

# DECISIONS

## COUNCIL DECISION (CFSP) 2016/2231

of 12 December 2016

### amending Decision 2010/788/CFSP concerning restrictive measures against the Democratic Republic of the Congo

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 20 December 2010, the Council adopted Decision 2010/788/CFSP <sup>(1)</sup>.
- (2) On 17 October 2016, the Council adopted conclusions expressing deep concern at the political situation in the Democratic Republic of the Congo (DRC). In particular it strongly condemned the acts of extreme violence that took place on 19 and 20 September in Kinshasa, noting that those acts further exacerbated the deadlock in the country due to the failure to call the presidential elections by the constitutional deadline of 20 December 2016.
- (3) The Council stressed that, in order to create a climate conducive to dialogue and the holding of elections, the Government of the DRC must clearly commit to ensuring that human rights and the rule of law are respected and must cease all use of the justice system as a political tool. It also called on all stakeholders to reject the use of violence.
- (4) The Council also indicated its readiness to use all the means at its disposal, including restrictive measures against those responsible for serious human rights violations, those who promote violence and those who try to obstruct a consensual and peaceful solution to the crisis which respects the aspiration of the people of the DRC to elect their representatives.
- (5) Decision 2010/788/CFSP should therefore be amended accordingly.
- (6) Further action by the Union is needed in order to implement certain measures,

HAS ADOPTED THIS DECISION:

#### *Article 1*

Decision 2010/788/CFSP is amended as follows:

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

#### *Article 3*

1. Restrictive measures as provided for in Articles 4(1) and 5(1) and (2) shall be imposed against persons and entities designated by the Sanctions Committee for engaging in or providing support for acts that undermine the peace, stability or security of the DRC. Such acts include:

- (a) acting in violation of the arms embargo and related measures as referred to in Article 1;
- (b) being political and military leaders of foreign armed groups operating in the DRC who impede the disarmament and the voluntary repatriation or resettlement of combatants belonging to those groups;

<sup>(1)</sup> Council Decision 2010/788/CFSP of 20 December 2010 concerning restrictive measures against the Democratic Republic of the Congo and repealing Common Position 2008/369/CFSP (OJ L 336, 21.12.2010, p. 30).

- (c) being political and military leaders of Congolese militias, including those receiving support from outside the DRC, who impede the participation of their combatants in disarmament, demobilisation and reintegration processes;
- (d) recruiting or using children in armed conflict in the DRC in violation of applicable international law;
- (e) being involved in planning, directing, or committing acts in the DRC that constitute human rights violations or abuses or violations of international humanitarian law, as applicable, including those acts involving the targeting of civilians, including killing and maiming, rape and other sexual violence, abduction, forced displacement, and attacks on schools and hospitals;
- (f) obstructing the access to or the distribution of humanitarian assistance in the DRC;
- (g) supporting persons or entities, including armed groups or criminal networks, involved in destabilising activities in the DRC through the illicit exploitation of or trade in natural resources, including gold, or wildlife or wildlife products;
- (h) acting on behalf of or at the direction of a designated person or entity, or acting on behalf of or at the direction of an entity owned or controlled by a designated person or entity;
- (i) planning, directing, sponsoring or participating in attacks against MONUSCO peacekeepers or United Nations personnel;
- (j) providing financial, material, or technological support for, or goods or services to a designated person or entity.

The relevant persons and entities covered by this paragraph are listed in Annex I.

2. Restrictive measures as provided for in Articles 4(1) and 5(1) and (2) shall be imposed against persons and entities:

- (a) obstructing a consensual and peaceful solution towards elections in DRC, including by acts of violence, repression or inciting violence, or by undermining the rule of law;
- (b) involved in planning, directing or committing acts that constitute serious human rights violations or abuses in DRC;
- (c) associated with those referred to in points (a) and (b);

as listed in Annex II.;

(2) Article 4 is replaced by the following:

*Article 4*

1. Member States shall take the necessary measures to prevent the entry into or transit through their territories of the persons referred to in Article 3.
2. Paragraph 1 shall not oblige a Member State to refuse its own nationals entry into its territory.
3. With regard to persons referred to in Article 3(1), paragraph 1 of this Article shall not apply:
  - (a) where the Sanctions Committee determines in advance and on a case-by-case basis that such entry or transit is justified on the grounds of humanitarian need, including religious obligation;
  - (b) where the Sanctions Committee concludes that an exemption would further the objectives of relevant resolutions of the United Nations Security Council, that is to say peace and national reconciliation in the DRC and stability in the region;
  - (c) where the Sanctions Committee authorises in advance and on a case-by-case basis, the transit of persons returning to the territory of the State of their nationality, or participating in efforts to bring to justice perpetrators of grave violations of human rights or international humanitarian law; or
  - (d) where such entry or transit is necessary for the fulfilment of judicial process.

In cases where, pursuant to this paragraph, a Member State authorises the entry into or transit through its territory of persons designated by the Sanctions Committee, the authorisation shall be limited to the purpose for which it is given and to the persons concerned thereby.

4. With regard to persons referred to in Article 3(2), paragraph 1 of this Article 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.

5. Paragraph 4 shall be considered as applying also where a Member State is host country of the Organisation for Security and Cooperation in Europe (OSCE).

6. Where a Member State grants an exemption pursuant to paragraph 4 or 5, it shall duly inform the Council thereof.

7. With regard to persons referred to in Article 3(2), Member States may grant exemptions from the measures imposed under paragraph 1 of this Article where travel is justified on the grounds 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 DRC.

8. A Member State wishing to grant exemptions referred to in paragraph 7 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. Where one or more of the Council members raise an objection, the Council, acting by a qualified majority, may decide to grant the proposed exemption.

9. Where, pursuant to paragraphs 4, 5, 6, 7 or 8 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) Article 5 is replaced by the following:

*Article 5*

1. All funds, other financial assets and economic resources owned or controlled directly or indirectly by the persons or entities referred to in Article 3 or held by entities owned or controlled directly or indirectly by them or by any persons or entities acting on their behalf or at their direction, as identified in Annex I and II, shall be frozen.

2. No funds, other financial assets or economic resources shall be made available, directly or indirectly, to or for the benefit of the persons or entities referred to in paragraph 1.

3. With regard to persons and entities referred to in Article 3(1), Member States may allow for exemptions from the measures referred to in paragraphs 1 and 2 in respect of funds, other financial assets and economic resources which are:

- (a) necessary for basic expenses, 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 reimbursement of incurred expenses associated with the provision of legal services;

- (c) intended exclusively for the payment of fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, or other financial assets and economic resources;
- (d) necessary for extraordinary expenses, after notification by the Member State concerned to, and approval by, the Sanctions Committee; or
- (e) the subject of a judicial, administrative or arbitral lien or judgment, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgment provided that the lien or judgment was entered before designation by the Sanctions Committee of the person or entity concerned, and is not for the benefit of a person or entity referred to in Article 3, after notification by the Member State concerned to the Sanctions Committee.

4. The exemptions referred to in points (a), (b) and (c) of paragraph 3 may be made after notification to the Sanctions Committee by the Member State concerned of its intention to authorise, where appropriate, access to such funds, other financial assets and economic resources, and in the absence of a negative decision by the Sanctions Committee within four working days of such notification.

5. With regard to persons and entities referred to in Article 3(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 and entities 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; 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.

6. 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 for persons and entities listed in Annex II, 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 person or entity was listed in the 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 person or entity 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.

7. With regard to persons and entities listed in Annex II, exemptions may also be made for funds and economic resources which are necessary for humanitarian purposes, such as delivering or facilitating the delivery of assistance, including medical supplies and food, or the transfer of humanitarian workers and related assistance or for evacuations from DRC.

8. Paragraphs 1 and 2 shall not prevent a person or entity listed in Annex II from making a payment due under a contract entered into prior to the date on which the person or entity was listed therein, provided that the Member State concerned has determined that the payment is not, directly or indirectly, received by a person or entity listed in Annex I or II.

9. 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 before the date on which those accounts became subject to restrictive measures, or
- (c) payments due to persons and entities referred to in Article 3(2) 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 paragraph 1.;

(4) Article 6 is replaced by the following:

*'Article 6*

1. The Council shall amend the list contained in Annex I on the basis of the determinations made by the United Nations Security Council or by the Sanctions Committee.

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

(5) Article 7 is replaced by the following:

*'Article 7*

1. Where the United Nations Security Council or the Sanctions Committee lists a person or entity, the Council shall include such 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 such person or entity an opportunity to present observations.

2. The Council shall communicate the decision referred to in Article 6(2), including the grounds for the listing, to the person or entity concerned, either directly, if the address is known, or through the publication of a notice, providing such person or entity 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.;

(6) Article 8 is replaced by the following:

*'Article 8*

1. Annex I shall include the grounds for listing of listed persons and entities as provided by the United Nations Security Council or the Sanctions Committee.

2. Annex I shall also include, where available, information provided by the United Nations Security Council or by 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 ID 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. Annex I shall also include the date of designation by the United Nations Security Council or by the Sanctions Committee.

3. Annex II shall include the grounds for listing the persons and entities referred to therein.

4. Annex II shall also include, where available, the information necessary to identify the persons or entities 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 entities, such information may include names, place and date of registration, registration number and place of business.;

(7) Article 9 is replaced by the following:

*Article 9*

1. This Decision shall be reviewed, amended or repealed as appropriate, in particular in the light of relevant decisions by the United Nations Security Council.

2. The measures referred to in Article 3(2) shall apply until 12 December 2017. They shall be renewed, or amended as appropriate, if the Council deems that their objectives have not been met.;

(8) The Annex to Decision 2010/788/CFSP is renamed Annex I and the headings in that Annex are replaced by the following '(a) List of persons referred to in Article 3(1)' and '(b) List of entities referred to in Article 3(1)';

*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, 12 December 2016.

*For the Council*  
*The President*  
F. MOGHERINI

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## ANNEX

The following Annex is added:

## ANNEX II

## LIST OF PERSONS AND ENTITIES REFERRED TO IN ARTICLE 3(2)

## A. PERSONS

	Name	Identifying information	Grounds for designation	Date of Listing
1.	Ilunga Kampete	a.k.a. Gaston Hughes Ilunga Kampete; a.k.a. Hugues Raston Ilunga Kampete. Born 24.11.1964 in Lubumbashi, military ID number: 1-64-86-22311-29. DRC nationality.	As Commander of the Republican Guard (GR), Ilunga Kampete was responsible for the GR units deployed on the ground and involved in the disproportionate use of force and violent repression, in September 2016 in Kinshasa. In this capacity, Ilunga Kampete was therefore involved in planning, directing, or committing acts that constitute serious human rights violations in DRC.	12.12.2016
2.	Gabriel Amisi Kumba	a.k.a. Gabriel Amisi Nkumba; a.k.a. "Tango Fort"; a.k.a. "Tango Four". Born 28.5.1964 in Malela, military ID number: 1-64-87-77512-30. DRC nationality.	Commander of the 1st defence zone of Congolese Army (FARDC) whose forces took part in the disproportionate use of force and violent repression, in September 2016 in Kinshasa. In this capacity, Gabriel Amisi Kumba was therefore involved in planning, directing, or committing acts that constitute serious human rights violations in DRC.	12.12.2016
3.	Ferdinand Ilunga Luyoyo	Born 8.3.1973 in Lubumbashi. Passport number: n° OB0260335 (valid from 15.4.2011 till 14.4.2016). DRC nationality.	As Commander of the anti-riot body <i>Légion Nationale d'Intervention of the Congolese National Police (PNC)</i> , Ferdinand Ilunga Luyoyo was responsible for disproportionate use of force and violent repression in September 2016 in Kinshasa. In this capacity, Ferdinand Ilunga Luyoyo was therefore involved in planning, directing, or committing acts that constitute serious human rights violations in DRC.	12.12.2016
4.	Celestin Kanyama	a.k.a. Kanyama Tshisiku Celestin; a.k.a. Kanyama Celestin Cishiku Antoine, a.k.a. Kanyama Cishiku Bilolo Célestin, a.k.a. Esprit de mort. Born 4.10.1960 in Kananga. DRC nationality. Passport number: OB0637580 (valid from 20.5.2014 to 19.5.2019). Was granted Schengen visa n° 011518403, issued on 2.7.2016.	As Kinshasa Police Commissioner (PNC), Celestin Kanyama was responsible for the disproportionate use of force and violent repression in September 2016 in Kinshasa. In this capacity, Celestin Kanyama was therefore involved in planning, directing, or committing acts that constitute serious human rights violations in DRC.	12.12.2016

	Name	Identifying information	Grounds for designation	Date of Listing
5.	John Numbi	a.k.a. John Numbi Banza Tambo; a.k.a. John Numbi Banza Ntambo; a.k.a. Tambo Numbi. Born 16.8.1962 in Jadotville-Likasi-Kolwezi. DRC nationality.	Former Inspector-General of the Congolese National Police (PNC), John Numbi remains an influential figure who was notably involved in the campaign of violent intimidation in the March 2016 gubernatorial elections in the DRC's four ex-Katangan provinces and as such is responsible for obstructing a consensual and peaceful solution towards elections in DRC.	12.12.2016
6.	Roger Kibelisa	a.k.a. Roger Kibelisa Ngambaswi. DRC nationality.	As Interior Director of the National Intelligence Service (ANR), Roger Kibelisa is involved in the intimidation campaign carried out by ANR officials towards opposition members, including arbitrary arrests and detention. Roger Kibelisa has therefore undermined the rule of law and obstructed a consensual and peaceful solution towards elections in DRC.	12.12.2016
7.	Delphin Kaimbi	a.k.a. Delphin Kahimbi Kasagwe; a.k.a. Delphin Kayimbi Demba Kasangwe; a.k.a. Delphin Kahimbi Kasangwe; a.k.a. Delphin Kahimbi Demba Kasangwe; a.k.a. Delphin Kasagwe Kahimbi. Born 15.1.1969 (alternatively: 15.7.1969) in Kiniezire/Goma. DRC nationality. Diplomatic passport n°: DB0006669 (valid 13.11.2013 till 12.11.2018).	Head of Military Intelligence Body (ex-DEMIAP), part of the National Operations Centre, the command and control structure responsible for arbitrary arrests and violent repression in Kinshasa in September 2016, and responsible for forces that participated in intimidation and arbitrary arrests, which obstructs a consensual and peaceful solution towards elections in DRC.	12.12.2016

B. ENTITIES'