Council Regulation (EU) 2016/682 of 29 April 2016 amending Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea

COUNCIL REGULATION (EU) 2016/682

of 29 April 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 2013/183/CFSP of 22 April 2013 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2010/800/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) Council Regulation (EC) No 329/2007[(2)] gives effect to measures provided for in Decision 2013/183/CFSP. On 2 March 2016, the United Nations Security Council adopted Resolution 2270 (2016) providing for new restrictive measures against North Korea. Those measures include additional criteria for listing persons and entities subject to the asset freeze, sectorial prohibitions concerning the procurement of gold, titanium ore, vanadium ore, rare earth minerals, coal, iron and iron ore from North Korea, prohibitions on the sale or supply of aviation fuel, prohibitions on maintenance of correspondent banking relationships and joint ventures with banks and entities with links to North Korea, and additional restrictive measures in the transport sector. Further prohibitions are included on the transfer and procurement of items which could contribute to the development of the operational capabilities of North Korea's armed forces, or the export of which could support or enhance the operational capabilities of armed forces of another UN Member State outside North Korea.

(2) On 31 March 2016, the Council adopted Decision (CFSP) 2016/476[(3)], giving effect to those 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:

Changes to legislation: *Council Regulation (EU) 2016/682 is up to date with all changes known to be in force on or before 27 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

Article 1

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

(1) in Article 1, point 6 is replaced by the following:

6. '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..

(2) Article 2 is replaced by the following:

Article 2

1 It shall be prohibited:

a to sell, supply, transfer or export, directly or indirectly, the goods and technology, including software, listed in Annexes I, Ia and Ib, whether or not originating in the Union, to any natural or legal person, entity or body in, or for use in North Korea;

b to sell, supply, export or transfer aviation fuel as listed in Annex Ie to North Korea or transport to North Korea aviation fuel on board the flag vessels or aircraft of Member States, whether or not originating in the territories of Member States;

c to 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 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[(4)].

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).

3 It shall be prohibited to purchase, import or transport the goods and technology listed in Annex I, Ia and Ib from North Korea, whether or not the item concerned originates in North Korea.

4 It shall be prohibited:

a to purchase, import or transfer or transport on board the flag vessels or aircraft of a Member State 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;

b to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibition referred to in point (a);

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

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

5 By way of derogation from paragraph 4(a), the relevant competent authority of the Member State, as identified on the websites listed in Annex II, may authorise:

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a the purchase, import or transfer of coal provided that the competent authority of the Member State, as identified on the websites listed in Annex II, has determined on the basis of credible information that the shipment originated outside of North Korea and was transported through North Korea solely for export from the Port of Rajin (Rason), that the relevant Member State has notified the Sanctions Committee in advance of such transactions, and that the transactions are unrelated to generating revenue for North Korea's nuclear or ballistic missile programmes or other activities prohibited by UN Security Council Resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or by this Regulation; or

b transactions 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 Resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or by this Regulation.

6 The prohibition referred to in paragraph 1(b) shall not apply with respect to the sale or supply of aviation fuel to civilian passenger aircraft outside North Korea exclusively for consumption during its flight to North Korea and its return to the airport of origin.

7 By way of derogation from paragraph 1(b), the relevant competent authority of the Member State, as identified on the websites listed in Annex II, may authorise the sale, supply or transfer of an item, provided that the Member State has obtained the advance approval of the Sanctions Committee on an exceptional case-by-case basis of the transfer to North Korea of such products for verified essential humanitarian needs and subject to specified arrangements for effective monitoring of delivery and use.

8 The Member State concerned shall inform the other Member States and the Commission of any authorisation granted under paragraph 5 or 7..

(3) the following article is inserted:

Article 2a

1 It shall be prohibited to sell, supply, transfer or export, directly or indirectly, to North Korea any item, except food or medicine, if the exporter knows or has reasonable grounds to believe that:

a the item is destined directly or indirectly for North Korea's armed forces; or

b the export of the item could support or enhance the operational capabilities of the armed forces of a State other than North Korea.

2 It shall be prohibited to purchase, import or transport from North Korea items referred to in paragraph 1 if the importer or transporter knows or has reasonable grounds to believe that the ground in point (a) or (b) of that paragraph exists.

3 By way of derogation from paragraph 1, the relevant competent authority of the Member State, as identified on the websites listed in Annex II, may authorise the sale, supply, transfer or export of an item to North Korea, or the purchase, import or transport of an item from North Korea, where:

a the item does not relate to the production, development, maintenance or use of military goods, or development or the maintenance of military personnel, and the competent authority has determined that the item would not directly contribute to the development of the operational capabilities of North Korea's

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armed forces or to exports that support or enhance the operational capabilities of armed forces of a State other than North Korea;

b the Sanctions Committee has determined on a case-by-case basis that a particular supply, sale or transfer would not be contrary to the objectives of UN Security Council Resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016); or

c the competent authority of the Member State is satisfied that the activity is excusively for either humanitarian or livelihood purposes which will not be used by North Korean persons, entities or bodies to generate revenue, and is not related to any activity prohibited by UN Security Council Resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016), provided that the Member State notifies the Sanctions Committee in advance of such a determination and informs the Sanctions Committee of measures taken to prevent the diversion of the item for any prohibited purpose.

4 The Member State concerned shall notify the other Member States and the Commission of its intention to grant an authorisation under this Article at least one week prior to granting the authorisation..

(4) in Article 3a, paragraphs 3 to 7 are replaced by the following:

3. Cargo within or transiting through the Union, including in airports, seaports and free trade zones, 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) including in the following circumstances:

a where the cargo has originated in North Korea;

b where the cargo is destined for North Korea;

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

e where the cargo is being transported on North Korean flagged vessels or aircraft registered in North Korea, or on a vessel or aircraft that is stateless.

4 Cargo within or transiting through the Union, including in airports and seaports, and falling outside the scope of paragraph 3, 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 where the cargo has originated in North Korea;

b where the cargo is destined for North Korea;

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

5 Paragraphs 3 and 4 shall be without prejudice to the inviolability and protection of diplomatic and consular bags provided for in the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963.

6 It shall be prohibited to provide access to ports in the territory of the Union to:

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a any vessel where there are reasonable grounds to believe that it is owned or controlled, directly or indirectly, by a person or entity listed in Annex IV;

b any vessel where there are reasonable grounds to believe it contains items the supply, sale, transfer or export of which is prohibited by UN Security Council Resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016);

c any vessel which has refused to be inspected after such inspection has been authorised by the vessel's flag State or state of registration; and

d any vessel flying the flag of North Korea or a stateless vessel which has refused to be inspected.

The prohibition in the first subparagraph shall not apply:

a in case of an emergency;

b in the case of a maritime vessel coming into port for inspection; or

c where the vessel is returning to its port of origin.

7 It shall be prohibited for any aircraft to take off from, land in or overfly the territory of the Union if there are reasonable grounds to believe that the aircraft contains items the supply, sale, transfer or export of which is prohibited by UN Security Council Resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), or 2270 (2016).

The prohibition in the first subparagraph shall not apply:

a where the aircraft is landing for inspection;

b in the case of an emergency landing.

8 By way of derogation from the prohibition in the first subparagraph of paragraph 6, the relevant competent authority of the Member State, as identified on the websites listed in Annex II, may authorise a maritime vessel to come into port if the Sanctions Committee has determined in advance that this is required for humanitarian purposes or any other purpose consistent with the objectives of UN Security Council Resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016).

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

1a. It shall be prohibited for credit and financial institutions falling within the scope of Article 16:

a to open a bank account with a credit or financial institution domiciled in North Korea or any credit or financial institution referred to in Article 11a(2);

b to establish a correspondent banking relationship with a credit or financial institution domiciled in North Korea or with any credit or financial institution referred to in Article 11a(2);

c to open representative offices in North Korea, or to establish a new branch or subsidiary, in North Korea;

d to establish a joint venture with or to take an ownership interest in a credit or financial institution domiciled in North Korea or any credit or financial institution referred to in Article 11a(2).

1b By way of derogation from the prohibitions in points (b) and (d) of paragraph 1a, the relevant competent authority of the Member State, as identified on the websites listed in Annex II, may authorise transactions if they have been approved by the Sanctions Committee in advance.