

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

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⁽¹⁾.

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 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⁽²⁾, 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⁽³⁾.

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.

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

b where the authorisation concerns a person, entity and body listed in Annex IV, 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 on 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

a where the authorisation concerns a person, entity or body listed in Annex IV, the Sanctions Committee has been notified of this determination by the Member State concerned and that the determination has been approved by that Committee, and

b where the authorisation concerns a person, entity or body listed in Annex V, the Member State concerned has notified other Member States and the Commission of the grounds on which it considers that a specific authorisation should be granted, at least two weeks prior to the authorisation.

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

7. Article 8 shall be replaced by the following:

Article 8

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 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 the date on which the person, entity or body referred to in Article 6 was designated, 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 Annexes IV or V;
- (d) recognising the lien or judgement is not contrary to public policy in the Member State concerned; and
- (e) the lien or judgement in respect of persons, entities and bodies listed in Annex IV has been notified by the Member State concerned to the Sanctions Committee.;

8. Article 9 shall be replaced by the following:

Article 9

1 Article 6(4) shall not prevent financial or credit institutions in the Union 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(4) 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 the date on which the person, entity or body referred to in Article 6 was designated,

provided that any such interest, other earnings and payments are frozen in accordance with Article 6(1) or 6(2).;

9. Article 11 shall be replaced by the following:

Article 11

1 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.

2 The prohibitions set out in point (b) of Article 3(1) and in Article 6(4) shall not give rise to any kind of liability on the part of the natural or legal persons, entities

or bodies concerned, if they did not know, and had no reasonable cause to suspect, that their actions would infringe these prohibitions.;

10. The following Article shall be inserted:

Article 11a

- 1 Credit and financial institutions which fall within the scope of Article 16 shall, in their activities with credit and financial institutions referred to in paragraph 2, and in order to prevent such activities contributing to North Korea's nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes:

- a exercise continuous vigilance over account activity, particularly by means of their programmes on customer due diligence and obligations relating to the prevention of money-laundering and the financing of terrorism;
- b require that in payment instructions all information fields which relate to the originator and beneficiary of the transaction in question be completed and, if that information is not supplied, refuse the transaction;
- c maintain all records of transactions for a period of five years and make them available to national authorities on request; and
- d if they suspect or have reasonable grounds to suspect that funds are related to proliferation financing, promptly report their suspicions to the financial intelligence unit (FIU) or another competent authority designated by the Member State concerned, as indicated on the websites listed in Annex II, without prejudice to Article 3(1) or Article 6. The FIU or another competent authority shall serve as a national centre for receiving and analysing suspicious transaction reports regarding potential proliferation financing. The FIU or other such competent authority shall have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires in order to properly undertake this function, including the analysis of suspicious transaction reports.

- 2 The measures set out in paragraph 1 shall apply to credit and financial institutions in their activities with:

- a credit and financial institutions domiciled in North Korea;
- b branches and subsidiaries falling within the scope of Article 16 of credit and financial institutions domiciled in North Korea, as listed in Annex VI;
- c branches and subsidiaries falling outside the scope of Article 16 of credit and financial institutions domiciled in North Korea, as listed in Annex VI; and
- d credit and financial institutions that are neither domiciled in North Korea nor fall within the scope of Article 16 but are controlled by persons or entities domiciled in North Korea, as listed in Annex VI.;

11. Article 13 shall be replaced by the following:

Article 13

- 1 The Commission shall be empowered to:
- a amend Annex Ia on the basis of determinations made by either the Sanctions Committee or the UN 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 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 UN Security Council; and
- e amend Annexes V and VI in accordance with decisions taken concerning Annexes II, III, IV and V to Common Position 2006/795/CFSP.

2 The Commission shall process personal data in order to carry out the tasks incumbent on it under this Regulation and in accordance with the provisions of 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⁽⁴⁾;

12. Article 16 shall be replaced by the following:

Article 16

This Regulation shall apply:

- (a) within the territory of the Union;
- (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 Union 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 Union.;

13. Annex I shall be replaced by the text in Annex I to this Regulation;

14. Annex IV shall be replaced by the text in Annex II to this Regulation;

15. The text in Annex III to this Regulation shall be added as Annex V;

16. The text in Annex IV to this Regulation shall be added as Annex VI.

Article 2

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, 22 December 2009.

For the Council

The President

A. CARLGREN

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

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- (1) OJ L 134, 29.5.2009, p. 1.;
- (2) OJ L 117, 4.5.2005, p. 13.
- (3) OJ L 360, 19.12.2006, p. 64.;
- (4) OJ L 8, 12.1.2001, p. 1.;