

DECISIONS

COUNCIL DECISION (CFSP) 2020/1999

of 7 December 2020

concerning restrictive measures against serious human rights violations and abuses

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) The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights and is committed to protect those values, which play a key role in ensuring peace and sustainable security, as cornerstones of its external action.
- (2) Human rights are universal, indivisible, interdependent and interrelated. States have primary responsibility to respect, protect and fulfil human rights, including ensuring compliance with international human rights law. Human rights violations and abuses worldwide remain of great concern, including the significant involvement of non-State actors in human rights abuses globally as well as the severity of many such acts. Such acts violate the principles and threaten the objectives of the Union's external action as set out in Article 21(1) and (2) of the Treaty on European Union (TEU).
- (3) On 9 December 2019, the Council welcomed the launch by the High Representative of the Union for Foreign Affairs and Security Policy (the 'High Representative') of preparatory work to establish a Union regime of general scope for restrictive measures against serious human rights violations and abuses.
- (4) This Decision establishes a framework for targeted restrictive measures to address serious human rights violations and abuses worldwide. In that regard, the Council emphasises the importance of international human rights law and of the interaction between international human rights law and international humanitarian law when considering the application of targeted restrictive measures under this Decision. This Decision does not affect the application of other existing or future Council decisions under the common foreign and security policy establishing restrictive measures in view of the situation in certain third countries, and which address human rights violations or abuses.
- (5) Such targeted restrictive measures will pursue common foreign and security policy objectives as set out in Article 21 TEU, and they will contribute to Union action to consolidate and support democracy, the rule of law, human rights and the principles of international law in accordance with point (b) of Article 21(2) TEU. The application of such targeted restrictive measures will be consistent with the Union's overall strategy in this area and enhance the Union's capacity to promote respect for human rights.
- (6) Further action by the Union is needed in order to implement certain measures,

HAS ADOPTED THIS DECISION:

Article 1

1. This Decision establishes a framework for targeted restrictive measures to address serious human rights violations and abuses worldwide. It applies to:

- (a) genocide;

- (b) crimes against humanity;
- (c) the following serious human rights violations or abuses:
 - (i) torture and other cruel, inhuman or degrading treatment or punishment,
 - (ii) slavery,
 - (iii) extrajudicial, summary or arbitrary executions and killings,
 - (iv) enforced disappearance of persons,
 - (v) arbitrary arrests or detentions;
- (d) other human rights violations or abuses, including but not limited to the following, in so far as those violations or abuses are widespread, systematic or are otherwise of serious concern as regards the objectives of the common foreign and security policy set out in Article 21 TEU:
 - (i) trafficking in human beings, as well as abuses of human rights by migrant smugglers as referred to in this Article,
 - (ii) sexual and gender-based violence,
 - (iii) violations or abuses of freedom of peaceful assembly and of association,
 - (iv) violations or abuses of freedom of opinion and expression,
 - (v) violations or abuses of freedom of religion or belief.

2. For the purpose of applying paragraph 1, regard should be had to customary international law and widely accepted instruments of international law, such as:

- (a) the International Covenant on Civil and Political Rights;
- (b) the International Covenant on Economic, Social and Cultural Rights;
- (c) the Convention on the Prevention and Punishment of the Crime of Genocide;
- (d) the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- (e) the International Convention on the Elimination of All Forms of Racial Discrimination;
- (f) the Convention on the Elimination of All Forms of Discrimination against Women;
- (g) the Convention on the Rights of the Child;
- (h) the International Convention for the Protection of All Persons from Enforced Disappearances;
- (i) the Convention on the Rights of Persons with Disabilities;
- (j) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
- (k) the Rome Statute of the International Criminal Court;
- (l) the European Convention for the Protection of Human Rights and Fundamental Freedoms.

3. For the purposes of this Decision, natural or legal persons, entities or bodies may include:

- (a) State actors;
- (b) other actors exercising effective control or authority over a territory;
- (c) other non-State actors.

4. When establishing or amending the list set out in the Annex with regard to other non-State actors under point (c) of paragraph 3, the Council shall take into account in particular the following specific elements:

- (a) the objectives of the common foreign and security policy as set out in Article 21 TEU; and
- (b) the gravity and/or impact of the abuses.

Article 2

1. Member States shall take the measures necessary to prevent the entry into, or transit through, their territories of:
 - (a) natural persons who are responsible for acts set out in Article 1(1);
 - (b) natural persons who provide financial, technical, or material support for, or are otherwise involved in, acts set out in Article 1(1), including by planning, directing, ordering, assisting, preparing, facilitating, or encouraging such acts;
 - (c) natural persons who are associated with the persons covered by points (a) and (b);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 under international law, namely:
 - (a) as a host country of an international intergovernmental organisation;
 - (b) as a host country of an international conference convened by, or under the auspices of, the United Nations;
 - (c) under a multilateral agreement conferring privileges and immunities; or
 - (d) pursuant to the 1929 Treaty of Conciliation (Lateran Pact) concluded by the Holy See (Vatican City State) and Italy.
4. Paragraph 3 shall be considered to apply also in cases where a Member State is host country of the Organization 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 the 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 restrictive measures, including the ending of serious human rights violations and abuses and the furthering of human rights.
7. Member States may also grant exemptions from the measures imposed under paragraph 1 where entry or transit is necessary for the fulfilment of a judicial process.
8. A Member State wishing to grant exemptions referred to in paragraph 6 or 7 shall notify the Council in writing. The exemption shall be deemed to be granted unless one or more of the Council members raises an objection in writing within two working days of receiving notification of the proposed exemption. Should one or more of the Council members raise an objection, the Council, acting by a qualified majority, may decide to grant the proposed exemption.
9. Where, pursuant to paragraph 3, 4, 6, 7 or 8, a Member State authorises the entry into, or transit through its territory of persons listed in the Annex, the authorisation shall be strictly limited to the purpose for which it is given and to the persons directly concerned thereby.

Article 3

1. All funds and economic resources belonging to, owned, held or controlled by:
 - (a) natural or legal persons, entities or bodies, who are responsible for acts set out in Article 1(1);
 - (b) natural or legal persons, entities or bodies, who provide financial, technical, or material support for or are otherwise involved in acts set out in Article 1(1), including by planning, directing, ordering, assisting, preparing, facilitating, or encouraging such acts;

- (c) natural or legal persons, entities or bodies, who are associated with the natural or legal persons, entities or bodies covered by points (a) and (b);

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 the natural or legal persons, entities or bodies listed in the Annex.

3. 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 funds or economic resources concerned are:

- (a) necessary to satisfy the basic needs of the natural or legal persons, entities or bodies listed in the Annex and dependent family members of such natural persons, including payments for food, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- (b) intended exclusively for the payment of reasonable professional fees or 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 relevant competent authority 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 or consular mission 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 or consular mission or international organisation.

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

4. By way of derogation from paragraph 1, the 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 of a judicial or administrative decision rendered in the Union, or 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.

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;

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

Article 4

1. By way of derogation from Article 3(1) and (2), the competent authorities in 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.
2. The Member State concerned shall inform the other Member States and the Commission of any authorisations granted under this Article within four weeks of the authorisation.

Article 5

1. The Council, acting by unanimity upon a proposal from a Member State or from the High Representative, shall establish and amend the list set out in the Annex.
2. The Council shall communicate the decisions referred to in paragraph 1, including the grounds for 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 decisions referred to in paragraph 1 and inform the natural or legal person, entity or body concerned accordingly.

Article 6

1. The Annex shall include the grounds for listing the natural or legal persons, entities or bodies referred to in Articles 2 and 3.
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 7

1. The Council and the High Representative shall 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 may 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 Regulation (EU) 2018/1725.

Article 8

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 or of 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 9

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 10

This Decision shall apply until 8 December 2023 and shall be kept under constant review. The measures set out in Articles 2 and 3 shall apply as regards the natural or legal persons, entities, and bodies listed in the Annex until 8 December 2021.

Article 11

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, 7 December 2020.

For the Council
The President
J. BORRELL FONTELLES

⁽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).

*ANNEX***List of natural and legal persons, entities and bodies referred to in Articles 2 and 3**

- A. Natural persons
 - B. Legal persons, entities and bodies
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