

COUNCIL COMMON POSITION 2008/369/CFSP**of 14 May 2008****concerning restrictive measures against the Democratic Republic of the Congo and repealing
Common Position 2005/440/CFSP**

THE COUNCIL OF THE EUROPEAN UNION,

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

Whereas:

- (1) Following the adoption by the United Nations Security Council on 18 April 2005 of Resolution 1596 (2005) (UNSCR 1596 (2005)), the Council adopted Common Position 2005/440/CFSP of 13 June 2005 concerning restrictive measures against the Democratic Republic of the Congo ⁽¹⁾.
- (2) On 31 March 2008, the United Nations Security Council adopted Resolution 1807 (2008) (UNSCR 1807 (2008)) providing for new exemptions to the restrictive measures regarding the arms embargo, asset freeze and travel ban, listing the criteria for designation by the Sanctions Committee established pursuant to United Nations Security Council Resolution 1533 (2004) (UNSCR 1533 (2004)) of individuals and entities subject to an asset freeze and travel ban, and extending the measures until 31 December 2008.
- (3) For the sake of clarity, the measures imposed by Common Position 2005/440/CFSP and those to be imposed pursuant to UNSCR 1807 (2008) should be integrated into a single legal instrument.
- (4) Common Position 2005/440/CFSP should therefore be repealed.
- (5) Action by the Community is needed in order to implement certain measures,

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 all non-governmental entities and individuals operating in the territory of the Democratic Republic of the Congo (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 all non-governmental entities and individuals operating in the territory of 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 all non-governmental entities and individuals operating in the territory of the DRC.

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 intended solely for support of, or use by, the United Nations Organisation Mission in the DRC (MONUC);
- (b) the supply, sale or transfer of protective clothing, including flak jackets and military helmets, temporarily exported to the DRC by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only;
- (c) the supply, sale or transfer of non-lethal military equipment intended solely for humanitarian or protective use, or the provision of technical assistance and training, related to such non-lethal equipment.

⁽¹⁾ OJ L 152, 15.6.2005, p. 22. Common Position as last amended by Common Position 2008/179/CFSP (OJ L 57, 1.3.2008, p. 37).

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

3. Member States shall give the Sanctions Committee established pursuant to UNSCR 1533 (2004) (Sanctions Committee) advance notification of any shipment of arms and related materiel for the DRC, or any provision of technical assistance, financing, brokering services and other services related to military activities in the DRC, other than those referred to in paragraphs 1(a) and (b). Such notification shall contain all relevant information, including, where appropriate, the end-user, the proposed date of delivery and the itinerary of shipments.

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 authorisations granted pursuant to paragraph 2 and, where appropriate, make provisions for repatriation of the arms delivered and related materiel.

Article 3

Restrictive measures as provided for in Articles 4(1) and 5(1) and (2) shall be imposed against the following persons and, as appropriate, entities, designated by the Sanctions Committee:

- persons or entities acting in violation of the arms embargo and related measures as referred to in Article 1,
- 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,
- political and military leaders of Congolese militias receiving support from outside the DRC, who impede the participation of their combatants in disarmament, demobilisation and reintegration processes,
- political and military leaders operating in the DRC and recruiting or using children in armed conflicts in violation of applicable international law,
- individuals operating in the DRC and committing serious violations of international law involving the targeting of

children or women in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement.

The relevant persons and entities are listed in the Annex.

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:

- (a) determines in advance and on a case-by-case basis that such entry or transit is justified on the grounds of humanitarian need, including religious obligation;
- (b) concludes that an exemption would further the objectives of relevant Resolutions of the Security Council, that is to say peace and national reconciliation in the DRC and stability in the region;
- (c) authorises in advance and on a case-by-case basis, the transit of individuals returning to the territory of the State of their nationality, or participating in efforts to bring to justice perpetrators of grave violations of human rights or international humanitarian law.

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.

Article 5

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

2. No funds, other financial assets or economic resources shall be made available, directly or indirectly, to or for the benefit of the persons or entities referred to in paragraph 1.

3. Member States may allow for exemptions from the measures referred to in paragraphs 1 and 2 in respect of funds, other financial assets and economic resources which are:

- (a) necessary for basic expenses, including payments for food-stuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- (b) intended exclusively for the payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;
- (c) intended exclusively for the payment of fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, or other financial assets and economic resources;
- (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 before designation by the Sanctions Committee of the person or entity concerned, 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. The exemptions referred to in paragraph 3(a), (b) and (c) may be made after notification to the Sanctions Committee by the Member State concerned of its 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.

5. 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 before the date on which those accounts became subject to restrictive measures,

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

Article 6

The Council shall establish the list contained in the Annex and amend it as determined by the Sanctions Committee.

Article 7

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

Article 8

This Common Position shall be reviewed, amended or repealed as appropriate, as determined by the United Nations Security Council.

Article 9

Common Position 2005/440/CFSP is hereby repealed.

Article 10

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

Done at Brussels, 14 May 2008.

For the Council
The President
A. BAJUK

ANNEX

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

	Surname	First Name	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	Date of designation	Other information
1.	BWAMBALE	Frank Kakolele	Frank Kakorere, Frank Kakorere Bwambale	M							1.11.2005	Former DRC-ML leader, exercising influence over policies and maintaining command and control over the activities of DRC-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.	KAKWAVU BUKANDE	Jérôme	Jérôme Kakwavu	M						Congolese	1.11.2005	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.	KATANGA	Germain		M						Congolese	1.11.2005	Under house arrest in Kinshasa from March 2005 for FRPI involvement in human rights abuses. Surrendered by the Government of the DRC to the International Criminal Court on 18 October 2007. 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.	KAMBALE	Kisoni	Dr Kisoni, Kidubai, Kambale KISONI	M			24.5.1961	Mulashé, DRC	C0323172	Congolese	29.3.2007	Gold trader, owner of Butembo Airlines and Congocom Trading House in Butembo. Deceased on 5 July 2007 in Butembo, DRC. Kisoni participated in militia financing through gold trading (buying from the FNI and selling to Uganda Commercial Impex (UCI Ltd) and smuggling across the DRC/Uganda border. Kisoni's support of an illegal armed group (FNI) through a personal commercial relationship with NJABU (an individual already subject to sanctions under Resolution 1596 (2005)) is in breach of the arms embargo of Resolutions 1493 (2003) and 596 (2005).
5.	LUBANGA	Thomas		M				Ituri		Congolese	1.11.2005	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 Resolution 1493 (2003), involved in the trafficking of arms, in violation of the arms embargo.
6.	MANDRO	Khawa Panga	Kawa Panga, Kawa Panga Mandro, Kawa Mandro, Yves Andoul Karim, Mandro Panga Kahwa, Yves Khawa Panga Mandro	M			20.8.1973	Bunia		Congolese	1.11.2005	Known as: 'Chief Kahwa', 'Kawa'. Ex-president of PUSIC, one of the armed groups and militia referred to in paragraph 20 of Resolution 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.

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7.	MPAMO	Iruta Douglas	Mpano, Douglas Iruta Mpamo	M		Bld Kanya-muhanga 52, Goma	28.12.1965/ 29.12.1965	Bashali, Masisi/ Goma, DRC (formerly Zaire)		Congolese	1.11.2005	Based in Goma. Owner/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.
8.	MUDA-CUMURA	Sylvestre		M						Rwandan	1.11.2005	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.
9.	MURWANA-SHY-AKA	Dr Ignace	Ignace	M			14.5.1963	Butera (Rwanda)/ Ngoma, Butare (Rwanda)		Rwandan	1.11.2005	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.
10.	MUSONI	Straton	IO Musoni	M			6.4.1961 (possibly 4.6.1961)	Mugambazi, Kigali, Rwanda		Rwandan passport expired on 10.9.2004	29.3.2007	Resident in Neuffen, Germany. 1st Vice President of Forces Démocratiques de Libération du Rwanda (FDLR) in Europe. Through his leadership of the FDLR, a foreign armed group operating in the DRC, Musoni is impeding the disarmament and voluntary repatriation or resettlement of combatants belonging to those groups, in breach of Resolution 1649 (2005).

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11.	MUTEBUTSI	Jules	Jules Mutebusi, Jules Mutebuzi	M				South Kivu		Congolese (South Kivu)	1.11.2005	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.
12.	NGUDJOLO	Mathieu Cui	Cui Ngudjolo	M							1.11.2005	'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.
13.	N/ABU	Floribert Ngabu	Floribert Njabu, Floribert Ndjabu, Floribert Ngabu Ndjabu	M							1.11.2005	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.

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14.	NKUNDA	Laurent	Laurent Nkunda Bwatere, Laurent Nkunda-batware, Laurent Nkunda Mahoro Batware, Laurant Nkunda Batware	M			6.2.1967/ 2.2.1967	North Kivu/ Rutshuru		Congolese	1.11.2005	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 04 by force. In receipt of weapons outside of FARDC in violation of the arms embargo. Founder, National Congress for the People's Defense, 2006; Senior Officer, Rally for Congolese Democracy-Goma (RCD-G), 1998-2006; Officer Rwandan Patriotic Front (RPF), 1992-1998.
15.	NYAKUNI	James		M						Ugandan	1.11.2005	Trade partnership with 'Commandant Jérôme', particularly smuggling across the DRC/Uganda border, including suspected 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.
16.	OZIA MAZIO	Dieudonné	Ozia Mazio	M			6.6.1949	Ariwara, DRC		Congolese	1.11.2005	Known as: 'Omari', 'Mr Omari'. President of FEC in Aru territory. Financial schemes with 'Commandant Jérôme' and FAPC and smuggling across the DRC/Uganda border, allowing supplies and cash to be made available to 'Commandant Jérôme' 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).

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17.	TAGANDA	Bosco	Bosco Ntaganda, Bosco Ntaganda	M						Congolese	1.11.2005	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.

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

	Name	Alias	Address (No, street, postal code, town, country)	Place of registration (town, country):	Date of registration	Registration number:	Principal place of business:	Date of designation	Other information
18.	BUTEMBO AIRLINES (BAL)			Butembo, DRC				29.3.2007	Privately owned airline, operates out of Butembo. Kambale Kisoni used his airline to transport FNI gold, rations and weapons between Mongbwalu and Butembo. This constitutes 'provision of assistance' to illegal armed groups in breach of the arms embargo of Resolutions 1493 (2003) and 1596 (2005).
19.	CONGOCOM TRADING HOUSE			Butembo, DRC (Tel. +253 (0) 99 983 784)				29.3.2007	Gold-trading house in Butembo. CONGOCOM is owned by Kambale Kisoni. Kisoni acquires almost all the gold production in the Mongbwalu district, which is controlled by the FNI. The FNI derive substantial income from taxes imposed on this production. This constitutes 'provision of assistance' to illegal armed groups in breach of the arms embargo of Resolutions 1493 (2003) and 1596 (2005).
20.	COMPAGNIE AERIENNE DES GRANDS LACS (CAGL), GREAT LAKES BUSINESS		CAGL, Avenue Président Mobutu, Goma DRC (CAGL also has an office in Gisenyi, Rwanda); GLBC, PO Box 315, Goma, DRC (GLBC also has an office in Gisenyi, Rwanda)					29.3.2007	CAGL and GLBC are companies owned by Douglas MPAMO, an individual already subject to sanctions under Resolution 1596 (2005). CAGL and GLBC were used to transport arms and ammunition in violation of the arms embargo of Resolutions 1493 (2003) and 1596 (2005).
21.	MACHANGA		Kampala, Uganda					29.3.2007	Gold-export company in Kampala (Director, Mr Rajua). MACHANGA bought gold through a regular commercial relationship with traders in the DRC tightly linked to militias. This constitutes 'provision of assistance' to illegal armed groups in breach of the arms embargo of Resolutions 1493 (2003) and 1596 (2005).

	Name	Alias	Address (No, street, postal code, town, country)	Place of registration (town, country):	Date of registration	Registration number:	Principal place of business:	Date of designation	Other information
22.	TOUS POUR LA PAIX ET LE DEVELOP- PEMENT (NGO)	TPD	Goma, North Kivu					1.11.2005	Implicated in violation of the arms embargo, by providing assistance to RCD-G, particularly in supplying trucks to transport arms and troops, and also by transporting weapons to be distributed, to parts of the population in Masisi and Rutshuru, North Kivu, in early 2005.
23.	UGANDA COMMERCIAL IMPEC (UCI) LTD		Kajoka Street, Kisemete Kampala, Uganda (Tel. +256 41 533 578/9); alternative address: PO Box 22709, Kampala, Uganda					29.3.2007	Gold-export company in Kampala. UCI bought gold through commercial relationship with traders in the DRC tightly linked to militias. This constitutes 'provision of assistance' to illegal armed groups in breach of the arms embargo of Resolutions 1493 (2003) and 1596 (2005).