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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION amending Decision 2013/183/CFSP concerning restrictive measures against the Democratic People's Republic of Korea

COUNCIL DECISION (CFSP) 2016/...

of ...

**amending Decision 2013/183/CFSP
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 the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 22 April 2013, the Council adopted Decision 2013/183/CFSP¹ which, *inter alia*, implemented United Nations Security Council Resolutions ('UNSCR') 1718 (2006), 1874 (2009), 2087 (2013) and 2094 (2013).
- (2) On 2 March 2016, the UN Security Council adopted UNSCR 2270 (2016), expressing its gravest concern at the nuclear test conducted by the Democratic People's Republic of Korea (the 'DPRK') on 6 January 2016 in violation of the relevant UNSC Resolutions, further condemning the DPRK's launch of 7 February 2016, which used ballistic missile technology and was in serious violation of the relevant UNSC Resolutions, and determining that there continues to exist a clear threat to international peace and security in the region and beyond.
- (3) UNSCR 2270 (2016), expressing great concern that the DPRK's arms sales have generated revenues that are diverted to the pursuit of nuclear weapons and ballistic missiles, decides that the restrictions on arms should cover all arms and related materiel, including small arms and light weapons and their related materiel. UNSCR 2270 (2016) further extends prohibitions on the transfer and procurement of any items that could contribute to the development of the DPRK's operational capabilities of its armed forces, or to exports that support or enhance the operational capabilities of armed forces of another Member State outside the DPRK.

¹ Council Decision 2013/183/CFSP of 22 April 2013 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2010/800/CFSP (OJ L 111 23.4.2013, p. 52).

- (4) UNSCR 2270 (2016) specifies that the prohibition on the procurement of technical assistance related to arms prohibits Member States from engaging in the hosting of trainers, advisors, or other officials for the purpose of military-, paramilitary- or police-related training.
- (5) UNSCR 2270 (2016) affirms that the prohibitions on the transfer, procurement and provision of related technical assistance related to certain goods also apply with respect to the shipment of items to or from the DPRK for repair, servicing, refurbishing, testing, reverse-engineering, and marketing, regardless of whether ownership or control is transferred, and underscores that the visa ban measures shall also apply to any individual traveling for the abovementioned purposes.
- (6) UNSCR 2270 (2016) extends the list of individuals and entities subject to asset freeze and visa ban measures and decides that the asset freeze shall apply with respect to entities of the Government of the DPRK or the Worker's Party of Korea, where the Member State determines that they are associated with the DPRK's nuclear or ballistic missile programs or other activities prohibited by the relevant UNSC Resolutions.
- (7) UNSCR 2270 (2016), expressing concern that the DPRK is abusing the privileges and immunities accorded under the Vienna Conventions on Diplomatic and Consular Relations, further decides on additional measures aimed at preventing DPRK diplomats or Governmental representatives or individuals from third-States from acting on behalf or at the direction of designated individuals or entities or from engaging in prohibited activities.

- (8) UNSCR 2270 (2016) further clarifies the scope of the obligation for Member States to prevent specialised training of DPRK nationals of certain sensitive disciplines.
- (9) UNSCR 2270 (2016) also expands the scope of the measures applicable to the transportation sector and financial sector.
- (10) UNSCR 2270 (2016) prohibits the procurement of certain minerals and the export of aviation fuel.
- (11) UNSCR 2270 (2016) further extends the prohibitions on the provision of financial support for trade with the DPRK.
- (12) UNSCR 2270 (2016) recalls that the Financial Action Task Force (FATF) has called upon countries to apply enhanced due diligence and effective countermeasures to protect their jurisdictions from the DPRK's illicit financial activity, and calls upon Member States to apply the FATF Recommendation 7, its Interpretative Note, and related guidance to effectively implement targeted financial sanctions related to proliferation.
- (13) UNSCR 2270 (2016) also underlines that measures imposed thereby are not intended to have adverse humanitarian consequences for the civilian population of the DPRK or to affect negatively activities that are not prohibited by the relevant UNSC Resolutions, and the work of international organizations and non-governmental organization carrying out assistance and relief activities in the DPRK for the benefit of the civilian population of the DPRK.

- (14) UNSCR 2270 (2016) expresses its commitment to a peaceful, diplomatic and political solution to the situation and reaffirms its support to the Six Party Talks and calls for their resumption.
- (15) UNSCR 2270 (2016) affirms that the DPRK's actions shall be kept under continuous review and that the UNSC is prepared to strengthen, modify, suspend or lift the measures as may be needed in light of the DPRK's compliance and it is determined to take further significant measures in the event of a further DPRK nuclear test or launch.
- (16) Further action by the Union is needed in order to implement certain measures provided for in this Decision.
- (17) Decision 2013/183/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2013/183/CFSP is amended as follows:

- (1) in Article 1(1), point (e) is replaced by the following:
 - '(e) any other item that could contribute to the DPRK's nuclear or ballistic missile programmes or other weapons of mass destruction programs, activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or by this Decision, or to the evasion of measures imposed by those UNSC Resolutions or by this Decision. The Union shall take the necessary measures in order to determine the relevant items to be covered by this provision.'

- (2) in Article 1(1), the following point is added:
 - '(f) any other item, except food or medicine, if the Member State determines that it could directly contribute to the development of the DPRK's operational capabilities of its armed forces, or to exports that support or enhance the operational capabilities of armed forces of another State outside the DPRK.'

(3) the following article is inserted:

'Article 1a

1. The measures imposed by point (f) of Article 1(1) shall not apply to the supply, sale or transfer of an item, or its procurement, where:
 - (a) the Member State determines that such activity is exclusively for humanitarian purposes or exclusively for livelihood purposes which will not be used by DPRK persons or entities to generate revenue, and also not related to any activity prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016) or this Decision, provided that the Member State notifies the Sanctions Committee in advance of such determination and also informs the Sanctions Committee of measures taken to prevent the diversion of the item for such other purposes; or
 - (b) the Sanctions Committee has determined on a case-by-case basis that a particular supply, sale or transfer would not be contrary to the objectives of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016).'

(4) the following article is inserted:

'Article 2a

The procurement from the DPRK by nationals of Member States, or using the flag vessels or aircraft of Member States, of gold, titanium ore, vanadium ore, and rare earth minerals, shall be prohibited, whether or not originating in the territory of the DPRK. The Union shall take the necessary measures in order to determine the relevant items to be covered by this provision.'

(5) the following articles are inserted:

'Article 4a

1. The procurement from the DPRK by nationals of Member States, or using the flag vessels or aircraft of Member States, of coal, iron, and iron ore, shall be prohibited, whether or not originating in the territory of the DPRK. The Union shall take the necessary measures in order to determine the relevant items to be covered by this provision.

2. Paragraph 1 shall not apply with respect to coal that the procuring Member State confirms on the basis of credible information has originated outside the DPRK and was transported through the DPRK solely for export from the Port of Rajin (Rason), provided that the Member State notifies the Sanctions Committee in advance and such transactions are unrelated to generating revenue for the DPRK's nuclear or ballistic missile programs or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or this Decision.
3. Paragraph 1 shall not apply with respect to transactions that are determined to be exclusively for livelihood purposes and unrelated to generating revenue for the DPRK's nuclear or ballistic missile programs or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or this Decision.

Article 4b

1. The sale or supply of aviation fuel, including aviation gasoline, naphtha-type jet fuel, kerosene-type jet fuel, and kerosene-type rocket fuel to the DPRK by nationals of Member States or from the territories of Member States or using the flag vessels or aircraft of Member States, shall be prohibited whether or not originating in the territories of Member States.

2. Paragraph 1 shall not apply if the Sanctions Committee has approved in advance on an exceptional case-by-case basis the transfer to the DPRK of such products for verified essential humanitarian needs and subject to specified arrangements for effective monitoring of delivery and use.
3. Paragraph 1 shall not apply with respect to the sale or supply of aviation fuel to civilian passenger aircraft outside the DPRK exclusively for consumption during its flight to the DPRK and its return flight.'

(6) Article 5 is replaced by the following:

'Article 5

Member States shall not provide public and private financial support for trade with the DPRK, including the granting of export credits, guarantees or insurance, to their nationals or entities involved in such trade, where such financial support could contribute to the DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes or activities, or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or by this Decision, or to the evasion of measures imposed by those UNSC Resolutions or by this Decision.'

(7) in Article 7, paragraph 1 is replaced by the following:

1. In order to prevent the provision of financial services or the transfer to, through, or from the territory of Member States, or to or by nationals of Member States or entities organised under their laws, or persons or financial institutions within their jurisdiction, of any financial or other assets or resources, including bulk cash, that could contribute to the DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes or activities, or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or by this Decision, or to the evasion of measures imposed by those UNSC Resolutions or by this Decision, Member States shall exercise enhanced monitoring, in accordance with their national authorities and legislation, of the activities of financial institutions within their jurisdiction with:
 - (a) banks domiciled in the DPRK;
 - (b) branches and subsidiaries within the jurisdiction of the Member States of banks domiciled in the DPRK, as listed in Annex IV;
 - (c) branches and subsidiaries outside the jurisdiction of the Member States of banks domiciled in the DPRK, as listed in Annex V; and
 - (d) financial entities that are neither domiciled in the DPRK nor within the jurisdiction of the Member States but are controlled by persons and entities domiciled in the DPRK, as listed in Annex V,

in order to avoid such activities contributing to the DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes or activities.'

(8) Article 8 is replaced by the following:

'Article 8

1. The opening of branches, subsidiaries, or representative offices of DPRK banks, including the Central Bank of DPRK, its branches and subsidiaries, and of other financial entities referred to in Article 7(1), in the territories of Member States shall be prohibited.
2. Existing branches, subsidiaries and representative offices shall be closed within ninety days from the adoption of UNSCR 2270 (2016).
3. It shall be prohibited for DPRK banks, including the Central Bank of DPRK, its branches and subsidiaries, and for other financial entities referred to in Article 7(1):
 - (a) to establish new joint ventures with banks under the jurisdiction of Member States;
 - (b) to take an ownership interest in banks under the jurisdiction of Member States;
 - (c) to establish or maintain correspondent banking relationships with banks under the jurisdiction of Member States;

unless the transactions mentioned in paragraphs (a), (b) and (c) above have been approved by the Sanctions Committee in advance.

4. Existing joint ventures, ownership interests and correspondent banking relationships with DPRK banks shall be terminated within ninety days from the adoption of UNSCR 2270 (2016).
5. Financial institutions within the territories of Member States or under their jurisdiction shall be prohibited from opening representative offices, subsidiaries, branches or banking accounts in the DPRK.
6. Existing representative offices, subsidiaries or banking accounts in the DPRK shall be closed within ninety days from the adoption of UNSCR 2270 (2016), if the relevant Member State has credible information that provides reasonable grounds to believe that such financial services could contribute to the DPRK's nuclear or ballistic missile programs, or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016).
7. Paragraph 6 shall not apply if the Sanctions Committee determines on a case-by-case basis that such offices, subsidiaries or accounts are required for the delivery of humanitarian assistance or the activities of diplomatic missions in the DPRK pursuant to the Vienna Convention on Diplomatic Relations or the activities of the United Nations or its specialized agencies or related organizations, or for any other purposes consistent with UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016).'

(9) in Article 10, paragraph 1 is replaced by the following:

'1. Member States shall inspect, in accordance with their national authorities and legislation and consistent with international law, including the Vienna Conventions on Diplomatic and Consular Relations, all cargo to and from the DPRK in their territory, or transiting through their territory, including at their airports, seaports and free trade zones, or cargo brokered or facilitated by the DPRK or DPRK nationals, or persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, or by persons or entities listed in Annex I, or cargo that is being transported on DPRK flagged aircraft or maritime vessels, for the purposes of ensuring that no items are transferred in violation of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) and 2270 (2016).'

(10) in Article 10, the following paragraph is inserted:

'1a. Member States shall inspect, in accordance with their national authorities and legislation and consistent with international law, including the Vienna Conventions on Diplomatic and Consular Relations, all cargo to and from the DPRK in their territory, or transiting through their territory, or cargo brokered or facilitated by the DPRK or DPRK nationals, or persons or entities acting on their behalf, including at their airports and seaports, if they have information that provides reasonable grounds to believe that the cargo contains items whose supply, sale, transfer or export is prohibited under this Decision.'

(11) Article 11 is replaced by the following:

'Article 11

1. Member States shall deny permission to land in, take off from or overfly their territory to any aircraft, if they have information that provides reasonable grounds to believe that the cargo contains items whose supply, sale, transfer or export is prohibited under UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or under this Decision.
2. Paragraph 1 shall not apply in the case of an emergency landing or under the condition of landing for inspection.'

(12) the following article is inserted:

'Article 11a

1. Member States shall prohibit the entry into their ports of any vessel, if they have information that provides reasonable grounds to believe that the vessel is owned or controlled, directly or indirectly, by a person or entity listed in Annex I, or contains cargo whose supply, sale, transfer or export is prohibited under UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016).
2. Paragraph 1 shall not apply in the case of emergency or in the case of return to its port of origination, or for inspection or if the Sanctions Committee determines in advance that such entry is required for humanitarian purposes or any other purposes consistent with the objectives of UNSCR 2270 (2016).'

(13) the following articles are inserted:

'Article 12a

1. It shall be prohibited to lease or charter flagged vessels or aircraft or provide crew services to the DPRK, any persons or entities listed in Annex I, any other DPRK entities, any other persons or entities whom the Member State determines to have assisted in the evasion of sanctions or in violating the provisions of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016), any persons or entities acting on behalf or at the direction of any of the aforementioned, and any entities owned or controlled by any of the aforementioned.
2. Paragraph 1 shall not apply to the leasing, chartering or provision of crew services provided that the relevant Member State has notified the Sanctions Committee in advance on a case-by-case basis and has provided the Sanctions Committee with the information demonstrating that such activities are exclusively for livelihood purposes which will not be used by DPRK persons or entities to generate revenue, and information on measures taken to prevent such activities from contributing to violations of the provisions of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016).

Article 12b

Member States shall de-register any vessel that is owned, operated or crewed by the DPRK and shall not register any such vessel that is de-registered by another State pursuant to paragraph 19 of UNSCR 2270 (2016).

Article 12c

1. It shall be prohibited to register vessels in the DPRK, obtain authorization for a vessel to use the DPRK flag, or to own, lease, operate, or provide any vessel classification, certification or associated service, or insure any vessel flagged by the DPRK.

2. Paragraph 1 shall not apply to activities notified in advance to the Sanctions Committee on a case-by-case basis, provided that the relevant Member State has provided the Sanctions Committee with detailed information on the activities, including the names of persons and entities involved in them, information demonstrating that such activities are exclusively for livelihood purposes which will not be used by DPRK persons or entities to generate revenue and information on measures taken to prevent such activities from contributing to violations of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016).!

(14) in Article 13, paragraphs 1 and 2 are replaced by the following:

1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of:
 - (a) the persons designated by the Sanctions Committee or by the Security Council as being responsible for, including through supporting or promoting, the DPRK's policies in relation to its nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes, together with their family members, or persons acting on their behalf or at their direction, as listed in Annex I;
 - (b) the persons not covered by Annex I, as listed in Annex II:
 - (i) who are responsible for, including through supporting or promoting, the DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes or persons acting on their behalf, or at their direction;
 - (ii) who provide financial services or the transfer to, through, or from the territory of Member States, or involving nationals of Member States or entities organised under their laws, or persons or financial institutions in their territory, of any financial or other assets or resources that could contribute to the DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes;

- (iii) who are involved in, including through the provision of financial services, the supply to or from the DPRK of arms and related material of all types, or the supply to the DPRK of items, materials, equipment, goods and technology which could contribute to the DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes;
 - (c) the persons not covered by Annex I or Annex II working on behalf or at the direction of a person or entity listed in Annex I or Annex II or persons assisting the evasion of sanctions or violating the provisions of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or of this Decision, as listed in Annex III to this Decision.
2. Point (a) of paragraph 1 shall not apply where the Sanctions Committee determines on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligations, or where the Sanctions Committee concludes that an exemption would otherwise further the objectives of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016).'

(15) the following articles are inserted:

'Article 14a

1. Member States shall expel DPRK diplomats, government representative or other DPRK national acting in a governmental capacity whom they determine are working on behalf of, or at the direction of a person or entity listed in Annex I, or of an individual or entities assisting in the evasion of sanctions or violating the provisions of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), or 2270 (2016), from their territories for the purpose of repatriation to the DPRK, consistent with applicable national and international law.
2. Paragraph 1 shall not apply in case of transit of representatives of the Government of the DPRK to the United Nations Headquarters or other UN facilities to conduct United Nations business.
3. Paragraph 1 shall not apply where the presence of a person is required for fulfilment of a judicial process or exclusively for medical, safety or other humanitarian purposes, or the Sanctions Committee has determined on a case-by-case basis that the expulsion of the individual would be contrary to the objectives of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) and 2270 (2016).

Article 14b

1. Member States shall expel nationals of third countries whom they determine are working on behalf of, or at the direction of a person or entity listed in Annex I, or assisting the evasion of sanctions or violating the provisions of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), or 2270 (2016), from their territories for the purpose of repatriation to the individual's state of nationality, consistent with applicable national and international law.
2. Paragraph 1 shall not apply where the presence of a person is required for fulfilment of a judicial process or exclusively for medical, safety or other humanitarian purposes, or the Sanctions Committee has determined on a case-by-case basis that the expulsion of the individual would be contrary to the objectives of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) and 2270 (2016).
3. Paragraph 1 shall not apply in case of transit of representatives of the Government of the DPRK to the United Nations Headquarters or other UN facilities to conduct United Nations business.'

(16) in Article 15(1), point (c) is replaced by the following:

- '(c) the persons and entities not covered by Annex I or Annex II working on behalf or at the direction of a person or entity listed in Annex I or Annex II or persons assisting the evasion of sanctions or violating the provisions of UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) or of this Decision, as listed in Annex III to this Decision.'

(17) in Article 15(1), the following point is inserted:

'(d) the entities of the Government of the DPRK or the Worker's Party of Korea, or by persons or entities acting on their behalf or at their direction, or by entities owned or controlled by them, that the Member State determines are associated with the DPRK's nuclear or ballistic missile programs or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016) shall be frozen.'

(18) the following Articles are inserted:

Article 15a

Point (d) of Article 15(1) shall not apply with respect to funds, other financial assets and economic resources that are required to carry out activities of the DPRK's missions to the United Nations and its specialized agencies and related organizations or other diplomatic and consular missions of the DPRK, and to any funds, other financial assets and economic resources that the Sanctions Committee determines in advance on a case-by-case basis are required for the delivery of humanitarian assistance, denuclearization or any other purpose consistent with the objectives of UNSCR 2270 (2016).

Article 15b

1. Representative offices of entities listed in Annex I shall be closed.

2. The direct or indirect participation in joint ventures or any other business arrangements by entities listed in Annex I, as well as persons or entities acting for or on their behalf, is prohibited.'

(19) Article 16 is replaced by the following:

'Article 16

Member States shall take the necessary measures to exercise vigilance and prevent specialised teaching or training of DPRK nationals, within their territories or by their nationals, of disciplines which would contribute to the DPRK's proliferation-sensitive nuclear activities and the development of nuclear weapon delivery systems, including teaching or training in advanced physics, advanced computer simulation and related computer sciences, geospatial navigation, nuclear engineering, aerospace engineering, aeronautical engineering and related disciplines.'

(20) Article 17 is replaced by the following:

'Article 17

Member States shall, in accordance with international law, exercise enhanced vigilance over DPRK diplomatic personnel so as to prevent such individuals from contributing to the DPRK's nuclear or ballistic missile programmes, or other activities prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) and 2270 (2016) or by this Decision, or to the evasion of measures imposed by those UNSC Resolutions or by this Decision.'

(21) Article 18 is replaced by the following:

'Article 18

No claims, including for compensation or indemnification or any other claim of this kind, such as a claim of set-off, fines or a claim under a guarantee, claims for extension or payment of a bond, financial guarantee, including claims arising from letters of credit and similar instruments, in connection with any contract or transaction the performance of which was affected, directly or indirectly, wholly or in part, by reason of measures decided on pursuant to UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) and 2270 (2016), including measures of the Union or any Member State in accordance with, as required by or in any connection with, the implementation of the relevant decisions of the Security Council or measures covered by this Decision, shall be granted to the designated persons or entities listed in Annexes I, II or III, or any other person or entity in the DPRK, including the Government of the DPRK, its public bodies, corporations and agencies, or any person or entity claiming through or for the benefit of any such person or entity.'

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 Brussels,

For the Council

The President
