Council Regulation (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007

COUNCIL REGULATION (EU) 2017/1509

of 30 August 2017

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

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) On 14 October 2006, the UN Security Council (‘UNSC’) adopted Resolution 1718 (2006) in which it condemned the nuclear test that the Democratic People's Republic of Korea (‘DPRK’) had conducted on 9 October 2006, determining that there was a clear threat to international peace and security, and required all Member States of the UN to apply a number of restrictive measures against the DPRK. Subsequent UNSC Resolutions (UNSCRs) 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016) and 2371 (2017) further extended these restrictive measures.

(2) In accordance with these UNSCRs, Decision (CFSP) 2016/849 provides in particular for restrictions on the import and export of certain goods, services and technology which could contribute to the DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes (Weapons of mass destruction (WMD) programmes), a luxury goods embargo as well as an asset freeze on persons, entities and bodies that have been linked to the WMD programmes. Further measures target the transport sector, including inspections of cargo and prohibitions pertaining to DPRK vessels and aircraft, the financial sector, such as a provision of certain financial services, and the diplomatic sphere, to prevent abuse of privileges and immunities.

(3) Furthermore, the Council has adopted several additional EU restrictive measures that complement and reinforce the UN-based restrictive measures. To that end, the Council extended the arms embargo, import and export restrictions, extended the list of persons and entities subject to an asset freeze and introduced prohibitions on transfers of funds and investment.

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(4) Adoption of a regulation within the meaning of Article 215 of the Treaty at the level of the Union is necessary in order to give effect to the above-mentioned restrictive measures, in particular with a view to ensuring their uniform application by economic operators in all Member States.

(5) Council Regulation (EC) No 329/2007[(2)] has been amended several times. In view of the extent of the amendments introduced, it is appropriate to consolidate all measures into a new regulation which repeals and replaces Regulation (EC) No 329/2007.

(6) The Commission should be empowered to publish the list of goods and technology that will be adopted by the Committee of the UNSC which was established pursuant to paragraph 12 of UNSCR 1718 (2006) ('Sanctions Committee') or the UNSC and, if appropriate, to add the nomenclature codes from the Combined Nomenclature as set out in Annex I to Council Regulation (EEC) No 2658/87[(3)].

(7) The Commission should also be empowered to amend the list of luxury goods if necessary in view of any definition or guidelines that the Sanctions Committee may promulgate to facilitate the implementation of the restrictions concerning luxury goods, taking the lists of luxury goods produced in other jurisdictions into account.

(8) The power to amend the lists in Annexes XIII, XIV, XV, XVI and XVII to this Regulation should be exercised by the Council, in view of the specific threat to international peace and security posed by DPRK, and in order to ensure consistency with the process for amending and reviewing Annexes I, II, III, IV and V to Decision (CFSP) 2016/849.

(9) The Commission should be empowered to amend the list of services, taking into account information provided by Member States as well as any definition or guidelines that may be issued by the United Nations Statistical Commission, or in order to add reference numbers taken from the Central Product Classification system for goods and services promulgated by the United Nations Statistical Commission.

(10) UNSCR 2270 (2016) recalls that the Financial Action Task Force ('FATF') has called upon countries to apply enhanced due diligence and effective countermeasures to protect their jurisdictions from the DPRK's illicit financial activity, and calls upon UN Member States to apply FATF Recommendation 7, its Interpretive Note and related guidance to effectively implement targeted financial sanctions related to proliferation.

(11) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and in particular the right to an effective remedy and to a fair trial and the right to the protection of personal data. This Regulation should be applied in accordance with those rights.

(12) For the implementation of this Regulation, and to create the highest level of legal certainty within the Union, the names and other relevant data concerning natural and legal persons, entities and bodies whose funds and economic resources are to be frozen in accordance with this Regulation, should be made public. Any processing of personal data of natural persons under this Regulation should be in conformity with Regulation

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(EC) No 45/2001 of the European Parliament and of the Council[4] and Directive 95/46/EC of the European Parliament and of the Council[5],

HAS ADOPTED THIS REGULATION:

CHAPTER I

Definitions

Article 1

This Regulation shall apply:

(a) within the territory of the Union;

(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, inside or outside the territory of the Union 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 2

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

(1) 'branch' of a financial or credit institution means a place of business which forms a legally dependent part of a financial or credit institution and which carries out directly all or some of the transactions inherent in the business of financial or credit institutions;

(2) 'brokering services' means:

  (a) the negotiation or arrangement of transactions for the purchase, sale or supply of goods and technology or of financial and technical services, including from a third country to any other third country; or

  (b) the selling or buying of goods and technology or of financial and technical services, including where they are located in third countries for their transfer to another third country;

(3) 'claim' means any claim, whether asserted by legal proceedings or not under or in connection with a contract or transaction, and includes in particular:

  (a) a claim for performance of any obligation arising under or in connection with a contract or transaction;

  (b) a claim for extension or payment of a bond, financial guarantee or indemnity of whatever form;

  (c) a claim for compensation in respect of a contract or transaction;

  (d) a counterclaim;

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(e) a claim for the recognition or enforcement, including by the procedure of exequatur, of a judgment, an arbitration award or an equivalent decision, wherever made or given;

(4) 'competent authorities' refers to the competent authorities as identified on the websites listed in Annex I;

(5) 'contract or transaction' means any transaction of whatever form and whatever the applicable law, whether comprising one or more contracts or similar obligations made between the same or different parties; for this purpose 'contract' includes a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, and credit, whether legally independent or not, as well as any related provision arising under, or in connection with, the transaction;

(6) 'credit institution' means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[(6)], including branches thereof, as defined in point (17) of Article 4(1) of that Regulation, located in the Union, whether its head office is situated within the Union or in a third country;

(7) 'diplomatic missions, consular posts and their members' has the same meaning as in the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, and also includes missions of the DPRK to international organisations hosted in the Member States and DPRK members of those missions;

(8) 'economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, actual or potential, which are not funds but can be used to obtain funds, goods or services, including vessels, such as maritime vessels;

(9) 'financial institution' means

(a) an undertaking, other than a credit institution, which carries out one or more of the activities listed in points (2) to (12), (14) and (15) of Annex I to Directive 2013/36/EU of the European Parliament and of the Council[(7)], including the activities of currency exchange offices (bureaux de change);

(b) an insurance undertaking as defined in point (1) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council[(8)], insofar as it carries out life assurance activities covered by that Directive;

(c) an investment firm as defined in point (1) of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council[(9)];

(d) a collective investment undertaking marketing its units or shares;

(e) an insurance intermediary as defined in point (5) of Article 2 of Directive 2002/92/EC of the European Parliament and of the Council[(10)] where it acts with respect to life insurance and other investment-related services, with the exception of a tied insurance intermediary as defined in point (7) of that Article;

(f) branches, when located in the Union, of financial institutions as referred to in points (a) to (e), whether their head office is situated in a Member State or in a third country;

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(10) 'freezing of economic resources' means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;

(11) 'freezing of funds' means preventing any moving, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management;

(12) 'funds' means financial assets and benefits of every kind, including but not limited to:

(a) cash, cheques, claims on money, drafts, money orders and other payment instruments;

(b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;

(c) publicly and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;

(d) interest, dividends or other income on or value accruing from or generated by assets;

(e) credit, right of set-off, guarantees, performance bonds or other financial commitments;

(f) letters of credit, bills of lading, bills of sale;

(g) documents evidencing an interest in funds or financial resources;

(13) 'insurance' means an undertaking or commitment whereby one or more natural or legal persons are obliged, in return for a payment, to provide one or more other persons, in the event of the materialisation of a risk, with an indemnity or a benefit as determined by the undertaking or commitment;

(14) 'investment services' means the following services and activities:

(a) reception and transmission of orders in relation to one or more financial instruments;

(b) execution of orders on behalf of clients;

(c) dealing on own account;

(d) portfolio management;

(e) investment advice;

(f) underwriting of financial instruments and/or placing of financial instruments on a firm-commitment basis;

(g) placing of financial instruments without a firm-commitment basis;

(h) any service in relation to the admission to trading on a regulated market or trading on a multilateral trading facility;

(15) 'payee' means a natural or legal person who is the intended recipient of the transfer of funds;