Council Regulation (EU) 2016/841 of 27 May 2016 amending Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea

COUNCIL REGULATION (EU) 2016/841

of 27 May 2016

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

Whereas:

(1) On 27 May 2016, the Council adopted Decision (CFSP) 2016/849.

(2) Council Regulation (EC) No 329/2007[(2)] gives effect to measures provided for in Decision (CFSP) 2016/849.

(3) Decision (CFSP) 2016/849 prohibits the supply, sale or transfer to the Democratic People's Republic of Korea (‘North Korea’) of further items, materials and equipment relating to dual-use goods and technology. It also prohibits transfers of funds to and from North Korea unless specifically authorised in advance, as well as investment by North Korea and its nationals in the territories under the jurisdiction of Member States and investment by Union nationals or entities in North Korea. Furthermore, it prohibits any aircraft operated by North Korean carriers or originating from North Korea from landing in, taking off from or overflying Member States' territory as well as any vessel that is owned, operated or crewed by North Korea from entering into Member States' ports. It introduces a prohibition on the import of luxury goods from North Korea, as well as prohibitions on the provision of financial support for trade with North Korea. A prior-contract exemption from the obligation to freeze the funds and economic resources of certain North Korean persons and entities is also introduced.

(4) Regulation (EC) No 329/2007 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

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(1) in Article 1, the following points are added:

10. "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;

11. "transfer of funds" means:

(a) any transaction carried out on behalf of a payer through a payment service provider by electronic means, with a view to making funds available to a payee at a payment service provider, irrespective of whether the payer and the payee are the same person;

(b) any transaction by non-electronic means, such as in cash, cheques or accountancy orders, with a view to making funds available to a payee irrespective of whether the payer and the payee are the same person;

12. "payee" means a natural or legal person that is the intended recipient of transferred funds;

13. "payer" means a person that holds a payment account and allows a transfer of funds from that payment account, or, where there is no payment account, that gives a transfer-of-funds order;

14. "payment service provider" means the categories of payment service provider referred to in Article 1(1) of Directive 2007/64/EC of the European Parliament and of the Council[(3)], natural or legal persons benefiting from a waiver pursuant to Article 26 of Directive 2007/64/EC and legal persons benefiting from a waiver pursuant to Article 9 of Directive 2009/110/EC of the European Parliament and of the Council[(4)], providing transfer-of-funds services.;

(2) in Article 2, paragraph 4 is replaced by the following:

4. It shall be prohibited to:

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

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

Annex Ic shall include gold, titanium ore, vanadium ore and rare-earth minerals referred to in point (a) of paragraph 4.

Annex Id shall include coal, iron and iron ore referred to in point (a) of paragraph 4.

Annex If shall include the petroleum products referred to in point (b) of paragraph 4.;

(3) Article 3a is replaced by the following:

Article 3a

1 By way of derogation from Article 2(1) and Article 3(1), the relevant competent authority of a Member State, as indicated on the websites listed in Annex II, may authorise, under such terms and conditions as it deems appropriate, the direct or indirect supply, sale, transfer or export of the items and technology, including software, referred to in Article 2(1) or the assistance or brokering services referred to in Article 3(1), provided that the goods and technology, assistance or brokering services are for food, agricultural, medical or other humanitarian purposes.

2 The Member State concerned shall inform the other Member States and the Commission, within four weeks, of authorisations granted pursuant to this Article.

3 By way of derogation from point (a) of Article 2(1) and points (a) and (b) of Article 3(1), the relevant competent authority of the Member State, as indicated on the websites listed in Annex II, may authorise the transactions referred to therein under such conditions as it deems appropriate and provided that the UN Security Council has approved the request.

4 The Member State concerned shall inform the other Member States and the Commission of any request for approval which it has submitted to the UN Security Council pursuant to paragraph 3.;

(4) Article 3b is replaced by the following:

Article 3b

1 In addition to the obligation to provide the competent customs authorities with the pre-arrival and pre-departure information as determined in the relevant provisions concerning entry and exit summary declarations as well as customs declarations in Regulation (EU) No 952/2013 of the European Parliament and of the Council[(5)], Commission Delegated Regulation (EU) 2015/2446[(6)] and Commission Implementing Regulation (EU) 2015/2447[(7)], the person who provides the information referred to in paragraph 2 of this Article shall declare whether the goods are covered by the EU Common List of Military Equipment or by this Regulation and, where their export is subject to authorisation, specify the goods and technology covered by the export licence granted.

2 The required additional elements referred to in this Article shall be submitted using a customs declaration or, in the absence of such a declaration, in any other written form, as appropriate.;

(5) Article 3c is deleted;

(6) Article 4 is replaced by the following:

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Article 4

1 It shall be prohibited to:

a sell, supply, transfer or export, directly or indirectly, luxury goods, as listed in Annex III, to North Korea;

b purchase, import or transfer from North Korea, directly or indirectly, luxury goods, as listed in Annex III, whether or not originating in North Korea;

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

2 By way of derogation from point (b) of paragraph 1, the prohibition referred to therein shall not apply to travellers' personal effects or to goods of a non-commercial nature for travellers' personal use contained in their luggage.

3 The prohibitions referred to in points (a) and (b) of paragraph 1 shall not apply to goods which are necessary for the official purposes of diplomatic or consular missions of Member States in North Korea or of international organisations enjoying immunities in accordance with international law, or to the personal effects of their staff.

4 The relevant competent authority of a Member State, as indicated on the websites listed in Annex II, may authorise, under such conditions as it deems appropriate, a transaction with regard to goods referred to in point 17 of Annex III, provided that the goods are for humanitarian purposes.;

(7) Article 5 is replaced by the following:

Article 5

1 Cargo 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 Resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (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;

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.

2 Where the cargo falls outside of the scope of paragraph 1, cargo within or transiting through the Union, including airports, seaports and free zones, shall be liable for inspection where there are reasonable grounds to believe that it may contain items the sale, supply, transfer or export of which is prohibited by this Regulation in the following circumstances:

a the cargo originates from North Korea;

b the cargo is destined for North Korea; or

c the cargo has been brokered or facilitated by North Korea or its nationals or individuals or entities acting on their behalf.

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3 Paragraphs 1 and 2 shall be without prejudice to the inviolability and protection of diplomatic and consular bags provided for in the Vienna Convention on Diplomatic Relations 1961 and the Vienna Convention on Consular Relations 1963.

4 The provision of bunkering or ship-supply services, or any other servicing of vessels, to North Korean vessels is prohibited where the providers of the service have information, including from the competent customs authorities on the basis of the pre-arrival and pre-departure information referred to in Article 3a(1), that provides reasonable grounds to believe that the vessels carry items whose supply, sale, transfer or export is prohibited by this Regulation, unless the provision of such services is necessary for humanitarian purposes.;

(8) the following articles are inserted:

Article 5b

1 It shall be prohibited, in the territory of the Union, to accept or approve investment in any commercial activity where such investment is made by:

- a persons, entities or bodies of the Government of North Korea;
- b the Workers Party of Korea;
- c nationals of North Korea;
- d legal persons, entities or bodies incorporated or constituted under the law of North Korea;
- e persons, entities or bodies acting on their behalf or at their direction;
- f legal persons, entities or bodies owned or controlled by them.

2 It shall be prohibited to:

- a establish a joint venture 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 legal person, entity or body referred to in points (a) to (f) of paragraph 1 engaged in North Korea's nuclear-related, ballistic-missile-related or other weapons-of-mass-destruction-related activities or programmes, or in activities in the sectors of mining, refining and chemical industries;
- b grant financing or financial assistance to any legal person, entity or body referred to in points (d) to (f) of paragraph 1 or for the documented purpose of financing such legal persons, entities or bodies;
- c provide investment services directly related to the activities referred to in points (a) and (b) of this paragraph.

Article 5c

1 Transfers of funds to and from North Korea shall be prohibited, unless they concern a transaction referred to in paragraph 3.

2 It shall be prohibited for credit and financial institutions falling within the scope of Article 16 to enter into, or continue to participate in, any transactions with:

- a credit and financial institutions domiciled in North Korea;
- b branches or subsidiaries falling within the scope of Article 16 of credit and financial institutions domiciled in North Korea, as listed in Annex VI;
- c branches or subsidiaries falling outside the scope of Article 16 of credit and financial institutions domiciled in North Korea, as listed in Annex VI;