



## Syria: The EU embargo and moves to arm the opposition

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As death and destruction continue unchecked in Syria, there have been increasing calls from some quarters for a more active policy of support for the secularist opposition on the part of Western governments, especially since the interventions of some regional actors are said to be having a strong influence on the conflict, favouring Islamist forces.

The UK government has hinted that it may make a decision to arm some opposition fighters, but this would not be legal with the EU arms embargo currently in force. On 28 February the provisions of the embargo were slightly changed and the government has said that it will step up aid non-lethal aid to the rebels.

If the UK government takes the decision to arm the rebels and cannot get agreement in the Council of the EU, it might veto the extension of the sanctions regime and replace it with UK-only legislation, allowing the UK more freedom to arm the rebels while re-instating the other provisions of the sanctions.

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**Contents**

- 1 Lifting the EU arms embargo? 2**
  - 1.1 Foreign Affairs Council 28 February 2
  - 1.2 New UK assistance to the rebels 3
  - 1.3 Further amendments or a British veto? 5
  - 1.4 Views in other EU countries 6
- 2 The EU sanctions regime 7**
  - 2.1 Amending the Decision 7
  - 2.2 Treaty base for sanctions 8
- 3 Can EU embargoes be ignored, or interpreted flexibly? 8**
  - 3.1 The Decision is mandatory 8
  - 3.2 EU arms embargoes are subject to interpretation 9

**1 Lifting the EU arms embargo?**

**1.1 Foreign Affairs Council 28 February**

Throughout 2013 there has been discussion about lifting or amending the EU arms embargo on Syria to allow more direct help to the Syrian rebel forces. With no sign of the carnage

abating and the Syrian government well-supplied with heavy weaponry, some have argued that it is time to intervene more directly and give the rebels the weapons they need to fight the Syrian government. Other argue that the outcome of this policy would be difficult to predict, except that it would be likely to increase the violence.

The UK has been arguing for some time that the EU should at least modify the arms embargo to allow member states to give more support to the rebels.

The original Regulation of May 2011 had allowed member states a certain amount of flexibility:

...the competent authorities in the Member States as listed in Annex III may authorise the sale, supply, transfer or export of equipment which might be used for internal repression, under such conditions as they deem appropriate, if they determine that such equipment is intended solely for humanitarian or protective use.<sup>1</sup>

On 28 February the Council extended the EU sanctions against Syria for three months and amended the arms embargo to mention specifically the recognised Syrian opposition group. The amended wording said that non-lethal military equipment, armoured vehicles and technical assistance and brokering services can be provided to the Syrian National Coalition as long as they are intended for the protection of civilians.<sup>2</sup>

The UK government had argued for a more substantial change to the restrictions, as the Foreign Secretary William Hague admitted in a press interview after the Council meeting:

It allows us to supply a greater range of equipment to protect civilian life in Syria. It also enables us to give assistance and advice that we've been restricted in giving before. We would have gone further, many nations would have made no amendment at all. This is a compromise.<sup>3</sup>

There were conflicting accounts of what had happened in the Council meeting. One EU diplomat said: "We fiddled with the words to make the British happy, nothing has changed."<sup>4</sup> Some reports maintained that the UK had argued for a full lifting of the arms embargo. The *Guardian* reported, on the other hand, that UK officials were insisting that Britain "had not sought agreement to send weapons [...] rejecting claims from Brussels that it had."<sup>5</sup>

## 1.2 New UK assistance to the rebels

On 6 March, Mr Hague made a statement to the House of Commons in which he supplied more detail about the help that the UK government would now be able to give, emphasising the importance of training:

Such technical assistance can include assistance, advice and training on how to maintain security in areas no longer controlled by the regime; on co-ordination between civilian and military councils; on how to protect civilians and minimise the risks to them;

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<sup>1</sup> [Council Regulation \(EU\) 442/2011](#) of 9 May 2011 concerning restrictive measures in view of the situation in Syria

<sup>2</sup> [COUNCIL DECISION 2013/109/CFSP of 28 February 2013](#), Article 1 (1) (a) and (b)

<sup>3</sup> "Britain could ramp up scale of security Syria rebels", *Telegraph*, 18 February 2013

<sup>4</sup> "Britain could ramp up scale of security Syria rebels", *Telegraph*, 18 February 2013

<sup>5</sup> "Eu renews arms embargo on both sides in conflict Britain can supply 'non-lethal' equipment to rebels", *Guardian*, 19 February 2013

and on how to maintain security during a transition. We will now provide such assistance, advice and training.<sup>6</sup>

It could also include training for military groups in their obligations under international law and international human rights.

The statement also listed the following equipment:

- equipment for search and rescue operations
- incinerators and refuse collection kit to prevent the spread of disease
- funds and equipment to repair electricity and water supplies to homes
- water purification kits
- communications equipment
- new types of non-lethal equipment for the protection of civilians
- protective equipment, including armoured four-wheel drive vehicles and body armour
- testing equipment for evidence of chemical weapons use.

Mr Hague went on to set out the extra funds that had been allocated for these purposes:

We have allocated nearly £3 million in funding this month to support this work and an additional £10 million thereafter, comprising \$20 million in non-lethal equipment and practical support for the Syrian opposition and civil society on top of the \$60 million announced by the United States. We hope other countries will offer similar assistance.<sup>7</sup>

On 14 April, the UK government announced a gift of various pieces of non-lethal equipment to the Syrian opposition's National Coalition assistance coordination unit. The gift included:

Five 4x4 vehicles with ballistic protection and 20 sets of body armour to the Syrian opposition National Coalition's assistance co-ordination unit; three 25-tonne trucks, one 20-tonne truck, four 12-tonne trucks, six 4x4 SUVs, five pick-ups, one recovery vehicle and four forklifts to ensure that the assistance co-ordination unit has the means to deliver assistance in the quantities necessary to have an impact on the suffering in Syria; and three advanced civil resilience kits for regional hubs and 22 basic civil resilience kits for other local councils; 107 generators; 130 solar powered batteries; hundreds of radios, water purification kits and rubbish collection kits; as well as basic administrative equipment—laptops, VSATs and printers. This equipment will support local administrative councils, through the National Coalition, to extricate the injured from the rubble in the aftermath of a mortar attack and to provide clean water and refuse management equipment to prevent the spread of disease.

Making the gift was a matter of special urgency because of the appalling and deteriorating situation on the ground and the urgent need to help the Syrian opposition deliver support to civilians. Owing to the Easter recess, this gift was notified to the Committee of Public Accounts to consider on Parliament's behalf. I also wrote to the Chairs of the Foreign Affairs Committee, Defence Committee and Committee on Arms

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<sup>6</sup> [HC Deb 6 March 2013, c963](#)

<sup>7</sup> [HC Deb 6 March 2013, c963](#)

Export Controls to inform them of this process. As no objections were received, we have now proceeded with the arrangements to make these gifts.<sup>8</sup>

### 1.3 Further amendments or a British veto?

In his statement of 6 March, Mr Hague talked about the potential for more change to the embargo:

In our view, if a political solution to the crisis in Syria is not found and the conflict continues, we and the rest of the European Union will have to be ready to move further, and we should not rule out any option for saving lives. In case further necessary amendments to the EU sanctions regime prove impossible to agree, we stand ready to take any domestic measures necessary to ensure that core sanctions on Syria remain effective.<sup>9</sup>

This could be taken as a veiled threat that unless the sanctions regime accords with UK views, the UK could veto the next extension. The 'domestic measures' mentioned in the statement would be UK-only legislation to replace the vetoed EU arms embargo, if this happened.

Prime Minister David Cameron reinforced this in his evidence to the Liaison Committee on 12 March. He said that the UK had already prepared domestic legislation in case negotiations had failed in February and the sanctions package had fallen:

**Richard Ottaway:** It is a big step to be supplying the rebels with weapons.

**Mr Cameron:** Let me be clear: that is not a decision that we have taken. I hope that we do not have to break from a collaborative approach across the European Union. I was just making the point that, if we thought it was the right thing to do, we would do it.

**Richard Ottaway:** Fair enough, but the Foreign Secretary said that if he cannot get agreement among his EU partners, "we stand ready to take any domestic measures to ensure that core sanctions on Syria remain effective." That is a very bold unilateral statement.

**Mr Cameron:** It is a responsible statement because if, for whatever reason-this could have happened when we were discussing the terms of the EU arms embargo-we could not have agreed among the 27 the changes we thought necessary to supply non-lethal equipment, we would have had a choice: you could have let the whole sanctions package fall and supplied the non-lethal equipment, but, at the same time, Britain, as a major financial centre and an important player in all of this, would have had to put in place its own sanctions legislation very quickly. So we drew up that legislation-it was ready to go if we could not get agreement across Europe-because it would have been irresponsible to see the sanctions package fall, but for Britain not to put in place its own sanctions regime; otherwise, members of the regime would have been able to access money, finance and who knows what, so that was just responsible planning.<sup>10</sup>

On 18 March, however, the government perhaps implied a reaffirmation of support for the embargo. Asked whether the government had discussed arming the rebels with US

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<sup>8</sup> HC Deb 15 April 2013, c17WS

<sup>9</sup> [HC Deb 6 Mar 2013, c963-4](#)

<sup>10</sup> [UNCORRECTED TRANSCRIPT OF ORAL EVIDENCE To be published as HC 484-iv, Liaison Committee, 12 March 2013](#)

Secretary of State John Kerry on his recent visit to London, Baroness Warsi said that it had not:

There was no discussion concerning the supply of arms or the possibility of military intervention either by the North Atlantic Treaty Organisation or by a joint operation between the UK and the US. We continue to work with our partners, including the US, to achieve a political solution to the crisis in Syria.<sup>11</sup>

#### 1.4 Views in other EU countries

On 14 March, the French government called on the EU to lift the arms embargo. Foreign Minister Laurent Fabius said Britain and France would ask "the Europeans now to lift the embargo so that the resistance fighters have the possibility of defending themselves".<sup>12</sup> He added that Britain and France were ready to go ahead with arms deliveries even without the support of EU partners. French President François Hollande insisted that the embargo should be lifted:

We want the Europeans to lift the embargo. Britain and France are agreed on this option ... France has to first persuade its European partners. But France also has to accept its responsibilities. We can't allow a people to be massacred by a regime which has shown that it doesn't want a political discussion.<sup>13</sup>

Guido Westerwelle, the German foreign minister, said on 14 March that Germany was prepared to bring forward discussion of the restrictions:

If important partners in the European Union now see a different situation, which in their view once again makes a change of the sanction decisions necessary, naturally we are ready to discuss it immediately in the EU.<sup>14</sup>

However, Germany is likely to resist substantial changes to the arms embargo and will probably be supported by Austria, Sweden and many of the smaller member states. Angela Merkel said that she had: "a number of concerns about exporting weapons to the opposition because you have to ask if you are just fuelling the conflict" while Austrian Chancellor Werner Faymann said: "I do not think you can solve a conflict that you are supplying weapons to. It usually just means that someone else delivers more weapons to the other side."

The Finnish Prime Minister Jyrki Katainen criticised French and British failure to work with EU partners: "We have tried to build up a common foreign and security policy and I hope that we could strengthen it by having a common policy on Syria".<sup>15</sup> The Swedish Foreign Minister made the point in February that arming the rebels would make any agreement with Russia less likely: "If we take steps that divide the UN even further that plays, in the short term, into the hands of the regime."<sup>16</sup>

An EU diplomat said that changes could be made quickly, with agreement:

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<sup>11</sup> [HL Deb 18 March 2013, c124WA](#)

<sup>12</sup> 'France urges EU to lift Syria arms ban to aid rebels', *AFP*, 14 March 2013

<sup>13</sup> 'Syria crisis: France and Britain move a step closer to arming rebels', *Guardian*, 14 March 2013

<sup>14</sup> 'Germany 'ready to talk' on EU arms for Syria', *Euobserver*, 14 March 2013

<sup>15</sup> 'Syrian arms embargo divides EU' *Deutsche Welle*, 16 March 2013

<sup>16</sup> 'UK seeks EU support on arming Syrian rebels', *Euobserver*, 18 February 2013

How fast or slow we go depends entirely on the degree of convergence among member states. If there is unanimity, it can be done very speedily in a few days.<sup>17</sup>

## 2 The EU sanctions regime

Wide-ranging sanctions, including an arms embargo, were originally imposed on Syria in May 2011.<sup>18</sup> In January and June 2012, further restrictions were imposed, including on equipment for monitoring and intercepting telecommunications and certain goods that might be used for the manufacture and maintenance of equipment which might be used for internal repression.<sup>19</sup>

Another Decision in July required member states to inspect vessels and aircraft passing through their territory towards Syria if they had reasonable grounds to suspect that the cargoes were embargoed items.<sup>20</sup>

In November 2012, the sanctions were extended until 1 March 2013 and the review period reduced from one year to three months.<sup>21</sup>

According to an EU External Affairs [Factsheet](#) of 28 February 2013 the arms embargo consists of:

- Prohibition on the export and import of arms and related material to and from Syria.

Prohibition on the export of equipment which might be used for internal repression and export restrictions on certain other equipment, goods and technology that might be used for internal repression or for the manufacture or maintenance of such products. The measure includes a prohibition on related financial assistance as well as insurance and reinsurance. Non-lethal military equipment and technical assistance may be provided under certain conditions.

- Obligation for member states to inspect vessels and aircraft if there are reasonable grounds to believe they carry arms, related material or equipment which might be used for internal repression. This applies in member states' seaports, airports and in their territorial sea, in accordance with international law. Items that may not be exported from the EU to Syria must be seized.<sup>22</sup>

### 2.1 Amending the Decision

The procedure for amending the Council Decision is set out in its Article 27:

1. The Council, acting upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, shall establish and amend the lists in Annexes I and II.

2. The Council shall communicate its decision on listing, including the grounds therefore, to the person or entity concerned, either directly, if the address is known, or through the publication of a notice, providing such person or entity with an opportunity to present observations.

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<sup>17</sup> 'Germany 'ready to talk' on EU arms for Syria', *Euobserver*, 14 March 2013

<sup>18</sup> Council Decision 2011/273/CFSP and Council Regulation No 442/2011

<sup>19</sup> Council Regulation (EU) 36/2012 18 January 2012 and Council Regulation (EU) 509/2012 16 June 2012

<sup>20</sup> Council Decision 2012/420/CFSP (23 July 2012)

<sup>21</sup> [Council Decision 2012/739/CFSP](#) (OJ L 330, 30 November 2012)

<sup>22</sup> [The European Union and Syria](#), Factsheet, EU, 28 February 2013

3. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decision and inform the person or entity concerned accordingly.

The amendments would be subject to the Qualified Majority Voting procedure, meaning that a change would have to attract at least 255 out of a possible 345 votes in the European Council.

## **2.2 Treaty base for sanctions**

The EU Treaties deal with external action both in the inter-governmental *Treaty on European Union* and in the *Treaty on the Functioning of the European Union* (TFEU – the former Community Treaty, under which the EU enacts legislation). Since the Maastricht Treaty in 1992 the political decision to impose sanctions has been made under the intergovernmental *Common Foreign and Security Policy* (CFSP) and the actual sanctions have been decided by EC/EU legislation, in a two-stage process.

In the CFSP the EU defines general guidelines, adopts decisions defining EU actions and positions, and arrangements for implementing these. Decisions on CFSP matters are taken in the European Council (heads of state and government) by unanimity, or by the Council of Ministers, also by unanimity, except in certain situations where qualified majority voting (QMV) applies.

**Article 215 TFEU** provides a legal base for sanctions against natural or legal persons and groups or non-State entities. It brings together the CFSP and EU competence by the joint proposal from the EU High Representative for Foreign Affairs and Security Policy and the Commission (as the High Representative is also a Vice President of the Commission).

The concrete implementing decision is based on the preceding political CFSP decision and most implementing decisions are taken by QMV. The European Parliament has a right to be informed about the decisions.

The periodical extension of the arms embargo is an extension of the CFSP decision to apply sanctions, and therefore requires unanimity.

## **3 Can EU embargoes be ignored, or interpreted flexibly?**

### **3.1 The Decision is mandatory**

The provisions of the EU sanctions against Syria are mandatory on member states. Article 29 of Council Decision 2012/739/CFSP states:

It shall be prohibited to participate, knowingly or intentionally, in activities the object or effect of which is to circumvent the prohibitions laid down in this Decision.

The Council Decision also refers specifically to the importance of Article 29 TEU, which states:

The Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. The Member States shall ensure that their national policies conform to the Union positions.

The UK secured a Declaration during the negotiations on the Lisbon Treaty which states:



The Conference underlines that the provisions in the Treaty on European Union covering the Common Foreign and Security Policy, including the creation of the office of High Representative of the Union .... and the establishment of an External Action Service, do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations.<sup>23</sup>

While this emphasises the intergovernmental nature of the CFSP, it is doubtful that it could be relied upon if a Member State Government wanted to act against an agreed CFSP decision.

### **3.2 EU arms embargoes are subject to interpretation**

The European Commission generally leaves member states to interpret the provisions of sanctions. A senior EU official said recently that the EU has no definition of lethal and non-lethal aid and that it is for each member state to decide how broadly or narrowly to define this clause.<sup>24</sup>

There are no obvious examples of a member state publicly announcing that is no longer bound by an existing EU arms embargo or, whether singly or in combination with some other member states, vetoing its extension. However, as we have already seen with Syria, EU arms embargoes are subject to interpretation (and re-interpretation).

For example, the EU arms embargo against China, in force since 1989, has certainly allowed for flexible interpretation by individual members states. The UK's interpretation has allowed for the export of goods of potential military application, which have gone through its standard licensing procedures for strategic exports on a case-by-case basis. But the UK nonetheless considers itself to be abiding by the EU arms embargo against China and no member state has challenged this view, at least in public.

Human rights groups and other non-state actors have on occasions been critical of how EU arms embargoes are implemented and have alleged violations of them. But there appear to be no examples of an official EU verdict that a member state has acted in violation of an arms embargo, or of any resultant punishment. Arms embargoes are implemented directly by member states. Monitoring and reporting on and enforcing implementation (including penalties for violations) has therefore been viewed primarily as a matter for individual member states.<sup>25</sup>

In a June 2012 study for the Groupe de Recherche et d'Information sur la Paix et la Sécurité, a Brussels-based think tank, the author argues that member states can interpret EU embargoes flexibly and that this undermines the foreign policy effectiveness of the EU:

Arms embargoes are used by the European Union as a means to change behaviour patterns of States or other entities. Recent cases of suspected violations of EU arms embargoes have highlighted the weaknesses of this form of sanctions. The lack of clarity in the phrasing of arms embargoes allows for flexibility in their interpretation by EU Member States and therefore flexibility in their implementation and application. This situation is also made possible due to the lack of oversight and monitoring by the EU of the follow-up of its decisions, although an authority has been created for this purpose. To overcome these shortcomings, the EU should clarify the ambiguities in the phrasing

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<sup>23</sup> Conference of the representatives of the governments of the member states to adopt the Treaty of Lisbon, Brussels, 23 July 2007

<sup>24</sup> 'UN envoy to discuss efforts to bring stability to Syria', *European Voice*, 7 March 2013

<sup>25</sup> [Verifying EU embargoes](#), UNIDIR, circa 2005, pp 5-6

of its arms embargoes, put in place a transparent mechanism to monitor their implementation and application and make a clear and responsible decision on the arms embargo on China.<sup>26</sup>

An example of the difficulties in interpretation was the case of the ship carrying weaponry from Russia to Syria in 2012, which stopped in a Cypriot port. The Cypriot authorities, having received assurances that the ship would only go to Turkey, allowed it to refuel and to leave the port. The Turkish navy later reported that the ship had docked at the Syrian port of Tartus.

Some within the EU thought that this was a flagrant breach of the arms embargo. Cyprus argued that it had acted within the law. In answer to a question in the European Parliament, the Commission said that it could not 'definitively' conclude that there had been a breach:

Regarding the matter of the refuelling of the MS Chariot ship, the Commission has examined the available facts and have assessed them in relation to the relevant provisions of Council Decision 2011/782/CFSP and Council Regulation 36/2012. On the basis of this assessment, the Commission considers that there are no definitive grounds to conclude that Cyprus has breached its obligations under the applicable EU legal instruments.<sup>27</sup>

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<sup>26</sup> Virginie Moreau, *European Union arms embargoes: symbolic measures?* Groupe de recherche et d'information sur la paix et la sécurité, June 2012

<sup>27</sup> [Answer given by High Representative/Vice-President Ashton on behalf of the Commission](#), European Parliament, 7 May 2012