



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.11.2006
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Proposal for a

COUNCIL REGULATION

concerning restrictive measures against the Democratic People's Republic of Korea

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. On 14 October 2006, the UN Security Council, acting under Chapter VII of the UN Charter, adopted Resolution 1718 (2006) in which it condemned the nuclear test that the Democratic People's Republic of Korea, hereinafter North Korea, had conducted on 9 October 2006. The UN Security Council decided that all UN members shall apply the following restrictive measures against North Korea:
 - a) a ban on exports of sensitive goods and technology, which could contribute to North Korea's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes, and on the provision of related services,
 - b) a ban on procurement of sensitive goods and technology from North Korea,
 - c) a ban on exports of luxury goods,
 - d) the freezing of funds and economic resources of persons, entities and bodies engaged in or providing support for the said North Korean programmes, and
 - e) restrictions on admission of persons responsible for North Korea's policies in relation to its nuclear-related, ballistic-missile related and other weapons of mass destruction-related programmes, and their family members.

Except for the list of luxury goods, the lists of items, persons, entities and bodies subject to the restrictive measures shall be drawn up by the UN.

2. In order to implement UN Security Council Resolution 1718 (2006), the Council is preparing Common Position 2006/.../CFSP, which provides for action by the Community in order to implement certain restrictive measures.
3. The restrictive measures concerning sensitive goods and technology, luxury goods and the freezing of funds and economic resources fall within the scope of the Treaty and cannot be adequately applied on the basis of existing Community legislation.
4. Member States can apply the restrictions on admission on the basis of existing legislation, including Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.
5. The Commission proposes, therefore, to implement all restrictive measures set out in UN Security Council Resolution 1718 (2006), with the exception of the restrictions on admission, by means of a new Council Regulation.

Proposal for a
COUNCIL REGULATION

concerning restrictive measures against the Democratic People's Republic of Korea

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301 thereof,

Having regard to Common Position 2006//CFSP of November 2006 concerning restrictive measures against the Democratic People's Republic of Korea¹,

Having regard to the proposal from the Commission,

Whereas:

- (1) On 14 October 2006, the UN Security Council adopted Resolution 1718 (2006) in which it condemned the nuclear test that the Democratic People's Republic of North Korea, hereinafter North Korea, had conducted on 9 October 2006. Determining that there is a clear threat to international peace and security, the UN Security Council decided that all Member States of the United Nations should apply a number of measures.
- (2) Common Position 2006/ /CFSP provides for the implementation of the restrictive measures set out in Resolution 1718 (2006) and notably for a ban on exports of sensitive goods and technology, which could contribute to North Korea's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes, and on the provision of related services, a ban on procurement of sensitive goods and technology from North Korea, a ban on exports of luxury goods and the freezing of funds and economic resources of persons, entities and bodies engaged in or providing support for the said North Korean programmes.
- (3) These measures fall within the scope of the Treaty and, therefore, notably with a view to ensuring their uniform application by economic operators in all Member States, Community legislation is necessary to implement them as far as the Community is concerned. For the purposes of this Regulation, the territory of the Community should be deemed to encompass the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty.
- (4) As regards exports to and imports from North Korea, this Regulation derogates from existing legislation that provides for general rules on exports to and imports from third countries, and in particular from Regulation (EC) No 1334/2000 of 22 June 2000

¹ OJ L [...],[...].11.2006, p. [...].

setting up a Community regime for the control of exports of dual-use items and technology².

- (5) It is appropriate to clarify the procedure that should be followed to obtain approval for exports of sensitive goods and technology and the provision of related technical assistance.
- (6) For reasons of expediency, the Commission should be empowered to publish the list of sensitive goods and technology that will be adopted by the Sanctions Committee or the UN Security Council and, if appropriate, to add the reference numbers taken from the Combined Nomenclature as set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff³.
- (7) The Commission should also be empowered to amend the list of luxury goods if necessary in view of any definition or guidelines that the Sanctions Committee may promulgate to facilitate the implementation of the restrictions concerning luxury goods, or in order to protect the Community's interests, taking the lists of luxury goods produced by other jurisdictions into account.
- (8) For reasons of expediency, the Commission should also be empowered to amend the list of persons, entities and bodies whose funds and economic resources should be frozen.
- (9) Member States should determine the penalties applicable to infringements of the provisions of this Regulation. The penalties provided for should be proportionate, effective and dissuasive.
- (10) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the following definitions shall apply:

1. 'Sanctions Committee' means: the Committee of the UN Security Council which was established pursuant to paragraph 12 of UN Security Council Resolution 1718 (2006);
2. 'North Korea' means the Democratic People's Republic of Korea;
3. 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may

² OJ L 159, 30.6.2000, p. 1. Regulation as last amended by Regulation (EC) No 394/2006 (OJ L 74, 13.3.2006, p. 1).

³ OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Regulation (EC) No 996/2006 (OJ L 179, 1.7.2006, p. 26).

take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; including verbal forms of assistance;

4. 'funds' means financial assets and benefits of every kind, including but not limited to:
 - a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
 - b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
 - c) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
 - d) interest, dividends or other income on or value accruing from or generated by assets;
 - e) credit, right of set-off, guarantees, performance bonds or other financial commitments;
 - f) letters of credit, bills of lading, bills of sale; and
 - g) documents evidencing an interest in funds or financial resources.
5. 'freezing of funds' means preventing any moving, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management.
6. 'economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.
7. 'freezing of economic resources' means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them.
8. 'territory of the Community' means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty.

Article 2

1. It shall be prohibited:
 - a) to sell, supply, transfer or export, directly or indirectly, the sensitive goods and technology, including software, listed in Annex I, whether or not originating in the Community, to any natural or legal person, entity or body in, or for use in North Korea, and to any diplomatic mission of North Korea wherever located.

- b) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibition referred to in point (a).
2. Annex I shall include the following:
- a) battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile systems as defined for the purpose of the United National Register on Conventional Arms,
 - b) materiel or items related to the goods referred to in point (a), including spare parts and software, as determined by the Sanctions Committee or the UN Security Council, and
 - c) any other items, materials, equipment, goods and technology, including software, which could contribute to North Korea's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes, as determined by the Sanctions Committee or the UN Security Council.
3. It shall be prohibited to purchase, import or transport sensitive goods and technology listed in Annex I, if the item concerned either originates in North Korea or it is known that it has been present in the territory of North Korea at any time.
4. Paragraph 3 shall not apply to road transport services provided within the territory of North Korea.

Article 3

It shall be prohibited:

- (a) to provide, directly or indirectly, technical assistance related to sensitive goods and technology listed in Annex I, and to the provision, manufacture, maintenance and use of goods listed in Annex I to any natural or legal person, entity or body in, or for use in, North Korea, or to any diplomatic mission of North Korea wherever located;
- (b) to provide, directly or indirectly, financing or financial assistance related to sensitive goods and technology listed in Annex I, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for any provision of related technical assistance to any natural or legal person, entity or body in, or for use in, North Korea, and to any diplomatic mission of North Korea wherever located;
- (c) to participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibitions referred to in points (a) or (b).

Article 4

1. If derogation from Articles 2(1) or 3(a) is deemed necessary in a specific case, the seller, supplier, transferring party, exporter or service provider concerned may present a duly motivated request to the competent authorities of a Member State as listed in Annex II. The Member State that received the request shall, if it deems that

such derogation is justified, present a request for a specific authorisation to the UN Security Council.

2. The relevant competent authority shall inform the other Member States and the Commission of any request for authorisation submitted to the UN Security Council pursuant to paragraph 1.
3. The competent authorities of the Member States as listed in Annex II may authorise the sale, supply, transfer, export or provision of technical assistance, under such conditions as they deem appropriate, if the UN Security Council has approved the request for specific authorisation.

Article 5

It shall be prohibited:

- (a) to sell, supply, transfer or export, directly or indirectly, luxury goods, as listed in Annex III, to any natural or legal person, entity or body in, or for use in, North Korea, or to any diplomatic mission of North Korea wherever located.
- (b) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibition referred to in point (a).

Article 6

1. All funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex IV shall be frozen. Annex IV shall include the persons, entities and bodies designated by the Sanctions Committee or the UN Security Council as
 - (a) being engaged in or providing support for North Korea's nuclear-related, other weapons of mass destruction-related and ballistic missiles-related programmes, or
 - (b) acting on behalf or at the direction of such persons, entities or bodies.
2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annex IV.
3. The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1 and 2 shall be prohibited.

Article 7

1. By way of derogation from Article 6, the competent authorities of the Member States, as listed in Annex II, may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources or the making

available of certain funds or economic resources, having determined that the funds or economic resources concerned are:

- (a) necessary to satisfy the basic needs of persons listed in Annex III and their dependent family members, 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; or
- (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources; and

provided that the Member State concerned has notified the Sanctions Committee of that determination and its intention to grant an authorisation, and the Sanctions Committee has not objected to that course of action within five working days of notification.

2. By way of derogation from Article 6 the competent authorities of the Member States, as listed in Annex II, may authorise the release of certain frozen funds or economic resources or the making available of certain frozen funds or economic resources, after having determined that the funds or economic resources are necessary for extraordinary expenses, provided that this determination has been notified by the Member State to the Sanctions Committee and that the determination has been approved by that Committee.
3. The relevant competent authority shall inform the competent authorities of the other Member States and the Commission of any authorisation granted under paragraphs 1 and 2.

Article 8

By way of derogation from Article 6, the competent authorities of the Member States as listed in Annex II may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

- (a) the funds or economic resources are the subject of a judicial, administrative or arbitral lien established prior to 14 October 2006 or of a judicial, administrative or arbitral judgement rendered prior to that date;
- (b) the funds or economic resources will be used exclusively to satisfy claims secured by such a lien or recognised as valid in such a judgement, within the limits set by applicable laws and regulations governing the rights of persons having such claims;
- (c) the lien or judgement is not for the benefit of a person, entity or body listed in Annex IV;
- (d) recognising the lien or judgement is not contrary to public policy in the Member State concerned;

- (e) the lien or judgement has been notified by the Member State to the Sanctions Committee.

Article 9

1. Article 6(2) shall not prevent financial or credit institutions in the Community from crediting frozen accounts where they receive funds transferred by third parties to the account of a listed natural or legal person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the competent authorities about such transactions without delay.
2. Article 6(2) shall not apply to the addition to frozen accounts of interest or other earnings on those accounts provided that any such interest or other earnings are frozen in accordance with Article 6(1).

Article 10

1. Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall:
 - (a) supply immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 6, to the competent authorities of the Member States listed in Annex IV where they are resident or located, and shall transmit such information, directly or through these competent authorities, to the Commission;
 - (b) cooperate with the competent authorities listed in Annex II in any verification of this information.
2. Any additional information directly received by the Commission shall be made available to the competent authorities of the Member State concerned.
3. Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

Article 11

The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen as a result of negligence.

Article 12

The Commission and Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with any other relevant information at

their disposal in connection with this Regulation, in particular information in respect of violations and enforcement problems and judgments handed down by national courts.

Article 13

The Commission shall be empowered to:

- (a) amend Annex I on the basis of determinations made by either the Sanctions Committee or the United Nations Security Council and, where appropriate, add the reference numbers taken from the Combined Nomenclature as set out in Annex I to Council Regulation (EEC) No 2658/87;
- (b) amend Annex II on the basis of information supplied by Member States;
- (c) amend Annex III in order to refine or adapt the list of goods included therein, taking any definition or guidelines that may be promulgated by the Sanctions Committee and the lists produced by other jurisdictions into account, or to add the reference numbers taken from the Combined Nomenclature as set out in Annex I to Council Regulation (EEC) No 2658/87, if necessary or appropriate; and
- (d) amend Annex IV on the basis of determinations made by either the Sanctions Committee or the United Nations Security Council.

Article 14

1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.
2. Member States shall notify the Commission of those rules without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 15

This Regulation shall apply:

- (a) within the territory of the Community, including its airspace;
- (b) on board of any aircraft or any vessel under the jurisdiction of a Member State;
- (c) to any person inside or outside the territory of the Community who is a national of a Member State;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the Community.

Article 16

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council
The President*

ANNEX I

Goods and technology referred to in Article 2

A. Goods

1. Battle tanks, i.e. tracked or wheeled self-propelled armoured fighting vehicles with high cross-country mobility and a high level of self-protection, weighing at least 16.5 metric tonnes unladen weight, with a high muzzle velocity direct fire main gun of at least 75 millimetres calibre.
2. Armoured combat vehicles, i.e. tracked or wheeled self-propelled vehicles, with armoured protection and cross-country capability, either: (a) designed and equipped to transport a squad of four or more infantrymen, or (b) armed with an integral or organic weapon of at least 20 millimetres calibre or an anti- tank missile launcher.
3. Large calibre artillery systems, i.e. gun, howitzer, artillery pieces combining the characteristics of a gun and a howitzer, mortar or multiple-launch rocket system, capable of engaging surface targets by delivering primarily indirect fire, with a calibre of 75 millimetres and above.
4. Combat aircraft, i.e. fixed-wing or variable-geometry wing aircraft armed and equipped to engage targets by employing guided missiles, unguided rockets, bombs, guns, cannons, or other weapons of destruction
5. Attack helicopters, i.e. rotary-wing aircraft equipped to employ anti-armour, air-to-ground, or air-to-air guided weapons and equipped with an integrated fire control and aiming system for these weapons
6. Warships, i.e. vessels or submarines with a standard displacement of 500 metric tonnes or above, armed or equipped for military use
7. Missiles or missile systems, i.e.
 - (a) guided or unguided rockets, ballistic or cruise missiles capable of delivering a warhead or weapon of destruction to a range of at least 25 kilometres,
 - (b) means designed or modified specifically for launching such missiles or rockets, if not covered by categories I through VI, and
 - (c) man-portable air defence systems (MANPADS)

(to be completed in due course)

B. Technology

(to be completed in due course)

ANNEX II

List of competent authorities referred to in Articles 4, 7, 8 and 10

(to be completed by Member States)

BELGIUM

CZECH REPUBLIC

DENMARK

GERMANY

ESTONIA

GREECE

SPAIN

FRANCE

IRELAND

ITALY

CYPRUS

LATVIA

LITHUANIA

LUXEMBOURG

HUNGARY

MALTA

NETHERLANDS

AUSTRIA

POLAND

PORTUGAL

SLOVENIA

SLOVAKIA

FINLAND

SWEDEN

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ANNEX III

Luxury goods referred to in Article 5

Note: The present list is provisional as the UN Security Council has not yet published its definition of luxury goods, nor a list of such goods

1. Pure bred breeding horses and live horses of high value
2. Reptiles and live exotic birds
3. Caviar and caviar substitutes
4. Truffles and preparations thereof
5. Wines (including sparkling wines), spirits and spirituous beverages
6. Cigars and cigarillos
7. Perfumes, toilet waters and high value beauty, make-up and skin preparations
8. Leather and travel goods, hand bags and similar articles of high value
9. Garments, clothing accessories and shoes of high value (regardless of their material)
10. Hand knotted carpets, hand-woven rugs
11. Hand-woven tapestries
12. Pearls, precious and semi-precious stones, articles of pearls, jewellery, gold- or silversmiths
13. Coins, not being legal tender

14. Cutlery of precious metal or plated or clad with precious metal
15. Tableware of porcelain, china, stone- or earthenware or fine pottery of high value
16. Table or decoration glassware of high value
17. Electronic items for domestic use of high value
18. Electrical/electronic or optical apparatus for recording and reproducing of high value
19. Luxurious vehicles for the transport of persons on earth, air or sea, as well as their accessories and spare parts
20. Clocks and watches and their parts of high value
21. Musical instruments of high value
22. Works of art, collectors pieces and antiques

ANNEX IV

List of persons, entities and bodies referred to in Article 6

A. Natural persons

(to be completed in due course)

B. Legal persons, entities and bodies

(to be completed in due course)