EUROPEAN
COMMISSION

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

Brussels, 30.4.2013
JOIN(2013) 12 final

2013/0144 (NLE)

Joint Proposal for a

COUNCIL REGULATION

concerning restrictive measures in respect of Myanmar/Burma and repealing Regulation (EC) No 194/2008

EXPLANATORY MEMORANDUM

(1) Council Regulation (EC) No 194/2008 provides for certain measures to be taken in relation to Myanmar/Burma, including restrictions on certain exports from Myanmar/Burma and a freezing of the assets of certain individuals and entities.

(2) The Council has decided, as a means of encouraging positive changes to continue, to lift all restrictive measures with the exception of the arms embargo and the embargo on equipment which might be used for internal repression.

(3) The High Representative of the EU for Foreign Affairs and Security Policy and the Commission propose to maintain those restrictive measures in this proposed Regulation and repeal Council Regulation (EC) No 194/2008.

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Joint Proposal for a

COUNCIL REGULATION

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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 Council Decision 2013/184/CFSP concerning restrictive measures against Myanmar/Burma and repealing Decision 2010/232/CFSP,

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

Whereas:

(1) Council Regulation (EC) No 194/2008 provides for certain measures to be taken in relation to Myanmar/Burma, including restrictions on certain exports from Myanmar/Burma and a freezing of the assets of certain individuals and entities.

(2) By Council Decision 2013/184/CFSP, the Council has agreed, as a means of encouraging positive changes to continue that all restrictive measures should be lifted with the exception of the arms embargo and the embargo on equipment which might be used for internal repression.

(3) Council Regulation (EC) No 194/2008 should be repealed.

(4) In order to ensure that the measures provided for in this Regulation are effective, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

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

(a) 'import' means any entry of goods into the customs territory of the Union or other territories to which the Treaty applies, under the conditions laid down in Article 299 thereof. It includes, within the meaning of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[1], the placing in a free zone or free warehouse, the placing under a suspensive procedure and the release for free circulation, but it excludes transit and temporary storage;

(b) 'export' means any departure of goods from the customs territory of the Union or other territories to which the Treaty applies, under the conditions laid down

[1] OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

in Article 299 thereof. It includes, within the meaning of Regulation (EEC) No 2913/92, the departure of goods that requires a customs declaration and the departure of goods after their storage in a free zone of control type I or free warehouse, but it excludes transit;

(c) 'exporter' means any natural or legal person on whose behalf an export declaration is made, that is to say the person who, at the time when the declaration is accepted, holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory of the Union or other territories to which the Treaty applies;

(d) 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take such forms as instruction, advice, training, transmission of working knowledge or skills or consulting services; technical assistance shall include verbal forms of assistance;

(e) 'territory of the Union' means the territories to which the Treaty is applicable, under the conditions laid down in the Treaty.

Article 2

Export restrictions

1. It shall be prohibited to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex I, whether or not originating in the Union, to any natural or legal person, entity or body in, or for use in Myanmar/Burma.

2. Paragraph 1 shall not apply to protective clothing, including flak jackets and helmets, temporarily exported to Myanmar/Burma by United Nations personnel, personnel of the European Union or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

Article 3

1. It shall be prohibited:

(a) to provide technical assistance 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 any natural or legal person, entity or body in, or for use in Myanmar/Burma;

(b) to 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, directly or indirectly to any natural or legal person, entity or body in, or for use in Myanmar/Burma.

2. It shall be prohibited:

(a) to provide technical assistance related to the equipment which might be used for internal repression as listed in Annex I, directly or indirectly to any natural or legal person, entity or body in, or for use in Myanmar/Burma;

(b) to provide financing or financial assistance related to the equipment listed in Annex I, including, in particular, grants, loans and export credit insurance, directly or indirectly to any natural or legal person, entity or body in, or for use in Myanmar/Burma.

3. It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in paragraphs 1 and 2.

4. The prohibitions set out in paragraphs 1(b) and 2(b) shall not give rise to liability of any kind on the part of the natural or legal persons or entities concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe these prohibitions.

Article 4

1. By way of derogation from Articles 2(1) and 3(2), the competent authorities in the Member States, as indicated in the websites listed in Annex II, may authorise, under such conditions as they deem appropriate:

(a) the sale, supply, transfer or export of equipment which might be used for internal repression as listed in Annex I, intended solely for humanitarian or protective use, or for institution-building programmes of the United Nations and the European Union, or for European Union and United Nations crisis-management operations;

(b) the sale, supply, transfer or export of de-mining equipment and material for use in de-mining operations; and

(c) the provision of financing and financial assistance and technical assistance related to equipment, material, programmes and operations referred to in subparagraphs (a) and (b).

2. By way of derogation from Article 3(1), the competent authorities in the Member States, as listed in Annex II, may authorise, under such conditions as they deem appropriate, the provision of financing and financial assistance and technical assistance related to:

(a) non-lethal military equipment intended solely for humanitarian or protective use, or for institution-building programmes of the United Nations and the European Union;

(b) materiel intended for European Union and United Nations crisis-management operations.

Article 5

The authorisations referred to in this Chapter shall not be granted for activities that have already taken place.

Article 6

General and final provisions

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 violation and enforcement problems and judgments handed down by national courts.

Article 7

The Commission shall be empowered to amend Annex II on the basis of information supplied by Member States.

Article 8

1. Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must 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 9

1. Member States shall designate the competent authorities referred to in this Regulation and identify them in, or through, the websites listed in Annex II.

2. Member States shall notify the Commission of their competent authorities without delay after the entry into force of this Regulation and shall notify it of any subsequent changes.

Article 10

This Regulation shall apply:

(a) within the territory of the Union, including its airspace;

(b) on board any aircraft or any vessel under the jurisdiction of a Member State;

(c) to any person inside or outside the territory of the Union 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 Union.

Article 11

Regulation (EC) No 194/2008 is hereby repealed.

Article 12

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

List of equipment which might be used for internal repression as referred to in Articles 4; 5 and 9

1. Fire-arms, ammunition and related accessories therefor, as follows:

   1.1. Firearms not controlled by ML 1 and ML 2 of the EU Common Military List[2];

   1.2. Ammunition specially designed for the firearms listed in 1.1 and specially designed components therefor;

   1.3. Weapon-sights not controlled by the EU Common Military List.

2. Bombs and grenades not controlled by the EU Common Military List.

3. Vehicles as follows:

   3.1. Vehicles equipped with a water cannon, specially designed or modified for the purpose of riot control;

   3.2. Vehicles specially designed or modified to be electrified to repel borders;

   3.3. Vehicles specially designed or modified to remove barricades, including construction equipment with ballistic protection;

   3.4. Vehicles specially designed for the transport or transfer of prisoners and/or detainees;

   3.5. Vehicles specially designed to deploy mobile barriers;

   3.6. Components for the vehicles specified in 3.1 to 3.5 specially designed for the purposes of riot control.

   Note 1: This item does not control vehicles specially designed for the purposes of fire-fighting.

   Note 2: For the purposes of item 3.5 the term 'vehicles' includes trailers.

4. Explosive substances and related equipment as follows:

   4.1. Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor; except those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflaters, electric-surge arresters of fire sprinkler actuators);

   4.2. Linear cutting explosive charges not controlled by the EU Common Military List;

   4.3. Other explosives not controlled by the EU Common Military List and related substances as follows:

   (a) amatol;

   (b) nitrocellulose (containing more than 12,5 % nitrogen);

[2] Common Military List of the European Union (adopted by the Council on 19 March 2007) (equipment covered by the European Union Code of Conduct on Arms Exports) (updating and replacing the Common Military List of the European Union adopted by the Council on 27 February 2006) (OJ L 88, 29.3.2007, p. 58).

(c) nitroglycol;

(d) pentaerythritol tetranitrate (PETN);

(e) picryl chloride;

(f) 2,4,6-trinitrotoluene (TNT).

5. Protective equipment not controlled by ML 13 of the EU Common Military List as follows:

   5.1. Body armour providing ballistic and/or stabbing protection;

   5.2. Helmets providing ballistic and/or fragmentation protection, anti-riot helmets, antiriot shields and ballistic shields.

   Note: This item does not control:

   equipment specially designed for sports activities;

   equipment specially designed for safety of work requirements.

6. Simulators, other than those controlled by ML 14 of the EU Common Military List, for training in the use of firearms, and specially designed software therefor.

7. Night vision, thermal imaging equipment and image intensifier tubes, other than those controlled by the EU Common Military List.

8. Razor barbed wire.

9. Military knives, combat knives and bayonets with blade lengths in excess of 10 cm.

10. Production equipment specially designed for the items specified in this list.

11. Specific technology for the development, production or use of the items specified in this list.

ANNEX II

Web sites for information on the competent authorities referred to in Articles 4, 7 and 8 and address for notifications to the European Commission

BELGIUM

http://www.diplomatie.be/eusanctions

BULGARIA

http://www.mfa.bg/en/pages/135/index.html

CZECH REPUBLIC

http://www.mfcr.cz/mezinarodnisankce

DENMARK

http://um.dk/da/politik-og-diplomati/retsorden/sanktioner/

GERMANY

http://www.bmwi.de/DE/Themen/Aussenwirtschaft/aussenwirtschaftsrecht,did=404888.html

ESTONIA

http://www.vm.ee/est/kat_622/

IRELAND

http://www.dfa.ie/home/index.aspx?id=28519

GREECE

http://www.mfa.gr/en/foreign-policy/global-issues/international-sanctions.html

SPAIN

http://www.maec.es/es/MenuPpal/Asuntos/Sanciones%20Internacionales/Paginas/Sanciones_%20Internacionales.aspx

FRANCE

http://www.diplomatie.gouv.fr/autorites-sanctions/

ITALY

http://www.esteri.it/MAE/IT/Politica_Europea/Deroghe.htm

CYPRUS

http://www.mfa.gov.cy/sanctions

LATVIA

http://www.mfa.gov.lv/en/security/4539

LITHUANIA

http://www.urm.lt/sanctions

LUXEMBOURG

http://www.mae.lu/sanctions

HUNGARY

http://www.kulugyminiszterium.hu/kum/hu/bal/Kulpolitikank/nemzetkozi_szankciok/

MALTA

http://www.doi.gov.mt/EN/bodies/boards/sanctions_monitoring.asp

NETHERLANDS

www.rijksoverheid.nl/onderwerpen/internationale-vrede-en-veiligheid/sancties

AUSTRIA

http://www.bmeia.gv.at/view.php3?f_id=12750&LNG=en&version=

POLAND

http://www.msz.gov.pl

PORTUGAL

http://www.min-nestrangeiros.pt

ROMANIA

http://www.mae.ro/node/1548

SLOVENIA

http://www.mzz.gov.si/si/zunanja_politika_in_mednarodno_pravo/zunanja_politika/mednarodna_varnost/omejevalni_ukrepi/

SLOVAKIA

http://www.mzv.sk/sk/europske_zalezitosti/sankcie_eu-sankcie_eu

FINLAND

http://formin.finland.fi/kvyhteistyo/pakotteet

SWEDEN

http://www.ud.se/sanktioner

UNITED KINGDOM

www.fco.gov.uk/competentauthorities

Address for notifications to the European Commission:

European Commission

Service for Foreign Policy Instruments (FPI)

EEAS 02/309

B-1049 Brussels

Belgium

E-mail: relex-sanctions@ec.europa.eu