I General Information

1. Background and Objectives

In 1999, the United Nations elaborated an International Convention for the Suppression of the Financing of Terrorism, which Austria also ratified. In addition to this convention, the UN Security Council adopted resolutions designed to block terrorists’ and terrorist organizations’ power of disposal of their financial assets and to prevent suspicious capital flows.

For instance, Resolution 1267, passed in 1999, obligates UN members to freeze funds and other financial resources owned or controlled by persons or organizations connected to Usama bin Laden, Al-Qaida and the Taliban. Resolution 1373, adopted in 2001, obligates all member states to freeze funds and financial assets or economic resources used to finance terrorism. Given the developments in Afghanistan, the United Nations Security Council passed two additional resolutions (1988 and 1989) in 2011 with the purpose of separating the sanctions to combat terrorism financing with respect to Al-Qaida and those with respect to the Taliban. In this context, it established two separate Security Council committees and lists of entities subject to sanctions so as to be able to react more flexibly to the different threats posed by these two groups.

2. Legal Basis, Sources

The Member States of the United Nations are obligated to transpose the respective resolutions of the United Nations into national law. As the authority to restrict the free movement of capital and payments principally falls within the ambit of the EU rather than that of individual EU Member States, the first step in transposing the provisions is for the EU to take a resolution within the framework of the common foreign and security policy (CFSP) to implement the most important sanction provisions of the resolutions of the Security Council of the United Nations in a manner binding for all EU Member States.

The actual implementation of the UN Security Council Resolution (that has binding effect for the general public) is done by drawing up an EU Regulation on the basis of the above-mentioned CFSP resolution; the EU Regulation is then directly applicable to Austria and all other EU Member States. Only where UN Security Council Resolutions target terrorist groups within Europe, such as the ETA or the IRA, are the UN sanctions to be transposed into national law directly, as the EU currently does not
have the authority to legislate such matters. Until July 1, 2010, such transpositions in Austria were based exclusively on the provisions of the Exchange Control Act 2004, on the basis of which the OeNB issued regulations ("Official Announcements"). Since July 1, 2010, the OeNB’s competence to impose sanctions in this area has been based primarily on the newly promulgated 2010 Sanctions Act.

The original versions of the respective legal instruments under EU law are described in more detail in the next sections. All EU sanctions, including the amendments thereto, are available online in English from the European Commission’s website in a consolidated document:

German and other language versions of the individual legal instruments as well as (unofficial) consolidated versions are available from EUR-Lex: http://eur-lex.europa.eu/RECH_naturel.do.

The following webpage provides an overview of the EU’s current sanctions, including a consolidated list of persons, groups and entities subject to EU financial sanctions:

The financial sanctions page of the German part of the OeNB’s website contains a list of the legal instruments under Austrian law on terrorism financing as well as the original versions and unofficial consolidated versions of the EU Regulations mentioned above: http://www.oenb.at/de/ueber_die_oenb/rechtl_grundlagen/ctf/terrorismusfinanzierung.jsp.

II. Restrictive Measures in Connection with the Al-Qaida Network and the Situation in Afghanistan (UN Security Council Regulations 1267, 1988 and 1989)

UN resolutions 1267, 1988 and 1989 were transposed into EU law by

- Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaida network (consolidated version of October 30, 2012), and by

- Council Regulation (EU) No 753/2011 of 1 August 2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan.

These regulations lay down the prohibition of making available funds or economic resources to certain persons directly or indirectly and prescribe that the funds or economic resources of these persons are to be frozen (for definitions of the terms “funds” and “economic resources,” see also Article 1 of Council Regulation (EC) No 881/2002 of 27 May 2002 as amended). The “freezing of funds” is to be understood as preventing 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 use of the funds, including portfolio management.
The “freezing of economic resources” is to be understood as preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them. The comprehensive instruction to freeze funds and resources applies in particular to credit and financial institutions as well as payment service providers with which persons on the list hold accounts or that perform transfers of funds on behalf of or for the benefit of such persons.

Within the framework of these sanction provisions (see Article 2a paragraphs 1 and 2 of Council Regulation (EC) No 881/2002 as amended), the OeNB may, under certain conditions (such as the use of funds necessary to cover basic expenses of listed persons, or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of UN Security Council resolutions) grant exemptions from the instruction to freeze funds and resources, or may allow the release of frozen funds. Requests for such authorizations, along with detailed reasons for the application, are to be submitted to the OeNB’s Legal Division.

Apart from the option of issuing an exemption for individual cases, there are specific payments to listed persons (e.g. crediting of interest or payments under previously concluded contracts to the account of the listed person) that are ex ante exempt by act of law (see Article 2a paragraph 4 of Council Regulation (EC) No 881/2002 as amended). The prerequisite, however, is that these amounts are credited to a frozen account and are themselves frozen. Hence, such cases do not require a separate application to be submitted.

As listed in Annex II of Council Regulation (EC) No 881/2002 as amended, the competent Austrian authorities are:

Oesterreichische Nationalbank
Otto-Wagner-Platz 3
A-1090 Wien
Tel. (43-1) 404 20-0
Fax (43 1) 404 20-73 99

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Bundesministerium für Inneres
Generaldirektion für die öffentliche Sicherheit
Bundeskriminalamt
Meldestelle Geldwäsche
Josef Holaubek Platz 1
A-1090 Wien
Tel. (43 1) 24836-85298
Fax (+43 1) 24836-1305

In this connection, the OeNB is the authority in charge of financial aspects (that is, technical aspects in connection with freezing/releasing funds).

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1 Compare also Article 9(1) of Regulation (EC) No 1781/2006 of 15 November 2006 on information on the payer accompanying transfers of funds.
III. Restrictive Measures to Combat Terrorism (UN Security Council Resolution 1373)

With respect to non-European terrorists, Security Council Resolution 1373 was implemented at EU level by means of


This regulation prohibits making available “funds, other financial assets and economic resources” to specific persons and prescribes that all funds and economic resources of said persons are to be frozen. The comprehensive instruction to freeze funds and resources applies in particular to credit and financial institutions as well as payment service providers with which persons on the list hold accounts or that perform transfers of funds on behalf of or for the benefit of such persons.

With respect to terrorists within Europe, in Austria, the above-mentioned UN Security Council resolution was implemented by the OeNB through regulations (“Official Announcements”) issued on the basis of the Exchange Control Act. As this form of transposition into national law could not completely fulfill the requirements imposed by the UN Security Council resolution, however, Austria passed the 2010 Sanctions Act on July 1, 2010. This Act has since represented the legal basis for the transposition of financial sanction provisions into national law in Austria. Under the 2010 Sanctions Act, the prohibition of making funds available and the instruction to freeze funds and resources now also applies with respect to the persons listed in OeNB Official Announcement DL 2/2002 (see Article 16 Sanctions Act).

Within the framework of these sanction provisions (see Articles 5 and 6 of Council Regulation (EC) No 2580/2001 as amended and Article 3 Sanctions Act), the OeNB may, under certain conditions (such as the use of funds necessary to cover basic expenses of listed persons, or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of UN Security Council resolutions) grant exemptions from the instruction to freeze funds and resources, or may allow the release of certain frozen funds or economic resources Requests for such authorizations, along with detailed reasons for the application, are to be submitted to the OeNB’s Legal Division.

Apart from the option of issuing an exemption for individual cases, there are specific payments to listed persons (e.g. crediting of interest or payments under previously concluded contracts to the account of the listed person) that are ex ante exempt by act of law (see Article 5 paragraph 1 of Council Regulation (EC) No 2580/2001 as amended). The prerequisite, however, is that these amounts are credited to a frozen account and are themselves frozen. Hence, such cases do not require a separate application to be submitted. This does not apply to persons listed by the OeNB under the Sanctions Act, as – unlike Council Regulation (EC) No 2580/2001 – the Sanctions Act does not provide for such an exception (in

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2 In essence, the definition provided earlier under II also applies here.
3 Compare also Article 9(1) of Regulation (EC) No 1781/2006 of 15 November 2006 on information on the payer accompanying transfers of funds.
such cases, an application would have to be submitted to the OeNB under the provisions of Article 3 paragraph 1 number 3 Sanctions Act).

As listed in Annex II of Council Regulation (EC) No 2580/2001 as amended, the competent Austrian authorities are:

**Under Article 3:**
Bundesministerium für Inneres
Generaldirektion für die öffentliche Sicherheit
Bundeskriminalamt
Meldestelle Geldwäsche
Josef Holubaek Platz 1
A-1090 Wien
Tel. (43 1) 24836-85298
Fax (+43 1) 24836-1305

**Under Article 4:**
Bundesministerium für Inneres
Generaldirektion für die öffentliche Sicherheit
Bundeskriminalamt
Meldestelle Geldwäsche
Josef Holubaek Platz 1
A-1090 Wien
Tel. (43 1) 24836-85298
Fax (+43 1) 24836-1305

Oesterreichische Nationalbank
A-1090 Wien
Otto-Wagner-Platz 3
Tel. (43 1) 404 20-0
Fax (43 1) 404 20-73 99

**Under Article 5:**
Oesterreichische Nationalbank
A-1090 Wien
Otto-Wagner-Platz 3
Tel. (43 1) 404 20-0
Fax (43 1) 404 20-73 99

**IV. Procedure**

a) Freezing and prohibition of making available of funds and economic resources

For example, if the customer of a bank is a listed person, the funds and economic resources of that person are to be frozen until further notice. Also, making available funds to listed persons is to be prevented, meaning that e.g. transfers that would normally be credited to the relevant person’s account must no longer be effected.
b) Provision of information to the competent authorities

Moreover, financial institutions and payment institutions must immediately provide any and all information that would facilitate the application of the pertinent sanction regulations to the competent authorities (as listed in Annex II) of the Member States in which they are resident or located, and, directly or through these competent authorities, to the Commission⁴; Austrian financial institutions and payment institutions must therefore in particular inform the OeNB about accounts and amounts frozen. The financial institutions and payment institutions must cooperate with competent authorities seeking to verify information thus provided.

c) Verifying the identity of persons concerned

It cannot be ruled out that, in some cases, an institution may freeze the funds and economic resources of a person who is not the actual target of financial sanctions if the identification data of this person are identical to those of a listed person (false positive). If a financial institution or payment institution has any doubts whether a customer is in fact a listed person, it must first draw on all resources and means at its disposal to verify the identity of the customer. If the institution is still not able to fully expel all doubts, it must consult the competent authority. In the meantime, the institution must not conduct any transactions connected to the customer until the matter has been clarified.

Persons who believe that their funds and financial resources have been frozen without due cause, as they have been mistaken for listed persons, should turn to the competent authority to clarify the issue.

V. Legal Consequences of Violations

Under Article 8 paragraph 1 Sanctions Act, the OeNB examines financial and payment institutions’ compliance with the sanction provisions. To this end, the OeNB is authorized (e.g. when performing on-site examinations under Article 70 para. 1 no. 3 Banking Act) to request information and reports from institutions and to inspect documents and data devices on site (compare Article 8 paragraph 2 Sanctions Act and Article 5 paragraph 2 Exchange Control Act). Moreover, institutions are obligated to cooperate with the competent authorities on the basis of Article 4 of Council Regulation (EC) 2580/2001 as amended and Article 5 of Council Regulation (EC) 881/2002 as amended.

Violations of the above-mentioned legal instruments are punishable: Whosoever conducts a transaction or any other legal act in violation of a regulation or decision issued by the OeNB or of a directly applicable sanction measure of the EU commits an administrative offense and is punishable by a fine of up to EUR 50,000. If the violation concerns an legal act involving a sum of more than EUR 100,000, the infraction is punishable by a criminal court with imprisonment of up to one year or up to 360 daily rates (see Articles 11 and 12 Sanctions Act).

Whosoever obtains an exemption authorization from the competent authority by fraudulent means, i.e. by providing wrong or incomplete information, commits an administrative offense and is punishable by a fine of up to EUR 50,000. Whosoever fails to fulfill his/her obligation to provide information, to disclose data, to submit documents and evidence or to permit inspections fully and within the period

prescribed or who knowingly provides incomplete or wrong information is punishable by a fine of up to EUR 5,000 (see Articles 13 and 14 Sanctions Act).

VI. Conclusion

In particular Austrian financial institutions and payment institutions are responsible for observing the above-mentioned sanction measures. Therefore, they must ensure in particular that no funds are made available to any of the persons listed in the relevant legal instruments and furthermore must freeze all funds owned, held or controlled by such persons.

Staff of the OeNB’s Legal Division are at your service to answer any questions about freezing and releasing funds and financial resources as well as the prohibition of making available funds and financial resources that you may have (Tel: (43-1) 40420-7304 or -7306, e-mail rechtsabteilung@oenb.at).