Council Regulation (EU) 2017/330 of 27 February 2017 amending Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea

COUNCIL REGULATION (EU) 2017/330

of 27 February 2017

amending Regulation (EC) No 329/2007 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Regulation (EC) No 329/2007[(2)] gives effect to measures provided for in Decision (CFSP) 2016/849, which, inter alia, repealed and replaced Decision 2013/183/CFSP[(3)]. On 30 November 2016, the United Nations Security Council adopted Resolution 2321 (2016) providing for new measures against the Democratic People's Republic of Korea. These include export bans for copper, nickel, silver, zinc, statues, helicopters, vessels, the tightening of the prohibitions in the transport sector and new restrictions in the banking sector.

(2) On 27 February 2017, the Council adopted Decision (CFSP) 2017/345[(4)], giving effect to these measures.

(3) Regulation (EC) No 329/2007 should therefore be amended accordingly.

(4) 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 (EC) No 329/2007 is amended as follows:

(1) in Article 1, the following point is added:

15. "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 North Korea

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to international organisations hosted in the Member States and North Korean members of those missions.;

(2) Article 2 is amended as follows:

(a) paragraph 2 is replaced by the following:

2. Annex I shall include all items, materials, equipment, goods and technology, including software, which are dual-use items or technology as defined in Council Regulation (EC) No 428/2009[(5)].

Annex Ia shall include other items, materials, equipment, goods and technology which could contribute to North Korea's nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes.

Annex Ib shall include certain key components for the ballistic missile sector.

Annex Ie shall include the aviation fuel referred to in paragraph 1(b).

Annex Ig shall include weapons-of-mass-destruction-related items, materials, equipment, goods and technology identified and designated pursuant to paragraph 25 of UN Security Council Resolution 2270 (2016) and paragraphs 4 and 7 of UN Security Council Resolution 2321 (2016).;

(b) paragraph 4 is replaced by the following:

4. It shall be prohibited to:

a import, purchase or transfer, directly or indirectly, gold, titanium ore, vanadium ore and rare-earth minerals, as listed in Annex Ic, or coal, iron and iron ore, as listed in Annex Id, from North Korea, whether or not originating in North Korea;

b import, purchase or transfer, directly or indirectly, copper, nickel, silver and zinc, as listed in Annex Ih from North Korea, whether or not originating in North Korea;

c import, purchase or transfer, directly or indirectly, petroleum products, as listed in Annex If from North Korea, whether or not originating in North Korea;

d participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in points (a), (b) and (c) of this subparagraph.

Annex Ic shall include gold, titanium ore, vanadium ore and rare-earth minerals referred to in point (a) of the first subparagraph.

Annex Id shall include coal, iron and iron ore referred to in point (a) of the first subparagraph.

Annex If shall include the petroleum products referred to in point (c) of the first subparagraph.

Annex Ih shall include the copper, nickel, silver and zinc referred to in point (b) of the first subparagraph.;

(c) paragraph 5 is amended as follows:

(i) point (b) is replaced by the following:

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(b) transactions in iron and iron ore that are determined to be exclusively for livelihood purposes and unrelated to generating revenue for North Korea's nuclear or ballistic missile programmes or other activities prohibited by UN Security Council Resolution 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016) or 2321 (2016) or by this Regulation;;

(ii) the following point is added:

(c) transactions in coal that are determined to be exclusively for livelihood purposes provided that the following conditions are met:

(i) the transactions are unrelated to generating revenue for North Korea's nuclear or ballistic missile programmes or other activities prohibited by UN Security Council Resolution 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016) or 2321 (2016);

(ii) the transactions do not involve individuals or entities that are associated with North Korea's nuclear or ballistic missile programmes or other activities prohibited by UN Security Council Resolution 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016) or 2321 (2016), including the persons, entities and bodies listed in Annex IV, 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; and

(iii) the Sanctions Committee has not notified the Member States that the aggregate annual limit has been reached.;

(3) the following Articles are inserted:

Article 4c

1 It shall be prohibited to import, purchase or transfer from North Korea, directly or indirectly, statues as listed in Annex IIIa, whether or not originating in North Korea.

2 By way of derogation from the prohibition in paragraph 1, the relevant competent authority of a Member State, as identified on the websites listed in Annex II, may authorise import, purchase or transfer, provided that the Member State has obtained the advance approval of the Sanctions Committee on a case-by-case basis.

Annex IIIa shall include the statues referred to in paragraph 1.

Article 4d

1 It shall be prohibited to sell, supply, transfer or export, directly or indirectly, helicopters and vessels, as listed in Annex IIIb, to North Korea.

2 By way of derogation from the prohibition in paragraph 1, the relevant competent authority of a Member State, as identified on the websites listed in Annex II, may authorise such sale, supply, transfer or export, provided that the Member State has obtained the advance approval of the Sanctions Committee on a case-by-case basis.

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3 Annex IIIb shall include the helicopters and vessels referred to in paragraph 1.

Article 4e

1 It shall be prohibited to:

a lease or otherwise make available real property, directly or indirectly, to persons, entities or bodies of the Government of North Korea, for any purpose other than diplomatic or consular activities, pursuant to the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations;

b lease real property, directly or indirectly, from persons, entities or bodies of the Government of North Korea; or

c engage in any activity linked to the use of real property, that persons, entities or bodies of the Government of North Korea own, lease or are otherwise entitled to use, except for the provision of goods and services which:

(i) are essential for the functioning of diplomatic missions or consular posts, pursuant to the 1961 and 1963 Vienna Conventions; and

(ii) cannot be used to generate income or profit directly or indirectly for the Government of North Korea.

2 For the purposes of this Article "real property" means land, buildings and parts thereof which are located outside the territory of North Korea.;

(4) in Article 5, paragraph 1 is replaced by the following:

1. Cargo, including personal luggage and checked baggage, within or transiting through the Union, including airports, seaports and free zones, as referred to in Articles 243 to 249 of Regulation (EU) No 952/2013, shall be liable for inspection for the purposes of ensuring that it does not contain items prohibited by UN Security Council Resolution 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016) or 2321 (2016) or by this Regulation where:

a the cargo originates from North Korea;

b the cargo is destined for North Korea;

c the cargo has been brokered or facilitated by North Korea or its nationals or individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them;

d the cargo has been brokered or facilitated by persons, entities or bodies listed in Annex IV; or

e the cargo is being transported on a North Korean flagged vessel or aircraft registered to North Korea, or on a stateless vessel or aircraft.;

(5) in Article 5a(1d), point (a) is replaced by the following:

(a) close any bank account with a credit or financial institution referred to in Article 5c(2);;

(6) in Article 5a, paragraph 1e is deleted;

(7) in Article 5a, paragraph 1f is replaced by the following:

1f. By way of derogation from points (a) and (c) of paragraph 1d, the relevant competent authority of the Member State, as identified on the websites listed in

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Annex II, may authorise certain representative offices, subsidiaries or bank accounts to remain operational, provided that the Sanctions Committee has determined on a case-by-case basis that such offices, subsidiaries or accounts are required for the delivery of humanitarian activities or the activities of diplomatic missions in North Korea or the activities of the UN or its specialised agencies or related organisations or any other purpose consistent with the objectives of UN Security Council Resolution 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016) or 2321 (2016).;

(8) the following Article is inserted:

Article 5aa

1 It shall be prohibited for credit and financial institutions falling within the scope of Article 16 to open a bank account for North Korean diplomatic missions or consular posts, and their North Korean members.

2 Credit and financial institutions falling within the scope of Article 16 shall, at the latest on 11 April 2017, close any bank account held or controlled by a North Korean diplomatic mission or consular post, and their North Korean members.

3 By way of derogation from paragraph 1, the relevant competent authority of a Member State, as indicated on the websites listed in Annex II, may authorise, upon request of a North Korean diplomatic mission, consular post, or one of their members, the opening of one bank account per mission, post and member, provided that the mission or post is hosted in that Member State or the member of the mission or post is accredited to that Member State.

4 By way of derogation from paragraph 2, the relevant competent authority of a Member State, as indicated on the websites listed in Annex II, may authorise a bank account to remain open, upon request by a North Korean mission, post, or one of their members, provided that the Member State has determined that the mission or post is hosted in that Member State or the member of that mission or post is accredited to that Member State and they do not hold any other bank account within that Member State. In the event that the mission, post or the North Korean member hold more than one bank account within that Member State, the mission, post, or member may indicate which bank account shall be retained.

5 Subject to the applicable rules of the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, the Member States shall inform the other Member States and the Commission of the names and identifying information of any North Korean members of the diplomatic mission and consular post accredited to that Member State, at the latest on 13 March 2017, and of subsequent updates within one week of any change to that list. The Member States shall inform the other Member States and the Commission of any authorisation granted pursuant to paragraphs 3 and 4. The relevant competent authority of a Member State, as indicated on the websites listed in Annex II, may inform credit and financial institutions in that Member State of the identity of any North Korean member of a diplomatic mission or consular post accredited to that or any other Member State.;

(9) in Article 6, the following paragraph is inserted:

1a. All vessels listed in Annex IVa and the funds and economic resources held by them shall be frozen, if the Sanctions Committee decides so. Annex IVa shall include the vessels that have been designated by the Sanctions Committee pursuant to paragraph 12 of UN Security Council Resolution 2321 (2016).;

(10) Article 9b is replaced by the following: