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COUNCIL COMMON POSITION 2005/440/CFSP

of 13 June 2005

concerning restrictive measures against the Democratic Republic of Congo and repealing Common Position 2002/829/CFSP

(OJ L 152, 15.6.2005, p. 22)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Decision 2005/846/CFSP of 29 November 2005	L 314	35	30.11.2005
►**M2**	Council Common Position 2006/624/CFSP of 15 September 2006	L 253	34	16.9.2006
►**M3**	Council Common Position 2007/654/CFSP of 9 October 2007	L 264	11	10.10.2007

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COUNCIL COMMON POSITION 2005/440/CFSP

of 13 June 2005

concerning restrictive measures against the Democratic Republic of Congo and repealing Common Position 2002/829/CFSP

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Whereas:

(1) On 21 October 2002, the Council adopted Common Position 2002/829/CFSP ([1]) on the supply of certain equipment into the Democratic Republic of Congo imposing an embargo on arms, munitions and military equipment on the Democratic Republic of Congo ('DRC').

(2) On 29 September 2003, the Council adopted Common Position 2003/680/CFSP amending Common Position 2002/829/CFSP in order to implement United Nations Security Council Resolution 1493 (2003) ('UNSCR 1493 (2003)') of 28 July 2003 imposing an arms embargo against the DRC.

(3) On 18 April 2005, the United Nations Security Council adopted Resolution 1596(2005), ('UNSCR 1596 (2005)') reaffirming the measures imposed by paragraph 20 of UNSCR 1493 (2003) and providing that these measures are to apply to any recipient in the territory of the DRC.

(4) UNSCR 1596 (2005) also imposes measures to prevent the entry into or transit through Member States' territories of all persons designated by the Committee established by paragraph 8 of UNSCR 1533 (2004), hereinafter referred to as 'the Sanctions Committee'.

(5) UNSCR 1596 (2005) furthermore imposes a freeze of all funds, financial assets and economic resources, owned or controlled, directly or indirectly, by persons designated by the Sanctions Committee or held by entities owned or controlled, directly or indirectly, by such persons or by any persons acting on their behalf or at their direction and provides that no funds, financial assets and economic resources are made available to or for the benefit of such persons or entities.

(6) It is appropriate to integrate the measures imposed by Common Position 2002/829/CFSP and the measures to be imposed pursuant to UNSCR 1596 (2005) in one single legal instrument.

(7) Common Position 2002/829/CFSP should therefore be repealed.

(8) Action by the Community is needed in order to implement certain measures,

([1]) OJ L 285, 23.10.2002, p. 1. Common Position as amended by the Common Position 2003/680/CFSP (OJ L 249, 1.10.2003, p. 64).

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HAS ADOPTED THIS COMMON POSITION:

Article 1

1. The direct or indirect supply, sale or transfer of arms and any related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned to the DRC by nationals of Member States or from the territories of Member States, or using their flag vessels or aircraft, shall be prohibited whether originating or not in their territories.

2. It shall also be prohibited to:

(a) grant, sell, supply or transfer technical assistance, brokering services and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, directly or indirectly to any person, entity or body in, or for use in the DRC;

(b) 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, brokering services and other services, directly or indirectly to any person, entity or body in, or for use in the DRC.

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Article 2

1. Article 1 shall not apply to:

(a) the supply, sale or transfer of arms and any related materiel or the provision of technical assistance, financing brokering services and other services related to arms and related materiel solely for support of or use by units of the army and police of the DRC, provided that the said units:

(i) have completed the process of their integration; or

(ii) operate under the command, respectively, of the *état-major intégré* of the armed forces or of the national police of the DRC; or

(iii) 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;

(b) the provision of technical training and assistance agreed to by the Government of the DRC and intended solely for support of units of the army and police of the DRC that are in the process of their integration in the provinces of North and South Kivu and the Ituri district;

(c) the supply, sale or transfer of arms and any related materiel or the provision of technical assistance, brokering services and other services related to arms and related materiel intended solely for support of or use by the United Nations Organisation Mission in the DRC (MONUC);

(d) the supply, sale or transfer of non-lethal military equipment intended solely for humanitarian or protective use, or the provision of assistance and training related to such non-lethal equipment, provided that such supply or provision has been notified in advance to the Sanctions Committee.

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2. The supply, sale or transfer of arms and related materiel referred to in paragraph 1 shall only be made to receiving sites as designated by the Government of the DRC, in coordination with MONUC, and notified in advance to the Sanctions Committee.

3. The supply, sale or transfer of arms and related materiel or the provision of services or technical training and assistance referred to in paragraph 1 shall be subject to an authorisation granted by the competent authorities of the Member States.

4. Member States shall consider deliveries under paragraph 1 on a case-by-case basis, taking full account of the criteria set out in the European Union Code of Conduct on Arms Exports. Member States shall require adequate safeguards against misuse of authorisation granted pursuant to paragraph 3 and, where appropriate, make provisions for repatriation of the delivered arms and related materiel.

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Article 3

In accordance with UNSCR 1596 (2005), UNSCR 1649 (2005) and UNSCR 1698 (2006) restrictive measures should be imposed against the following persons, as designated by the Sanctions Committee:

— persons who act in violation of the arms embargo,

— political and military leaders of foreign armed groups operating in the Democratic Republic of Congo who impede the disarmament and the voluntary repatriation or resettlement of combatants belonging to those groups,

— political and military leaders of Congolese militias receiving support from outside the Democratic Republic of Congo and in particular those operating in Ituri, who impede the participation of their combatants in disarmament, demobilisation and reintegration processes,

— political and military leaders recruiting or using children in armed conflict in violation of applicable international law,

— individuals committing serious violations of international law involving the targeting of children in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement.

The relevant persons are listed in the Annex to this Common Position.

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Article 4

1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of the persons referred to in Article 3.

2. Paragraph 1 shall not oblige a Member State to refuse its own nationals entry into its territory.

3. Paragraph 1 shall not apply where the Sanctions Committee determines in advance and on a case-by-case basis that travel is justified on the grounds of humanitarian need, including religious obligation, or where the Sanctions Committee concludes that an exemption would further the objectives of the Security Council Resolutions, that are peace and national reconciliation in the DRC and stability in the region.

4. In cases where pursuant to paragraph 3, a Member State authorises the entry into, or transit through, its territory of persons designated by the Sanctions Committee, the authorisation shall be limited to the purpose for which it is given and to the persons concerned thereby.

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Article 5

1. All funds, other financial assets and economic resources owned or controlled directly or indirectly by the persons referred to in Article 3 or held by entities owned or controlled directly or indirectly by such persons or by any persons acting on their behalf or at their direction, as identified in the Annex, shall be frozen.

2. No funds, financial assets or economic resources shall be made available directly or indirectly to or for the benefit of such persons or entities.

3. Exemptions may be made for funds, other financial assets and economic resources which are:

(a) necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

(b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;

(c) intended exclusively for payment of fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources, after notification by the Member State concerned to the Sanctions Committee of the intention to authorise, where appropriate, access to such funds, other financial assets and economic resources and in the absence of a negative decision by the Sanctions Committee within four working days of such notification;

(d) necessary for extraordinary expenses, after notification by the Member State concerned to and approval by the Sanctions Committee;

(e) the subject of a judicial, administrative or arbitral lien or judgment, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgment provided that the lien or judgment was entered prior to the date of the UNSCR 1596 (2005), and is not for the benefit of a person or entity referred to in Article 3, after notification by the Member State concerned to the Sanctions Committee.

4. Paragraph 2 shall not apply to the addition to frozen accounts of:

(a) interest or other earnings on those accounts; or

(b) payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to restrictive measures,

provided that any such interest, other earnings and payments continue to be subject to paragraph 1.

Article 6

The Council shall establish the list contained in the Annex and implement any modifications thereof on the basis of the determination made by the Sanctions Committee.

Article 7

This Common Position shall take effect on the date of its adoption.

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Article 8

This Common Position shall apply until 15 February 2008. It shall be reviewed or amended in the light of relevant decisions by the United Nations Security Council.

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Article 9

Common Position 2002/829/CFSP is hereby repealed.

Article 10

This Common Position shall be published in the *Official Journal of the European Union*.

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ANNEX

List of persons and entities referred to in Articles 3, 4 and 5

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1. Surname, First Name: BWAMBALE, Frank Kakolele

   Alias: Frank Kakorere, Frank Kakorere Bwambale

   Sex:

   Title, Function:

   Address (No, street, postal code, town, country):

   Date of birth:

   Place of birth (town, country):

   Passport or ID Number (including country that issued and date and place of issue):

   Nationality:

   Other information: Former RCD-ML leader, exercising influence over policies and maintaining command and control over the activities of RCD-ML forces, one of the armed groups and militias referred to in paragraph 20 of Res. 1493 (2003), responsible for trafficking of arms, in violation of the arms embargo.

2. Surname, First Name: KAKWAVU BUKANDE, Jérôme

   Alias: Jérôme Kakwavu

   Sex:

   Title, Function:

   Address (No, street, postal code, town, country):

   Date of birth:

   Place of birth (town, country):

   Passport or ID Number (including country that issued and date and place of issue):

   Nationality: Congolese

   Other information: Known as: Commandant Jérôme. Former President of UCD/FAPC. FAPC's control of illegal border posts between Uganda and the DRC — a key transit route for arms flows. As President of the FAPC, he exercises influence over policies and maintains command and control over the activities of FAPC forces, which have been involved in arms trafficking and, consequently, in violations of the arms embargo. Given the rank of General in the FARDC in December 2004.

3. Surname, First Name: KATANGA, Germain

   Alias:

   Sex:

   Title, Function:

   Address (No, street, postal code, town, country):

   Date of birth:

   Place of birth (town, country):

   Passport or ID Number (including country that issued and date and place of issue):

   Nationality: Congolese

   Other information: Under house arrest in Kinshasa from March 2005 for FRPI involvement in human rights abuses. FRPI chief. Appointed General in the FARDC in December 2004. Involved in weapons transfers, in violation of the arms embargo.

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4. Surname, First Name: LUBANGA, Thomas

   Alias:

   Sex:

   Title, Function:

   Address (No, street, postal code, town, country):

   Date of birth:

   Place of birth (town, country): Ituri

   Passport or ID Number (including country that issued and date and place of issue):

   Nationality: Congolese

   Other information: Arrested in Kinshasa from March 2005 for UPC/L involvement in human rights abuses violations. President of the UPC/L, one of the armed groups and militias referred to in paragraph 20 of Res. 1493 (2003), involved in the trafficking of arms, in violation of the arms embargo.

5. Surname, First Name: MANDRO, Khawa Panga

   Alias: Kawa Panga, Kawa Panga Mandro, Kawa Mandro, Yves Andoul Karim

   Sex:

   Title, Function:

   Address (No, street, postal code, town, country):

   Date of birth: 20.8.1973

   Place of birth (town, country): Bunia

   Passport or ID Number (including country that issued and date and place of issue):

   Nationality: Congolese

   Other information: Known as: ‘Chief Kahwa’, ‘Kawa’. Ex-President of PUSIC, one of the armed groups and militia referred to in paragraph 20 of Res. 1493 (2003) involved in arms trafficking, in violation of the arms embargo. In prison in Bunia since 04/05 for sabotage of the Ituri peace process.

6. Surname, First Name: MPANO, Douglas

   Alias:

   Sex:

   Title, Function:

   Address (No, street, postal code, town, country):

   Date of birth:

   Place of birth (town, country):

   Passport or ID Number (including country that issued and date and place of issue):

   Nationality: Congolese

   Other information: Based in Goma. Manager of the Compagnie Aérienne des Grands Lacs and of Great Lakes Business Company, whose aircraft were used to provide assistance to armed groups and militias referred to in paragraph 20 of Res. 1493 (2003). Also responsible for disguising information on flights and cargo apparently to allow for the violation of the arms embargo.

7. Surname, First Name: MUDACUMURA, Sylvestre

   Alias:

   Sex:

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Title, Function:

Address (No, street, postal code, town, country):

Date of birth:

Place of birth (town, country):

Passport or ID Number (including country that issued and date and place of issue):

Nationality: Rwandan

Other information: Known as: 'Radja', 'Mupenzi Bernard', 'General Major Mupenzi'. FDLR Commander on the ground, exercising influence over policies, and maintaining command and control over the activities of FDLR forces, one of the armed groups and militias referred to in paragraph 20 of Res. 1493 (2003), involved in trafficking of arms, in violation of the arms embargo.

8. Surname, First Name: MURWANASHY-AKA, Dr Ignace

Alias: Ignace

Sex:

Title, Function:

Address (No, street, postal code, town, country):

Date of birth:

Place of birth (town, country):

Passport or ID Number (including country that issued and date and place of issue):

Nationality: Rwandan

Other information: Resident in Germany. President of FDLR, exercising influence over policies, and maintaining command and control over the activities of FDLR forces, one of the armed groups and militias referred to in paragraph 20 of Res. 1493 (2003), involved in trafficking of arms, in violation of the arms embargo.

9. Surname, First Name: MUTEBUTSI, Jules

Alias: Jules Mutebusi, Jules Mutebuzi

Sex:

Title, Function:

Address (No, street, postal code, town, country):

Date of birth:

Place of birth (town, country): South Kivu

Passport or ID Number (including country that issued and date and place of issue):

Nationality: Congolese (South Kivu)

Other information: Currently detained in Rwanda. Known as: 'Colonel Mutebutsi'. Former FARDC Deputy Military Regional Commander of 10th MR in April 2004, dismissed for indiscipline and joined forces with other renegade elements of former RCD-G to take town of Bukavu in May 2004 by force. Implicated in the receipt of weapons outside of FARDC structures and provision of supplies to armed groups and militia mentioned in paragraph 20 of Res. 1493 (2003), in violation of the arms embargo.

10. Surname, First Name: NGUDJOLO, Matthieu

Alias: Cui Ngudjolo

Sex:

Title, Function:

Address (No, street, postal code, town, country):

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Date of birth:

Place of birth (town, country):

Passport or ID Number (including country that issued and date and place of issue):

Nationality:

Other information: 'Colonel' or 'General'. FNI Chief of Staff and former Chief of Staff of the FRPI, exercising influence over policies and maintaining command and control the activities of FRPI forces, one of the armed groups and militias referred to in paragraph 20 of Res. 1493 (2003), responsible for trafficking of arms, in violation of the arms embargo. Arrested by MONUC in Bunia in October 2003.

11. Surname, First Name: NJABU, Floribert Ngabu

Alias: Floribert Njabu, Floribert Ndjabu, Floribert Ngabu Ndjabu

Sex:

Title, Function:

Address (No, street, postal code, town, country):

Date of birth:

Place of birth (town, country):

Passport or ID Number (including country that issued and date and place of issue):

Nationality:

Other information: Arrested and placed under house arrest in Kinshasa from March 2005 for FNI involvement in human rights abuses. President of FNI, one of the armed groups and militias referred to in paragraph 20 of Res. 1493 (2003), involved in the trafficking of arms, in violation of the arms embargo.

12. Surname, First Name: NKUNDA, Laurent

Alias: Laurent Nkunda Bwatare, Laurent Nkundabatware, Laurent Nkunda Mahoro Batware

Sex:

Title, Function:

Address (No, street, postal code, town, country):

Date of birth: 6.2.1967

Place of birth (town, country): North Kivu/Rutshuru

Passport or ID Number (including country that issued and date and place of issue):

Nationality: Congolese

Other information: Currently unlocated. Sightings in Rwanda and Goma. Known as: 'General Nkunda'. Former RCD-G General. Joined forces with other renegade elements of former RCD-G to take Bukavu in May 2004 by force. In receipt of weapons outside of FARDC in violation of the arms embargo.

13. Surname, First Name: NYAKUNI, James

Alias:

Sex:

Title, Function:

Address (No, street, postal code, town, country):

Date of birth:

Place of birth (town, country):

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Passport or ID Number (including country that issued and date and place of issue):

Nationality: Ugandan

Other information: Trade partnership with Commandant Jerome, particularly smuggling across the DRC/Uganda border, including suspectted smuggling of weapons and military material in unchecked trucks. Violation of the arms embargo and provision of assistance to armed groups and militia referred to in paragraph 20 of Res. 1493 (2003), including financial support that allows them to operate militarily.

14. Surname, First Name: OZIA MAZIO, Dieudonné

Alias: Ozia Mazio

Sex:

Title, Function:

Address (No, street, postal code, town, country):

Date of birth: 6.6.1949

Place of birth (town, country): Ariwara, DRC

Passport or ID Number (including country that issued and date and place of issue):

Nationality: Congolese

Other information: Known as: 'Omari', 'Mr Omari'. President of FEC in Aru territory. Financial schemes with Commandant Jerome and FAPC and smuggling across the DRC/Uganda border, allowing supplies and cash to be made available to Commandant Jerome and his troops. Violation of the arms embargo, including by providing assistance to armed groups and militia referred to in paragraph 20 of Res. 1493 (2003).

15. Surname, First Name: TAGANDA, Bosco

Alias: Bosco Ntaganda, Bosco Ntagenda

Sex:

Title, Function:

Address (No, street, postal code, town, country):

Date of birth:

Place of birth (town, country):

Passport or ID Number (including country that issued and date and place of issue):

Nationality: Congolese

Other information: Known as: 'Terminator', 'Major'. UPC/L military commander, exercising influence over policies and maintaining command and control over the activities of UPC/L, one of the armed groups and militias referred to in paragraph 20 of Res. 1493 (2003), involved in the trafficking of arms, in violation of the arms embargo. He was appointed General in the FARDC in December 2004 but refused to accept the promotion, therefore remaining outside of the FARDC.

16. Name: TOUS POUR LA PAIX ET LE DEVELOPPMENT (NGO)

Alias: TPD

Address (No, street, postal code, town, country): Goma, North Kivu

Place of registration (town, country):

Date of registration:

Registration number:

Principal place of business:

Other information: Implicated in violation of the arms embargo, by providing assistance to RCD-G, particularly in supplying trucks to transport arms and

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troops, and also by transporting weapons to be distributed, to parts of the population in Masisi and Rutshuru, North Kivu, in early 2005.