



Thirty-Eighth Meeting
30 January 2014

EC-M-38/DEC.1
30 January 2014
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DECISION

DESTRUCTION OF SYRIAN CHEMICAL WEAPONS AT COMMERCIAL FACILITIES AND ARRANGEMENTS GOVERNING ON-SITE INSPECTIONS

The Executive Council,

Recalling that, in paragraph 24 of its decision EC-M-34/DEC.1 (dated 15 November 2013), which sets forth, inter alia, the detailed requirements for the destruction of Syrian chemical weapons, including the removal and destruction of Syrian chemical weapons outside the territory of the Syrian Arab Republic, the Executive Council (hereinafter “the Council”) requested the Director-General to explore options for destruction in commercial chemical disposal facilities of certain specified chemicals and reaction masses;

Recalling also that, in its decision EC-M-36/DEC.2 (dated 17 December 2013), on the plan for the destruction of Syrian chemical weapons outside the Syrian Arab Republic, the Council supported the Director-General’s work to identify commercial facilities for the destruction of certain specified chemicals and reaction masses, subject to the request from the Council at its Thirty-Fifth Meeting that the Director-General consult with the relevant State Party in order to obtain its agreement before any contract is concluded (EC-M-35/3, dated 29 November 2013);

Recalling further the provisions of paragraph 7 of the same decision;

Noting that the implementation of the agreements on verification to be concluded between the States Parties hosting the above-mentioned commercial facilities and the Organisation shall be consistent with the relevant provisions of the Chemical Weapons Convention (hereinafter “the Convention”) and Council decisions EC-M-33/DEC.1 (dated 27 September 2013), EC-M-34/DEC.1, EC-M-36/DEC.2, and any other subsequent relevant decisions of the policy-making organs of the OPCW; and

Acknowledging that the purpose of verification measures will be to confirm the identity and quantity of chemicals and related materials destroyed in an essentially irreversible way and to provide assurances that no chemical or related material is diverted;

Hereby:

1. **Decides** to authorise the Director-General to enter into contracts for the destruction of certain specified chemicals and reaction masses at qualified commercial facilities selected pursuant to paragraph 24 of decision EC-M-34/DEC.1, and subject to the request from the Council at its Thirty-Fifth Meeting that the Director-General consult



with the relevant State Party in order to obtain its agreement before any contract is concluded (EC-M-35/3), utilising funds from the OPCW special trust fund for the financial resources needed for the activities related to the complete destruction of the Syrian chemical weapons outside the territory of the Syrian Arab Republic (S/1141/2013, dated 19 November 2013);

2. **Decides also** to authorise the Director-General to accept in-kind contributions made by States Parties to directly sponsor commercial entities to implement the provisions of paragraph 7 of decision EC-M-36/DEC.2, while making sure that they meet the necessary technical requirements;
3. **Decides further** that the destruction operations referred to in paragraphs 1 and 2 above shall be verified by the Technical Secretariat, consistent with the provisions of the Convention and an agreement to be concluded between the Organisation and each State Party on whose territory the destruction activities are to occur, and that such agreement shall be based on the model contained in the Annex to this decision;
4. **Decides further** that the Director-General, based on the progress reports received from the commercial facilities, the OPCW inspection reports, and the information received from the Host State Party in accordance with subparagraph 12(d) of EC-M-34/DEC.1, shall include in his monthly reports to the Council as required by decisions EC-M-33/DEC.1 and EC-M-34/DEC.1 information regarding the activities relating to the destruction of chemicals and related material at commercial facilities;
5. **Approves** the model agreement specifying the arrangements governing on-site inspections at commercial facilities, as contained in the Annex to this decision; and
6. **Requests** the Director-General to submit each such proposed agreement to the Council for its consideration and approval not later than 15 days before the specified destruction operations are to begin.

Annex (English only):

Model Agreement Specifying the Arrangements Governing On-Site Inspections at Commercial Facilities Selected Pursuant to Paragraph 24 of Decision EC-M-34/DEC.1 or Sponsored by States Parties Pursuant to Paragraph 7 of Decision EC-M-36/DEC.2

Annex**MODEL AGREEMENT SPECIFYING THE ARRANGEMENTS GOVERNING
ON-SITE INSPECTIONS AT COMMERCIAL FACILITIES SELECTED
PURSUANT TO PARAGRAPH 24 OF DECISION EC-M-34/DEC.1 OR SPONSORED
BY STATES PARTIES PURSUANT TO PARAGRAPH 7 OF
DECISION EC-M-36/DEC.2**

WHEREAS the Executive Council (hereinafter “the Council”) of the Organisation for the Prohibition of Chemical Weapons (hereinafter “the OPCW”) in decision EC-M-34/DEC.1, dated 15 November 2013, set forth, inter alia, the detailed requirements for the destruction of Syrian chemical weapons, including removal and destruction of Syrian chemical weapons outside the territory of the Syrian Arab Republic, and requested the Director-General to explore options for destruction in commercial chemical disposal facilities of certain specified chemicals and reaction masses;

WHEREAS the Council supported the Director-General’s work to identify commercial facilities for the destruction of certain specified chemicals and reaction masses (paragraph 4 of EC-M-36/DEC.2, dated 17 December 2013);

WHEREAS, as a result of the solicitation process conducted by the Technical Secretariat (hereinafter “the Secretariat”) to identify such facilities, [name of the company] (hereinafter “the Company”) has been selected to be awarded a contract (hereinafter “the Contract”) for activities to be undertaken at [name and location of the facility] (hereinafter “the facility”) located on the territory of [name of the State Party] (hereinafter “the Host State”);

[**WHEREAS**, pursuant to paragraph 7 of its decision EC-M-36/DEC.2, dated 17 December 2013, on the plan for the destruction of Syrian chemical weapons outside the Syrian Arab Republic, [Name of the State Party] (hereinafter “the Host State”) has offered, through an in-kind contribution, to directly sponsor [name of the company] (hereinafter, “the Company”) to undertake the treatment and disposal of chemicals and effluents with a view to their destruction in a manner which is consistent with paragraph 12 of Part IV(A) of the Verification Annex at [name and location of the facility] (hereinafter “the facility”) located on its territory;]¹

WHEREAS, consistent with subparagraph 12(a) of decision EC-M-34/DEC.1, the Host State shall not be regarded as a possessor State Party;

WHEREAS, consistent with subparagraph 12(f) of decision EC-M-34/DEC.1, [name of the State Party] is to take all measures to implement the relevant provisions of EC-M-34/DEC.1 and to meet the requirements provided for under paragraph 10 of Article IV of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and of the Destruction (hereinafter “the Convention”) with respect to the safety of people and to protecting the environment;

¹

This provision is specific to the agreements to be concluded with States Parties directly sponsoring commercial facilities to undertake the destruction of relevant chemicals and effluents.

WHEREAS the activities to be undertaken by the Company on the territory of [name of the State Party] will be subject to verification by OPCW inspection teams;

WHEREAS the implementation of this Agreement shall be consistent with the relevant provisions of the Convention and relevant decisions by the OPCW policy-making organs;

The OPCW and the Government of [name of the State Party], both constituting the Parties to this Agreement, have agreed on the following arrangements for the conduct of verification at [name and geographic coordinates of the facility] and elsewhere on the territory of the [name of the State Party]:

Section 1 General Provisions

1. The purpose of this Agreement is to facilitate the implementation of the provisions of the Convention and relevant decisions by the OPCW policy-making organs regarding verification activities conducted at the facility and elsewhere on the territory of [name of the State Party], as specified in this Agreement and the Contract.
2. The responsibility for the conduct of destruction of the chemicals in commercial facilities rests with the relevant company in accordance with the Contract whereas the Host State facilitates the activities related to the verification carried out by the OPCW.
3. The Parties have agreed to apply for planning purposes the general factors contained in Attachment 1.
4. The relevant provisions for verification contained in Parts II, Section B of Part III and Part IV(A) of the Verification Annex of the Convention shall apply;
5. The Host State shall ensure that its representative(s) can at all times be reached by the inspection team leader and designated members of the inspection team either in person or by telephone. The Host State shall provide the names and means of contact for its designated representative(s) to the inspection team leader.
6. Upon request of the inspection team, the Host State shall provide or arrange for the provision of the amenities listed in detail in Attachment 2. Requests from the inspection team for the Host State to provide or arrange amenities shall be made in writing by an authorised member of the inspection team using the form contained in Attachment 2. Costs incurred by the Host State in relation to the provision of or arrangement for amenities shall be borne by the OPCW, unless agreed otherwise.
7. The Agreement and the Contract are complementary and should be read in combination. A copy of the Contract shall be provided to the Host State within seven days of its conclusion.
8. The language for communication between the inspection team and the Host State during the conduct of verification activities at the facility shall be English.

Section 2 Health and Safety

1. Health and safety matters will be handled in accordance with the Convention, the OPCW Health and Safety Policy and Regulations and applicable national, local and facility safety and environmental laws and regulations.
2. All applicable health and safety regulations relevant to the conduct of verification activities on the territory of the Host State, including inspections at the facility, are listed in Attachment 3 and shall be made available, in English, to the inspection team prior to the beginning of the inspection.
3. In the course of the pre-inspection briefing, the inspection team shall be briefed on all health and safety matters which, in the view of the representatives of the Host State and the facility, are relevant to the conduct of verification activities by the team.
4. During the course of its activities, the inspection team shall refrain from any action which by its nature could endanger the safety of the team, the facility, or personnel or could cause harm to the environment. Should the Host State refuse certain inspection activities on the grounds of health and safety, it may explain the circumstances and considerations involved, and shall provide alternative means for conducting the inspection activities.
5. In the case of emergency situations or accidents involving inspection team members while on the territory of the Host State, the inspection team shall comply with the directions of the Host State representatives and facility personnel. The Host State shall facilitate the provisions of medical and other assistance in a timely and effective manner with due regard to the rules of medical ethics if medical assistance is requested. Such assistance includes first aid, the arrangements for transport by ambulance and contacts with and evacuation to a mutually agreed hospital.

Section 3 Confidentiality

Matters related to confidentiality are governed by the Convention, including its Confidentiality Annex, the OPCW Policy on Confidentiality and the Contract.

Section 4 Media and Public Relations

Media and public relations are governed by the OPCW Media and Public Relations Policy and the Contract. The inspection Team Leader shall consult with the OPCW Director-General and with the representative of the Host State before the team has any contacts with the media or the public.

Section 5

Verification Activities

1. The Host State, in close consultation with the Company, shall allow and facilitate, consistent with national legislation and relevant provisions of the Convention and relevant decisions of the OPCW policy-making organs, the conduct by OPCW inspection teams of the verification measures specified in general terms below in paragraph 3 and in greater detail in the Contract. The Host State shall, inter alia:
 - (a) upon notification of the arrival of the inspection team, ensure its immediate entry into its territory and shall through an in-country escort or by other means do everything in its power to ensure the safe conduct of the inspection team and its equipment and supplies, from its point of entry to the facility and to a point of exit; and
 - (b) subject to the provisions of paragraph 29 of Part II of the Verification Annex, apply no restriction on the entry into its territory or on the use of any approved inspection equipment.
2. The purpose of the verification measures shall be:
 - (a) to confirm the identity and quantity of the chemicals and related material received and destroyed;
 - (b) to confirm that these chemicals and related material have in fact been destroyed; and
 - (c) to provide assurance that no chemical or related material is diverted.
3. Verification measures as reflected in the Contract may include:
 - (a) access of OPCW inspection teams to transport containers, storage or other relevant areas at the port of disembarkation, or areas of the facility specified in Attachment 4;
 - (b) installation and use of monitoring instruments, including photographic and video recording equipment;
 - (c) sampling and analysis;
 - (d) access to and review of relevant monitoring and process data, weighing data, and operational records.
4. The inspection team shall be given a pre-inspection briefing by representatives of the Host State and the Company in accordance with paragraph 37 of Part II of the Verification Annex.
5. Upon completion of an inspection, the inspection team shall meet with representatives of the Host State and personnel responsible for the facility to review the preliminary

findings of the inspection team and to clarify any ambiguities, in accordance with paragraph 60 of Part II of the Verification Annex.

6. The activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party or Host State and disturbance to the facility or area inspected. The inspection team shall avoid unnecessarily hampering or delaying the operation of a facility and avoid affecting its safety.

Section 6 **Support and Privileges and Immunities**

1. In accordance with the Convention, the OPCW and its inspection teams shall enjoy the applicable privileges and immunities, in particular those set forth under its Article VIII and Section B of Part II of the Verification Annex for the entire period between arrival on and departure from its territory, and thereafter with respect to acts previously performed in the exercise of their official functions.
2. The Host State shall provide the necessary support in accordance with Part II of the Verification Annex.

Section 7 **Costs**

Any cost arising out of the conduct of verification activities at the facility or at any other location where inspection team conducts verification (e.g. port facilities) in relation to the activities undertaken under the Contract shall be borne by the OPCW.

Section 8 **Attachments**

The Attachments form an integral part of this Agreement. Any reference to the Agreement includes the Attachments. However, in case of any inconsistency between this Agreement and any Attachment, the sections of the Agreement shall prevail.

Section 9 **Amendments and Modifications**

1. Amendments to the sections of this Agreement may be proposed by either Party and shall be agreed to and enter into force under the same conditions as provided for under Section 11.
2. Modifications to the Attachments of this Agreement may be agreed upon at any time between the representative of the OPCW and representative of the Host State, each being specifically authorized to do so. The Director-General shall inform the Council about any such modifications. Each Party to this Agreement may revoke its consent to a modification not later than four weeks after it had been agreed upon. After this time period the modification shall take effect.

Section 10
Settlement of Disputes

Any dispute between the Parties that may arise out of the application or interpretation of this Agreement shall be settled in accordance with Article XIV of the Convention.

Section 11
Entry into Force

The Agreement shall provisionally apply as from the date it is agreed between the representative of the OPCW and representative of the Host State, each being specifically authorized to do so, and shall enter into force upon approval by the Council and signature by the two Parties.

Section 12
Duration and Termination

This Agreement shall cease to be in force no later than 30 days after the completion of the activities by the Company, as certified by the Secretariat in accordance with the Contract.
Done at The Hague, the Netherlands on (date) in two copies in English, each copy being equally authentic.

For the Government of [the Host State]

For the OPCW

Attachment 1. General Factors for Planning Purposes

1. The frequency and duration of inspections will be decided based on the nature of chemicals and related material to be destroyed and will be reflected in the Contract.
2. Inspections will be notified a minimum of five days in advance.
3. The inspection team will consist of no more than five persons.
4. The planned period of inspection will be notified in advance.
5. Inspections at the facility will take place only on working days and during working hours.

Attachment 2. Amenities

At the request of the OPCW, the Host State will provide or arrange for the provision of the following amenities:

Attachment 3. Health and Safety Regulations

The following national and facility health and safety regulations are relevant to the conduct of verification activities under this Agreement:

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Attachment 4. Additional Areas of Access as Referenced in Section 5.3(a) of the Agreement

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