

EXPLANATORY MEMORANDUM ON THE EUROPEAN UNION'S COMMON FOREIGN AND SECURITY POLICY

Council Implementing Decision (CFSP) 2019/351 amending Council Implementing Decision (CFSP) 2013/255/CFSP concerning restrictive measures against Syria

Council Implementing Regulation (EU) 2019/350 amending Council Implementing Regulation No 36/2012 concerning restrictive measures in view of the situation in Syria

Submitted by the Foreign and Commonwealth Office on 13 March 2019.

SUBJECT MATTER

1. At the Foreign Affairs Council on 4 March 2019, the attached Council Implementing Decision and Council Implementing Regulation were adopted. They add seven new listings to the EU Syria sanctions regime and amend the statement of reasons of eight individuals to reflect the positions they now hold.
2. Those individuals listed will be subject to an asset freeze and a travel ban.

SCRUTINY HISTORY

3. An Explanatory Memorandum on this issue was last submitted for Parliamentary scrutiny on 25 May 2018. The documents were cleared at the House of Lords EU Select Committee Chairman's sift on 6 June 2018. The House of Commons European Scrutiny Committee cleared the documents as "not legally or politically important" on 6 June 2018 (ESC 39772 & 39773, 30th Report, Session 2017-19).

MINISTERIAL RESPONSIBILITY

4. The Secretary of State for Foreign and Commonwealth Affairs is the Minister with overall responsibility for UK policy on the EU's Common Foreign and Security Policy.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

5. The UK's Foreign Affairs policy is a reserved matter under the UK's devolution settlements and no devolved administration interests arise. The devolved administrations have therefore not been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

6.

- i. Legal Basis: Article 31(2) of the Treaty of the European Union and Article 30(1) of Council Decision (CFSP) 2013/255/CFSP for the Council Implementing Decision and Article 32(1) of Regulation 36/2012 for the Council Implementing Regulation.
- ii. European Parliament Procedure: N/A
- iii. Voting procedure: Council acting by Qualified Majority for the Council Implementing Decision, and by Qualified Majority for the Council Implementing Regulation.
1. Impact on United Kingdom Law: The Implementing Regulation is directly applicable in UK law. Provision is made in domestic legislation for offences and penalties to enforce the principal Council Regulation in the UK. With respect to the Council Implementing Decision, the travel ban is implemented through domestic legislation.
- iv. Application to Gibraltar: Yes.
- vi. Fundamental rights analysis: The procedures for designating individuals under the principal Council Decision 2013/255 and Council Regulation 36/2012 (the "Principal Decision and Regulation") are considered compliant with fundamental human rights. The Council Implementing Decision and Council Implementing Regulation do not raise any new fundamental rights issues.

The principal Decision and Regulation state that the Council shall provide designated persons and entities with an opportunity to present observations on the reasons for their listing. Where observations are submitted, the EU will review its decision in the light of those observations and inform the person or entity concerned accordingly. In addition, the measures will be kept under review.

Where a person is designated, provision is made for competent authorities of Member States to authorise the release of frozen funds where necessary in certain circumstances, for example, to satisfy the basic expenses of listed persons or their dependents and where necessary for extraordinary expenses. Decisions by competent authorities of Member States in this regard would be subject to challenge in Member States' courts. In addition, Member States may grant exemptions from the travel ban where travel is justified, inter alia, on the basis of humanitarian need.

The principal Decision and Regulation respect fundamental rights, notably the right to an effective remedy and to a fair trial and the right to the protection of personal data. Furthermore, the Courts of the European Union must, in accordance with the powers conferred on them, ensure the review of the lawfulness of all European Union acts in respect of fundamental rights.

Those fundamental rights include respect for the rights of the defence and the right to effective judicial protection.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

7. None.

SUBSIDIARITY

8. Action by the EU is appropriate to ensure the uniform application across the EU of the sanctions measures.

POLICY IMPLICATIONS (including Exit implications where appropriate)

9. On 23 June 2016, the UK voted to leave the EU. On 29 March 2017, the Government triggered Article 50 of the TEU to begin the process of exit. Until 29 March 2019, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period, the Government will also continue to negotiate, implement, and apply EU legislation.

10. The EU Syria sanctions regime is an important part of our efforts to restrict the regime's ability to wage war on the Syrian civilian population and pressure the regime to engage meaningfully with the UN-led political process. It is vital that regime and its supporters commit to the UN-led Geneva process which remains the forum to end the conflict in Syria. Sanctions send a clear signal of our commitment to accountability.

11. Those listed under the Council Implementing Decision and Council Implementing Regulation were appointed to Ministerial positions by President Asad in November 2018. There is designation criteria under the EU Syria sanctions regime for imposing asset freezes and travel bans on individuals who have held office since May 2011 as Ministers within the Syria Government. It is Government policy that Ministers within the Syrian Government should be considered jointly responsible for the policy of repression carried out by the Syrian regime.

CONSULTATION

12. Not Applicable.

IMPACT ASSESSMENT

13. Not Applicable.

FINANCIAL IMPLICATIONS


14. None.

TIMETABLE

15. This was adopted at the General Affairs Council on 4 March.

OTHER OBSERVATIONS

16. None.

A handwritten signature in black ink that reads "Alan Duncan". The signature is written in a cursive style with a large initial 'A' and a long, sweeping tail for the 'n' in 'Duncan'.

Rt Hon Sir Alan Duncan MP
Minister for Europe and the Americas
Foreign and Commonwealth Office