



Council of the
European Union

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION concerning restrictive measures against the proliferation and use of chemical weapons

COUNCIL DECISION (CFSP) 2018/...

of ...

**concerning restrictive measures
against the proliferation and use of chemical weapons**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) The European Union supports the international treaties and regimes for disarmament, non-proliferation and arms controls.
- (2) The Union supports the effective implementation and universalisation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (hereafter ‘CWC’), and underlines its support for and the importance of the Organisation for the Prohibition of Chemical Weapons (OPCW) and its Technical Secretariat. The Union strongly condemns the proliferation and use of chemical weapons anywhere, by anyone, under any circumstances. In order to support the prohibition laid down by the CWC against the use of chemical weapons, which poses a serious threat to international security, the Union considers it necessary to take specific measures against those who resort to such weapons or contribute to developing or using them. The Union is committed to contributing to identifying and holding accountable individuals, entities, groups or governments responsible for the use of chemical weapons, as well as those who assist or encourage such activities. It is equally important to address the preparatory steps before use such as the development, production, acquisition, transfer and stockpiling of chemical weapons.
- (3) In this regard, the Union expressed its support to the Decision of the Conference of the States Parties to the CWC addressing the threat from chemical weapons use, adopted on 27 June 2018.

- (4) The Union and its Member States support the other international initiatives aimed at tackling the threat of chemical weapons, such as the Australia Group which, by coordinating and harmonising national export control measures, assists in the fulfilment of obligations under the CWC and the Biological and Toxin Weapons Convention, as well as ‘the Proliferation Security Initiative’ and the International Partnership against Impunity for the Use of Chemical Weapons. The Union and its Member States also support the implementation of relevant UNSC Resolutions, notably Resolutions 1540 (2004), 2118 (2013), 2209 (2015), 2235 (2015) and 2325 (2016).
- (5) On 22 March 2018, the European Council concluded that the use of chemical weapons, including the use of any toxic chemicals as weapons under any circumstances, is completely unacceptable, must be systematically and rigorously condemned and constitutes a security threat to us all. On 28 June 2018, the European Council called for the adoption as soon as possible of a new EU regime of restrictive measures to address the use and proliferation of chemical weapons.
- (6) This Decision contributes to the Union’s efforts to counter the proliferation and use of chemical weapons. The scope and definition of chemical weapons referred to in this Decision should be the same as provided for by the CWC.
- (7) Further action by the Union is needed in order to implement certain measures,

HAS ADOPTED THIS DECISION:

Article 1

‘Chemical weapons’ means chemical weapons as defined in Article II of the Chemical Weapons Convention (CWC).

Article 2

1. Member States shall take the measures necessary to prevent the entry into, or transit through, their territories of:
 - (a) natural persons who are responsible for, provide financial, technical or material support for or are otherwise involved in:
 - (i) manufacturing, acquiring, possessing, developing, transporting, stockpiling or transferring chemical weapons;
 - (ii) using chemical weapons;
 - (iii) engaging in any preparations for the use of chemical weapons;
 - (b) natural persons who assist, encourage or induce any natural or legal person, entity or body to engage in any activity referred to in point (a) of this paragraph and thereby cause or contribute to a danger that such activities may be carried out; and
 - (c) natural persons associated with the natural persons listed in points (a) and (b);
- as listed in the Annex.

2. Paragraph 1 shall not oblige a Member State to refuse its own nationals entry into its territory.
3. Paragraph 1 shall be without prejudice to the cases where a Member State is bound by an obligation of international law, namely:
 - (a) as a host country of an international intergovernmental organisation;
 - (b) as a host country to an international conference convened by, or under the auspices of, the United Nations;
 - (c) under a multilateral agreement conferring privileges and immunities; or
 - (d) pursuant to the 1929 Treaty of Conciliation (Lateran Pact) concluded by the Holy See (Vatican City State) and Italy.
4. Paragraph 3 shall be considered as applying also in cases where a Member State is host country of the Organisation for Security and Cooperation in Europe (OSCE).
5. The Council shall be duly informed in all cases where a Member State grants an exemption pursuant to paragraph 3 or 4.

6. Member States may grant exemptions from the measures imposed under paragraph 1 where travel is justified on the grounds of urgent humanitarian need, or on grounds of attending intergovernmental meetings and those promoted or hosted by the Union, or hosted by a Member State holding the Chairmanship in office of the OSCE, where a political dialogue is conducted that directly promotes the policy objectives of the restrictive measures, including implementing the legal prohibitions against chemical weapons and the achievement of chemical weapons disarmament. Member States may also grant exemptions from the measures imposed under paragraph 1 where entry or transit is necessary for the fulfilment of a judicial process.
7. A Member State wishing to grant exemptions referred to in paragraph 6 shall notify the Council in writing. The exemption shall be deemed to be granted unless one or more of the Council members raises an objection in writing within two working days of receiving notification of the proposed exemption. Should one or more of the Council members raise an objection, the Council, acting by a qualified majority, may decide to grant the proposed exemption.
8. Where, pursuant to paragraphs 3, 4, 6 or 7 a Member State authorises the entry into, or transit through its territory of persons listed in the Annex, the authorisation shall be strictly limited to the purpose for which it is given and to the persons directly concerned thereby.

Article 3

1. All funds and economic resources belonging to, owned, held or controlled by:
 - (a) natural or legal persons, entities or bodies who are responsible for, provide financial, technical or material support for or are otherwise involved in:
 - (i) manufacturing, acquiring, possessing, developing, transporting, stockpiling or transferring chemical weapons;
 - (ii) using chemical weapons;
 - (iii) engaging in any preparations for the use of chemical weapons;
 - (b) natural or legal persons, entities or bodies which assist, encourage or induce, in any way, any natural or legal person, entity or body to engage in any activity referred to in point (a) of this paragraph and thereby cause or contribute to a danger that such activities may be carried out; and
 - (c) natural or legal persons, entities or bodies associated with the natural or legal persons, entities and bodies covered by points (a) and (b) of this paragraph;as listed in the Annex, shall be frozen.
2. No funds or economic resources shall be made available directly or indirectly to or for the benefit of the natural or legal persons, entities or bodies listed in the Annex.

3. By way of derogation from paragraphs 1 and 2, the competent authority of a Member State may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as it deems appropriate, after having determined that the funds or economic resources concerned are:
- (a) necessary to satisfy the basic needs of the natural or legal persons, entities or bodies listed in the Annex and dependent family members of such natural persons, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
 - (b) intended exclusively for the payment of reasonable professional fees and the reimbursement of incurred expenses associated with the provision of legal services;
 - (c) intended exclusively for the payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources;
 - (d) necessary for extraordinary expenses, provided that the competent authority has notified the competent authorities of the other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted, at least two weeks prior to the authorisation; or
 - (e) to be paid into or from an account of a diplomatic or consular mission or an international organisation enjoying immunities in accordance with international law, insofar as such payments are intended to be used for official purposes of the diplomatic or consular mission or international organisation.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this paragraph.

4. By way of derogation from paragraph 1, the competent authorities of a Member State may authorise the release of certain frozen funds or economic resources, provided that the following conditions are met:
- (a) the funds or economic resources are the subject of an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in paragraph 1 was listed in the Annex, or a judicial or administrative decision rendered in the Union, or a judicial decision enforceable in the Member State concerned, prior to or after that date;
 - (b) the funds or economic resources will be used exclusively to satisfy claims secured by such a decision or recognised as valid in such a decision, within the limits set by applicable laws and regulations governing the rights of persons having such claims;
 - (c) the decision is not for the benefit of a natural or legal person, entity or body listed in the Annex; and
 - (d) recognition of the decision is not contrary to public policy in the Member State concerned.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this paragraph.

5. Paragraph 1 shall not prevent a natural or legal person, an entity or body listed in the Annex from making a payment due under a contract entered into prior to the date on which such natural or legal person, entity or body was listed therein, provided that the Member State concerned has determined that the payment is not, directly or indirectly, received by a natural or legal person, entity or body referred to in paragraph 1.
6. Paragraph 2 shall not apply to the addition to frozen accounts of:
- (a) interest or other earnings on those accounts;
 - (b) payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to the measures provided for in paragraphs 1 and 2; or
 - (c) payments due under judicial, administrative or arbitral decisions rendered in the Union or enforceable in the Member State concerned;
- provided that any such interest, other earnings and payments remain subject to the measures provided for in paragraph 1.

Article 4

1. The Council, acting by unanimity upon a proposal from a Member State or from the High Representative of the Union for Foreign Affairs and Security Policy, shall establish and amend the list in the Annex.

2. The Council shall communicate the decision referred to in paragraph 1, including the grounds for the listing, to the natural or legal person, entity or body concerned, either directly, if the address is known, or through the publication of a notice, providing such person, entity or body with an opportunity to present observations.
3. Where observations are submitted, or where substantial new evidence is presented, the Council shall review the decision referred to in paragraph 1 and inform the natural or legal person, entity or body concerned accordingly.

Article 5

1. The Annex shall include the grounds for listing the natural and legal persons, entities and bodies referred to in Articles 2 and 3.
2. The Annex shall also contain, where available, the information necessary to identify the natural or legal persons, entities or bodies concerned. With regard to natural persons, such information may include names, including aliases, date and place of birth, nationality, passport and identity card numbers, gender, address if known, and function or profession. With regard to legal persons, entities or bodies, such information may include names, place and date of registration, registration number and place of business.

Article 6

No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Decision, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, in particular a claim for extension or payment of a bond, guarantee or indemnity, in particular a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:

- (a) designated natural or legal persons, entities or bodies listed in the Annex;
- (b) any natural or legal person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in point (a).

Article 7

In order to maximise the impact of the measures set out in this Decision, the Union shall encourage third States to adopt restrictive measures similar to those provided for in this Decision.

Article 8

This Decision shall apply until ... [12 months after adoption date]. This Decision shall be kept under constant review. It shall be renewed, or amended as appropriate, if the Council deems that its objectives have not been met.

Article 9

This Decision shall enter into force on the date of its publication in the *Official Journal of the European Union*.

Done at ...,

For the Council
The President

ANNEX

List of natural and legal persons, entities and bodies
referred to in Articles 2 and 3

[...]
