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COUNCIL JOINT ACTION 2007/405/CFSP

of 12 June 2007

on the European Union police mission undertaken in the framework of reform of the security sector (SSR) and its interface with the system of justice in the Democratic Republic of the Congo (EUPOL RD Congo)

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► <u>M3</u>	Council Joint Action 2009/466/CFSP of 15 June 2009	L 151	40	16.6.2009



COUNCIL JOINT ACTION 2007/405/CFSP

of 12 June 2007

on the European Union police mission undertaken in the framework of reform of the security sector (SSR) and its interface with the system of justice in the Democratic Republic of the Congo (EUPOL RD Congo)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14 and Article 25, third paragraph, thereof,

Whereas:

- (1) Further to an official invitation from the Government of the Democratic Republic of the Congo (DRC), on 9 December 2004 the Council adopted Joint Action 2004/847/CFSP on the European Union Police Mission in Kinshasa (DRC) regarding the Integrated Police Unit (EUPOL 'Kinshasa')⁽¹⁾, as provided for in the Global and Inclusive Agreement on Transition in the Democratic Republic of the Congo, signed in Pretoria on 17 December 2002, and the Memorandum on the Army and Security of 29 June 2003.
- (2) Following the promulgation on 18 February 2006 of the Constitution of the Democratic Republic of the Congo, the elections held in the DRC in 2006 marked the end of the transition process and enabled a government to be formed in 2007. Its programme provides in particular for a comprehensive reform of the security sector (SSR), the drawing up of a national plan, and priority reforms in the police, armed forces and judicial sectors.
- (3) The United Nations has reaffirmed its support for the reform of the security sector in several Security Council resolutions, and is conducting the MONUC operation in the DRC which is contributing to the security and stability of the country. On 15 May 2007, the United Nations Security Council adopted Resolution 1756 (2007) extending MONUC's mandate and allowing it, in close cooperation with other international partners including the European Union, to contribute to efforts to support the government in the initial process of planning security sector reform.
- (4) The European Union has consistently shown its support for the transition process in the DRC and for the reform of the security sector, including by the organisation of three operations under the Common Foreign and Security Policy (CFSP): EUSEC RD Congo⁽²⁾, EUPOL Kinshasa and Operation EUFOR RD Congo⁽³⁾.
- (5) As it is aware of the benefits to be gained from adopting a comprehensive approach combining the different initiatives underway, the EU indicated in the conclusions adopted by the

⁽¹⁾ OJ L 367, 14.12.2004, p. 30. Joint Action as last amended by Joint Action 2006/913/CFSP (OJ L 346, 9.12.2006, p. 67).

⁽²⁾ Council Joint Action 2005/355/CFSP of 2 May 2005 on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (DRC) (OJ L 112, 3.5.2005, p. 20). Joint Action as last amended by Joint Action 2007/192/CFSP (OJ L 87, 28.3.2007, p. 22).

⁽³⁾ Council Joint Action 2006/319/CFSP of 27 April 2006 on the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process. (OJ L 116, 29.4.2006, p. 98). Joint Action repealed by Joint Action 2007/147/CFSP (OJ L 64, 2.3.2007, p. 44).

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Council on 15 September 2006 that it was prepared to assume a coordinating role in international efforts in the security sector, in close cooperation with the United Nations, to support the Congolese authorities in this field.

- (6) In this context, the General Secretariat of the Council and staff of the Commission carried out two evaluation missions in the DRC, in cooperation with the Congolese authorities, in October 2006 and March 2007, to develop an overall EU approach to security sector reform.
- (7) On 7 December 2006 the Council adopted Joint Action 2006/913/CFSP amending and extending Joint Action 2004/847/CFSP. The new mandate, which runs until 30 June 2007, also enabled EUPOL 'Kinshasa' to increase its advisory role with the Congolese police in order to facilitate, in liaison with the EUSEC RD Congo mission, the process of security sector reform in the DRC.
- (8) On 14 May 2007, the Council approved an operations concept relating to a police mission conducted under the European Security and Defence Policy on security sector reform (SSR) and its interface with the justice system in the Democratic Republic of the Congo. The concept provides in particular that there should be no break in continuity when the activities of EUPOL Kinshasa cease and those of EUPOL RD Congo commence.
- (9) On the same date, 14 May 2007, the Council approved a revised general concept on continuation of the mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo, EUSEC RD Congo.
- (10) Synergies between the two missions, EUSEC RD Congo and EUPOL RD Congo, should be promoted taking into account equally the prospect that the two missions may eventually become a single mission.
- (11) To increase the consistency of the EU's activities in the DRC, the closest possible coordination between the various EU players should be ensured in Kinshasa as well as in Brussels, in particular through appropriate arrangements. The European Union Special Representative (EUSR) for the African Great Lakes Region should have a key role to play in this respect, taking account of his mandate.
- (12) On 15 February 2007 the Council adopted Joint Action 2007/112/CFSP ⁽¹⁾ appointing Mr Roeland VAN DE GEER as the new EUSR for the African Great Lakes Region.
- (13) On 11 May 2007 the Secretary-General/High Representative (SG/HR) sent a letter to the Congolese authorities to inform them of the EU's willingness to continue and increase its current commitment in the field of security sector reform and to obtain their formal consent. In a letter dated 2 June 2007, the Congolese authorities formally accepted the EU's offer and invited it to organise a mission to that effect.
- (14) Third States should participate in the project in accordance with the general guidelines defined by the European Council.
- (15) The mandate of the mission is being carried out in a security context that is liable to deteriorate and to undermine the objectives of the Common Foreign and Security Policy (CFSP) as defined in Article 11 of the Treaty,

HAS ADOPTED THIS JOINT ACTION:

⁽¹⁾ OJ L 46, 16.2.2007, p. 79.

▼ B*Article 1***Mission**

1. The European Union is conducting a mission to provide advice and assistance for security sector reform (SSR) in the Democratic Republic of the Congo (DRC), called EUPOL RD Congo, with the aim of contributing to Congolese efforts to reform and restructure the National Congolese Police (PNC) and its interaction with the judicial system. The mission must provide advice and assistance directly to the responsible Congolese authorities and through the police reform monitoring committee (CSRP) and the joint committee on justice, while taking care to promote policies compatible with human rights and international humanitarian law, democratic standards and the principles of good governance, transparency and respect for the rule of law.
2. The mission shall operate in accordance with the provisions contained in the mission statement set out in Article 2.

*Article 2***Mission Statement**

1. The mission will support SSR in the field of policing and its interface with the justice system. By means of monitoring, mentoring and advisory action with emphasis on the strategic dimension, EUPOL RD Congo shall:
 - contribute to the reform and restructuring of the Congolese National Police (PNC) through support for the setting up of a viable, professional and multiethnic/integrated police force, which takes account of the importance of proximity policing throughout the whole country with the direct involvement of the Congolese authorities in that process,
 - contribute to improving interaction between the police and the criminal justice system in the broader sense,
 - contribute to ensuring the consistency of all SSR efforts,
 - operate in close interaction with EUSEC RD Congo and the projects of the Commission, and coordinate its action with the other international efforts in the field of reform of the police and the criminal justice system,

▼ M2

- contribute to the police as well as to the gender, human rights and children and armed conflict aspects of the peace process in the eastern DRC and especially to its linkage to the reform process of the PNC.

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2. EUPOL RD Congo shall be a mission without executive powers. It shall accomplish its tasks through, *inter alia*, mentoring, monitoring and advisory duties.
3. The mission shall advise the Member States and third States and shall coordinate and facilitate, under their responsibility, the implementation of their projects in fields which are of interest to the mission and in furtherance of its objectives.

▼ M2*Article 3***Structure of the mission and deployment zone**

1. The mission shall have headquarters (HQ) in Kinshasa consisting of:

▼ M2

- (a) the Head of Mission;
 - (b) a team of police advisers at strategic level;
 - (c) a team of police advisers at operational level;
 - (d) a team of legal advisers at strategic and operational level;
 - (e) administrative support.
2. The mission shall have a permanent presence in Goma and Bukavu, in the eastern part of the DRC, so as to deliver assistance and expertise to the stabilisation process in the eastern DRC.
3. The operational breakdown of tasks shall be as follows:
- (a) experts forming an integral part of the various working parties on police reform, and advisers assigned to the key organisational and decision-making posts of the CSRP planned by the Congolese authorities;
 - (b) experts assigned to the PNC, particularly in key posts, and assigned to mentor the criminal police and the police responsible for the maintenance of law and order;
 - (c) justice interface in the field of criminal law in order to add to activities in the police field an interface with criminal justice and follow up important aspects of the reform of criminal justice, including in the case of military criminal law;
 - (d) expertise aimed at contributing to the horizontal aspects of SSR;
 - (e) experts assigned to the PNC, particularly in key posts, and assigned to mentor the Border Police and Audit Police Service;
 - (f) experts assigned to the police as well as to the gender, human rights and children and armed conflict aspects of the stabilisation process in the east, and its linkage to the national police reform process.
4. The deployment zone shall be Kinshasa, Goma and Bukavu. Given the geographical implications of the mission throughout the territory of the DRC, as a result of the mission statement, movement of experts and their presence in other locations in the provinces could prove necessary, on the instructions of the Head of Mission or of any person so authorised by the Head of Mission and taking due account of the security situation.

▼ M1*Article 3a***Civilian Operation Commander**

1. The Civilian Planning and Conduct Capability (CPCC) Director shall be the Civilian Operation Commander for EUPOL RD Congo.
2. The Civilian Operation Commander shall exercise command and control of EUPOL RD Congo at the strategic level under the political control and strategic direction of the Political and Security Committee (PSC) and the overall authority of the SG/HR.
3. The Civilian Operation Commander shall ensure proper and effective implementation of the Council's decisions and the PSC's decisions, in particular by issuing instructions at strategic level as required to the Head of Mission.
4. All seconded staff shall remain under the full command of the national authorities of the sending State or EU institution. National authorities shall transfer Operational Control (OPCON) of their personnel, teams and units to the Civilian Operation Commander.
5. The Civilian Operation Commander shall have overall responsibility for ensuring that the EU's duty of care is properly discharged.

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6. The Civilian Operation Commander and the EUSR shall consult each other as required.

▼B*Article 4***Planning**

The Head of Mission shall draw up the Operational Plan (OPLAN) for the mission so that it may be submitted for approval by the Council. The Head of Mission shall be assisted in this task by the General Secretariat of the Council.

*Article 5***Head of Mission**

1. Superintendent Adílio Ruivo Custódio shall be appointed Head of Mission.

▼M1

2. The Head of Mission shall assume responsibility and exercise command and control of the mission at theatre level.

3. The Head of Mission shall exercise command and control over personnel, teams and units from contributing States as assigned by the Civilian Operation Commander together with administrative and logistic responsibility over assets, resources and information put at the disposal of the mission.

4. The Head of Mission shall issue instructions to all mission staff for the effective conduct of EUPOL RD Congo in theatre, assuming its coordination and day-to-day management, in accordance with the Civilian Operation Commander's instructions at strategic level.

5. The Head of Mission shall be responsible for the implementation of the Mission's budget. For that purpose the Head of Mission shall sign a contract with the Commission.

6. The Head of Mission shall be responsible for disciplinary control over staff. In the case of seconded staff, disciplinary action shall be exercised by the national or EU authority concerned.

7. The Head of Mission shall represent EUPOL RD Congo in the operations area and shall ensure appropriate visibility of the Mission.

8. The Head of Mission shall coordinate with other EU actors on the ground as appropriate. Without prejudice to the chain of command, the Head of Mission shall receive local political guidance from the EUSR.

▼B*Article 6***Staff**

1. Mission experts shall be seconded by Member States and by the EU institutions. Each Member State or institution shall bear the costs relating to the seconded experts, including travel expenses to and from the DRC, salaries, medical coverage and allowances, other than per diems and allowances linked to risks and living conditions.

2. International civilian staff and local staff shall be recruited on a contractual basis by the mission as required.

▼M1

3. All staff shall carry out their duties and act in the interest of the Mission. All staff shall respect the security principles and minimum

▼ M1

standards established by Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations ⁽¹⁾.

*Article 7***Chain of Command**

1. EUPOL RD Congo shall have a unified chain of command as a crisis management operation.
2. Under the responsibility of the Council, the Political and Security Committee (PSC) shall exercise political control and strategic direction of EUPOL RD Congo.
3. Under the political control and strategic direction of the PSC and the overall authority of the SG/HR the Civilian Operation Commander shall be the commander of EUPOL RD Congo at strategic level and, as such, shall issue instructions to the Head of Mission and provide him with advice and technical support.
4. The Civilian Operation Commander shall report to the Council through the SG/HR.
5. The Head of Mission shall exercise command and control of EUPOL RD Congo at theatre level and shall be directly responsible to the Civilian Operation Commander.

*Article 8***Political control and strategic direction**

1. Under the responsibility of the Council, the PSC shall exercise political control and strategic direction of the mission. The Council hereby authorises the PSC to take the relevant decisions for that purpose in accordance with Article 25 of the Treaty on European Union. This authorisation shall include the power to amend the OPLAN. It shall also include powers to take subsequent decisions regarding the appointment of the Head of Mission. The powers of decision with respect to the objectives and termination of the mission shall remain vested in the Council.
2. The PSC shall report to the Council at regular intervals.
3. The PSC shall receive reports by the Civilian Operation Commander and the Head of Mission on a regular basis and as required on issues within their areas of responsibility.

▼ B*Article 9***Financial arrangements****▼ M3**

1. The financial reference amount intended to cover the expenditure relating to the mission for the period from 1 July 2007 to 30 June 2008 shall be EUR 5 500 000.

The financial reference amount intended to cover the expenditure related to the mission for the period from 1 July 2008 until 31 October 2009 shall be EUR 6 920 000.

The Council shall establish a new financial reference amount in order to cover expenditure related to the mission for the period from 1 November 2009 to 30 June 2010.;

⁽¹⁾ OJ L 101, 11.4.2001, p. 1. Decision as amended by Decision 2007/438/EC (OJ L 164, 26.6.2007, p. 24).

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2. As regards expenditure financed out of the amount stipulated in paragraph 1, the following shall apply:
 - (a) expenditure shall be managed in accordance with the Community rules and procedures applicable to the budget, with the exception that any pre-financing shall not remain the property of the Community. Nationals of third States shall be allowed to tender for contracts;
 - (b) the Head of Mission shall report fully to, and be supervised by, the Commission regarding the activities undertaken in the framework of his contract.
3. The financial arrangements shall respect the operational requirements of the mission, including compatibility of equipment.
4. The expenditure connected with the mission shall be eligible as from the entry into force of this Joint Action.

*Article 10***Participation by third States**

1. Without prejudice to the decision-making autonomy of the EU and its single institutional framework, third States may be invited to contribute to the mission, provided that they bear the cost of the staff seconded by them, including salaries, all-risks insurance cover, daily subsistence allowances and travel expenses to and from the DRC, and that they contribute to the running costs of the mission, as appropriate.
2. Third States contributing to the mission shall have the same rights and obligations in terms of day-to-day management of the project as EU Member States.
3. The Council hereby authorises the PSC to take the relevant decisions on acceptance of the contributions proposed and to establish a Committee of Contributors.
4. Detailed arrangements regarding the participation of third States shall be covered by agreements concluded in accordance with the procedure laid down in Article 24 of the Treaty. The Secretary General/High Representative, who shall assist the Presidency, may negotiate such arrangements on the latter's behalf. Where the EU and a third State have concluded an agreement establishing a framework for the third State's participation in EU crisis-management operations, the provisions of that agreement shall apply in the context of the mission.

*Article 11***Coordination**

1. The Council and the Commission shall each, in accordance with their respective powers, ensure that this Joint Action is consistent with the Community's external activities, in accordance with the second paragraph of Article 3 of the Treaty. The Council and the Commission shall cooperate to this end. Arrangements for coordinating EU activities in the DRC shall be put in place in Kinshasa, as well as in Brussels.
2. Without prejudice to the chain of command, the Head of Mission shall act in close coordination with the Commission delegation.
3. Without prejudice to the chain of command, the Head of Mission EUSEC RD Congo and the Head of Mission EUPOL RD Congo shall closely coordinate their actions and shall seek synergies between the two missions, particularly as regards the horizontal aspects of security-sector reform in the DRC.
4. In accordance with his mandate, the EUSR shall ensure consistency between the actions undertaken by the EUPOL RD

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Congo mission and the EUSEC RD Congo mission. He shall contribute to coordination with the other international players involved in security-sector reform in the DRC.

5. The Head of Mission shall cooperate with the other international players present, in particular MONUC and the third States involved in the DRC.

*Article 12***Release of classified information**

1. The Secretary-General/High Representative shall be authorised to release to the third States associated with the present Joint Action any European Union classified information and documents up to the 'EU CONFIDENTIAL' level which are generated for the purposes of the operation, in accordance with the Council's security regulations ⁽¹⁾.

2. The Secretary-General/High Representative shall also be authorised to release to the United Nations, in accordance with the operational needs of the mission, any European Union information and documents up to the 'EU RESTRICTED' level which are generated for the purposes of the operation, in accordance with the Council's security regulations. Local arrangements will be made to that end.

3. In the case of precise and immediate operational need, the Secretary-General/High Representative shall also be authorised to release to the host State any European Union information and documents up to the 'EU RESTRICTED' level which are generated for the purposes of the operation, in accordance with the Council's security regulations. In all other cases, such information and documents will be released to the host State in accordance with the appropriate procedures for cooperation by the host State with the European Union.

4. The Secretary-General/High Representative shall be authorised to release to the third States associated with the present Joint Action any European Union non-classified documents connected with the deliberations of the Council relating to the operation and covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council's Rules of Procedure ⁽²⁾.

*Article 13***Status of the mission and of its staff**

1. The status of mission staff, including where appropriate the privileges, immunities and any further guarantees necessary for the completion and smooth functioning of the mission, shall be agreed in accordance with the procedure laid down in Article 24 of the Treaty on European Union. The SG/HR, who shall assist the Presidency, may negotiate such arrangements on its behalf.

2. The State or Community institution having seconded a staff member shall be responsible for dealing with any complaints linked to the secondment, from or concerning the staff member. The State or Community institution in question shall be responsible for bringing any action against the person seconded.

⁽¹⁾ Decision 2001/264/EC(OJ L 101, 11.4.2001, p. 1). Decision as last amended by Decision 2005/952/EC (OJ L 346, 29.12.2005, p. 18).

⁽²⁾ Decision 2006/683/EC, Euratom (OJ L 285, 16.10.2006, p. 47). Decision as last amended by Decision 2007/4/EC, Euratom (OJ L 1, 4.1.2007, p. 9).

▼ M1*Article 14***Security**

1. The Civilian Operation Commander shall direct the Head of Mission's planning of security measures and ensure their proper and effective implementation for EUPOL RD Congo in accordance with Articles 3a and 7 in coordination with the Council Security Office.
2. The Head of Mission shall be responsible for the security of the operation and for ensuring compliance with minimum security requirements applicable to the operation, in line with the policy of the European Union on the security of personnel deployed outside the European Union in an operational capacity under Title V of the Treaty on European Union and its supporting instruments.
3. The Head of Mission shall be assisted by a Mission Security Officer (MSO), who shall report to the Head of Mission and also maintain a close functional relationship with the Council Security Office.
4. EUPOL RD Congo staff shall undergo mandatory security training before their entry into function, in accordance with the OPLAN. They shall also receive regular in theatre refresher training organised by the MSO.

*Article 14a***Watch-Keeping**

The Watch-Keeping Capability shall be activated for EUPOL RD Congo.

▼ M2▼ B*Article 16***Entry into force and duration**

This Joint Action shall enter into force on 1 July 2007.

▼ M3

It shall expire on 30 June 2010.

▼ B*Article 17***Publication**

This Joint Action shall be published in the *Official Journal of the European Union*.

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The Decisions of the PSC pursuant to Article 8(1), regarding the appointment of the Head of Mission, shall also be published in the *Official Journal of the European Union*.