

COUNCIL DECISION 2012/712/CFSP

of 19 November 2012

relating to the 2013 Review Conference of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 29 and Article 31(1) thereof,

Whereas:

- (1) On 29 April 1997, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC) entered into force. The CWC aims at eliminating an entire category of weapons of mass destruction by prohibiting the development, production, acquisition, stockpiling, retention, transfer or use of chemical weapons.
- (2) The European Union considers the CWC to be a key component of the non-proliferation and disarmament framework and a unique disarmament and non-proliferation instrument the integrity and strict application of which must be fully guaranteed. All EU Member States are States Parties to the CWC.
- (3) The Union, moreover, considers that the CWC has proven to be a very successful instrument in that near universal accession has been achieved and the possessor states have already destroyed a large part of their chemical weapons stockpiles. At the same time, and while destruction remains a priority for the Organisation for the Prohibition of Chemical Weapons (OPCW) established pursuant to the CWC, new challenges and threats present themselves to which the OPCW must adapt itself to preserve and protect the integrity of the CWC.
- (4) The Union also believes that close engagement of the OPCW with civil society on a regular basis, including in the run-up and during the Review Conference, is beneficial for the work of the OPCW.
- (5) On 17 November 2003, the Council of the European Union adopted Common Position 2003/805/CFSP on the universalisation and reinforcement of multilateral agreements in the field of non-proliferation of weapons of mass destruction and means of delivery ⁽¹⁾. Under that Common Position the CWC is included as one of those multilateral agreements.
- (6) On 12 December 2003, the European Council adopted the EU Strategy against proliferation of Weapons of Mass Destruction, which reaffirms the commitment of the

Union to the multilateral treaty system and underlines, inter alia, the crucial role of the CWC and the OPCW in creating a world free of chemical weapons.

- (7) On 28 April 2004, the United Nations Security Council unanimously adopted Resolution 1540 (2004) reaffirming the proliferation of weapons of mass destruction and their means of delivery as a threat to international peace and security. Subsequently, the Security Council adopted Resolutions 1673 (2006), 1810 (2008) and 1977 (2011) which reiterated the objectives of Resolution 1540 (2004) and expressed the interest of the Security Council in intensifying its efforts to promote full implementation of that Resolution. Implementation of the CWC and implementation of Resolution 1540 (2004) and subsequent related Resolutions are mutually reinforcing.
- (8) On 22 November 2004, the Council of the European Union adopted the first Joint Action 2004/797/CFSP on support for OPCW activities in the framework of the implementation of the EU Strategy against Proliferation of Weapons of Mass Destruction ⁽²⁾. That Joint Action was followed by Council Joint Action 2005/913/CFSP ⁽³⁾, adopted on 12 December 2005, Council Joint Action 2007/185/CFSP ⁽⁴⁾, adopted on 19 March 2007, Council Decision 2009/569/CFSP ⁽⁵⁾, adopted on 27 July 2009 and Council Decision 2012/166/CFSP ⁽⁶⁾, adopted on 23 March 2012.
- (9) On 8 September 2006, the UN General Assembly adopted the Global Counter-Terrorism Strategy in which the States Members of the UN resolved, inter alia, to implement all UN Security Council resolutions related to international terrorism and to cooperate fully with the counter-terrorism subsidiary bodies of the Security Council in the fulfilment of their tasks. The Strategy also encouraged the OPCW to continue its efforts, within its mandate, in helping States to build capacity to prevent terrorists from accessing chemical materials, to ensure security at related facilities, and to respond effectively in the event of an attack using such materials.
- (10) On 2 December 2011, the UN General Assembly adopted, by consensus, a Resolution on the Implementation of the CWC.

⁽²⁾ OJ L 349, 25.11.2004, p. 63.

⁽³⁾ OJ L 331, 17.12.2005, p. 34.

⁽⁴⁾ OJ L 85, 27.3.2007, p. 10.

⁽⁵⁾ OJ L 197, 29.7.2009, p. 96.

⁽⁶⁾ OJ L 87, 24.3.2012, p. 49.

⁽¹⁾ OJ L 302, 20.11.2003, p. 34.

(11) In view of the forthcoming Third Review Conference of the CWC during 2013 ('Third Review Conference'), it is appropriate to define the approach of the Union which will guide its Member States at that conference,

HAS ADOPTED THIS DECISION:

Article 1

1. The objective of the European Union shall be to strengthen the Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction (CWC) by building on the progress achieved so far in destroying declared stockpiles of chemical weapons and the prevention of their re-emergence, through, inter alia, enhancement of the CWC's verification regime, improvement of national implementation as well as efforts towards achieving universality.

2. The Union shall aim to strengthen the CWC also by adapting the implementation of the CWC in light of the changing security environment and developments in science and technology and by emphasising that the Third Review Conference should provide political support and broad guidance for the work to be undertaken in the inter-sessional period on the future priorities of the OPCW.

3. To attain the objective laid down in this Article, the Union shall put forward concrete proposals to the Third Review Conference.

Article 2

For the purposes of the objective laid down in Article 1, the Union shall:

- (a) contribute to a full review of the operation of the CWC at the Third Review Conference, taking into account in particular scientific and technological developments, as well as to building a solid foundation for addressing challenges that the CWC will be faced with in the future;
- (b) help build consensus for a successful outcome of the Third Review Conference and promote, inter alia, the following essential issues:

(i) reaffirmation of the comprehensive nature of the prohibition of chemical weapons as laid down in the General Purpose Criterion by:

- reconfirming that the CWC's prohibitions apply to any toxic chemical, except where such chemical is intended for any purpose not prohibited by paragraph 9 of Article II and as long as the types and quantities are consistent with such a purpose, and thus take into account the developments in science and technology since the Second Review Conference in 2008,
- underlining the obligation of States Parties to reflect the General Purpose Criterion in their national implementation legislation and administrative enforcement practice;

(ii) emphasising the full and timely implementation by the States Parties of all declaration obligations under

Article III, especially those relating to chemical weapons, and including also those relating to riot control agents;

(iii) development and implementation by the CWC Technical Secretariat ('Technical Secretariat') of targeted, tailor-made approaches on achieving the universality of the CWC, in close coordination and cooperation with States Parties, also in view of the fact that at least one State not Party to the CWC, Syria, admitted, in July 2012, possession of chemical weapons;

(iv) reaffirmation of the obligation of chemical weapons possessor states to destroy their chemical weapons and recognition of the achievements so far in eliminating chemical weapons through:

- welcoming the efforts undertaken and the progress made by possessor states to destroy their declared stockpiles and highlighting the fact that we are well under way towards a world free of chemical weapons,

- recognising the successful addressing of the issue of the final extended deadline for the destruction of chemical weapons by the possessor states,

- calling upon chemical weapons possessor states to complete destruction of their chemical weapons stockpiles in the shortest time possible in accordance with the CWC and its Verification Annex as well as the decision of the Sixteenth Session of the Conference of the States Parties on the issue of the final extended deadline for destruction of the remaining stockpiles,

- reiterating the importance of systematic verification of destruction by the Technical Secretariat as prescribed by the CWC and its Verification Annex,

- emphasising that whilst expertise and capacity to deal with chemical weapons as well as with old chemical weapons and abandoned chemical weapons should be retained, the OPCW must also continue its adaptation to the new security environment;

(v) strengthening of the verification regime with regard to activities not prohibited under the CWC, with a view to strengthening prevention of re-emergence of chemical weapons by:

- highlighting the obligation of all States Parties to submit adequate and timely declarations under Article VI,

- conducting a sufficient number of inspections under Article VI with appropriate geographical coverage and frequency, in accordance with the agreed guidelines,

- increasing the relevance of inspections under Article VI to the object and purpose of the CWC and ensuring effective site selection, including through the evaluation of the results of the interim Other Chemical Production Facilities site selection methodology,
 - improving the information basis for industry verification by, inter alia, encouraging the Technical Secretariat to use information already available, including information voluntarily submitted by States Parties and information from previous inspection reports as well as appropriate publicly available information,
 - emphasising that the Schedules of Chemicals ('Schedules') of the CWC were designed primarily for the application of different verification measures,
 - working on maintaining the relevance of the Schedules in light of developments in science and technology by, inter alia, examining the merits of reviewing the Schedules at regular intervals between Review Conferences,
 - further promoting engagement and interaction with the chemical industry and supporting the Technical Secretariat's efforts in that direction,
 - considering additional quality and efficiency measures for the inspection process, such as appropriate increases in the flexibility and the streamlining of the conduct of inspections,
 - ensuring a Technical Secretariat capability for effective sampling and analysis during industry inspections;
- (vi) continuous improvement of national implementation measures and recalling that full compliance with Article VII is a vital factor for the present and future efficiency of the CWC regime, including through:
- adopting a targeted and tailor-made approach in encouraging and assisting States Parties which are yet to adequately implement the CWC,
 - offering assistance to States Parties in need, as exemplified by the Joint Actions and Decisions adopted by the Council of the European Union in support of OPCW activities,
 - strengthening national export and import controls which are required to prevent the acquisition of chemical weapons, and improving the OPCW's capability to assist with the establishment of national mechanisms for control of international transfers,
 - implementing appropriate measures to enhance chemical safety and security,
 - exploring potential synergies between the OPCW and other relevant international organisations as regards implementation support and capacity building;
- (vii) implementation of the provisions of the CWC on consultations, cooperation and fact-finding, in particular the challenge inspection mechanism which remains a viable and usable tool of the OPCW's verification regime, stressing the legal right of States Parties to request a challenge inspection without prior consultation and encouraging the use of the mechanism as required for clarifying and resolving any questions concerning possible non-compliance with the CWC; in this respect, underlining the importance of the Technical Secretariat maintaining and further developing the technical capabilities, expertise and necessary preparedness to conduct challenge inspections as well as the obligation of States Parties to continuously be ready and able to receive challenge inspections;
- (viii) continued strong support of OPCW activities related to assistance and protection, in particular retaining the OPCW's capabilities and expertise and enhancing the capacity of the Technical Secretariat and the States Parties to prevent, respond to and mitigate misuse or attacks involving toxic chemicals, notably by:
- encouraging all States Parties to submit adequate and timely declarations under Article X as required by the CWC and encouraging States Parties to increase offers of assistance,
 - emphasising the importance of the Technical Secretariat retaining its capabilities and expertise as well as maintaining and further developing the necessary preparedness to conduct investigations of alleged use,
 - underlining the importance of continued OPCW support for national protective programmes and of enhancing the ability of the OPCW to mediate offers of expertise and assistance,
 - encouraging the OPCW to assist States in building capacity for preventing and mitigating terrorist attacks using chemical weapons, inter alia, through advice on enhancing chemical safety and security,
 - emphasising the importance of increased cooperation with regional and subregional organisations, including by taking part in international efforts to establish regional centres of excellence for assistance and protection, and considering combining this with efforts under Articles VII and XI, in accordance with the decision on Article XI taken by the Sixteenth Session of the Conference of the States Parties,

- considering ways of enhancing the OPCW's ability to deal with conflict and post-conflict situations involving chemical weapons,
 - requesting the Technical Secretariat to enhance its cooperation with other relevant international organisations on emergency response to the use or threat of use of chemical weapons, including in conflict and post-conflict situations, especially with respect to cooperation with the UN in relation to investigation of possible use of chemical weapons;
- (ix) fostering international cooperation in accordance with the CWC by:

- welcoming concrete and practical proposals which take account of existing initiatives, as exemplified by the Joint Actions and Decisions adopted by the Council of the European Union, in particular proposals concerning issues such as chemical safety and security and the management of chemicals, in accordance with the decision on Article XI taken by the Sixteenth Session of the Conference of the States Parties,
 - encouraging the Technical Secretariat to assist States Parties in implementing their national obligations through tailored and sustainable technical assistance, in order to facilitate enhanced international cooperation in the field of chemistry,
 - encouraging the Technical Secretariat to work in collaboration with other organisations and to evaluate its programmes to ensure that they have the desired impact and that resources are maximised;
- (x) enhancement of the OPCW's contribution to global anti-terrorism efforts by:

- continuing and intensifying work in the OPCW Open-Ended Working Group on Terrorism,
- emphasising compliance with obligations under UN Security Council Resolution 1540 (2004) as well as the other relevant UN Resolutions, in particular to call for practical cooperation between the OPCW and relevant organisations with the aim of eliminating the risk of chemical weapons being acquired or used for terrorist

purposes, including possible terrorist access to materials, equipment and knowledge that could be used in the development and production of chemical weapons,

- underlining the need to work towards strengthening global chemical safety and security and the national control of international transfers, including assisting States Parties with the implementation of practical and targeted measures which at the same time could contribute to enhancing cooperation with regard to peaceful uses of chemistry and assistance and protection.

Article 3

Action taken by the Union for the purposes of Article 2 shall comprise:

- (a) where appropriate, demarches:
- (i) with a view to promoting universal accession to the CWC;
 - (ii) to promote effective national implementation of the CWC by States Parties;
 - (iii) to urge States Parties to support and participate in an effective and complete review of the CWC and thereby reiterate their commitment to this fundamental international norm against chemical weapons;
 - (iv) to promote the proposals in Article 2 which are aimed at further strengthening the CWC;
- (b) statements and working papers in the run-up to, and during, the Third Review Conference for consideration by States Parties.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 19 November 2012.

For the Council
The President
C. ASHTON