Council Regulation (EU) 2015/613 of 20 April 2015 amending Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, and repealing Regulation (EC) No 889/2005

COUNCIL REGULATION (EU) 2015/613

of 20 April 2015

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to Council Decision 2010/788/CFSP of 20 December 2010 concerning restrictive measures against the Democratic Republic of the Congo and repealing Common Position 2008/369/CFSP[(1)],

Having regard to the joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission,

Whereas:

(1) Council Regulation (EC) No 1183/2005[(2)] gives effect to Decision 2010/788/CFSP and provides for certain measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo ('DRC'), including the freezing of their assets.

(2) Council Regulation (EC) No 889/2005[(3)] imposes certain restrictive measures regarding the prohibition on providing technical and financial assistance related to military activities in the DRC, in accordance with Council Decision 2010/788/CFSP.

(3) United Nations Security Council Resolution (UNSCR) 2198 (2015) amended the criteria for the designation of persons and entities subject to the restrictive measures set out in paragraphs 9 and 11 of UNSCR 1807 (2008). By Decision (CFSP) 2015/620[(4)], the Council decided to extend the scope of those criteria accordingly.

(4) That measure falls within the scope of the Treaty and regulatory action at the level of the Union is necessary in order to implement it, in particular with a view to ensuring its uniform application by economic operators in all Member States. Consequently, Regulation (EC) No 1183/2005 should be amended accordingly.

(5) The provisions of Regulation (EC) No 889/2005 should be integrated into Regulation (EC) No 1183/2005 and Regulation (EC) No 889/2005 should be repealed.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) 2015/613. (See end of Document for details)*

(6) Some provisions of Regulation (EC) No 1183/2005 should also be updated to reflect standard wording used in recent legal acts on restrictive measures concerning liability, satisfaction of claims, and circumvention of prohibitions.

(7) Regulation (EC) No 1183/2005 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1183/2005 is amended as follows:

(1) Article 1 is replaced by the following:

Article 1

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

(a) "claim" means any claim, whether asserted by legal proceedings or not, made before or after the date of entry into force of this Regulation, under or in connection with a contract or transaction, and includes in particular a claim:

(i) for performance of any obligation arising under or in connection with a contract or transaction;

(ii) for extension or payment of a bond, financial guarantee or indemnity of whatever form;

(iii) for compensation in respect of a contract or transaction;

(iv) which is a counterclaim;

(v) for the recognition or enforcement, including by the procedure of exequatur, of a judgment, an arbitration award or an equivalent decision, wherever made or given;

(b) "contract or transaction" means any transaction of whatever form and whatever the applicable law, whether comprising one or more contracts or similar obligations made between the same or different parties; for this purpose "contract" includes a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, and credit, whether legally independent or not, as well as any related provision arising under, or in connection with, the transaction;

(c) "competent authorities" refers to the competent authorities of the Member States as identified on the websites listed in Annex II;

(d) "economic resources" means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds, but may be used to obtain funds, goods or services;

(e) "freezing of economic resources" means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;

(f) "freezing of funds" means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any

change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used, including portfolio management;

(g) "funds" means financial assets and benefits of every kind, including, but not limited to:

(i) cash, cheques, claims on money, drafts, money orders and other payment instruments;

(ii) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;

(iii) publicly-and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;

(iv) interest, dividends or other income on or value accruing from or generated by assets;

(v) credit, right of set-off, guarantees, performance bonds or other financial commitments;

(vi) letters of credit, bills of lading, bills of sale; and

(vii) documents showing evidence of an interest in funds or financial resources;

(h) "technical assistance" means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, in the form of an instruction, advice, training, transmission of working knowledge or skills or consulting services and including verbal forms of assistance;

(i) "brokering services" means:

(i) the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology or of financial and technical services, from a third country to any other third country, or

(ii) the selling or buying of goods and technology or of financial and technical services, that are located in third countries for their transfer to another third country;

(j) "territory of the Union" means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty, including their airspace..

(2) The following Articles are inserted:

Article 1a

1 It shall be prohibited to provide, directly or indirectly:

a technical assistance or brokering services related to the goods and technology listed in the Common Military List of the European Union[(5)] ("Common Military List") or related to the provision, manufacture, maintenance and use of goods included in that list, to any non-governmental entity or person operating in the territory of the Democratic Republic of Congo ("DRC");

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) 2015/613. (See end of Document for details)*

b financing or financial assistance related to the sale, supply, transfer or export of goods and technology listed in the Common Military List, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance, for any sale, supply, transfer or export of such items, or for any provision of related technical assistance or brokering services to any non-governmental entity or person operating in the territory of the DRC;

2 The provision of technical assistance, financing or financial assistance or brokering services to any non-governmental or other person, entity or body in the DRC, or for use in the DRC, other than provision of that assistance to the United Nations Organisation Stabilisation Mission in the DRC ("Monusco") or the African Union Regional Task Force in accordance with Article 1b(1), shall be notified in advance to the Committee of the Security Council of the United Nations established pursuant to paragraph 8 of UN Security Council Resolution 1533 (2004) ("Sanctions Committee"). Those notifications shall contain all relevant information, including, where appropriate, the end-user, the proposed date of delivery and the itinerary of shipments.

Article 1b

1 By way of derogation from Article 1a, the competent authorities may authorise the provision of:

a technical assistance, financing or financial assistance or brokering services related to arms and related material intended solely for the support of or use by Monusco;

b technical assistance, financing or financial assistance or brokering services 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 in accordance with Article 1a(2);

c technical assistance, financing or financial assistance or brokering services related to arms and related material intended solely for the support of or use by the African Union Regional Task Force.

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

(3) In Article 2, paragraph 3 is deleted.

(4) In Article 2a, paragraph 1 is replaced by the following:

1. Annex I shall include the natural or legal persons, entities or bodies designated by the Sanctions Committee for engaging in or providing support for acts that undermine the peace, stability or security of the DRC. Such acts shall include:

a acting in violation of the arms embargo and related measures as referred to in Article 1 of Decision 2010/788/CFSP and Article 1a of this Regulation;

b being political and military leaders of foreign armed groups operating in the DRC who impede the disarmament and the voluntary repatriation or resettlement of combatants belonging to those groups;

c being political and military leaders of Congolese militias, including those receiving support from outside the DRC, who impede the participation of their combatants in disarmament, demobilisation and reintegration processes;

d recruiting or using children in armed conflict in violation of applicable international law;

e being involved in planning, directing or participating in the targeting of children or women in situations of armed conflict, including killing and maiming, rape and other sexual violence, abduction, forced displacement and attacks on schools and hospitals;

f obstructing the access to or the distribution of humanitarian assistance in the DRC;

g supporting individuals or entities, including armed groups, involved in destabilising activities in the DRC through illicit trade of natural resources, including gold or wildlife as well as wildlife products;

h acting on behalf of or at the direction of a designated person or entity, or acting on behalf of or at the direction of an entity owned or controlled by a designated person or entity;

i planning, directing, sponsoring or participating in attacks against MONUSCO peacekeepers or UN personnel;

j providing financial, material, or technological support for, or goods or services to a designated person or entity..

(5) Article 7 is replaced by the following:

Article 7

1 The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person, entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen as result of negligence.

2 Actions by natural or legal persons, entities or bodies shall not give rise to any liability of any kind on their part if they did not know, and had no reasonable cause to suspect, that their actions would infringe the prohibitions set out in this Regulation..

(6) The following Articles are inserted:

Article 7a

1 No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:

a designated natural or legal persons, entities or bodies listed in Annex I;

b any natural or legal person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in point (a).

2 In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited under paragraph 1 shall be on the natural or legal person, entity or body seeking the enforcement of that claim.

3 This Article is without prejudice to the right of the natural or legal persons, entities and bodies referred to in paragraph 1 to judicial review of the legality of the non-performance of contractual obligations in accordance with this Regulation.