

COUNCIL DECISION (CFSP) 2021/2208
of 13 December 2021
amending Decision (CFSP) 2017/1775 concerning restrictive measures in view of the situation
in Mali

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 September 2017, the Council adopted Decision (CFSP) 2017/1775 ⁽¹⁾ concerning restrictive measures in view of the situation in Mali.
- (2) On 24 and 25 May 2021, the European Council adopted conclusions in which it strongly condemned the coup d'état which took place in Mali on 24 May 2021 with the detention of the President of the Transition of Mali and the Prime Minister and stated that the Union is ready to consider targeted measures against political and military leaders who obstruct the Malian transition.
- (3) On 26 May 2021, the Security Council of the United Nations noted with concern the risk of negative impact of the aforementioned events of 24 May 2021 on ongoing efforts to counter terrorism, implement the Agreement on Peace and Reconciliation in Mali (the 'Agreement') and stabilise the centre of Mali.
- (4) On 29 June 2021, the Security Council of the United Nations adopted Resolution 2584 (2021), in which it further condemned the events of 24 May 2021 and expressed significant impatience with the persistent delays in the implementation of the Agreement. It called on all Malian stakeholders to facilitate the full realisation of the political transition and handover of power to elected civilian authorities within the 18-month transition period, as decided during the 15 September 2020 meeting of the Economic Community of West African States (ECOWAS). It called on Mali's Transitional Government to organise free and fair presidential and legislative elections, scheduled for 27 February 2022, along with regional and local elections and a constitutional referendum, as appropriate, within that 18-month time frame.
- (5) On 18 October 2021, the Council discussed the situation in Mali and indicated the possibility of considering restrictive measures, in support of efforts by ECOWAS, and in line with the conclusions adopted by the European Council in May, against those hindering the transition agenda.
- (6) On 7 November 2021, ECOWAS highly deplored the lack of progress made in the preparations for the elections, including the absence of a detailed timetable of activities for the conduct of elections on the agreed dates. It reiterated the need to adhere to the transition timetable in respect of the elections scheduled for 27 February 2022 and called on the Transition Authorities to act accordingly to ensure an expeditious return to constitutional order. It called on the International Community to take the necessary measures to ensure that the Transition Authorities respect their commitment to an expeditious return to constitutional order. It decided to impose sanctions with immediate effect against identified individuals and groups, including the entire Transition Authorities and the other Transition institutions. It called on bilateral and multilateral partners to endorse and support the implementation of these sanctions.

⁽¹⁾ 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).

- (7) On 15 November 2021, the Council agreed to establish a dedicated framework for restrictive measures in view of the situation in Mali, supporting the decision taken by ECOWAS on 7 November 2021.
- (8) Decision (CFSP) 2017/1775 should therefore be amended accordingly.
- (9) Further action by the Union is needed in order to implement certain measures,

HAS ADOPTED THIS DECISION:

Article 1

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

- (1) in Article 1, in paragraphs 1 and 5, 'the Annex' is replaced by 'Annex I';
- (2) the following Article is inserted after Article 1:

'Article 1a

1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of natural persons:

- (a) being responsible for or complicit in, or having engaged in, directly or indirectly in actions or policies that threaten the peace, security, or stability of Mali, such as those actions or policies referred to in Article 1, paragraph 1;
- (b) obstructing or undermining the successful completion of the political transition of Mali, including by obstructing or undermining the holding of elections or the handover of power to elected authorities; or
- (c) being associated with natural persons referred to in points (a) or (b).

The designated persons referred to in this paragraph are listed in Annex II.

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) pursuant to the 1929 Treaty of Conciliation (Lateran Pact) concluded by the Holy See (Vatican City State) 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 paragraphs 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.
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 paragraphs 6 or 7 shall notify the Council in writing. The exemption shall be deemed to be granted unless one or more Member States raises 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 a qualified majority, may decide to grant the proposed exemption.

9. Where, pursuant to paragraphs 3, 4, 6 or 7, a Member State authorises the entry into, or transit through its territory of persons listed in Annex II, the authorisation shall be strictly limited to the purpose for which it is given and to the persons directly concerned thereby;

- (3) in Article 2, in paragraphs 1, 2, and 4(b), 'the Annex' is replaced by 'Annex I';
- (4) the following Article is inserted after Article 2:

'Article 2a

1. All funds and economic resources owned or controlled directly or indirectly by natural or legal persons, entities or bodies:

- (a) being responsible for or complicit in, or having engaged directly or indirectly, in actions or policies that threaten the peace, security, or stability of Mali, such as those actions or policies referred to in Article 2, paragraph 1;
- (b) obstructing or undermining the successful completion of the political transition of Mali, including by obstructing or undermining the holding of elections or the handover of power to elected authorities; or
- (c) being associated with natural or legal persons, entities or bodies referred to in points (a) or (b),

shall be frozen.

The designated natural or legal persons, entities or bodies referred to in this paragraph are listed in Annex II.

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 Annex II.

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 Annex II and dependent family members of such natural persons, including payments for foodstuffs, rent or mortgage, 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 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 within two weeks of the authorisation.

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, or the making available of certain 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 Annex II, 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 Annex II; 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 the authorisation.

5. Paragraph 1 shall not prevent a natural or legal person, entity or body listed in Annex II 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.

7. 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.;

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

'Article 3

1. The Council shall establish the list in Annex I and shall amend it in accordance with determinations made by the Security Council or by the Sanctions Committee.

2. 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 Annex II.;

- (6) Article 4 is replaced by the following:

'Article 4

1. Where the Security Council or the Sanctions Committee designates a person or entity, the Council shall include that person or entity in Annex I. The Council shall communicate its decision, including the grounds for listing, to the person or entity concerned, either directly, if the address is known, or through the publication of a notice, providing that person or entity with an opportunity to present observations.

2. The Council shall communicate the decision referred to in Article 3(2), 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 its decision and inform the person or entity concerned accordingly.;

(7) Article 5 is replaced by the following:

'Article 5

1. Annex I shall include the grounds for listing the persons and entities as provided by the Security Council or the Sanctions Committee.
2. Annex I shall also include, where available, information provided by the Security Council or the Sanctions Committee necessary to identify the persons or entities concerned. With regard to persons, such information may include names, including aliases, date and place of birth, nationality, passport and identity card numbers, gender, address if known, and function or profession. With regard to entities, such information may include names, place and date of registration, registration number and place of business.
3. Annex II shall include the grounds for listing the natural and legal persons, entities and bodies referred to therein.
4. Annex II shall also include, 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.;

(8) the following Articles are inserted after Article 5:

'Article 5a

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 Annexes I and II;
 - (b) as regards the High Representative, for preparing amendments to Annexes I and II.
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 Annexes I and II.
3. For the purposes of this Decision, the Council and the High Representative are designated as "controller" within the meaning of Article 3, point (8) of Regulation (EU) 2018/1725 of the European Parliament and of the Council (*), in order to ensure that the natural persons concerned can exercise their rights under that Regulation.

Article 5b

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 Annex II;
- (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).;

(*) 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).

(9) Article 6 is replaced by the following:

Article 6

1. This Decision shall be amended or repealed as appropriate, in accordance with determinations made by the Security Council.

2. The measures referred to in Article 1a, paragraph 1, and Article 2a, paragraphs 1 and 2 shall apply until 14 December 2022 and shall be kept under constant review. They shall be renewed, or amended, as appropriate, if the Council deems that its objectives have not been met.;

(10) the Annex is amended as set out in the Annex to this Decision.

Article 2

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, 13 December 2021.

For the Council
The President
J. BORRELL FONTELLES

ANNEX

1. The Annex to Decision (CFSP) 2017/1775 is renamed Annex I.
2. An Annex II is added, with the following sections:

ANNEX II

- A. List of natural persons referred to in Article 1a, paragraph 1
 - B. List of natural or legal persons, entities or bodies referred to in Article 2a, paragraph 1'.
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