

## 2017 Italy - Niger

### ***"Cooperation Agreement in the area of Defence between the Government of the Italian Republic and the Government of the Republic of the Niger"***

#### **Background**

The Republic of the Niger is one of the main African transit countries of migration flows from Sub-Saharan Africa to Europe. Usually migrants cross Niger in order to reach Libya, Algeria and eventually Italian coasts.

From 2015, the Republic of the Niger curbed its migration flows, following the European trend of *externalization of borders*, as the outcome of the Valletta Summit 2015.

The European Union supports Niger, since 2015, with the EUTF (EU Emergency Trust Fund for Africa), reportedly as a way to “push” the State to contain its flows of irregular traffic of migrants, practically externalizing its borders and preventing sub-saharan migrants to move closer to Europe.

For this reason, in 2015 a Nigerien law was created as a precondition for the enjoyment of the EU funds. This law (L. 36/2015) criminalized the smuggling and trade of migrants. As a consequence, a notable portion of the economy of the country which was based on this traffic activity was affected, impacting especially in the Agadez region, considered as the main smuggling hub on the road to Europe. The aforementioned law falls under the “Legislative framework” about Nigerien migration.

In addition, the Republic of the Niger is part of CEDEAO/ECOWAS (the “Economic Community of West Africa Sahara”, Lagos Treaty, 1975) which is a community of African States that grants citizens of adherent Countries freedom of circulation.

Migrants’s living conditions worsened because of the new policy of “illegal traffic of migrants”, whereby usual and “safe” routes became impracticable and the new ones were extremely unsafe.

The first italian embassy in Sahel was placed in 2018, in Niamey.

The Italian military deployment is expressly committed to the reinforcement of borders and contrast to illegal migration and human traffic.

In terms of **bilateral treaties**: it is worth mentioning the *Cooperation Agreement in Security area between the Government of the Italian Republic and the Government of the Republic of the Niger*, which was signed in Niamey 2 February 2010.

The last step, in terms of bilateral treaties, is the *Cooperation Agreement in the area of Defence between the Government of the Italian Republic and the Government of the Republic of the Niger* signed in 2017 in Rome.

For what it concerns **military missions**: Italy is committed since 2012 in the EUCAP Sahel Niger (European Union Capacity Building in Sahel) a mission of support to Nigerien authorities in countering illegal traffic and terrorism in Sahel region .

Moreover, Italy is committed in the bilateral military mission "MISIN operation" supporting Niger and comprehensive of Mauritania, Nigeria and Benin as areas of intervention. Within the context of a joined USA-EU action, the mission is intended to support the surveillance of borders and collection of information about illegal traffic of humans, whilst also providing training to Nigerien authorities. The legal basis of the MISIN operation, which was initiated in 2018 and then renewed for 2019, are the Resolutions S/RES/2359 and S/RES/2391, and the 2017 bilateral agreement between Italy and Niger.

Also part of the legal basis of the relations between the Parties it is reported the existence of two letters, respectively sent from the Nigerien Government to the Italian one on the 1st November 2017 and on the 15th January 2018 "*...through which Italy was asked to send military forces for training and border surveillance...*".

### **Procedure**

The Agreement was concluded in solemn form, signed in 2017 and ratified in 2019 by Italy ( L. 29.07.2019, GU No 188 12.08.2019).

### **Parties**

The Government of the Italian Republic and the Government of the Republic of the Niger.

### **Signature and Ratification**

Signed in Rome on the 26th September 2017 by the Italian Minister of Defence, Roberta Pinotti. Ratified by the President of the Italian Republic, Sergio Matterella, on the 13th August 2019 (G.U.). For the Nigerien part, it is signed by the Minister of the Defence Kalla Moutari.

### **Legal Basis**

Given its solemn form, the Cooperation Agreement is considered as self legitimating, hence representing its own legal basis.

### **Aims**

Mutual cooperation in order to improve the Defence area and reinforcement of the pre existing relations between the States.

## **Content**

On the basis of the Agreement, the Parties are able to conclude technical agreements on military cooperation, and multi annual plans of bilateral cooperation in the defence sector.

Field of action: Article 2 (“general cooperation”): "security and defence policy"; "research, development of the logistical support and acquisition of defence products and services"; "peacekeeping operations and humanitarian aid"; "organization and use of Armed Forces and military equipment" "training and formation in military field" and "other military sectors of common interest". Practical cooperation would be achieved by reciprocal visits, exchange of expertise and meetings between Parties, as well as through practical and theoretical formation.

The agreement, in Article 6 (“cooperation in defense products”), lists a series of weaponry which would be involved in the cooperation, as well as a list of modalities of research and development in the defense industry which ranges from support between Parties to exchange of experiences.

## **Final Disposition**

(Article 11) Based on consent, Parties can negotiate additional protocols on specific fields of cooperation on the defense area, those would be in compliance with national procedures, within the limit of the present Agreement.

Development programs would be set by authorized personnel of the Italian Minister of the Defense and the Minister of the Defense of the Republic of the Niger, in close connection with the Ministers of the Foreign Affairs of both States and the Authorities of classified information’s security.

Amendments and revisions based on consent, would be achieved by an exchange of Notes between Parties, through diplomatic channels.

Entry into force (Article 10): “following the receipt of the second notification concerning the fulfillment of the preparatory procedures by the parties”.

The Agreement is valid until denunciation of one of the parties (90 days).

## **Cases and secondary legislation (cf. Application)**

The MISIN operation, which has as legal basis the Agreement at stake, officially started in 2018 and has among its objectives "*the contribution of the surveillance to borders, territory and development of the air component of the Niger*".

## **Critical Issues**

Two main issues: the first concerning the legal configuration of the agreement, the other concerning the contents.

Concerning the **procedure**: the conclusion of the Agreement followed an unusual path. At first sight, it was concluded in simplified form, since it was signed by the Italian Minister of Defence in 2017, and it was apparently executive since it was the legal basis of the military mission "MISIN" operation, which started in 2018.

As a consequence of judgment No 11125/2018 TAR Lazio, through the "*richiesta di accesso civico*" form ASGI and CILD, the text of the agreement was published under FOIA's duty, later the Italian Government ruled the DDL of ratification of the Cooperation agreement. The Agreement was then ratified on the 13.08.2019. In conclusion, is this an agreement concluded in simplified form considering the latter explanation, or is it concluded in solemn form but provisionally applied until the ratification?

Today the two Letters (1st November 2017 and 15th January 2018), between the Government of the Republic of Niger and Italy which were requested to be published, remain undisclosed for "security reasons". These letters are widely considered as part of the "legal basis" of the Agreement.

Among the criticisms, we can also identify the role of the Italian Parliament in the conclusion of the Agreement. It is reported that the Italian procedure concerning the conclusion of international agreements was not "properly" followed. Precisely it appears that the Parliament was requested to approve the ratification even though the Agreement was already in force (the procedure prescribed by Article 80 Italian Constitution was not complied with).

About the **contents**: the Agreement is too generic, it appears to be essentially a Framework Agreement in the military and defence area.

In Article 6(1) it is surprisingly mentioned in the list of defence products "*ships and military equipment*", even though Niger does not have access to sea.

It is noteworthy the wording of Article 6 ("cooperation in the field of defence products") which mentions "the supply of products of interest of the Armed Forces will be developed according to this Agreement".

According to the Agreement, the reciprocal supply of military products "will be carried out according to the present Agreement, through State to State operations or through private companies approved by Governments".

Overall, the Agreement is apparently standing more as an exchange agreement of defence products rather than a simple Cooperation Agreement in the defence field.