Changes to legislation: *Council Regulation (EU) No 1283/2009 is up to date with all changes known to be in force on or before 31 January 2022. 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*

Council Regulation (EU) No 1283/2009 of 22 December 2009 amending Council Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea

COUNCIL REGULATION (EU) No 1283/2009

of 22 December 2009

amending Council 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) and (2) thereof,

Having regard to Council Common Position 2009/573/CFSP of 27 July 2009[(1)] and Council Decision 2009/1002/CFSP of 22 December 2009[(2)] amending Common Position 2006/795/CFSP concerning restrictive measures against the Democratic People's Republic of Korea,

Having regard to the joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission,

Whereas:

(1) On 20 November 2006, the Council adopted Common Position 2006/795/CFSP[(3)] concerning restrictive measures against the Democratic People's Republic of Korea (hereinafter referred to as 'North Korea') and implementing United Nations Security Council Resolution (UNSCR) 1718 (2006).

(2) In accordance with UNSCR 1874 (2009), additional restrictive measures were imposed against North Korea by Common Position 2009/573/CFSP, including notably a prohibition on the supply, sale or transfer of certain 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. Decision 2009/1002/CFSP specifies that this prohibition shall include all dual-use goods and technology listed in Annex I to 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 (Recast)[(4)].

(3) Common Position 2009/573/CFSP also provides for the inspection of certain cargoes to and from North Korea and, in the case of aircraft and vessels, for the supply of additional pre-arrival or pre-departure information in respect of goods brought into or out of the Union. This information must be provided in accordance with the provisions on entry and exit summary declarations of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[(5)], and Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code[(6)].

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(4) Common Position 2009/573/CFSP also provides for a prohibition on bunkering services or any other services for North Korea's vessels in order to prevent the transport of items whose export is prohibited under Regulation (EC) No 329/2007[7].

(5) Common Position 2009/573/CFSP also extends measures to freeze funds to other categories of persons and introduces financial vigilance measures in respect of the activities of financial institutions which could contribute to North Korea's nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes.

(6) These measures fall within the scope of the Treaty and, notably with a view to ensuring their uniform application by economic operators in all Member States, Union legislation is therefore necessary in order to implement them as far as the Union is concerned.

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

(8) Any processing of personal data of natural persons under this Regulation should respect Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[8] and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[9].

(9) 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 hereby amended as follows:

1. Article 1(8) shall be replaced by the following:

8. "territory of the Union" means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty, including their airspace.;

2. Article 2 shall be 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 and Ia, 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 Regulation (EC) No 428/2009[10].

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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.

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

3. Article 3(1) shall be replaced by the following:

1. It shall be prohibited:

a to provide, directly or indirectly, technical assistance related to goods and technology listed in the EU Common List of Military Equipment or in Annexes I and Ia, and to the provision, manufacture, maintenance and use of goods listed in the EU Common List of Military Equipment or in Annexes I and Ia 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 and Ia, including in particular grants, loans and export credit insurance, 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;

c to obtain, directly or indirectly, technical assistance related to goods and technology listed in the EU Common List of Military Equipment or in Annexes I and Ia, and to the provision, manufacture, maintenance and use of goods listed in the EU Common List of Military Equipment or in Annexes I and Ia from any natural or legal person, entity or body in, or for use in, North Korea;

d to obtain, 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 and Ia, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items, or for any provision of related technical assistance from any natural or legal person, entity or body in, or for use in, North Korea;

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

4. The following Article shall be inserted:

Article 3a

1 In order to prevent the transfer of goods and technology listed in Annexes I and Ia which could contribute to North Korea's nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes, or of the luxury goods listed in Annex III, cargo aircraft and merchant vessels to and from North Korea and North Korean vessels shall be required to submit pre-arrival or pre-departure information, for all goods brought into or out of the Union, to the competent customs authorities of the Member State concerned.

The rules governing the obligation to provide pre-arrival or pre-departure information, in particular the time limits to be respected and data to be required, shall be as laid down in the applicable provisions concerning entry and exit summary declarations

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as well as customs declarations in Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code[(11)], and Commission Regulation (EC) No 1875/2006 of 18 December 2006 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code[(12)].

Furthermore, cargo aircraft and merchant vessels to and from North Korea, or their representatives, shall declare whether the goods are covered by this Regulation and, if their export is subject to authorisation, specify the particulars of the export licence granted.

Until 31 December 2010 the entry and exit summary declarations and the required additional elements referred to in this Article may be submitted in written form using commercial, port or transport information, provided that it contains the necessary particulars.

As from 1 January 2011, the required additional elements referred to in this Article shall be submitted either in written form or using the entry and exit summary declarations as appropriate.

2 The provision by nationals of Member States or from the territories of Member States 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 paragraph 1, that provides reasonable grounds to believe that the vessels carry items whose supply, sale, transfer or export is prohibited under this Regulation, unless the provision of such services is necessary for humanitarian purposes.;

5. Article 6 shall be replaced by the following:

Article 6

1 All funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex IV shall be frozen. Annex IV shall include the persons, entities and bodies designated by the Sanctions Committee or the UN Security Council in accordance with paragraph 8(d) of UNSCR 1718 (2006).

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) and (c) of Article 4(1) of Common Position 2006/795/CFSP, have been identified by the Council:

a as responsible for North Korean 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

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 Korean 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.

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

3 Annexes IV and V shall include, where available, information on listed natural persons for the purpose of identifying sufficiently the persons concerned.

Such information may include:

a surname and given names, including alias names and titles, if any;
b date and place of birth;
c nationality;
d passport and identity card numbers;
e fiscal and social security numbers;
f gender;
g address or other information on whereabouts;
h function or profession;
i date of designation.

Annexes IV and V shall also include the grounds for listing, such as occupation.

Annexes IV and V may also include information for identification purposes as set out in this paragraph on family members of the persons listed, provided that this information is necessary in a specific case for the sole purpose of verifying the identity of the listed natural person concerned.

4 No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of the natural or legal persons, entities or bodies listed in Annexes IV and V.

5 The participation, knowingly and intentionally, in activities the object or effect of which is, directly or indirectly, to circumvent the measures referred to in paragraphs 1 and 2 shall be prohibited.;

6. Article 7 shall be replaced by the following:

Article 7

1 By way of derogation from Article 6, the competent authorities of the Member States, as indicated on the websites listed in Annex II, may authorise, under such conditions as they deem appropriate, the release of certain frozen funds or economic resources or the making available of certain funds or economic resources, if the following conditions are met:

a the competent authority concerned has determined that the funds or economic resources are:

(i) necessary to satisfy the basic needs of persons listed in Annexes IV or V and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

(ii) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services; or

(iii) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources; and