

DECISIONS

COUNCIL DECISION (CFSP) 2023/726

of 31 March 2023

amending certain Council Decisions concerning restrictive measures in order to insert provisions on a humanitarian exemption

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 9 December 2022, the United Nations Security Council (UNSC) adopted United Nations Security Council Resolution (UNSCR) 2664 (2022), recalling its previous resolutions imposing sanctions measures in response to threats to international peace and security, and emphasising that measures taken by United Nations Member States to implement sanctions comply with their obligations under international law and are not intended to have adverse humanitarian consequences for civilian populations or adverse consequences for humanitarian activities or those carrying them out.
- (2) Expressing its readiness to review, adjust and terminate, when appropriate, its sanctions regimes taking into account the evolution of situations on the ground and the need to minimise unintended adverse humanitarian effects, the UNSC decided, in paragraph 1 of UNSCR 2664 (2022) that the provision, processing or payment of funds, other financial assets or economic resources or the provision of goods and services necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs are permitted and are not a violation of the asset freezes imposed by the UNSC or its Sanctions Committees. For the purposes of this Decision, paragraph 1 of UNSCR 2664 (2022) is termed the 'humanitarian exemption'. The humanitarian exemption is applicable to certain actors as set out in that Resolution.
- (3) UNSCR 2664 (2022) requires that the humanitarian exemption to the asset freeze measures apply to the 1267/1989/2253 ISIL (Da'esh) and Al-Qaida sanctions regime for a period of two years from the date of the adoption of UNSCR 2664 (2022), and states that the UNSC intends to decide on an extension of the application of UNSCR 2664 (2022) prior to the date on which the application of that exemption would otherwise expire.
- (4) UNSCR 2664 (2022) emphasises that where the humanitarian exemption conflicts with previous resolutions, it is to supersede such previous resolutions to the extent of such conflict. However, UNSCR 2664 (2022) clarifies that paragraph 1 of UNSCR 2615 (2021) remains in effect.
- (5) UNSCR 2664 (2022) requests that providers relying on the humanitarian exemption make reasonable efforts to minimise the accrual of any benefits prohibited by sanctions, whether as a result of direct or indirect provision or diversion to designated individuals or entities, including by strengthening the providers' risk management and due diligence strategies and processes.
- (6) The Council considers that the humanitarian exemption to the asset freeze measures pursuant to UNSCR 2664 (2022) should also apply in cases where the Union decides to adopt complementary measures concerning the freezing of funds and economic resources in addition to those decided upon by the UNSC or its Sanctions Committees.

- (7) It is therefore necessary to amend accordingly Council Decisions 2010/413/CFSP ⁽¹⁾, 2010/788/CFSP ⁽²⁾, 2014/450/CFSP ⁽³⁾, (CFSP) 2015/740 ⁽⁴⁾, (CFSP) 2015/1333 ⁽⁵⁾, (CFSP) 2016/849 ⁽⁶⁾, (CFSP) 2016/1693 ⁽⁷⁾ and (CFSP) 2017/1775 ⁽⁸⁾.
- (8) Further action by the Union is necessary to implement certain measures in this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Decision (CFSP) 2016/849 is amended as follows:

- (1) in Article 27, paragraph 7 is replaced by the following:

- ‘7. Without prejudice to paragraph 8, the prohibition in paragraphs 1(a) and (2) shall not apply:
- (a) where the Sanctions Committee has determined, on a case-by-case basis, that an exemption is necessary to facilitate the work of international and non-governmental organisations carrying out assistance and relief activities in the DPRK for the benefit of the civilian population;
- (b) with respect to financial transactions with the Foreign Trade Bank or the Korean National Insurance Company (KNIC) if such transactions are solely for the operation of diplomatic missions in the DPRK or humanitarian activities that are undertaken by, or in coordination with, the United Nations.’;

- (2) in Article 27, the following paragraph is added:

- ‘8. 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,

⁽¹⁾ Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP (OJ L 195, 27.7.2010, p. 39).

⁽²⁾ Council Decision 2010/788/CFSP of 20 December 2010 concerning restrictive measures in view of the situation in the Democratic Republic of the Congo (OJ L 336, 21.12.2010, p. 30).

⁽³⁾ Council Decision 2014/450/CFSP of 10 July 2014 concerning restrictive measures in view of the situation in Sudan and repealing Decision 2011/423/CFSP (OJ L 203, 11.7.2014, p. 106).

⁽⁴⁾ Council Decision (CFSP) 2015/740 of 7 May 2015 concerning restrictive measures in view of the situation in South Sudan and repealing Decision 2014/449/CFSP (OJ L 117, 8.5.2015, p. 52).

⁽⁵⁾ Council Decision (CFSP) 2015/1333 of 31 July 2015 concerning restrictive measures in view of the situation in Libya, and repealing Decision 2011/137/CFSP (OJ L 206, 1.8.2015, p. 34).

⁽⁶⁾ Council Decision (CFSP) 2016/849 of 27 May 2016 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2013/183/CFSP (OJ L 141, 28.5.2016, p. 79).

⁽⁷⁾ Council Decision (CFSP) 2016/1693 of 20 September 2016 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them and repealing Common Position 2002/402/CFSP (OJ L 255, 21.9.2016, p. 25).

⁽⁸⁾ Council Decision (CFSP) 2017/1775 of 28 September 2017 concerning restrictive measures in view of the situation in Mali (OJ L 251, 29.9.2017, p. 23).

- (f) appropriate other actors as determined by the Sanctions Committee as regards paragraph 1(a), and paragraph 2 in so far as it refers to persons and entities covered by paragraph 1(a), and by the Council as regards paragraphs 1(b), 1(c) and 1(d), and paragraph 2 in so far as it refers to persons and entities covered by paragraphs 1(b), 1(c) and 1(d).';

- (3) Article 28 is replaced by the following:

'Article 28

Without prejudice to Article 27(8), Article 27(1)(d), and Article 27(2) in so far as it refers to the persons and entities covered by Article 27(1)(d), shall not apply with respect to funds, other financial assets or economic resources that are required to carry out the activities of the DPRK's missions to the UN and its specialised agencies and related organisations or other diplomatic and consular missions of the DPRK, or to any funds, other financial assets or economic resources that the Sanctions Committee determines in advance on a case-by-case basis are required for the delivery of humanitarian assistance, denuclearisation or any other purpose consistent with the objectives of UNSCR 2270 (2016).';

- (4) in Article 36, the following paragraph is added:

'3. The exemption referred to in Article 27(8) as regards Article 27(1), points (b), (c) and (d), and Article 27(2) insofar as it refers to persons and entities covered by points (b), (c) and (d) of Article 27(1), shall be reviewed at regular intervals and at least every 12 months.'

Article 2

Decision 2010/788/CFSP is amended as follows:

- (1) in Article 5, the following paragraph is added:

'10. 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Sanctions Committee with regard to persons and entities referred to in Article 3(1), and by the Council with regard to persons and entities referred to in Article 3(2).';

- (2) in Article 5, paragraph 7 is replaced by the following:

'7. Without prejudice to Article 5(10), with regard to persons and entities listed in Annex II, exemptions may also be made for funds and economic resources which are necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies and food, or the transfer of humanitarian workers and related assistance or for evacuations from DRC.'

Article 3

Decision 2010/413/CFSP is amended as follows:

(1) in Article 20, the following paragraph is added:

'15. 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Committee as regards paragraphs 1(a) and 1(d), and paragraph 2 in so far as it refers to persons and entities covered by paragraphs 1(a) and 1(d), and by the Council as regards paragraphs 1(b), 1(c) and 1(e), and paragraph 2 in so far as it refers to persons and entities covered by paragraphs 1(b), 1(c) and 1(e).';

(2) in Article 26, the following paragraph is added:

'6. The exemption referred to in Article 20(15) as regards Article 20(1), points (b), (c) and (e), and Article 20(2) insofar as it refers to persons and entities covered by points (b), (c) and (e) of Article 20(1), shall be reviewed at regular intervals and at least every 12 months.'

Article 4

Decision (CFSP) 2016/1693 is amended as follows:

(1) in Article 3, the following paragraph is added:

'10. Paragraphs 1, 2, 3 and 4 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Committee as regards paragraphs 1 and 2, and by the Council as regards paragraphs 3 and 4.';

(2) Article 6 is replaced by the following:

Article 6

1. This Decision shall be reviewed, amended or repealed as appropriate, in particular in the light of relevant decisions by the UNSC or by the Committee.
2. Article 3(10) shall apply until 9 December 2024, unless the UNSC decides to extend the application of UNSCR 2664 (2022) beyond that date.
3. The measures referred to in Article 2(2) and Article 3(3) and (4) shall be reviewed at regular intervals and at least every 12 months.
4. Where observations are submitted by a person or entity designated in accordance with Article 2(2) or Article 3(3) and (4), the Council shall review the designation in light of those observations and the measures shall cease to apply if the Council determines, in accordance with the procedure referred to in Article 5, that the conditions for their application are no longer met.
5. If a further request is made, based on substantial new evidence, to remove a person or entity from the Annex, the Council shall conduct a further review in accordance with paragraph 3.
6. The measures referred to in Article 2(2) and Article 3(3) and (4) shall apply until 31 October 2023.

Article 5

Decision (CFSP) 2015/1333 is amended as follows:

(1) in Article 9, the following paragraph is added:

- ‘14. Paragraphs 1, 2 and 4 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
 - (f) appropriate other actors as determined by the Committee as regards paragraph 1, and paragraph 4 in so far as it refers to the persons and entities covered by paragraph 1, and by the Council as regards paragraph 2, and paragraph 4 in so far as it refers to the persons and entities covered by paragraph 2.’;

(2) in Article 9, paragraph 8 is replaced by the following:

- ‘8. Without prejudice to Article 9(14), with regard to persons and entities listed in Annex IV, exemptions may also be made for funds and economic resources which are necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, the provision of electricity, humanitarian workers and related assistance, or evacuating foreign nationals from Libya.’;

(3) in Article 9, paragraph 9 is replaced by the following:

'9. Without prejudice to Article 9(14), with regard to entities referred to in paragraph 3, exemptions may also be made for funds, financial assets and economic resources provided that:

- (a) the Member State concerned has provided notice to the Committee of its intent to authorise access to funds, other financial assets, or economic resources, for one or more of the following purposes and in the absence of a negative decision by the Committee within five working days of such a notification:
 - (i) humanitarian needs;
 - (ii) fuel, electricity and water for strictly civilian uses;
 - (iii) resuming Libyan production and sale of hydrocarbons;
 - (iv) establishing, operating, or strengthening institutions of civilian government and civilian public infrastructure; or,
 - (v) facilitating the resumption of banking sector operations, including to support or facilitate international trade with Libya;
- (b) the Member State concerned has notified the Committee that those funds, other financial assets or economic resources are not to be made available to or for the benefit of the persons referred to in paragraphs 1, 2 and 3;
- (c) the Member State concerned has consulted in advance the Libyan authorities about the use of such funds, other financial assets, or economic resources; and
- (d) the Member State concerned has shared with the Libyan authorities the notification submitted pursuant to this paragraph and the Libyan authorities have not objected within five working days to the release of such funds, other financial assets, or economic resources.'

Article 6

Decision (CFSP) 2017/1775 is amended as follows:

(1) in Article 2, the following paragraph is added:

'8. 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Sanctions Committee.'

(2) in Article 2a, the following paragraph is added:

'8. 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
 - (f) appropriate other actors as determined by the Council.;
- (3) in Article 2a, paragraph 7 is replaced by the following:

‘7. Without prejudice to paragraph 8, by way of derogation from paragraphs 1 and 2, the 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 provision of such funds or economic resources is necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies, food, or the transfer of humanitarian workers and related assistance or for evacuations from Mali. The Member State concerned shall inform the other Member States and the Commission of any authorisations granted under this Article within two weeks of the authorisation.’

Article 7

Decision (CFSP) 2015/740 is amended as follows:

- (1) in Article 7, the following paragraph is added:

‘7. Article 6 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Committee.’;

- (2) in Article 8, the following paragraph is added:

‘6. Article 6 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Council.’

Article 8

In Article 5 of Decision 2014/450/CFSP, the following paragraph is added:

‘5. 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) the employees, grantees, subsidiaries, or implementing partners of the entities mentioned in points (a) to (d) while and to the extent that they are acting in those capacities; or by,
- (f) appropriate other actors as determined by the Sanctions Committee.’

Article 9

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

Done at Brussels, 31 March 2023.

For the Council
The President
J. ROSWALL
