Council Regulation (EU) 2017/1858 of 16 October 2017 amending Regulation (EU) 2017/1509 concerning restrictive measures against the Democratic People's Republic of Korea

COUNCIL REGULATION (EU) 2017/1858

of 16 October 2017

amending 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 from the High Representative of the Union for Foreign Affairs and Security Policy and of the European Commission,

Whereas:

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

(2) On 5 August 2017 and 11 September 2017 respectively, the United Nations Security Council (UNSC) adopted Resolutions 2371 (2017) and 2375 (2017), in which it expressed its gravest concern at the ballistic missile tests of 3 July 2017 and 28 July 2017 and the nuclear test of 2 September 2017 conducted by the Democratic People's Republic of Korea (DPRK), and imposed new measures against the DPRK. These measures further reinforce the restrictive measures imposed by UNSC Resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016) and 2356 (2017).

(3) On 14 September 2017, the Council adopted Decision (CFSP) 2017/1562[(3)] and on 10 October 2017 it adopted Decision (CFSP) 2017/1838[(4)] amending Decision (CFSP) 2016/849 in order to give effect to the new measures imposed by UNSC Resolutions 2371 (2017) and 2375 (2017).

(4) On 14 September 2017, the Council adopted Regulation (EU) 2017/1548[(5)] and on 10 October 2017 adopted Regulation (EU) 2017/1836[(6)], both of which amended Regulation (EU) 2017/1509 to give effect to the measures provided for in Decision (CFSP) 2016/849.

(5) On 16 October 2017, the Council decided to further expand the ban on EU investment in and with the DPRK to all sectors, to lower the amount of personal remittances that

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) 2017/1858. (See end of Document for details)*

could be sent to the DPRK from EUR 15 000 to EUR 5 000, and to impose an oil export ban to the DPRK.

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

(7) Regulation (EU) 2017/1509 should therefore be amended accordingly.

(8) 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

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

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

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) or 2375 (2017) including the persons, entities and bodies listed in Annex 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) or 2375 (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.;

(2) Article 16g is replaced by the following:

Article 16g

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 15 of UNSCR 2375 (2017).

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

(3) point (a) of Article 17(2) is replaced by the following:

(a) to establish, maintain or operate a joint venture or a cooperative entity with any natural or legal person, entity or body referred to in paragraph 1 or domiciled in the DPRK or to, to take, maintain or extend an ownership interest, including by acquisition in full or the acquisition of shares and other securities of a participatory nature in any legal person, entity or body that is referred to in paragraph 1 or is domiciled in the DPRK, or in activities or assets in the DPRK;;

(4) Article 17a is replaced by the following:

Article 17a

1 By way of derogation from point (a) of Article 17(2), the competent authorities of the Member States may authorise such activities, in particular those regarding joint ventures or cooperative entities that are non-commercial, public utility infrastructure projects not generating profit, 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 point (a) of Article 17(2), and in insofar as they do not relate to joint ventures or cooperative entities, the competent authorities of the Member States may authorise such activities, provided that the Member State has determined that those activities are exclusively for humanitarian purposes, and are not in the sectors of mining, refining, chemical, metallurgy or the metalworking, aerospace or conventional arms-related industries.

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

(5) Article 21 is amended as follows:

(a) paragraph 4 is replaced by the following:

4. The prohibitions in paragraphs 1 and 2 shall not apply to any of the following transactions, provided that they involve a transfer of funds for amounts equal to or below EUR 15 000 or equivalent:

a transactions regarding foodstuffs, healthcare or medical equipment or for agricultural or humanitarian purposes;

b transactions regarding the execution of the exemptions provided for in this Regulation;

c transactions in connection with a specific trade contract not prohibited by this Regulation;

d transactions required exclusively for the implementation of projects funded by the Union or its Member States for development purposes directly addressing the needs of the civilian population or the promotion of denuclearisation; and

e transactions regarding a diplomatic or consular mission or an international organisation enjoying immunities in accordance with international law, insofar as such transactions are intended to be used for official purposes of the diplomatic or consular mission or international organisation.;

(b) the following paragraph is added: