

COUNCIL DECISION (CFSP) 2015/740**of 7 May 2015****concerning restrictive measures in view of the situation in South Sudan and repealing Decision 2014/449/CFSP**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Whereas:

- (1) On 10 July 2014, the Council adopted Decision 2014/449/CFSP⁽¹⁾ in view of its continuing serious concern about the situation in South Sudan.
- (2) On 3 March 2015, the United Nations Security Council adopted Resolution (UNSCR) 2206 (2015), in view of its grave alarm and concern regarding the conflict between the Government of the Republic of South Sudan and opposition forces since December 2013, its concern over the resulting great human suffering and its strong condemnation of past and ongoing human rights violations and abuses and violations of international humanitarian law, as well as over the large-scale displacement of persons and the deepening humanitarian crisis. The Security Council stressed the responsibility borne by all parties to the conflict for the suffering of the people of South Sudan. It also determined that the situation in South Sudan constitutes a threat to international peace and security in the region.
- (3) Paragraphs 9 and 12 of UNSCR 2206 (2015) provide for restrictive measures in the form of travel restrictions and asset freezes that may be applied in relation to persons and entities designated by the Security Council Committee established pursuant to paragraph 16 of UNSCR 2206 (2015) ('the Committee'). Paragraphs 6, 7 and 8 of UNSCR 2206 (2015) also provide for criteria for designating persons and entities to be subject to the restrictive measures set out in paragraphs 9 and 12 of that Resolution.
- (4) For the sake of clarity, the restrictive measures imposed by Decision 2014/449/CFSP and the restrictive measures provided for by UNSCR 2206 (2015) should be integrated into a single legal instrument.
- (5) Decision 2014/449/CFSP should therefore be repealed accordingly.
- (6) Further Union action is needed to implement certain measures,

HAS ADOPTED THIS DECISION:

Article 1

1. The sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned to South Sudan 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 also be prohibited to:
 - (a) provide, directly or indirectly, technical assistance, brokering services or other services related to the items referred to in paragraph 1 or related to the provision, manufacture, maintenance and use of such items, to any natural or legal person, entity or body in, or for use in, South Sudan;
 - (b) provide, directly or indirectly, financing or financial assistance related to the items referred to in paragraph 1, including in particular grants, loans and export credit insurance, as well as insurance or reinsurance for any sale, supply, transfer or export of such items, or for the provision of related technical assistance, brokering services or other services to any natural or legal person, entity or body in, or for use in, South Sudan;
 - (c) participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the measures referred to in point (a) or (b).

⁽¹⁾ Council Decision 2014/449/CFSP of 10 July 2014 concerning restrictive measures in view of the situation in South Sudan (OJ L 203, 11.7.2014, p. 100).

Article 2

1. Article 1 shall not apply to:

- (a) the sale, supply, transfer or export of non-lethal military equipment intended solely for humanitarian, human rights monitoring or protective use, or for institution-building programmes of the UN, the African Union (AU), the EU or the Intergovernmental Authority on Development (IGAD), or of materiel intended for UN, AU and EU crisis management operations;
- (b) the sale, supply, transfer or export of non-combat vehicles which have been manufactured or fitted with materials to provide ballistic protection, intended solely for protective use, in South Sudan, by personnel of the EU or its Member States or by UN, AU or IGAD personnel;
- (c) the provision of technical assistance, brokering services and other services related to the equipment or to the programmes and operations referred to in point (a);
- (d) the provision of financing and financial assistance related to the equipment or to the programmes and operations referred to in point (a);
- (e) the sale, supply, transfer or export of de-mining equipment and materiel for use in de-mining operations;
- (f) the sale, supply, transfer or export of non-lethal military equipment intended solely for the support of the process of Security Sector Reform in South Sudan as well as the provision of financing, financial assistance or technical assistance related to such equipment,

provided that such deliveries have been approved in advance by the competent authority of the Member State in question.

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

3. Member States shall consider deliveries under this Article on a case-by-case basis, taking full account of the criteria set out in Council Common Position 2008/944/CFSP⁽¹⁾. Member States shall require adequate safeguards against misuse of authorisations granted under this Article and, where appropriate, make provisions for repatriation of the equipment.

Article 3

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

- (a) designated by the Security Council or by the Committee in accordance with paragraphs 6, 7, 8 and 9 of UNSCR 2206 (2015), as listed in Annex I to this Decision;
- (b) not covered by point (a), obstructing the political process in South Sudan, including by acts of violence or violations of ceasefire agreements, as well as persons responsible for serious violations of human rights in South Sudan, and persons associated with them, as listed in Annex II.

2. Paragraph 1 shall not oblige a Member State to refuse its own nationals entry into its territory.

Article 4

1. This Article applies to the persons listed in Annex I.

2. Article 3(1) shall not apply where:

- (a) travel is justified on the grounds of humanitarian need, including religious obligation, as determined by the Committee on a case-by-case basis;
- (b) entry or transit is necessary for the fulfilment of a judicial process;
- (c) travel would further the objectives of peace and national reconciliation in South Sudan and stability in the region, as determined by the Committee on a case-by-case basis.

⁽¹⁾ Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ L 335, 13.12.2008, p. 99).

Article 5

1. This Article applies to the persons listed in Annex II.
2. Article 3(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 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.
3. Paragraph 2 shall be considered as applying also in cases where a Member State is host country to the Organisation for Security and Cooperation in Europe (OSCE).
4. The Council shall be duly informed in all cases where a Member State grants an exemption pursuant to paragraph 2 or 3.
5. Member States may grant exemptions from the measures imposed under Article 3(1) where travel is justified on grounds of urgent humanitarian need, or on grounds of attending intergovernmental meetings and meetings promoted or hosted by the EU 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 South Sudan.
6. A Member State wishing to grant exemptions referred to in paragraph 5 shall notify the Council in writing. The exemption shall be deemed to be granted unless one or more of the Council members raise 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.
7. Where, pursuant to paragraphs 2, 3, 5 and 6, 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.

Article 6

1. All funds and economic resources belonging to, owned, held or controlled by, directly or indirectly,
 - (a) persons and entities designated by the Security Council or by the Committee in accordance with paragraphs 6, 7, 8 and 12 of UNSCR 2206 (2015), as listed in Annex I to this Decision;
 - (b) persons obstructing the political process in South Sudan, including by acts of violence or violations of ceasefire agreements, as well as persons responsible for serious violations of human rights in South Sudan, and natural or legal persons, entities or bodies associated with them, as listed in Annex II,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 Annex I or II.

Article 7

1. This Article applies to the persons and entities listed in Annex I.

2. 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 for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- (b) exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;
- (c) fees or service charges for routine holding or maintenance of frozen funds and economic resources.

The Member State concerned shall notify the Committee in advance of the intention to authorise, where appropriate, the release of certain frozen funds or economic resources. Authorisations may be granted in the absence of a negative decision by the Committee within five working days of such notification.

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 necessary for extraordinary expenses, provided that such determination has been notified by the Member State concerned to the Committee and has been approved by the Committee.

4. By way of derogation from Article 6(1), the competent authorities of a Member State may also authorise the release of certain frozen funds or economic resources, provided that the Member State concerned has determined that the funds or economic resources are the subject of a judicial, administrative or arbitral lien or judgment and that the funds or economic resources will be used exclusively to satisfy that lien or judgment, provided that the lien was entered into or the judgment delivered prior to the date of the adoption of UNSCR 2206 (2015), namely 3 March 2015, is not for the benefit of a natural or legal person, entity or body listed in Annex I or II, and has been notified by the Member State concerned to the Committee.

5. Article 6(1) shall not apply to the addition to frozen accounts of:

- (a) interest or other earnings on those accounts; or
- (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 Article 6,

provided that any such interest, other earnings and payments remain subject to the measures provided for in Article 6(1).

6. Article 6 shall not prevent a listed natural or legal person, entity or body from making a payment due under a contract entered into prior to the date on which such natural or legal person, entity or body was listed in Annex I, 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 listed in Annex I or II and after notification by the Member State concerned to the Committee of the intention to make or receive such payments or to authorise, where appropriate, the release of funds, other financial assets or economic resources for this purpose, 10 working days prior to such authorisation.

Article 8

1. This Article applies to the persons and entities listed in Annex II.

2. 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 persons listed in Annex II 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; or
- (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.

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

3. By way of derogation from Article 6(1), the competent authorities of a Member State 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 Article 6(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 I or 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 authorisations granted under this paragraph.

4. Article 6(1) shall not prevent a listed natural or legal person, entity or body from making a payment due under a contract entered into prior to the date on which such natural or legal person, entity or body was listed in Annex II, 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 listed in Annex I or II.

5. Article 6(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 Article 6; 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 Article 6(1).

Article 9

1. Where the Security Council or the Committee lists a person or entity, the Council shall include such person or entity in Annex I.

2. The Council, acting upon a proposal by a Member State or the High Representative of the Union for Foreign Affairs and Security Policy, shall decide to establish and amend the list in Annex II.

3. The Council shall communicate its decisions referred to in paragraphs 1 and 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 such natural or legal person, entity or body with an opportunity to present observations.

4. Where observations are submitted, or where substantial new evidence is presented, the Council shall review its decisions and inform the natural or legal person, entity or body concerned accordingly.

Article 10

1. Annexes I and II shall include the grounds for listing the persons and entities referred to in Articles 3(1) and 6(1), as provided by the Security Council or by the Committee with regard to Annex I, and the Council with regard to Annex II.
2. Annexes I and II shall also contain, where available, the information necessary to identify the persons and entities concerned, as provided by the Security Council or by the Committee with regard to Annex I, and the Council with regard to Annex II. 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 legal persons, entities or bodies, such information may include names, place and date of registration, registration number and place of business. Annexes I and II shall also include the date of designation.

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

1. 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 and in the light of relevant decisions of the Security Council.
2. The measures referred to in point (b) of Article 3(1) and point (b) of Article 6(1) shall be reviewed at regular intervals and at least every 12 months. They shall cease to apply in respect of the persons and entities concerned if the Council determines, in accordance with the procedure referred to in Article 9, that the conditions for their application are no longer met.

Article 13

Decision 2014/449/CFSP is hereby repealed.

Article 14

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

Done at Brussels, 7 May 2015.

For the Council
The President
E. RINKĒVIČS

ANNEX I

List of persons and entities referred to in point (a) of Article 3(1) and point (a) of Article 6(1)

ANNEX II

List of persons and entities referred to in point (b) of Article 3(1) and point (b) of Article 6(1)

	Name	Identifying information	Reasons	Date of listing
1.	Santino DENG (a.k.a.: Santino Deng Wol)	Commander of the third Infantry Division of the Sudan People's Liberation Army (SPLA)	Santino Deng is commander of the third Infantry Division of the SPLA that took part in the recapture of Bentiu in May 2014. Santino Deng is thus responsible for violations of the 23 January Cessation of Hostilities Agreement.	11.7.2014
2.	Peter GADET (aka: Peter Gatdet Yaka; Peter Cadet; Peter Gadet Yak; Peter Gadet Yaak; Peter Gatdet Yaak; Peter Gatdet; Peter Gatdeet Yaka)	Leader of the anti-government Nuer militia. Place of birth: Mayom County Unity State	Peter Gadet is leader of the anti-government Nuer militia that conducted an attack on Bentiu on 15 - 17 April 2014, in violation of the 23 January Cessation of Hostilities Agreement. The attack resulted in the killing of more than 200 civilians. Peter Gadet is thus responsible for fuelling the cycle of violence, thus obstructing the political process in South Sudan, and for serious human rights violations.	11.7.2014