



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 13 November 2006
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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL COMMON POSITION concerning restrictive
measures against the Democratic People's Republic of Korea

COMMON GUIDELINES

Consultation deadline for Bulgaria and Romania: 14.11.2006

COUNCIL COMMON POSITION 2006/.../CFSP

of

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Whereas:

- (1) On 15 July 2006, the United Nations Security Council adopted Resolution 1695 (2006) ("UNSCR 1695 (2006)") in which it condemned the multiple launches by the Democratic People's Republic of Korea ("DPRK") of ballistic missiles on 5 July 2006.
- (2) On 14 October 2006 the United Nations Security Council adopted Resolution 1718 (2006), ("UNSCR 1718 (2006)") in which it condemned the nuclear test proclaimed by the DPRK on 9 October 2006, and expressed its gravest concern at the challenge such a test constituted to the Treaty on the Non-Proliferation of Nuclear Weapons and to international efforts aimed at strengthening the global regime of non-proliferation of nuclear weapons, and the danger it posed to peace and stability in the region and beyond. The UN Security Council determined therefore a clear threat to international peace and security.
- (3) On 17 October 2006, the Council of the European Union strongly condemned the test of a nuclear explosive device by the DPRK and urged the DPRK to return immediately to the Six-Party talks, to abandon all nuclear weapons and existing nuclear programmes, and to comply with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, including submitting all its nuclear activities to International Atomic Energy Agency verification. The Council also stated that it would fully implement the provisions of all relevant UNSC Resolutions and notably those of UNSCR 1695 (2006) and UNSCR 1718 (2006).

- (4) UNSCR 1718 (2006) prohibits the direct or indirect supply, sale or transfer to the DPRK by nationals of Member States or from the territories of Member States, or using their flag vessels or aircraft, of certain conventional weapons as defined for the purpose of the UN register on Conventional Arms, or related materiel including spare parts, or items as determined by the UN Security Council or the Committee established pursuant to paragraph 12 of UNSCR 1718 (2006) ("the Committee"). The Council considers it appropriate also to cover other conventional weapons, including at least all goods and technology on the EU Common List of Military Equipment.
- (5) UNSCR 1718 (2006) also prohibits the direct or indirect supply, sale or transfer to the DPRK by nationals of Member States or from the territories of Member States, or using their flag vessels or aircraft, of items as listed in the relevant UN documents, which notably comprise the items contained in the Nuclear Suppliers Group and Missile Technology Control Regime lists; and of other materials, equipment, goods and technology related to nuclear, ballistic missile or other weapons of mass destruction programmes.
- (6) UNSCR 1718 (2006) also prohibits the provision of technical training, services and assistance in relation to the items referred to in recitals (4) and (5), the prohibition of which should also cover financing or financial assistance.
- (7) UNSCR 1718 (2006) also prohibits the procurement of the items referred to in recitals (4) and (5) from the DPRK.

- (8) UNSCR 1718 (2006) also prohibits the supply, sale or transfer of luxury goods to the DPRK.
- (9) UNSCR 1718 (2006) also imposes measures to prevent the entry into, or transit through their territories of the persons designated by the Committee or by the UN Security Council as being responsible for, including through supporting or promoting, DPRK policies in relation to DPRK's nuclear-related, ballistic missile-related and other weapons of mass destruction-related programmes, together with their family members.
- (10) UNSCR 1718 (2006) furthermore imposes a freeze of funds, other financial assets and economic resources, owned or controlled directly or indirectly by the persons or entities designated by the Committee or by the UN Security Council as being engaged in or providing support for, including through other illicit means, DPRK's nuclear-related, other weapons of mass destruction-related and ballistic missiles-related programmes, or by persons or entities acting on their behalf or at their direction; and an obligation that no funds, financial assets or economic resources are made available to or for the benefit of such persons or entities.
- (11) This Common Position may be amended if the Council deems it appropriate to apply the restrictive measures to additional persons, entities or items, or to other categories of persons, entities or items.
- (12) 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 the following items and technology, including software, to the DPRK by nationals of Member States or through or from the territories of Member States, or using their flag vessels or aircraft, shall be prohibited whether or not originating in their territories:
 - (a) arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, with the exception of non-combat vehicles which have been manufactured or fitted with materials to provide ballistic protection, intended solely for protective use of personnel of the EU and its Member States in the DPRK;
 - (b) all items, materials, equipment, goods and technology as determined by the UN Security Council or the Committee in accordance with paragraph 8(a)(ii) of UNSCR 1718 (2006), which could contribute to DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes.

2. It shall also be prohibited to:
 - (a) provide technical training, advice, services, assistance or brokering services, related to items and technology set out in paragraph 1 and to the provision, manufacture, maintenance and use of these items, directly or indirectly to any person, entity or body in, or for use in the DPRK;

- (b) provide financing or financial assistance related to items and technology referred to in paragraph 1, including, in particular, grants, loans and export credit insurance, for any sale, supply, transfer or export of these items, or for the provision of related technical training, advice, services, assistance, or brokering services, directly or indirectly to any person, entity or body in, or for use in the DPRK;
 - (c) to participate, knowingly or intentionally, in activities the object or effect of which is to circumvent the prohibition referred to in points (a) and (b).
3. The procurement by nationals of Member States, or using their flag vessels or aircraft, of items and technology referred to in paragraph 1 from the DPRK shall also be prohibited, whether or not originating in the territory of the DPRK.

Article 2

The direct or indirect supply, sale or transfer of luxury goods to the DPRK by nationals of Member States or through or from the territories of Member States, or using their flag vessels or aircraft, shall be prohibited whether originating or not in their territories.

Article 3

1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of the persons designated by the Committee or by the UN Security Council as being responsible for, including through supporting or promoting, DPRK policies in relation to DPRK's nuclear-related, ballistic missile-related and other weapons of mass destruction-related programmes, together with their family members, as listed in the Annex.
2. Paragraph 1 will not oblige a Member State to refuse its own nationals entry into its territory.
3. Paragraph 1 shall not apply where the Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligations, or where the Committee concludes that an exemption would otherwise further the objectives of UNSCR 1718 (2006).
4. In cases where pursuant to paragraph 3, a Member State authorises the entry into, or transit through, its territory of persons listed in the Annex, the authorisation shall be limited to the purpose for which it is given and to the persons concerned thereby.

Article 4

1. All funds and economic resources belonging to, owned, held or controlled, directly or indirectly, by the persons and entities designated by the Committee or by the UN Security Council as being engaged in or providing support for, including through illicit means, DPRK's nuclear-related, other weapons of mass destruction-related and ballistic missiles-related programmes, or by persons or entities acting on their behalf or at their direction shall be frozen.
2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of persons and entities referred to in paragraph 1.
3. Exemptions may be made for funds and economic resources which are:
 - (a) necessary to satisfy basic needs, including payment 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, in accordance with national laws, for routine holding or maintenance of frozen funds and economic resources,

after notification by the Member State concerned to the Committee of the 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 Committee within five working days of such notification.

4. Exemptions may also be made for funds and economic resources which are:

- (a) necessary for extraordinary expenses, after notification by the Member State concerned to and approval by the Committee; or
- (b) the subject of a judicial, administrative or arbitral lien or judgment, in which case the funds and economic resources may be used to satisfy that lien or judgment, provided that the lien or judgment was entered prior to the date of UNSCR 1718 (2006), and is not for the benefit of a person or entity referred to in paragraph 1, after notification by the Member State concerned to the Committee.

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 prior to 14 October 2006,

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

Article 5

Member States shall, in accordance with their national authorities and legislation, and consistent with international law, take cooperative action, including through inspection of cargo to and from the DPRK as necessary, in order to prevent illicit trafficking in nuclear, chemical or biological weapons, ballistic missiles, their means of delivery, related materials and technology. In this respect available non-proliferation mechanisms could be used to assure effective sea, air and land cargo inspections.

Article 6

The Council shall establish the list contained in the Annex and implement any modifications thereto on the basis of the determinations made by the Committee or the UN Security Council.

Article 7

This Common Position shall be reviewed, and, if necessary, amended, notably as regards the categories of persons, entities or items or additional persons, entities or items to be covered by the restrictive measures, or taking into account relevant UNSC resolutions.

Article 8

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

Article 9

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

Done at Brussels,

For the Council

The President

ANNEX

List of persons referred to in Article 3
