

COUNCIL DECISION (CFSP) 2018/655
of 26 April 2018
amending Decision 2013/184/CFSP concerning restrictive measures against Myanmar/Burma

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 of the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 22 April 2013, the Council adopted Decision 2013/184/CFSP⁽¹⁾ concerning restrictive measures against Myanmar/Burma.
- (2) On 26 February 2018, the Council adopted conclusions condemning the ongoing widespread, systematic grave human rights violations committed by the Myanmar/Burma military and security forces and calling on the Government of Myanmar/Burma and the security forces to ensure that security, the rule of law and accountability prevail in Rakhine, Kachin and Shan States. The conclusions confirmed the relevance of the existing embargo on arms and equipment which can be used for internal repression and endorsed the renewal of these restrictive measures. It also called for concrete options for the strengthening of the current embargo and for proposals for targeted restrictive measures against senior military officers of the Myanmar armed forces (Tatmadaw) responsible for serious and systematic human rights violations.
- (3) In this context it is appropriate to impose further restrictive measures on Myanmar/Burma in the form of a prohibition on the export of dual-use goods for military and Border Guard Police end users, restrictions on the export of equipment for monitoring communications that might be used for internal repression, and on military training and military cooperation.
- (4) Furthermore, targeted restrictive measures should be imposed against certain natural persons from the Myanmar Armed Forces (Tatmadaw) and the Border Guard Police responsible for serious human rights violations, for example for inciting violence, for discrimination and violence against persons belonging to minorities in Rakhine and for obstructing the voluntary and safe return process of displaced persons from Rakhine State to their place of origin, as well as against persons, entities or bodies associated with them. Targeted restrictive measures should also be imposed against certain natural persons from the Myanmar Armed Forces (Tatmadaw) and the Border Guard Police responsible for obstructing the provision of humanitarian assistance to civilians in need or responsible for obstructing the conduct of independent investigations into alleged serious human rights violations or abuses, as well as against persons, entities or bodies associated with them.
- (5) The passage of humanitarian assistance for civilians in need, subject to control by the parties to the conflict and in accordance with international humanitarian law, should not be impeded. It is thus appropriate to apply restrictions on natural persons from the Myanmar Armed Forces (Tatmadaw) responsible for obstructing the rapid and unimpeded passage of humanitarian assistance for civilians in need. Such restrictions should not unduly affect the delivery of humanitarian assistance and should be applied in full consideration of human rights law and of the applicable rules of international humanitarian law.
- (6) Decision 2013/184/CFSP should be amended accordingly.
- (7) Further action by the Union is needed in order to implement certain measures,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2013/184/CFSP is amended as follows:

- (1) the following wording is added before Article 1:

‘CHAPTER I

EXPORT RESTRICTIONS;

⁽¹⁾ Council Decision 2013/184/CFSP of 22 April 2013 concerning restrictive measures against Myanmar/Burma and repealing Decision 2010/232/CFSP (OJ L 111, 23.4.2013, p. 75).

(2) the following Article is inserted:

'Article 1a

1. The direct or indirect sale, supply, transfer or export of all dual-use goods and technology listed in Annex I to Council Regulation (EC) No 428/2009 (*) for military use in Myanmar/Burma, or to any military end-user or to the Border Guard Police in Myanmar/Burma by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft, shall be prohibited whether originating or not in their territories.

2. It shall be prohibited:

(a) to provide technical assistance, brokering services or other services related to goods and technology set out in paragraph 1 and to the provision, manufacture, maintenance and use of these goods and technology, directly or indirectly, to any military end-user or to the Border Guard Police in Myanmar/Burma, or for military use in Myanmar/Burma;

(b) to provide financing or financial assistance related to goods and technology referred to in paragraph 1, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of these goods and technology, or for the provision of related technical assistance, brokering services or other services, directly or indirectly, to any military end-user or to the Border Guard Police in Myanmar/Burma, or for military use in Myanmar/Burma.

3. The prohibitions in paragraphs 1 and 2 shall be without prejudice to the execution of contracts concluded before 27 April 2018 or ancillary contracts necessary for the execution of such contracts.

(*) Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (OJ L 134, 29.5.2009, p. 1).';

(3) Article 2 is replaced by the following:

'Article 2

1. Articles 1 and 1a shall not apply to:

(a) the sale, supply, transfer or export of non-lethal military equipment, or of equipment which might be used for internal repression or dual-use goods and technology listed in Annex I to Regulation (EC) No 428/2009 intended solely for humanitarian or protective use, or for institution-building programmes of the UN and the EU, or of materiel intended for EU and UN crisis management operations;

(b) the sale, supply, transfer or export of demining equipment and materiel for use in demining operations;

(c) the provision of financing and financial assistance related to such equipment or to such programmes and operations;

(d) the provision of technical assistance related to such equipment or to such programmes and operations;

on condition that such exports have been approved in advance by the relevant competent authority.

2. Article 1 and 1a shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Myanmar/Burma by UN personnel, personnel of the EU or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.;

(4) Article 3 is replaced by the following:

'Article 3

1. The sale, supply, transfer or export of equipment, technology or software intended primarily for use in the monitoring or interception by the Government of Myanmar/Burma, or on its behalf, of the internet and of telephone communications on mobile or fixed networks in Myanmar/Burma, including the provision of any telecommunication or internet monitoring or interception services of any kind, as well as the provision of financial and technical assistance to install, operate or update such equipment, technology or software, by nationals of Member States or from the territories of Member States shall be prohibited.

2. By derogation from paragraph 1, Member States may authorise the sale, supply, transfer or export of the equipment, technology or software, including the provision of any telecommunication or internet monitoring or interception services of any kind, as well as the related provision of financial and technical assistance, referred to in paragraph 1 if they have reasonable grounds to determine that the equipment, technology or software would not be used for internal repression by Myanmar/Burma's government, public bodies, corporations or agencies, or any person or entity acting on their behalf or at their direction.

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

3. The Union shall take the necessary measures in order to determine the relevant elements to be covered by this Article.;

(5) The following Articles and Chapters are inserted:

CHAPTER II

RESTRICTIONS ON MILITARY TRAINING AND MILITARY COOPERATION

Article 4

1. The provision of military training to or military cooperation with the Myanmar Armed Forces (Tatmadaw) and the Border Guard Police shall be prohibited.

2. The prohibition in paragraph 1 shall not apply to training or cooperation aimed at strengthening democratic principles, the rule of law or respect for international law, including international human rights law, in Myanmar/Burma.

CHAPTER III

RESTRICTIONS ON ADMISSION

Article 5

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

- (a) natural persons from the Myanmar Armed Forces (Tatmadaw) and the Border Guard Police responsible for serious human rights violations in Myanmar/Burma;
- (b) natural persons from the Myanmar Armed Forces (Tatmadaw) and the Border Guard Police responsible for obstructing the provision of humanitarian assistance to civilians in need;
- (c) natural persons from the Myanmar Armed Forces (Tatmadaw) and the Border Guard Police responsible for obstructing the conduct of independent investigations into alleged serious human rights violations or abuses, or
- (d) natural persons associated with the natural persons referred to in points (a), (b) and (c),

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 to an international intergovernmental organisation;
- (b) as a host country to an international conference convened by, or under the auspices of, the 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 (State of the Vatican City) and Italy.

4. Paragraph 3 shall be considered as also applying 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 the ground of urgent humanitarian need, or on grounds of attending intergovernmental meetings and those promoted or hosted by the European 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 democracy, human rights and the rule of law in Myanmar/Burma.

7. A Member State wishing to grant exemptions referred to in paragraph 6 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.

8. Where, pursuant to paragraph 3, 4, 6 or 7, 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 and to the persons concerned thereby.

CHAPTER IV

FREEZING OF FUNDS AND ECONOMIC RESOURCES

Article 6

1. All funds and economic resources belonging to or owned, held or controlled by:

- (a) natural persons from the Myanmar Armed Forces (Tatmadaw) and the Border Guard Police responsible for serious human rights violations in Myanmar/Burma;
- (b) natural persons from the Myanmar Armed Forces (Tatmadaw) and the Border Guard Police responsible for obstructing the provision of humanitarian assistance to civilians in need;
- (c) natural persons from the Myanmar Armed Forces (Tatmadaw) and the Border Guard Police responsible for obstructing the conduct of independent investigations into alleged serious human rights violations or abuses; or
- (d) natural or legal persons, entities or bodies associated with the natural persons referred to in points (a), (b) and (c),

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 and bodies listed in the Annex.

3. The competent authority 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 it deems 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 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 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 paragraphs 1, the competent authorities of a Member State may authorise the release of certain frozen funds or economic resources if 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) recognising 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 that was concluded by, or an obligation that arose for, a natural or legal person, an entity or body listed in the Annex 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 in breach of paragraph 3.

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.

CHAPTER V

GENERAL AND FINAL PROVISIONS

Article 7

1. The Council, acting by unanimity upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, 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 such 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 8

1. The Annex shall include the grounds for listing the natural and legal persons, entities and bodies referred to in Articles 5(1) and 6(1).
2. The Annex shall also 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, including 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 9

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures laid down in this Decision.

Article 10

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 persons, entities or bodies referred to in point (a).

Article 11

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 12

This Decision shall apply until 30 April 2019. It 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.;

- (6) Articles 4 and 5 are renumbered as Articles 13 and 14 respectively;
- (7) The Annex set out in the Annex to this Decision is added.

Article 2

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

Done at Brussels, 26 April 2018.

For the Council
The President
E. ZAHARIEVA

ANNEX

'ANNEX

List of natural and legal persons, entities and bodies referred to in Articles 5(1) and 6(1).
