

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

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 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.

⁽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).

- (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:

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.

⁽¹⁾ OJ L 46, 16.2.2007, p. 79.

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.

Article 3

Structure of the mission and deployment zone

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

- (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 operational breakdown of tasks will 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 Police Reform Monitoring Committee (CSRP) planned by the Congolese authorities;
- (b) experts assigned to the Congolese National Police (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 reform of criminal justice, including in the case of military criminal law;
- (d) expertise aimed at contributing to the horizontal aspects of SSR.

3. The deployment zone shall be Kinshasa. 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 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.

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.

2. The Head of Mission shall exercise operational control over and assume day-to-day management of the EUPOL RD mission.

3. The national authorities shall delegate operational control to the Head of Mission of EUPOL RD Congo.

4. The Head of Mission shall be responsible for disciplinary control of the staff. In the case of seconded staff, any disciplinary action shall be taken by the national or European authority concerned.

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

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

7. The Head of Mission shall ensure that EUPOL RD Congo closely coordinates its action with the Government of the DRC, the United Nations, via the MONUC mission, and the third States involved in the SSR field (aspects of the police/justice interface).

8. The Head of Mission shall ensure that the mission has a sufficiently high profile.

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.

3. Mission experts shall remain under the authority of their Member State or the appropriate 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, as a crisis-management operation, 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 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 through the EUSR.
6. The EUSR shall report to the Council through 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 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 Operational Plan (OPLAN). It shall also include powers 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.

Article 9

Financial arrangements

1. The financial reference amount to cover expenditure relating to the mission shall be EUR 5 500 000.
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, 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 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.

⁽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).

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.

*Article 14***Security**

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

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

⁽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).

3. Appropriate training in security measures will be carried out for all staff in accordance with the OPLAN. A reminder of the security regulations will be provided regularly by the EUPOL RD Congo officer in charge of security.

Article 15

Review of the mission

The Political and Security Committee shall, on the basis of a report by the General Secretariat of the Council, presented at the latest in March 2008, agree recommendations to the Council for a decision to be taken as to whether the two missions, namely EUSEC RD Congo and EUPOL RD Congo, should become a single mission.

Article 16

Entry into force and duration

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

It shall apply until 30 June 2008.

Article 17

Publication

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

Done at Luxembourg, 12 June 2007.

For the Council

The President

W. SCHÄUBLE