

North Korea: EUROPEAN UNION AND UNITED KINGDOM SANCTIONS

by The Swedish Club and Reed Smith LLP
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Overview

The EU and UK have adopted similar sanctions regimes with regard to North Korea.

The relevant EU regulation is Council Regulation (EU) 2017/1509. The UK regulations relating to North Korea are the Democratic People's Republic of Korea (Sanctions) (EU Exit) Regulations 2019, which was introduced following the UK's exit from the EU and largely replicates the terms of Council Regulation (EU) 2017/1509.

Who do the EU and UK Sanctions apply to?

The scope of the EU and UK sanctions regimes are very similar in how they apply in their respective jurisdictions. Specifically, both apply:

- (a) within the territory of the EU / UK respectively, including their airspace;
- (b) on board any aircraft or any vessel under the jurisdiction of an EU Member State / the UK;
- (c) to any person inside or outside the territory of the EU / UK, who is a national of an EU Member State / the UK;
- (d) to any legal person, entity or body which is incorporated or constituted under the law of an EU Member State / the UK; and
- (e) to any legal person, entity or body in respect of any business done in whole or in part within the EU / UK.

This will include Owners, Managers, Operators, Charterers and even vessels which are registered, incorporated, constituted or do business in whole or in part within the EU / UK.

The sanctions do not apply to non-EU / non-UK companies. However, if those companies take any action that is in breach of sanctions, associated EU / UK companies and employees who are EU / UK citizens may face penalties under the EU and UK regimes.

In addition, non-EU / non-UK companies may face sanctions in respect of any business they conduct that is done in whole or in part within the EU / UK. The sanctions would be limited to that particular business, and would not extend to exclusively non-EU / non-UK business carried out by those companies.

Prohibitions: Overview

EU and UK prohibitions of most significance to the shipping sector relating to North Korea are:

a. Asset Freezes

Under the EU and UK sanctions regimes, all funds and economic resources belonging to, owned, held or controlled by listed parties are to be frozen. In addition, no funds or economic resources may be made available, directly or indirectly, to or for the benefit of listed parties. The prohibition on making available

funds and economic resources goes beyond prohibiting direct payments to listed parties. Indirect payments, such as payments to a non-listed party who then in turn pays the money to a listed party, are prohibited.

Under EU and UK regulations, narrow exceptions apply (e.g., where the funds are required for a diplomatic or consular mission in the DPRK or for transactions related to humanitarian assistance). In the EU, this requires authorization from the competent Member State (that in turn, needs to obtain approval from the EU Sanctions Committee) and in the case of the UK, a HM Treasury licence is required instead.

b. Financial Measures / Investments

The EU and UK financial restrictions effectively prohibit transacting with any entity based in the DPRK. The restrictions include (but are not limited to):

- Prohibitions on transferring funds to or from the DPRK. It is not permissible to provide public or private financial support for trade with the DPRK, to DPRK nationals, or entities involved in such trade.
- Investment in the territories of the Member States/UK by the DPRK, its nationals, or entities incorporated in the DPRK.

Under, EU and UK regulations narrow exceptions apply as above. Authorisation is required by the competent Member State in the EU or in the case of the UK, a HM Treasury licence must be obtained.

c. Export and Import Restrictions

The restrictions imposed on trade with North Korea are comprehensive. These include (but are not limited to):

Metals / Minerals

It is prohibited to:

- import, purchase or transfer coal, iron, and iron ore from the DPRK;
- import, purchase or transfer lead and lead ore from the DPRK;
- import, purchase or transfer copper, nickel, silver and zinc from the DPRK;
- import, purchase or transfer earth and stone, including magnesite and magnesia from the DPRK.
- export, import, purchase or transfer gold and precious metals, as well as of diamonds, to, from or for the Government of the DPRK, its public bodies, corporations and agencies or the Central Bank of the DPRK. The import, purchase or transfer from the DPRK of gold, titanium ore, vanadium ore, rare-earth minerals, copper, nickel, silver and zinc is also prohibited;
- supply, transfer or export all industrial machinery, transportation vehicles, and iron, steel and other metals to the DPRK.

Liquid Cargoes / Petroleum Products

It is prohibited to:

- sell, supply, transfer or export to the DPRK all condensates and natural gas liquids;

- sell, supply, transfer or export aviation fuel to the DPRK;
- sell, supply, transfer or export crude oil to the DPRK;
- import, purchase or transfer petroleum products from the DPRK;
- sell, supply, transfer or export all refined petroleum products to the DPRK.

Other goods

It is prohibited to:

- import, purchase or transfer food and agricultural products from the DPRK;
- sell, supply, transfer or export helicopters and vessels to the DPRK;
- import or export, sell, supply, purchase or transfer luxury goods to or from the DPRK;
- import, purchase or transfer machinery and electrical equipment from the DPRK;
- import, purchase or transfer textiles from the DPRK;
- import, purchase or transfer wood from the DPRK.

Dual-Use Goods

It is prohibited to export, sell or transfer to DPRK:

- items, materials and equipment relating to dual-use goods and technology; and
- any other item listed in the conventional arms dual-use list adopted by the UN Sanctions Committee pursuant to paragraph 7 of UNSCR 2321 (2016). Related assistance, technical training, advice and services are also prohibited.

d. Ports and Vessels

There are further restrictions on DPRK Ports and Vessels. Outlined below are those key restrictions applicable to EU/UK persons (including individuals and companies) operating in the Shipping sector. In particular, it is prohibited, without authorisation:

- to provide access to ports to any vessel owned, operated or crewed by the DPRK or flagged to the DPRK;
- for a vessel to use the DPRK flag, to own, lease, operate, or provide any vessel classification, certification or associated service, or to insure any vessel flagged to the DPRK, including chartering such vessels;
- to register vessels in the DPRK. It is prohibited to apply for or to assist in the registration or maintenance on the register of any vessel owned, controlled or operated by the DPRK or DPRK nationals, any vessels listed by the EU/UK or that has been deregistered by another State;
- to provide any servicing to DPRK vessels, if there is information available that the vessels carry prohibited items. Vessels listed by the EU/UK shall be seized;

- to facilitate or engage in bunkering or ship-to-ship transfers to or from any DPRK flagged vessel of any prohibited goods that are being sold, supplied, transferred or exported to or from the DPRK.

e. Restrictions on Services

The following restrictions on services are also relevant to those operating in the shipping sector. In particular, it is prohibited to:

- provide services incidental to mining and to manufacturing in the chemical, mining and refining industry to a person connected with the DPRK or for activities that take place in the DPRK;
- lease or charter vessels and aircrafts and to provide crew services to (1) the DPRK, (2) any persons listed by the EU/UK or entities acting on behalf of or owned or controlled by such listed persons, or (3) any other DPRK entities. Under EU regulations it is also prohibited to provide such services to any other persons or entities whom the Member State determines to have assisted in the evasion of sanctions;
- procure vessel or aircraft crew services from the DPRK.

Exceptions

Under EU and UK regulations, there are narrow exceptions to some of the restrictions listed above, for example, where the relevant goods are required for humanitarian purposes or in relation to assisting vessels in an emergency. In the EU, this requires authorisation by the competent authorities of the relevant Member States (and in some cases from the EU Sanctions Committee as well) followed by notification to the Commission. In the UK, a licence from the Secretary of State is required instead.

Due diligence as a defence to liability

The EU and UK sanctions regulations implementing these prohibitions include a defence to liability where the person or entity concerned “*did not know, and had no reasonable cause to suspect*”, that their actions would infringe the relevant prohibitions.

Conducting thorough investigations into any particular trade or transaction involving sanctioned jurisdictions is, therefore, critical; well-documented investigations and screenings may serve as a defence to unintentional sanctions violations.

Anti-circumvention

The EU and UK sanctions regulations contain anti-circumvention wording that provides that it “*shall be prohibited to participate, knowingly and intentionally, including indirectly, in activities the object or effect of which is to circumvent the prohibitions...*”. Therefore, even if a transaction is not in direct breach of sanctions, if it intended to circumvent sanctions, a violation and liability may still arise.

Avoiding a breach – effective due diligence

Due to the scope of the restrictions detailed above, any trade involving DPRK is likely to involve serious sanctions risk and will only be permitted in exceptionally narrow circumstances.

In these circumstances, we advise Members to carry out effective due diligence to identify any DPRK involvement in their trade and take legal advice if identified.

In particular, in order to minimise the risk of falling foul of the cargo prohibitions, the following questions should be asked:

- What is the cargo? It should be identified as precisely as possible.
- What is the origin of the cargo?
- What is the location of the cargo? This may be different to the cargo's origin.
- What is the destination of the cargo? This should include the cargo's final destination and any intermediate destinations.
- Who will be the ultimate receiver of the cargo? Will the cargo pass through the custody of any intermediaries before reaching the ultimate receiver and if so, who are they?
- What will the cargo be used for?

Additionally, Members should be particularly aware of inadvertently undertaking ship-to-ship ("STS") transfers of DPRK origin or destination goods, which are prohibited. Where STS activities are contemplated (particularly off the Chinese, Korean, and Japanese coasts) then the following steps should be taken:

- Those outlined at above;
- Review of a vessel's AIS history for anomalies and/or periods of "dark activity";
- Verification of a vessel's names, IMO number and flag;
- Verification of a vessel's at least three most recent STS partners and/or ports of call;
- Verify if there is a history of "flag hopping" or frequent changes in name; and
- Review whether the vessel has been identified in any advisory (including U.S. or UN) indicating it has a history of STS operations linked to DPRK.

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