



2024/254

15.1.2024

COUNCIL DECISION (CFSP) 2024/254
of 12 January 2024
concerning restrictive measures in view of the situation in Guatemala

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 August 2023, the Supreme Electoral Tribunal of Guatemala (the 'TSE') declared the official results of the second round of the presidential elections held in the country on 20 August 2023.
- (2) On 5 October 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 developments following the presidential elections. He expressed deep concern over persistent attempts to undermine the election results through selective and arbitrary legal and procedural actions that are neither in line with Guatemala's constitution nor with the international and regional standards that Guatemala has subscribed to, and called on all Guatemalan institutions and officials to fully respect the integrity of the election results that the TSE certified and to halt any actions that could endanger a peaceful transition process. He highlighted that further actions to overturn the outcome of the elections and continued instrumentalisation of judicial and prosecutorial institutions to undermine democracy and the rule of law would have an impact on Guatemala's relations with the Union.
- (3) On 13 November 2023, the EU Election Observation Mission Guatemala 2023 (EU EOM) published its final report and recommendations on the general elections of 2023 in Guatemala. The report underlines the clear election results as certified by the TSE on 28 August 2023, the remarkable resilience and commitment by Guatemalan citizens to defend democracy, as well as a sense of deep democratic crisis following attempts by the Public Prosecutor's Office and other members of the country's judiciary to overturn the choice of voters and the implementation of the election results. In analysing the context of the elections, the EU EOM highlighted a number of human rights concerns, in particular as regards severe restrictions on the freedoms of expression and of the press.
- (4) On 8 December 2023, the High Representative issued a statement on the latest developments in Guatemala condemning attempts to nullify the results of the general and presidential elections in the country, calling on the Guatemalan authorities to defend the electoral process and the constitutional order of the country, and highlighting that the latest actions by the Public Prosecutor's Office of Guatemala constitute a violation of Guatemala's constitution, the rule of law, the electoral process and the most basic principles of a democracy. The statement emphasised that the Union had agreed in principle on, and was ready to adopt, a framework allowing for targeted restrictive measures against those responsible for such actions.
- (5) In full alignment with the Union's consistent position on the general elections in Guatemala, the international community, including the Organization of American States, in its resolution adopted on 15 November 2023, and the office of the Spokesperson for the United Nations Secretary-General, in a statement of 2 October 2023, has repeatedly expressed grave concern over attempts to overturn the election results and called for a peaceful and orderly transition of power in Guatemala.
- (6) In view of the gravity of the situation, which constitutes a threat to the stability of Guatemala and 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 undermine democracy, the rule of law or the peaceful transfer of power in Guatemala or undermining democracy or the rule of law in Guatemala including through serious financial misconduct concerning public funds and the unauthorised export of capital, as well as against natural or legal persons, entities or bodies associated with them.

(7) 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 the natural persons listed in the Annex.
2. The Annex shall include natural persons:
 - (a) responsible for, engaging in, providing support to, or benefitting from actions that undermine democracy, the rule of law or the peaceful transfer of power in Guatemala, including:
 - (i) persecution or intimidation of public officials or public institutions involved in or supporting the electoral process, of democratically-elected authorities or of the democratic opposition in Guatemala;
 - (ii) repression, persecution or intimidation of representatives of civil society or of the media, or of judges, lawyers or prosecutors;
 - (b) undermining democracy or the rule of law in Guatemala through serious financial misconduct concerning public funds or the unauthorised export of capital;
 - (c) associated with the natural persons designated under points (a) and (b) above.
3. Paragraph 1 shall not oblige a Member State to refuse its own nationals entry into its territory.
4. 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 (UN);
 - (c) under a multilateral agreement conferring privileges and immunities; or
 - (d) under the 1929 Treaty of Conciliation (Lateran pact) concluded by the Holy See (Vatican City State) and Italy.
5. Paragraph 4 shall also apply in cases where a Member State is the host country of the Organization for Security and Cooperation in Europe (OSCE).
6. The Council shall be duly informed in all cases where a Member State grants an exemption pursuant to paragraphs 4 or 5.
7. 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 the restrictive measures, including support for the stability and restoration of the constitutional order in Guatemala.
8. 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.
9. A Member State wishing to grant exemptions referred to in paragraph 7 or 8 shall notify the Council in writing. The exemption shall be deemed to be granted unless one or more Member States raise an objection in writing within 2 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.
10. Where, pursuant to paragraphs 4, 5, 7, 8 and 9, a Member State authorises the entry into, or transit through, its territory of persons listed in the Annex, the authorisation shall be limited to the purpose for which it is given to the person concerned thereby.

Article 2

1. All funds and economic resources belonging to, owned, held or controlled by any natural or legal person, entity or body 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. The Annex shall include natural or legal persons, entities or bodies:
 - (a) responsible for, engaging in, providing support to, or benefitting from, actions that undermine democracy, the rule of law or the peaceful transfer of power in Guatemala, including:
 - (i) persecution or intimidation of public officials or public institutions involved in or supporting the electoral process, of democratically-elected authorities or of the democratic opposition in Guatemala;
 - (ii) repression, persecution or intimidation of representatives of civil society or of the media, or of judges, lawyers or prosecutors;
 - (b) undermining democracy or the rule of law in Guatemala through serious financial misconduct concerning public funds or the unauthorised export of capital;
 - (c) associated with the natural persons designated under points (a) and (b) above.
4. 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 persons listed in the Annex and their dependent family members, 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 2 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 2 weeks of the authorisation.

5. 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 within 2 weeks of the authorisation.

6. 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.

7. 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.

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 UN, 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 UN General Assembly and members of those humanitarian organisations;
- (d) bilaterally or multilaterally-funded non-governmental organisations participating in the UN Humanitarian Response Plans, UN Refugee Response Plans and other UN appeals or humanitarian clusters coordinated by the UN Office for the Coordination of Humanitarian Affairs;
- (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 mentioned in points (a) to (f) while, and to the extent that, they are acting in those capacities.

9. Without prejudice to paragraph 8, and by way of derogation from paragraphs 1 and 2, the 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.

10. In the absence of a negative decision, a request for information or a notification for additional time from the relevant competent authority within 5 working days of the date of receipt of a request for authorisation under paragraph 9, that authorisation shall be considered granted.

11. The Member State concerned shall inform the other Member States and the Commission of any authorisations granted under paragraphs 9 and 10 within 4 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 decisions 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 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 Article 3, point (8), 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;

⁽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).

- (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 13 January 2025.

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.

In reviewing restrictive measures taken pursuant to Article 1(2)(b) and Article 2(3)(b), the Council shall take into account as appropriate whether the persons in question are subject to judicial proceedings or not in respect of the conduct for which they were listed.

The exceptions referred to in Article 2(8), (9) and (10) 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*.

Done at Brussels, 12 January 2024.

For the Council
The President
H. LAHBIB

ANNEX

LIST OF NATURAL AND LEGAL PERSONS, ENTITIES AND BODIES REFERRED TO IN ARTICLES 1 AND 2

[...]
