

EXPLANATORY MEMORANDUM

General explanation

On October 15, 2018, the Council of the European Union (hereinafter: EU) adopted a sanctions regime in the area of the proliferation and use of chemical weapons consisting of Decision (CFSP) 2018/1544 and Regulation (EU) 2018/1542. This specific EU sanctions regime allows the EU to take global action against designated individuals or entities involved in any way in facilitating, encouraging, using or preparing the use of chemical weapons. The aim is to stop the proliferation and use of chemical weapons, given the serious threat to international security. This aforementioned EU sanctions regime enables the EU to impose targeted sanctions, such as the freezing of bank accounts and the imposition of visa bans, on individuals or organizations directly responsible for the development and use of chemical weapons, as well as on persons and entities providing financial, technical or material support and on persons and entities assisting or encouraging them or associated with them.

The natural persons, legal persons and entities subject to the restrictive measures are listed in the Annex to Decision (CFSP) 2018/1544 and in Annex I to Regulation (EU) 2018/1542. This Sanctions Decree refers to the Annex to Decision (CFSP) 2018/1544 and Annex I to Regulation (EU) No. 2018/1542, based on which the regime of freezing funds or other assets applies. Given the nature and effectiveness of the foreign policy in the area of combating internationally organized crime and terrorism, but also in the interest of the international legal order, uniform application in Aruba is necessary. The speed at which, for example, the place of domicile of (legal) persons is changed and funds or other assets are channeled away or moved can be so high that not applying such sanctions would undermine the objective thereof.

Within the framework of the Common Foreign and Security Policy of the Kingdom and in order to protect the integrity and reputation of Aruba and its financial

sector, the Government has decided, using Articles 2 and 2a of the Sanctions State Ordinance 2006, to implement the thematic EU sanctions regime concerning restrictive measures against the proliferation and use of chemical weapons aimed at the freezing of funds or other assets. With this State Decree, Aruba supports the global ban on chemical weapons as provided for in the Chemical Weapons Convention.¹

The introduction of this State Decree does not entail any financial consequences for the Government. Finally, it should be noted that, since this State Decree is intended to implement a number of international decisions without delay, the Government has decided not to hear the Advisory Council. The possibility to do so is offered by the second paragraph of Article 2 of the Sanctions State Ordinance 2006.

In the following explanatory notes on the individual Articles, the Articles of this State Decree will be discussed in more detail.

Explanatory notes on the individual Articles

Article 1

This Article contains a number of necessary definitions. It cannot be ruled out that natural persons, legal persons, entities or bodies will be added to (*listing*) and removed from (*delisting*) Annex I to aforementioned Regulation (EU) 2018/1542 and the Annex to Decision (CFSP) 2018/1544. In order to avoid that an amendment is required each time, a dynamic reference is provided for, in particular, for the Annexes to Regulation (EU) 2018/1542 and Decision (CFSP) 2018/1544.

Article 2

Based on this Article, the funds and other assets of individuals or organizations listed in the various Annexes to the EU sanctions regime against the proliferation and use of chemical weapons must be frozen. The Government is of the opinion

¹ Aruba prepared its own implementing legislation and designated a National Authority; see the State Ordinance of March 26, 1999 (“AB” [*Official Bulletin*] 1999 No. 1) in implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction enacted in Paris on January 13, 1993 (“Trb.” [*Treaty Series*] 1993, 162) (the State Ordinance on the Implementation of the Chemical Weapons Convention) and the State Decree on the Implementation of the Chemical Weapons Convention (AB 2002 No. 26).

that this provides for a sufficient legal basis to implement the freezing measures, in any case. The Minister of Finance may grant an exemption from the freezing measures in order to pay for the basic necessities or to incur extraordinary expenses.

Article 3

The first paragraph entrusts the Central Bank of Aruba (the Bank) with the timely and digital publication of the Annexes via the website www.cbaruba.org. This will ensure that the intended freezing measures can be implemented efficiently and effectively. The EU sanctions (consolidated version) can also be found in the Official Journal of the European Union and are easily accessible via the website <http://eur-lex.europa.eu>.

The fact that the Annexes will be subject to constant adjustment must also be taken into account. In addition to financial service providers, the Designated Non-Financial Businesses and Professions (DNFBPs), including lawyers, accountants, tax consultants, real estate brokers, civil-law notaries, car dealers and jewelers, should also be familiar with these adjustments at all times.

Article 4

This Article requires everyone not to provide services and to refrain from acts that result or can reasonably result in a natural person, legal person or other entity listed in Annex I to the EU Regulation and the Annex to the EU Decision, respectively, having access in any way to the funds or other assets frozen pursuant to Article 2. This applies not only to services within the meaning of Article 1 of this State Decree, but also to any act that has the effect of placing a fund or an asset under the control of a designated person. For the record, it should be noted that the violation of this prohibition has been made punishable under Article 17 of the Sanctions Ordinance 2006.

Article 5

This Article requires service providers to take immediate action, insofar as they have funds or assets of a natural person, legal person or other entity listed in Annex I to Regulation (EU) 2018/1542 and the Annex to Decision (CFSP) 2018/1544 in their custody, as a result of which those funds and assets cannot be transferred, converted, moved or made available to a natural person, legal person or other entity listed in these Annexes to the EU sanctions in violation of the freezing order.

Article 6

Finally, Article 6 contains the provision on the entry into force. This State Decree enters into force as soon as possible, namely as of the day following the date of issue of the Official Bulletin of Aruba, given that international sanctions are being implemented.

The Minister of General Affairs, Integrity,
Government Care, Innovation and Energy,
[was signed]

The Minister of Finance, Economic Affairs
and Culture,
[was signed]

The Minister of Justice, Security
and Integrity,
[was signed]