Council Regulation (EU) 2017/1836 of 10 October 2017 amending Regulation (EU) 2017/1509 concerning restrictive measures against the Democratic People's Republic of Korea

COUNCIL REGULATION (EU) 2017/1836

of 10 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 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 11 September 2017, the United Nations Security Council adopted Resolution 2375 (2017) ('UNSCR') in which it expressed the gravest concern at the nuclear test of 2 September 2017 by the Democratic People's Republic of Korea (DPRK). The UNSC reaffirmed that the proliferation of nuclear, chemical and biological weapons constitutes a threat to international peace and security, and imposed new measures against the DPRK. These measures further reinforce the restrictive measures imposed by UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017) and 2371 (2017).

(3) The UNSC imposed new prohibitions with regard to imports of, inter alia, DPRK textiles, exports of petroleum products to DPRK, joint ventures and in the maritime sector.

(4) Council Decision (CFSP) 2017/1838[(3)] amended Decision (CFSP) 2016/849 in order to give effect to the new measures imposed by UNSCR 2375 (2017).

(5) 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.

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

HAS ADOPTED THIS REGULATION:

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EU) 2017/1836. (See end of Document for details)*

Article 1

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

(1) in Article 3(2), the 7th subparagraph is replaced by:

Part VII of Annex II shall include conventional arms-related items, materials, equipment, goods and technology designated, pursuant to paragraph 5 of UNSCR 2371 (2017).;

(2) in Article 3(2), the following text is inserted after the 7th subparagraph:

Part VIII of Annex II shall include weapons of mass destruction-related items, materials, equipment, goods and technology designated, pursuant to paragraph 4 of UNSCR 2375 (2017).

Part IX of Annex II shall include conventional arms-related items, materials, equipment, goods and technology designated, pursuant to paragraph 5 of UNSCR 2375 (2017).;

(3) the following articles are inserted:

Article 16c

It shall be prohibited to sell, supply, transfer or export, directly or indirectly, condensates and natural gas liquids, as listed in Annex XIc, to the DPRK.

Article 16d

It shall be prohibited to sell, supply, transfer or export, directly or indirectly, all refined petroleum products, as listed in Annex XId, 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 livelihood purposes of DPRK nationals, provided that all of the following conditions are met:

a the transaction does not involve individuals or entities that are associated with the DPRK's nuclear or ballistic missile programmes or other activities prohibited by UNSCRs 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, or individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them, directly or indirectly, or individuals or entities assisting in the evasion of sanctions;

b the transaction is unrelated to generating revenue for the DPRK's nuclear or ballistic missile programmes or other activities prohibited by UNSCRs 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.

Article 16f

It shall be prohibited to sell, supply, transfer or export, directly or indirectly, crude oil, as listed in Annex XIe, to the DPRK.

Article 16g

1 By way of derogation from Article 16f, the competent authorities of the Member States may authorise transactions in crude oil after having determined that the Union's annual aggregate transactions would not exceed the amount sold, supplied, transferred or exported in the period between 11 September 2016 and 10 September 2017.

2 By way of derogation from Article 16f, the competent authorities of the Member States may authorise transactions in crude oil that are determined to be exclusively for livelihood purposes, provided that all of the following conditions are met:

a the transactions is unrelated to 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); and

b the Member State has obtained the advance approval of the Sanctions Committee on a case-by-case basis.

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

Article 16h

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

Article 16i

1 By way of derogation from Article 16h, the competent authorities of the Member States may authorise the import, purchase or transfer of textiles, 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 Article 16h, the competent authorities of the Member States may authorise the import, purchase or transfer of textiles by no later than 10 December 2017 provided that:

a the import, purchase or transfer is due under a written contract that entered into force prior to 11 September 2017; and

b the Member State concerned notifies the Sanctions Committee of the details of such import, purchase or transfer by no later than 24 January 2018.

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

(4) Article 17(2)(a) is replaced by the following:

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

(5) in Article 17, the following paragraph is added:

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3. Existing joint ventures or cooperative entities referred to in point (a) of paragraph 2, shall be closed by 9 January 2018, or within 120 days after the Sanctions Committee has denied a request for approval.;

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

(7) the following Article is inserted:

Article 17b

By way of derogation from Article 17(3), the competent authorities of the Member States may authorise such joint venture or cooperative entity to remain operational, provided that the Member State has obtained the advance approval of the Sanctions Committee on a case-by-case basis.;

(8) Article 34(2) is replaced by the following:

2. All vessels listed in Annex XIV shall be seized, if the Sanctions Committee has so specified.;

(9) Article 34(4) is replaced by the following:

4. Annex XIII shall include the persons, entities and bodies designated by the Sanctions Committee or the UNSC pursuant to paragraph 8(d) of UNSCR 1718 (2006), and paragraph 8 of UNSCR 2094 (2013).

Annex XIV shall include the vessels that have been designated by the Sanctions Committee pursuant to paragraph 12 of UNSCR 2321 (2016) and paragraph 8 of UNSCR 2375 (2017).

Annex XV shall include persons, entities and bodies not listed in Annex XIII and XIV, who, pursuant to point (b) of Article 27(1) of Decision (CFSP) 2016/849, or any equivalent subsequent provision, have been identified by the Council:

a as responsible for, including through supporting or promoting, the DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-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 the DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-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

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

(10) in Article 39(1), point (g) is replaced by the following:

(g) that is listed under Annex XIV, if the Sanctions Committee has so specified.;

(11) in Article 40, paragraph (3) is replaced by the following:

3. By way of derogation from the prohibition in Article 39(1), where that concerns a vessel within the scope of point (g), the competent authorities of the Member States may authorise a vessel to come into port if the Sanctions Committee has determined in advance that such entry is required for humanitarian purposes or any other purposes consistent with the objectives of UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017) or 2375 (2017).;

(12) Article 43(d) is replaced by the following:

(d) to register or maintain on the register, any vessel that is owned, controlled or operated by the DPRK or DPRK nationals, or has been de-registered by another State pursuant to paragraph 24 of UNSCR 2321 (2016) or paragraph 8 of UNSCR 2375 (2017); or;

(13) the following Article is inserted:

Article 44a

It shall be prohibited to facilitate or engage in ship-to-ship transfers to or from any DPRK flagged vessel of any goods or items that are being sold, supplied, transferred or exported to or from the DPRK.;

(14) Article 45 is replaced by the following:

Article 45

By way of derogation from the prohibitions arising from UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2070 (2016), 2321 (2016), 2356 (2016), 2371 (2017) or 2375 (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 these resolutions.;

(15) in Article 46, point (b) is replaced by the following:

(b) amend Parts II, III, IV, V, VI, VII, VIII and IX of Annex II and Annexes VI, VII, IX, X, XI, Xia, XIb, XIc, XId, XIe and XIf 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 Regulation (EEC) No 2658/87;;

(16) Annex II is amended in accordance with Annex I to this Regulation;

(17) Annex V is amended in accordance with Annex II to this Regulation;

(18) Annex XIa is amended in accordance with Annex III to this Regulation;