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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION in support of UNSCR 2235 (2015), establishing an OPCW-UN joint investigative mechanism to identify the perpetrators of chemical attacks in the Syrian Arab Republic

COUNCIL DECISION (CFSP) 2015/...

of ...

**in support of UNSCR 2235 (2015),
establishing an OPCW-UN joint investigative mechanism
to identify the perpetrators of chemical attacks in the Syrian Arab Republic**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 26(2) and Article 31(1) thereof,

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

Whereas:

- (1) On 7 August 2015, the UN Security Council unanimously adopted Resolution (UNSCR) 2235 (2015), condemning any use of toxic chemicals, such as chlorine, as a chemical weapon in the Syrian Arab Republic and expressing its determination to identify those responsible for such acts. To this end, the UN Security Council established for a period of one year, with the possibility of future extension if it deems it necessary, a joint investigative mechanism (JIM) to identify, to the greatest extent feasible, individuals, entities, groups or governments who were perpetrators, organisers, sponsors or otherwise involved in the use of chemicals, including chlorine or any other toxic chemical, as weapons in the Syrian Arab Republic, in cases where the fact-finding mission (FFM) of the Organisation for the Prohibition of Chemical Weapons (OPCW) determines or has determined that a specific incident in the Syrian Arab Republic involved or likely involved the use of chemicals, including chlorine or any other toxic chemical, as weapons.
- (2) On 10 September 2015, the UN Security Council authorised the recommendations, including elements of terms of reference regarding the OPCW-UN JIM established by UNSCR 2235 (2015), submitted by the UN Secretary-General in his letters to the President of the UN Security Council dated 27 August 2015 and 9 September 2015.

- (3) The EU Strategy against Proliferation of Weapons of Mass Destruction ('the Strategy') underlines the crucial role of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC) and of the OPCW in creating a world free of chemical weapons.
- (4) The Union is actively implementing the Strategy and is giving effect to the measures listed in Chapter III thereof, in particular by releasing financial resources to support specific projects conducted by multilateral institutions, such as the OPCW. Accordingly, on 9 December 2013, the Council adopted Decision 2013/726/CFSP¹ in support of the activities of OPCW in the framework of UNSCR 2118 (2013), the OPCW Executive Council Decision of 27 September 2013 on the destruction of Syrian chemical weapons and subsequent and related resolutions and decisions. Furthermore, on 17 February 2015, the Council adopted Decision (CFSP) 2015/259² in support of activities of the OPCW in the framework of the implementation of the Strategy.
- (5) On 23 September 2015, the OPCW Director-General addressed a letter to the High Representative of the Union for Foreign Affairs and Security Policy ('the High Representative') seeking a financial contribution from the Union to a trust fund for OPCW missions in the Syrian Arab Republic, including activities related to the OPCW FFM in support of the JIM in its analysis of allegations of the use of chemicals, including chlorine or any other toxic chemical, as weapons.

¹ Council Decision 2013/726/CFSP of 9 December 2013 in support of the UNSCR 2118 (2013) and OPCW Executive Council EC-M-33/Dec 1, in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction (OJ L 329, 10.12.2013, p. 41).

² Council Decision (CFSP) 2015/259 of 17 February 2015 in support of activities of the Organisation for the Prohibition of Chemical Weapons (OPCW) in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction (OJ L 43, 18.2.2015, p. 14).

- (6) On 24 September 2015, the Head of the OPCW-UN JIM addressed a letter to the High Representative seeking financial support for the JIM through a trust fund.
- (7) Following the accession of the Syrian Arab Republic to the CWC, effective from 14 October 2013, the OPCW is responsible for verifying the Syrian Arab Republic's compliance with the CWC and the terms of any relevant OPCW Executive Council Decisions and for reporting, in coordination with the UN Secretary-General, as needed, to the UN Security Council on non-compliance with UNSCR 2118 (2013).
- (8) The technical implementation of this Decision should be entrusted to the OPCW and the UN Office for Disarmament Affairs (UNODA) as the implementing office of the JIM trust fund. The projects supported by the Union can only be financed through voluntary contributions to the respective OPCW and JIM trust funds. Such contributions to be provided by the Union will be instrumental in enabling the OPCW and the JIM to fulfil the tasks set out in UNSCR 2235 (2015).
- (9) The supervision of the proper implementation of the Union's financial contribution should be entrusted to the Commission,

HAS ADOPTED THIS DECISION:

Article 1

1. In order to implement certain elements of the Strategy, the Union shall support the OPCW and the JIM by contributing to costs associated with their activities under UNSCR 2235 (2015), with the following overall objective: identification to the greatest extent feasible of individuals, entities, groups or governments who were perpetrators, organisers, sponsors or otherwise involved in the use of chemicals, including chlorine or any other toxic chemical, as weapons in the Syrian Arab Republic, where the OPCW FFM determines or has determined that a specific incident in the Syrian Arab Republic involved or likely involved the use of chemicals, including chlorine or any other toxic chemical, as weapons.

2. In order to achieve the objective referred to in paragraph 1, the Union shall support the following projects:
 - (a) OPCW special missions in the Syrian Arab Republic, including activities related to the OPCW FFM in support of the JIM in its analysis of allegations of use of chemicals, including chlorine or any other toxic chemical, as weapons;
 - (b) OPCW-UN JIM, including its establishment and ability to begin its full operations under UNSCR 2235 (2015).

A detailed description of these projects is set out in the Annex.

Article 2

1. The High Representative shall be responsible for the implementation of this Decision.
2. The technical implementation of the projects referred to in Article 1(2) shall be entrusted to the OPCW and UNODA as the implementing office of the JIM trust fund. They shall perform this task under the responsibility of the High Representative. For this purpose, the High Representative shall enter into the necessary arrangements with the OPCW and UNODA.

Article 3

1. The financial reference amount for the implementation of the projects referred to in Article 1(2) shall be EUR 4 586 096,00.
2. The expenditure financed by the amount set out in paragraph 1 shall be managed in accordance with the procedures and rules applicable to the Union budget.

3. The Commission shall supervise the proper management of the expenditure referred to in paragraph 1. For this purpose, it shall conclude financing agreements with the OPCW and with UNODA as the implementing office of the JIM trust fund respectively. The financing agreements shall stipulate that the OPCW and the UN are to ensure visibility of the Union's contribution, appropriate to its size.
4. The Commission shall endeavour to conclude the financing agreements referred to in paragraph 3 as soon as possible after the entry into force of this Decision. It shall inform the Council of any difficulties in that process and of the date of conclusion of those financing agreements.

Article 4

1. The High Representative shall report to the Council on the implementation of this Decision on the basis of regular reports prepared by the OPCW and the OPCW-UN JIM. Those reports shall form the basis for an evaluation by the Council.
2. The Commission shall provide the Council with information on the financial aspects of the implementation of the projects referred to in Article 1(2).

Article 5

1. This Decision shall enter into force on the date of its adoption.
2. It shall expire 18 months after the date of the conclusion of the financing agreements between the Commission and the OPCW and UNODA referred to in Article 3(3), or it shall expire on ...* if no such financing agreements have been concluded by that date.

Done at ...,

For the Council

The President

* OJ: Please insert date: six months after the entry into force of this Decision.

ANNEX

European Union support of UNSCR 2235 (2015) in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction

1. General framework and objectives

In April 2014, at the peak of the operation to remove and destroy Syria's chemical weapons, a number of serious allegations were made regarding the use of chlorine as a weapon against civilians. The Director-General of the Organisation for the Prohibition of Chemical Weapons (OPCW) established an OPCW fact-finding mission (FFM) to look into these allegations. His decision was supported by the OPCW Executive Council and the United Nations (UN) Secretary-General pledged his assistance.

A team comprising OPCW and UN personnel attempted in May 2014 to conduct an on-site investigation in one of the villages reportedly attacked with chlorine. While crossing a buffer zone between the areas controlled by the Syrian government and those controlled by the opposition, the team came under armed attack and had to abort the mission. The FFM nonetheless continued its work and interviewed eyewitnesses, treating physicians, first responders and victims in a safe location outside Syria. Based on this work, the FFM concluded with a high degree of confidence that chlorine, either pure or in mixture, had indeed been used as a weapon in three villages in northern Syria.

The OPCW Executive Council, in its decision EC-M-48/DEC.1 adopted on 4 February 2015, expressed serious concern regarding the findings of the FFM and reaffirmed its condemnation, in the strongest possible terms, of the use of chemical weapons by anyone in any circumstances. The OPCW Executive Council expressed further support for the continuation of the work of the FFM, in particular by studying all available information relating to allegations of the use of chemical weapons in Syria, including information provided by the Syrian Arab Republic as well as by others. This was followed by the adoption on 6 March 2015 of UN Security Council Resolution (UNSCR) 2209 (2015), in which the UN Security Council endorsed the OPCW Executive Council decision and called for those responsible for such attacks to be held accountable.

Following up on that Resolution, the UN Security Council unanimously adopted, on 7 August 2015, UNSCR 2235 (2015), condemning any use of toxic chemicals, such as chlorine, as a chemical weapon in the Syrian Arab Republic and expressing its determination to identify those responsible for such acts. In this regard, the UN Security Council recalled the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare; the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC); and UNSCRs 1540 (2004), 2118 (2013) and 2209 (2015). The UN Security Council established for a period of one year, with the possibility of future extension if it deems it necessary, an OPCW-UN joint investigative mechanism (JIM) to identify to the greatest extent feasible individuals, entities, groups or governments who were perpetrators, organisers, sponsors or otherwise involved in the use of chemicals, including chlorine or any other toxic chemical, as weapons in the Syrian Arab Republic, where the OPCW FFM determines or has determined that a specific incident in the Syrian Arab Republic involved or likely involved the use of chemicals, including chlorine or any other toxic chemical, as weapons. That mechanism is currently being established.

For this purpose, the Union should support OPCW and the JIM in their respective tasks under UNSCR 2235 (2015) and the OPCW Executive Council decision EC-M-48/DEC.1, as well as the CWC.

2. Description of the projects

A. Project 1: OPCW FFM's

1. Project purpose

To support the implementation of the OPCW FFM's mandate, under both UNSCR 2235 (2015) and the OPCW Executive Council decision EC-M-48/DEC.1, as well as the CWC, by covering the FFM's related operational costs. Those costs include the hiring of external consultants with specific skills (e.g. interpreters and doctors), as well as OPCW equipment required by the FFM team.

2. Expected results

The FFM's ongoing work will shed light on a number of allegations of the use of toxic chemicals in the Syrian Arab Republic, and shall cooperate closely with the JIM, thereby contributing to the fulfilment of the JIM's mandate under paragraph 5 of UNSCR 2235 (2015).

3. Project description

The FFM shall continue to assess whether alleged incidents in the Syrian Arab Republic involved or likely involved the use of chemicals as weapons.

The FFM's activities cover allegations of both past incidents and incidents that may occur in the future. The complexity of these activities is likely to vary considerably; hence the exact number of deployments cannot be accurately determined.

Based on the experience of deployments in 2015, the OPCW expects that in 2016 FFM operations may involve the deployment of six to 12 inspectors on six missions, the duration of each being approximately three weeks. It is likely that each mission will include the hiring of external consultants with specific skills, such as interpreters and doctors.

The following activities are planned as part of the FFM:

(a) Interviews: the nature of alleged incidents is such that a wide variety of witnesses may need to be interviewed. These include:

- medical staff,
- first responders,
- treating physicians,
- casualties,
- other witnesses.

As such, interview teams need to have a multifaceted expertise including weapons, chemicals, medical signs and symptoms, as well as interpretation.

(b) Medical examinations and the taking of biomedical samples.

(c) Sample identification, collection and analysis.

- (d) Evidence-handling, including open source as well as items provided by witnesses and third parties. Complementary to the interview teams, multifaceted expertise is also particularly required in this area.
- (e) Report writing.
- (f) Training, including refresher training in order to stay up to date with modern practices:
 - safe and security approaches in the field,
 - interview techniques,
 - evidence-handling and storage, including chain of custody,
 - awareness of explosive remnants of war,
 - toxic chemicals training course,
 - forensic awareness,
 - basic industrial chemistry and chemical profiling.
- (g) Site-assessment and scene-exploitation.
- (h) Mission-support personnel and expertise, particularly for complex missions.

B. Project 2: OPCW-UN JIM

1. Project purpose

To support the quick establishment of the JIM and its ability to begin its full operations under UNSCR 2235 (2015).

2. Expected results

The identification to the greatest extent feasible of individuals, entities, groups or governments who were perpetrators, organisers, sponsors or otherwise involved in the use of chemicals, including chlorine or any other toxic chemical, as weapons in the Syrian Arab Republic.

3. Project description

The UN Security Council approved UN Secretary-General's recommendations regarding the establishment and operation of the JIM and requested that the UN Secretary-General, in coordination with the OPCW Director-General, undertake without delay the steps, measures and arrangements necessary for the speedy establishment and full functioning of the JIM, including recruiting impartial and experienced staff with relevant skills and expertise to fully implement the responsibilities pursuant to UNSCR 2235 (2015).

The JIM shall be led by an independent, three-member panel (the 'Leadership Panel') to be supported by a core staff of professionals grouped into three components. In this regard, the JIM shall be headed by an Assistant Secretary-General with overall responsibility and two Deputies responsible for the political and investigation components, respectively.

The leadership of the JIM shall be supported by three components. A Political Office, to be based in New York, shall provide political analysis, legal advice, media relations and administrative support. An Investigation Office, to be based in The Hague, shall provide chemical and medical analysis, forensics, military ordnance analysis, investigation and information analysis. An Operations Support Office, to be based in New York, shall provide support to the political and investigation components.

The core staff of the JIM, with the exception of those in an administrative function, shall be funded from the regular budget. The Security Council has decided that material and technical needs shall be funded by voluntary contributions. For that purpose, the UN Secretary-General established a trust fund, which shall be administered in accordance with the administrative and financial regulations of the UN.

In accordance with the EU strategy against Proliferation of Weapons of Mass Destruction, which sets the objective of fostering the role of the UN Security Council and enhancing its expertise in meeting the challenges of proliferation, the Union shall support the implementation of UNSCR 2235 (2015), in particular in those areas having a high potential for visible and quick impact in the establishment of the JIM and its ability to begin its full operations.

This includes support for the following activities:

- (a) finalising the setting up of offices in both New York and The Hague for the Leadership Panel and its Political and Investigation Offices, respectively, as well as the Operations Support Office, and the purchasing of office furniture and lockable cabinets to ensure the secure storage of information and materials received and/or generated by the JIM;
- (b) developing and implementing a record-management system within a robust information security regime to be applied to all information obtained or generated by the JIM in the conduct of its work; this regime shall take into account the confidentiality and security requirements deemed necessary for the storage and use of information and materials received and/or generated by the JIM;

- (c) preparing for the possible deployment of JIM investigators to the Syrian Arab Republic if the JIM deems this to be necessary for its investigation and determines that there are reasonable grounds to believe that access to Syria, including in areas within the Syrian territory but outside of the control of the Syrian Arab Republic, is justified;
- (d) purchasing communications, security-related equipment, and office supplies, to support the JIM in the implementation of its mandate. These shall include IT equipment (a dedicated server, computers, laptops with docking stations, an additional set of computers for an intranet network not linked to the internet, commercial shredders, etc) needed to ensure the implementation of the information security regime referred to in point (b).

Additional expertise and activities shall be funded by voluntary contributions as requirements continue to emerge. Ad hoc expert consultants shall be hired for short periods, including for the speedy development of the record-management system and the information security regime referred to in point (b), as well as the development of standard operating procedures.

3. Duration

The estimated implementation period for these projects is 12 months.

4. Implementing agencies

The OPCW will be entrusted with the technical implementation of project 1. That project shall be implemented by staff of the OPCW, experts and contractors.

The United Nations Office for Disarmament Affairs on behalf of the OPCW-UN JIM shall be entrusted with the technical implementation of project 2. That project shall be implemented by the staff of the JIM, consultants and contractors.

The UN and the OPCW will develop their activities in cooperation with relevant partners, including international organisations and agencies, to ensure effective synergies and avoid duplication.

5. Union visibility

The implementing agencies shall take all appropriate measures to publicise the fact that the action is funded by the Union. Such measures shall be implemented in accordance with the Communication and visibility manual for EU external actions published by the European Commission.

6. Reporting

The implementing agencies shall prepare:

- (a) regular reports on the implementation of the projects concerned; and
- (b) a final report not later than 3 months after the completion of the relevant activities.

7. Estimated total cost of the projects

The estimated total cost of the projects is EUR 4 586 096,00.
