



2023/2287

24.10.2023

COUNCIL DECISION (CFSP) 2023/2287
of 23 October 2023
concerning restrictive measures in view of the situation in Niger

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 28 July 2023, the United Nations Security Council (the 'UNSC') issued a statement in which it strongly condemned the efforts to change unconstitutionally the legitimate government of the Republic of Niger ('Niger') on 26 July 2023. The members of the UNSC called for the immediate and unconditional release of the democratically elected President of the Republic, Mohamed Bazoum, and underscored the urgent need for the restoration of constitutional order in Niger. The members of the UNSC also expressed their support for regional and continental mediation efforts.
- (2) On 28 July 2023, the High Representative of the Union for Foreign Affairs and Security Policy (the 'High Representative') issued a statement on behalf of the Union on the situation in Niger condemning the coup d'état, which constitutes a serious attack on stability and democracy in Niger. The High Representative stated that any disruption of the constitutional order will have consequences for cooperation between the Union and Niger and expressed support to the efforts of the Economic Community of West African States ('Ecowas') to enable an immediate return to constitutional order in Niger.
- (3) On 29 July 2023, the High Representative announced the suspension of the Union's budget support to Niger and of all cooperation in the area of defence and security between the Union and Niger.
- (4) On 30 July 2023, the Authority of Heads of State and Government of Ecowas issued a statement which condemned the attempted coup and affirmed that President Bazoum remains the legitimate elected President of Niger. Moreover, the heads of state of Ecowas decided on a number of measures, including closing land and air borders between Ecowas Member States and Niger, imposing a no-fly zone on all commercial flights to and from Niger, suspending all commercial and financial transactions between Ecowas Member States and Niger, freezing the assets of the Republic of Niger held in the central banks of Ecowas Member States as well as any state assets of Niger held in commercial banks located in Ecowas Member States, suspending financial assistance to Niger and financial transactions of regional financial institutions with Niger, and imposing travel ban and asset freeze measures on the military officials involved in the coup.
- (5) On 10 August 2023, the Authority of Heads of State and Government of Ecowas issued a further statement, which reiterated the strong condemnation of the attempted coup and the continued detention of President Bazoum and ordered the deployment of the Ecowas Standby Force to restore constitutional order in Niger.
- (6) On 12 August 2023, the High Representative issued a statement on behalf of the Union on the situation in Niger, reiterating the call for a return to constitutional order, expressing support to Ecowas efforts, including through the establishment of a new regime of individual restrictive measures, and calling for the release of President Bazoum and his family.
- (7) On 14 August 2023, the Peace and Security Council of the African Union (AU) issued a statement expressing deep concern over the alarming resurgence of military coups d'état which undermine democracy, peace, security and stability in the African continent, reiterating the AU's zero tolerance for unconstitutional changes of government, condemning in the strongest terms possible the military coup d'état in Niger, demanding the immediate and unconditional release of President Bazoum, and commending the efforts of Ecowas.

- (8) In view of the gravity of the situation, which constitutes a threat to international peace and security in the region, it is appropriate to establish a dedicated framework of restrictive measures against natural or legal persons, entities or bodies responsible for actions that threaten the peace, stability and security of Niger, undermine the constitutional order, democracy, and the rule of law, in particular those who are responsible for the arbitrary detention of democratically elected authorities of Niger, or that constitute serious human rights violations or abuses or violations of applicable international humanitarian law in Niger, and against natural or legal persons, entities or bodies associated with them.
- (9) Further action by the Union is needed in order to implement certain measures,

HAS ADOPTED THIS DECISION:

Article 1

1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of natural persons:
- (a) responsible for actions or policies that threaten the peace, stability or security of Niger, or who have engaged directly or indirectly in, provided support to, or benefited from such actions or policies;
 - (b) undermining the constitutional order in Niger;
 - (c) whose actions, policies or activities undermine democracy or the rule of law in Niger, including those who are responsible for the arbitrary detention of democratically elected authorities of Niger;
 - (d) involved in planning, directing or committing acts in Niger that constitute serious human rights violations or abuses or violations of international humanitarian law, as applicable;
 - (e) associated with the natural persons designated under points (a) to (d), or with the natural or legal persons designated under Article 2(1);
- as listed in the Annex.
2. Paragraph 1 shall not oblige a Member State to refuse its own nationals entry into its territory.
3. Paragraph 1 shall be without prejudice to the cases where a Member State is bound by an obligation of international law, namely:
- (a) as a host country of an international intergovernmental organisation;
 - (b) as a host country to an international conference convened by, or under the auspices of, the United Nations;
 - (c) under a multilateral agreement conferring privileges and immunities; or
 - (d) under the 1929 Treaty of Conciliation (Lateran pact) concluded by the Holy See (State of the Vatican City) and Italy.
4. Paragraph 3 shall also apply in cases where a Member State is host country of the Organisation for Security and Cooperation in Europe (OSCE).
5. The Council shall be duly informed in all cases where a Member State grants an exemption pursuant to paragraph 3 or 4.
6. Member States may grant exemptions from the measures imposed under paragraph 1 where travel is justified on grounds of urgent humanitarian need or on grounds of attending intergovernmental meetings or meetings promoted or hosted by the Union, or hosted by a Member State holding the Chairmanship in office of the OSCE, where a political dialogue is conducted that directly promotes the policy objectives of the restrictive measures, including support for stability and the restoring of the constitutional order in Niger.

7. Member States may also grant exemptions from the measures imposed under paragraph 1 where entry or transit of a person is necessary for the fulfilment of a judicial process.

8. A Member State wishing to grant an exemption pursuant to paragraph 6 or 7 shall notify the Council in writing. An exemption shall be deemed to be granted unless one or more Member States raise an objection in writing within two working days of receiving notification of the proposed exemption. Should one or more Member States raise an objection, the Council, acting by qualified majority, may decide to grant the proposed exemption.

9. Where, pursuant to paragraphs 3, 4, 6, 7 or 8, a Member State authorises the entry into, or transit through, its territory of a natural person listed in the Annex, that authorisation shall be limited to the purpose for which it is given to the person concerned.

Article 2

1. All funds and economic resources belonging to, owned, held or controlled by natural or legal persons, entities or bodies:

- (a) responsible for actions or policies that threaten the peace, stability or security of Niger, or who have engaged directly or indirectly in, provided support to, or benefited from such actions or policies;
 - (b) undermining the constitutional order in Niger;
 - (c) whose actions, policies or activities undermine democracy or the rule of law in Niger, including those who are responsible for the arbitrary detention of democratically elected authorities of Niger;
 - (d) involved in planning, directing or committing acts in Niger that constitute serious human rights violations or abuses or violations of international humanitarian law, as applicable;
 - (e) associated with the natural or legal persons, entities or bodies designated under points (a) to (d) above;
- as listed in the Annex, shall be frozen.

2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in the Annex.

3. By way of derogation from paragraphs 1 or 2, competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources concerned are:

- (a) necessary to satisfy the basic needs of the persons listed in the Annex and their dependent family members, including payments for foodstuffs, rent or mortgages, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- (b) intended exclusively for the payment of reasonable professional fees and the reimbursement of incurred expenses associated with the provision of legal services;
- (c) intended exclusively for the payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources;
- (d) necessary for extraordinary expenses, provided that the competent authority concerned has notified the competent authorities of the other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted at least two weeks prior to the authorisation; or
- (e) to be paid into or from an account of a diplomatic mission or consular post or an international organisation enjoying immunities in accordance with international law, insofar as such payments are intended to be used for official purposes of the diplomatic mission or consular post or international organisation.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this paragraph within two weeks of such authorisation.

4. By way of derogation from paragraph 1, competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, provided that the following conditions are met:

- (a) the funds or economic resources are the subject of an arbitral decision rendered prior to the date on which the natural or legal person, entity or body referred to in paragraph 1 was listed in the Annex, or the subject of a judicial or administrative decision rendered in the Union, or of a judicial decision enforceable in the Member State concerned, prior to 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) recognition of 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 authorisation granted under this paragraph within two weeks of such authorisation.

5. Paragraph 1 shall not prevent a natural or legal person, entity or body listed in the Annex from making a payment due under a contract or agreement entered into, or an obligation that arose, prior to the date on which such natural or legal person, entity or body was listed therein, provided that the Member State concerned has determined that the payment is not, directly or indirectly, received by a natural or legal person, entity or body referred to in paragraph 1.

6. Paragraph 2 shall not apply to the addition to frozen accounts of:

- (a) interest or other earnings on those accounts, provided that such interest or other earnings remain subject to the measures provided for in paragraph 1;
- (b) payments due under contracts, agreements or obligations that were concluded or that arose prior to the date on which those accounts became subject to the measures provided for in paragraphs 1 and 2, provided that such payments remain subject to the measures provided for in paragraph 1; or
- (c) payments due under judicial, administrative or arbitral decisions rendered in the Union or enforceable in the Member State concerned, provided that such payments remain subject to the measures provided for in paragraph 1.

7. Paragraphs 1 and 2 shall not apply to the provision, processing or payment of funds, other financial assets or economic resources or to the provision of goods and services, which are necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs where such assistance and other activities are carried out by:

- (a) the United Nations, including its programmes, funds and other entities and bodies, as well as its specialised agencies and related organisations;
- (b) international organisations;
- (c) humanitarian organisations having observer status with the United Nations General Assembly and members of those humanitarian organisations;
- (d) bilaterally or multilaterally funded non-governmental organisations participating in the United Nations Humanitarian Response Plans, Refugee Response Plans, other United Nations appeals or humanitarian clusters coordinated by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA);
- (e) organisations and agencies to which the Union has granted the Humanitarian Partnership Certificate or which are certified or recognised by a Member State in accordance with national procedures;

- (f) Member States' specialised agencies; or
- (g) the employees, grantees, subsidiaries, or implementing partners of the entities referred to in points (a) to (f) while and to the extent that they are acting in those capacities.

8. In cases not covered by paragraph 7 and by way of derogation from paragraph 1 or 2 of this Article, competent authorities of a Member State may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the provision of such funds or economic resources is necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs.

9. In the absence of a negative decision, a request for information or a notification for additional time from the competent authority concerned within five working days of the date of receipt of a request for an authorisation under paragraph 8, that authorisation shall be considered granted.

The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under this Article within four weeks of such authorisation.

Article 3

1. The Council, acting by unanimity upon a proposal from a Member State or from the High Representative of the Union for Foreign Affairs and Security Policy (the 'High Representative'), shall establish and amend the list in the Annex.
2. The Council shall communicate the decision referred to in paragraph 1, including the grounds for the listing, to the natural or legal person, entity or body concerned, either directly, if the address is known, or through the publication of a notice, providing that natural or legal person, entity or body 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, entity or body concerned accordingly.

Article 4

1. The Annex shall include the grounds for listing the natural and legal persons, entities and bodies referred to in Articles 1 and 2.
2. The Annex shall contain, where available, the information necessary to identify the natural or legal persons, entities or bodies concerned. With regard to natural persons, such information may include: names and aliases; date and place of birth; nationality; passport and identity card numbers; gender; address, if known; and function or profession. With regard to legal persons, entities or bodies, such information may include: names; place and date of registration; registration number; and place of business.

Article 5

1. The Council and the High Representative may process personal data in order to carry out their tasks under this Decision, in particular:
 - (a) as regards the Council, for preparing and making amendments to the Annex;
 - (b) as regards the High Representative, for preparing amendments to the Annex.

2. The Council and the High Representative shall process, where applicable, relevant data relating to criminal offences committed by listed natural persons, and to criminal convictions or security measures concerning such persons, only to the extent that such processing is necessary for the preparation of the Annex.

3. For the purposes of this Decision, the Council and the High Representative are designated as ‘controller’ within the meaning of point (8) of Article 3 of Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽¹⁾, in order to ensure that the natural persons concerned can exercise their rights under that Regulation.

Article 6

No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Decision, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, in particular a claim for extension or payment of a bond, guarantee or indemnity, in particular a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:

- (a) designated natural or legal persons, entities or bodies listed in the Annex;
- (b) any natural or legal person, entity or body acting through or on behalf of one of the natural or legal persons, entities or bodies referred to in point (a).

Article 7

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

Article 8

In order to maximise the impact of the measures set out in this Decision, the Union shall encourage third States to adopt restrictive measures similar to those provided for in this Decision.

Article 9

This Decision shall apply until 24 October 2024.

This Decision shall be kept under constant review. It shall be renewed, or amended as appropriate, if the Council deems that its objectives have not been met.

The exceptions referred to in Article 2(7), (8) and (9) as regards Article 2(1) and (2) shall be reviewed at regular intervals and at least every 12 months or, following a fundamental change in circumstances, at the urgent request of any Member State, the High Representative, or the Commission.

Article 10

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

⁽¹⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

Done at Luxembourg, 23 October 2023.

For the Council
The President
J. BORRELL FONTELLES

*ANNEX***List of natural and legal persons, entities and bodies referred to in Articles 1 and 2**[...]
