

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL JOINT ACTION 2009/709/CFSP

of 15 September 2009

on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (EUSEC RD Congo)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14, Article 25, third paragraph, and Article 28(3), first subparagraph thereof,

Whereas:

- (1) Since 2 May 2005, the European Union (EU) has been conducting a mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (DRC) (EUSEC RD Congo). The current mission statement is set out in Joint Action 2007/406/CFSP ⁽¹⁾ and ends on 30 September 2009.
- (2) The Secretary-General/High Representative for Common Foreign and Security Policy (SG/HR) sent a letter to the President of the DRC dated 27 July 2009 stating the EU's renewed commitment. Following that letter, the mission statement should be adapted as from 1 October 2009.
- (3) Following the ratification in 2005 of the Constitution of the Third 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, which has adopted a programme providing in particular for comprehensive reform of the security sector, the drawing up of a national plan, and priority reforms in the police, armed forces and judicial sectors. The development of a revised plan for reform of the Armed forces of the Democratic Republic of the Congo (FARDC), approved by the President of the Republic at the end of May 2009, demonstrates the interest of the Congolese authorities in reinvigorating the process of security sector reform (SSR) in the DRC.
- (4) The United Nations has reaffirmed its support for the transition process and SSR by means of several Security Council resolutions, and is conducting the United Nations Mission in the Democratic Republic of the Congo (MONUC), which is contributing to the security and stability of the country. On 22 December 2008, the United Nations Security Council adopted Resolution 1856 (2008) extending MONUC's mandate and allowing it, in close coordination with other international partners, and especially the EU, to contribute to efforts to support the government in the process of SSR.
- (5) The EU has consistently supported SSR in the DRC, as one of the elements of a more general EU commitment to supporting development and democracy in the African Great Lakes Region, 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.
- (6) On 27 July 2009, the Council approved a revised General Concept on continuation of the mission to provide advice and assistance for SSR in the DRC.
- (7) On 15 June 2009, the Council adopted Joint Action 2009/466/CFSP amending and extending for an additional period of 12 months Joint Action 2007/405/CFSP on the EU police mission undertaken in the framework of SSR and its interface with the system of justice in the Democratic Republic of the Congo (EUPOL RD Congo) ⁽²⁾.
- (8) The synergies between the two missions, EUPOL RD Congo and EUSEC RD Congo, should continue to be promoted.

⁽¹⁾ OJ L 151, 13.6.2007, p. 52.⁽²⁾ OJ L 151, 16.6.2009, p. 40.

- (9) In order 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, through appropriate arrangements. The European Union Special Representative (EUSR) for the African Great Lakes Region will have an important role to play in this respect, taking account of his mandate.
- (10) On 16 February 2009, the Council adopted Joint Action 2009/128/CFSP⁽¹⁾ extending the mandate of Mr Roeland VAN DE GEER as the EUSR for the African Great Lakes Region.
- (11) Joint Action 2005/355/CFSP has been amended several times in order to boost the mission, in particular by Joint Action 2007/406/CFSP, as last amended by Joint Action 2009/509/CFSP⁽²⁾ extending the mission until 30 September 2009.
- (12) For the sake of clarity, Joint Action 2007/406/CFSP should be replaced by a new Joint Action.
- (13) Third States should participate in the project in accordance with the general guidelines defined by the European Council.
- (14) The current security situation in the DRC may deteriorate, with potentially serious repercussions for the process of strengthening democracy, the rule of law and international and regional security. A continued commitment of EU political effort and resources will help to embed stability in the region,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Mission

1. The European Union (EU) is conducting a mission to provide advice and assistance for security sector reform (SSR) in the Democratic Republic of the Congo (DRC), named 'EUSEC RD Congo', with the aim of assisting the Congolese authorities in setting up a defence apparatus capable of guaranteeing the security of the Congolese people, while respecting democratic standards, human rights and the rule of law, as well as the principles of good governance and transparency. The purpose of the mission is to contribute, in close coordination with international partners, to creating conditions to facilitate the implementation in the short and medium term of the guidelines adopted by the Congolese authorities in the revised plan for reform of the Armed forces of the Democratic Republic of the Congo (FARDC).

⁽¹⁾ OJ L 46, 17.2.2009, p. 36.

⁽²⁾ OJ L 172, 2.7.2009, p. 36.

2. The mission shall operate in accordance with the mission statement set out in Article 2.

Article 2

Mission statement

1. The mission shall aim, in close cooperation and coordination with the other actors in the international community, in particular the United Nations and the United Nations Mission in the Democratic Republic of the Congo (MONUC), and in pursuit of the objectives laid down in Article 1, to provide practical support in the field of SSR in the DRC – with emphasis on the strategic dimension – as set out in the revised General Concept, including:

- supporting the overall implementation of the revised plan through assistance and support for the structures put in place by the Congolese authorities to manage the implementation of the revised plan,
- making the implementation of the revised plan for reform of the FARDC operational through the development of detailed plans to rebuild the FARDC, in particular in the following areas: administration, operational capabilities, budget and finance, training, logistics, human rights and combating sexual violence, and human resources,
- identifying and managing specific projects in support of the revised plan for reform of the FARDC,
- supporting the Congolese authorities in the process of integrating ex-combatants into the FARDC, including the accelerated integration of the National Council for the Defence of the People (CNDP) and armed groups,
- supporting the EUSR in particular in the context of the peace negotiations in the east of the country,
- supporting cross-cutting activities, particularly in the area of human rights and for gender issues,

2. The mission shall advise the Member 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.

Article 3

Structure of the mission and deployment zone

1. The mission shall have headquarters in Kinshasa consisting of:
- (a) the mission leadership;
 - (b) an administrative support and logistics department for the mission;

(c) a department of advisers, at strategic level, assigned to the various structures of the Ministry of Defence, responsible for contributing to work on SSR carried out by the Congolese administration, and

(d) a department of defence experts responsible for assisting and supporting the Congolese in carrying out specific actions in the areas of administration, human resources, finance, logistics and training.

2. The main deployment zone shall be Kinshasa. Seconded advisers shall also be deployed in the four military regions in the east of the DRC. Movements of experts and their temporary presence in the military regions shall, if necessary, be organised on the instructions of the Head of Mission.

Article 4

Planning

The Head of Mission shall draw up a revised implementation plan (OPLAN) for the mission, to be submitted for approval by the Council. He shall be assisted in this task by the General Secretariat of the Council.

Article 5

Head of Mission

1. The Head of Mission shall assume day-to-day management of the mission and shall be responsible for staff and disciplinary matters.

2. All seconded staff shall remain under the full command of the national authorities of the sending State or the EU institution concerned. National authorities shall transfer operational control (OPCON) of their personnel to the Head of Mission.

3. The Head of Mission shall be responsible for disciplinary matters relating to staff. In the case of seconded staff, disciplinary action shall be exercised by the national authorities or EU institution concerned.

4. In the context of the mission statement as set out in Article 2, the Head of Mission shall be authorised to have recourse to financial contributions from the Member States to implement projects identified as supplementing in a consistent manner the mission's other actions, in two specific cases: either the project is provided for in the financial statement relating to this Joint Action or it is incorporated in the course of the mission by amending the financial statement at the request of the Head of Mission.

The Head of Mission will then conclude an arrangement with the Member States concerned. This arrangement shall in particular cover the specific procedures for dealing with any complaint from third parties concerning damage caused as a result of acts or omissions by the Head of Mission in the use of the funds provided by the contributing Member States.

Under no circumstances may the EU or the Secretary-General/High Representative (SG/HR) be held liable by contributing Member States as a result of acts or omissions by the Head of Mission in the use of funds from those States.

5. The Head of Mission shall sign a contract with the Commission to execute the budget for the mission.

6. The Head of Mission shall collaborate closely with the EUSR.

Article 6

Staff

1. Mission experts shall be seconded by Member States and by the EU institutions. Except for the Head of Mission, each Member State or institution shall bear the costs relating to the experts seconded, including travel expenses to and from the DRC, salaries, medical coverage and allowances other than daily allowances.

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

3. All mission experts shall remain under the authority of the appropriate Member State or EU institution, and shall fulfil their duties and act in the interest of the mission. Both during and after the mission, mission experts shall exercise the greatest discretion with regard to all facts and information relating to the mission.

Article 7

Chain of command

1. The mission shall have a unified chain of command.

2. The Political and Security Committee (PSC) shall exercise political control and strategic direction.

3. The SG/HR shall give political guidance to the Head of Mission through the EUSR.

4. The Head of Mission shall lead the mission and assume its day-to-day management.

5. The Head of Mission shall report to the SG/HR.

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

1. Under the responsibility of the Council, the PSC shall exercise the political control and strategic direction of the mission. The Council hereby authorises the PSC to take the relevant decisions in accordance with Article 25 of the Treaty. This authorisation shall include the power to amend the OPLAN and the chain of command. It shall also include powers necessary to take decisions regarding the appointment of the Head of Mission. The power of decision with respect to the objectives and termination of the mission shall remain vested in the Council, assisted by the SG/HR.
2. The PSC shall report to the Council at regular intervals.
3. The PSC shall receive, at regular intervals, reports by the Head of Mission. The PSC may invite the Head of Mission to its meetings as appropriate.
4. The EUSR shall provide the Head of Mission with the political guidance required to fulfil his duties at local level.

*Article 9***Financial provisions**

1. The financial reference amount to cover expenditure relating to the mission shall be EUR 10 900 000.
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. 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 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 mission as 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 SG/HR, 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***Consistency and 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 the coordination of the EU's activities in the DRC shall be established in Kinshasa as well as in Brussels.
2. Without prejudice to the chain of command, the Head of Mission shall also act in close coordination with the Commission delegation.
3. Without prejudice to the chain of command, the Head of the EUSEC RD Congo mission and the Head of the EUPOL RD Congo mission shall coordinate their activities closely and shall seek synergies between the two missions, particularly as regards the horizontal aspects of SSR in the DRC, and as regards the sharing of functions between the two missions, particularly in relation to gender issues and human rights.
4. The Head of Mission shall ensure that EUSEC RD Congo closely coordinates its activities with the Government of the DRC, the United Nations, via the MONUC mission, and the third States involved in the defence area of SSR in the DRC.

5. In accordance with his mandate, the EUSR shall ensure consistency between the activities of the EUSEC RD Congo mission and the EUPOL RD Congo mission. He shall contribute to coordination with the other international players involved in SSR in the DRC.

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

1. The SG/HR shall be authorised to release to third States associated with this Joint Action EU classified information and documents up to the level 'CONFIDENTIEL UE' generated for the purposes of the operation, in accordance with the Council's security regulations ⁽¹⁾.

2. The SG/HR shall be authorised further to release to the United Nations, in accordance with the operational needs of the mission, EU classified information and documents up to the level 'RESTREINT UE' generated for the purposes of the operation, in accordance with the Council's security regulations. Local arrangements shall be established for this purpose.

3. In the event of a specific and immediate operational need, the Secretary-General/High Representative shall also be authorised to release to the host State EU classified information and documents up to the level 'RESTREINT UE' generated for the purposes of the operation, in accordance with the Council's security regulations. In all other cases, such information and documents shall be released to the host State in accordance with procedures appropriate to the host State's level of cooperation with the EU.

4. The SG/HR shall be authorised to release to third States associated with this Joint Action EU non-classified documents relating to the deliberations of the Council with regard 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. The SG/HR, who shall assist the Presidency, may negotiate such arrangements on its behalf.

2. The State or EU 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 EU institution in question shall be responsible for bringing any action against the person seconded.

*Article 14***Security**

1. The Head of Mission shall be responsible for the security of the EUSEC RD Congo mission.

2. The Head of Mission shall exercise this responsibility in accordance with EU directives on the security of staff deployed outside EU territory in an operational mission under Title V of the Treaty and related documents.

3. Appropriate training in security measures shall be provided for all staff, in accordance with the OPLAN. A reminder of security instructions shall be given regularly by the EUSEC RD Congo officer in charge of security.

*Article 15***Review of the mission**

The PSC shall, on the basis of a report by the General Secretariat of the Council presented at the latest in March 2010, approve recommendations to the Council with a view to reviewing the progress of the reform of the FARDC and evaluating the impact of the mission on the implementation of specific measures to support the revised plan for reform of the FARDC, basing itself on strategic indicators and on operational indicators set out in the mission implementation plan.

*Article 16***Entry into force and duration**

This Joint Action shall enter into force on 1 October 2009.

It shall apply until 30 September 2010.

*Article 17***Publication**

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

Done at Brussels, 15 September 2009.

For the Council

The President

C. BILDT

⁽¹⁾ Decision 2001/264/EC (OJ L 101, 11.4.2001, p. 1).

⁽²⁾ Decision 2006/683/EC, Euratom (OJ L 285, 16.10.2006, p. 47).