

**Security Council Committee established
pursuant to resolution 1718 (2006)**

Updated on 28 June 2017

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**Implementation Assistance Notice No. 4: Implementation of paragraphs 8 and 27 of
resolution 2270 (2016)**

The Security Council Committee established pursuant to resolution 1718 (2006) believes that the following information may be useful to Member States in implementing their obligations pursuant to resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) and 2270 (2016).

The Committee notes that in light of resolution 2270 (2016), there are two “catch-all” provisions – paragraph 8 (concerning conventional arms and related material) and paragraph 27 (concerning nuclear, ballistic missile, and other weapons of mass destruction programs, as well as activities prohibited by the relevant resolutions, and to the evasion of measures imposed by them). The Committee further notes that paragraph 27 of resolution 2270 (2016) supersedes paragraph 22 of resolution 2094 (2013).

In paragraph 8 of resolution 2270 (2016), the Security Council:

“*Decides* that the measures imposed in paragraphs 8 (a) and 8 (b) of resolution 1718 (2006) shall also apply to **any item**, except food or medicine, if the State determines that such item 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 Member State outside the DPRK, and *decides* also that this provision shall cease to apply to the supply, sale or transfer of an item, or its procurement, if:

- a) the State determines that such activity is exclusively for humanitarian purposes or exclusively for livelihood purposes which will not be used by DPRK individuals or entities to generate revenue, and also not related to any activity prohibited by resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or this resolution, provided that the State notifies in advance of such determination and also informs the Committee of measures taken to prevent the diversion of the item for such other purposes, or
- b) the Committee has determined on a case-by-case basis that a particular supply, sale or transfer would not be contrary to the objectives of resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or this resolution;”

The Committee also notes that paragraph 27 of Security Council resolution 2270 (2016) supersedes paragraph 22 of Security Council resolution 2094 (2013), and the Security Council:

“*Decides* that the measures imposed in paragraph 8 (a) and 8 (b) of resolution 1718 (2006) shall also apply to **any item** if the State determines that such item could contribute to the DPRK’s nuclear or ballistic missile programmes or other weapons of mass destruction programs, activities prohibited by resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094

(2013) or this resolution, or to the evasion of measures imposed by resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) and this resolution;”

The Committee reiterates that the sanctions are not intended to affect economic activities unrelated to the DPRK’s illicit programs or activities, the supply, sale or transfer of all items unrelated to the DPRK’s illicit programs or activities, the normal, non-prohibited exchanges of other countries with the DPRK, including any activities of diplomatic missions in accordance with the Vienna Convention on Diplomatic Relations, and activities of UN and humanitarian agencies in the DPRK in accordance with their mandate, or to impose a negative humanitarian impact on the DPRK or any country.

To improve implementation of paragraphs 8 and 27 of resolution 2270 (2016), consistent with the above-mentioned principles, the Committee makes the following observations:

1. It is the responsibility of the State to make its own determination, in accordance with its national administrative and legal processes, whether an item falls under the scope of paragraphs 8 or 27 of resolution 2270 (2016).
2. To make this determination, the State should assess prudently the totality of the circumstances, based on all accurate and available comprehensive information, through conducting its own adequate research and appropriate diligence with respect to shipments, and consulting with relevant States as appropriate.
3. Keeping in mind the objectives set forth in the relevant resolutions, States may wish to consider the following technical factors in making this determination:
 - a) There may be supplies, sales, or transfers of items with technical specifications just below those provided in current lists of prohibited ballistic missile-, nuclear-, and other weapons or chemical- and biological- weapons-related items. These lists may be found at: <https://www.un.org/sc/suborg/en/sanctions/1718/prohibited-items>. As some of these items may be dual-use (i.e., have both civilian and military functions) and the supplies, sales, or transfers of dual-use items could be diverted to or converted to 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, or to the DPRK’s nuclear or ballistic missile programmes or other weapons of mass destruction programs, activities prohibited by resolutions 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013) or 2270 (2016), or to the evasion of measures imposed by those resolutions, States are encouraged to take into account the specific circumstances of each case to endeavor to minimize the diversion or conversion risk, such as relationship to the DPRK’s known procurement priorities or to their entities involved in prohibited activities, and carefully determine the nature of such items and their likely actual end-use and end-user on a case by case basis. As an established exercise, proper end-use/end-user arrangements should be taken into account to address concerns.
 - b) Individuals and entities known to have participated in prohibited programmes or activities are frequently involved in the supply, sale or transfer of items that could contribute to such programs or activities, or to the evasion of measures, and may be the originator, intended recipient or facilitator. The use of front companies, which are often

established for the sole purpose of facilitating illicit activity and have little or no legitimate purpose or physical presence, is common for transfers of prohibited items and facilitation of related payments. In this regard, the Committee emphasizes that information on all of the parties to a transaction, including any relationships they may have to such individuals and entities, should be carefully studied and encourages States to share and verify relevant information, especially in light of previously verified attempts to obscure or conceal the true originator, recipient, or facilitator.

- c) Deceptive labelling or documentation, as well as attempts to conceal the origin, destination, or ultimate end-use or end-user of items, have all been associated with the supply, sale, or transfer of items that could contribute to prohibited programmes or activities or to the evasion of measures. In previous violations, illicit cargo has been concealed in vessels.
4. The previous work of the Committee and its Panel of Experts (POE) may be a source of additional useful information to help States determine whether an item's supply, sale, or transfer should be prevented. Documentation from the Committee and Panel often includes information regarding risk factors, patterns of sanctions evasion, and procurement priorities that may assist States in their analysis. States should be aware that in its publications the Panel provides the Committee with its personal technical analysis, which may not be shared by all Committee members.
5. In many circumstances, taking appropriate action to prevent the supply, sale, or transfer of items that could contribute to prohibited programmes or activities, or to evasion of measures, may involve dealing with complex legal, commercial, or contractual arrangements. In these situations, all Member States are obligated to take action prudently based on all available information that is accurate and comprehensive and fully implement paragraphs 8 or 27 of resolution 2270 (2016).
6. There may be cases in which a Member State may determine that a seized item does not fall within the scope of paragraphs 8 or 27 of resolution 2270 (2016). In these situations, the Member State is encouraged to consult with relevant States for an appropriate solution in the spirit of avoiding any diplomatic, legal or commercial disputes.

The Committee notes the sensitivities and complexities of the implementation of this provision. This provision should be implemented and interpreted in a consistent and non-arbitrary way and within the scope of relevant resolutions. The Committee stands ready to answer any further inquiries for Member States regarding proper implementation of paragraphs 8 or 27 of resolution 2270 (2016).

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