



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.5.2005
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Proposal for a

COUNCIL REGULATION

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

(presented by the Commission)

EXPLANATORY MEMORANDUM

- In view of the continuing illicit flow of weapons within and into the Democratic Republic of the Congo, the UN Security Council, acting under Chapter VII of the Charter of the United Nations, adopted Resolution 1596 (2005) on 18 April 2005, inter alia extending the arms embargo imposed by UN Security Council Resolution 1493 (2003) to any recipient in the Democratic Republic of the Congo. The United Nations Security Council made provision for certain exemptions to the embargo.
- In order to implement the arms embargo set out in UN Security Council Resolution 1596 (2005), the Council has adopted Common Position 2005/XXX/CFSP.
- The prohibition to provide technical and financial assistance related to military activities in the Democratic Republic of the Congo foreseen by Common Position 2005/XXX/CFSP falls within the scope of the Treaty and requires specific Community legislation. The Commission proposes to implement these measures in the Community by means of a Council Regulation.

Proposal for a

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imposing certain restrictive measures in respect of the Democratic Republic of the 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/xxx/CFSP of xx 2005 concerning restrictive measures against the Democratic Republic of the Congo,¹

Having regard to the proposal from the Commission²,

Whereas:

- (1) Council Common Position 2002/829/CFSP of 21 October 2002³ imposed an embargo on the supply of arms and related materiel to the Democratic Republic of the Congo.
- (2) On 28 July 2003 the United Nations Security Council decided in its Resolution 1493 (2003), hereinafter referred to as 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 Democratic Republic of the Congo.
- (3) Council Common Position 2003/680/CFSP of 29 September 2003⁴ provides for the alignment of Common Position 2002/829/CFSP with the measures set out by UNSCR 1493 (2003). Some of these measures are implemented at Community level by Council Regulation (EC) No 1727/ 2003⁵.
- (4) In view of the continuing illicit flow of weapons within and into the Democratic Republic of the Congo, the UN Security Council, acting under Chapter VII of the Charter of the United Nations, adopted Resolution 1596 (2005) of 18 April 2005, hereinafter referred to as UNSCR 1596 (2005), *inter alia* extending the existing arms embargo to any recipient in the territory of the Democratic Republic of the Congo. Resolution 1596 (2005) provides for certain exemptions to the embargo.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ L 285, 23.10.2002, p. 1.

⁴ OJ L 249, 1.10.2003, p. 64.

⁵ OJ L 249, 1.10.2003, p. 5.

- (5) Common Position 2005/..../CFSP confirms the embargo and ban of Common Position 2002/829/CFSP and makes provision 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 Resolution 1596 (2005). Since this exemption applies to the ban on the provision of certain financial and technical assistance, Regulation (EC) No 1727/2003 should be amended accordingly. On the occasion of that amendment, it is appropriate to align with recent practice the provisions of that Regulation on the ban on technical assistance, financing and financial assistance related to military activities.
- (6) The prohibition to provide 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. 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.
- (7) For reasons of expediency, the Commission should be empowered to amend the Annex to this Regulation.
- (8) 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.
- (9) For the sake of clarity, Regulation (EC) No 1727/2003 should be replaced by a new Regulation containing all the relevant provisions regarding the prohibition to provide technical and financial assistance related to military activities in the Democratic Republic of the Congo,

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 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 Democratic Republic of the Congo;

- (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 Democratic Republic of the Congo.
- (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 paragraphs (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 Organization Mission in the Democratic Republic of the Congo (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 Democratic Republic of the Congo , provided that the said units:
 - have completed the process of their integration, or
 - operate under the command, respectively, of the “état-major intégré” of the Armed Forces or of the National Police of the Democratic Republic of the Congo, or
 - 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 provided for 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.

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;
- (c) to any legal person, group or entity which is incorporated or constituted under the law of a Member State;
- (d) to any legal person, group or entity doing business within the Community.

Article 8

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

Article 9

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 Brussels,

For the Council
The President

ANNEX

List of competent authorities referred to in Article 3

(to be completed by the Member States)

BELGIUM

CZECH REPUBLIC

DENMARK

GERMANY

ESTONIA

GREECE

SPAIN

FRANCE

IRELAND

ITALY

CYPRUS

LATVIA

LITHUANIA

LUXEMBOURG

HUNGARY

MALTA

NETHERLANDS

AUSTRIA

POLAND

PORTUGAL

SLOVENIA

SLOVAKIA

FINLAND

SWEDEN

UNITED KINGDOM

EUROPEAN COMMUNITY

Commission of the European Communities

Directorate-General for External Relations

Directorate Common Foreign and Security Policy (CFSP) and European Security and Defence Policy (ESDP): Commission Coordination and contribution

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