VERŻJONI ELETTRONIKA

L.N. 256 of 2015

NATIONAL INTEREST (ENABLING POWERS) ACT (CAP. 365)

Enforcement of European Union Sanctions (Democratic People's Republic of Korea) Regulations, 2015

IN exercise of the powers conferred by article 3(2) of the National Interest (Enabling Powers) Act, the Prime Minister has made the following regulations:-

1. The title of these regulations is the Enforcement of European Union Sanctions (Democratic People's Republic of Korea) Regulations, 2015. Citation.

2. In these regulations, unless the context otherwise requires - Interpretation.

"the Act" means the National Interest (Enabling Powers) Act; Cap. 365.

"the Council Regulation" means the Council Regulation referred to in regulation 3, any amendment and any repealing Regulation;

"Monitoring Board" means the Board established under regulation 2 of the Sanctions (Monitoring Board) Regulations; S.L. 365.08

"the Treaty" means the Treaty referred to in article 2 of the European Union Act. Cap. 460.

3. These regulations apply to Council Regulation (EC) No. 329/2007 of 27 March, 2007 on restrictive measures in respect of the Democratic People's Republic of Korea, which text is contained in the Schedule to these regulations. Text of Council Regulations (EU) No.329/ 2007.

4. For the purposes of article 3 of the European Union Act, the Council Regulation is binding in its entirety on Malta and shall be part of the domestic law thereof under the conditions laid down in the Treaty. Applicability of the European Union Act. Cap. 460.

5. (1) Where any provision of any regulation made under the Act requires any person or any other entity to carry out the identification of funds or assets belonging to or in the possession of persons or entities as may be identified or identifiable under these regulations, or the freezing or blocking of such funds or assets, such person or entity shall without delay notify in writing any relevant information it may have regarding persons, entities, assets or funds affected by these regulations to the Monitoring Board, or to such other public authority as may be prescribed by any other law. Notification about freezing of assets.

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(2) The disclosure of any information within the terms and requirements of this regulation shall not constitute a breach of the Professional Secrecy Act, where applicable, or of any other confidentiality obligation arising from a contract or any other law.

Cap. 377.

(3) Whosoever fails to abide by the provisions of sub-regulation (1) shall be guilty of an offence as is referred to in article 4 of the Criminal Code.

Cap. 9.

Corporate liability.

6. (1) Where an offence against any provision of the Council Regulation to which these regulations apply, or against these regulations is committed by a body of persons, whether corporate or unincorporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

(2) Where the person found guilty of an offence under these regulations is an officer of a body corporate as is referred to in article 121D of the Criminal Code or is a person having a power of representation or having such authority as is referred to in that article and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of these regulations be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine of not less than five thousand euro (€5,000) and not more than one hundred and sixteen thousand four hundred and sixty-eight euro (€116,468).

Cap. 9.

Penalty.

7. Any person who commits an offence against any provision of the Council Regulation to which these regulations apply, or against these regulations shall, on conviction, be liable to imprisonment for a term from twelve months to five years or to a fine (*multa*) not exceeding one hundred and sixteen thousand four hundred and sixty-eight euro (€116,468), or to both such imprisonment and fine.

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SCHEDULE

(Regulation 3)

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 60 and 301 thereof,

Having regard to Council Common Position 2006/795/CFSP of 20 November 2006 concerning restrictive measures against the Democratic People's Republic of Korea,

Having regard to the proposal from the Commission,

Whereas:

(1) On 14 October 2006, the UN Security Council adopted Resolution 1718 (2006) in which it condemned the nuclear test that the Democratic People's Republic of Korea (hereinafter referred to as North Korea), had conducted on 9 October 2006, determining that there was a clear threat to international peace and security, and imposing on all Member States of the United Nations that they apply a number of restrictive measures.

(2) Common Position 2006/795/CFSP provides for the implementation of the restrictive measures set out in Resolution 1718 (2006) and notably for a ban on exports of goods and technology which could contribute to North Korea's nuclear-related, other weapons of mass destruction-related or ballistic missile-related programmes, and on the provision of related services, a ban on procurement of goods and technology from North Korea, a ban on exports of luxury goods to North Korea, as well as the freezing of funds and economic resources of persons, entities and bodies engaged in or providing support for the said North Korean programmes.

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

(4) This Regulation derogates from existing Community legislation that provides for general rules on exports to, and imports from, third countries, and in particular from Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology; most of these items and technology should be covered by this Regulation.

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(5) It is appropriate to clarify the procedure that should be followed to obtain approval for exports of goods and technology and the provision of related technical assistance.

(6) For reasons of expediency, the Commission should be empowered to publish the list of goods and technology that will be adopted by the Sanctions Committee or the UN Security Council and, if appropriate, to add the reference numbers taken from the Combined Nomenclature as set out in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff.

(7) The Commission should also be empowered to amend the list of luxury goods if necessary in view of any definition or guidelines that the Sanctions Committee may promulgate to facilitate the implementation of the restrictions concerning luxury goods, taking the lists of luxury goods produced by other jurisdictions into account.

(8) For reasons of expediency, the Commission should also be empowered to amend the list of persons, entities and bodies whose funds and economic resources should be frozen, on the basis of determinations made by either the Sanctions Committee or the United Nations Security Council.

(9) Member States should determine the penalties applicable to infringements of the provisions of this Regulation. The penalties provided for should be proportionate, effective and dissuasive.

(10) 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

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

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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

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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.

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:

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(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:

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(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

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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.

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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.

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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

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ANNEX I

Goods and technology referred to in Articles 2 and 3

A. Goods

(to be completed in due course)

B. Technology

(to be completed in due course)

ANNEX II

Websites for information on the competent authorities referred to in Articles 5, 7, 8, 10 and 15 and address for notifications to the European Commission

BELGIUM

http://www.diplomatie.be/eusanctions

BULGARIA

(to be completed in due course)

CZECH REPUBLIC

http://www.mfcr.cz/mezinarodnisankce

DENMARK

http://www.um.dk/da/menu/Udenrigspolitik/FredSikkerhedOgInternationalRetsorden/Sanktioner/

GERMANY

http://www.bmwi.de/BMWi/Navigation/Aussenwirtschaft/Aussenwirtschaftsrecht/embargos.html

ESTONIA

http://web-visual.vm.ee/est/kat_622/

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GREECE

http://www.ypex.gov.gr/www.mfa.gr/en-US/Policy/Multilateral+Diplomacy/International+Sanctions/

SPAIN

www.mae.es/es/Menuppal/Asuntos/Sanciones+Internacionales

FRANCE

http://www.diplomatie.gouv.fr/autorites-sanctions/

IRELAND

www.dfa.ie/un_eu_restrictive_measures_ireland/competent_authorities

ITALY

http://www.esteri.it/UE/deroghe.html

CYPRUS

http://www.mfa.gov.cy/sanctions

LATVIA

http://www.mfa.gov.lv/en/security/4539

LITHUANIA

http://www.urm.lt

LUXEMBOURG

http://www.mae.lu/sanctions

HUNGARY

http://www.kulugyminiszterium.hu/kum/hu/bal/nemzetkozi_szankciok.htm

MALTA

http://www.doi.gov.mt/EN/bodies/boards/sanctions_monitoring.asp

NETHERLANDS

http://www.minbuza.nl/sancties

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AUSTRIA

(to be completed in due course)

POLAND

http://www.msz.gov.pl

PORTUGAL

http://www.min-nestrangeiros.pt

ROMANIA

http://www.mae.ro/index.php?unde=doc&id=32311&idlnk=1&cat=3

SLOVENIA

http://www.mzz.gov.si/si/zunanja_politika/mednarodna_varnost/omejevalni_ukrepi/

SLOVAKIA

http://www.foreign.gov.sk

FINLAND

http://formin.finland.fi/kvyhteistyo/pakotteet

SWEDEN

(to be completed in due course)

UNITED KINGDOM

www.fco.gov.uk/competentauthorities

Address for notifications to the European Commission:

European Commission

DG External Relations

Directorate A. Crisis Platform and Policy Coordination in CFSP

Unit A.2. Crisis Management and Conflict Prevention

CHAR 12/106

B-1049 Bruxelles/Brussels (Belgium)

VERŻJONI ELETTRONIKA

E-mail relex-sanctions@ec.europa.eu

Tel. (32-2) 295 55 85, 299 11 76

Fax (32-2) 299 08 73

ANNEX III

Luxury goods referred to in Article 4

1. Pure-bred horses

2. Caviar and caviar substitutes

3. Truffles and preparations thereof

4. High quality wines (including sparkling wines), spirits and spirituous beverages

5. High quality cigars and cigarillos

6. Luxury perfumes, toilet waters and cosmetics, including beauty and make-up products

7. High quality leather, saddlery and travel goods, handbags and similar articles

8. High quality garments, clothing accessories and shoes (regardless of their material)

9. Hand-knotted carpets, handwoven rugs and tapestries

10. Pearls, precious and semi-precious stones, articles of pearls, jewellery, gold- or silversmith articles

11. Coins and banknotes, not being legal tender

12. Cutlery of precious metal or plated or clad with precious metal

13. High quality tableware of porcelain, china, stone- or earthenware or fine pottery

14. High quality lead crystal glassware

15. High end electronic items for domestic use

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16. High end electrical/electronic or optical apparatus for recording and reproducing sound and images

17. Luxury vehicles for the transport of persons on earth, air or sea, as well as their accessories and spare parts

18. Luxury clocks and watches and their parts

19. High quality musical instruments

20. Works of art, collectors' pieces and antiques

21. Articles and equipment for skiing, golf, diving and water sports

22. Articles and equipment for billiard, automatic bowling, casino games and games operated by coins or banknotes

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ANNEX IV

List of persons, entities and bodies referred to in Article 6

A. Natural persons

(to be completed in due course)

B. Legal persons, entities and bodies

(to be completed in due course)

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