

Guidelines

Relating to the implementation of financial sanctions¹ against certain persons, entities, bodies and groups within the framework of combating terrorism financing

¹ In this guide, the term "sanctions" is used interchangeably with the term "restrictive measures". For the purposes of this guide, these terms shall have the same meaning.

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General comments:

- The recommendations issued in this guide are to be considered non-exhaustive and of a general nature for the purpose of implementing financial sanctions within the framework of combating terrorism financing.
- The recommendations set out in this guide are not legally binding and should not be read as recommending any action which would be incompatible with applicable European or national laws. The guide is not intended to replace the obligation of the operators to consult applicable law. Only the latter is legally binding.
- It therefore follows that the guide shall not substitute applicable law or the handling of individual requests.
- The Ministry of Finance is responsible for keeping the guide up-to-date and invites users to send their suggestions by email to the following address: sanctions@fi.etat.lu
- Users are also invited to communicate by email any difficulties they may encounter in the implementation of a financial sanctions regime.
- The guide is available for download from the Ministry of Finance's website, under the International Financial Sanctions section.
http://www.mf.public.lu/publications/sanctions_financieres_int/index.html
- This guide does not specifically address financial restrictive measures that are not related to the financing of terrorism. In respect of such measures, users are asked to refer to the Ministry of Finance's guide entitled "Guidelines relating to the implementation of financial restrictive measures (sanctions) imposed against third countries, entities or individuals". This guide is also available for download from the Ministry of Finance's website, under the International Financial Sanctions section.
http://www.mf.public.lu/publications/sanctions_financieres_int/index.html

1. Restrictive financial measures

Within the framework of combating terrorism financing, Luxembourg differentiates between three financial restrictive measures regimes applicable in Luxembourg:

Restrictive measures at United Nations' level: These relate to restrictive measures put in place by the United Nations Security Council Resolutions ("UNSC Resolutions"), that countries are required to transpose into their national legislation and implement. With respect to policy areas that fall within the competence of the European Union, the transposition of the UNSC resolutions by the European Union may remove the need for their national transposition.

Restrictive measures at European level: These are one of the EU's tools to promote the objectives of the Common Foreign and Security Policy (CFSP) and are adopted by an EU CFSP decision. Where such decisions have an impact on policy areas that fall within the competence of the European Union, they are implemented by an EU Council or Commission Regulation. Unlike decisions, which do not provide for direct obligations to be imposed on stakeholders, EU regulations are directly applicable in Luxembourg and do not require national transposition. They generally enter into force on the day following their publication in the Official Journal of the European Union.²

National framework: The legal basis is the Law of 27 October 2010 implementing United Nations Security Council resolutions as well as acts adopted by the European Union concerning prohibitions and restrictive measures in financial matters in respect of certain persons, entities and groups within the framework of combatting terrorism financing ("Law of 27 October 2010").

In accordance with Article 3 of this law, the measures required for the implementation of the prohibitions and restrictive measures mentioned in Article 1 of this law are adopted by way of Grand-Ducal Regulations. The Grand-Ducal Regulation designates the natural and legal persons, entities or groups who are subjected to the measures and prohibitions.

Natural and legal persons, entities or groups, who are included in lists attached to an act of the European Union are designated by way of a reference to such list. Such a reference is valid for natural and legal persons, entities or groups who were included on these lists as part of judicial and police cooperation in criminal matters.

² http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/FR/foraff/135805.pdf

2. Overview³

UNSC resolutions	Content	Transposition
UNSC Resolution 1988 (2011), as amended	Reiterates the 'Afghanistan' section of UNSC Resolution 1267 (1999) ⇒ Member States are to freeze without delay the funds and other financial assets or economic resources of the listed individuals and/or entities.	Regulation (EU) 753/2011 of 1 st August 2011 Law of 27 October 2010 Grand-Ducal Regulation of 29 October 2010, (as amended by Grand-Ducal Regulation of 3 August 2011), implementing the Law of 27 October 2010
UNSC Resolution 1989 (2011), as amended	Reiterates the 'Al Qaida' section of UNSC Resolution 1267 (1999) ⇒ Member States are to freeze without delay the funds and other financial assets or economic resources of the listed individuals and/or entities.	Regulation (EU) 881/2002 of 27 May 2002 Law of 27 October 2010 Grand-Ducal Regulation of 29 October 2010, (as amended by Grand-Ducal Regulation of 3 August 2011), implementing the Law of 27 October 2010
UNSC Resolution 1373 (2001)	⇒ Member states are required, among other things, to implement a framework enabling the freezing of assets at national level.	2001/931/CFSP of 27 December 2001 Regulation (EU) 2580/2001 of 27 December 2001 Law of 27 October 2010 Grand-Ducal Regulation of 29 October 2010, implementing the Law of 27 October 2010

Moreover, in accordance with the law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, the financial intelligence unit of the public prosecutor's office⁴ has the authority to freeze the assets held with professionals⁵, for a period of up to 6 months, even in the absence of a suspicious transaction report made by the professional.

³ See also the comparative table on the Committees of the Security Council of the United Nations, established pursuant to resolutions 1267 (1999), 1989 (2011) and 1373 (2001).

⇒ <http://www.un.org/en/sc/1540/cooperation/un-bodies-and-entities.shtml>

⁴ See section 4. below.

⁵ Law of 12 November 2004, Article 5. (Obligation to cooperate with the authorities), paragraph 3a, ("The provisions of paragraph 1, point (b) and paragraph 3 apply even in the absence of a suspicious transaction report made by the professional according to paragraph 1, point (a) and paragraph 1a.") [Unofficial English translation of the text of the law.]

3. List of the main competent authorities in matters relating to financial sanctions in Luxembourg.

3.1. The Ministry of Foreign and European Affairs and in particular the **Directorate for International Economic Relations and European Affairs** are responsible for the **overall coordination of the economic and financial restrictive measures** taken by the United Nations Security Council and/or the European Union. They work together with other national authorities responsible for the implementation of restrictive measures.

⇒ **Contact details: Directorate for International Economic Relations and European Affairs**

6, rue de l'Ancien Athénée

L-1144 Luxembourg

Tel.: (+352) 2478 2313

Fax: (+352) 22 20 48

3.2. The Ministry of Finance is the competent authority for all matters relating to the financial aspects of international sanctions. Such competence includes in particular (a) dealing with any questions regarding the implementation of financial restrictive measures from the persons, entities and groups targeted, as well as from natural and legal persons called upon to apply them; (b) any disputes relating to (a); (c) dealing with any questions and disputes regarding homonyms⁶; (d) dealing with any questions and disputes regarding unintended consequences of the financial restrictive measures on assets; and (e) exceptionally granting authorisations exempting from the imposed prohibitions and financial restrictive measures. In addition, (f) the Ministry of Finance shall inform natural and legal persons of the implementation of prohibitions and restrictive measures via the website provided for in Article 4(1) of the Law of 27 October 2010.

⇒ **Contact details: Ministry of Finance**

Directorate for Multilateral Affairs, Development and Compliance

3, rue de la Congrégation

L-2931 Luxembourg

Tel.: (+352) 247 82656

Fax: (+352) 46 62 12

Email: sanctions@fi.etat.lu

⇒ **Who can apply to the Ministry of Finance?**

- (i) Any natural or legal persons of Luxembourg nationality or residing in Luxembourg and their lawyers⁷;
- (ii) All natural or legal persons of foreign nationality or who do not reside in Luxembourg but whose assets have been frozen in Luxembourg, and their lawyers⁸.

3.3. The *Commission de Surveillance du Secteur Financier* – (“CSSF”) is responsible for the **prudential supervision** of professionals of the financial sector falling under the scope of its

⁶ As regards the matter of homonyms, please refer to the "Lists – Databases" section.

⁷ The Ministry of Finance may request a copy of the mandate.

⁸ Idem.

competences. On the basis of Article 33 of CSSF Regulation no. 12-02, professionals are required to keep informed the CSSF when persons, entities or groups are involved in a transaction or business relationship subject to prohibitions or restrictive measures in financial matters in the framework of the fight against terrorism financing are identified. The "Financial crime" section of CSSF's website contains useful information on this matter.

⇒ **Contact details: *Commission de Surveillance du Secteur Financier***

283, route d'Arlon
L-1150 Luxembourg
Tel.: (+352) 26 25 1 – 1
Fax: (+352) 26 25 1- 2601
Email: direction@cssf.lu
Website: www.cssf.lu

3.4. The ***Commissariat aux Assurances ("CAA")*** is responsible for the **prudential supervision** of professionals of the insurance sector falling under the scope of its competences. On the basis of Article 31 of CAA Regulation no. 13/01, professionals are required to inform the CAA where persons, entities or groups involved in a transaction or business relationship subject to prohibitions or restrictive measures in financial matters are identified.

⇒ **Contact details: *Commissariat aux Assurances***

7, boulevard Joseph II
L-1840 Luxembourg
Tel.: (+352) 22 69 11 – 1
Fax: (+352) 22 69 10
Email: sanctions@commassu.lu
Website: www.caa.lu

4. Financial intelligence unit ("FIU")

The FIU has national jurisdiction to investigate both money laundering and terrorism financing cases⁹.

In particular, the FIU serves as the national authority responsible¹⁰ for receiving the suspicious transaction reports and other information regarding potential money laundering or terrorist financing, for requesting such information to the extent provided for by applicable law, for analyzing such reports and information and following up as appropriate.

The obligation to report, without delay, all suspicious transactions to the FIU is based, in particular, on article 5, paragraph (1) a) and paragraph 1a of the law of 12 November 2004, as amended, on the fight against money laundering and terrorism financing.

According to these provisions, *“the professionals, their management and their employees, are obliged to inform without delay, on their own initiative, the (...) FIU when they know, suspect or have good reasons to suspect that money laundering or terrorism financing occurs, has occurred,*

⁹ See Article 13a of the [law of 7 March 1980, as amended](#), on the organisation of the judicial system.

¹⁰ Idem.

has been attempted, in particular, because of the person concerned, of any changes relating to this person, of the source of funds, of the nature, the aim or the terms of the transaction. The report shall include all information and supporting documents that gave rise to the report. The obligation to report suspicious transactions applies without the need for the reporting party to identify the underlying offence."

*"As regards the fight against terrorism financing, the obligation to report suspicious transactions (...) applies also for the funds for which there are reasonable grounds to suspect or which are suspected to be linked or otherwise associated with or that they will be used for terrorism, terrorist acts, terrorist associations, organizations or groups or by those who finance terrorism."*¹¹

⇒ **Contact details: Cellule de Renseignement financier (*Financial Intelligence Unit*)**

41B bd. Franklin D. Roosevelt

L-2450 Luxembourg

Tel. : (+352) 475981-447

Fax : (+352) 26 20 25 29

E-mail: plcrf@justice.etat.lu

5. Obligation to cooperate with the authorities¹²

All persons, entities, groups and bodies to whom the financial restrictive measures apply, are obliged to cooperate with the national authorities responsible for implementing these measures. They should provide the national authorities with any information which may be relevant such as i.a. details pertaining to any accounts frozen, data on the identity of designated persons, details of incoming transfers resulting in the crediting of a frozen account, attempts to circumvent existing financial sanctions and cases of homonyms.

The national authorities may use the information they receive only for the purposes for which it was provided, namely ensuring the effective implementation of the restrictive measures. Such implementation also involves sustained cooperation with international and transnational authorities such as the European Commission, the Council of the European Union, the EEAS¹³, the relevant United Nations sanctions committees, the competent authorities of other Member States and police, customs and judicial authorities.¹⁴

6. The value and binding nature of the various legal acts imposing financial sanctions

6.1. UNSC resolutions – CFSP Decisions

UNSC Resolutions or CFSP Decisions are binding only for Member States.

¹¹ Unofficial English translation of the text of the law.

¹² See also section on "The obligation to freeze, without delay, funds and economic resources".

¹³ The European External Action Service, <http://www.eeas.europa.eu/>

¹⁴ See "Restrictive Measures (sanctions): Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), – IV (Role of economic operators and citizens), paragraph 41; V (Use of information by competent authorities), paragraphs 42 and 43.

⇒ **Please note:** Although these standards are not enforceable against natural or legal persons, the latter may not disregard them. It follows that natural or legal persons may not plead good faith on the grounds that the UNSC Resolutions or CFSP decisions are to be disregarded simply because they are not directly applicable to them. It is strongly recommended to contact the Ministry of Finance in case where a UNSC Resolution or a CFSP Decision has not (yet) been transposed into national law.

Operators may consult the UNSC Resolutions on the following website: <http://www.un.org/fr/sc/documents/resolutions/>.

CFSP Decisions are available on the following websites: <https://eur-lex.europa.eu> and http://eeas.europa.eu/cfsp/sanctions/docs/asures_en.pdf.

6.2. EU Regulations

An EU Regulation is a rule that is binding on citizens of the EU and/or natural or legal persons residing, having their registered office in the EU, or operating in or from EU territory. An EU Regulation is binding in its entirety and directly applicable in all Member States without intervention by the national authorities.

EU Regulations may be consulted on the following websites: <http://eur-lex.europa.eu/>¹⁵ and http://eeas.europa.eu/cfsp/sanctions/docs/asures_en.pdf.

6.3. Laws/Grand-Ducal regulations

A Law or Grand-Ducal Regulation issued to implement a law becomes effective following its publication in the Official Gazette.¹⁶ They are applicable to citizens of Luxembourg, both natural and legal persons, and any other natural or legal person operating in or from Luxembourg.

The Laws and Grand-Ducal Regulations can be consulted on the following website: <http://www.legilux.public.lu/leg/a/index.php>

Operators may also consult the CSSF's website:

<http://www.cssf.lu/en/documentation/regulations/financial-crime/>

6.4. Ministerial regulations

Ministerial regulations enter into force after their publication in the Mémorial. They are applicable to citizens of Luxembourg, both natural and legal persons, and any other natural or legal person operating in or from Luxembourg.

Please note: Financial sanctions imposed by UN Security Council Resolutions within the framework of combating terrorist financing and designations thereupon, are implemented by

¹⁵ See also Section 14. Lists – Databases for consolidated lists of financial sanctions targets.

¹⁶ The law or regulation will enter into force four full days after its publication, including the publication date, unless it states a longer or shorter deadline.

Ministerial Regulations. These Ministerial Regulations are (usually) adopted before the respective European Regulations come into force.

The Ministerial Regulations can be consulted on the following website:
<http://www.legilux.public.lu/leg/a/index.php>

Operators may also consult the CSSF's website:
<http://www.cssf.lu/en/documentation/regulations/financial-crime/>

6.5. No retroactivity

EU Regulations, Laws, Grand-Ducal Regulations and Ministerial Regulations have no retroactive effect.

7. The territoriality clause of EU Regulations

EU Regulations should apply only in situations where links exist with the EU. The European Union will refrain from adopting legislative instruments that, having extra-territorial application, would be in breach of international law. In general, EU regulations shall apply:¹⁷

- Within the territory of the European Union, including its airspace¹⁸.
- On board of any aircraft or any vessel under the jurisdiction of a Member State. It therefore follows that persons, entities and bodies falling within the scope of the EU Regulation and which own or control vessels or aircraft registered outside the European Union must make every effort to ensure that such vessels or aircraft comply with the EU regulations.
- To any person inside or outside the territory of the European Union who is a national of a Member State.
- To any legal person, entity or body, within or outside the European Union, which is incorporated or constituted under the law of a Member State¹⁹.
- To any legal person, entity or body in respect of any business concluded in whole or in part within the European Union. It follows that any non-European legal person, entity or body established in a non-European country must apply EU Regulations in respect of any business carried out in whole or in part within the European Union. Any other interpretation would mean allowing the non-European entity to conduct a transaction in the EU that is prohibited to EU citizens.

However, entities subject to the laws of a country outside the EU and established outside the EU shall not be bound by EU Regulations. That said, where the registered office of such entities is

¹⁷ Also see the "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy", Section II-J (Jurisdiction), paragraphs 51 and 52.

¹⁸ **Territory of the Union** ⇒ The Territory of the Union means the territories of the Member States to which the Treaty on European Union and the Treaty on the Functioning of the European Union is applicable, under the conditions laid down in the Treaties, including the airspace of the Member States. Territories that are expressly excluded by the Member States are outside the territory of the Union and are listed in the corresponding annex of the abovementioned treaties. As a result these territories do not have to implement EU regulations.

¹⁹ Idem.

established in the EU and where such entities are acting under the direction of such registered office, the latter may be held liable.

8. Various language versions

The Court of Justice of the European Union ("CJEU") considers that the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision, or be made to override the other language versions in that regard.²⁰

The interpretation of a provision of EU law must take into account the context, the objects, the purpose and the wording of the rules of which it forms part.²¹

9. Technical and IT issues

The obligation to implement financial sanctions shall remain in force even in the event of technical or IT issues and such issues cannot justify the breach of financial restrictive measures.

The Ministry of Finance recommends that it is notified as soon as possible of any issues that may be encountered, whether technical or IT-related, when implementing a financial sanctions regime so that the Ministry may assess each situation on a case-by-case basis to determine the appropriate course of action, which may include changes to procedures or to existing legal texts.

10. Remedies

10.1. Non-contentious remedies – Requests for de-listing

Existing legal texts	Delisting procedure	Who to contact
Regulation (EU) ²²	✓	<p>EU Council 175, rue de la Loi B-1048 Brussels - Belgium</p> <p>The European Commission B-1049 Brussels - Belgium</p> <p>The European Commission may also be contacted at the following email address: relex-sanctions@ec.europa.eu</p>

²⁰ CJEU 5 December 1967 Van de Vecht, 19/67.

²¹ CJEU 21 February 1984, St. Nikolaus Brennerei, 337/82, Rec. P. 1051, point 10, CJEU 17 October 1995, Leifer and others, C-83/94, Rec. P. I-3231, point 22.

²² See Regulation (EU) N°881/2002 of 27 May 2002, Article 7; Regulation (EU) 753/2011 of 1st August 2011, Article 11. Also see the "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy", Annex I, paragraphs 19 and 20 and "Restrictive Measure (sanctions): Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section A (Designation and identification of persons and entities subject to targeted restrictive measures), III (De-listing), paragraphs 18-22.

UNSC Resolution 1989 (2011)	✓	<p>Office of the Ombudsperson of the Security Council's 1267 Committee Office TB-08041D United Nations Organisation New York, NY 10017 United States of America Tel: 1 212 963 2671 Fax: 1 212 963 1300/3778 email: ombudsperson@un.org http://www.un.org/fr/sc/ombudsperson/</p> <p>*If a person is delisted from the UN sanctions list, relevant amendments are made to the corresponding legal acts of the EU.</p> <p>* On 17 December 2012, the Security Council adopted resolution 2083 (2012), by which it authorised the Focal Point (see below) to receive travel ban and assets freeze exemption requests in relation to individuals, groups, undertakings or entities on the Al-Qaida Sanctions List. On 17 June 2014, the Council adopted resolution 2161 (2014), further authorising the Focal Point to receive communications from individuals removed from the Al-Qaida Sanctions List and those claiming to have been subjected to the sanctions measures mistakenly. https://www.un.org/sc/suborg/fr/sanctions/delisting/resolutions</p>
UNSC Resolution 1988 (2011) and other UNSC Resolutions ²³	✓	<p>Focal Point for De-listing²⁴ Security Council Subsidiary Organs Branch Room DC2 2034 United Nations New York, N.Y. 10017 United States of America Tel. +1 917 367 9448 Fax. +1 212 963 1300 Email: delisting@un.org http://www.un.org/sc/committees/dfp.shtml</p> <p>*Petitioners may submit de-listing requests either through the focal point process outlined in resolution 1730 (2006), or through the State of their residence or citizenship. *If a person is removed from the UN sanctions list, relevant amendments are made to the corresponding legal acts of the EU.</p>

²³ With the exception of Resolutions 1989 (2011), 1267 (1999), 1333 (2000).

²⁴ Established pursuant to Resolution 1730 (2006) of the Security Council.

10.2. Contentious remedies

10.2.1. Against an EU Regulation:

The Court of Justice of the European Union

L - 2925 Luxembourg

Tel. switchboard: (352) 4303.1

Fax: (352) 4303.2600

http://curia.europa.eu/jcms/jcms/Jo2_7022

An application for the annulment of an act imposing financial restrictive measures is heard in the General Court of the EU. An appeal to the judgment of the General Court is heard by the Court of Justice of the European Union (CJEU).

It should be noted that the annulment of the acts imposing restrictive measures (against a person, entity, groups or bodies) does not take effect immediately after the judgment made by the General Court unless explicitly stated in the judgment.

The effects of any acts that have been annulled in the first instance are maintained until expiry of the period for bringing an appeal to the CJEU (two months and ten days from notification of the judgment). During that period, the competent EU institution can remedy the infringements established and adopt, new restrictive measures with respect to the persons, entities, groups or bodies concerned by the annulment. Alternatively, the competent institutions can appeal, in which case the restrictive measures remain in full force pending the outcome of the appeal. After the aforementioned period of two months and ten days, if the EU institutions do not bring an appeal and if the infringements established by the General Court are not remedied, the restrictive measures against this person or entity will end.²⁵

10.2.2. European Union Legal Aid

In order to ensure effective access to justice, legal aid shall be granted for proceedings before the General Court of the European Union. Legal aid shall cover, in whole or in part, the costs involved in legal assistance and representation by a lawyer in proceedings before the General Court. The cashier of the General Court shall bear those costs. Any natural person who, because of their financial circumstances, is wholly or partly unable to meet the costs referred to above shall be entitled to legal aid. Their financial circumstances shall be assessed, taking into account objective factors such as income, capital and the family situation. Legal aid shall be refused if the action in respect of which the application is made appears to be manifestly inadmissible or manifestly unfounded.

An application for legal aid may be made before or after the action has been brought before the General Court. The application needs not be made through a lawyer.

²⁵ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section A (Designation and identification of persons and entities subject to targeted restrictive measures), III (De-listing), paragraph 22.

The application for legal aid must be accompanied by all information and supporting documents making it possible to assess the applicant's financial circumstances, such as a certificate issued by the competent national authority attesting to his financial circumstances.

If the application is made before the action has been brought before the Court, the applicant must briefly state the subject matter of the proposed action, the facts of the case and the arguments in support of the action. The application must be accompanied by supporting documents to that end.

Further information is available on the following website:

http://curia.europa.eu/jcms/jcms/Jo2_10056/?hlText=aide+judiciaire

11. Applications for authorisation and other applications

11.1. Procedure:

In accordance with Article 2 (2) of the Grand-Ducal Regulation of 29 October 2010 "*the Minister responsible for finance is competent to deal with any questions and disputes regarding the implementation of prohibitions and restrictive measures, raised by or related to persons, entities and groups referred to herein, as well as natural and legal persons obliged to apply these measures.*"²⁶ Any inquiries relating thereto, including any application for authorisation in accordance with the exemptions specifically provided for under European legislation,²⁷ should be sent by email to sanctions@fi.etat.lu or by post to Ministère des Finances, Direction Affaires multilatérales, Développement et Compliance, 3, rue de la Congrégation, L-1352 Luxembourg. Once the application is submitted, the Ministry of Finance shall acknowledge receipt thereof to the applicant.

11.2. Processing time:

The Ministry of Finance shall notify applicants of its decision as soon as possible. However, the processing time depends on the complexity of the application and the status of the case. Incomplete applications will not be processed until all required paperwork is received. Furthermore, depending on the complexity of the case, additional consultations within the relevant government departments and with the European Commission Services are often necessary.

11.3. Expenses in respect of applications

The costs of processing applications shall be borne by the Ministry of Finance, at no additional cost for the applicants.

11.4. Can a copy of the authorisation be sent to third parties?

Notwithstanding the applicable rules concerning confidentiality and professional secrecy, professionals may transfer a copy of the authorisation to third parties that have an apparent connection with the transaction. The Ministry of Finance should be consulted prior to forwarding the document to parties that have no obvious connection with the transaction (for example, foreign government authorities). In case of any doubt, the Ministry of Finance should also be consulted.

²⁶ Unofficial English translation of the text of the law.

²⁷ See Regulation (EU) N° 753/2011 of 1st August 2011, Article 5; Regulation (EU) N°881/2002 of 27 May 2002, Article 2a; Regulation 2580/2001 of 27 December 2001, Article 6.

11.5. Modification of an authorisation

Authorisations are issued on the basis of the information and documents submitted during the application process. It follows that applicants are required to a) keep the Ministry of Finance informed of any changes that are likely to alter the assessment parameters on the basis of which the authorisation was issued and (b) where necessary, submit a new application with all of the necessary and/or useful supporting documents and information. If the authorisation is issued on the basis of information that proves to be false, the authorisation shall be considered null and void. In the event of a change in circumstances on the basis of which the authorisation has been issued, the Ministry of Finance may withdraw or amend the authorisation.

11.6. Removal from the financial sanctions lists of a person and/or entity for which the authorisation has been issued.

In the event of the removal from the financial sanctions lists of a person and/or entity for which the authorisation has been issued, it shall no longer be necessary to request authorisation to perform transactions involving such person and/or entity. The authorisation shall therefore expire on the date of actual removal from the list.²⁸ It is recommended to keep a copy of the authorisation and any documentation relating thereto in the event of inspections or queries relating to the period during which the authorisation was still valid.

11.7. What should I do if an authorisation is refused?

The Ministry of Finance shall provide the reasons for its refusal. In the event of refusal, the applicant is strictly prohibited from carrying out the underlying transactions. If, however, the applicant would like the Ministry of Finance to reconsider its decision, it must provide an analysis on the basis of new facts and information and submit any relevant documentation.

11.8. Miscellaneous

It is important to notify the Ministry of Finance of any cases of emergency circumstances (for example, humanitarian danger).

A duly formulated application for authorisation within the context of a specific financial sanctions regime does not exempt the applicant from the requirement to submit prior notification or obtain prior authorisation, which might be provided for in other legislation, not relating to financial sanctions, whether at national or European level.

The authorisation procedure does not negate the need for ordinary procedures to determine the validity of claims against a designated person or entity, and an authorisation does not confer title.²⁹

Applications or queries relating to financial sanctions imposed by other Member States do not fall under the competencies of the Luxembourg Ministry of Finance; applicants should therefore contact the competent authorities of such Member States.

²⁸ See also the "Remedies" section.

²⁹ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), XI (Guidance when considering requests for exemptions), paragraph 82.

Lastly, it should be noted that should an entity be licensed by a Luxembourg or foreign authority, it does not mean that such entity cannot be subject to financial sanctions.

12. The freezing of funds and economic resources

12.1. Funds, economic resources; freezing and making them available – Definitions, scope of application and examples

Funds ⇒ Financial assets and economic benefits of every kind, including but not limited to cash, cheques, cash claims, drafts, money orders and other payment instruments, deposits with financial institutions or other entities, balances on accounts, debts and debt obligations, publicly and privately traded securities and debt instruments, including stocks and shares and other titles of shareholding, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts, interest, dividends or other income on or value accruing from or generated by assets, credit, right of set-off, guarantees, performance bonds or other financial commitments, letters of credit, bills of lading, bills of sale, as well as documents evidencing a participation in funds or financial resources, and any other instrument of export-financing.³⁰

Freezing of funds ⇒ Any action aimed at preventing any move, transfer, alteration, use of, dealing with or access to funds in any way that would change their volume, amount, location, ownership, possession, character, destination or that would enable the funds to be used, including portfolio management.³¹

Economic resources ⇒ Assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.³²

Freezing of economic resources ⇒ Any action aimed at preventing the use of these resources to obtain funds, goods or services in any way, including, but not limited to, the selling, hiring or mortgaging of them.³³

Entry into force of the asset freeze ⇒ The existing legislation shall determine whether transactions initiated prior to the entry into force of financial sanctions shall be carried out. In the absence of any specific provision, transactions shall be blocked, even if they were initiated before the entry into force of the financial sanctions. Any contractual provision to the contrary shall be null and void.³⁴

Making funds and economic resources available to listed persons³⁵ ⇒ Making funds and economic resources available can take several forms and has been broadly interpreted by the CJUE. For example, economic resources can be made available by way of payment for goods and services, as a donation,

³⁰ Article 2 of the Law of 27 October 2010. Unofficial English translation of the text of the law.

³¹ Idem.

³² Idem.

³³ Idem.

³⁴ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), III (Scope of financial restrictive measures), paragraph 33.

³⁵ The term "listed" referring to persons, groups, entities and bodies is used interchangeably with the term "designated".

in order to return funds previously held under a contractual arrangement, and as a swap. The fact that economic resources are made available against payment of a consideration which may be regarded as adequate is therefore irrelevant.³⁶ In case of any doubt, the Ministry of Finance should be consulted.

Making funds or economic resources indirectly available to listed persons ⇒ In order to establish whether funds have been made indirectly available, one must first determine whether there is "ownership", "possession" or "control".³⁷ If this is the case, making funds or economic resources available to non-listed entities or bodies, but which are owned or controlled by a listed person, entity or body, will in principle be considered as making them indirectly available to the listed person, entity or body regardless of the number of intermediaries, their place of residence and notwithstanding the existence of legally separate contractual undertakings. Even if the intermediary is not an entity owned or controlled by the designated entities or persons, it may, however, make funds indirectly available for the benefit of a listed person. Each case should therefore be considered on its individual merits and the Ministry of Finance must be contacted in case of any doubt.

It is the responsibility of the operator to provide the information necessary to determine, on a case-by-case basis using a risk-based approach, that the funds or economic resources concerned will not be used by or benefit that listed person. The criteria to be taken into account include, among others:

- the date and nature of the contractual links between the entities concerned;
- the relevance of the sector of activity of the non-listed entity for the listed person or entity;
- the characteristics of the funds or economic resources made available, including their potential practical use by, and ease of transfer to, the listed entity or person.³⁸

Examples of the asset freeze measures ³⁹⇒ (1) The debiting of frozen accounts is prohibited; (2) The crediting (including the accrual of interest) of frozen accounts is not prohibited, but the amount concerned shall also be frozen⁴⁰; (3) Transfers are blocked in the place in which they are located at the time of their identification; (4) Cheques deposited are credited to accounts and the corresponding amount is frozen; (5) Cheques drawn on accounts are suspended pending authorisation or refusal; (6) Withdrawal and payment cards are deactivated; (7) Clearing (incl. set-off) is prohibited⁴¹; (8) Purchase and sale transactions are blocked; (9) The provision of goods is prohibited notwithstanding pre-

³⁶ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VII (Economic Resources), paragraph 59.

³⁷ See the "Ownership, possession and control" section.

³⁸ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section VIII (Ownership and Control), paragraphs 66-68.

³⁹ For information purposes only. Only the existing legislation has authoritative status.

⁴⁰ See Regulation (EU) N°881/2002 of 27 May 2002, Article 2a, paragraph 4; Regulation (EU) N° 753/2011 of 1st August 2011, Article 6, paragraph 1, sub-paragraph a); Regulation (EU) N° 2580/2001 of 27 December 2001, article 5, paragraph 1.

⁴¹ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VI (Funds), paragraph 47.

existing contractual obligations⁴²; (10) Proceeds from loans and credit facilities, received and not yet disbursed, will no longer be granted or disbursed.

The freezing and closure of accounts ⇒ The closure of a frozen account is subject to prior authorisation. In this respect, consideration should be given to whether it would be better not to close the account, for the following two reasons: (a) To prevent the financial exclusion of the designated person or entity; (b) To allow the competent authorities to continue monitoring the finances of the designated person and/or entity.

Transfer of rights ⇒ Non-designated creditors of a designated person or entity may, without authorisation, transfer to any non-designated person their financial claims against the designated person or entity. The designated person, entity or body, however, needs an authorisation to transfer his or her financial claim against any other person or entity to any other person.⁴³

Proportionality and fundamental rights ⇒ A decision to freeze assets is taken with respect for the principle of proportionality and the fundamental rights of the individual⁴⁴. Freezing measures are not punitive measures.⁴⁵ It follows that it is neither the purpose nor the effect of these measures to submit those persons to inhumane or degrading treatment. In the absence of precise rules on this matter in existing legislation, an operator who, in good faith and in case of emergency, has not been able to comply with freezing measures due to the obligation to prevent inhumane or degrading treatment must report without delay to the Ministry of Finance.

Basic expenses ⇒ Basic expenses are defined as expenses necessary to satisfy the basic needs of the designated natural or legal persons, entities or bodies, and include in particular payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and public utility charges.⁴⁶ The Ministry of Finance shall assess each application on a case-by-case basis to determine whether or not the expenses can be considered as basic.

Unnecessary expenses ⇒ Any unnecessary expenses (e.g. numerous subscriptions for the same purpose, expenditure on luxuries, unnecessary travel costs) are subject to a prior authorisation procedure and are assessed on a case-by-case basis.

Expenses linked with a real and effective defence of the designated person ⇒ Financial restrictive measures do not affect the right to a real and effective defence. The EU Regulations contain specific

⁴² See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), III (Scope of financial restrictive measures), paragraph 33.

⁴³ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VI (Funds), paragraph 46.

⁴⁴ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), Section X (Exemptions), paragraph 76.

⁴⁵ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), Section III (Scope of financial restrictive measures), paragraph 32. Also see the "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy", Annex I.

⁴⁶ See "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy", paragraph 83 (Standard wording 1.a)) as well as the exemptions provided for in Regulations (EU) 2580/2001, 881/2002 and 753/2011. The UNSC Resolutions also provide for similar exemptions. See <http://www.un.org/french/sc/committees/>.

provisions for the release of funds intended exclusively for the payment of reasonable professional fees and the reimbursement of incurred expenses associated with the provision of legal services.⁴⁷ It therefore follows that the release of lump sums or sums that are not justified is not authorised. In order to allow the Ministry of Finance to determine whether there are grounds for releasing funds, applicants must submit:

- A copy of the mandate granted by the client;
- A copy of publicly available documents relating to the case at hand;
- In the event of a request for reimbursement: copies of paid invoices;
- Otherwise, a summary of time spent and costs incurred (time sheets);
- Copies of airline tickets, hotel expense receipts and other similar documents;
- Copies of any other relevant documents.

Personal use of economic resources ⇒ It follows that the personal use of economic resources (e.g. living in one's own house or driving one's own car) by a designated person is not prohibited. In summary, assets which are only suitable for personal use or consumption, and therefore cannot be used by a designated person to obtain funds, goods or services, do not fall within the definition of 'economic resources'. No authorisation is therefore required to make them available to a designated person. In this spirit, domestic supplies of utilities such as gas, electricity, water and telephone lines are not prohibited by the Regulations, owing to their consumptive nature and consequent lack of transferability.⁴⁸ However, if use of economic resources amounts to an economic activity which could result in the designated person obtaining funds, goods or services (e.g. if the designated person seeks to let his or her house or his or her car), it will require prior authorisation.⁴⁹

The right to work ⇒ Financial restrictive measures do not affect a designated person's right to work. However, payment for that work requires an authorisation. Authorisation in such circumstances should normally require payments to be made to a frozen account. Any payment in cash should be authorised explicitly. Deductions for social security and taxes may be authorised under the exemption for basic expenses (see above). An authorisation is also required to make welfare benefits available to a designated person (for example, unemployment benefits).⁵⁰

Designated legal entities ⇒ When a legal entity is designated, its continued existence as such is not prohibited. In the case of a business, freezing its assets will affect its operation and have direct consequences for third parties such as employees, creditors and others that may not have caused the listing of the entity. Business conducted with such an entity will generally involve either making funds

⁴⁷ See Regulation (EU) N°753/2011 of 1st August 2011, article 5, paragraph 1, sub-paragraph b); Regulation (EU) N°881/2002 of 27 May 2002, article 2a, paragraph 1, sub-paragraph ii).

⁴⁸ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VII (Economic Resources), paragraph 61.

⁴⁹ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures) VII (Economic Resources), paragraphs 53-55.

⁵⁰ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), X (Exemptions), paragraph 77.

or economic resources available to it and require thus prior authorisation. In order to again operate freely without any restrictions, de-listing is required.⁵¹

12.2. Ownership, possession and control

The term "freeze" does not mean confiscation, transfer of ownership or seizure.⁵²

The funds and economic resources may also be owned by non-designated individuals or entities. Consequently, it is necessary to examine the notions of "ownership", "possession" and "control". Each requests for authorisation is assessed on the basis of the fulfilment of the criteria of ownership, possession and control.

Ownership ⇒ The right to use, enjoy and dispose of property fully and freely subject only to such limitations as are prescribed by law.

In the case of **joint ownership** by a designated person and a non-designated person, the assets must be frozen. It is up to the non-designated person or entity to request an authorisation to use such frozen assets and / or to sever the joint ownership so that that person's share can be unfrozen. Joint ownership of the funds does not negate this requirement of the non-designated person to request prior authorisation, even though third-party property as such is not frozen by the Regulations.⁵³

Possession⇒ Possession is a factual state of exercising control over an object, whether owning the object or not. A person may be in possession of property, although possession does not always imply ownership. If the possessor is a designated person, the assets should be frozen at the time of implementation of the restrictive measure, even if the person in possession of the property is not the owner thereof.

Control ⇒ Control is either a legal notion or is based on facts. Control is found to exist if (a) a rule establishes it, regardless whether the control is exercised or not; and (b) in practice, a person has the power to enjoy all or part of the ownership rights.⁵⁴ In both cases, assets must be frozen upon implementation of the restrictive measure.

⁵¹ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), Section IX (Designated legal entities), paragraphs 73-75.

⁵² See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), II (Administrative and judicial freezing, seizure and confiscation), paragraph 28; Section III (Scope of financial restrictive measures), paragraph 32; Section VI (Funds), paragraphs 44, 48; and the "Assets freeze explanation of terms document approved by the Al-Qaida Sanctions Committee on 24 February 2015; paragraph 11; https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/assets_freeze.pdf .

⁵³ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), III (Scope of financial restrictive measures), paragraphs 35 and 36; Section VI (Funds), paragraph 45; Section VII (Economic resources), paragraph 56.

⁵⁴ A designated person is considered as controlling funds without owning them if he or she has received powers to represent another non-designated person, allowing him or her to order the transfer of funds he or she does not own. The same applies where a designated person is a guardian for a minor, and therefore has the power to administer the bank account of a non-designated minor, who is the legal owner of the account. See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive

Holding or controlling should be construed as comprising all situations where, without having a title of ownership, a designated person or entity is able lawfully to dispose of or transfer funds or economic resources he, she or it does not own, without any need for prior approval by the legal owner.⁵⁵

The freezing measures do not require persons that hold or control economic resources owned by a designated person or entity to return such economic resources to their owner, and no authorisation is required to continue such holding or controlling. However, since such economic resources are frozen, any new contractual arrangement concerning their use or any dealing with them requires prior authorisation.⁵⁶

Overview

	Assets controlled by the owner (= designated person)	Assets held or controlled by another person (=non-designated person) who is not the owner.	Joint ownership of the assets (The owners are not all designated)
Will the assets be frozen or not? * Assets = Funds or economic resources	Assets must be frozen.	Assets must be frozen. *No prior authorisation required to continue holding or controlling the funds or economic resources.	Assets must be frozen. In order to their respective share of the assets, the other owners must request prior authorisation or sever the joint ownership.

The release of frozen assets or the release of non-frozen assets to a designated person ⇒ Taking into consideration the notions of ownership, possession and control, it may be considered that the release of frozen assets or the release of non-frozen assets to a designated person may take place when that person has acquired ownership of the assets or holds or controls such assets.

It is therefore necessary to assess and determine the appropriate course of action for each situation on a case-by-case basis with the assistance of the Ministry of Finance.

12.3. Legal entities – Definitions of ownership and control

Owning a legal person, group or entity ⇒ means being in possession of 50% or more of the proprietary rights of a legal person, group or entity, or having a majority interest therein.⁵⁷

Measures", Section B (Financial Restrictive Measures), III (Scope of financial restrictive measures), paragraph 34.

⁵⁵ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), III (Scope of financial restrictive measures), paragraph 34.

⁵⁶ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VI (Funds), paragraph 44 and VII (Economic Resources), paragraph 60.

⁵⁷ See definition in Council Regulation (EC) No 2580/2001 of 27 December 2001, article one, paragraph 5).

Controlling a legal person, group or entity means any of the following:⁵⁸ ⇒ **(a)** having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person, group or entity; **(b)** having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person, group or entity who have held office during the present and previous financial year; **(c)** controlling alone, pursuant to an agreement with other shareholders in or members of a legal person, group or entity, a majority of shareholders' or members' voting rights in that legal person, group or entity; **(d)** having the right to exercise a dominant influence over a legal person, group or entity, pursuant to an agreement entered into with that legal person, group or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person, group or entity permits it being subject to such agreement or provision; **(e)** having the power to exercise the right to exercise a dominant influence referred to in point (d), without being the holder of that right⁵⁹; **(f)** having the right to use all or part of the assets of a legal person, group or entity; **(g)** managing the business of a legal person, group or entity on a unified basis, while publishing consolidated accounts; **(h)** sharing jointly and severally the financial liabilities of a legal person, group or entity, or guaranteeing them.

If any of these criteria are satisfied, it is considered that the legal person, group or entity is controlled by another person or entity, unless the contrary can be established on a case-by-case basis.⁶⁰ The fulfilment of the above criteria of ownership or control may be refuted on a case-by-case basis.⁶¹

It should be noted that a legal person that is owned or controlled by a designated person or entity may not necessarily be included in the list of designated persons or entities. Operators may therefore request access to any relevant documents or information that would allow them to determine the identity of the persons that ultimately own or control the legal person.

An operator who is aware that a non-listed entity is owned or controlled by a listed person or entity has to inform the competent authority of the relevant Member State and the Commission either directly or through the Member State.⁶²

12.4. Legal entities – Typology

12.4.1. Designated legal persons that own and/or control a subsidiary

As a shareholding is regarded as an asset, the listed person may not redeem its shareholding to generate profits. No further payments shall be made for the benefit of the listed person (for example, dividend payments). The freezing of funds does not, however, affect voting rights or any legal conventions in general. The non-designated subsidiary may not, however, continue its business activity insofar as such activity involves making funds indirectly available to the designated parent company. It is therefore necessary to exercise increased due diligence in respect of business

⁵⁸ See definition in Council Regulation (EC) No 2580/2001 of 27 December 2001, article one, paragraph 6).

⁵⁹ Including, for example, by means of a front company. See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VIII (Ownership and control), paragraph 63.

⁶⁰ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VIII (Ownership and control), paragraph 64.

⁶¹ See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VIII (Ownership and control), paragraph 65.

⁶² See "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section B (Financial Restrictive Measures), VIII (Ownership and control), paragraph 71.

transactions with the subsidiary and to assess each situation on a case-by-case basis with assistance from the Ministry of Finance.

12.4.2. Branches of a designated company

A branch is a place of business and is not a separate legal entity distinct from the designated parent company; as a consequence the freezing will also affect the assets of branches.

12.4.3. Legal persons controlled by a designated natural person.

As the legal person is regarded as an asset, the funds of such legal persons will be frozen.

12.4.4. Joint-venture

First of all, reference should be made to the legal text establishing the financial restrictive measures. If the legal text does not contain any specific conditions relating to joint-ventures, reference should be made to the agreement establishing the joint-venture in order to determine, on a case-by-case basis, whether the activity of the latter is for the benefit of a listed person (either on a daily basis or occasionally, for example, through the payment of dividends). The Ministry of Finance shall assess each situation on a case-by-case basis based on the information provided in the application.

12.5. The obligation to freeze, without delay, funds and economic resources

Once an operator becomes aware that a person is listed, the funds and economic resources of that person must be frozen without delay.⁶³ Operators must also inform the Ministry of Finance without delay of asset freeze measures taken, together with any relevant information relating thereto. The economic operator should provide the Ministry of Finance with any additional information that may help the Ministry of Finance to decide on the outcome of the blocked transaction.

12.6. Informing the designated person of the asset freeze

Operators are advised to inform the designated person (a) that he or she has been included on the financial sanctions list; (b) that he or she has non-contentious and contentious remedies available to him/her; (c) that he or she may request exceptional authorisation to perform a specific transaction from the Ministry of Finance provided that applicable legal provisions allow for such authorisation and in accordance with the conditions laid down by the latter. The designated person, however, is strictly prohibited from attempting to circumvent or circumventing or facilitating the circumvention of the financial restrictive measures in any manner whatsoever.

⁶³ With regards to the meaning of the phrase "without delay", see the FATF Recommendations, General Glossary: The phrase 'without delay' is defined as ideally, within a matter of hours of a designation by the United Nations Security Council or its relevant Sanctions Committee (e.g. the 1267 Committee, the 1988 Committee, the 1718 Sanctions Committee or the 1737 Sanctions Committee). For the purposes of resolution 1373 (2001), the term 'without delay' means upon having reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, one who finances terrorism or a terrorist organisation. In both cases, the term 'without delay' should be interpreted in the context of the need to prevent the flight or dissipation of funds or other assets which are linked to terrorists, terrorist organisations, and those who finance terrorism, and to the financing of proliferation of weapons of mass destruction and the need for global, concerted action to interdict and disrupt their flow swiftly."

13. Limitation of liability

13.1. In the event of the operator's compliance with the financial restrictive measures

The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith and in accordance with the legal provisions, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body carrying out such action, or its directors or employees, unless it is proven that the funds and economic resources were frozen or withheld as a result of negligence.⁶⁴ The burden of proof of negligence lies with the person seeking to establish liability.

13.2. In the event of the operator's non-compliance with the financial restrictive measures

According to existing Regulations, the financial sanctions shall not give rise to any liability of any kind on the part of the natural and legal persons, entities or bodies who made funds or economic resources available if they did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibition in question.⁶⁵

This is about limiting the liability of operators who have acted in good faith. Good faith assumes that the operator had exercised due diligence before the transaction could start or continue. If an operator is unable to demonstrate the necessary due diligence he/she cannot therefore plead good faith.

In any event, if the operator becomes aware that he/she has not complied with the legal provisions, he/she must contact the Ministry of Finance as soon as possible in order to redress the situation. If necessary, such operators are advised to seek independent legal advice.

14. Lists – Databases

The lists of designated persons and entities are published by the European Commission and the United Nations on their respective websites. These lists facilitate the tracking and investigation process; however, in case of discrepancies between these lists and applicable legal provisions, the applicable legal provisions shall prevail.

The lists may be consulted on the following websites:

For the European Commission: http://eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm
http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf

For the United Nations: <https://www.un.org/sc/suborg/fr/sanctions/un-sc-consolidated-list>

In addition, it is highly recommended that you subscribe to the Ministry of Finance's newsletter to receive emails providing the latest news and details of any amendments to the "International Financial Sanctions" section of the Ministry of Finance's website.

⁶⁴ Article 5 of the Law of 27 October 2010.

⁶⁵ See standard wording included in the "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy", section III F. See also Regulation N° 753/2011 of 1st August 2011, Article 7, paragraph 2.

Subscription to the newsletter is available at the following address:
<http://www.mf.public.lu/functions/newsletter/index.php>

14.1. Homonyms

A situation of homonyms exists where:

- A person has the same first name and surname as a listed person, including cases where the first name and surname cannot be discerned from each other.
- A person has a first name and surname that differs slightly from the listed person's surname due to the possible use of different alphabets.

In a situation of homonyms, accounts are monitored and all transactions suspended. Such situations should be brought to the attention of the Ministry of Finance for its assessment.

It is not sufficient that the name and surname of the person concerned are identical to those of the listed person in order to conclude that it is the same person. On the contrary, other identifiers may clearly demonstrate that they are indeed two different people. By way of example, such identifiers may reveal a different geographic location, different occupations or professions, different dates of birth, or different passport numbers.

Any operator that is confronted with a situation of homonyms must gather additional identifiers without delay before making any decision and keep a written record of the results of their enquiries. If, after gathering such identifiers, it can be clearly demonstrated that they are not the same person, the Ministry of Finance need not be contacted.

In case of any doubt, the operator has to contact the Ministry of Finance and suspend any transactions on the account until the situation is sufficiently clarified. The limited availability of identifiers cannot, alone, justify dealings with a designated person or entity.⁶⁶

15. Sanctions for breaching the financial restrictive measures

Amongst the sanctions currently in force in Luxembourg in the event of a breach of the financial restrictive measures, those imposed by the following legal provisions should be noted:

15.1. Law of 27 October 2010

15.1.1. Article 7 of the Law of 27 October 2010:

Without prejudice to the application of more severe penalties that may be provided for under other legal provisions, violations of this law and its implementing regulations shall be punished by a prison sentence of between eight days and five years and a fine of between €251 and €250,000, or by one of these penalties to the exclusion of the other.

⁶⁶ "Restrictive measures (sanctions) – Update of the EU Best Practices for the Effective Implementation of Restrictive Measures", Section A (Designation and identification of persons and entities subject to targeted restrictive measures), II (Claims concerning mistaken identity), paragraph 9.

15.1.2. Article 4 of the Law of 27 October 2010

“(…) (3) The *Commission de Surveillance du Secteur Financier* and the *Commissariat aux Assurances* are each responsible for the supervision of the professionals in their specific sectors for the purpose of the execution of this law. To this end, they may apply any measures and exercise any powers, including sanctions, with which they are vested, pursuant to applicable legal and regulatory provisions.”⁶⁷

16. Summary of websites to be consulted (for guidance only)

Website	Link
The Ministry of Finance	http://www.mf.public.lu/publications/sanctions_financieres_int/index.html
The Ministry of Foreign and European Affairs	http://www.gouvernement.lu/4411847/mesures-restrictives
<i>Commissariat aux Assurances</i>	http://www.caa.lu
<i>Commission de Surveillance du Secteur Financier</i>	http://www.cssf.lu/en/documentation/regulations/financial-crime/
FIU	http://www.justice.public.lu/fr/organisation-justice/ministere-public/parquets-arondissement/lutte-anti-blanchiment/index.html
Official Gazette	http://www.legilux.public.lu
Official Journal of the European Union ⁶⁸	http://eur-lex.europa.eu/homepage.html
Consolidated list of sanctions – EU	http://www.eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf
Consolidated list of sanctions – United Nations	https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list
United Nations Security Council Resolutions	⇒ http://www.un.org/french/sc/committees/1267/index.shtml [Resolution 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities] ; ⇒ http://www.un.org/french/sc/committees/1988/index.shtml [Resolution 1988 (2011)] ; ⇒ http://www.un.org/fr/sc/ctc/ [the Counter-Terrorism Committee, established pursuant to Resolution 1373 (2001)]; ⇒ http://www.un.org/fr/sc/documents/resolutions/ .
EU Best Practices	http://data.consilium.europa.eu/doc/document/ST-10254-2015-INIT/fr/pdf
EU Guidelines	http://data.consilium.europa.eu/doc/document/ST-11205-2012-INIT/fr/pdf
GAFI – FATF	http://www.fatf-gafi.org/

⁶⁷ Unofficial English translation of the text of the law.

⁶⁸ The consolidated versions of the legal acts published on the Official Journal are not legally binding and are not always updated to include the most recent amendments to the legal act. It is therefore necessary to take into account those amendments that were published after the date of the consolidated act.