

**EXPLANATORY MEMORANDUM ON THE EUROPEAN UNION'S
COMMON FOREIGN AND SECURITY POLICY**

Council Decision CFSP 2017/xxx amending Decision (CFSP) 2010/788 concerning restrictive measures in view of the situation in the Democratic Republic of the Congo.

Submitted by the Foreign and Commonwealth Office on 5 December 2017.

SUBJECT MATTER

1. On 20 December 2010, the EU Council adopted Decision (CFSP) 2010/788 concerning restrictive measures against the Democratic Republic of the Congo (DRC).
2. On 12 December 2016, the Council adopted Decision (CFSP) 2016/2231 in response to the obstruction of the electoral process and the related human rights violations in the DRC. Council Decision (CFSP) 2016/2231 amended Decision (CFSP) 2010/788 and introduced autonomous restrictive measures under its Article 3(2).
3. On 29 May 2017, the EU Council Implementing Decision 2017/905 amended Annex II to Decision 2010/788/CFSP to impose restrictive measures against 9 additional individuals bringing the total of individuals subject to restrictive measures to 16.
4. Council Decision (CFSP) 2016/2231 extended these restrictive measures until 12 December 2017. On the basis of a review of the measures this draft Council Decision CFSP 2017/xxx proposes to extend these measures until 12 December 2018.
5. The individuals subject to restrictive measures as a result of engaging in or providing support for acts that undermine the peace, stability or security of the DRC are below:

Note that names with an asterisk* were listed on 29.05.2017

1. Ilunga Kampete
2. Gabriel Kumba
3. Ferdinand Luyoyo
4. Celestin Kanyama
5. John Numbi
6. Roger Kibelisa
7. Delphin Kaimbi
8. Evariste Boshab *

9. Gedeon Mutanga*
10. Alex Mupompa*
11. Jean-Claude Kazembe Musonda*
12. Lambert Mende*
13. Muhindo Akili Mundos*
14. Eric Ruhorimbere*
15. Ramazani Shadari*
16. Kalev Mutondo*

SCRUTINY HISTORY

6. An Explanatory Memorandum on this issue was last submitted for Parliamentary Scrutiny to the House of Lords Select Committee on the European Union on 18 May 2017. The documents were cleared on 4 July 2017 at the Chairman's sift. A post-election Explanatory Memorandum was submitted to the House of Commons European Scrutiny Committee on 26 June 2017. The documents were cleared as "not legally or politically important" on 13 November 2017 (ESC 38779, 1st Report, Session 2017-19).

MINISTERIAL RESPONSIBILITY

7. The Secretary of State for Foreign and Commonwealth Affairs is the Minister with overall responsibility for UK policy on the EU's Common Foreign and Security Policy.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

8. The UK's Foreign Affairs policy is a reserved matter under the UK's devolution settlements and no devolved administration interests arise. The devolved administrations have therefore not been consulted in the preparation of this EM.

LEGAL AND PROCEDURAL ISSUES

9. Legal Basis of the Council Decision: Article 29 of the Treaty on European Union.
10. Legal Basis of the Council Implementing Regulation: Treaty on the Functioning of the European Union.
11. Voting Procedures: Council acting by Unanimity for the Council Decision, and by qualified majority voting for the Council Implementing Regulation.
12. Impact on UK Law: The Council Implementing Regulation will be directly applicable in UK law.

13. Application to Gibraltar: Yes.
14. Fundamental rights analysis: The procedures for designating individuals are compliant with fundamental rights.
15. Provision is made for competent authorities of Member States to authorise the release of frozen funds where necessary in certain circumstances, for example, to satisfy the basic needs of listed persons or their dependents and where necessary for extraordinary expenses. Decisions by competent authorities of Member States in this regard would be subject to challenge in Member States' courts. Prohibitions on the transfer of funds and financial services are exempted where necessary for humanitarian purposes, or where necessary for supply of foodstuffs, medical equipment or provision of health care.
16. The Council keeps the measures under regular review to ensure there are grounds for keeping those designated on the list.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

17. None.

SUBSIDIARITY

18. Action by the EU is appropriate to ensure the uniform application across the EU of the sanctions measures against the DRC.

POLICY IMPLICATIONS

19. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty on the European Union on 29 March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.
20. Presidential elections in the DRC were due to be held by December 2016, at the end of President Kabila's second and final term of office. Although the DRC constitution prohibits Kabila from standing for another term, he did not resign when his mandate expired and has consistently sought to delay the electoral process.
21. Over 40 people were killed by the security forces during protests on 19 December 2016 and over 400 people were arrested. On 31 December 2016, talks between the government and opposition parties reached an unexpected deal. This included assurances that Kabila would step down and elections would be held before the end of 2017. However, elections will not happen in 2017. An electoral calendar has finally been released and elections have been scheduled for 23 December 2018. Political space remains constrained and there has been little progress on the implementation of the 31 December agreement.

22. EU restrictive measures imposed in December 2016 targeted non-political actors, principally members of the security services with command responsibility. They were sanctioned because of the human rights violations during the December 2016 protests and obstruction of the democratic process.
23. The EU Foreign Affairs Council of 6 March 2017 strongly condemned the serious human rights violations that have occurred in the DRC. Foreign Ministers agreed that the EU should “adopt new individual restrictive measures against those responsible for serious human rights violations or for incitement to violence and those who would obstruct a consensual and peaceful solution to the crisis, one that respects the aspiration of the people of the DRC to elect their representatives”.
24. Additional restrictive measures were imposed in May 2017 against 9 individuals for their involvement in human rights violations in the Kasai region and obstructing the democratic process. This brought the total number of individuals subject to restrictive measures to 16.
25. Given the trajectory of the political situation and the lack of progress on human rights issues in DRC, the UK government believe in the importance of the international community sending a clear message that those responsible for violating human rights and obstructing the political process in the DRC will face consequences. We remain deeply concerned about ongoing human rights violations and the political situation in DRC, and that sanctions - as part of a wider strategy - can help encourage respect for human rights and progress towards a political settlement.

REGULATORY IMPACT ASSESSMENT

26. Not applicable.

FINANCIAL IMPLICATIONS

27. None.

TIMETABLE

28. The EU is seeking adoption at the Foreign Affairs Council on the 11th December.



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