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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 889/2005

of 13 June 2005

imposing certain restrictive measures in respect of the Democratic Republic of Congo and repealing Regulation (EC) No 1727/2003

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301 thereof,

Having regard to Common Position 2005/440/CFSP of 13 June 2005 concerning restrictive measures against the Democratic Republic of Congo ⁽¹⁾,

Having regard to the proposal from the Commission,

Whereas:

- (1) Council Common Position 2002/829/CFSP of 21 October 2002 on the supply of certain equipment into the Democratic Republic of Congo ⁽²⁾ imposed an embargo on the supply of arms and related materiel to the Democratic Republic of the Congo ('DRC').
- (2) On 28 July 2003 the United Nations Security Council decided in its Resolution 1493 (2003) ('UNSCR 1493 (2003)') to impose an embargo on the supply of arms and related materiel as well as the provision of assistance, advice or training related to military activities to all armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive agreement, in the DRC.
- (3) Common Position 2003/680/CFSP provides for the alignment of Common Position 2002/829/CFSP with the measures set out by UNSCR 1493 (2003). Some of these measures have been implemented at Community level by Council Regulation (EC) No 1727/2003 ⁽³⁾.
- (4) In view of the continuing illicit flow of weapons within and into the DRC, the UN Security Council, acting under Chapter VII of the Charter of the United Nations,

adopted Resolution 1596 (2005) of 18 April 2005 ('UNSCR 1596 (2005)') which, *inter alia*, extends the existing arms embargo to any recipient in the territory of the DRC. UNSCR 1596 (2005) provides for certain exemptions to the embargo.

- (5) Common Position 2005/440/CFSP confirms the embargo and ban on the provision of related assistance of Common Position 2002/829/CFSP and provides for an additional exemption to the arms embargo and the ban on the provision of related assistance in order to bring the list of exemptions in line with UNSCR 1596 (2005).
- (6) The prohibition on providing technical and financial assistance related to military activities falls within the scope of the Treaty. In order to avoid any distortion of competition, Community measures are therefore necessary to implement that prohibition as far as the Community is concerned.
- (7) For the purpose of this Regulation, the territory of the Community should be deemed to encompass the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty.
- (8) For reasons of expediency, the Commission should be empowered to amend the Annex to this Regulation.
- (9) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force on the day of its publication.
- (10) For the sake of clarity, Regulation (EC) No 1727/2003 should be replaced by this new Regulation containing all the relevant provisions regarding the prohibition on providing technical and financial assistance related to military activities in the DRC,

⁽¹⁾ See page 22 of this Official Journal.

⁽²⁾ OJ L 285, 23.10.2002, p. 1. Common Position as amended by Common Position 2003/680/CFSP (OJ L 249, 1.10.2003, p. 64).

⁽³⁾ OJ L 249, 1.10.2003, p. 5. Regulation as amended by Commission Regulation 1567/2004 (OJ L 285, 4.9.2004, p. 10).

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the following definitions shall apply:

1. 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; technical assistance also includes verbal forms of assistance;
2. 'Sanctions Committee' means the Committee of the Security Council of the United Nations which was established pursuant to paragraph 8 of UNSCR 1533 (2004).

Article 2

It shall be prohibited:

- (a) to grant, sell, supply or transfer technical assistance related to military activities directly or indirectly to any person, entity or body in, or for use in the DRC;
- (b) to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of arms and related materiel, or for any grant, sale, supply, or transfer of related technical assistance and other services, directly or indirectly to any person, entity or body in, or for use in the DRC;
- (c) to participate, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to promote the transactions referred to in points (a) and (b).

Article 3

1. By way of derogation from Article 2, the competent authority, as set out in the Annex, of the Member State where the service provider is established, may authorise:

- (a) the provision of technical assistance, financing and financial assistance related to arms and related materiel intended solely for support of and use by the United Nations Organisation Mission in the DRC ('MONUC');
- (b) the provision of technical assistance, financing and financial assistance related to arms and related materiel intended solely for support of or use by units of the army and police of the DRC, provided that the said units:
 - (i) have completed the process of their integration, or

- (ii) operate under the command, respectively, of the 'état-major intégré' of the Armed Forces or of the National Police of the DRC, or

- (iii) are in the process of their integration, in the territory of the DRC outside the provinces of North and South Kivu and the Ituri district.

- (c) the provision of technical assistance, financing and financial assistance related to non-lethal military equipment intended solely for humanitarian or protective use, where the provision of such assistance or services has been notified in advance to the Sanctions Committee.

2. No authorisations shall be granted for activities that have already taken place.

Article 4

The Commission and Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with any other relevant information at their disposal in connection with this Regulation, in particular information in respect of violation and enforcement problems and judgments handed down by national courts.

Article 5

1. The Commission shall be empowered to amend the Annex on the basis of information supplied by Member States.

2. Without prejudice to the rights and obligations of the Member States under the Charter of the United Nations, the Commission shall maintain all necessary contacts with the Sanctions Committee for the purpose of the effective implementation of this Regulation.

Article 6

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties laid down must be effective, proportionate and dissuasive.

Member States shall notify those rules to the Commission without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment thereof.

Article 7

This Regulation shall apply

- (a) within the territory of the Community, including its airspace and on board any aircraft or any vessel under the jurisdiction of a Member State;

(b) to any person inside or outside the territory of the Community who is a national of a Member State;

Article 8

Regulation (EC) No 1727/2003 is hereby repealed.

(c) to any legal person, group or entity which is incorporated or constituted under the law of a Member State;

Article 9

(d) to any legal person, group or entity doing business within the Community.

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 13 June 2005.

For the Council

The President

J. ASSELBORN

ANNEX

List of competent authorities referred to in Article 3(1)

BELGIUM

Ministerie van het Brussels Hoofdstedelijk Gewest/Ministère de la Région de Bruxelles — Capitale
 Directie Externe Betrekkingen/Direction des Relations extérieures
 City Center
 Kruidtuinlaan/Boulevard du Jardin Botanique 20
 B-1035 Brussel/Bruxelles
 Téléphone: (32-2) 800 37 59 (Cédric Bellemans)
 Fax: (32-2) 800 38 20
 cbellemans@mrbc.irisnet.be

Région wallonne:
 Cabinet du Ministre-Président du Gouvernement wallon
 Rue Mazy, 25-27
 B-5100 Jambes-Namur
 Téléphone: (32-81) 33 12 11
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Vlaams Gewest:
 Administratie Buitenlands Beleid
 Boudewijnlaan 30
 B-1000 Brussel
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CZECH REPUBLIC

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 Licenční správa
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Ministerstvo financí
 Finanční analytický útvar
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Erhvervs- og Byggestyrelsen
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 Fax (45) 35 46 62 03

Udenrigsministeriet
 Asiatisk Plads 2
 DK-1448 København K
 Tlf. (45) 33 92 00 00
 Fax (45) 32 54 05 33

Justitsministeriet
 Slotsholmsgade 10
 DK-1216 København K
 Tlf. (45) 33 92 33 40
 Fax (45) 33 93 35 10

GERMANY

Concerning financing and financial assistance:
 Deutsche Bundesbank
 Servicezentrum Finanzsanktionen
 Postfach
 D-80281 München
 Tel. (49) 89 28 89 38 00
 Fax (49) 89 35 01 63 38 00

Concerning technical assistance:
 Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAFA)
 Frankfurter Straße 29—35
 D-65760 Eschborn
 Tel. (49) 61 96 908-0
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ESTONIA

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GREECE

Ministry of Economy and Finance
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Υπουργείο Οικονομίας και Οικονομικών
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SPAIN

Ministerio, de Industria Turismo y Comercio
 Secretaría General de Comercio Exterior
 Paseo de la Castellana, 162
 E-28046 Madrid
 Tel. (34) 913 49 38 60
 Fax (34) 914 57 28 63

FRANCE

Ministère de l'économie, des finances et de l'industrie
 Direction générale des douanes et des droits indirects
 Cellule embargo — Bureau E2
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Direction générale du Trésor et de la politique économique
 Service des affaires multilatérales et du développement
 Sous-direction Politique commerciale et investissements
 Service Investissements et propriété intellectuelle
 139, rue du Bercy
 F-75572 Paris Cedex 12
 Tél.: (33) 1 44 87 72 85
 Télécopie: (33) 1 53 18 96 55

Ministère des affaires étrangères
 Direction générale des affaires politiques et de sécurité
 Direction des Nations unies et des organisations internationales
 Sous-direction des affaires politiques
 Tél.: (33) 1 43 17 59 68
 Télécopie: (33) 1 43 17 46 91
 Service de la politique étrangère et de sécurité commune
 Tél.: (33) 1 43 17 45 16
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IRELAND

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LATVIA

Latvijas Republikas Ārlietu ministrija
 Brīvības iela 36
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LITHUANIA

Ministry of Foreign Affairs
 Security Policy Department
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LUXEMBOURG

Ministère de l'économie et du commerce extérieur
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Ministère des affaires étrangères et de l'immigration
 Direction des affaires politiques
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MALTA

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NETHERLANDS

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AUSTRIA

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POLAND

Organ koordynujący:
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 Kardeljeva pl. 25
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