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COUNCIL DECISION 2010/565/CFSP

of 21 September 2010

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

(OJ L 248, 22.9.2010, p. 59)

Amended by:

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COUNCIL DECISION 2010/565/CFSP

of 21 September 2010

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 28 and Article 43 thereof,

Whereas:

(1) On the basis of Joint Action 2005/355/CFSP ([1]), the European Union (EU) has been conducting, since 2 May 2005, a mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (DRC) (EUSEC RD Congo). The current mandate of the mission is set out in Joint Action 2009/709/CFSP ([2]) and expires on 30 September 2010.

(2) The Secretary-General/High Representative for Common Foreign and Security Policy 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 was adapted as from 1 October 2009. The Congolese authorities transposed that letter into an action programme which was signed, on 21 January 2010, by the Minister for Defence and War Veterans and the Head of the EUSEC RD Congo mission.

(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 Congolese authorities have demonstrated their interest in implementing the security sector reform (SSR) process in the DRC at operational level by developing a plan to reform the Armed Forces of the Democratic Republic of the Congo (FARDC) in three stages between 2009 and 2025, a plan which was approved by the President of the Republic at the end of May 2009 and presented to the representatives of the international community on 26 January 2010, and by taking over the role of coordinator of the work of the various actors supporting SSR in the DRC.

([1]) 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).

([2]) OJ L 246, 18.9.2009, p. 33.

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(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 Organisation Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO), which is focusing on peacekeeping in the east of the country and on peace consolidation throughout the country. On 28 May 2010, the United Nations Security Council adopted Resolution 1925 (2010) extending MONUC's mandate until 30 June 2010 and renaming it the United Nations Organisation Stabilisation Mission in the DRC (MONUSCO) as from 1 July 2010 and allowing it to support, in close cooperation with other international partners, the efforts of the Congolese authorities to strengthen and reform security and judicial institutions.

(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 14 June 2010, the Council adopted Decision 2010/329/CFSP amending and extending for an additional period of three months Joint Action 2007/405/CFSP on the European Union 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) ([1]).

(7) In order to increase the coordination, consistency and complementarity of the EU's activities in the DRC, making maximum use of the new European institutional framework, there should be enhanced coordination of EU action between the two missions, between the European players in the DRC and between Brussels and Kinshasa.

(8) On 11 August 2010, the Council adopted Decision 2010/440/CFSP ([2]) extending the mandate of Mr Roeland VAN DE GEER as the EU Special Representative (EUSR) for the African Great Lakes Region.

(9) On 29 July 2010, the Council approved the crisis management concept for the commitment of common security and defence policy missions in support of security sector reform in the DRC.

(10) Third States should participate in the project in accordance with the general guidelines defined by the European Council.

([1]) OJ L 149, 15.6.2010, p. 11.
([2]) OJ L 211, 12.8.2010, p. 20.

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(11) 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 DECISION:

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), hereinafter referred to as 'EUSEC RD Congo' or 'the mission', 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.

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 MONUSCO, and in pursuit of the objectives laid down in Article 1, to provide practical support in the field of SSR, creating conditions to facilitate the implementation in the short and medium term of activities and projects based on the guidelines adopted by the Congolese authorities in the plan for reform of the FARDC as set out in the mission action programme, including:

(a) maintaining support at strategic level;

(b) supporting the consolidation of the administration and the introduction of a human resources management system based on the work in progress;

(c) supporting the modernisation of logistics;

(d) supporting a relaunch of the training system, particularly for executive staff, mainly through support for the School of Administration and Military Academy project in Kananga and for studies for the School of Logistics in Kinshasa;

(e) pursuing activities relating to the campaign against impunity in the areas of respect for human rights, including sexual violence.

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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) a leadership;

(b) an administrative support and logistics department;

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

(d) an advice and assistance department, including advisers deployed in the east of the DRC and responsible for contributing to work on SSR carried out by the Congolese administration; and

(e) a planning cell.

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

Article 4

Planning

The Head of Mission shall draw up an implementation plan (OPLAN) for the mission, to be submitted for approval by the Council. He shall be assisted in this task by the departments under the authority of the High Representative of the Union for Foreign Affairs and Security Policy (HR).

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.

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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 Decision 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 shall 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 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.

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6. The Head of Mission shall collaborate closely, in his area of competence, with the Head of the EU Delegation and the heads of Member States' missions in Kinshasa.

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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.

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Article 7

Chain of command

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

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

3. The Head of Mission shall report to the HR.

Article 8

Political control and strategic direction

1. Under the responsibility of the Council and the HR, the Political and Security Committee (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 38(3) of the Treaty on European Union (TEU). This authorisation shall include the power to amend the implementation plan. 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 HR.

2. The PSC shall report to the Council at regular intervals.

3. The PSC shall receive reports by the Head of Mission at regular intervals, through the HR. The PSC may invite the Head of Mission to its meetings as appropriate.

Article 9

Financial provisions

1. The financial reference amount to cover expenditure relating to the mission shall be EUR 12 600 000 for the period from 1 October 2010 to 30 September 2011.

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The financial reference amount intended to cover expenditure related to the Mission for the period from 1 October 2011 to 30 September 2012 shall be EUR 13 600 000.

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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 EU 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.

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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 Decision.

Article 10

Participation by third States

1. Without prejudice to the decision-making autonomy of the EU and the single institutional framework, the Council authorises the PSC to invite third States to propose 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 pursuant to Article 37 of the TEU and in accordance with the procedure laid down in Article 218 of the Treaty on the Functioning of the European Union (TFEU) and additional technical arrangements if necessary. 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

Implementation and consistency of the EU's response

1. The HR shall be responsible for the implementation of this Decision and shall also ensure that it is consistent with the EU's external action as a whole, including the EU's development programmes.

2. The Head of Mission shall assist the HR in implementing this Decision.

Article 12

Coordination

1. Arrangements for the coordination of the EU's activities in the DRC shall be established in Kinshasa as well as in Brussels.

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2. 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 crosscutting areas.

3. The Head of Mission shall ensure that EUSEC RD Congo closely coordinates its activities in support of the reform of the FARDC with the Government of the DRC, the United Nations, via the MONUSCO mission, and the third States involved in the defence area of the SSR process in the DRC.

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4. The Head of the EU Delegation in Kinshasa shall provide local political guidelines for the EUSEC RD Congo mission within the general framework defined by the planning documents.

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5. The Head of the EU delegation and the Head of the EUSEC RD Congo mission shall establish the appropriate arrangements for information/consultation, particularly as regards the political aspects which may have an impact on the conduct of the mission. Likewise, the Head of the EUSEC RD Congo mission shall inform the Head of the EU delegation of all contacts at his level which may have a political impact.

6. The Head of the EUSEC RD Congo mission (or his representative) shall also act as defence adviser to the Head of the delegation, without prejudice to each player's existing chains of command. In that context, there shall be constant contact between the mission and the EU delegation.

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Article 13

Release of classified information

1. The HR shall be authorised to release to third States associated with this Decision 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]).

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

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2. The HR shall be authorised 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 HR 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 HR shall be authorised to release to third States associated with this Decision 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 ([1]).

Article 14

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 pursuant to Article 37 of the TEU and in accordance with the procedure laid down in Article 218(3) of the TFEU.

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.

3. The conditions of employment and the rights and obligations of international and local civilian personnel shall be set out in a contract concluded between the Head of Mission and the staff member.

Article 15

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 decided on pursuant to Title V, Chapter 2, of the TEU and related documents.

([1]) Council Decision 2009/937/EU (OJ L 325, 11.12.2009, p. 35).

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3. The Head of Mission shall be assisted by a Mission Security Officer (MSO) who shall report to him and shall also have a functional link with the Council Security Office.

4. 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 MSO.

Article 16

Review of the mission

On the basis of an evaluation report drafted by the departments under the authority of the HR halfway through the mission and presented in June 2011 at the latest, the PSC shall 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 plan for reform of the FARDC. The evaluation shall be based, inter alia, on progress indicators and on specific operational indicators detailed in the OPLAN.

Article 17

Entry into force and duration

This Decision shall enter into force on 1 October 2010.

It shall apply until 30 September 2012.