Council Regulation (EC) No 1183/2005 of 18 July 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

COUNCIL REGULATION (EC) No 1183/2005

of 18 July 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60, 301 and 308 thereof,

Having regard to Common Position 2005/440/CFSP of 13 June 2005 concerning restrictive measures against the Democratic Republic of the Congo[(1)],

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament[(2)],

Whereas:

(1) 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 providing, *inter alia*, for financial restrictive measures against persons designated by the competent United Nations Sanctions Committee as acting in violation of the arms embargo imposed against the Democratic Republic of the Congo by UN Security Council Resolutions 1493 (2003) and 1596 (2005).

(2) Common Position 2005/440/CFSP provides, *inter alia*, for implementation of the financial restrictive measures against persons designated by the competent United Nations Sanctions Committee. Those measures fall within the scope of the Treaty. In order to avoid any distortion of competition Community measures are therefore necessary to implement them as far as the Community is concerned. For the purposes 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.

(3) For reasons of expediency, the Commission should be empowered to amend the Annexes to this Regulation.

(4) 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.

(5) The Treaty, in Articles 60 and 301, empowers the Council to take, under certain conditions, measures aimed at the interruption or reduction of payments or movement

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EC) No 1183/2005. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

of capital and of economic relations with regard to third countries. The measures laid down in this Regulation, targeted also at individual persons not directly linked to the government of a third country, are necessary to attain this objective of the Community and Article 308 of the Treaty empowers the Council to take such measures if no other specific powers are provided for in the Treaty,

HAS ADOPTED THIS REGULATION:

[F1 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;

***Changes to legislation:** There are outstanding changes not yet made to Council Regulation (EC) No 1183/2005. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(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.**]**

Textual Amendments

F1 Substituted by 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.

[F2 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[3] ('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');

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

Changes to legislation: *There are outstanding changes not yet made to Council Regulation (EC) No 1183/2005. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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.

Textual Amendments

F2 Inserted by 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.

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**[**F3;**]**

[F4d technical assistance, financing or financial assistance or brokering services related to other sales and supply of arms and related materiel, as approved in advance by the Sanctions Committee.**]**

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

Textual Amendments

F2 Inserted by 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.

F3 Substituted by Council Regulation (EU) 2016/1165 of 18 July 2016 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.

F4 Inserted by Council Regulation (EU) 2016/1165 of 18 July 2016 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.

***Changes to legislation:** There are outstanding changes not yet made to Council Regulation (EC) No 1183/2005. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[F5 Article 2

1 All funds and economic resources belonging to, owned, held or controlled, either directly or indirectly, by a natural or legal person, entity or body listed in Annex I or Annex Ia including by a third party acting on their behalf or at their direction, shall be frozen.

2 No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annex I or Annex Ia.**]**

Textual Amendments

F5 Substituted by Council Regulation (EU) 2016/2230 of 12 December 2016 amending Council 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.

[F6 Article 2a

[F1 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;

[F3 e planning, directing, or committing acts in the DRC that constitute human rights violations or abuses or violations of international humanitarian law, as applicable, including those acts involving the targeting of civilians, 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;

[F3 g supporting individuals or entities, including armed groups or criminal networks, involved in destabilizing activities in the DRC through the illicit exploitation or 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;

[F7 i planning, directing, sponsoring or participating in attacks against MONUSCO peacekeepers or United Nations personnel, including members of the Group of Experts;**]**

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

2 Annex I shall include the grounds for listing natural or legal persons, entities or bodies, as provided by the UN Security Council or by the Sanctions Committee.

3 Annex I shall also include, where available, information necessary to identify the natural or legal persons, entities and bodies concerned, as provided by the UN Security Council