Council Regulation (EU) No 296/2013 of 26 March 2013 amending Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea

COUNCIL REGULATION (EU) No 296/2013

of 26 March 2013

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(1) thereof,

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[(1)] gives effect to measures provided for in Council Decision 2010/800/CFSP of 22 December 2010 concerning restrictive measures against the Democratic People's Republic of Korea[(2)].

(2) On 18 February 2013, the Council adopted Decision 2013/88/CFSP[(3)] amending Decision 2010/800/CFSP which provided for additional restrictive measures against the Democratic People's Republic of Korea ('North Korea') by giving effect to the additional measures required by United Nations (UN) Security Council Resolution 2087 (2013) and to further autonomous measures of the Union.

(3) Decision 2013/88/CFSP includes an additional criterion for autonomous designation by the Union of persons and entities subject to restrictive measures, namely persons involved in, including through the provision of financial services, the supply to or from North Korea of arms and related material of all types, or of 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.

(4) Furthermore, Decision 2013/88/CFSP prohibits the sale, supply, transfer to North Korea of certain other goods relevant to North Korea's weapons of mass destruction-related programmes, in particular its ballistic-missile sector, especially certain types of aluminium.

(5) Decision 2013/88/CFSP also prohibits the sale, purchase, transportation or brokering of gold, precious metals and diamonds to, from or for the Government of North Korea and the delivery of newly printed or minted or unissued North Korean denominated banknotes and coinage to or for the benefit of the Central Bank of North Korea, as well as the sale or purchase of North Korean public or public-guaranteed bonds. Furthermore, Decision 2013/88/CFSP clarifies that where the Council has provided for a prohibition on financial services, this includes the provision of insurance and

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reinsurance services. This necessitates a technical amendment to Regulation (EC) No 329/2007.

(6) Decision 2013/88/CFSP prohibits the opening of new branches, subsidiaries, or representative offices of North Korean banks in the territories of Member States, the establishment of new joint ventures, or the taking of an ownership interest by the North Korean banks, including the Central Bank of North Korea, with banks in the jurisdiction of Member States.

(7) Moreover, in line with paragraph 13 of UN Security Council Resolution 2087 (2013), it is necessary to establish that no claims in connection with the performance of any contract or transaction affected by those measures shall be granted to designated persons or entities or any other person or entity in North Korea.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

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

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 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual- use items[(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.

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

(2) Article 3(1) is amended as follows:

(a) points (a) and (b) are replaced by the following:

(a) to provide, directly or indirectly, technical assistance and brokering services related to goods and technology listed in the EU Common List of Military Equipment or in Annexes I, Ia and Ib, and to the provision, manufacture, maintenance and use of goods listed in the

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EU Common List of Military Equipment or in Annexes I, Ia and Ib to any natural or legal person, entity or body in, or for use in, North Korea;

(b) to provide, directly or indirectly, financing or financial assistance related to goods and technology listed in the EU Common List of Military Equipment or in Annexes I, Ia and Ib, including in particular grants, loans and export credit insurance, as well as insurance and reinsurance, for any sale, supply, transfer or export of such items, or for any provision of related technical assistance to any natural or legal person, entity or body in, or for use in, North Korea;;

(b) in points (c) and (d), the words 'Annexes I and Ia' are replaced by the words 'Annexes I, Ia and Ib';

(3) in the first subparagraph of Article 3a(1), the words 'Annexes I and Ia' are replaced by the words 'Annexes I, Ia and Ib';

(4) the following articles are inserted:

Article 4a

1 It shall be prohibited:

a to sell, supply, transfer or export, directly or indirectly, gold, precious metals and diamonds, as listed in Annex VII, whether or not originating in the Union, to or for the Government of North Korea, its public bodies, corporations and agencies, the Central Bank of North Korea and any person, entity or body acting on their behalf or at their direction, or any entity or body owned or controlled by them;

b to purchase, import or transport, directly or indirectly, gold, precious metals and diamonds, as listed in Annex VII, whether or not originating in North Korea, from the Government of North Korea, its public bodies, corporations and agencies, the Central Bank of North Korea and any person, entity or body acting on their behalf or at their direction, or any entity or body owned or controlled by them;

c to provide, directly or indirectly, technical assistance or brokering services, financing or financial assistance, related to the goods referred to in points (a) and (b), to the Government of North Korea, its public bodies, corporations and agencies, the Central Bank of North Korea and any person, entity or body acting on their behalf or at their direction, or any entity or body owned or controlled by them.

2 Annex VII shall include gold, precious metals and diamonds subject to the prohibitions referred to in paragraph 1.

Article 4b

It shall be prohibited to sell, supply, transfer or export, directly or indirectly, newly printed or unissued North Korean denominated banknotes and minted coinage, to or for the benefit of the Central Bank of North Korea.

Article 5a

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

a to open a new representative office in North Korea or to establish a new branch or subsidiary in North Korea; or

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b to establish a new joint venture with a credit or financial institution domiciled in North Korea or with any credit or financial institution referred to in Article 11a(2).

2 It shall be prohibited:

a to authorise the opening of a representative office or the establishment of a branch or subsidiary in the Union of a credit or financial institution domiciled in North Korea or of any credit or financial institution referred to in Article 11a(2);

b to conclude agreements for, or on behalf of, a credit or financial institution domiciled in North Korea or for, or on behalf of, any credit or financial institution referred to in Article 11a(2) pertaining to the opening of a representative office or the establishment of a branch or subsidiary in the Union;

c to grant an authorisation for the taking up and pursuing the business of a credit institution or for any other business requiring prior authorisation, by a representative office, branch or subsidiary of a credit or financial institution domiciled in North Korea or of any credit or financial institution referred to in Article 11a(2), if the representative office, branch or subsidiary was not operational before 19 February 2013;

d to acquire or to extend a participation, or to acquire any other ownership interest, in a credit or financial institution falling within the scope of Article 16 by any credit or financial institution referred to in Article 11a(2).;

(5) Article 6(2) is replaced by the following:

2. All funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex V shall be frozen. Annex V shall include persons, entities and bodies not listed in Annex IV, who, in accordance with points (b), (c) and (d) of Article 5(1) of Council Decision 2010/800/CFSP of 22 December 2010 concerning restrictive measures against the Democratic People's Republic of Korea[(5)] have been identified by the Council:

a as responsible for North Korea's nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes, as well as persons or bodies acting in their name or on their instructions and entities owned or controlled by them;

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 North Korea's nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes, as well as persons or bodies acting in their name or on their instructions and entities owned or controlled by them; or

c as involved in, including through the provision of financial services, the supply to or from North Korea of arms and related material of all types, or of 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, to North Korea.

Annex V shall be reviewed at regular intervals and at least every 12 months.;

(6) the following articles are inserted:

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Article 9a

It shall be prohibited:

(a) to sell or purchase public or public-guaranteed bonds issued after 19 February 2013, directly or indirectly, to or from any of the following:

(i) North Korea or its Government, and its public bodies, corporations and agencies;

(ii) the Central Bank of North Korea;

(iii) a credit or financial institution domiciled in North Korea or any credit or financial institution referred to in Article 11a(2);

(iv) a natural person or a legal person, entity or body acting on behalf or at the direction of a legal person, entity or body referred to in (i) or (ii);

(v) a legal person, entity or body owned or controlled by a person, entity or body referred to in (i), (ii) or (iii);

(b) to provide brokering services with regard to public or public-guaranteed bonds issued after 19 February 2013 to a person, entity or body referred to in point (a);

(c) to assist a person, entity or body referred to in point (a) in order to issue public or public-guaranteed bonds, by providing brokering services, advertising or any other service with regard to such bonds.

Article 9b

1 No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by the measures imposed under this Regulation, including claims for indemnity or any other claim of this type, such as a claim for compensation or a claim under a guarantee, notably a claim for extension or payment of a bond, guarantee or indemnity, particularly a financial guarantee or financial indemnity, of whatever form, shall be satisfied, if they are made by:

a designated persons, entities or bodies listed in Annexes IV and V;

b any other North Korean person, entity or body, including the Government of North Korea, its public bodies, corporations and agencies;

c any person, entity or body acting through or on behalf of one of the persons, entities or bodies referred to in points (a) and (b).

2 The performance of a contract or transaction shall be regarded as having been affected by the measures imposed under this Regulation where the existence or content of the claim results directly or indirectly from those measures.

3 In any proceedings for the enforcement of a claim, the onus of proving that satisfying the claim is not prohibited by paragraph 1 shall be on the person seeking the enforcement of that claim.

4 This Article is without prejudice to the right of the persons, entities and bodies referred to in paragraph 1 to judicial review of the legality of the non-performance of contractual obligations in accordance with this Regulation.;