

《2004年聯合國(反恐怖主義措施)(修訂)條例草案》委員會

目的

本文件旨在提供資料，闡述一些主要的普通法司法管轄區和歐洲司法管轄區如何實施聯合國安全理事會(安理會)第1373號決議第1(d)和1(b)段，以回應委員會在二零零四年三月二十五日的會議上提出的要求，特別是這些國家有否將有關行為定為罪行。

實施安理會第1373號決議

2. 安理會第1373號決議採取了非常廣泛的方式，以處理有關制止資助恐怖主義的事宜。為協助各國釐定優先考慮的事項，以實施安理會第1373號決議規定的廣泛措施，聯合國反對恐怖主義委員會¹(反恐委員會)已說明會首先檢視各國是否已制定有效的反恐怖主義法例，以涵蓋關乎安理會第1373號決議(包括決議的第1(b)和1(d)段)的所有方面的活動，尤其集中打擊資助恐怖主義的行為。反恐委員會並解釋，將重點置於法例的制定，是基於如各國並不具備有效的法律架構，便不能訂定行政的機制以防止和制止恐怖主義，或將恐怖分子和其支持者繩之於法。

普通法司法管轄區

3. 從各國向反恐委員會提交的報告²中，可看到很多主要的普通法司法管轄區均將安理會第1(b)和1(d)段禁止的行為，定為罪行，以實施該兩段的規定。這些國家包括澳洲、加拿大、新西蘭、美國和英國，有關法例載於英文版的附件A。

¹ 聯合國反對恐怖主義委員會按安理會第1373號決議的第6段成立，以監測決議的執行情況。聯合國安全理事會的成員均為該委員會的成員。

² 各國的報告可於反恐委員會的網址
http://www.un.org/Docs/sc/committees/1373/submitted_reports.html 流覽。

歐洲司法管轄區

4. 就歐洲國家方面，為了採納安理會第 1373 號決議涵蓋的廣泛措施，歐洲聯盟(歐盟)³在二零零一年十二月二十七日通過了兩項共同立場書(即第 2001/930/CFSP 和 2001/931/CFSP 號文件，分別載於英文版的附件 B 和 C)，該兩項立場書訂定了多項措施，其中包括 —

- (a) 將以下行為定為罪行：歐盟成員國國民或在其國領土內的任何人，以任何手段直接或間接故意提供或籌集資金，意圖將該等資金用於恐怖主義行為，或明知該等資金將會用於恐怖主義行為(見英文版的附件 B 第 1 條)。有關條文反映了安理會第 1373 號決議第 1(b)段的規定；以及
- (b) 禁止直接或間接提供資金、金融資產、經濟資源、金融或其他有關服務予犯下、企圖犯下、協助或參與恐怖主義行為的人；該等人直接或間接擁有或控制的實體；以及代表該等人或按該等人指示行事的人和實體(見英文版的附件 B 第 3 條和附件 C 第 3 條)。有關條文反映了安理會第 1373 號決議第 1(d)段的規定。

在二零零一年十二月二十七日，歐盟並採納了第 2580/2001 號規例(載於英文版的附件 D)，以實施第 2001/931/CFSP 號共同立場書。該規例屬法律規定，其中第 2 條訂明不得直接或間接提供資金、金融資產和經濟資源予指明的恐怖分子或恐怖分子集團。

5. 在二零零二年六月十三日，歐盟更為打擊恐怖主義通過了一項具法律效力的框架決議(載於英文版的附件 E)，目的是確保各歐盟成員國採用相若的恐怖主義罪行定義，並就該等罪行釐定相同的最低和最高罰則。該框架決議回應安理會第 1373 號決議第 1(b)和 1(d)段的規定，以制止資助恐怖主義的行為 —

³ 成員包括比利時、丹麥、德國、希臘、西班牙、法國、愛爾蘭、意大利、盧森堡、荷蘭、奧地利、葡萄牙、芬蘭、瑞典、英國和多個東歐國家。

- (a) 第 2 條訂明成員國須採取所需措施，以確保參與恐怖主義集團的行為(包括提供資料或實質資源，或資助其活動)，而明知該等行為會有助恐怖主義集團進行刑事活動，須予懲罰；以及
- (b) 第 5 條訂明成員國須採取所需措施，以確保就第 2 條所指的罪行，訂定有效、合適和具阻嚇性的刑罰。

歐盟呼籲成員國於二零零四年六月前全面履行該框架決議。截至二零零四年三月，只有三個成員國(未被點名)尚未就實施該框架決議的情況提交全面報告。

6. 有關數個歐洲司法管轄區(即比利時、法國、德國和荷蘭)實施安理會第 1373 號決議第 1(b)和 1(d)段以及上述歐盟規定的情況，現撮載於附件 F，有關資料源自這些國家提交反恐委員會的報告和互聯網上的其他資料。這些國家同樣採取訂立罪行的方式以實施決議的規定。

保安局
二零零四年四月

**Anti-terrorism legislation -
Common law jurisdictions**

<u>AUSTRALIA</u>	<u>CANADA</u>	<u>NEW ZEALAND</u>	<u>UNITED KINGDOM</u>	<u>UNITED STATES</u>
Implementation of paragraph 1(b) of UNSCR 1373				
<p>Crimes (Foreign Incursions and Recruitment) Act 1978</p> <p><u>Section 6</u></p> <p>(1) A person shall not:</p> <p>(a) enter a foreign State with intent to engage in a hostile activity in that foreign State; or</p> <p>(b) engage in a hostile activity in a foreign State.</p> <p>(3) For the purposes of subsection (1), engaging in a hostile activity in a foreign State consists of doing an act with the intention of achieving any one or more of the following objectives (whether or not such an objective is achieved):</p> <p>(a) the overthrow by force or violence of the government of the foreign State or of a part of the foreign State;</p> <p>(aa) engaging in armed hostilities in the foreign State;</p>	<p>United Nations Suppression of Terrorism Regulations</p> <p><u>Section 1</u></p> <p>“listed person” means</p> <p>(a) a person whose name appears on the list that the Committee of the Security Council of the United Nations, established by Resolution 1267 (1999) of October 15, 1999, establishes and maintains pursuant to that Resolution or to Resolution 1333(2000) of December 19, 2000; and</p> <p>(b) a person whose name is listed in the schedule in accordance with section 2 (i.e. a person who there are reasonable grounds to believe has carried out, attempted to carry out, participated in or facilitated the carrying out of a terrorist activity; is controlled directly or indirectly by any person conducting any of the aforementioned activities; or is acting on behalf of , or at</p>	<p>Terrorism Suppression Act 2002</p> <p><u>Section 8(1)</u></p> <p>A person commits an offence who, directly or indirectly, wilfully and without law justification or reasonable excuse, provides or collects funds intending that they be used, or knowing that they are to be used, in full or in part, in order to carry out 1 or more acts of a kind that, if they were carried out, would be 1 or more terrorist acts.</p> <p>[penalty : on conviction on indictment to imprisonment for a term not exceeding 14 years.]</p>	<p>Anti-Terrorism Act 2000</p> <p><u>Section 15</u></p> <p>(1) A person commits an offence if he -</p> <p>(a) invites another to provide money or other property, and</p> <p>(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.</p> <p>(2) A person commits an offence if he -</p> <p>(a) receives money or other property, and</p> <p>(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.</p> <p>(3) A person commits an offence if he -</p> <p>(a) provides money or other property, and</p> <p>(b) knows or has</p>	<p>The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001</p> <p><u>(amending Title 18, United States Code)</u></p> <p><u>Section 2339A</u></p> <p>(a) Offense. -</p> <p>Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending they are to be used in preparation for, or in carrying out a terrorist act, or in preparation for, or in carrying out, the concealment or an escape from the commission of any such act, or attempts or conspires to do such an act, shall be fined under this title, imprisoned not</p>

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<p>(b) causing the death of, or bodily injury to, a person who:</p> <p>(i) is the head of state of the foreign State; or</p> <p>(ii) holds, or performs any of the duties of, a public office of the foreign State or of a part of the foreign State; or</p> <p>(c) unlawfully destroying or damaging any real or personal property belonging to the government of the foreign State or of a part of the foreign State.</p> <p><u>Section 7</u></p> <p>(1) A person shall not, whether within or outside Australia:</p> <p>(e) give money or goods to , or perform services for, any other person or any body or association of persons with the intention of supporting or promoting the commission of an offence against section 6;</p> <p>(f) receive or solicit money or goods, or the performance of services, with the intention of</p>	<p>the direction of, or in association with any person conducting any of the aforementioned activities.).</p> <p><u>Section 3</u></p> <p>No person in Canada and no Canadian outside Canada shall knowingly provide or collect by any means, directly or indirectly, funds with the intention that the funds be used, or in the knowledge that the funds are to be used, by a listed person.</p> <p>[penalty :</p> <p>- on conviction on indictment, to imprisonment for a term of not more than 10 years.</p> <p>- on summary conviction, to a fine of not more than CA\$100,000 or to imprisonment for a term of not more than one year, or to both.]</p> <p>Anti-Terrorism Act</p> <p><u>(amending the Criminal Code)</u></p> <p><u>Section 83.02</u></p>		<p>reasonable cause to suspect that it may be used, for the purposes of terrorism.</p> <p><u>Section 16</u></p> <p>(1) A person commits an offence if he uses money or other property for the purposes of terrorism.</p> <p>(2) A person commits an offence if he -</p> <p>(a) possesses money or other property, and</p> <p>(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.</p> <p><u>Section 17</u></p> <p>A person commits an offence if –</p> <p>(a) he enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and</p> <p>(b) he knows or has reasonable cause to suspect that it will or may</p>	<p>more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life.</p> <p>(b) Definition. -</p> <p>In this section, the term “material support or resources” means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.</p> <p><u>Section 2339B</u></p> <p>(a) Prohibited Activities. -</p> <p>(1) Unlawful conduct. -</p> <p>Whoever, within the United States or subject to the jurisdiction of the United States, knowingly provides</p>

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<p>supporting or promoting the commission of an offence against section 6.</p> <p>[penalty : imprisonment for 10 years.]</p> <p>Suppression of the Financing of Terrorism Act 2002</p> <p><u>Schedule 1 adds the following to the Criminal Code</u></p> <p><u>Section 103.1</u></p> <p>(1) A person commits an offence if:</p> <p>(a) the person provides or collects funds; and</p> <p>(b) the person is reckless as to whether the funds will be used to facilitate or engage in a terrorist act.</p> <p>(2) A person commits an offence under subsection (1) even if the terrorist act does not occur.</p> <p>[penalty : imprisonment for life.]</p>	<p>Everyone who, directly, or indirectly, wilfully and without lawful justification or excuse, provides or collects property intending that it be used or knowing that it will be used, in whole or in part, in order to carry out</p> <p>(a) an act or omission that constitutes a terrorist activity, or</p> <p>(b) any other act or omission intended to cause death or serious bodily harm to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, if the purpose of that act or omission, by its nature or context, is to intimidate the public, or to compel a government or an international organization to do or refrain from doing any act,</p> <p>is guilty of an indictable offence.</p> <p>[penalty : imprisonment for not more than 10 years.]</p>		<p>be used for the purposes of terrorism.</p> <p><u>Section 18</u></p> <p>(1) A person commits an offence if he enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property -</p> <p>(a) by concealment,</p> <p>(b) by removal from the jurisdiction,</p> <p>(c) by transfer to nominees, or</p> <p>(d) in any other way.</p> <p>[penalty :</p> <p>- conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both.</p> <p>- on summary conviction, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory minimum or to both.]</p>	<p>material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 15 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life.</p> <p>Suppression of the Financing of Terrorism Convention Implementation Act 2002</p> <p><u>(amending Title 18, United States Code)</u></p> <p><u>Section 2339C</u></p> <p>(a) Offenses. -</p> <p>(1) In general. -</p> <p>Whoever, in a circumstance described in subsection (c), by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the intention that such funds be used, or with the knowledge that such</p>

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				<p>funds are to be used, in full or in part, to carry out –</p> <p>(A) an act which constitutes an offence within the scope of specified terrorism related treaties, as implemented by the United States; or</p> <p>(B) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act,</p> <p>shall be punished as prescribed in subsection (d)(1).</p>

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				<p>(2) Attempts and Conspiracies. -</p> <p>Whoever attempts or conspires to commit an offense under paragraph (1) shall be punished as prescribed in subsection (d)(1).</p> <p>[penalty : fine, imprisonment for not more than 20 years, or both.]</p> <p>(3) Relationship to Predicate Act -</p> <p>For an act to constitute an offense set forth in this subsection, it shall not be necessary that the funds were actually used to carry out a predicate act.</p> <p>(c) Concealment.- Whoever -</p> <p>(1)(A) is in the United States; or</p> <p>(B) is outside the United States and is a national of the United States or a legal entity organized under the laws of the United States (including any of the its States, districts, commonwealths,</p>

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				<p>territories, or possessions); and</p> <p>(2) knowingly conceals or disguises the nature, location, source, ownership, or control of any material support, resources, or funds -</p> <p>(A) knowing or intending that the support or resources were provided in violation of section 2339B of this title; or</p> <p>(B) knowing or intending that any such funds or any proceeds of such funds were provided or collected in violation of subsection (a).</p> <p>[penalty : fine, imprisonment for not more than 10 years, or both.]</p>
Implementation of paragraph 1(d) of UNSCR 1373				
<p>Suppression of the Financing of Terrorism Act 2002</p> <p><u>Schedule 3 adds the following to the Charter of the United Nations Act 1945</u></p>	<p>United Nations Suppression of Terrorism Regulations</p> <p><u>Section 4(d)</u></p> <p>No person in Canada and no Canadian outside Canada shall knowingly make any property</p>	<p>Terrorism Suppression Act 2002</p> <p><u>Section 9(1)</u></p> <p>A person commits an offence who, without lawful justification or reasonable</p>	<p>The Terrorism (United Nations Measures) Order 2001</p> <p><u>Article 3</u></p> <p>Any person, who, except under the authority of a</p>	<p>Same as above</p>

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<p><u>Section 21</u></p> <p>(1) A person commits an offence if:</p> <p>(a) the person, directly or indirectly, makes an asset available to a person or entity; and</p> <p>(b) the person or entity to whom the asset is made available is a proscribed person or entity; and</p> <p>(c) the making available of the asset is not in accordance with a notice issued by the Minister.</p> <p>(2) Strict liability applies to the circumstance of (1)(c).</p> <p>[penalty : imprisonment for 5 years.]</p> <p>Security Legislation Amendment (Terrorism) Act 2002</p> <p><u>Schedule 1 adds the following to the Criminal Code</u></p> <p><u>Section 102.6</u></p> <p>(1) A person commits an offence if:</p>	<p>or any financial or other related services available, directly or indirectly, for the benefit of a listed person.</p> <p>[penalty :</p> <ul style="list-style-type: none"> - on conviction on indictment, to imprisonment for a term of not more than 10 years. - on summary conviction, to a fine of not more than CA\$100,000 or to imprisonment for a term of not more than one year, or to both.] <p>Anti-Terrorism Act</p> <p><u>(amending the Criminal Code)</u></p> <p><u>Section 83.03</u></p> <p>Every one who, directly or indirectly, collects property, provides or invites a person to provide, or makes available property or financial or related services</p> <p>(a) intending that they be used, or knowing that they will be used, in whole or in part, for the purpose of facilitating or carrying out</p>	<p>excuse, deals with any property knowing that the property is -</p> <p>(a) property owned or controlled, directly or indirectly, by an entity for the time being designated under this Act as a terrorist entity or as an associated entity; or</p> <p>(b) property derived or generated from any property of the kind specified in paragraph (a).</p> <p>[penalty : on conviction on indictment to imprisonment for a term not exceeding 7 years.]</p> <p><u>Section 10(1)</u></p> <p>A person commits an offence who makes available, or causes to be made available, directly or indirectly, without lawful justification or reasonable excuse, any property, or any financial or related services, either to, or for the benefit of, an entity, knowing that the entity is an entity for the time being designated under this Act as a terrorist entity or as an associated entity.</p> <p>[penalty : on conviction on indictment to imprisonment for a term not exceeding 7 years.]</p>	<p>licence granted by the Treasury under this article, makes any funds or financial (or related) services available directly or indirectly to or for the benefit of -</p> <p>(a) a person who commits, attempts to commit, facilitates or participates in the commission of acts of terrorism;</p> <p>(b) a person controlled or owned directly or indirectly by a person in (a), or</p> <p>(c) a person acting on behalf, or at the direction, of a person in (a),</p> <p>is guilty of an offence under this Order.</p> <p>[penalty :</p> <ul style="list-style-type: none"> - on conviction on indictment to imprisonment for a term not exceeding 7 years or to a fine or to both. - on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or to both.] 	

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<p>(a) the person intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly); and</p> <p>(b) the organisation is a terrorist organization; and</p> <p>(c) the person knows the organisation is a terrorist organisation.</p> <p>[penalty : imprisonment for 25 years.]</p> <p>(2) A person commits an offence if:</p> <p>(a) the person intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly); and</p> <p>(b) the organisation is a terrorist organization; and</p> <p>(c) the person is reckless as to whether the organisation is a terrorist organisation.</p> <p>[penalty : imprisonment for 15 years.]</p>	<p>any terrorist activity, or for the purpose of benefiting any person who is facilitating or carrying out such an activity, or</p> <p>(b) knowing that, in whole or in part, they will be used or will benefit a terrorist group,</p> <p>is guilty of an indictable offence.</p> <p>[penalty : imprisonment for a term of not more than 10 years.]</p> <p><u>Section 83.04</u></p> <p>Every one, who</p> <p>(a) uses property , directly or indirectly, in whole or in part, for the purposes of facilitating or carrying out a terrorist activity, or</p> <p>(b) possesses property intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purposes of facilitating or carrying out a terrorist activity,</p> <p>is guilty of an indictable offence.</p>			

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<p><u>Section 102.7</u></p> <p>(1) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person intentionally provides to an organisation support or resources that would help the organisation engage in a terrorist act; and (b) the organisation is a terrorist organization; and (c) the person knows the organisation is a terrorist organisation. <p>[penalty : imprisonment for 25 years.]</p> <p>(2) A person commits an offence if:</p> <ul style="list-style-type: none"> (a) the person intentionally provides to an organisation support or resources that would help the organisation engage in a terrorist act;and (b) the organisation is a terrorist organization; and (c) the person is reckless as to whether the organisation is a 	<p>[penalty : imprisonment for a term of not more than 10 years.]</p> <p><u>Section 83.08</u></p> <p>No person in Canada or no Canadian outside Canada shall knowingly</p> <ul style="list-style-type: none"> (a) deal directly or indirectly in any property that is owned or controlled by or on behalf of a terrorist group; (b) enter into or facilitate, directly or indirectly, any transaction, in respect of property referred to in (a); or (c) provide any financial or other related services in respect of property referred to in (a) to, for the benefit of or at the direction of a terrorist group. <p>[penalty :</p> <ul style="list-style-type: none"> - on summary conviction, to a fine of not more than CA\$100,000 or to imprisonment for a term of not more than one year, or to both. - on conviction on indictment, to imprisonment for a term of not more than 10 years.] 			

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terrorist organisation. [penalty : imprisonment for 15 years.]				

(Acts adopted pursuant to Title V of the Treaty on European Union)

COUNCIL COMMON POSITION
of 27 December 2001
on combating terrorism
 (2001/930/CFSP)

THE COUNCIL OF THE EUROPEAN UNION

HAS ADOPTED THIS COMMON POSITION:

Having regard to the Treaty on European Union, and in particular Articles 15 and 34 thereof.

Article 1

Whereas:

The wilful provision or collection, by any means, directly or indirectly, of funds by citizens or within the territory of each of the Member States of the European Union with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts shall be criminalized.

(1) At its extraordinary meeting on 21 September 2001, the European Council declared that terrorism is a real challenge to the world and to Europe and that the fight against terrorism will be a priority objective of the European Union.

(2) On 28 September 2001, the United Nations Security Council adopted resolution 1373(2001), reaffirming that terrorist acts constitute a threat to peace and security and setting out measures aimed at combating terrorism and in particular the fight against the financing of terrorism and the provision of safe havens for terrorists.

Article 2

Funds and other financial assets or economic resources of:

(3) On 8 October 2001, the Council reaffirmed the determination of the EU and its Member States to play their full part, in a coordinated manner, in the global coalition against terrorism, under the aegis of the United Nations. The Council also reiterated the Union's determination to attack the sources which fund terrorism, in close cooperation with the United States.

— persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts;

— entities owned or controlled, directly or indirectly, by such persons; and

— persons and entities acting on behalf of or under the direction of such persons and entities,

(4) On 19 October 2001, the European Council declared that it is determined to combat terrorism in every form throughout the world and that it will continue its efforts to strengthen the coalition of the international community to combat terrorism in every shape and form, for example by the increased cooperation between the operational services responsible for combating terrorism: Europol, Eurojust, the intelligence services, police forces and judicial authorities.

including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities, shall be frozen.

Article 3

Funds, financial assets or economic resources or financial or other related services shall not be made available, directly or indirectly, for the benefit of:

(5) Action has already been taken to implement some of the measures listed below.

— persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts;

— entities owned or controlled, directly or indirectly, by such persons; and

(6) Under these extraordinary circumstances, action by the Community is needed in order to implement some of the measures listed below.

— persons and entities acting on behalf of or under the direction of such persons.

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Article 4

Measures shall be taken to suppress any form of support, active or passive, to entities or persons involved in terrorist acts, including measures aimed at suppressing the recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.

Article 5

Steps shall be taken to prevent the commission of terrorist acts, including by the provision of early warning among Member States or between Member States and third States by exchange of information.

Article 6

Safe haven shall be denied to those who finance, plan, support, or commit terrorist acts, or provide safe havens.

Article 7

Persons who finance, plan, facilitate or commit terrorist acts shall be prevented from using the territories of the Member States of the European Union for those purposes against Member States or third States or their citizens.

Article 8

Persons who participate in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts shall be brought to justice; such terrorist acts shall be established as serious criminal offences in laws and regulations of Member States and the punishment shall duly reflect the seriousness of such terrorist acts.

Article 9

Member States shall afford one another, as well as third States, the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts in accordance with international and domestic law, including assistance in obtaining evidence in the possession of a Member State or a third State which is necessary for the proceedings.

Article 10

The movement of terrorists or terrorist groups shall be prevented by effective border controls and controls on the issuing of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents. The Council notes the Commission's intention to put forward proposals in this area, where appropriate.

Article 11

Steps shall be taken to intensify and accelerate the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel

documents; traffic in arms, explosives or sensitive materials; use of communication technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups.

Article 12

Information shall be exchanged among Member States or between Member States and third States in accordance with international and national law, and cooperation shall be enhanced among Member States or between Member States and third States on administrative and judicial matters to prevent the commission of terrorist acts.

Article 13

Cooperation among Member States or between Member States and third States, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of terrorist acts shall be enhanced.

Article 14

Member States shall become parties as soon as possible to the relevant international conventions and protocols relating to terrorism listed in the Annex.

Article 15

Member States shall increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and United Nations Security Council Resolutions 1269(1999) and 1368(2001).

Article 16

Appropriate measures shall be taken in accordance with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts. The Council notes the Commission's intention to put forward proposals in this area, where appropriate.

Article 17

Steps shall be taken in accordance with international law to ensure that refugee status is not abused by the perpetrators, organisers or facilitators of terrorist acts and that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists. The Council notes the Commission's intention to put forward proposals in this area, where appropriate.

Article 18

This Common Position shall take effect on the date of its adoption.

Article 19

This Common Position shall be published in the Official Journal.

Done at Brussels, 27 December 2001.

For the Council
The President
L. MICHEL

ANNEX

List of international conventions and protocols relating to terrorism referred to in Article 14

1. Convention on Offenses and Certain Other Offenses Committed on Board Aircraft — Tokyo 14.9.1963
2. Convention for the Unlawful Seizure of Aircraft — The Hague 16.12.1970
3. Convention for the Suppression of Unlawful Acts Against the Safety of Aircraft — Montreal 23.9.1971
4. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Personnel — New York 14.12.1973
5. European Convention for the Suppression of Terrorism — Strasbourg 27.1.1977
6. Convention Against the Taking of Hostages — New York 17.12.1979
7. Convention on the Physical Protection of Nuclear Materials — Vienna 3.3.1980
8. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Aviation, complementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Aircraft — Montreal 24.2.1988
9. Convention for the Suppression of unlawful Acts Against the Safety of Maritime Navigation — Rome 10.3.1988
10. Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms on the Continental Shelf — Rome 10.3.1988
11. Convention on the Marking of Plastic Explosives for the Purpose of Detection — Montreal 1.3.1991
12. UN Convention for the Suppression of Terrorist Bombings — New York 15.12.1997
13. UN Convention for the Suppression of Financing of Terrorism — New York, 9.12.1999

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COUNCIL COMMON POSITION
of 27 December 2001
on the application of specific measures to combat terrorism

(2001/931/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 15 and 34 thereof,

Whereas:

- (1) At its extraordinary meeting on 21 September 2001, the European Council declared that terrorism is a real challenge to the world and to Europe and that the fight against terrorism will be a priority objective of the European Union.
- (2) On 28 September 2001, the United Nations Security Council adopted Resolution 1373(2001) laying out wide-ranging strategies to combat terrorism and in particular the fight against the financing of terrorism.
- (3) On 8 October 2001, the Council reiterated the Union's determination to attack the sources which fund terrorism, in close cooperation with the United States.
- (4) On 26 February 2001, pursuant to UNSC Resolution 1333(2000), the Council adopted Common Position 2001/154/CFSP⁽¹⁾ which provides *inter alia* for the freezing of funds of Usama bin Laden and individuals and entities associated with him. Consequently, those persons, groups and entities are not covered by this Common Position.
- (5) The European Union should take additional measures in order to implement UNSC Resolution 1373(2001).
- (6) Member States have transmitted to the European Union the information necessary to implement some of those additional measures.
- (7) Action by the Community is necessary in order to implement some of those additional measures; action by the Member States is also necessary, in particular as far as the application of forms of police and judicial cooperation in criminal matters is concerned,

HAS ADOPTED THIS COMMON POSITION:

Article 1

1. This Common Position applies in accordance with the provisions of the following Articles to persons, groups and entities involved in terrorist acts and listed in the Annex.

⁽¹⁾ OJ L 57, 27.2.2001, p. 1.

2. For the purposes of this Common Position, 'persons, groups and entities involved in terrorist acts' shall mean:

- persons who commit, or attempt to commit, terrorist acts or who participate in, or facilitate, the commission of terrorist acts,
- groups and entities owned or controlled directly or indirectly by such persons; and persons, groups and entities acting on behalf of, or under the direction of, such persons, groups and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons, groups and entities.

3. For the purposes of this Common Position, 'terrorist act' shall mean one of the following intentional acts, which, given its nature or its context, may seriously damage a country or an international organisation, as defined as an offence under national law, where committed with the aim of:

- (i) seriously intimidating a population, or
- (ii) unduly compelling a Government or an international organisation to perform or abstain from performing any act, or
- (iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation:
 - (a) attacks upon a person's life which may cause death;
 - (b) attacks upon the physical integrity of a person;
 - (c) kidnapping or hostage taking;
 - (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;
 - (e) seizure of aircraft, ships or other means of public or goods transport;
 - (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
 - (g) release of dangerous substances, or causing fires, explosions or floods the effect of which is to endanger human life;

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- (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life;
- (i) threatening to commit any of the acts listed under (a) to (h);
- (j) directing a terrorist group;
- (k) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the group.

For the purposes of this paragraph, 'terrorist group' shall mean a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist acts. 'Structured group' means a group that is not randomly formed for the immediate commission of a terrorist act and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

4. The list in the Annex shall be drawn up on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority in respect of the persons, groups and entities concerned, irrespective of whether it concerns the instigation of investigations or prosecution for a terrorist act, an attempt to perpetrate, participate in or facilitate such an act based on serious and credible evidence or clues, or condemnation for such deeds. Persons, groups and entities identified by the Security Council of the United Nations as being related to terrorism and against whom it has ordered sanctions may be included in the list.

For the purposes of this paragraph 'competent authority' shall mean a judicial authority, or, where judicial authorities have no competence in the area covered by this paragraph, an equivalent competent authority in that area.

5. The Council shall work to ensure that names of natural or legal persons, groups or entities listed in the Annex have sufficient particulars appended to permit effective identification of specific human beings, legal persons, entities or bodies, thus facilitating the exculpation of those bearing the same or similar names.

6. The names of persons and entities on the list in the Annex shall be reviewed at regular intervals and at least once every six months to ensure that there are grounds for keeping them on the list.

Article 2

The European Community, acting within the limits of the powers conferred on it by the Treaty establishing the European Community, shall order the freezing of the funds and other financial assets or economic resources of persons, groups and entities listed in the Annex.

Article 3

The European Community, acting within the limits of the powers conferred on it by the Treaty establishing the European Community, shall ensure that funds, financial assets or economic resources or financial or other related services will not be made available, directly or indirectly, for the benefit of persons, groups and entities listed in the Annex.

Article 4

Member States shall, through police and judicial cooperation in criminal matters within the framework of Title VI of the Treaty on European Union, afford each other the widest possible assistance in preventing and combating terrorist acts. To that end they shall, with respect to enquiries and proceedings conducted by their authorities in respect of any of the persons, groups and entities listed in the Annex, fully exploit, upon request, their existing powers in accordance with acts of the European Union and other international agreements, arrangements and conventions which are binding upon Member States.

Article 5

This Common Position shall take effect on the date of its adoption.

Article 6

This Common Position shall be kept under constant review.

Article 7

This Common Position shall be published in the Official Journal.

Done at Brussels, 27 December 2001.

For the Council
The President
L. MICHEL

ANNEX

First list of persons, groups and entities referred to in Article 1⁽¹⁾

1. PERSONS

- *— ABAUNZA MARTINEZ, Javier (E.T.A. Activist) born 1.1.1965 in Guernica (Biscay), identity card No 78.865.882.
- *— ALBERDI URANGA, Itziar (E.T.A. Activist) born 7.10.1963 in Durango (Biscay), identity card No 78.865.693.
- *— ALBISU IRIARTE, Miguel (E.T.A. Activist; Member of Gestoras Pro-amnistía) born 7.6.1961 in San Sebastián (Guipúzcoa), identity card No 15.954.596.
- *— ALCALDE LINARES, Angel (E.T.A. Activist; Member of Herri Batasuna/EH/Batasuna) born 2.5.1943 in Portugalete (Vizcaya), identity card 14.390.353.
- AL-MUGHASSIL, Ahmad Ibrahim (a.k.a. ABU OMRAN; a.k.a. AL-MUGHASSIL, Ahmed Ibrahim) born 26.6.1967 in Qatif-Bab al Shamal, Saudi Arabia; citizen Saudi Arabia.
- AL-NASSER, Abdelkarim Hussein Mohamed, born in Al Ihsa, Saudi Arabia; citizen Saudi Arabia.
- AL YACCOUB, Ibrahim Salih Mohammed, born 16.10.1996 in Tarut, Saudi Arabia; citizen Saudi Arabia.
- *— ARZALLUS TAPIA, Eusebio (E.T.A. Activist) born 8.11.1957 in Regil (Guipúzcoa), identity card No 15.927.207.
- ATWA, Ali (a.k.a. BOUSLIM, Ammar Mansour; a.k.a. SALIM, Hassan Rostom), Lebanon, born 1960 in Lebanon; citizen Lebanon.
- *— ELCORO AYASTUY, Paulo (E.T.A. Activist; Member of Jarrai/Haika/Segi) born 22.10.1973 in Vergara (Guipúzcoa), identity card No 15.394.062.
- EL-HOORIE, Ali Saed Bin Ali (a.k.a. AL-HOURI, Ali Saed Bin Ali; a.k.a. EL-HOURI, Ali Saed Bin Ali) born 10.7.1965 alt. 11.7.1965 in El Dibabiya, Saudi Arabia; citizen Saudi Arabia.
- *— FIGAL ARRANZ, Antonio Agustín (E.T.A. Activist; Member of Kas/Ekin) born 2.12.1972 in Baracaldo (Biscay), identity card No 20.172.692.
- *— GOGESCOEHEA ARRONATEGUI, Eneko (E.T.A. Activist), born 29.4.1967 in Guernica (Biscay), identity card No 44.556.097.
- *— GOIRICELAYA GONZALEZ, Cristina (E.T.A. Activist; Member of Herri Batasuna/EH/Batasuna), born 23.12.1967 in Vergara (Guipúzcoa), identity card No 16.282.556.
- *— IPARRAGUIRRE GUENECHEA, M^a Soledad (E.T.A. Activist) born 25.4.1961 in Escoriaza (Navarre), identity card No 16.255.819.
- IZZ-AL-DIN, Hasan (a.k.a. GARBAYA, AHMED; a.k.a. SA-AD; a.k.a. SALWWAN, Samir), Lebanon, born 1963 in Lebanon, citizen Lebanon.
- MOHAMMED, Khalid Shaikh (a.k.a. ALI, Salem; a.k.a. BIN KHALID, Fahd Bin Adballah; a.k.a. HENIN, Ashraf Refaat Nabith; a.k.a. WADOOD, Khalid Abdul) born 14.4.1965 alt. 1.3.1964 in Kuwait; citizen Kuwait.
- *— MORCILLO TORRES, Gracia (E.T.A. Activist; Member of Kas/Ekin) born 15.3.1967 in San Sebastián (Guipúzcoa), identity card No 72.439.052.
- *— MÚGICA GOÑI, Ainhoa (E.T.A. Activist) born 27.6.1970 in San Sebastián (Guipúzcoa), identity card No 34.101.243.
- MUGHNIYAH, Imad Fa'iz (a.k.a. MUGHNIYAH, Imad Fayiz), Senior Intelligence Officer of HIZBALLAH, born 7.12.1962 in Tayr Dibba, Lebanon, passport No 432298 (Lebanon).
- *— MUÑOA ORDOZGOITI, Aloña (E.T.A. Activist; Member of Kas/Ekin) born 6.7.1976 in Segura (Guipúzcoa), identity card No 35.771.259.
- *— NARVÁEZ GOÑI, Juan Jesús (E.T.A. Activist) born 23.2.1961 in Pamplona (Navarra), identity card No 15.841.101.
- *— OLARRA GURIDI, Juan Antonio (E.T.A. Activist) born 11.9.1967 in San Sebastián (Guipúzcoa), identity card No 34.084.504.
- *— ORBE SEVILLANO, Zigor (E.T.A. Activist; Member of Jarrai/Haika/Segi) born 22.9.1975 in Basauri (Biscay), identity card No 45.622.851.
- *— OTEGUI UNANUE, Mikel (E.T.A. Activist; Member of Jarrai/Haika/Segi) born 8.10.1972 in Itsasondo (Guipúzcoa), identity card No 44.132.976.

⁽¹⁾ Persons marked with an * shall be the subjects of Article 4 only.

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- *— PEREZ ARAMBURU, Jon Iñaki (E.T.A. Activist; Member of Jarrai/Haika/Segi) born 18.9.1964 in San Sebastián (Guipúzcoa), identity card No 15.976.521.
- *— SAEZ DE EGUILAZ MURGUTONDO, Carlos (E.T.A. Activist; Member of Kas/Ekin) born 9.12.1963 in San Sebastián (Guipúzcoa), identity card No 15.962.687.
- *— URANGA ARTOLA, Kamen (E.T.A. Activist; Member of Herri Batasuna/EH/Batasuna) born 25.5.1969 in Ondarroa (Biscay), identity card No 30.627.290.
- *— VILA MICHELENA, Fermín (E.T.A. Activist; Member of Kas/Ekin) born 12.3.1970 in Irún (Guipúzcoa), identity card No 15.254.214.

2. GROUPS AND ENTITIES

- *— Continuity Irish Republican Army (CIRA)
- *— Euskadi Ta Askatasuna/Tierra Vasca y Libertad/Basque Fatherland and Liberty (E.T.A.)
(The following organisations are part of the terrorist group E.T.A.: K.a.s., Xaki Ekin, Jarrai-Haika-Segi, Gestoras pro-amnistía.)
- *— Grupos de Resistencia Antifascista Primero de Octubre/Antifascist Resistance Groups First of October (G.R.A.P.O.)
- Hamas-Izz al-Din al-Qassem (terrorist wing of Hamas)
- *— Loyalist Volunteer Force (LVF)
- *— Orange Volunteers (OV)
- Palestinian Islamic Jihad (PIJ)
- *— Real IRA
- *— Red Hand Defenders (RHD)
- *— Revolutionary Nuclei/Epanastatiki Pirines
- *— Revolutionary Organisation 17 November/Dekati Evdomi Noemvri
- *— Revolutionary Popular Struggle/Epanastatikos Laikos Agonas (ELA)
- *— Ulster Defence Association/Ulster Freedom Fighters (UDA/UFF)

COUNCIL REGULATION (EC) No 2580/2001

of 27 December 2001

on specific restrictive measures directed against certain persons and entities with a view to combating terrorism

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60, 301 and 308 thereof,

Having regard to Common Position 2001/931/CFSP on the application of specific measures to combat terrorism⁽¹⁾, adopted by the Council on 27 December 2001,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽²⁾,

Whereas:

- (1) At its extraordinary meeting on 21 September 2001, the European Council declared that terrorism is a real challenge to the world and to Europe and that the fight against terrorism will be a priority objective of the European Union.
- (2) The European Council declared that combating the funding of terrorism is a decisive aspect of the fight against terrorism and called upon the Council to take the necessary measures to combat any form of financing for terrorist activities.
- (3) In its Resolution 1373(2001), the United Nations Security Council decided on 28 September 2001 that all States should implement a freezing of funds and other financial assets or economic resources as against persons who commit, or attempt to commit, terrorist acts or who participate in or facilitate the commission of such acts.
- (4) In addition, the Security Council decided that measures should be taken to prohibit funds and other financial assets or economic resources from being made available for the benefit of such persons, and to prohibit financial or other related services from being rendered for the benefit of such persons.
- (5) Action by the Community is necessary in order to implement the CFSP aspects of Common Position 2001/931/CFSP.
- (6) This Regulation is a measure needed at Community level and complementary to administrative and judicial

procedures regarding terrorist organisations in the European Union and third countries.

- (7) Community territory is deemed to encompass, for the purposes of this Regulation, all the territories of the Member States to which the Treaty is applicable, under the conditions laid down in that Treaty.
- (8) With a view to protecting the interests of the Community, certain exceptions may be granted.
- (9) As regards the procedure for establishing and amending the list referred to in Article 2(3) of this Regulation, the Council should exercise the corresponding implementing powers itself in view of the specific means available to its members for that purpose.
- (10) Circumvention of this Regulation should be prevented by an adequate system of information and, where appropriate, remedial measures, including additional Community legislation.
- (11) The competent authorities of the Member States should, where necessary, be empowered to ensure compliance with the provisions of this Regulation.
- (12) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those sanctions must be effective, proportionate and dissuasive.
- (13) The Commission and the Member States should inform each other of the measures taken under this Regulation and of other relevant information at their disposal in connection with this Regulation.
- (14) The list referred to in Article 2(3) of this Regulation may include persons and entities linked or related to third countries as well as those who otherwise are the focus of the CFSP aspects of Common Position 2001/931/CFSP. For the adoption of provisions in this Regulation concerning the latter, the Treaty does not provide powers other than those under Article 308.
- (15) The European Community has already implemented UNSCR 1267(1999) and 1333(2000) by adopting Regulation (EC) No 467/2001⁽³⁾ freezing the assets of certain persons and groups and therefore those persons and groups are not covered by this Regulation.

⁽¹⁾ See page 93 of this Official Journal.

⁽²⁾ Opinion delivered on 13 December 2001 (not yet published in the Official Journal).

⁽³⁾ OJ L 67, 9.3.2001, p. 1.

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HAS ADOPTED THIS REGULATION:

Article 1

For the purpose of this Regulation, the following definitions shall apply:

1. 'Funds, other financial assets and economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.
2. Freezing of funds, other financial assets and economic resources' means the prevention of any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management.
3. 'Financial services' means any service of a financial nature, including all insurance and insurance-related services, and all banking and other financial services (excluding insurance) as follows:

Insurance and insurance-related services

- (i) Direct insurance (including co-insurance):

- (A) life assurance;

- (B) non-life;

- (ii) Reinsurance and retrocession;
- (iii) Insurance intermediation, such as brokerage and agency;
- (iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

Banking and other financial services (excluding insurance)

- (v) Acceptance of deposits and other repayable funds;
- (vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
- (vii) Financial leasing;
- (viii) All payment and money transmission services, including credit, charge and debit cards, travellers' cheques and bankers' drafts;
- (ix) Guarantees and commitments;
- (x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

- (A) money market instruments (including cheques, bills, certificates of deposits);

- (B) foreign exchange;

- (C) derivative products including, but not limited to, futures and options;

- (D) exchange rate and interest rate instruments, including products such as swaps and forward rate agreements;

- (E) transferable securities;

- (F) other negotiable instruments and financial assets, including bullion;

- (xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

- (xii) Money brokering;

- (xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

- (xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

- (xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

- (xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) to (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

4. For the purposes of this Regulation, the definition of 'terrorist act' shall be the one contained in Article 1(3) of Common Position 2001/931/CFSP.

5. '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.

6. 'Controlling a legal person, group or entity' means any of the following:

- (a) having the right 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 its 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 right;
- (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.

Article 2

1. Except as permitted under Articles 5 and 6:
 - (a) all funds, other financial assets and economic resources belonging to, or owned or held by, a natural or legal person, group or entity included in the list referred to in paragraph 3 shall be frozen;
 - (b) no funds, other financial assets and economic resources shall be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3.
2. Except as permitted under Articles 5 and 6, it shall be prohibited to provide financial services to, or for the benefit of, a natural or legal person, group or entity included in the list referred to in paragraph 3.
3. The Council, acting by unanimity, shall establish, review and amend the list of persons, groups and entities to which this Regulation applies, in accordance with the provisions laid down in Article 1(4), (5) and (6) of Common Position 2001/931/CFSP; such list shall consist of:
 - (i) natural persons committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;
 - (ii) legal persons, groups or entities committing, or attempting to commit, participating in or facilitating the commission of any act of terrorism;
 - (iii) legal persons, groups or entities owned or controlled by one or more natural or legal persons, groups or entities referred to in points (i) and (ii); or

- (iv) natural legal persons, groups or entities acting on behalf of or at the direction of one or more natural or legal persons, groups or entities referred to in points (i) and (ii).

Article 3

1. The participation, knowingly and intentionally, in activities, the object or effect of which is, directly or indirectly, to circumvent Article 2 shall be prohibited.
2. Any information that the provisions of this Regulation are being, or have been, circumvented shall be notified to the competent authorities of the Member States listed in the Annex and to the Commission.

Article 4

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy and to the provisions of Article 284 of the Treaty, banks, other financial institutions, insurance companies, and other bodies and persons shall:
 - provide immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 2 and transactions executed pursuant to Articles 5 and 6;
 - to the competent authorities of the Member States listed in the Annex where they are resident or located, and
 - through these competent authorities, to the Commission,
 - cooperate with the competent authorities listed in the Annex in any verification of this information.
2. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.
3. Any information directly received by the Commission shall be made available to the competent authorities of the Member States concerned and to the Council.

Article 5

1. Article 2(1)(b) shall not apply to the addition to frozen accounts of interest due on those accounts. Such interest shall also be frozen.
2. The competent authorities of the Member States listed in the Annex may grant specific authorisations, under such conditions as they deem appropriate, in order to prevent the financing of acts of terrorism, for
 1. the use of frozen funds for essential human needs of a natural person included in the list referred to in Article 2(3) or a member of his family, including in particular payments for foodstuffs, medicines, the rent or mortgage for the family residence and fees and charges concerning medical treatment of members of that family, to be fulfilled within the Community;

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2. payments from frozen accounts for the following purposes:

(a) payment of taxes, compulsory insurance premiums and fees for public utility services such as gas, water, electricity and telecommunications to be paid in the Community; and

(b) payment of charges due to a financial institution in the Community for the maintenance of accounts;

3. payments to a person, entity or body person included in the list referred to in Article 2(3), due under contracts, agreements or obligations which were concluded or arose before the entry into force of this Regulation provided that those payments are made into a frozen account within the Community.

3. Requests for authorisations shall be made to the competent authority of the Member State in whose territory the funds, other financial assets or other economic resources have been frozen.

Article 6

1. Notwithstanding the provisions of Article 2 and with a view to the protection of the interests of the Community, which include the interests of its citizens and residents, the competent authorities of a Member State may grant specific authorisations:

— to unfreeze funds, other financial assets or other economic resources,

— to make funds, other financial assets or other economic resources available to a person, entity or body included in the list referred to in Article 2(3), or

— to render financial services to such person, entity or body, after consultation with the other Member States, the Council and the Commission in accordance with paragraph 2.

2. A competent authority which receives a request for an authorisation referred to in paragraph 1 shall notify the competent authorities of the other Member States, the Council and the Commission, as listed in the Annex, of the grounds on which it intends to either reject the request or grant a specific authorisation, informing them of the conditions that it considers necessary in order to prevent the financing of acts of terrorism.

The competent authority which intends to grant a specific authorisation shall take due account of comments made within

two weeks by other Member States, the Council and the Commission.

Article 7

The Commission shall be empowered, on the basis of information supplied by Member States, to amend the Annex.

Article 8

The Member States, the Council and the Commission shall inform each other of the measures taken under this Regulation and supply each other with the relevant information at their disposal in connection with this Regulation, notably information received in accordance with Articles 3 and 4, and in respect of violation and enforcement problems or judgments handed down by national courts.

Article 9

Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed. Such sanctions shall be effective, proportionate and dissuasive.

Article 10

This Regulation shall apply:

1. within the territory of the Community, including its airspace,

2. on board any aircraft or any vessel under the jurisdiction of a Member State,

3. to any person elsewhere who is a national of a Member State,

4. to any legal person, group or entity incorporated or constituted under the law of a Member State,

5. to any legal person, group or entity doing business within the Community.

Article 11

1. This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

2. Within a period of one year from the entry into force of this Regulation, the Commission shall present a report on the impact of this Regulation and, if necessary, make proposals to amend it.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 December 2001.

For the Council

The President

L. MICHEL

ANNEX

LIST OF COMPETENT AUTHORITIES REFERRED TO IN ARTICLES 3, 4 AND 5

BELGIUM

Ministère des finances
Trésorerie
avenue des Arts 30
B-1040 Bruxelles
Fax (32-2) 233 75 18

DENMARK

Erhvervsfremmestyrelsen
Dahlerups Pakhus
Langelinie Alle 17
DK-2100 København Ø
Tel. (45) 35 46 60 00
Fax (45) 35 46 60 01

GERMANY

— concerning freeze of funds:

Deutsche Bundesbank
Wilhelm Eppsteinsstr. 14
D-60431 Frankfurt/Main
Tel. (00-49-69) 95 66

— concerning insurances:

Bundesaufsichtsamt für das Versicherungswesen (BAV)
Grauheckendorfer Str. 108
D-53117 Bonn
Tel. (00-49-228) 42 28

GREECE

Ministry of National Economy
General Directorate of Economic Policy
5 Nikis str.
GR-105 63 Athens
Tel. (00-30-1) 333 27 81-2
Fax (00-30-1) 333 27 93

Υπουργείο Εθνικής Οικονομίας
Γενική Διεύθυνση Οικονομικής Πολιτικής
Νίκης 5, 10562 ΑΘΗΝΑ
Τηλ: (00-30-1) 333 27 81-2
Φαξ: (00-30-1) 333 27 93

SPAIN

Dirección General de Comercio e Inversiones
Subdirección General de Inversiones Exteriores
Ministerio de Economía
Paseo de la Castellana, 162
E-28046 Madrid
Tel. (00-34) 91 349 39 83
Fax (00-34) 91 349 35 62

Dirección General del Tesoro y Política Financiera
Subdirección General de Inspección y Control de Movimientos de Capitales
Ministerio de Economía
Paseo del Prado, 6
E-28014 Madrid
Tel. (00-34) 91 209 95 11
Fax (00-34) 91 209 96 56

FRANCE

Ministère de l'économie, des finances et de l'industrie
Direction du Trésor
Service des affaires européennes et internationales
Sous-direction E
139, rue du Bercy
F-75572 Paris Cedex 12
Tel. (33-1) 44 87 17 17
Fax (33-1) 53 18 36 15

IRELAND

Central Bank of Ireland
Financial Markets Department
PO Box 559
Dame Street
Dublin 2
Tel. (353-1) 671 66 66

Department of Foreign Affairs
Bilateral Economic Relations Division
76-78 Harcourt Street
Dublin 2
Tel. (353-1) 408 24 92

ITALY

Ministero dell'Economia e delle Finanze

...

LUXEMBOURG

Ministère des affaires étrangères, du commerce extérieur, de la coopération, de l'action humanitaire et de la défense
Direction des relations économiques internationales
BP 1602
L-1016 Luxembourg
Tel. (352) 478-1 ou 478-2350
Fax (352) 22 20 48

Ministère des Finances
3 rue de la Congrégation
L-1352 Luxembourg
Tel. (352) 478-2712
Fax (352) 47 52 41

NETHERLANDS

Ministerie van Financiën
Directie Wetgeving, Juridische en Bestuurlijke Zaken
Postbus 20201
2500 EE Den Haag
Nederland
Tel. (31-70) 342 82 27
Fax (31-70) 342 79 05

AUSTRIA

— Article 3

Bundesministerium für Inneres — Bundeskriminalamt
A-1090 Wien
Josef-Holaubek-Platz 1
Tel. (+ 431) 313 45-0
Fax (431) 313 45-85 290

— Article 4

Oesterreichische Nationalbank
A-1090 Wien
Otto-Wagner-Platz 3
Tel. + 431) 404 20-0
Fax (431) 404 20-73 99

Bundesministerium für Inneres — Bundeskriminalamt
A-1090 Wien
Josef-Holaubek-Platz 1
Tel. (+ 431) 313 45-0
Fax (431) 313 45-85 290

— Article 5

Oesterreichische Nationalbank
A-1090 Wien
Otto-Wagner-Platz 3
Tel. + 431) 404 20-0
Fax (431) 404 20-73 99

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PORTUGAL

Ministério das Finanças
 Direcção Geral dos Assuntos Europeus e Relações Internacionais
 Avenida Infante D. Henrique, n.º 1, C. 2.º
 P-1100 Lisboa
 Tel.: (351-1) 882 32 40/47
 Fax: (351-1) 882 32 49

tfn 08-787 80 00
 fax 08-24 13 35

— Article 5

Riksförsäkringsverket (RFV)
 103 51 Stockholm
 tfn 08-786 90 00
 fax 08-411 27 89

Ministério dos Negócios Estrangeiros
 Direcção Geral dos Assuntos Multilaterais/Direcção dos Serviços das
 Organizações Políticas Internacionais
 Largo do Râlvas
 P-1350-179 Lisboa
 Tel.: (351 21) 394 60 72
 Fax: (351 21) 394 60 73

UNITED KINGDOM

HM Treasury
 International Financial Services Team
 19 Allington Towers
 London SW1E 5EB
 United Kingdom
 Tel: (44-207) 270 55 50
 Fax: (44-207) 270 43 65

FINLAND

Ulkosainministeriö/Utrikesministeriet
 PL 176
 SF-00161 Helsinki
 Tel. (358-9) 13 41 51
 Fax. (358-9) 13 41 57 07 and (358-9) 62 98 40

Bank of England
 Financial Sanctions Unit
 Threadneedle Street
 London EC2R 8AH
 United Kingdom
 Tel. (44-207) 601 46 07
 Fax (44-207) 601 43 09

SWEDEN

— Article 3
 Rikspolisstyrelsen (RPS)
 Box 12256
 102 26 Stockholm
 tfn 08-401 90 00
 fax 08-401 99 00

— Articles 4 and 6
 Finansinspektionen
 Box 7831
 103 98 Stockholm

EUROPEAN COMMUNITY

Commission of the European Communities
 Directorate-General for External Relations
 Directorate CFSP
 Unit A.2/Mr A. de Vries
 Rue de la Loi/Wetstraat 200
 B-1049 Bruxelles/Brussel
 Tel: (32-2) 295 68 80
 Fax: (32-2) 296 75 63
 E-mail: anthonius-de-vries@cec.eu.int

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL FRAMEWORK DECISION

of 13 June 2002

on combating terrorism

(2002/475/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Union, and in particular Article 29, Article 31(e) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) The European Union is founded on the universal values of human dignity, liberty, equality and solidarity, respect for human rights and fundamental freedoms. It is based on the principle of democracy and the principle of the rule of law, principles which are common to the Member States.
- (2) Terrorism constitutes one of the most serious violations of those principles. The La Gomera Declaration adopted at the informal Council meeting on 14 October 1995 affirmed that terrorism constitutes a threat to democracy, to the free exercise of human rights and to economic and social development.
- (3) All or some Member States are party to a number of conventions relating to terrorism. The Council of Europe Convention of 27 January 1977 on the Suppression of Terrorism does not regard terrorist offences as political offences or as offences connected with political offences or as offences inspired by political motives. The United Nations has adopted the Convention for the suppression of terrorist bombings of 15 December 1997 and the Convention for the suppression of financing terrorism of 9 December 1999. A draft global Convention against terrorism is currently being negotiated within the United Nations.
- (4) At European Union level, on 3 December 1998 the Council adopted the Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice ⁽³⁾. Account should also be taken of the

Council Conclusions of 20 September 2001 and of the Extraordinary European Council plan of action to combat terrorism of 21 September 2001. Terrorism was referred to in the conclusions of the Tampere European Council of 15 and 16 October 1999, and of the Santa Maria da Feira European Council of 19 and 20 June 2000. It was also mentioned in the Commission communication to the Council and the European Parliament on the biannual update of the scoreboard to review progress on the creation of an area of 'freedom, security and justice' in the European Union (second half of 2000). Furthermore, on 5 September 2001 the European Parliament adopted a recommendation on the role of the European Union in combating terrorism. It should, moreover, be recalled that on 30 July 1996 twenty-five measures to fight against terrorism were advocated by the leading industrialised countries (G7) and Russia meeting in Paris.

- (5) The European Union has adopted numerous specific measures having an impact on terrorism and organised crime, such as the Council Decision of 3 December 1998 instructing Europol to deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property ⁽⁴⁾; Council Joint Action 96/610/JHA of 15 October 1996 concerning the creation and maintenance of a Directory of specialised counter-terrorist competences, skills and expertise to facilitate counter-terrorism cooperation between the Member States of the European Union ⁽⁵⁾; Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network ⁽⁶⁾, with responsibilities in terrorist offences, in particular Article 2; Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union ⁽⁷⁾; and the Council Recommendation of 9 December 1999 on cooperation in combating the financing of terrorist groups ⁽⁸⁾.

⁽¹⁾ OJ C 332 E, 27.11.2001, p. 300.

⁽²⁾ Opinion delivered on 6 February 2002 (not yet published in the Official Journal).

⁽³⁾ OJ C 19, 23.1.1999, p. 1.

⁽⁴⁾ OJ C 26, 30.1.1999, p. 22.

⁽⁵⁾ OJ L 273, 25.10.1996, p. 1.

⁽⁶⁾ OJ L 191, 7.7.1998, p. 4.

⁽⁷⁾ OJ L 351, 29.12.1998, p. 1.

⁽⁸⁾ OJ C 373, 23.12.1999, p. 1.

- (6) The definition of terrorist offences should be approximated in all Member States, including those offences relating to terrorist groups. Furthermore, penalties and sanctions should be provided for natural and legal persons having committed or being liable for such offences, which reflect the seriousness of such offences.
- (7) Jurisdictional rules should be established to ensure that the terrorist offence may be effectively prosecuted.
- (8) Victims of terrorist offences are vulnerable, and therefore specific measures are necessary with regard to them.
- (9) Given that the objectives of the proposed action cannot be sufficiently achieved by the Member States unilaterally, and can therefore, because of the need for reciprocity, be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity. In accordance with the principle of proportionality, this Framework Decision does not go beyond what is necessary in order to achieve those objectives.
- (10) This Framework Decision respects fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they emerge from the constitutional traditions common to the Member States as principles of Community law. The Union observes the principles recognised by Article 6(2) of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, notably Chapter VI thereof. Nothing in this Framework Decision may be interpreted as being intended to reduce or restrict fundamental rights or freedoms such as the right to strike, freedom of assembly, of association or of expression, including the right of everyone to form and to join trade unions with others for the protection of his or her interests and the related right to demonstrate.
- (11) Actions by armed forces during periods of armed conflict, which are governed by international humanitarian law within the meaning of these terms under that law, and, inasmuch as they are governed by other rules of international law, actions by the armed forces of a State in the exercise of their official duties are not governed by this Framework Decision.
- their nature or context, may seriously damage a country or an international organisation where committed with the aim of:
- seriously intimidating a population, or
 - unduly compelling a Government or international organisation to perform or abstain from performing any act, or
 - seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.
- shall be deemed to be terrorist offences:
- (a) attacks upon a person's life which may cause death;
 - (b) attacks upon the physical integrity of a person;
 - (c) kidnapping or hostage taking;
 - (d) causing extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger human life or result in major economic loss;
 - (e) seizure of aircraft, ships or other means of public or goods transport;
 - (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
 - (g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life;
 - (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;
 - (i) threatening to commit any of the acts listed in (a) to (h).
2. This Framework Decision shall not have the effect of altering the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 2

Offences relating to a terrorist group

Article 1

Terrorist offences and fundamental rights and principles

1. Each Member State shall take the necessary measures to ensure that the intentional acts referred to below in points (a) to (i), as defined as offences under national law, which, given

1. For the purposes of this Framework Decision, 'terrorist group' shall mean: a structured group of more than two persons, established over a period of time and acting in concert to commit terrorist offences. 'Structured group' shall mean a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

2. Each Member State shall take the necessary measures to ensure that the following intentional acts are punishable:

- (a) directing a terrorist group;
- (b) participating in the activities of a terrorist group, including by supplying information or material resources, or by funding its activities in any way, with knowledge of the fact that such participation will contribute to the criminal activities of the terrorist group.

Article 3

Offences linked to terrorist activities

Each Member State shall take the necessary measures to ensure that terrorist-linked offences include the following acts:

- (a) aggravated theft with a view to committing one of the acts listed in Article 1(1);
- (b) extortion with a view to the perpetration of one of the acts listed in Article 1(1);
- (c) drawing up false administrative documents with a view to committing one of the acts listed in Article 1(1)(a) to (h) and Article 2(2)(b).

Article 4

Inciting, aiding or abetting, and attempting

1. Each Member State shall take the necessary measures to ensure that inciting or aiding or abetting an offence referred to in Article 1(1), Articles 2 or 3 is made punishable.

2. Each Member State shall take the necessary measures to ensure that attempting to commit an offence referred to in Article 1(1) and Article 3, with the exception of possession as provided for in Article 1(1)(f) and the offence referred to in Article 1(1)(i), is made punishable.

Article 5

Penalties

1. Each Member State shall take the necessary measures to ensure that the offences referred to in Articles 1 to 4 are punishable by effective, proportionate and dissuasive criminal penalties, which may entail extradition.

2. Each Member State shall take the necessary measures to ensure that the terrorist offences referred to in Article 1(1) and offences referred to in Article 4, inasmuch as they relate to terrorist offences, are punishable by custodial sentences heavier than those imposed under national law for such offences in the absence of the special intent required pursuant to Article 1(1), save where the sentences imposed are already the maximum possible sentences under national law.

3. Each Member State shall take the necessary measures to ensure that offences listed in Article 2 are punishable by custodial sentences, with a maximum sentence of not less than fifteen years for the offence referred to in Article 2(2)(a), and for the offences listed in Article 2(2)(b) a maximum sentence of not less than eight years. In so far as the offence referred to in Article 2(2)(a) refers only to the act in Article 1(1)(i), the maximum sentence shall not be less than eight years.

Article 6

Particular circumstances

Each Member State may take the necessary measures to ensure that the penalties referred to in Article 5 may be reduced if the offender:

- (a) renounces terrorist activity, and
- (b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
 - (i) prevent or mitigate the effects of the offence;
 - (ii) identify or bring to justice the other offenders;
 - (iii) find evidence; or
 - (iv) prevent further offences referred to in Articles 1 to 4.

Article 7

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for any of the offences referred to in Articles 1 to 4 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on one of the following:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person;
- (c) an authority to exercise control within the legal person.

2. Apart from the cases provided for in paragraph 1, each Member State shall take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of any of the offences referred to in Articles 1 to 4 for the benefit of that legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in any of the offences referred to in Articles 1 to 4.

*Article 8***Penalties for legal persons**

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) a judicial winding-up order;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

*Article 9***Jurisdiction and prosecution**

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 1 to 4 where:

- (a) the offence is committed in whole or in part in its territory. Each Member State may extend its jurisdiction if the offence is committed in the territory of a Member State;
- (b) the offence is committed on board a vessel flying its flag or an aircraft registered there;
- (c) the offender is one of its nationals or residents;
- (d) the offence is committed for the benefit of a legal person established in its territory;
- (e) the offence is committed against the institutions or people of the Member State in question or against an institution of the European Union or a body set up in accordance with the Treaty establishing the European Community or the Treaty on European Union and based in that Member State.

2. When an offence falls within the jurisdiction of more than one Member State and when any of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders with the aim, if possible, of centralising proceedings in a single Member State. To this end, the Member States may have recourse to any body or mechanism established within the European Union in order to facilitate cooperation between their judicial authorities and the coordination of their action. Sequential account shall be taken of the following factors:

- the Member State shall be that in the territory of which the acts were committed,
- the Member State shall be that of which the perpetrator is a national or resident,

— the Member State shall be the Member State of origin of the victims,

— the Member State shall be that in the territory of which the perpetrator was found.

3. Each Member State shall take the necessary measures also to establish its jurisdiction over the offences referred to in Articles 1 to 4 in cases where it refuses to hand over or extradite a person suspected or convicted of such an offence to another Member State or to a third country.

4. Each Member State shall ensure that its jurisdiction covers cases in which any of the offences referred to in Articles 2 and 4 has been committed in whole or in part within its territory, wherever the terrorist group is based or pursues its criminal activities.

5. This Article shall not exclude the exercise of jurisdiction in criminal matters as laid down by a Member State in accordance with its national legislation.

*Article 10***Protection of, and assistance to, victims**

1. Member States shall ensure that investigations into, or prosecution of, offences covered by this Framework Decision are not dependent on a report or accusation made by a person subjected to the offence, at least if the acts were committed on the territory of the Member State.

2. In addition to the measures laid down in the Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings⁽¹⁾, each Member State shall, if necessary, take all measures possible to ensure appropriate assistance for victims' families.

*Article 11***Implementation and reports**

1. Member States shall take the necessary measures to comply with this Framework Decision by 31 December 2002.

2. By 31 December 2002, Member States shall forward to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report drawn up from that information and a report from the Commission, the Council shall assess, by 31 December 2003, whether Member States have taken the necessary measures to comply with this Framework Decision.

3. The Commission report shall specify, in particular, transposition into the criminal law of the Member States of the obligations referred to in Article 5(2).

⁽¹⁾ OJ L 82, 22.3.2001, p. 1.

22.6.2002

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Article 12

Territorial application

This Framework Decision shall apply to Gibraltar.

Article 13

Entry into force

This Framework Decision shall enter into force on the day of its publication in the Official Journal.

Done at Luxembourg, 13 June 2002.

For the Council
The President
M. RAJOY BREY

**反恐怖主義法例——
數個歐洲司法管轄區**

<u>比利時</u>	<u>法國</u>	<u>德國</u>	<u>荷蘭</u>
實施安理會第 1373 號決議第 1(b)段			
<p>打擊資助恐怖分子活動的依據如下：</p> <p>(a) 《比利時刑法典》，該刑法典就在恐怖主義行為之前進行並構成罪行的作為(例如串謀干犯刑事罪行和威脅作出襲擊)，以及作出恐怖主義行為的罪行(例如劫持人質、綁架和謀殺)訂明罰則。此外，如恐怖分子干犯任何罪行(例如收集資金)，以協助其行動，比利時當局亦可予以懲罰；</p> <p>(b) 多條特定法例，尤其是一九九三年一月十一日所制定有關防止利用金融體系清洗黑錢的法例，以及一九九九年一</p>	<p>根據法國法律，安理會第 1373 號議第 1(b)段載列的全部活動，均屬於罪行。</p> <p>自一九八六年起，法國的反恐怖主義法例訂明，凡參與資助恐怖主義活動者，可被視作干犯串謀作恐怖主義行為這較嚴重罪行而遭檢控。提供資金，是串謀唆使他人干犯恐怖主義罪行或以金錢協助和教唆他人干犯恐怖主義罪行的證明。</p> <p>為加強和改善這項條文，二零零一年十一月十五日制定的法令引進多項罪行的新描述，明確包括資助恐怖主義活動。</p> <p>凡干犯資助恐怖主義活動的罪行(《刑法典》第 41-2-2 條)，可被判監禁 10 年及罰款</p>	<p>根據德國法律，資助恐怖主義活動可構成一項獨立罪行(《德國刑法典》第 129a 條)。根據這條文可施加的刑罰，視乎個別情況而定：舉例說，如作出資助的人被視作“支持者”，法律訂明單是這罪行便可判監禁 3 至 15 年；如該人是有關組織的“普通成員”，可判監禁 1 至 10 年；如該人並非有關組織的成員，則可判監禁 6 個月至 5 年。</p> <p>此外，當局尚可考慮以參與主要罪行來懲罰資助恐怖主義活動者。舉例說，如犯案者資助他人購買武器在進行襲擊時殺人，當局亦可考慮判處參與謀殺罪行的刑罰。所判處的刑罰，則視乎實際</p>	<p>根據《荷蘭刑法典》，資助恐怖主義活動屬刑事罪行。檢控方式可分三種。</p> <p>首先，可根據《刑法典》第 46 條視作準備干犯刑事罪行。最高刑罰，視乎適用於擬資助的恐怖主義罪行的最高刑罰而定。在這情況下，有關的人無須已實際作出恐怖主義行為。其次，視作資助犯罪組織。在這情況下，當局可以疑犯參與犯罪組織為理由而作出檢控(《刑法典》第 140 條)。這罪行的最高刑罰為監禁 6 年。第三，根據《刑法典》第 46a 和 47 條，資助恐怖主義活動可視作參與某罪行(例如串謀煽動他人干犯恐怖主義罪行)(不論成功與否)而遭檢控。同樣，</p>

<u>比利時</u>	<u>法國</u>	<u>德國</u>	<u>荷蘭</u>
<p>月十日所制定有關有組織罪行的法例；以及</p> <p>(c) 實施多項國際公約，其中大部分是有關對付恐怖主義的聯合國公約。</p> <p>安理會第 1373 號決議第 1(b) 段所述作為，如屬於上述法律制度的範疇，當局均可予以檢控。法律亦訂明，該等作為可列作協助及教唆犯罪等刑事罪行。</p> <p>比利時於二零零三年十二月制定了反恐怖主義法例，以落實歐盟就打擊恐怖主義作出的框架決議(見文件第 5 段)。</p>	<p>150 萬法國法郎。</p>	<p>干犯的恐怖主義罪行可判的刑罰而定(在本例子中，謀殺罪的刑罰為終身監禁)。</p>	<p>最高刑罰是視乎適用於擬資助的恐怖主義罪行的最高刑罰而定。</p> <p>荷蘭的刑事法自二零零二年一月一日起已落實《制止資助恐怖主義的國際公約》。任何人參與收集資金以協助和教唆恐怖主義活動的刑事罪行，均可被刑事起訴</p>
實施安理會第 1373 號決議第 1(d)段			
<p>安理會第 1373 號決議第 1(d) 段禁止的活動，可根據上述現行法例(例如對付串謀干犯刑事罪行或打擊清洗黑錢的法例)予以懲罰。當局如通過調查或情報發現可疑的財務交易，會根據打擊清洗黑錢的法例(亦針對與恐怖主義有關連的資金)，以及對付串謀</p>	<p>法國實施歐盟所採納法律文書(即第 2001/931/CFSP 號共同立場書和歐盟第 2580/2001 號規例)(見文件第 4 段)的規定，即禁止歐盟成員國的國民和居民向被列為與資助恐怖主義活動有關連的人或實體提供資金或經濟資源。根據《關稅法規》第 459 條，有</p>	<p>德國實施歐盟所採納法律文書(即第 2001/931/CFSP 號共同立場書和歐盟第 2580/2001 號規例)(見文件第 4 段)的規定，即禁止歐洲聯盟成員國的國民和居民向被列為與資助恐怖主義活動有關連的人或實體提供資金或經濟資源。</p>	<p>荷蘭實施歐盟所採納法律文書(即第 2001/931/CFSP 號共同立場書和歐盟第 2580/2001 號規例)(見文件第 4 段)的規定，禁止歐洲聯盟成員國的國民和居民向被列為與資助恐怖主義活動有關連的人或實體提供資金或經濟資源。</p> <p>荷蘭的制裁法例亦適用。根</p>

比利時	法國	德國	荷蘭
<p>行為的刑事法例，檢控犯案者。</p> <p>比利時於一九九五年五月十一日制定法例，以落實聯合國安全理事會的決議，並於二零零二年五月二日根據該法例制定敕令，以特定的限制性措施針對某些人和實體，以打擊恐怖主義。敕令訂明，因作出或試圖作出恐怖主義行為或參與或協助作出該等行為而被列入有關名單的人或實體所持有的資金、其他金融資產或經濟資源，須受歐盟第 2580/2001 號規例(見文件第 4 段)規管。任何人被裁定違反歐盟第 2580/2001 號規例，可判處監禁 8 天至 5 年，以及罰款 25 至 25,000 歐元。</p> <p>比利時於二零零三年十二月制定了反恐怖主義法例，以落實歐盟就打擊恐怖主義作出的框架決議(見文件第 5 段)。</p>	<p>關刑罰為監禁 1 至 5 年、沒收罪體、沒收用以干犯詐騙罪行的車輛和罰款。</p> <p>明知而參與資助恐怖主義行為，即構成協助和教唆。因此，蓄意資助恐怖分子團體或組織的自然人或法人，均須負上刑事責任。</p> <p>在國家層面，《金融和財務法規》第 L-152-1 條進一步加強此規定。該條訂明，任何自然人不經信貸機構或服務機構等中介者，把價值 7,600 歐元或以上的資金、證券或金融票據調入或調離法國，必須向海關當局作出申報，否則當局可沒收有關物品或與有關物品等值的款項(如不可能檢取有關物品)，並處以不少於該罪行或試圖干犯的罪行所涉及總金額四分之一但不多於該金額的罰款，作為懲罰。這項申報規定於九九零年一月一日訂立，是法國海關打擊資助恐怖分子活動的重要工具。</p>	<p>在國家層面，德國可限制牽涉安理會第 1373 號決議所針對的人或組織的資金和付款交易。這些措施，以《對外貿易和付款法令》第 2 和 7 條為依據。這兩項條文賦權德國政府限制有關對外貿易和付款的合法交易或活動，以保障《對外貿易和付款法令》第 7 條第 1 款所述價值觀念(即德國的安全、人民和平共存，以及德國的對外關係)免受特定威脅。</p> <p>二零零二年八月二十二日制定的《刑事法第三十四修訂法令》(二零零二年八月二十九日出版的 2002 年聯邦法憲報第 1 部第 61 號第 3390 頁)於二零零二年八月三十日生效。根據該法令第 1 條第 7 號，《刑法典》第 261 條第 1 款第 2 句第 5 號載列於清洗黑錢或隱藏非法取得資產罪行之前的罪行，已增加《刑法典》第 129 條(組成犯罪組織)和第 129a 條第 3 款(支援恐怖分子組織，包括外國組織、為該等組織招募成員)所訂罪</p>	<p>據《1977 年制裁法令》，政府可藉頒布全國法令，實施國際制裁。舉例說，與名列國際間制訂的恐怖分子名單的人或組織進行任何財務或經濟交易，即屬干犯刑事罪行。違反《制裁法令》者，當局可根據《經濟罪刑法令》檢控。蓄意違反《制裁法令》的最高刑罰為監禁 6 年。</p>

<u>比利時</u>	<u>法國</u>	<u>德國</u>	<u>荷蘭</u>
		行。因此，載列於清洗黑錢或隱藏非法取得資產罪行之前的罪行(《刑法典》第 261 條第 1 款第 2 句第 5 號)，現包括協助恐怖分子組織(包括外國組織)籌集款項的所有刑事罪行。	