



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 3 June 2013

10435/13

**Interinstitutional File:
2013/0180 (NLE)**

**PESC 626
RELEX 472
COASI 80
COARM 97
FIN 312
CONUN 75**

PROPOSAL

from:	Commission/High Representative
dated:	30 May 2013
No Cion doc.:	JOIN(2013) 18 final
Subject:	Joint Proposal for a Council Regulation amending Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea

Delegations will find attached a joint proposal from the Commission and the High Representative of the EU for Foreign Affairs and Security Policy, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

Encl.: JOIN(2013) 18 final



EUROPEAN
COMMISSION

HIGH REPRESENTATIVE OF THE
EUROPEAN UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 30.5.2013
JOIN(2013) 18 final

2013/0180 (NLE)

Joint Proposal for a

COUNCIL REGULATION

**amending Regulation (EC) No 329/2007 concerning restrictive measures against the
Democratic People's Republic of Korea**

EXPLANATORY MEMORANDUM

- (1) On 7 March 2013, the United Nations Security Council (UNSC) adopted Resolution 2094 (2013) in which it condemned the nuclear test that the Democratic People's Republic of Korea ("North Korea") had conducted on 12 February 2013. The UNSC affirmed the measures it had already taken in UNSC Resolutions 1718 (2006), 1874 (2009) and 2087 (2013) and decided that all UN members shall apply additional restrictive measures against North Korea. The additional measures provided for in UNSC Resolution 2094 (2013) include:
 - (a) asset freeze measures against individuals or entities acting on behalf of or at the direction of the individuals and entities which have already been designated, and to entities owned or controlled by them, including through illicit means;
 - (b) a prohibition on establishment of correspondent banking relationships with banks and financial institutions in North Korea or the opening of bank accounts in North Korea;
 - (c) the requirement to inspect cargos originating in North Korea or destined for North Korea or brokered or facilitated by North Korea, or by individuals or entities acting on their behalf, where there are reasonable grounds to believe that the cargo contains prohibited items;
 - (d) a prohibition on aircraft taking off from, landing in or overflying territory if there are reasonable grounds to believe that the aircraft contains prohibited items.
- (2) In order to implement UNSC Resolution 2094 (2013), the Council adopted Decision 2013/183/CFSP concerning restrictive measures against the Democratic People's Republic of Korea repealing Decision 2010/800/CFSP¹, which provides for action by the European Union in order to implement additional restrictive measures.
- (3) The High Representative for Foreign Affairs and Security Policy and the Commission propose to implement the restrictive measures noted above by means of an amendment to Council Regulation 329/2007.

¹ OJ L 111, 23.4.2013, p.52.

Joint Proposal for a

COUNCIL REGULATION

amending Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 215 thereof,

Having regard to the joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the European Commission,

Whereas:

- (1) Council Regulation (EC) No 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic Republic of Korea², gives effect to measures provided for in Common Position 2006/795/CFSP of 20 November 2006 concerning restrictive measures against the Democratic People's Republic of North Korea³, which was later repealed and replaced by Council Decision 2010/800/CFSP of 22 December 2010 concerning restrictive measures against the Democratic People's Republic of Korea⁴ ('North Korea').
- (2) On 22 April 2013, the Council adopted Decision 2013/183/CFSP concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2010/800/CFSP⁵, renewing existing measures and giving effect to United Nations Security Council (UNSC) Resolution 2094 (2013).
- (3) The restrictive measures include a prohibition on the transfer of technical training, advice, services or technical assistance in relation to prohibited items and it is necessary to expand the scope of that prohibition to include other intermediary services.
- (4) The provision of financial services to additional persons and entities is prohibited, namely those acting on behalf of, or at the direction of, designated persons and entities or entities owned or controlled by them, and it is necessary to add an additional listing criteria to that effect.
- (5) It is necessary to prohibit the establishment of new correspondent relationships with banks in North Korea and the maintenance of correspondent relationships with banks

² OJ L 88, 29.3.2007, p. 1.

³ OJ L 322, 22.11.2006, p. 32.

⁴ OJ L 341, 23.12.2010, p. 32.

⁵ OJ L 111, 23.4.2013, p. 52.

in North Korea where there are reasonable grounds to believe that this could contribute to North Korea's nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes or other prohibited activities. Furthermore, financial institutions of Member States shall be prohibited from opening of bank accounts in North Korea.

- (6) It is necessary to inspect cargo originating in North Korea or destined for North Korea or brokered or facilitated by North Korea or its nationals, or by individuals or entities acting on their behalf, where there are reasonable grounds to believe that the cargo contains prohibited items. Accordingly, there should be a requirement to submit pre-arrival and pre-departure information.
- (7) It is necessary to prohibit any aircraft from taking off from, landing in or overflying the territory of the Union, if there are reasonable grounds to believe that the aircraft contains prohibited items.
- (8) These measures fall within the scope of the Treaty on the Functioning of the European Union and, therefore, in particular with a view to ensuring their uniform application by economic operators in all Member States, regulatory action at the level of the Union is necessary in order to implement them.
- (9) Regulation (EC) 329/2007 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 329/2007 is amended as follows:

- (1) Article 3(1)(a) is replaced by the following:
 - (a) “to provide, directly or indirectly, technical assistance and brokering or other intermediary services related to goods and technology listed in the EU Common List of Military Equipment or in Annexes I, Ia and Ib and to the provision, manufacture, maintenance and use of goods listed in the EU Common List of Military Equipment or in Annexes I, Ia, and Ib to any natural or legal person, entity or body in, or for use in, North Korea;”
- (2) Article 3a is replaced by the following:

“Article 3a

 1. To prevent the transfer of goods and technology which are covered by the EU Common List of Military Equipment or the supply, sale, transfer, export or import of which is prohibited by this Regulation, and in addition to the obligation to provide the competent customs authorities with the pre-arrival and pre-departure information as determined in the relevant provisions concerning entry and exit summary declarations as well as customs declarations in Regulation (EEC) No 2913/92⁶ and in Regulation (EEC) No 2454/93⁷, the person who provides the information referred to

⁶ OJ L 302, 19.10.1992, p. 1.

⁷ OJ L 253, 11.10.1993, p. 1.

in paragraph 2 of this Article, shall declare whether the goods are covered by the EU Common List of Military Equipment or by this Regulation and, where their export is subject to authorisation, specify the particulars of the export licence granted.

2. The required additional elements referred to in this Article shall be submitted either in written form or using a customs declaration as appropriate.

3. The provision of bunkering or ship supply services, or any other servicing of vessels, to North Korean vessels is prohibited where the providers of the service have information, including from the competent customs authorities on the basis of the pre-arrival and pre-departure information referred to in paragraph 1, that provides reasonable grounds to believe that the vessels carry items whose supply, sale, transfer or export is prohibited under this Regulation, unless the provision of such services is necessary for humanitarian purposes.”

(3) Article 5a is amended as follows:

(a) In Article 5a(1), points (a) and (b) are replaced by the following:

“(a) to open a new bank account with a credit or financial institution domiciled in North Korea or any credit or financial institution referred to in Article 11a(2);

(b) to establish a new correspondent banking relationship with a credit or financial institution domiciled in North Korea or with any credit or financial institution referred to in Article 11a(2);”

(b) In Article 5a(1) the following points (c), (d) and (e) are added:

“(c) to open a new representative office in North Korea, or to establish a new branch or subsidiary, in North Korea;

(d) to establish a new joint venture with a credit or financial institution domiciled in North Korea or with any credit or financial institution referred to in Article 11a(2);

(e) to maintain a correspondent banking relationship with a credit or financial institution domiciled in North Korea and any credit or financial institution referred to in Article 11a(2) if there is information that provides reasonable grounds to believe that this could contribute to North Korea’s nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes, or other prohibited activities by this Regulation or Decision 2013/88/CFSP.”

(4) In Article 6 paragraphs 1 to 4 are replaced by the following:

“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 in accordance with paragraph 8(d) of UN Security Council Resolution 1718 (2006), and paragraph 8 of UN Security Council Resolution 2094 (2013).

2. All funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex V shall be frozen. Annex V shall include persons, entities and bodies not listed in Annex IV, who, in accordance with paragraph Article 15 (1) point (b) of Council Decision 2013/183/CFSP, have been identified by the Council:

(a) as responsible for, including through support or promoting, North Korea's nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes, or persons, entities or bodies acting on their behalf or at their direction, or persons, entities or bodies owned or controlled by them, including through illicit means;

(b) as providing financial services or the transfer to, through or from the territory of the Union, or involving nationals of Member States or entities organised under their laws, or persons or financial institutions in the territory of the Union, of any financial or other assets or resources that could contribute to North Korea's nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes, or persons, entities or bodies acting on their behalf or at their direction, or persons, entities or bodies owned or controlled by them; or

(c) as involved in, including through the provision of financial services, the supply to or from North Korea of arms and related material of all types, or of items, materials, equipment, goods and technology which could contribute to North Korea's nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes to North Korea.

Annex V shall be reviewed at regular intervals and at least every 12 months.

2a. All funds and economic resources belonging to, owned, held or controlled by persons, entities or bodies in Annex Va shall be frozen. Annex Va shall include the persons, entities or bodies not covered by Annex IV or V who are working on behalf of or at the direction of a person, entity or body listed in Annex IV or V or persons assisting in the evasion of sanctions or violating the provisions of this Regulation, of Decision 2013/183/CSFP as listed in Annex Va.

Annex Va shall be reviewed at regular intervals and at least every 12 months.

3. Annexes IV, V and Va shall include where available information on listed natural persons for the purpose of identifying sufficiently the persons concerned.

Such information may include:

- (a) surname and given names, including alias names and titles, if any;
- (b) date and place of birth;
- (c) nationality;
- (d) passport and identity card numbers;
- (e) fiscal and social security numbers;

- (f) gender;
- (g) address or other information on whereabouts;
- (h) function or profession;
- (i) date of designation.

Annexes IV, V and Va shall also include the grounds for listing, such as occupation.

Annexes IV, V and Va may also include information on identification purposes as set out in this paragraph on family members of the persons listed, provided that this information is necessary in a specific case for the sole purpose of verifying the identity of the listed natural person concerned.

4. No funds or economic resources shall be made available, directly or indirectly, to for the benefit of the natural or legal persons, entities or bodies listed in Annexes IV, V and Va.”

- (5) Article 7 is replaced by the following:

“Article 7

1. By way of derogation from Article 6, the competent authorities of the Member States, as indicated on the websites 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, if the following conditions are met:

- (a) the competent authority concerned has determined that the funds or economic resources are:
 - (i) necessary to satisfy the basic needs of persons listed in Annex IV, V or Va and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and public utility charges;
 - (ii) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services; or
 - (iii) intended exclusively for payment of fees or services charges for routine holding or maintenance of frozen funds or economic resources; and
- (b) where the authorisation concerns a person, entity and body listed in Annex IV, 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 indicated on the websites 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 expense, provided that:

- (a) where the authorisation concerns a person, entity or body listed in Annex IV, the Sanctions Committee has been notified of this determination by the member State concerned and that the determination has been approved by that Committee, and
- (b) where the authorisation concerns a person, entity or body listed in Annex V or Va, the Member State concerned has notified other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted, at least two weeks prior to the authorisation.

3. The Member State concerned shall inform other Member States and the Commission of any authorisation granted under paragraphs 1 and 2.”

- (6) Article 8(c) shall be replaced by the following:

“(c) the lien or judgement is not for the benefit of a person, entity or body listed in Annexes IV, V or Va.”

- (7) Article 11a(1) is replaced by the following:

“1. Credit and financial institutions which fall within the scope of Article 16 shall, in their activities with credit and financial institutions referred to in paragraph 2, and in order to prevent such activities contributing to North Korea’s nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes or to prevent other activities prohibited by this Regulation, or Decision 2013/88/CFSP:

- (a) exercise continuous vigilance over account activity, particularly by means of their programmes on customer due diligence and obligations related to the prevention of money-laundering and the financing of terrorism;
- (b) require that in payment instructions all information fields which relate to the originator and beneficiary of the transaction in question be completed and, if that information is not supplied, refuse the transaction;
- (c) maintain all records of transactions for a period of five years and make them available to national authorities on request;
- (d) if they suspect or have reasonable grounds to suspect that funds are related to proliferation financing, promptly report their suspicions to the financial intelligence unit (FIU) or another competent authority designated by the Member State concerned, as indicated on the websites listed in Annex II, without prejudice to Article 3(1) or Article 6. The FIU or another competent authority shall serve as a national centre for receiving and analysing suspicious transaction reports regarding potential proliferation financing. The FIU or other such competent authority shall have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires in order to properly undertake this function, including the analysis of suspicious transaction reports.”

(8) The following Article shall be inserted:

“Article 11b

1. Where there are reasonable grounds to believe that an aircraft may contain items whose supply, sale, transfer or export is prohibited under Articles 2, 4 or 4a, it shall be prohibited for that aircraft to:

- (a) fly over the territory of the Union; or
- (b) to take off from or land in the territory of the Union.

2. Paragraph 1 shall not restrict aircraft from making an emergency landing.

3. Paragraph 1 shall not restrict aircraft registered in an EU Member State from landing for inspection of prohibited items.

4. It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent paragraph 1.”

(9) The Annex to this Regulation is inserted as Annex Va to Regulation 329/2007.

Article 2

This Regulation shall enter into force on the day following that 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

"ANNEX Va"