

(Acts adopted under Title V of the Treaty on European Union)

COUNCIL JOINT ACTION 2004/847/CFSP

of 9 December 2004

on the European Union Police Mission in Kinshasa (DRC) regarding the Integrated Police Unit (EUPOL 'Kinshasa')

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and, in particular Article 14, Article 25, third subparagraph, Article 26 and Article 28(3) thereof,

Whereas:

- (1) On 26 January 2004, the Council adopted Common Position 2004/85/CFSP concerning conflict prevention, management and resolution in Africa⁽¹⁾.
- (2) The European Union, through Operation Artemis conducted in the Democratic Republic of Congo (DRC) during 2003 under Joint Action 2003/423/CFSP of 5 June 2003 on the EU Military Operation in the Democratic Republic of Congo⁽²⁾, has already taken concrete steps to contribute to the re-establishment of security within the DRC.
- (3) On 14 December 2000, the Council adopted Joint Action 2000/792/CFSP⁽³⁾ appointing Mr Aldo Ajello as the Special Representative of the European Union for the African Great Lakes Region, and repealing Joint Action 96/250/CFSP. The mandate of the Special Representative was last extended by Joint Action 2004/530/CFSP⁽⁴⁾.
- (4) On 29 September 2003, the Council adopted Common Position 2003/680/CFSP⁽⁵⁾ amending Common Position 2002/829/CFSP on the supply of certain equipment to the DRC.
- (5) The global and all-inclusive Agreement on the transition in the Democratic Republic of Congo, signed in Pretoria on 17 December 2002 and the Memorandum on Security and the Army of 29 June 2003 provided for the establishment of an Integrated Police Unit (IPU).
- (6) On 28 July 2003 the United Nations Security Council adopted Resolution 1493 (2003) in which it expresses satisfaction at the promulgation, on 4 April 2003, of the Transitional Constitution in the Democratic Republic of Congo and at the formation, announced on 30 June 2003, of the Government of National Unity and Transition. It also encourages donors to support the establishment of an integrated Congolese police unit and approves the provision by the United Nations Organisation Mission in the DRC (MONUC) of the additional assistance that might be needed for its training.
- (7) In the Joint Declaration on UN-EU Cooperation in Crisis Management of 29 September 2003, the Secretary-General of the United Nations and the Presidency of the Council of the European Union welcomed the existing cooperation between the United Nations and the European Union in the area of civilian and military crisis management, and considered ways to assist in the establishment of an Integrated Police Unit in Kinshasa to provide security to the transitional government and institutions.
- (8) On 20 October 2003, the government of the DRC addressed an official request to the High Representative for the CFSP for European Union assistance in setting up the IPU, which should contribute to ensuring the protection of the state institutions and reinforce the internal security apparatus.
- (9) On 15 December 2003 the Political and Security Committee (PSC) agreed that the European Union should support the establishment of the IPU following a three strands approach: the rehabilitation and refurbishment of a training centre and the provision of basic equipment; the training of the IPU; and the follow-up, monitoring and mentoring of the concrete implementation of IPU's mandate after the initial training phase.
- (10) The Commission has adopted a financing decision on the European Development Fund (EDF) for a project which includes technical assistance, rehabilitation of the training centre and the provision of certain equipment for the IPU, as well as adequate training.

⁽¹⁾ OJ L 21, 28.1.2004, p. 25.

⁽²⁾ OJ L 143, 11.6.2003, p. 50.

⁽³⁾ OJ L 318, 16.12.2000, p. 1.

⁽⁴⁾ OJ L 234, 3. 7. 2004, p. 13.

⁽⁵⁾ OJ L 249, 1.10.2003, p. 64.

(11) On 17 May 2004, the Council adopted Joint Action 2004/494/CFSP⁽¹⁾ in which the European Union commit to 'support the process of the consolidation of internal security in the DRC, which is an essential factor for the peace process and the development of the country, through assistance to the setting up of an Integrated Police Unit (IPU) in Kinshasa'. To that end, and in addition to the EDF funded activities, the European Union and its Member States contributed with funds and/or contributions in kind to provide the government of the DRC with the law enforcement equipment, arms and ammunition identified as necessary for the establishment of the IPU.

(12) On 1 October 2004 the United Nations Security Council adopted Resolution 1565 (2004) in which it decided to extend the deployment of MONUC until 31 March 2005. In addition, the UNSC decided that MONUC would have, inter alia, the mandate in support of the Government of National Unity and Transition: 'to contribute to arrangements taken for the security of the institutions and the protection of officials of the Transition in Kinshasa until the integrated police unit is ready to take on this responsibility and assist the Congolese authorities in the maintenance of order in other strategic areas'.

(13) The current security situation in the DRC may deteriorate with potentially serious repercussions on the process of strengthening of 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.

(14) Recital 12 of Joint Action 2004/494/CFSP envisages that 'The Council may decide that the EDF project and the provision of law enforcement equipment, arms and ammunition of the IPU as appropriate be followed by a European Security and Defence Policy (ESDP) component for monitoring, mentoring and advising'.

(15) In its meeting of 16 November 2004, the PSC agreed to the concept of an ESDP mission to follow the EDF project.

(16) On 22 November 2004, the Council reiterated its commitment to work in very close association with MONUC and to provide it with effective support to fulfil its mandate, which includes police training,

HAS ADOPTED THIS JOINT ACTION:

Article 1

Mission

1. The European Union hereby establishes a European Union Police Mission (EUPOL 'KINSHASA') in order to ensure the follow-on to the EDF project referred to in Joint Action 2004/494/CFSP in relation to the setting up of an IPU in Kinshasa (DRC) as from early January 2005. Before that date and in order to prepare the Police Mission, a Planning Team shall be established not later than 1 December 2004 and shall be operational until the start of the mission.

2. EUPOL 'KINSHASA' shall operate in accordance with the objectives and other provisions as contained in the mission statement set out in Article 3.

Article 2

Planning Phase

1. During the planning phase, the Planning Team shall comprise a Police Head of Mission/Head of the Planning Team and the necessary staff to deal with functions ensuing from the needs of the mission.

2. A comprehensive risk assessment shall be carried out as a priority in the planning process and may be updated as necessary.

3. The General Secretariat of the Council shall elaborate the Concept of Operations (CONOPS). The Planning Team shall subsequently draw up the Operation Plan (OPLAN) and develop all technical instruments necessary to execute EUPOL 'KINSHASA'. CONOPS and OPLAN shall take into account the comprehensive risk assessment. The Council shall approve the CONOPS and the OPLAN.

Article 3

Mission Statement

The European Union shall conduct a police mission in Kinshasa (DRC) in order to monitor, mentor, and advise the setting up and the initial running of the IPU in order to ensure that the IPU acts following the training received in the Academy Centre and according to international best practices in this field. These actions shall be focused on the IPU chain of command to enhance the management capability of the IPU and to monitor, mentor and advise the operational Units in the execution of its tasks.

Article 4

Structure of the mission

The Mission will be composed of a Head Quarter (HQ) co-located in the IPU operational base. The HQ will consist of the office of the Head of the Mission, a monitor, mentor and advisor branch, an administration support branch and liaison officers to the most relevant actors regarding the IPU.

⁽¹⁾ OJ L 182, 19.5.2004, p. 41.

*Article 5***Head of Mission/Police Commissioner**

1. Upon a proposal by the Secretary-General/High Representative, the PSC shall appoint a Head of Mission/Police Commissioner. The Head of Mission/Police Commissioner shall exercise Operational Control over EUPOL 'KINSHASA' and assume the day-to-day management of EUPOL 'KINSHASA' functions.
2. The Head of Mission/Police Commissioner shall sign a contract with the Commission.
3. All police officers shall remain under full command of the appropriate national authority. National authorities shall transfer Operational Control to the Head of EUPOL 'KINSHASA'.
4. The Head of Mission/Police Commissioner shall be responsible for disciplinary control over the staff. For seconded staff, disciplinary action shall be exercised by the national or EU authority concerned.

*Article 6***Staff**

1. The numbers and competence of EUPOL 'KINSHASA' staff shall be consistent with the mission statement set out in Article 3 as well as the mission structure set out in Article 4.
2. Police officers shall be seconded by Member States. Each Member State shall bear the costs related to the police officers seconded by it, including salaries, medical coverage, allowances other than per diems and housing allowances, and travel expenses to and from the DRC.
3. International civilian staff and local staff shall be recruited on a contractual basis by EUPOL 'KINSHASA' as required.
4. Contributing states or Community institutions may also, if required, second international civilian staff. Each contributing state or Community institution shall bear the costs related to any of the staff seconded by it including salaries, medical coverage, allowances other than per diems and housing allowances, and travel expenses to and from the DRC.

*Article 7***Chain of Command**

The structure of EUPOL 'KINSHASA' shall have a unified chain of command, as a crisis management operation.

- The European Union Special Representative (EUSR) shall report to the Council through the Secretary-General/High Representative,

- The PSC shall provide the political control and strategic direction,
- The Head of Mission/Police Commissioner shall lead EUPOL 'KINSHASA' and assume its day-to-day management,
- The Head of Mission/Police Commissioner shall report to the Secretary-General/High Representative through the EUSR,
- The Secretary-General/High Representative shall give guidance to the Head of Mission/Police Commissioner through the EUSR.

*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 hereby authorises the PSC to take the relevant decisions in accordance with Article 25 of the Treaty. This authorisation shall include the powers to amend the Operation Plan and the Chain of Command. The powers of decision with respect to the objectives and termination of the operation shall remain vested in the Council, assisted by the Secretary-General/High Representative.
2. The EUSR shall provide the Police Head of Mission with local political guidance. The EUSR shall ensure coordination with other EU actors as well as relations with host state authorities.
3. The PSC shall report to the Council at regular intervals taking into account the EUSR reports.
4. The PSC shall receive reports by the Police Head of Mission regarding the conduct of the mission at regular intervals. The PSC may invite the Police Head of Mission to its meetings as appropriate.

*Article 9***Participation of Third States**

1. Without prejudice to the decision-making autonomy of the EU and the single institutional framework of the Union, acceding states will be invited and candidate and other third states may be invited to contribute to EUPOL 'KINSHASA' on the basis that they bear the cost of sending the police officers and/or the international civilian staff seconded by them, including salaries, allowances and travel expenses to and from the DRC, and contribute to the running costs of EUPOL 'KINSHASA' as appropriate.

2. The Council hereby authorises the PSC to take, upon the recommendation of the Police Head of Mission and the Committee for Civilian Aspects of Crisis Management, the relevant decisions on acceptance of the proposed contributions.

3. Third states making contributions to EUPOL 'KINSHASA' shall have the same rights and obligations in terms of day-to-day management of the operation as EU Member States taking part in the operation.

4. The PSC shall take appropriate action with regard to participation arrangements and shall, if required, submit a proposal to the Council, including on possible financial participation from third states in the common costs.

5. Detailed arrangements regarding the participation of third states shall be the subject of agreements pursuant to Article 24 of the Treaty. The Secretary-General/High Representative assisting the Presidency may negotiate such arrangements on its behalf. Where the EU and a third state have concluded an agreement establishing a framework for the participation of this third state in the EU crisis management operations, the provisions of such an agreement shall apply in the context of this operation.

Article 10

Financial arrangements

1. The costs for implementing this Joint Action shall be a maximum amount of EUR 4 370 000 to cover the costs during the planning phase and the year 2005.

2. As regards expenditure financed out of the Community budget, 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 the Planning Team/Police Head of Mission shall report fully to, and be supervised by, the Commission on the activities undertaken in the framework of his contract.

3. The financial arrangements shall respect the operational requirements of EUPOL 'KINSHASA', including compatibility of equipment and interoperability of its teams.

Article 11

Community and other relevant actions

1. The Council notes the Commission's intention to direct its action towards achieving the objectives of this Joint Action, where appropriate, by relevant Community measures.

2. The Council also notes that coordination arrangements are required in Kinshasa as well as in Brussels, inter alia with regard to possible future projects under EDF, taking into account existing coordination mechanisms.

Article 12

Release of classified information

1. The Secretary-General/High Representative is authorised to release to third states associated with this Joint Action, 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.

2. The Secretary-General/High Representative is also 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 drawn up for this purpose.

3. In the event of a specific and immediate operational need, the Secretary-General/High Representative is also 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 European Union.

4. The Secretary-General/High Representative is authorised to release to third states associated with this Joint Action EU non-classified documents related to the deliberations of the Council with regard to the operation covered by the obligation of professional secrecy pursuant to Article 6(1) of the Council Rules of Procedure.

Article 13

Status of staff of EUPOL 'KINSHASA'

1. The status of EUPOL 'KINSHASA' staff in the DRC, including where appropriate the privileges, immunities and further guarantees necessary for the completion and smooth functioning of EUPOL 'KINSHASA' shall be agreed in accordance with the procedure laid down in Article 24 of the Treaty. The Secretary-General/High Representative assisting the Presidency may negotiate such arrangement on its behalf.

2. The state or Community institution having seconded a staff member shall be responsible for answering any claims 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

Entry into force, duration and expenditure

This Joint Action shall enter into force on the date of its adoption.

It shall expire on 31 December 2005.

The expenditure shall be eligible after the adoption of the Joint Action.

Article 15

Publication

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

Done at Brussels, 9 December 2004.

For the Council

The President

L. J. BRINKHORST
