality,
- passport numbers or ID card numbers,
- address or whereabouts of the person,
- function or profession,
- occasionally information on membership in terrorist organisations.

The following data (special categories of data pursuant to Article 10 of the Regulation) are not published for the lists of *Regulation 2580/2001* but only made available to the person concerned or his/her lawyers:

- national administrative decisions,
- criminal convictions,
- indictments,
- indications showing that persons concerned were involved in terrorist activities,
- information that persons concerned are member or have links to terrorist organisations (which -as indicated above- is also occasionally published).

Concerning the *EU autonomous measures* and the *implementation of UN measures* the following data are processed and published in the Official Journal:

- names and aliases,
- gender,
- dates and place of birth,
- nationality,
- passport numbers or ID card numbers,
- address,
- function or profession,
- grounds for listing/statement of reasons (including special categories of data pursuant to Article 10 of the Regulation such as information as to the role in human rights infringements, criminal sanctions, depending on the criteria in the respective regulations).

Recipients

For all three regimes the recipients of the personal data are the Commission, EEAS and Member States delegations in the Council's preparatory bodies, as well as European Courts in case of court proceedings.

For the *implementation of UN measures* additional information provided to the Council in the context of review requests is shared with the Commission, the EEAS and Member States' delegations, but is not forwarded to the UN.

Furthermore, as described above, most personal data (except for the detailed statement of reasons for *Regulation 2580/2001*) for all three regimes is published in the Official Journal and is thus publicly available.

Information provided to data subjects

For *Regulation 2580/2001*, if the address of the data subject is known, a statement of reasons (summarising the documentation submitted to the Council) is sent to him/her. If no address is known, an information notice is published in the C series of the Official Journal, informing the data subject that the statement of reasons is available from the controller upon request. Both measures are taken at the time the restrictive measures take effect. According to the Council this does not preclude data subjects to request the rectification of their data at any later stage.

The information notice informs listed persons that they have been newly listed or that the justification for their listing was updated. Listed persons should request the statement of reasons within two weeks of publication of the notice. The notice also informs listed persons of their right to submit at any time a request for a review of the listing decision. In order to be considered at the next regular review, listed persons should send such requests within two weeks of publication of the notice. Finally, listed persons are informed of which national authorities they should address to obtain authorisation to use frozen funds (e.g. to pay for subsistence expenses, legal assistance etc.).

For *EU autonomous measures* and the *implementation of UN measures*, if the address of the data subject is known, an information notice is sent to him/her. If no address is known, an information notice is published in the C series of the Official Journal. Both measures are taken at the time the restrictive measures take effect.

For *EU autonomous measures* listed persons are informed of which national authorities they should address to obtain authorisation to use frozen funds (e.g. to pay for subsistence expenses, legal assistance etc.) as well as of their right to challenge the listing decision before the General Court of the European Union. They are also informed that they may submit requests for delisting (with supporting documentation) to the Council.

For the *implementation of UN measures*, the information notice includes contact information for the UN focal point for delisting or the Office of the UN Ombudsperson, informing listed persons that they may at any time introduce a request for delisting (together with supporting documentation) thereof. They are also informed of the possibility to request a review of the listing decision by the Council. Listed persons are informed of which national authorities they should address to obtain authorisation to use frozen funds (to pay e.g. for subsistence expenses, legal assistance etc.). Finally, they are informed of the right to challenge the listing decision before the General Court of the European Union.

In all three regimes no specific information on the EU data protection rules is currently contained in the standard letters or in the Notices. Furthermore, data subjects only receive a direct letter in case their address is known to the Council.

Rights of access and rectification

For *Regulation 2580/2001*, as the statement of reasons is not published, it is sent to listed persons on the Council's own initiative only if an address is known, or upon request following the publication of the Notice in the Official Journal. Access to the statement of reasons is always granted to the data subject. If data subjects (or their lawyers) request access to personal data other than the statement of reasons, access is only granted if the originator of the data concerned (proposing Member State) has agreed to it[5] and on the basis of Council Decision 2004/644/EC (implementing rules on data protection).[6]

For *EU autonomous measures* access to the data subjects' personal data (other than the data published in the Official Journal) is only given after agreement of the originator of the data concerned (Member State or EEAS)[7] following the procedures of Council Decision 2004/644/EC.

For the *implementation of UN measures*, requests for access and rectification are dealt with in accordance with Section 5 of Council Decision 2004/644/EC with an indication that the Council does not have additional information compared to that which is published in the Official Journal and that this information is based on the lists published by the UN.

With regard to rectification data subjects can request a review of their listing. In addition to the possibility of delisting requests by a person concerned, the Council updates and reviews the lists on a regular basis. According to the Council, for the *implementation of UN measures* delisting is automatic and is done after the UN decision to delist. As these lists are implementations of lists decided at the UN level, the Council does not conduct regular reviews on its own initiative but only updates the list in case the UN list is amended. Lists for *EU autonomous measures* are reviewed at least every year, lists for *Regulation 2580/2001* are reviewed every six months. Corrections and modifications of the lists can be agreed, adopted and published quickly, taking into account the Council's decision-making procedures (High Representative's proposal for an Implementing Regulation, passage through appropriate preparatory bodies of the Council and final adoption by the Council). The Council then adopts and publishes an implementing regulation deleting the person concerned from the list. The reasons for delisting are not given in such implementing regulation. Furthermore, for persons concerned whose contact details are available, they are also directly informed about the delisting by letter. Such letter also does not contain any reasons for the delisting. The procedure for delisting is the same as the adoption, i.e. in the form of a regulation based on a parallel Council decision.

Conservation

For all three notifications, the Council conserves personal data for five years from the moment of delisting or for the duration of any on-going court proceedings related to the listing decision, whichever period is longer. According to the notification this period is set on the basis of Article

[5] In accordance with Council Decision 2011/292/EU on the security rules for protecting EU classified information.
[6] Council Decision 2004/644/EC adopting implementing rules concerning Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 296/20, 21/09/2004.
[7] See fn. 5.

46 of the Statute of the Court of Justice which provides that matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise to it. Data is not stored for historical, statistical or scientific purposes.

Personal data published in the Official Journal remain on the public record.

Security

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3. Legal analysis

3.1. General Remarks

Given that the three notifications deal with closely related processing activities having similar purposes and procedures, the EDPS decided to address them in a Joint Opinion.

This Joint Opinion does not address a single legal instrument to implement asset freezing measures at Union level, but several regulations requiring such measures. Unless indicated otherwise, all recommendations in the legal analysis below apply to all three notified processing operations.

As the scope of these processing operations changes frequently with new sanctions regimes being added, or older regimes being suspended, it would not be practical to demand a new notification for each new sanctions regime. Additionally, the regimes in each of the three notifications are fundamentally similar within each category.

This prior check is intended as an "umbrella" Opinion including all the regulations mentioned in the notifications (see point 3.3) but also for additional regulations imposing restrictive measures that could be adopted after the date of notification in the future. Taking into account that the provisions of the existing regulations imposing restrictive measures and the processing operations carried out on the basis of newly adopted asset freezing regulations are largely similar, and that the recommendations contained in this Opinion are also meant as a benchmark for the implementation of restrictive measures in general, there would be little added value in carrying out a full prior checking procedure each time a new Council regulation imposing restrictive measures is adopted.[8] For this reason, **this Opinion and the recommendations therein should be seen as also applying to future regulations imposing restrictive measures insofar as the processing operations foreseen are substantially identical to those analysed in this prior check**.

Therefore, unless the data processing operations under additional regulations to be adopted in the future differ from the operations analysed in this Joint Opinion, they should also be considered to be covered under this Joint Opinion. However, this approach has no impact on the obligation of the controller to notify the processing operation to the DPO of the Council pursuant to Article 25 of the Regulation. Only in case a newly adopted regulation providing for asset freezing differs

[8] In this respect the Council informed the EDPS on 21 March 2014 during the assessment of the notification about the new autonomous measures adopted for the Ukraine, see Section 3.3 below. The proposed approach is also applied to these regulations.

substantially from the ones described in this Opinion, the DPO has to update the notification to the EDPS accordingly.

3.2. Prior checking

The processing operations notified constitute processing of personal data, i.e. "*any information relating to an identified or identifiable natural person*" pursuant to Article 2(a) of the Regulation; notably lists of names and contact details as well as the reasons for listing of the data subjects concerned. The processing is performed by a Union body, the Council, in the exercise of activities which fall within the scope of Union law (in the light of the Lisbon Treaty). The competence of the Council to adopt asset freezing measures is based on Article 215 TFEU on restrictive measures (contained in Part Five - The Union's External Action of the TFEU). The processing of the data is done through partly automatic means, while a lot of information is processed in paper files, storage, collection and transfer are largely automated. Therefore, the Regulation is applicable. This Opinion does however not cover processing of personal data by the EEAS, by Member States and their delegations leading to the adoption of the Council Decision, nor the Council Decisions pursuant to Chapter 2 of Title V of the Treaty on European Union. It covers only the processing activities of the Council Secretariat in implementing these Council Decisions, i.e. the regulations and implementing regulations adopted accordingly.

Article 27(1) of the Regulation subjects to prior checking by the EDPS all "*processing operations likely to present specific risks to the rights and freedoms of data subjects by virtue of their nature, their scope or their purposes*". Article 27(2) of the Regulation contains a list of processing operations that are likely to present such risks. Point (a) of this list includes the processing of personal data related to "*suspected offences, offences, criminal convictions or security measures*" as one such risky processing operation. Such data may be processed in the context of the notified processing operations on restrictive asset freezing measures as the reasons for listing often refer to criminal offences and convictions. In addition, the processing operations also falls under Article 27(2)(d) of the Regulation as it concerns the processing of personal data with the "*purpose of excluding individuals from a right, benefit or contract*". The purpose of the notified processing operations is to exclude listed individuals from certain rights, notably the full enjoyment of their property rights and access to their funds and economic resources. The notified processing operations are therefore subject to prior checking.

Since prior checking is designed to address situations that are likely to present certain risks, the Opinion of the EDPS should be given prior to the start of the processing operation. In this case, however, the processing operations have already been established. In particular given the significant risks for data subjects and the long time the processing operations have been in place, the EDPS regrets the long delay between the start of the processing operations and the notification. The recommendations made by the EDPS should be implemented or reasons for not implementing them should be provided without undue delay.

3.3. Lawfulness of the processing

Article 5 of the Regulation contains the conditions for lawfulness of processing. Article 5(a) declares lawful processing that is "*necessary for performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof or in the legitimate exercise of official authority vested in a Community institution or body*".

The notified processing activities are based on a number of regulations which are in turn based on Article 215 TFEU. These regulations implement CFSP Common Positions or CFSP Decisions adopted under the TEU on EU level and are thus within the scope of Article 5(a) of the Regulation.

Additionally, according to Article 5(b) of the Regulation personal data may be processed if "*processing is necessary for compliance with a legal obligation to which the controller is subject*". Article 297(1) TFEU establishes that the Institutions shall publish adopted legislative acts in the Official Journal. The country specific regulations providing the legal bases for the notified processing operations state (using slightly differing wording respectively) that the Council shall update the lists of persons subject to the asset freezes contained in the annexes and that changes to the annexes shall take the legal form of Council implementing regulations. The Council must thus amend the lists in the annexes or the Regulation and publish them in the Official Journal. This situation, in which the Council has no margin for manoeuvre, constitutes a legal obligation under **Article 5(b)** of the Regulation.[9] This applies only for the publication of the legal act in the Official Journal; for all other processing operations analysed in this Opinion, **Article 5(a)** is the ground for lawfulness.

The different legal bases for each regime or country are described in more detail below. In some cases, the mentioned regulations contain both a part dealing with the implementation of UN restrictive measures and a part dealing with EU autonomous restrictive measures ("**mixed regimes**"). Such regulations are listed under both headings B and C below.

These regulations provide a legal basis for the notified processing operations (the reference points out the relevant Articles for each of the regulations). While the content of the legal bases differs slightly between and within the three categories, they are sufficiently similar to be analysed jointly.

A. Restrictive measures with a view to combating terrorism

- Regulation 2580/2001: Article 2(3).

B. EU autonomous measures

EU autonomous measures are provided for in the following country-specific regulations:[10]

- Belarus: Council Regulation (EC) No 765/2006: Articles 2, 2b, 8a;
- Côte d'Ivoire: Council Regulation (EC) No 560/2005 (mixed regime): Articles 2, 2a;
- Egypt (2011): Council Regulation (EU) No 270/2011: Articles 2, 3, 12;
- Republic of Guinea (Conakry): Council Regulation (EC) No 1284/2009: Articles 6, 14, 15a;
- Republic of Guinea-Bissau: Council Regulation (EU) No 377/2012: Articles 2, 3, 11;

[9] See also EDPS prior check Opinion in case 2010-0426, issued on 22 February 2012, section 3.3.

[10] Thereafter new Regulations were adopted notably on the Ukraine, Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine; Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.

- Iran - Human Rights: Council Regulation (EU) No 359/2011: Articles 2, 3, 12;
- Iran - Non-proliferation: Council Regulation (EU) No 267/2012 (mixed regime): Articles 23, 46(2)-(6);
- Libya: Council Regulation (EU) No 204/2011 (mixed regime): Articles 5, 6(2)-(4), 16(2)-(6);
- Syria (2011): Council Regulation (EU) No 36/2012: Articles 14, 15, 32;
- Tunisia: Council Regulation (EU) No 101/2011: Articles 2, 3, 12.

For the following regulations the Council established the initial lists, but the Commission is in charge of updating the lists thereafter: [11]

- Democratic People's Republic of Korea (North Korea): Council Regulation (EC) No 329/2007 (mixed regime): Article 6(2)-(4);
- Zimbabwe: Council Regulation (EC) No 314/2004: Article 6.

C. Implementation of UN restrictive measures

- Afghanistan (Taliban): Council Regulation (EU) No 753/2011: Articles 3, 4, 11;
- Côte d'Ivoire: Council Regulation (EC) No 560/2005 (mixed regime): Articles 2, 2a, 11a;
- Iran-Non-proliferation: Council Regulation (EU) No 961/2010 (mixed regime): Articles 23, 46(1);
- Libya: Council Regulation (EU) No 204/2011 (mixed regime): Articles 5, 6(1), (3), (4), 16(1);
- Liberia: Council Regulation (EC) No 872/2004: Article 2;
- Somalia: Council Regulation (EU) No 356/2010: Articles 2, 12, 13, 14.

For the following regulations the Council established the initial lists, but the Commission is in charge of updating the lists thereafter: [12]

- Democratic Republic of Congo: Council Regulation (EC) No 1183/2005: Article 2, 9(1)(a);
- Democratic People's Republic Of Korea (North Korea): Council Regulation (EC) No 329/2007 (mixed regime): Article 6(1), (3)-(4);
- Sudan (Darfur region): Council Regulation (EC) No 1184/2005, Articles 2, 9(1)(a).

In the Council's notification for the EU autonomous measures, all mixed regimes were mentioned as well; for the UN part of these regimes, reference was made to the notification for UN regimes. That notification, however, only mentioned those regulations that deal exclusively

[11] Processing with regards to restrictive measures for this Regulation is mainly implemented by the Commission based on CFSP decisions and thus covered by the EDPS Opinion 2010-0426. This Opinion thus only covers the ex-post processing of personal data by the Council when establishing the initial list. However, should the Council decide to amend the list or to adopt new measures this needs to comply with the recommendations given in this Opinion, see point 3.1 below.

[12] Processing with regards to restrictive measures for this Regulation is mainly implemented by the Commission based on UN decisions and thus covered by the EDPS Opinion 2010-0426. The Opinion thus only covers the ex-post processing of personal data by the Council when establishing the initial list. However, should the Council decide to amend the list or to adopt new measures this needs to comply with the recommendations given in this Opinion, see point 3.1 below.

with UN regimes, excluding the mixed regimes. Taken literally, this could be understood as implying that UN designations mixed regimes would not be covered by the notifications. The EDPS clarified with the controller that the UN parts of mixed regimes are understood to be covered by the notification for UN measures as well and are thus also part of this Joint Opinion.

The processing operations under the three regimes are thus carried out on the legal bases provided above, are necessary for the performance of a task carried out in the public interest, notably the interest to prevent terrorism or to enforce international peace and security or human rights, and are thus legitimate pursuant to Article 5(a) of the Regulation. However, sometimes the regulations do not seem to be detailed enough as a legal basis for the processing. Notably in some Regulations the Council publishes more categories of data than provided for in the respective regulation. Furthermore some regulations do not explicitly provide for the publication of the grounds for listing (which in any case in the EDPS' view should not be published unless necessary for the identification, please see below point 3.4. and 3.5) **The Council should review all regulations and make sure that all regulations are detailed enough in this respect to serve as a legal basis for the processing of personal data including a list of the categories of data to be published.** Furthermore, the Council informed that it regularly reviews the lists under the different regulations (at least every six months for *Regulation 2580/2001* and at least once a year for *EU autonomous measures*). However, not all regulations seem to provide explicitly for such regular review by the Council (see point 3.5 below on regular reviews). **The respective regulations should thus be clarified in this respect and explicitly provide for such regular review.**

3.4. Processing of special categories of data

The notified processing operations may involve the processing of special categories of data under Article 10 of the Regulation, notably of data relating to (suspected) "*offences, criminal convictions or security measures*".

The EDPS would like to highlight that the very fact of appearing on the list of persons whose assets are to be frozen can render the published personal data as such "sensitive", in that listings related to terrorism or human rights infringements imply the suspicion of being related to criminal activity. This is not necessarily the case for all listings. In the context of this prior check, sensitive data are in general the grounds for listing which can include convictions, arrests and imprisonments.

The statements of reasons and supporting documentation supplied by Member States when proposals for listing are discussed for all three regimes may contain such sensitive data. In addition, the grounds for listing in *EU autonomous measures* and *the implementation of UN measures* may be published in the Official Journal. For listings under *Regulation 2580/2001* the specific grounds for listing are not published, however sometimes membership in a listed entity is indicated.

According to Article 10(5) of the Regulation, such special categories of data may only be processed "*if authorised by the Treaties establishing the European Communities or legal instruments adopted on the basis thereof*". Whereas the processing of special categories of data for listing in general could be based directly on Article 215 TFEU, the publication of these special categories of data should be directly provided by the regulation on the restrictive measure.

Almost all the regulations imposing *EU autonomous measures* and *implementing UN restrictive measures* specifically provide for publications of the grounds of the listing: either in an Annex to the Regulation or as part of the list in the Regulation (Belarus, Cote d'Ivoire, Egypt, Guinea-Bissau, Iran, Korea, Libya, Syria, Tunisia, Afghanistan) or in a communication published in the Official Journal to persons for whom no address is known for sending the decision (Guinea, Iran). However, the asset freezing regulations for Zimbabwe, Congo, Liberia, Somalia and Sudan do not provide directly for a publication of the grounds specifically. For these regulations processing of special categories of data such as criminal convictions would thus not be in line with Article 10(5) of the Regulation.

Furthermore, as discussed in more detail below in point 3.5, the EDPS questions the necessity of publishing such sensitive personal data in the grounds of listing generally in the Official Journal unless it is required for the identification of the person (which does not seem to be the case). **Should the Council continue its practice to publish the grounds for listing for *EU autonomous measures,* the legal basis for the processing would need to be revised with regard to the publication of these special categories of data in those regulations where such publication is not explicitly provided for**.

3.5. Data Quality

According to Article 4(1)(c), data must be adequate, relevant and non excessive in relation to the purposes for which collected and/or further processed. Additionally, data must be accurate and where necessary kept up to date pursuant to Article 4(1)(d).

With regard to the criteria of data processed being "*adequate, relevant and non excessive*", the EDPS would like to emphasise that personal data published should be strictly limited to what is necessary to identify the person concerned. In this respect, data on family members (parents, spouse) should only be included in the published lists when necessary in order to identify the listed person. **In this regard, the EDPS invites the Council to assess the necessity of the inclusion of each data item both in general (i.e. whether an item should be possibly included in the list published in a regulation) and on a case-by-case basis (i.e. whether an item should be included *in this specific case,* or whether the other items suffice for reliable identification) in relation to any regulation object of this prior check.**

Having regard to the proportionality principle, the EDPS questions notably the necessity of publishing also the information on the grounds for listing in the Official Journal for the *EU autonomous measures* and the *Implementation of UN measures*.[13] The publication of these grounds is in general explicitly provided for in the respective Council regulation on which the EU asset freezing measure is based (see above point 3.3). The Council elaborated that the purpose for publishing the statement of reasons is to show that persons listed fulfil the criteria for listing and that the listing is therefore well founded. The grounds of listing published in the Official Journal are currently often very detailed and contain a large amount of personal data including on (suspected) infringements or involvement in criminal activities which constitute special categories of data pursuant to Article 10(5) of the Regulation. In the EDPS' view and in line with the judgements of the Courts of Justice of the European Union[14], it could suffice to make the

[13] Pursuant to Regulation 2580/2001.
[14] See for instance Case T-85/09 *Kadi* et Case T-228/02 *Organisation des Modjahedines du peuple d'Iran*.

grounds for listings available to the persons concerned either directly, if an address is known, or upon request following a Communication published in the Official Journal (as provided for the regime under Regulation 2580/2001). **Therefore the EDPS invites the Council to reconsider the approach taken in Council regulations on asset freezing in this respect and not to publish the grounds for listing systematically but only communicate them to the data subjects concerned. This could be done either directly when an address is known or indirectly by publishing a notice informing data subjects that they will be communicated the grounds for listing upon request.**

As regards the requirement that data must be accurate and kept up to date, this relates to the rights of access and to rectify data (see point 3.9 below). This ensures that data processed are accurate, complete and up to date in the meaning of Article 4(1)(d) of the Regulation.

Given the serious consequences that restrictive measures have on affected persons, utmost attention must be given to the accuracy of the personal data. While the review procedure for listed persons can serve to rectify mistakes resulting in wrong listings, the Council should make the utmost efforts to ensure the quality of the data already at the stage of establishing the lists. The information is provided by the proposing Member State, EEAS or UN body; the Secretariat General of the Council does not assess the accuracy of the data in substance.. However, it has the duty to check the legal soundness of the proposed statement of reasons/grounds for listing and if it meets the listing criteria. Although these proposing bodies are the main source for proposals to list a data subject for asset freezing measures, they are not covered by this Opinion which only covers the processing of the Council on the basis of the regulations adopted pursuant to Article 215 TFEU once data subjects have been proposed for being listed.

With regard to accuracy, the EDPS also underlines that the lists of individuals subject to asset freezing measures need to be regularly and frequently reviewed. For *EU autonomous measures* the regulations all provide such review at least every 12 months with the exception of the regulation on Zimbabwe.[15] With regard to *Regulation 2580/2001* the notification indicates that the lists are revised at least twice a year, however this is not provided explicitly by that regulation. **Therefore all regulations should be clarified and provide explicitly for such regular review unless this is not already explicitly provided for by the CFSP Council decision the regulation is based on**. For *UN implementing measures* no regular review is provided as listing and delisting is based on decisions of the relevant UN bodies. The EDPS underlines that the accuracy and being up-to-date is of utmost importance in particular in view of data subjects who should no longer be included on asset freezing lists. The requirement to keep data accurate and up-to-date thus in the EDPS' view **requires frequent updates of the list, notably in case of delisting of a person as the regulations remain in force and binding until they are amended.** A distinction can be made between automatic review by the Council and a review of lists following requests of persons listed. Notably in case of a request of delisting by a listed person, the Council should rectify the inaccurate data without delay to ensure accuracy (see point 3.9 below). In view of the fact that such review can be done by adopting an amending regulation through written procedure, such review can be implemented within a short time frame (around one month). This is of particular importance as many third parties that implement the asset freezing measures (such as banks) base themselves on the lists as published and might thus freeze the assets of a data subjects for longer than justified.

[15] See the respective regulations for Belarus, Cote d'Ivoire, Egypt, Guinea, Guinea-Bissau, Iran, Korea, Libya, Syria, and Tunisia.

Personal data must be processed fairly and lawfully (Article 4(1)(a) of the Regulation). Lawfulness was addressed above in point 3.3, fairness relates to the information supplied to the data subjects (see below in point 3.11). In this respect, as elaborated in point 3.11 below, the EDPS notes that data subjects are currently not provided all the required information pursuant to Article 12 of the Regulation.

3.6. Conservation of data/ Data retention

Article 4(1)(e) of the Regulation states that data should be kept in a form which permits identification of data subjects for no longer than is necessary for which the data are collected and/or further processed.

For all three notified processing operations, data are stored for up to five years after a delisting has taken place or after the expiry of the validity of the respective restrictive measure. The Council justified this approach with the possibility of legal actions for non-contractual damages. According to Article 46 of the Statute of the Court of Justice of the European Union, such proceedings are time barred after five years from the occurrence of the event giving rise thereto. Conserving the data for five years is thus justified to ensure that they are available for possible court proceedings. In the event that proceedings are still pending at the end of this period, conservation may continue for the duration of the proceedings until the judgment has acquired the force of *res judicata*. The EDPS thus considers these conservation periods in line with the Regulation.

Data published in the Official Journal remain on the public record. As these lists are parts of or annexes to legislative acts of the Union, their publication is mandatory under Article 297 TFEU. However, as indicated with regard to data quality in point 3.5 above, lists should be kept accurate and up-to-date and rectified or revised at a regular basis.

3.7. Transfer of data

The recipients of the personal data processed by the Council are the Commission, EEAS and Member State Delegations to the Council, as well as European Courts in case of court proceedings.

The EDPS reminds the Council that for all transfers within the Council or to other EU institutions and bodies Article 7 of the Regulation applies. **Data may only be transferred if "*necessary for the legitimate performance of tasks covered by the competence of the recipient*". In addition recipients should be reminded in case of such transfer that they should process data only for the purposes for which they were transmitted.**

With regard to any transfer from the Council to Member States' Delegations (i.e. Permanent Representations) Article 8 applies provided the recipient is subject to national law implementing Directive 95/46 (or Article 9 if it is not).

Pursuant to the notification, the Council does not currently transfer any personal data to third parties or international organisation such as the UN.

However, the Council indicates that in the future it is not excluded that data might be transferred to the UN. For such transfers, the Council would have to make sure that the conditions for a transfer pursuant to Article 9 of the Regulation are met. In this respect the EDPS notes that currently an adequacy finding does not exist for the UN Sanctions Committee and therefore any transfer would need to be based on any of the derogations of Article 9 of the Regulation. In this respect the EDPS would like to point out that it will publish Guidelines on the transfer of personal data to third countries and international organisation by EU institutions and bodies.
The publication of the list of data subjects whose assets shall be frozen in the electronic version of the Official Journal on the internet (as well as the publication in the paper copies of the Official Journal) does not qualify as a transfer.[16] However, such publication is a processing operation which must comply with the Regulation, notably the principles of fair and lawful processing (see points 3.3 and 3.5 above and point 3.11 below).

3.8. Processing of a personal number or unique identifier

Article 10(6) of the Regulation provides that "*the European Data Protection Supervisor shall determine the conditions under which a personal number or other identifier of general application may be processed by a Community institution or body*".

Under the three asset freezing regimes notified, national identification card or passport numbers can also be included in the publicly accessible list. The publication of such special categories of data can be necessary in order to allow economic operators to implement the freeze and to identify the correct person avoiding risks of coincidence of names and in relation to persons who have different aliases.

While the EDPS understands that the need to process unique identifiers of individuals in order to correctly identify the persons concerned by the asset freezing measures, he would like to encourage -in line with his recommendations in point 3.5 above- the **Council to evaluate, in general and on a case by case basis, the need to minimize the processing of such data in case person concerned can be easily identified without recourse to these sensitive data.**

3.9. Rights of access, rectification and erasure

Article 13 of the Regulation grants data subjects a right of access to data stored about them. Article 14 grants the right to have inaccurate or incomplete data rectified "without delay". According to Article 20 of the Regulation, certain restrictions may be imposed on these rights if they are necessary for a number of reasons enumerated in that Article.

The Council submits in the notification that Section 5 of the Council's Decision implementing the data protection rules[17] applies to the processing subject to the notification and provides for the rights of access and rectification. **The procedure to exercise the data subjects' rights should be referred to and explained in any communication (Privacy Notice, etc.) to the data subject (See point 3.11 below)** and be applicable even in case the person is not directly reachable,

[16] Cf. Case C-101/01 - *Lindqvist*, at para. 71 for internet publication.
[17] Council Decision 2004/644/EC of 13 September 2004 adopting implementing rules concerning Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, Official Journal L 296, 21.09.2004, p. 16.

namely when the information for the individuals concerned is only published in the Official Journal.

The Council grants the data subjects (or his/her lawyer) access to the statement of reasons (for measures based on *Regulation 2580/2001* which are not published) or to personal data in the file, after having received the agreement of the proposing Member State or the EEAS in view of the Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information classified as "EU RESTRICTED/RESTREINT UE". **However, in order to allow the individuals concerned to exercise their rights as data subjects (as well as their right of to be heard), the EDPS notes that access should be given to their personal data contained in the file on a wide basis.**

Access cannot be refused simply on the basis that there is no agreement of the Member State which provided the information, but can only be refused if one of the exceptions of Article 20 of the Regulation applies. These exceptions should be interpreted narrowly and assessed on a case-by-case basis. An exemption from the right of access could be considered notably if it is a necessary measure to safeguard national security, public security or defence of a Member State pursuant to Article 20(1)(d) of the Regulation. Furthermore Article 20(1)(a) of the Regulation might justify the restriction of access if necessary to safeguard the prevention, investigation, detection and prosecution of criminal offences.

As regards rectification, the Council should rectify incomplete or inaccurate data without delay in line with Article 14 of the Regulation. This applies not only to personal data of the listed person but also to the very fact that a person was included on the list. In general the Council will be informed about inaccurate personal data (including if a person should be on the list) following a review request by the data subject or following information received from the proposing Member State, the EEAS or the UN Sanctions Committee.

The Notice published in the Official Journal informing the data subject for whom no address is known usually states that they "*may submit a request to the Council, together with supporting documentation, that the decision to include them on the above-mentioned list should be reconsidered*". This is a way for data subject to ensure that the file is complete and accurate. The lists are then amended and published at the next revision of the regulation in the Official Journal (as an implementing regulation amending the respective implementing regulation). The Council may update the list of persons subject to asset freezing measures inter alia upon the data subject's request or if there is information available (mainly provided by the Member States, EEAS or the UN) that this person should not have been listed or should no longer be listed. **In this respect, the EDPS notes that in view of the severe consequences of being on the list, the Council should rectify personal data without delay in order to guarantee data quality of the personal data processed. This must be done immediately and the Council should not wait for the next regular revision to rectify such data.**

Furthermore, the Notice published with regard to measures pursuant to *Regulation 2580/2001* provides for the submission of comments a deadline of 2 weeks from the date of notification of the statement in order to be included in the next regular review. The Council informed that also requests for review after that deadline will be considered. **The EDPS notes however, that the two-week deadline with regard to measures pursuant to Regulation 2580/2001 should not limit the data subject's right to have his/her personal data rectified without delay at any**

time pursuant to Article 14 of the Regulation. According to the Council a review or a delisting can be adopted by written procedure and therefore it should be possible to keep the lists up-to-date.

Pursuant to Article 16 of the Regulation the data subject has the right to obtain from the controller the erasure of data if their processing is unlawful. This applies notably if a person should not have been on the list or if the principle of data quality (including accuracy) is infringed. However, such erasure could only be done in the files of the Council. The publication of the data subject's name in the Official Journal on the other hand could no longer be erased. As described above, in case of a justified review request the Council will rectify inaccurate data and remove the individual's name from the asset freezing list (through an (implementing) regulation amending the respective regulation published in the Official Journal). **However, in the EDPS' view, in case the person's data have been stored or published unlawfully pursuant to Article 16 of the Regulation, the Council should take additional measures on top of a simple removal from the list in order to publicly "clear" the name of a wrongfully listed person. This is due to the fact that it is not possible to remove data from the official record of the Official Journal once published.** For instance, the Council could publish the reasons for delisting a person in its (implementing) regulation amending the list and inform the person concerned individually by letter of the reasons of their removal (in case contact details are available) to provide the data subject with a document facilitating the de-blocking of the accounts and reducing the negative effects on the person's reputation. This is to be distinguished from cases in which the initial decision to list was lawful, but the person is removed at a later stage when new information has become available (e.g. after charges have been dropped against persons listed under Regulation 2580/2001).

Furthermore, pursuant to Article 17, the data subjects have a right to obtain from the Council the notification to third parties to whom the data have been disclosed of any rectification unless it proves impossible or involves a disproportionate effort. The publication of the delisting in the Official Journal complies with that obligation. **However, the EDPS recommends the Council to also consider the possibility to inform third parties working with the asset freezing lists published (e.g. banks and financial institutions or their associations) also directly of the rectification unless this involves a disproportionate effort.** Furthermore, publishing the delisting of a person - including the reasons for delisting as described above - would be another way to inform third parties about the erasure.

3.10. Right to object

Article 18(a) of the Regulation grants data subjects a right "*to object at any time, on compelling legitimate grounds relating to his or her particular situation, to the processing of data relating to him or her, except in the cases covered by Article 5(b), (c) and (d)*".

The EDPS is aware of the fact that the activities of establishing and amending the lists and the processing connected to the publication and information exchange, which all involve processing of personal data, are at the core of the purpose of the asset freezing measures. Indeed the whole process is set up in order for economic operators to be able to quickly and clearly identify the names and personal details of persons whose assets have to be frozen on the basis of UN or EU autonomous listings.

However, Article 18(a) requires that the objection has to be based on "*compelling legitimate grounds*" and that the objection has to be "*justified*". A concerned person would have to meet this standard in order to be able to object to any of the processing activities identified above which fall under Article 5(a) of the Regulation. However, in view of the surprise effect of the publication of the listed person in the Official Journal, the right to object cannot be exercised prior to the publication.

As mentioned above in point 3.3, publication in the Official Journal is a legal obligation on the Council. The right to object therefore does not apply to processing operations concerning the publication.[18]

The regulations covered by the notifications submitted provide for the possibility of requesting a review of the grounds for listing of a person. Such a procedure, which aims at formally introducing the right to be heard and in general reflects the due process principles, has been triggered by the Courts' case law and is welcomed by the EDPS. The positive effect of this provision in terms of personal data protection is that this procedure overcomes the limitations to the applicability of the right to object for the data subject in view of the legal obligation to publish in the Official Journal as described above. **In the EDPS' view, this review procedure should be included in all legislative instruments for asset freezing in the Union legal order, in order to guarantee a fair and legitimate personal data processing for all the persons concerned by the listings.** This would allow the creation of a common procedure for review and allow the right to object on justified and verifiable grounds for all processing activities.

3.11. Information to the data subject

The processing operations concern personal data which have not been obtained by the data subject. Article 12 of the Regulation lists the information the data controller must provide to the data subject in relation to the processing activities. This information must include –*inter alia*– the identity of the controller, the purposes of the processing, the legal basis, the recipients of the data, the existence of the rights of access to and the right to rectify the data.

The Council does currently not provide data subjects with all the information required pursuant to Article 12 of the Regulation. Data subjects only receive limited information either directly -if their address is known- or indirectly by a Notice published in the "C" series of the Official Journal. Pursuant to the information received by the Council, the information provided to data subjects contains certain pieces of information requested by the Regulation, although many of them are provided in a rather implicit way: notably information on the identity of the controller, the purpose of the processing, the categories of data concerned, the right of access, the legal basis for the processing is given in the letter or Notice. Informing the data subjects that their personal data is processed is also of utmost importance in order for them to be able to exercise their rights.

The EDPS recommends that the Council revises and completes the information that should be given to the data subjects and to provide data subject with all the information pursuant to Article 12. Notably information on the recipients or categories of recipients, more specific

[18] Note that this only concerns the publication in the Official Journal, not the process leading up to it.

information on the rights of access and rectification, the time-limits for storing the data, the right to have recourse at any time to the EDPS, and on the origin of the data[19] should be added.

Such information should either be given in the letter sent to data subjects or in the Notice published in the Official Journal (directly or via a link to a Privacy Statement).

In principle, according to Article 12(1), data subjects must be informed of the processing of personal data about them which has not been obtained directly from them "*at the time of undertaking the recording of personal data or, if a disclosure to a third party is envisaged, no later than the time when data are first disclosed*".

Exemptions from this right to information are foreseen in Article 20(1)(a) and (d) of the Regulation, allowing restrictions if they are necessary for "*the prevention, investigation, detection and prosecution of criminal offences*" or "*the national security, public security or defence of the Member States*", respectively. In these cases, data subjects have to be informed of the principal reasons for the restriction and their right to recourse to the EDPS (Article 20(3)); even the provision of this information may be deferred for as long as it would deprive the restriction of its effect (Article 20(5)).

This information to data subjects is currently not provided at the time the processing starts, but only once the listing decision has been made public. This deferral could be justified for the initial listing decision based on the above mentioned exemptions, as otherwise there would be no 'surprise effect' and to-be-listed persons could remove their assets. However, the deferral of the information to be provided pursuant to Article 12 of the Regulation can only be relied on for the first listing decision, but not for subsequent listing decisions in the case that new grounds for listing become available.[20]

3.12. Security measures

[…]

4. Conclusion

There is no reason to believe that there is a breach of the provisions of Regulation 45/2001 providing the considerations are fully taken into account. Specifically, the Council should implement the following recommendations:

- make sure that all regulations providing for asset freezing measures are detailed enough to serve as a legal basis for the processing of personal data, including a list of the categories of data to be published in the Official Journal and provide for regular reviews;
- assess the necessity of the inclusion of each data item on the published lists both in general and on a case-by-case basis in relation to any regulation object of this prior check (notably for sensitive data such as personal numbers and unique identifiers) and limit data to what is necessary to identify the person concerned;

[19] Except where the controller cannot disclose this information for reasons of professional secrecy pursuant to Article 12(1)(iv) of the Regulation.

[20] See T 228/02 paras. 128-130. This line was confirmed in the subsequent cases T 284/08, paras. 36, 37, 44 and in the appeals case C 27/09, paras. 61, 62, 65-67.

- reconsider the approach to publish the grounds for listing systematically but rather only communicate them to the data subjects concerned;
- should the Council nevertheless continue its practice to publish the grounds for listing, ensure that the legal basis for the processing with regard to the publication of grounds for listing which are special categories of data explicitly provides for such publication;
- update frequently and regularly the lists of persons to ensure data quality, and in particular if a person needs to be taken of the list, implement such revision of the regulation without delay;
- for all transfers pursuant to Article 7 remind recipients to process data only for the purposes for which they were transmitted;
- grant data subjects access to their personal data contained in the Council's files on a wide basis (unless restriction is justified by an exemption pursuant to Article 20 of the Regulation);
- take additional measures on top of a simple removal from the list in order to publicly "clear" the name of a wrongfully listed person in case the processing (i.e. the listing) was unlawful;
- ensure that all legislative instruments for asset freezing contain a review procedure, in order to guarantee a fair and legitimate personal data processing for all data subjects;
- provide all information required pursuant to Article 12 of the Regulation including the procedures for data subjects to exercise their rights to data subjects.

Done at Brussels, 07 May 2014

(signed)

Giovanni BUTTARELLI
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