

Council Regulation (EC) No 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People's Republic of Korea (repealed)

Article 1

For the purposes of this Regulation, the following definitions shall apply:

1. 'Sanctions Committee' means: the Committee of the UN Security Council which was established pursuant to paragraph 12 of UN Security Council Resolution 1718 (2006);
2. 'North Korea' means the Democratic People's Republic of Korea;
3. 'technical assistance' means any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; including verbal forms of assistance;
4. 'funds' means financial assets and benefits of every kind, including but not limited to:
 - (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
 - (b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
 - (c) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
 - (d) interest, dividends or other income on or value accruing from or generated by assets;
 - (e) credit, right of set-off, guarantees, performance bonds or other financial commitments;
 - (f) letters of credit, bills of lading, bills of sale; and
 - (g) documents evidencing an interest in funds or financial resources;
5. 'freezing of funds' means preventing any moving, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management;
6. 'economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services;
7. 'freezing of economic resources' means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;
8. 'territory of the Community' means the territories of the Member States to which the Treaty is applicable, under the conditions laid down in the Treaty, including their airspace.

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 Annex I, whether or not originating in the Community, 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 any items, materials, equipment, goods and technology, including software, which are dual-use items as defined in Regulation (EC) No 1334/2000, which could contribute to North Korea's nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes, as determined by the Sanctions Committee or the UN Security Council. It shall not include goods and technology included in the EU Common List of Military Equipment⁽¹⁾.

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

Article 3

- 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 Annex I, and to the provision, manufacture, maintenance and use of goods listed in the EU Common List of Military Equipment or in Annex I 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 Annex I, 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 participate, knowingly and intentionally, in activities, the object or effect of which is to circumvent the prohibitions referred to in points (a) or (b).

2 The prohibitions set out in paragraph 1 shall not apply to non-combat vehicles which have been manufactured or fitted with materials to provide ballistic protection, intended solely for protective use of personnel of the EU and its Member States in North Korea.

Article 4

It shall be prohibited:

- (a) to sell, supply, transfer or export, directly or indirectly, luxury goods, as listed in Annex III, to 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).

Article 5

1 If a derogation from Articles 2(1)(a) or 3(1)(a) or (b) or 4(a) is deemed necessary in a specific case, the seller, supplier, transferring party, exporter or service provider concerned may present a duly motivated request to the competent authorities of a Member State as indicated in the websites listed in Annex II. The Member State that received the request shall, if it deems that such derogation is justified, present a request for a specific approval to the UN Security Council.

2 The Member State concerned shall inform the other Member States and the Commission of any request for approval submitted to the UN Security Council pursuant to paragraph 1.

3 The competent authorities of the Member States, as indicated in the websites listed in Annex II, may authorise the sale, supply, transfer, export or provision of technical assistance, under such conditions as they deem appropriate, if the UN Security Council has approved the request for specific approval.

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 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 Annex IV.

3 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.

Article 7

1 By way of derogation from Article 6, the competent authorities of the Member States, as indicated in 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, having determined that the funds or economic resources concerned are:

- a necessary to satisfy the basic needs of persons listed in Annex IV and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- b intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services; or
- c intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources; and

provided that the Member State concerned has notified the Sanctions Committee of that determination and its intention to grant an authorisation, and the Sanctions Committee has not objected to that course of action within five working days of notification.

2 By way of derogation from Article 6 the competent authorities of the Member States, as indicated in the websites listed in Annex II, may authorise the release of certain frozen funds or economic resources or the making available of certain frozen funds or economic resources, after having determined that the funds or economic resources are necessary for extraordinary expenses, provided that this determination has been notified by the Member State to the Sanctions Committee and that the determination has been approved by that Committee.

3 The Member States concerned shall inform the other Member States and the Commission of any authorisation granted under paragraphs 1 and 2.

Article 8

By way of derogation from Article 6, the competent authorities of the Member States, as indicated in the websites listed in Annex II, may authorise the release of certain frozen funds or economic resources, if the following conditions are met:

- (a) the funds or economic resources are the subject of a judicial, administrative or arbitral lien established prior to 14 October 2006 or of a judicial, administrative or arbitral judgement rendered prior to that date;
- (b) the funds or economic resources will be used exclusively to satisfy claims secured by such a lien or recognised as valid in such a judgement, within the limits set by applicable laws and regulations governing the rights of persons having such claims;
- (c) the lien or judgement is not for the benefit of a person, entity or body listed in Annex IV;
- (d) recognising the lien or judgement is not contrary to public policy in the Member State concerned;
- (e) the lien or judgement has been notified by the Member State to the Sanctions Committee.

Article 9

1 Article 6(2) shall not prevent financial or credit institutions in the Community from crediting frozen accounts where they receive funds transferred by third parties to the account of a listed natural or legal person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the competent authorities about such transactions without delay.

- 2 Article 6(2) shall not apply to the addition to frozen accounts of:
- a interest or other earnings on those accounts; or
 - b payments due under contracts, agreements or obligations that were concluded or arose prior to 14 October 2006;

provided that any such interest, other earnings and payments are frozen in accordance with Article 6(1).

Article 10

1 Without prejudice to the applicable rules concerning reporting, confidentiality and professional secrecy, natural and legal persons, entities and bodies shall:

- a supply immediately any information which would facilitate compliance with this Regulation, such as accounts and amounts frozen in accordance with Article 6, to the competent authorities of the Member States, as indicated in the websites listed in Annex II, where they are resident or located, and shall transmit such information, directly or through the relevant Member States, to the Commission;
- b cooperate with the competent authorities, as indicated in the websites listed in Annex II, in any verification of this information.

2 Any additional information directly received by the Commission shall be made available to the Member State concerned.

3 Any information provided or received in accordance with this Article shall be used only for the purposes for which it was provided or received.

Article 11

The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with this Regulation, shall not give rise to liability of any kind on the part of the natural or legal person or entity or body implementing it, or its directors or

employees, unless it is proved that the funds and economic resources were frozen or withheld as a result of negligence.

Article 12

The Commission and Member States shall immediately inform each other of the measures taken under this Regulation and shall supply each other with any other relevant information at their disposal in connection with this Regulation, in particular information in respect of violations and enforcement problems and judgments handed down by national courts.

Article 13

The Commission shall be empowered to:

- (a) amend Annex I on the basis of determinations made by either the Sanctions Committee or the United Nations Security Council and, where appropriate, add the reference numbers taken from the Combined Nomenclature as set out in Annex I to Regulation (EEC) No 2658/87;
- (b) amend Annex II on the basis of information supplied by Member States;
- (c) amend Annex III in order to refine or adapt the list of goods included therein, according to any definition or guidelines that may be promulgated by the Sanctions Committee and taking into account the lists produced by other jurisdictions, or to add the reference numbers taken from the Combined Nomenclature as set out in Annex I to Regulation (EEC) No 2658/87, if necessary or appropriate;
- (d) amend Annex IV on the basis of determinations made by either the Sanctions Committee or the United Nations Security Council; and
- (e) amend Annexes I or IV pursuant to any decision taken by the Council on the basis of Common Position 2006/795/CFSP.

Article 14

1 Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

2 Member States shall notify the Commission of those rules without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 15

1 Member States shall designate the competent authorities referred to in this Regulation and identify them in, or through, the websites as listed in Annex II.

2 Member States shall notify the Commission of their competent authorities without delay after the entry into force of this Regulation and shall notify it of any subsequent amendment.

Article 16

This Regulation shall apply:

- (a) within the territory of the Community;
- (b) on board any aircraft or any vessel under the jurisdiction of a Member State;

- (c) to any person inside or outside the territory of the Community who is a national of a Member State;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of a Member State;
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the Community.

Article 17

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 March 2007.

For the Council

The President

P. STEINBRÜCK

Status: This is the original version (as it was originally adopted).

- (1) The current version of the list is published on page 58 of this Official Journal.