Council Regulation (EU) 2018/285 of 26 February 2018 amending Council Regulation (EU) 2017/1509 concerning restrictive measures against the Democratic People's Republic of Korea

COUNCIL REGULATION (EU) 2018/285

of 26 February 2018

amending Council Regulation (EU) 2017/1509 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 Council Decision (CFSP) 2016/849 of 27 May 2016 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2013/183/CFSP[(1)],

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

Whereas:

(1) Council Regulation (EU) 2017/1509[(2)] gives effect to measures provided for in Decision (CFSP) 2016/849.

(2) On 22 December 2017 the United Nations Security Council ('UNSC') adopted Resolution 2397 (2017), in which it expressed its gravest concern at the ballistic missile launch by the Democratic People's Republic of Korea ('DPRK') on 28 November 2017. The UNSC reaffirmed that the proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security, and imposed new measures against the DPRK. Those measures further reinforce the restrictive measures imposed by UNSC Resolutions ('UNSCR') 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017) and 2375 (2017).

(3) The UNSC decided, inter alia, to strengthen the export ban on petroleum products and to impose an import ban on DPRK food products, machinery, electrical equipment, earth and stone; a ban on the export to the DPRK of industrial equipment, machinery, transportation vehicles and industrial metals; and further maritime restrictive measures.

(4) The Commission should be empowered to amend the lists of food and agricultural products; machinery and electrical equipment; earth and stone, including magnesite and magnesia; wood; vessels; and industrial machinery, transportation vehicles, and iron, steel and other metals on the basis of determinations made by either the Sanctions Committee or the UNSC and to update nomenclature codes from the Combined Nomenclature as set out in Annex I to Council Regulation (EEC) No 2658/87[(3)].

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) 2018/285. (See end of Document for details)*

(5) To ensure the uniform application of the maritime measures contained in UNSC Resolution 2397 (2017), it is appropriate to create a new Annex XVIII to Regulation (EU) 2017/1509 containing a list of vessels which the Council has reason to believe were involved in activities, or the transport of items, prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017), 2375 (2017) or 2397 (2017).

(6) The power to amend the list of vessels set out in Annex XVIII to Regulation (EU) 2017/1509 should be exercised by the Council in order to ensure consistency with the process for adopting and amending the list of vessels in Annex VI to Decision (CFSP) 2016/849.

(7) Three persons and one entity that have been designated by the UNSC should be removed from the list of persons and entities designated autonomously by the Council set out in Annex XV to Regulation (EU) 2017/1509.

(8) Council Decision (CFSP) 2018/293[(4)] amended Decision (CFSP) 2016/849 in order to give effect to the new measures imposed by UNSC Resolution 2397 (2017).

(9) These measures fall within the scope of the Treaty and, therefore, in particular with a view to ensuring their uniform application in all Member States, regulatory action at the level of the Union is necessary.

(10) Regulation (EU) 2017/1509 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2017/1509 is amended as follows:

(1) Article 16a is replaced by the following:

Article 16a

1 It shall be prohibited to import, purchase or transfer, directly or indirectly, seafood, including fish, crustaceans, molluscs, and other aquatic invertebrates in all forms, as listed in Annex XIa, from the DPRK, whether or not originating in the DPRK.

2 It shall be prohibited to purchase or transfer, directly or indirectly, fishing rights from the DPRK.;

(2) Articles 16d, 16e and 16f are replaced by the following:

Article 16d

It shall be prohibited to sell, supply, transfer or export, directly or indirectly, all refined petroleum products, as listed in Annex XId, whether or not originating in the Union, to the DPRK.

Article 16e

1 By way of derogation from Article 16d, the competent authorities of the Member States may authorise transactions in refined petroleum products that are determined to be exclusively for humanitarian purposes, provided that all of the following conditions are met:

a the transactions do not involve individuals or entities that are associated with the DPRK's nuclear or ballistic missile programmes or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017), 2375 (2017) or 2397 (2017), including the persons, entities and bodies listed in Annexes XIII, XV, XVI and XVII;

b the transaction is unrelated to generating revenue for the DPRK's nuclear or ballistic missile programmes or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017), 2375 (2017) or 2397 (2017);

c the Sanctions Committee has not notified the Member States that 90 % of the aggregate annual limit has been reached; and

d the Member State concerned notifies the Sanctions Committee of the amount of the export and information on all parties to the transaction every 30 days.

2 The Member State concerned shall notify the other Member States and the Commission of any authorisation granted pursuant to paragraph 1.

Article 16f

It shall be prohibited to sell, supply, transfer or export, directly or indirectly, crude oil, as listed in Annex XIe, whether or not originating in the Union, to the DPRK.;

(3) in Article 16g, paragraph 1 is replaced by the following:

1. By way of derogation from Article 16f, the competent authorities of the Member States may authorise transactions in crude oil, provided that all of the following conditions are met:

a the competent authority of the Member State has determined that the transaction is exclusively for humanitarian purposes; and

b the Member State has obtained the advance approval of the Sanctions Committee on a case-by-case basis, in accordance with paragraph 4 of UNSCR 2397 (2017).;

(4) the following articles are inserted:

Article 16j

It shall be prohibited to import, purchase or transfer, directly or indirectly, food and agricultural products listed in Annex XIg from the DPRK, whether or not originating in the DPRK.

Article 16k

It shall be prohibited to import, purchase or transfer, directly or indirectly, machinery and electrical equipment listed in Annex XIh from the DPRK, whether or not originating in the DPRK.

Article 16l

It shall be prohibited to import, purchase or transfer, directly or indirectly, earth and stone, including magnesite and magnesia, listed in Annex XIi from the DPRK, whether or not originating in the DPRK.

Article 16m

It shall be prohibited to import, purchase or transfer, directly or indirectly, wood listed in Annex XIj from the DPRK, whether or not originating in the DPRK.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) 2018/285. (See end of Document for details)*

Article 16n

It shall be prohibited to import, purchase or transfer, directly or indirectly, vessels listed in Annex XIk from the DPRK, whether or not originating in the DPRK.

Article 16o

1 By way of derogation from Articles 16j to 16n, the competent authorities of the Member States may authorise the import, purchase or transfer of the items referred to in those Articles by no later than 21 January 2018 provided that:

a the import, purchase or transfer is due under a written contract that entered into force prior to 22 December 2017; and

b the Member State concerned notifies the Sanctions Committee of the details of such import, purchase or transfer by no later than 5 February 2018.

2 The Member State concerned shall notify the other Member States and the Commission of any authorisation granted pursuant to paragraph 1.

Article 16p

It shall be prohibited to sell, supply, transfer or export to the DPRK, directly or indirectly, all industrial machinery, transportation vehicles, and iron, steel and other metals listed in part A of Annex XII, whether or not originating in the Union.

Article 16q

1 The competent authorities of the Member States may authorise the export of spare parts needed to maintain the safe operation of DPRK commercial civilian passenger aircraft of the aircraft models and types listed in part B of Annex XII.

2 The Member State concerned shall notify the other Member States and the Commission of any authorisation granted pursuant to paragraph 1.;

(5) Article 34 is amended as follows:

(a) paragraphs 7, 8 and 9 are deleted;

(b) paragraphs 10, 11 and 12 are renumbered as paragraphs 7, 8 and 9;

(6) Articles 43 and 44 are replaced by the following:

Article 43

1 It shall be prohibited:

a to lease or charter vessels or aircraft or provide crew services to the DPRK, persons or entities listed in Annex XIII, XV, XVI or XVII, any other DPRK entities, any other persons or entities which have assisted in violating the provisions of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016) or 2371 (2017) or any person or entity acting on behalf of, or at the direction of, any such person or entity, and entities owned or controlled by them;

b to procure vessel or aircraft crew services from the DPRK;

c to own, lease, operate, charter, insure or provide vessel classification services or associated services to any vessel flagged to the DPRK;

d to provide vessel classification services to vessels listed in Annex XVIII;

e to apply for or to assist in the registration or maintenance on the register of any vessel that is owned, controlled or operated by the DPRK or DPRK nationals, any vessel listed in Annex XVIII or that has been deregistered by another State

pursuant to paragraph 24 of UNSCR 2321 (2016), paragraph 8 of UNSCR 2375 (2017) or paragraph 12 of UNSCR 2397 (2017); or

f to provide insurance or reinsurance services to vessels owned, controlled or operated by the DPRK or vessels listed in Annex XVIII.

2 Annex XVIII shall include the vessels not listed in Annex XIV, which the Council has reasons to believe were involved in activities, or the transport of items, prohibited by UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017), 2375 (2017) or 2397 (2017).

Article 44

1 By way of derogation from the prohibition in point (a) of Article 43(1), the competent authorities of the Member States may authorise the leasing, chartering or provision of crew services, provided that the Member State has obtained the advance approval of the Sanctions Committee on a case-by-case basis.

2 By way of derogation from the prohibitions in points (c) and (e) of Article 43(1), the competent authorities of the Member States may authorise the owning, leasing, operating, chartering of, or providing vessel classification services or associated services to any DPRK flagged vessel, or the registration, or maintenance on the register, of any vessel that is owned, controlled or operated by the DPRK or DPRK nationals, provided that the Member State has obtained the advance approval of the Sanctions Committee on a case-by-case basis.

3 By way of derogation from the prohibition in point (d) of Article 43(1), the competent authorities of the Member States may authorise vessel classification services to vessels listed in Annex XVIII, provided that the Member State has obtained the advance approval of the Sanctions Committee on a case-by-case basis.

4 By way of derogation from the prohibitions in point (e) of Article 43(1), the competent authorities of the Member States may authorise the registration of a vessel that has been deregistered by another State pursuant to paragraph 12 of UNSCR 2397 (2017), provided that the Member State has obtained the advance approval of the Sanctions Committee on a case-by-case basis.

5 By way of derogation from the prohibition in point (f) of Article 43(1), the competent authorities of the Member States may authorise the provision of insurance or reinsurance services, provided that the Sanctions Committee has determined in advance on a case-by-case basis that the vessel is engaged in activities exclusively for livelihood purposes which will not be used by DPRK individuals or entities to generate revenue or exclusively for humanitarian purposes.

6 The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraphs 1, 2, 3, 4 and 5.;

(7) Article 45 is replaced by the following:

Article 45

1 By way of derogation from the prohibitions arising from UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017), 2375 (2017) or 2397 (2017), the competent authorities of Member States may authorise any activities if the Sanctions Committee has determined, on a case-by-case basis, that they are necessary to facilitate the work of international and non-governmental organisations carrying out assistance and relief activities in the DPRK for the benefit of the civilian population in the DPRK or for any other purpose consistent with the objectives of those UNSCRs.