

# DECISIONS

## COUNCIL DECISION (CFSP) 2016/1693

of 20 September 2016

**concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them and repealing Common Position 2002/402/CFSP**

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) On 19 October 2001, the European Council declared that it was determined to combat terrorism in every form throughout the world and that it would continue its efforts to strengthen the coalition of the international community to combat terrorism in every shape and form.
- (2) On 16 January 2002, the United Nations Security Council ('UNSC') adopted Resolution 1390 (2002) ('UNSCR 1390 (2002)') which expanded the measures imposed by UNSC Resolutions 1267 (1999) ('UNSCR 1267 (1999)') and 1333 (2000) ('UNSCR 1333 (2000)') to cover Usama bin Laden and members of the Al-Qaeda organisation and other individuals, groups, undertakings and entities associated with them, as designated by the Committee established pursuant to UNSCR 1267 (1999).
- (3) UNSCR 1390 (2002) adjusts the scope of the sanctions in regard to the freezing of funds, the visa ban and the embargo on the supply, sale or transfer of arms as well as on technical advice, assistance or training related to military activities imposed by UNSCR 1267 (1999) and UNSCR 1333 (2000).
- (4) UNSCR 1390 (2002) was adopted by the UNSC on the basis of Chapter VII of the Charter of the United Nations, which allows the UNSC to take all necessary measures for the maintenance of international peace and security.
- (5) Those measures, adopted by the UNSC in the context of the fight against international terrorism, have been transposed in the Union law by Common Position 2002/402/CFSP<sup>(1)</sup>, adopted by the Council in the framework of the Union's Common Foreign and Security Policy, and by Council Regulation (EC) No 881/2002<sup>(2)</sup>.
- (6) On 17 December 2015, the UNSC adopted Resolution 2253 (2015) ('UNSCR 2253 (2015)') expanding the scope of the measures imposed by UNSCR 1390 (2002) to individuals, groups, undertakings or entities associated with the Islamic State in Iraq and the Levant ('ISIL (Da'esh)') and reiterating its unequivocal condemnation of ISIL (Da'esh), Al-Qaeda and associated individuals, groups, undertakings and entities for ongoing and multiple criminal terrorist acts aimed at causing the deaths of innocent civilians and other victims, destruction of property and greatly undermining stability.
- (7) In that context, UNSCR 2253 (2015) re-emphasised that sanctions in support of countering terrorism are an important tool in the maintenance and restoration of international peace and security and recalled that ISIL (Da'esh) is a splinter group of Al-Qaeda and that any individual, group, undertaking or entity supporting ISIL (Da'esh) is eligible for listing by the United Nations ('UN').

<sup>(1)</sup> Council Common Position 2002/402/CFSP of 27 May 2002 concerning restrictive measures against members of the ISIL (Da'esh) and Al-Qaida organisations, and other individuals, groups, undertakings and entities associated with them (OJ L 139, 29.5.2002, p. 4).

<sup>(2)</sup> Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations (OJ L 139, 29.5.2002, p. 9).

- (8) ISIL (Da'esh) and Al-Qaeda constitute a threat to international peace and security. Restrictive measures adopted by the Union in the context of the fight against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them, fall within the objectives of the Union's Common Foreign and Security Policy as set out in Article 21(2)(c) of the Treaty.
- (9) In view of the threat posed by ISIL (Da'esh) and Al-Qaeda, the Council should be able to impose targeted restrictive measures on any individual regardless of nationality or citizenship, or on any entity responsible for terrorist actions on behalf or in support of ISIL (Da'esh) and Al-Qaeda, in accordance with the criteria set out in this Decision.
- (10) The aim of such targeted measures is to prevent actions on behalf or in support of ISIL (Da'esh) and Al-Qaeda.
- (11) It is necessary to provide for restrictions on the entry into and transit through the territories of Member States by ISIL (Da'esh) and Al-Qaeda and by persons associated with them, including those who are nationals of a Member State. Without prejudice to the responsibilities of Member States for safeguarding internal security, such restrictions should not prevent designated nationals of a Member State from transiting through another Member State in order to return to the Member State of their nationality, nor should they prevent designated family members of nationals of a Member State from transiting through another Member State for the same purpose.
- (12) UNSCR 1373 (2001) provides that where UN Member States have identified persons or entities as engaged in terrorist actions, appropriate measures should be taken.
- (13) At the same time, the measures implementing UNSCRs 1267 (1999), 1390 (2002) and 2253 (2015) as Union law should be amended to reflect the provisions of relevant resolutions of the UNSC.
- (14) In accordance with the case-law of the Court of Justice of the European Union, when the Council decides to include the name of a person or entity on the list in the Annex, it must give individual, specific and concrete reasons for doing so, and such a decision must be taken on a sufficiently solid factual basis.
- (15) For the sake of clarity and legal certainty the restrictive measures imposed by Common Position 2002/402/CFSP as amended by subsequent Decisions should be consolidated into a new legal instrument and include provisions allowing the Council to impose restrictive measures on persons and entities.
- (16) Common Position 2002/402/CFSP should therefore be repealed and replaced by this Decision.
- (17) Further action by the Union is needed in order to implement certain measures,

HAS ADOPTED THIS DECISION:

#### *Article 1*

1. The direct or indirect supply, sale, transfer or export of arms or related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts, to any individual, group, undertaking or entity designated by the UNSC pursuant to UNSCRs 1267 (1999), 1333 (2000) and 2253 (2015), as updated by the Committee established pursuant to UNSCR 1267 (1999) ('the Committee'), or designated by the Council, or to those acting on their behalf or at their direction, by nationals of Member States or from or through the territories of Member States or using their flag vessels or aircraft, shall be prohibited whether originating or not in their territories.
2. It shall be prohibited to:
  - (a) provide technical assistance, brokering services and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, directly or indirectly to any individual, group, undertaking or entity referred to in paragraph 1;

- (b) provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance for any sale, supply, transfer or export of arms and related materiel, or for the provision of related technical assistance, brokering services and other services directly or indirectly to any individual, group, undertaking or entity referred to in paragraph 1;
- (c) participate knowingly and intentionally in activities the object or effect of which is to circumvent the prohibitions referred to in point (a) or (b) of this paragraph.

#### Article 2

1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of persons, designated and subject to travel restrictions by the UNSC pursuant to UNSCRs 1267 (1999), 1333 (2000) and 2253 (2015) or by the Committee, identified as:

- (a) participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of;
- (b) supplying, selling or transferring arms and related materiel to;
- (c) recruiting for, or otherwise supporting acts or activities of,

Al-Qaeda, ISIL (Da'esh), or any cell, affiliate, splinter group or derivative thereof; or

- (d) being controlled directly or indirectly by, or otherwise supporting, any individual, group, undertaking or entity associated with Al-Qaeda or ISIL (Da'esh), included on the ISIL (Da'esh) and Al-Qaeda Sanctions List.

2. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of persons:

- (a) associated with ISIL (Da'esh) and Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, including by:
  - (i) participating in the financing of ISIL (Da'esh) and Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, or in the financing of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of them;
  - (ii) participating in the planning, facilitating, preparing, or perpetrating of acts or activities or providing or receiving of terrorist training such as instruction related to arms, explosive devices or other methods or technologies with the purpose of committing terrorist acts by, in conjunction with, under the name of, on behalf of, or in support of ISIL (Da'esh) and Al-Qaeda or any cell, affiliate, splinter group or derivative thereof;
  - (iii) engaging in trade with ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, in particular of oil, oil products, modular refineries and related material, as well as trade in other natural resources and trade in cultural property;
  - (iv) supplying, selling or transferring arms and related materiel to ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof;
- (b) travelling or seeking to travel outside of the Union for the purpose of:
  - (i) the perpetration, planning, or preparation of, or participation in, terrorist acts on behalf or in support of ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof;
  - (ii) the providing or receiving of terrorist training, on behalf or in support of ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof; or
  - (iii) otherwise supporting ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof;
- (c) seeking to travel into the Union for the same purpose as referred to in point (b) or to participate in acts or activities in conjunction with, under the name of, on behalf or in support of ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof;

- (d) recruiting for, or otherwise supporting acts or activities of, ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof, including by:
  - (i) providing or collecting, by any means, directly or indirectly, funds in order to finance the travelling of individuals, for the purpose referred to in points (b) and (c); organising the travel of individuals for the purpose referred to in points (b) and (c), or otherwise facilitating it for that purpose;
  - (ii) soliciting another person to participate in acts or activities by, in conjunction with, under the name of, on behalf of, or in support of ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof;
- (e) inciting or publicly provoking acts or activities by, in conjunction with, under the name of, on behalf of, or in support of ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, including by encouraging or glorifying such acts or activities thereby causing a danger that terrorist acts may be committed;
- (f) being involved or complicit in ordering or committing serious abuses of human rights, including abduction, rape, sexual violence, forced marriage and enslavement of persons, outside the territory of the Union, on behalf or in the name of ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof,

as listed in the Annex.

3. Paragraphs 1 and 2 shall not oblige a Member State to refuse its own nationals entry into its territory.
4. Paragraph 1 shall not apply where entry or transit is necessary for the fulfilment of a judicial process, or when the Committee determines that entry or transit is justified.
5. Member States may grant exemptions from the measures imposed under paragraph 2 where travel is justified:
  - (a) on the grounds of urgent humanitarian need;
  - (b) for the purpose of a judicial process; or
  - (c) where a Member State is bound by an obligation towards an international organisation.
6. A Member State wishing to grant the exemptions referred to in paragraph 5 shall notify the Council in writing. With regard to points (a) and (b) of paragraph 5, the exemption shall be deemed to be granted unless one or more Council members raise an objection in writing within two working days of receiving notification of the proposed exemption. Should one or more Council members raise an objection, the Council, acting by qualified majority, may decide to grant the proposed exemption.
7. Where, pursuant to paragraph 5, a Member State authorises the entry into, or transit through, its territory of persons listed in the Annex, the authorisation shall be limited to the purpose for which it is given and to the persons concerned thereby.

### Article 3

1. All funds, other financial assets and economic resources, owned or controlled, directly or indirectly, by persons, groups, undertakings and entities designated and subject to an asset freeze by the UNSC pursuant to UNSCRs 1267 (1999), 1333 (2000) and 2253 (2015), or by the Committee, identified as:
  - (a) participating in the financing, planning, facilitating, preparing, or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of;
  - (b) supplying, selling or transferring arms and related materiel to;
  - (c) recruiting for, or otherwise supporting acts or activities of, Al-Qaeda, ISIL (Da'esh), or any cell, affiliate, splinter group or derivative thereof; or
  - (d) being owned or controlled directly or indirectly by, or otherwise supporting, any individual, group, undertaking or entity associated with ISIL (Da'esh) or Al-Qaeda, included on the ISIL (Da'esh) and Al-Qaeda Sanctions List, or by a third party acting on their behalf or at their direction,

shall be frozen.

2. No funds, other financial assets or economic resources shall be made available, directly or indirectly to or for the benefit of natural or legal persons referred to in paragraph 1.

3. All funds, other financial assets and economic resources, owned or controlled directly or indirectly, by persons, groups, undertakings and entities:

(a) associated with ISIL (Da'esh) and Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, including by:

- (i) participating in the financing of ISIL (Da'esh) and Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, or in the financing of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of them;
- (ii) participating in the planning, facilitating, preparing, or perpetrating of acts or activities or providing or receiving of terrorist training such as instruction related to arms, explosive devices or other methods or technologies with the purpose of committing terrorist acts by, in conjunction with, under the name of, on behalf of, or in support of ISIL (Da'esh) and Al-Qaeda or any cell, affiliate, splinter group or derivative thereof;
- (iii) engaging in trade with ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, in particular of oil, oil products, modular refineries and related material, as well as trade in other natural resources and trade in cultural property;
- (iv) supplying, selling or transferring arms and related materiel to ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof;

(b) travelling or seeking to travel outside of the Union for the purpose of:

- (i) the perpetration, planning, or preparation of, or participation in, terrorist acts on behalf or in support of ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof;
- (ii) the providing or receiving of terrorist training, on behalf or in support of ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof; or
- (iii) otherwise supporting ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof;

(c) seeking to travel into the Union for the purpose referred to in point (b) or to participate in acts or activities in conjunction with, under the name of, on behalf or in support of ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof;

(d) recruiting for or otherwise supporting acts or activities of ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof, including by:

- (i) providing or collecting, by any means, directly or indirectly, funds in order to finance the travelling of individuals, for the purpose referred to in points (b) and (c); organising the travel of individuals for the purpose referred to in points (b) and (c), or otherwise facilitating it for that purpose;
- (ii) soliciting another person to participate in acts or activities by, in conjunction with, under the name of, on behalf of, or in support of ISIL (Da'esh), Al-Qaeda, or any cell, affiliate, splinter group or derivative thereof;

(e) inciting or publicly provoking acts or activities by, in conjunction with, under the name of, on behalf of, or in support of ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof, including by encouraging or glorifying such acts or activities thereby causing a danger that terrorist acts may be committed;

(f) being involved or complicit in ordering or committing serious abuses of human rights, including abduction, rape, sexual violence, forced marriage and enslavement of persons, outside the territory of the Union, on behalf or in the name of ISIL (Da'esh), Al-Qaeda or any cell, affiliate, splinter group or derivative thereof,

as listed in the Annex, shall be frozen.

4. No funds, other financial assets or economic resources shall be made available, directly or indirectly to or for the benefit of the natural or legal persons referred to in paragraph 3.

5. By way of derogation from paragraphs 1, 2, 3 and 4, exemptions may be made for funds, financial assets and economic resources which are:

- (a) necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and public utility charges;
- (b) intended exclusively for payment for reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services in accordance with national laws; or
- (c) intended exclusively for payment for fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources.

Those exemptions shall only be made after notification by the Member State concerned to the Committee, where appropriate, of the intention to authorise access to such funds, other financial assets or economic resources and in the absence of a negative decision by the Committee within three working days of such notification.

6. By way of derogation from paragraphs 1, 2, 3 and 4, exemptions may also be made for funds, financial assets and economic resources which are necessary for extraordinary expenses provided that such determination has been notified by the competent authority of the Member State to the Committee, where applicable, and has been approved by the Committee.

7. Paragraph 3 shall not prevent a designated person or entity from making a payment due under a contract entered into before the listing of such a person or entity, provided that the relevant Member State has determined that the payment is not directly or indirectly received by a person or entity referred to in paragraphs 1 and 3.

8. By way of derogation from paragraph 3, the competent authorities of a Member State may authorise the release of certain frozen funds or economic resources provided the following conditions are met:

- (a) the funds or economic resources are subject of an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in paragraph 3 was listed in the Annex, of a judicial or administrative decision rendered in the Union, or a judicial decision enforceable in the Member State concerned, prior to, on 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) recognising 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 authorisations granted under this paragraph.

9. Paragraphs 2 and 4 shall not apply to the addition of payments to frozen accounts of persons and entities referred to in paragraphs 1 and 3 provided that any such payments are frozen.

#### *Article 4*

No claims, including claims for compensation or any other claim of this type, such as a claim for set-off or a claim under a guarantee, in connection with any contract or transaction the performance of which was affected, directly or indirectly, wholly or in part, by reason of measures decided upon pursuant to UNSCRs 1267 (1999), 1333 (2000) and 2253 (2015), including measures of the Union or any Member State in accordance with, as required by or in any connection with, the implementation of the relevant decisions of the UNSC or measures covered by this Decision, shall be granted to the designated persons or entities designated by the UN or listed in the Annex or any person or entity claiming through or for the benefit of any such person or entity.

#### *Article 5*

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

2. The Council shall communicate the decision referred to in paragraph 1, including the statement of reasons, to the natural or legal person, group, undertaking and entity concerned, either directly, if the address is known, or through the publication of a notice, providing such natural or legal person, group, undertaking or entity 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, group, undertaking or entity concerned accordingly.
4. By way of derogation from paragraph 1, if a Member State considers that there has been a substantial change of circumstances affecting the designation of a listed person or entity, the Council, acting by a qualified majority on a proposal from that Member State, may decide to remove the name of such person or entity from the list in the Annex.

#### *Article 6*

1. This Decision shall be reviewed, amended or repealed as appropriate, in particular in the light of relevant decisions by the UNSC or by the Committee.
2. The measures referred to in Article 2(2) and Article 3(3) and (4) shall be reviewed at regular intervals and at least every 12 months.
3. Where observations are submitted by a person or entity designated in accordance with Article 2(2) or Article 3(3) and (4), the Council shall review the designation in light of those observations and the measures shall cease to apply if the Council determines, in accordance with the procedure referred to in Article 5, that the conditions for their application are no longer met.
4. If a further request is made, based on substantial new evidence, to remove a person or entity from the Annex, the Council shall conduct a further review in accordance with paragraph 3.
5. The measures referred to in Article 2(2) and Article 3(3) and (4) shall apply until 23 September 2017.

#### *Article 7*

Common Position 2002/402/CFSP is repealed and replaced by this Decision.

#### *Article 8*

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

Done at Brussels, 20 September 2016.

*For the Council*  
*The President*  
I. KORČOK

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ANNEX

**List of persons, groups, undertakings and entities referred to in Articles 2 and 3**

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