

NORTH KOREA SANCTIONS UPDATE



Amid continuing frustration at the activities of North Korea, including allegations of a link between North Korea and cyber attacks against banks in Bangladesh and elsewhere which resulted in the theft of more than \$80 million, the EU and US have now imposed still further sanctions against North Korea.

European Union

On 20 and 28 May 2016, the European Union imposed two further rounds of sanctions against North Korea. The new sanctions bolster the wide-ranging restrictions adopted at the beginning of May (see our earlier briefing¹) which included measures in respect of North Korea's shipping sector, an expanded arms embargo, additional asset freeze designations and prohibitions relating to the insurance and financial sectors.

The newly imposed EU measures include:

- The addition of one entity and 18 individuals to the list of asset freeze targets.
- A new ban on the purchase and transportation from North Korea of petroleum products (as listed in an Annex to the Regulation) whether or not originating in North Korea.

- An expansion of the existing ban on the supply and transfer of luxury goods to North Korea which now also prohibits the purchase and transfer of luxury goods from North Korea, whether or not originating in North Korea. This prohibition will not apply to travellers' personal effects or goods of non-commercial nature for travellers' personal use contained in their luggage.
- The prohibition on vessels entering EU ports has been extended to include any vessel owned, operated or crewed by North Korea. The earlier ban (which remains in place) related to:
 1. Vessels known or believed to be owned or controlled by a designated person or entity.
 2. North Korean flagged vessels.
 3. Vessels in respect of which there are reasonable grounds to believe that there is prohibited cargo on board or the vessel has refused to be inspected.



The prohibition does not apply in any case if the vessel is returning to its port of origin, in case of an emergency or inspection, or for humanitarian reasons.

- The prohibition relating to aircraft has been significantly expanded – it is now prohibited for any aircraft operated by North Korean carriers or originating from North Korea to take off from, land in or overfly the territory of the EU. This is also subject to a number of exceptions, for example in case of emergency landing.
- New prohibitions on certain investments in and by North Korea, including a ban on investing in North Korea's mining, refining and chemical industries.
- New restrictions in respect of all financial transfers to and from North Korea (see below).

All financial transfers to and from North Korea above €15,000 or equivalent will require a prior authorisation by the competent national authorities. An authorisation will only be granted if the transfer falls under one of the specific categories, these include transactions regarding foodstuffs, healthcare or medical equipment, transactions in connection with a specific trade contract not prohibited by North Korea sanctions and payments to satisfy claims against North Korea, its nationals, legal persons, entities or bodies.

Financial transfers equal to or below €15,000 do not require special authorisation but can only be performed if they also fall within one of the above-mentioned categories. In addition, EU banks are required to exercise enhanced due diligence in respect of North Korea transfers.

United States

On 1 June 2016, the US Department of the Treasury designated North Korea as a jurisdiction of “primary money laundering concern” under Section 311 of the US Patriot Act². Based on this designation, Financial Crimes Enforcement Network of the US Department of the Treasury published a proposal which, once enacted, will prevent any processing through the US financial system of transactions involving North Korean financial institutions.

In practice, however, this measure should not have much practical effect as US financial institutions are already prohibited from processing any payments, including through correspondent accounts of foreign financial institutions, involving persons located in North Korea and North Korean government, unless authorised by OFAC.



The series of measures imposed against North Korea by the UN and others over the past few months are significant for three main reasons: the breadth of the restrictions (unprecedented at UN level), the fact that the UN was able to agree such a wide-ranging package of measures, and the positive involvement of China.

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Significance of the new restrictions

The series of measures imposed against North Korea by the UN and others over the past few months are significant for three main reasons.

The first reason is the breadth of the restrictions, unprecedented at UN level. This may indicate that future UN sanctions against other sanctioned countries could be equally broad. This is important because the UN sanctions set the base line for national sanctions, and more onerous restrictions at the UN level could potentially mean a more level playing field at the international level.

The second is the fact that the UN was able to agree such a wide-ranging package of measures. This may indicate that other countries are coming round to the view, long held by the likes of the EU and the US, that sanctions are effective.

The third is the positive involvement of China. China is by far North Korea's largest trading partner (representing almost 95% of exports to North Korea's top five trading partners and almost 92% of imports by North Korea's top five trading partners in 2014), such that China's support for any sanctions against North Korea is critical to their effectiveness.

1 <http://www.hfw.com/European-Union-sanctions-against-North-Korea-update-May-2016>

2 The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.



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