COUNCIL COMMON POSITION 2009/573/CFSP

of 27 July 2009

amending Common Position 2006/795/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 15 thereof,

Whereas:

(1) On 20 November 2006 the Council of the European Union adopted Common Position 2006/795/CFSP concerning restrictive measures against the Democratic People's Republic of Korea [1] (DPRK) which implemented United Nations Security Council Resolution 1718 (2006) (UNSCR 1718 (2006)).

(2) In a declaration of 26 May 2009, the European Union strongly condemned the test of a nuclear explosive device carried out by DPRK on 25 May 2009.

(3) On 12 June 2009, the United Nations Security Council adopted Resolution 1874 (2009) (UNSCR 1874 (2009)) which widened the scope of the restrictive measures imposed by UNSCR 1718 (2006), inter alia, by extending the arms embargo against DPRK.

(4) The European Council of 18 and 19 June 2009 invited the Council and the European Commission to transpose UNSCR 1874 (2009) in a robust way and without delay.

(5) UNSCR 1874 (2009) calls upon all UN Member States and international financial and credit institutions not to enter into new commitments for grants, financial assistance, or concessional loans to the DPRK and calls upon all UN Member States to exercise enhanced vigilance with a view to reducing current commitments. It also calls upon all UN Member States not to provide public financial support for trade with the DPRK where such financial support could contribute to the DPRK's nuclear-related or ballistic missile-related or other weapons of mass destruction-related programmes or activities.

(6) UNSCR 1874 (2009) also calls upon all UN Member States to prevent the provision of financial services or the transfer to, through, or from their territory, or to or by their nationals 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 such programmes or activities.

(7) Moreover, UNSCR 1874 (2009) calls upon all States to inspect, in accordance with their national authorities and legislation, and consistent with international law, all cargoes to and from DPRK, in their territory, including seaports and airports, if the State concerned has information that provides reasonable grounds to believe that the cargo contains items whose supply, sale, transfer or export is prohibited under UNSCR 1718 (2006) or UNSCR 1874 (2009).

(8) Furthermore, UNSCR 1874 (2009) calls upon all UN Member States to inspect vessels on the high seas, with the consent of the flag State, 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 UNSCR 1718 (2006) or UNSCR 1874 (2009).

(9) UNSCR 1874 (2009) provides that UN Member States are to seize and dispose of items whose supply, sale, transfer or export is prohibited under UNSCR 1718 (2006) or UNSCR 1874 (2009) in a manner that is not inconsistent with their obligations under applicable Security Council resolutions and international conventions.

(10) UNSCR 1874 (2009) provides that UN Member States are to prohibit the provision by their nationals or from their territory of bunkering services, or other servicing of vessels, to DPRK vessels if they have information that provides reasonable grounds to believe that they are carrying items whose supply, sale, transfer or export is prohibited under UNSCR 1718 (2006) or UNSCR 1874 (2009).

(11) UNSCR 1874 (2009) calls upon UN Member States to exercise vigilance and prevent specialised teaching or training of DPRK nationals within their territories or by their nationals, of disciplines which could contribute to DPRK's proliferation — sensitive nuclear activities and the development of nuclear weapon delivery systems.

(12) In line with the European Council Declaration on DPRK of 18 and 19 June 2009 and in order to fulfil the objectives of UNSCR 1874 (2009), the prohibition on the supply, sale or transfer to DPRK of items determined by the United Nations should apply to certain other items which could contribute to DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes.

[1] OJ L 322, 22.11.2006, p. 32.

(13) Moreover, restrictions on admission should also be applied in respect of persons designated by the European Union, either because of their promotion or support of DPRK's nuclear-related, ballistic missile-related and other weapons of mass destruction-related programmes or because they provide financial services or transfer financial or other assets or resources that could contribute to those programmes.

(14) Furthermore, a freezing of funds or economic resources should be applied in respect of the persons and entities designated by the European Union, either because of their promotion or support of DPRK's nuclear-related, ballistic missile-related and other weapons of mass destruction-related programmes or because they provide financial services or transfer financial or other assets or resources that could contribute to those programmes.

(15) In addition, in order to prevent the provision of financial services or the transfer to, through, or from their territory, or to or by their nationals 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 DPRK's nuclear-related, ballistic missile-related and other weapons of mass destruction-related programmes or activities, Member States should exercise enhanced monitoring over the activities of financial institutions within their jurisdiction with certain banks and financial entities linked to DPRK.

(16) Common Position 2006/795/CFSP should be amended accordingly.

(17) Action by the European Community is needed in order to implement certain measures,

HAS ADOPTED THIS COMMON POSITION:

Article 1

Common Position 2006/795/CFSP is hereby amended as follows:

1. Article 1 shall be amended as follows:

(a) in paragraph 1 the following point shall be added:

'(c) certain other items, materials, equipment, goods and technology which could contribute to DPRK's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes. The European Community shall take the necessary measures in order to determine the relevant items to be covered by this provision.';

(b) paragraph 3 shall be replaced by the following:

'3. The procurement by nationals of Member States, or using their flag vessels or aircraft, of items and technology referred to in paragraph 1 from the DPRK, as well as the provision to nationals of Member States by DPRK of technical training, advice, services, assistance, financing and financial assistance referred to in paragraph 2, shall also be prohibited, whether or not originating in the territory of the DPRK.';

2. the following Article shall be inserted:

'Article 1a

1. Member States shall not enter into new commitments for grants, financial assistance and concessional loans to the DPRK, including through their participation in international financial institutions, except for humanitarian and developmental purposes directly addressing the need of the civilian population or the promotion of denuclearisation. Member States shall also exercise vigilance with a view to reducing current commitments and, if possible, putting an end to them.

2. Member States shall not provide public financial support for trade with 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 or ballistic missile-related or other weapons of mass destruction-related programmes or activities.';

3. Article 3 shall be replaced by the following:

'Article 3

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 Committee or by the UN Security Council as being responsible for, including through supporting or promoting, DPRK policies in relation to DPRK's nuclear-related, ballistic missile-related and other weapons of mass destruction-related programmes, together with their family members, as listed in Annex I;

(b) persons not covered by Annex I who are responsible for, including through supporting or promoting, DPRK's nuclear-related, ballistic missile-related and other weapons of mass destruction-related programmes, as listed in Annex II;

(c) persons not covered by Annex I or Annex 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, as listed in Annex III.

2. Paragraph 1(a) shall not apply where the 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 Committee concludes that an exemption would otherwise further the objectives of UNSCR 1718 (2006) or UNSCR 1874 (2009).

3. Paragraph 1 shall not oblige a Member State to refuse its own nationals entry into its territory.

4. Paragraph 1 shall be without prejudice to cases where a Member State is bound by an obligation of international law, namely:

(i) as a host country of an international intergovernmental organisation;

(ii) as a host country to an international conference convened by, or under the auspices of, the United Nations;

(iii) under a multilateral agreement conferring privileges and immunities;

(iv) under the 1929 Treaty of Conciliation (Lateran pact) concluded by the Holy See (State of the Vatican City) and Italy.

5. Paragraph 4 shall be considered as applying also in cases where a Member State is host country of the Organisation for Security and Cooperation in Europe (OSCE).

6. The Council shall be duly informed in all cases where a Member State grants an exemption pursuant to paragraph 4 or 5.

7. Member States may grant exemptions from the measures imposed in paragraph 1 where travel is justified on the grounds of urgent humanitarian need, or on grounds of attending intergovernmental meetings, including those promoted by the European Union, or hosted by a Member State holding the Chairmanship in office of the OSCE, where a political dialogue is conducted that directly promotes democracy, human rights and the rule of law in DPRK.

8. A Member State wishing to grant exemptions referred to in paragraph 7 shall notify the Council thereof in writing. The exemption shall be deemed to be granted unless one or more of the Council Members raise an objection in writing within two working days of receiving notification of the proposed exemption. Should one or more of the Council members raise an objection, the Council, acting by a qualified majority, may decide to grant the proposed exemption.

9. In cases where, pursuant to paragraphs 4, 5 and 7, a Member State authorises the entry into, or transit through, its territory of persons listed in Annexes I, II or III, the authorisation shall be limited to the purpose for which it is given and to the persons concerned thereby.

10. Member States shall notify the Committee of the entry into or transit through, their territories of the persons set out in Annex I, if an exception has been granted.';

4. in Article 4, paragraph 1 shall be replaced by the following:

'1. All funds and economic resources belonging to, owned, held or controlled, directly or indirectly, by:

(a) the persons and entities designated by the Committee or by the UN Security Council as being engaged in or providing support for, including through illicit means, DPRK's nuclear-related, other weapons of mass destruction-related and ballistic missiles-related programmes, as listed in Annex I;

(b) the persons and entities not covered by Annex I that are responsible for DPRK's nuclear-related, ballistic missile-related and other weapons of mass destruction-related programmes or persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, as listed in Annex II;

(c) the persons and entities not covered by Annex I or Annex II that 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, or persons or entities acting on their behalf or at their direction, or entities owned or controlled by them, as listed in Annex III,

shall be frozen.';

5. the following Article shall be inserted:

'*Article 4a*

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 that could contribute to the DPRK's nuclear-related, ballistic missile-related, or other weapons of mass destruction-related programmes or activities, Member States shall exercise enhanced monitoring of the activities of financial institutions within their jurisdiction with:

(a) banks domiciled in DPRK;

(b) branches and subsidiaries within the jurisdiction of the Member States of banks domiciled in DPRK, as listed in Annex IV;

(c) branches and subsidiaries outside the jurisdiction of the Member States of banks domiciled in DPRK, as listed in Annex V; and

(d) financial entities that are neither domiciled in DPRK nor within the jurisdiction of the Member States but are controlled by persons and entities domiciled in 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.

2. For the above purpose, financial institutions shall be required, in their activities with banks and financial entities set out in paragraph 1, to:

(a) exercise continuous monitoring over account activity, including through their programmes on customer due diligence and under their obligations relating to money-laundering and financing of terrorism;

(b) require that all information fields of payment instructions 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;

(d) if they suspect or have reasonable grounds to suspect that funds could contribute to the DPRK's nuclear-related, ballistic missile-related, or other weapons of mass destruction-related programmes or activities, promptly report their suspicions to the Financial Intelligence Unit (FIU) or another competent authority designated by the Member State concerned. The FIU or such other competent authority shall have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to undertake this function properly, including the analysis of suspicious transaction reports.';

6. Article 5 shall be replaced by the following:

'*Article 5*

1. Member States shall inspect, in accordance with their national authorities and legislation and consistent with international law, all cargo to and from the DPRK in their territory, 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 Common Position.

2. 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 Common Position.

3. Member States shall cooperate, in accordance with their national legislation, with inspections pursuant to paragraphs 1 and 2.

4. Aircrafts and vessels transporting cargo to and from the DPRK shall be subject to the requirement of additional pre-arrival or pre-departure information for all goods brought into or out of a Member State.

5. In cases where inspection referred to in paragraphs 1 and 2 is undertaken, Member States shall seize and dispose of items whose supply, sale, transfer or export is prohibited under this Common Position in accordance with paragraph 14 of UNSCR 1874 (2009).

6. The provision by nationals of Member States or from the territories of Member States of bunkering or ship supply services, or other servicing of vessels, to DPRK vessels shall be prohibited if they have information that provides reasonable grounds to believe that the vessels carry items whose supply, sale, transfer or export is prohibited under this Common Position unless provision of such services is necessary for humanitarian purposes or until the cargo has been inspected, and seized and disposed of if necessary, in accordance with paragraphs 1, 2 and 4.';

7. the following Article shall be inserted:

'*Article 5a*

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 DPRK's proliferation-sensitive nuclear activities and the development of nuclear weapon delivery systems.';

8. Article 6 shall be replaced by the following:

'1. The Council shall establish the list contained in Annex I and implement any modifications thereto on the basis of the determinations made by the Committee or the Security Council.

2. The Council, acting by unanimity on a proposal from a Member State or the Commission, shall establish the lists in Annexes II, III, IV and V and adopt modifications thereto.';

9. Article 7 shall be replaced by the following:

'*Article 7*

1. This Common Position shall be reviewed, and, if necessary, amended, notably as regards the categories of persons, entities or items or additional persons, entities or items to be covered by the restrictive measures, or taking into account relevant Security Council Resolutions.

2. The measures referred to in Article 3(1)(b) and (c) and 4(1)(b) and (c) shall be reviewed at regular intervals and at least every 12 months. They shall cease to apply in respect of the persons and entities concerned if the Council determines, in accordance with the procedure referred to in Article 6(2), that the conditions for their application are no longer met.';

10. the Annex shall be replaced by the text set out in Annex to this Common Position.

Article 2

This Common Position shall take effect on the date of its adoption.

Article 3

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Brussels, 27 July 2009.

For the Council

The President

C. BILDT

ANNEX

'*ANNEX*

Annex I

List of persons and entities referred to in Articles 3(1)(a) and 4(1)(a)

Annex II

List of persons and entities referred to in Articles 3(1)(b) and 4(1)(b)

Annex III

List of persons and entities referred to in Articles 3(1)(c)and 4(1)(c)

Annex IV

List of branches and subsidiaries referred to in Article 4a(1)(b)

Annex V

List of branches, subsidiaries and financial entities referred to in Article 4a(1)(c) and (d)'