



Brussels, 31.1.2019
C(2019) 644 final

Guidance Note

**Import and export ban of luxury goods under Council Regulation (EU) 2017/1509
(restrictive measures towards the Democratic People's Republic of Korea)**

Import and export ban of luxury goods under Council Regulation (EU) 2017/1509 (restrictive measures towards the Democratic People's Republic of Korea)

The UN Security Council first imposed restrictive measures against the Democratic People's Republic of Korea ('DPRK') in 2006. Subsequent UN Security Council Resolutions (UNSCR) and EU autonomous sanctions further strengthened the sanctions regime against the DPRK. UN-based and EU autonomous measures are contained in Council Decision (CFSP) 2016/849 of 27 May 2016 concerning restrictive measures against the DPRK and Council Regulation (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the DPRK, both as amended.

This note has been conceived as a guidance document from the Commission and sheds light on its understanding of Article 10 of the Regulation, i.e. on the application of the export and import ban on luxury goods, for the purpose of uniform implementation by national authorities and parties concerned¹. This guidance note aims to answer certain questions that have been brought to the Commission's attention. Should further questions arise, the Commission may revise or extend this guidance document.

Import and export ban on luxury goods

UNSCR 1718 (2006) as a legal basis for the export ban on luxury goods

Paragraph 8 (a) (iii) of UNSCR 1718 (2006) obligates all Member States to prevent the direct or indirect supply, sale or transfer to the DPRK through their territories or by their nationals, or using their flag vessels or aircraft, and whether or not originating in their territories, of luxury goods.

Paragraph 23 of UNSCR 2094 (2013), paragraph 39 of UNSCR 2270 (2016) and paragraph 5 of UNSCR 2321 (2016) reaffirmed the measures imposed in paragraph 8 (a) (iii) of resolution 1718 (2006), and clarified that the term luxury goods **includes, but is not limited to items specified** in their relevant annexes.

The [Implementation Assistance Notice No. 3](#) issued by the Security Council Committee established pursuant to resolution 1718 (2006) acknowledges the responsibility of Member States (in the case of the EU, the Union) to set forth their own national ['EU'] definition of **additional luxury goods**, while encouraging Member States to take into account certain principles and factors concerning the application of controls on luxury goods.

Regulation (EU) 2017/1509 as a legal basis for the export ban under UNSCR 1718 (2006) and for an EU autonomous import ban

¹ This note does not aspire to cover all provisions in an exhaustive manner, nor does it create any new legislative rules. The Commission oversees the application of Union law under the control of the Court of Justice of the European Union. Pursuant to the Treaties, only the Court of Justice of the European Union can provide legally binding interpretations of acts of the institutions of the Union.

Point a of Article 10(1) of Regulation (EU) 2017/1509 contains the export ban as stipulated in paragraph 8 (a) (iii) of UNSCR 1718 (2006), while point b of Article 10(1) contains an import ban as an additional EU autonomous measure:

"Article 10

1. It shall be prohibited:

(a) to sell, supply, transfer or export, directly or indirectly, luxury goods as listed in Annex VIII, to the DPRK;

(b) to import, purchase or transfer from the DPRK, directly or indirectly, luxury goods, as listed in Annex VIII, whether or not originating in the DPRK.

2. The prohibition referred to in point (b) of paragraph 1 shall not apply to travellers' personal effects or to goods of a non-commercial nature for travellers' personal use contained in their luggage.

3. The prohibitions referred to in paragraph 1 shall not apply to goods which are necessary for the official purposes of diplomatic or consular missions of Member States in the DPRK or of international organisations enjoying immunities in accordance with international law, or to the personal effects of their staff.

4. The competent authorities of the Member States may authorise, under the conditions they deem appropriate, a transaction with regard to goods referred to in point (17) of Annex VIII, provided that the goods are for humanitarian purposes."

Annex VIII to Regulation (EU) 2017/1509 contains the list of luxury goods subject to this import and export ban, comprising 22 different categories of goods, for a total of over 300 items, including all applicable nomenclature codes.

This list was last reviewed in November 2017, resulting in the adoption of Council Regulation (EU) 2017/2062 of 13 November 2017 amending Regulation (EU) 2017/1509. As a consequence, several subjective qualifiers ("high-quality" etc.) were replaced by nominal values (value threshold) and for some categories the value threshold was deleted, resulting in a full ban. The UN Panel of Experts in its [report S/2018/171](#) dated 5 March 2018 acknowledged that this amendment strengthened the implementation of restrictive measures against the DPRK.

Guidance on the implementation of Annex VIII of Council Regulation (EU) 2017/1509

Implementing the concept of 'luxury goods' within the EU legislation requires the creation of more specific categories such as cigars, caviar and leather products. The categories reflect the luxury character of the products concerned. Where necessary, a value threshold is included in the definition of the category to exclude goods that fall into the category but do not have per se the character of luxury. This value threshold applies to both new and used items. Nomenclature codes are listed for each category. The scope of some of the codes falls outside their category. In such cases, "ex" is mentioned in front of the code. On the contrary, if the

scope of a code is fully covered by its category, no "ex" is mentioned. In the latter case, all goods declared under the given code are subject to the ban.

For example, under the category "(8) *Coats of a value exceeding EUR 75 each, or other garments, clothing accessories and shoes (regardless of their material) of a value exceeding EUR 20 each*":

- *"ex 4203 00 00 Articles of apparel and clothing accessories, of leather or of composition leather"*

means that all items that fall under code 4203 00 00 are covered by the ban, insofar as they correspond to the description of the category (i.e. *Coats of a value exceeding EUR 75 each, or other garments, clothing accessories and shoes (regardless of their material) of a value exceeding EUR 20 each*).

- *"6112 20 00 Ski suits"*

means that all goods under the code are covered (i.e. they fall within the description of the category).

The nomenclature codes are taken from the Combined Nomenclature as defined in Article 1(2) of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff and as set out in Annex I thereto, which are valid at the time of publication of the Regulation and mutatis mutandis as amended by subsequent legislation.

Inspections of cargo, including personal luggage and checked baggage

Article 38 of Regulation (EU) 2017/1509 lays down the conditions for the inspections of cargo, including personal luggage and checked baggage, to ensure that it does not contain items prohibited by UNSCR 1718 (2006) and all subsequent relevant resolutions as well as Regulation (EU) 2017/1509 itself:

"Article 38

1. Cargo, including personal luggage and checked baggage, within or transiting through the Union, including airports, seaports and free zones, as referred to in Articles 243 to 249 of Regulation (EU) No 952/2013, shall be liable for inspection for the purposes of ensuring that it does not contain items prohibited by UNSCR 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 (2016), 2321 (2016), 2371 (2017), or by this Regulation where:

(a) the cargo originates from the DPRK;

(b) the cargo is destined for the DPRK;

(c) the cargo has been brokered or facilitated by the DPRK or its nationals or its individuals or entities acting on their behalf or at their direction, or entities owned or controlled by them;

(d) the cargo has been brokered or facilitated by persons, entities or bodies listed in Annex XIII;

(e) the cargo is being transported on a DPRK flagged vessel or aircraft registered to the DPRK, or on a stateless vessel or aircraft.

2. Where the cargo within or transiting through the Union, including airports, seaports and free zones, falls outside of the scope of paragraph 1, it shall be liable for inspection where there are reasonable grounds to believe that it may contain items the sale, supply, transfer or export of which is prohibited by this Regulation in the following circumstances:

(a) the cargo originates in the DPRK;

(b) the cargo is destined for the DPRK; or

(c) the cargo has been brokered or facilitated by the DPRK or its nationals or individuals or entities acting on their behalf.

3. Paragraphs 1 and 2 shall be without prejudice to the inviolability and protection of diplomatic and consular bags provided for in the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations.

4. The provision of bunkering or ship-supply services, or any other servicing of vessels, to DPRK 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 Article 9(1), that provides reasonable grounds to believe that the vessels carry items whose supply, sale, transfer or export is prohibited by this Regulation, unless the provision of such services is necessary for humanitarian purposes.”

As far as diplomatic and consular relations are concerned, the general principle is that all persons enjoying diplomatic or consular privileges and immunities should respect the laws and regulations of the receiving State (Article 41 of the 1961 Vienna Convention on Diplomatic Relations and Article 55 of the 1963 Vienna Convention on Consular Relations). Regulation (EU) 2017/1509, including the non-circumvention clause as stated in its Article 52, constitutes a part of the legislation of the Member States and thus should be followed by DPRK personnel enjoying diplomatic and consular privileges and immunities.

At the same time, as stated in Article 38(3) of Regulation (EU) 2017/1509, diplomatic and consular bags, which may contain only diplomatic documents or articles intended for official use, are exempt from inspection, subject to the provisions of the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations:

Article 27(3) of the 1961 Vienna Convention on Diplomatic Relations provides that the diplomatic bag shall not be opened or detained.

Article 35(3) of the 1963 Vienna Convention on Consular Relations provides that the consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than correspondence, documents or articles, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

The personal baggage of diplomatic agents, which must not be confused with the diplomatic and consular bag, does not fall under the exception of Article 38(3) of Regulation (EU) 2017/1509.

Article 36(2) of the 1961 Vienna Convention on Diplomatic Relations provides that the personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains, inter alia, articles the import or export of which is prohibited by the law of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorised representative.

The term “personal baggage”, as used in the 1961 Vienna Convention on Diplomatic Relations, comprises personal luggage, checked baggage and cargo (containers) of diplomatic agents.

Case study: Inspection of cargo, including personal luggage and checked baggage belonging to DPRK diplomats returning to the DPRK:

In the case of a diplomat returning to the DPRK, the following provisions relating to his/her cargo apply:

Article 10(1) of Regulation (EU) 2017/1509 prohibits the supply, transfer or export of luxury goods to the DPRK, regardless of its nature (commercial or non-commercial) unless for the purposes referred to in Article 10(3).

Article 38 of Regulation (EU) 2017/1509 envisages the inspection of cargo, regardless of the status of its owner (may it be a diplomat or non-diplomat) or its nature (commercial or non-commercial), to – inter alia – prevent the supply, transfer or export of prohibited items, including luxury goods, to the DPRK.

Article 52 of Regulation (EU) 2017/1509 prohibits any participation knowingly and intentionally in activities, the object or effect of which is to circumvent the prohibitions contained in the Regulation. However, Article 36(2) the 1961 Vienna Convention on Diplomatic Relations, stipulates that the personal baggage of a diplomatic agent may only be inspected under certain circumstances (“serious grounds”) and shall be conducted only in the presence of the diplomatic agent concerned or of his/her authorised representative.

An important consideration when assessing the existence of such serious grounds is that the UN Security Council referred to the fact that the DPRK is abusing the privileges and immunities accorded under the 1961 Vienna Convention on Diplomatic Relations in order to circumvent sanctions. In this context, UNSCR 2094 (2013) (paragraph 24) calls upon

Member States to exercise *enhanced vigilance* over DPRK diplomatic personnel so as to prevent such individuals from contributing to the evasion of measures imposed by the relevant resolutions.