

DECISIONS

COUNCIL DECISION (CFSP) 2017/1838

of 10 October 2017

amending Decision (CFSP) 2016/849 concerning restrictive measures against the Democratic People's Republic of Korea

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Having regard to Council Decision (CFSP) 2016/849 of 27 May 2016 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2013/183/CFSP ⁽¹⁾,

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

Whereas:

- (1) On 27 May 2016, the Council adopted Decision (CFSP) 2016/849.
- (2) On 11 September 2017, the United Nations Security Council ('UNSC') adopted Resolution 2375 (2017) ('UNSCR 2375 (2017)'), in which it expressed the gravest concern for both the nuclear test by the Democratic People's Republic of Korea ('DPRK') on 2 September 2017 and the danger posed to the peace and stability of the region and beyond by the DPRK's ongoing nuclear- and ballistic missile-related activities. The UNSC also determined that a clear threat to international peace and security continues to exist.
- (3) UNSCR 2375 (2017) extends the prohibition on the export and import of certain goods to and from the DPRK and the restrictions on investment in the DPRK.
- (4) UNSCR 2375 (2017) also prohibits issuing work authorisations for DPRK nationals in the jurisdiction of Member States.
- (5) UNSCR 2375 (2017) furthermore provides for enhanced maritime interdiction of cargo vessels.
- (6) Further action by the Union is necessary to implement certain measures in this Decision.
- (7) Decision (CFSP) 2016/849 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision (CFSP) 2016/849 is amended as follows:

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

'(b) all items, materials, equipment, goods and technology, as determined by the UN Security Council or the Committee established pursuant to paragraph 12 of UNSCR 1718 (2006) ("the Sanctions Committee") in accordance with paragraph 8(a)(ii) of UNSCR 1718 (2006), paragraph 5(b) of UNSCR 2087 (2013), paragraph 20 of UNSCR 2094 (2013), paragraph 25 of UNSCR 2270 (2016) and paragraph 4 of UNSCR 2375 (2017), which could contribute to the DPRK's nuclear-related, ballistic-missile-related or other weapons of mass destruction-related programmes;'

⁽¹⁾ OJ L 141, 28.5.2016, p. 79.

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

‘(i) any other item listed in the conventional arms dual-use list adopted by the Sanctions Committee pursuant to paragraph 7 of UNSCR 2321 (2016) and paragraph 5 of UNSCR 2375 (2017).’;

(3) the following Article is inserted:

‘Article 6c

1. The procurement of textiles (including but not limited to fabrics and partially or fully completed apparel products) from the DPRK by nationals of Member States, or using the flag vessels or aircraft of Member States, shall be prohibited, whether or not originating in the territory of the DPRK.

2. Paragraph 1 shall not apply where the Sanctions Committee has granted approval in advance on a case-by-case basis.

3. Member States may allow imports of textiles (including but not limited to fabrics and partially or fully completed apparel products) for which written contracts have been finalised prior to 11 September 2017, up to 10 December 2017, provided that the Sanctions Committee is notified by 24 January 2018 with details about those imports.’;

(4) Article 9 is replaced by the following:

‘Article 9

1. The import, purchase or transfer from the DPRK of petroleum products shall be prohibited.

2. The direct or indirect supply, sale or transfer to the DPRK, by nationals of Member States or through or from the territories of Member States or using the flag vessels or aircraft of Member States, and whether or not originating in their territories, of all refined petroleum products shall be prohibited.

3. Paragraph 2 shall not apply with respect to the direct or indirect supply, sale or transfer to the DPRK, by nationals of Member States or through or from the territories of Member States or using the flag vessels or aircraft of Member States, and whether or not originating in their territories, of refined petroleum products in the amount of up to 500 000 barrels during an initial period of three months beginning on 1 October 2017 and ending on 31 December 2017, and refined petroleum products in the amount of up to 2 000 000 barrels per year during a period of 12 months beginning on 1 January 2018 and annually thereafter, provided that:

(a) the Member State shall notify the Sanctions Committee every 30 days of the amount of such supply, sale, or transfer to the DPRK of refined petroleum products along with information about all the parties to the transaction; and

(b) the supply, sale, or transfer of refined petroleum products involve no individuals or entities that are associated with the DPRK’s nuclear or ballistic missile programmes or other activities prohibited by UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017) or 2375 (2017), including designated individuals or entities, or individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them, directly or indirectly, or individuals or entities assisting in the evasion of sanctions; and

(c) the supply, sale, or transfer of refined petroleum products are exclusively for livelihood purposes of DPRK nationals and unrelated to generating revenue for the DPRK’s nuclear or ballistic missile programmes or other activities prohibited by UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017) or 2375 (2017).

4. The Union shall take the necessary measures in order to determine the relevant items to be covered by this Article.’;

(5) the following Article is inserted:

‘Article 9b

1. The supply, sale, or transfer to the DPRK by a Member State in any period of 12 months after 11 September 2017 of an amount of crude oil that is in excess of the amount the Member State supplied, sold or transferred in the period of 12 months prior to this date shall be prohibited.

2. Paragraph 1 shall not apply where the Sanctions Committee has approved in advance on a case-by-case basis that a shipment of crude oil is exclusively for livelihood purposes of DPRK nationals and unrelated to the DPRK's nuclear or ballistic missile programmes or other activities prohibited by UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017) or 2375 (2017).

3. The Union shall take the necessary measures to determine the relevant items to be covered by this Article.;

(6) the following Article is inserted:

'Article 9c

The direct or indirect supply, sale or transfer to the DPRK, by nationals of Member States or through or from the territories of Member States, or using the flag vessels or aircraft of Member States, of all condensates and natural gas liquids shall be prohibited, whether or not originating in the territories of Member States. The Union shall take the necessary measures to determine the relevant items to be covered by this Article.;

(7) in Article 11(2), point (c) is replaced by the following:

'(c) the opening, maintenance, and operation of all joint ventures or cooperative entities, new and existing, by nationals of Member States or in territories of Member States with DPRK entities or individuals, whether or not acting for or on behalf of the government of the DPRK.;

(8) in Article 11, the following paragraphs are added:

'3. Paragraph 2, point c, shall not apply to joint ventures or cooperative entities, in particular those that are non-commercial, public utility infrastructure projects which do not generate profit, that have been approved by the Sanctions Committee in advance on a case-by-case basis.

4. Member States shall close any such existing joint venture or cooperative entity no later than by 9 January 2018 if such joint venture or cooperative entity has not been approved by the Sanctions Committee on a case-by-case basis. Member States shall also close any such existing joint venture or cooperative entity within 120 days after the Sanctions Committee has denied a request for approval.;

(9) in Article 16, paragraph (3) is replaced by the following:

'(3) Member States shall inspect vessels, with the consent of the flag State, on the high seas if they have information that provides reasonable grounds to believe that the cargo of such vessels contains items whose supply, sale, transfer or export is prohibited under this Decision.

If a Member State that is a flag State does not consent to inspection on the high seas, it shall direct the vessel to proceed to an appropriate and convenient port for the required inspection by the local authorities pursuant to paragraph 18 of UNSCR 2270 (2016).

When the flag State neither consents to inspections on the high seas nor directs the vessel to proceed to an appropriate and convenient port for the required inspection, or if the vessel refuses to comply with flag State direction to permit inspection on the high seas or to proceed to such a port, Member States shall promptly submit a report containing relevant details regarding the incident, the vessel and the flag State to the Sanctions Committee.;

(10) Article 16(6) is replaced by the following:

'6. Member States shall take the necessary measures to seize and dispose of, such as through destruction, rendering inoperable or unusable, storage, or transferring to a State other than the originating or destination State for disposal, items the supply, sale, transfer, or export of which is prohibited by UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2371 (2017) or 2375 (2017) that are identified in inspections, in a manner that is consistent with their obligations under applicable international law.;

(11) in Article 16, the following paragraph is added:

'9. Member States shall prohibit their nationals, persons subject to their jurisdiction, entities incorporated in their territory or subject to their jurisdiction, and vessels flying their flag, from facilitating or engaging in ship-to-ship transfers to or from DPRK-flagged vessels of any goods or items that are being supplied, sold, or transferred to or from the DPRK.;

(12) Article 18a is replaced by the following:

‘Article 18a

1. A Member State that is a flag State of a vessel designated by the Sanctions Committee shall, if the Sanctions Committee has so specified, de-flag the vessel.
2. A Member State that is the flag State of a vessel designated by the Sanctions Committee shall, if the Sanctions Committee has so specified, direct the vessel to a port identified by the Sanctions Committee, in coordination with the port State.
3. A Member State that is the flag State of a vessel designated by the Sanctions Committee shall, if the Sanctions Committee has so specified, immediately deregister the vessel.
4. Member States shall, if the designation by the Sanctions Committee has so specified, prohibit entry into their ports of a vessel, except in case of emergency or in case of return to its port of origination, or unless the Sanctions Committee determines in advance that such entry is required for humanitarian purposes or any other purposes consistent with the objectives of UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017) or 2371 (2017).
5. Member States shall, if the designation by the Sanctions Committee has so specified, make a vessel subject to an asset freeze.
6. Annex IV shall contain the vessels referred to in paragraphs 1 to 5 of this Article designated by the Sanctions Committee in accordance with paragraph 12 of UNSCR 2321 (2016), paragraph 6 of UNSCR 2371 (2017) and paragraphs 6 and 8 of UNSCR 2375 (2017).’;

(13) Article 26a is replaced by the following:

‘Article 26a

1. Member States shall not provide work authorisations for DPRK nationals in their jurisdictions in connection with admission to their territories.
2. Paragraph 1 shall not apply where the Sanctions Committee approves on a case-by-case basis in advance that employment of DPRK nationals in a Member State’s jurisdiction is required for the delivery of humanitarian assistance, denuclearisation or any other purpose consistent with the objectives of UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2356 (2017), 2371 (2017) or 2375 (2017).
3. Paragraph 1 shall not apply with respect to work authorisations for which written contracts have been finalised prior to 11 September 2017.’;

(14) Article 32 is replaced by the following:

‘Article 32

No claims in connection with any contract or transaction the performance of which has been affected, directly or indirectly, wholly or in part, by the measures imposed pursuant to UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016) or 2375 (2017), including measures of the Union or of any Member State in accordance with, as required by or in any connection with the implementation of the relevant decisions of the UN Security Council or measures covered by this Decision, 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 or entities listed in Annex I, II or III;
- (b) any other person or entity in the DPRK, including the Government of the DPRK, its public bodies, corporations and agencies; or
- (c) any person or entity acting through or on behalf of one of the persons or entities referred to in points (a) or (b).’;

(15) the heading of Annex IV is replaced by the following:

‘List of vessels referred to in Article 18a(6)’;

(16) Annex VI is deleted.

Article 2

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

Done at Luxembourg, 10 October 2017.

For the Council
The President
T. TÕNISTE
