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**Research Report**

## Moving beyond targeted sanctions: The sanctions regime of the European Union against North Korea

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SWP Research Paper

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*Eric J. Ballbach*

# Moving Beyond Targeted Sanctions

The Sanctions Regime of the European Union  
against North Korea



Stiftung Wissenschaft und Politik  
German Institute for  
International and Security Affairs

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- As diplomatic initiatives have thus far failed to achieve the objective of a complete, verifiable, and irreversible denuclearization of the Democratic People's Republic of Korea (DPRK), and given that a military solution is generally considered to be unfeasible, sanctions have become the central instrument of the international community in dealing with the threat from North Korea.
- While inherently linked to and built upon the respective resolutions of the UN Security Council, the EU's sanctions regime against North Korea succeeds the former in terms of quantity and quality, constituting the most comprehensive sanctions regime of the EU currently in operation.
- Since its inception in 2006, the EU's sanctions regime against the DPRK developed in several episodes, which are built upon different logics and objectives: coercion, constraining, signaling.
- The political explanation for the EU's decision to adopt autonomous sanctions results from a set of interrelated factors, most notably the general support for sanctions as an adequate tool for EU member states to use against North Korea, the influence of powerful member states, namely Germany, France, and (before Brexit) the UK, pushing for the imposition of autonomous EU measures, the lack of diplomatic engagement and economic interest, as well as third party pressure.
- While sanctions will remain an important aspect of the EU's North Korea strategy in the foreseeable future, it is in Brussels' interest to supplement its sanctions-based strategy with more proactive initiatives vis-à-vis North Korea, as the current approach has distinct negative strategic implications for the EU.

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### **Moving Beyond Targeted Sanctions: The Sanctions Regime of the European Union against North Korea**

The pursuit of nuclear weapons by the Democratic People's Republic of Korea (DPRK or North Korea) and its ever expanding ballistic missile program are among the most pressing challenges facing international politics. Pointing to existential threats posed by United States (US) military bases in the region, joint military drills between the US and its allies, and Washington's alleged "hostile policies" toward Pyongyang, North Korea's leadership considers nuclear weapons as the sole means to guarantee its survival. However, this endeavor is associated with multiple risks of nuclear proliferation, poses immediate legitimacy problems for corresponding international regulatory structures such as the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), and heightens the risk of a regional arms race, and ultimately even a direct military conflict in Northeast Asia.

Against this background, several bilateral and multilateral diplomatic initiatives to dissuade North Korea from its path toward becoming a nuclear power have been initiated since the country's nuclear program first became a matter for international politics in the late 1980s and early 1990s. In 2006, the country conducted its first nuclear weapons test, followed by five additional tests in 2009, 2013, two in 2016, and in 2017. Moreover, since Kim Jong Un's accession to power in 2011, North Korea has massively expanded its missile program and conducted well over 100 missile tests since then.

Although the European Union (EU) is not a military power in the region and its diplomatic clout there on security issues is limited, its interests are nevertheless directly at stake: to support a lasting reduction of tensions on the Korean Peninsula and in the region through a complete, verifiable, and irreversible denuclearization of North Korea, to uphold the international non-proliferation regime, and to support an improvement of the human rights situation in the DPRK. These are the central objectives of the Critical Engagement strategy, initiated by the EU roughly 25 years ago. Although cooperation and engagement have long been central elements of its policy toolkit, the EU has more recently increasingly focused on the



“critical” component of its policy toward North Korea. Front and center of this approach is the comprehensive support for sanctions. Initiated in the aftermath of North Korea’s first nuclear test in 2006, the EU’s sanctions regime is linked to, and builds upon, that of the United Nations Security Council (UNSC). However, Brussels has not merely transposed mandatory UN sanctions, but repeatedly adopted additional autonomous measures. Successively increasing its financial, sectoral, commodity, diplomatic, and individual sanctions, the EU’s sanctions regime against North Korea succeeds that of the UNSC both in terms of quantity and quality, constituting the EU’s most comprehensive sanctions regime currently in operation. This raises a number of crucial questions:

- Which role do sanctions play in the context of the EU’s broader strategy on North Korea?
- How did the EU’s sanctions regime against the DPRK develop, and which qualitative changes can be identified over time?
- On which logic(s) is this sanctions regime based, and (how) did the logic(s) change over time?
- What are the reasons and political factors explaining the EU’s adoption of autonomous sanctions?
- Which additional measures and initiatives should complement the EU’s sanctions regime against North Korea?

The analysis of the EU’s sanctions regime against North Korea in the context of Brussels’ Critical Engagement strategy exposes both the different logics on which the sanctions regime is built and the underlying political factors.

Firstly, individual sanctions episodes are linked to specific dominant logics and objectives. Coercive sanctions intend to inflict damage and alter Pyongyang’s cost-benefit calculations. They are designed with the intent to compel a change in North Korea’s behavior according to the demands of the international community, that is, to stop the development of its nuclear weapons and ballistic missile programs and commit to a complete, verifiable, and irreversible denuclearization. As it became less likely that sanctions would coerce North Korea into changing its behavior, the primary purpose of EU sanctions now was to prevent Pyongyang from pursuing its course of action and to slow down the country’s accelerating activities. To this end, both EU and UN sanctions began the shift toward a more comprehensive logic seeking to undermine the functional operation of the North Korean state. At the same time, however, autonomous EU sanctions were also used to stigma-

tize North Korea by sending a normative message to the target and the larger international community. Signaling thus also remained an important aspect of the EU’s autonomous sanctions. Particularly as the perceived threats to the global non-proliferation system (as a core interest of the EU) increased sharply as a result of North Korea’s increased testing activities, Brussels adopted autonomous punitive measures that were designed to signal its determination to protect the international non-proliferation system, and — especially via its UNSC member states France and (until 2020) the United Kingdom (UK) — to signal its resolve to go beyond the sanctions decisions of the UNSC, which were repeatedly hampered by opposition from China and Russia.

Secondly, the EU’s decision to repeatedly adopt autonomous sanctions against North Korea is a result of the interplay between a set of factors that are crucial in understanding the politics behind the EU’s emphasis on sanctions in dealing with North Korea, most notably the general support for sanctions among EU member states (EUMS), the influence of the E3 (Germany, France, the UK) for the imposition of autonomous EU measures, the lack of diplomatic engagement, and economic interest as well as third party pressure.

As it is unlikely that sanctions alone will solve the manifold challenges linked to North Korea’s nuclear and ballistic missile programs, and given that the EU’s current approach has also had negative strategic consequences, the EU should complement its sanctions-based strategy against North Korea with targeted diplomatic initiatives. The EU and individual member states should particularly focus on opening new and/or re-establishing dormant channels of communication with North Korea and assist with bringing the primary conflict parties together. By resuming the political dialogue unilaterally halted by the EU in 2015 and organizing informal discussion forums both on an official and unofficial level — all with a goal of improving understanding among the involved parties — Brussels would maximize its space for diplomatic maneuvering without compromising its sanctions objectives. Doing so, however, requires that the EU and its member states give the nuclear conflict the high priority it deserves, formulate an independent policy based on Europe’s interests, and clearly articulate and pursue this policy to the relevant actors.

# Understanding “Sanctions”

As there is no commonly agreed upon definition of the term “sanctions” under international law, it comes as no surprise that scholars operate with different understandings of the concept. For instance, Hufbauer et al. refer to sanctions as the “deliberate, government inspired withdrawal, or threat of withdrawal, of customary trade or financial relations.”<sup>1</sup> However, in addition to the disruption of economic relations, sanctions may also involve a variety of non-economic measures.<sup>2</sup> The present study therefore conceives of sanctions as “measures imposed by an individual or collective sender that interrupt normal relations or benefits that would otherwise be granted in response to perceived misconduct by the target.”<sup>3</sup> This rather broad definition includes economic, financial as well as diplomatic sanctions.<sup>4</sup>

## Sanctions vary in their degree of discrimination.

A crucial aspect in defining sanctions furthermore refers to their degree of discrimination and the question of targeted vs. comprehensive sanctions and full embargos. The idea of targeted sanctions emerged in response to the adverse experiences with comprehensive trade embargoes in the mid-nineties, especially following the humanitarian catastrophe in Iraq

triggered by the UN embargo. In response to the “legitimacy crisis of sanctions,”<sup>5</sup> the five permanent members of the UNSC announced that “any future sanctions regime should be directed to minimize unintended adverse side-effects of sanctions on the most vulnerable segments of targeted countries.”<sup>6</sup> What distinguishes targeted from comprehensive sanctions is thus their discriminatory nature, that is, “their ability to affect specifically those responsible for objectionable actions.”<sup>7</sup> Biersteker et al. distinguish five main types of targeted sanctions:<sup>8</sup>

- 1) financial sanctions, such as investment bans or the freezing of Central Bank assets;
- 2) sectoral sanctions, such as aviation bans or arms embargoes;
- 3) commodity sanctions covering oil, diamonds, charcoal, or luxury goods;
- 4) diplomatic sanctions, such as limitation of diplomatic staff;
- 5) individual sanctions, consisting mostly of travel bans and freezing assets.

Based on this classification, Figure 1 (p. 8) categorizes targeted sanctions according to their different degree of discrimination.

## Sanctions regimes and sanctions episodes

Instead of conceptualizing the EU’s sanctions regime against North Korea as a single unit of analysis, the study distinguishes a number of distinct sanctions episodes that constitute the core units of analysis. Conventionally, sanctions regimes have been understood and studied on the basis of sanctions cases or

1 Gary Clyde Hufbauer et al., *Economic Sanctions Reconsidered*, 3 ed. (Washington, D.C., 2007), 3.

2 Clara Portela, *Targeted Sanctions against Individuals on Grounds of Grave Human Rights Violations – Impact, Trends and Prospects at EU Level*, Briefing Paper (European Parliament, Policy Department, Directorate-General for External Policies, 2018), 7, [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603869/EXPO\\_STU\(2018\)603869\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/603869/EXPO_STU(2018)603869_EN.pdf).

3 Clara Portela, *European Union Sanctions and Foreign Policy – When and Why Do They Work?* (London and New York, NY, 2010).

4 Ibid.; Thomas J. Biersteker, Sue E. Eckert, and Marcos Tourinho, eds., *Targeted Sanctions – The Impacts and Effectiveness of United Nations Action* (Cambridge, 2016); Margaret Doxey, “Reflections on the Sanctions Decade and Beyond”, *International Journal* 64, no. 2 (2009): 539–49.

5 Portela, *Targeted Sanctions* (see note 2), 8.

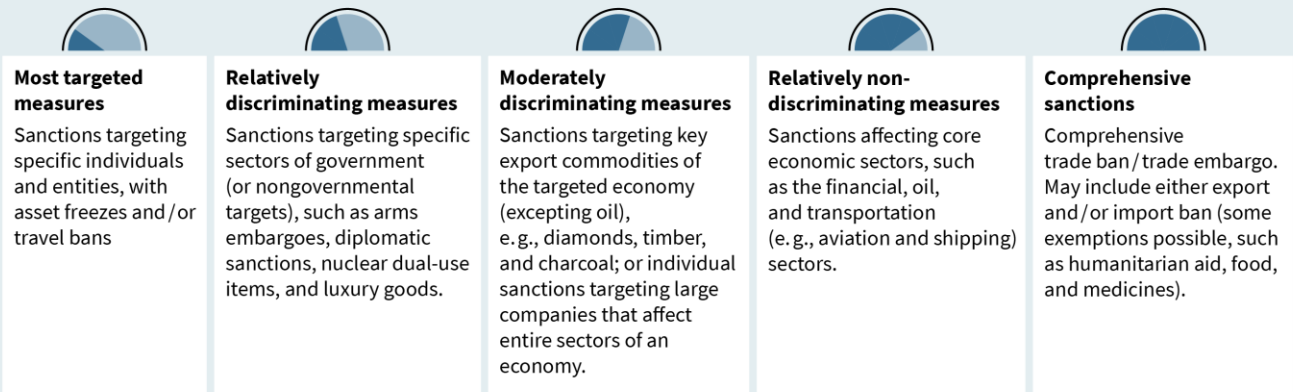
6 United Nations Security Council, *Letter to the President of the Security Council from the Permanent Representatives of China, France, the Russian Federation, the United States and the United Kingdom to the United Nations*, S/1995/300 (New York, NY, 13 April 1995).

7 Portela, *Targeted Sanctions* (see note 2), 8.

8 Biersteker, Eckert, and Tourinho, *Targeted Sanctions* (see note 4), 26.

Figure 1

Discrimination scale of sanctions



Source: Biersteker, Eckert and Tourinho, eds., *Targeted Sanctions* (2016; adapted)  
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Source: Author, adapter from Thomas J. Biersteker, Sue E. Eckert, and Marcos Tourinho, eds., *Targeted Sanctions – The Impacts and Effectiveness of United Nations Action* (Cambridge, 2016).

sanctions periods, commonly referring to the time frame when sanctions were first imposed until the sender’s removal of sanctions (either altogether or of particular sanctions measures).<sup>9</sup> Although demarcating sanctions in such a broad way might be useful both for quantitative and epistemological purposes, a case approach to sanctions is problematic if one aims to account for the changes that took place during the individual episodes in a more detailed way. A sanctions episode can be understood as

“a specific period within a sanctions case, which is defined as the basis of a sender’s decision to change, extend or update a policy position based on a judgement of the impact and the efficiency of its policy in achieving a behavioral change. A number of sanctions episodes form part of a sanctions regime (or a sanctions case).”<sup>10</sup>

Sanctions episode 1 thus begins with the initial point of entry into the respective sanctions regime, i.e. the time when an actor such as an individual country or the EU initiates its sanctions policy against a particu-

lar entity. A new sanctions episode then begins when the existing measures are either suspended or broadened via new sanctions decisions. This involves a constant evaluation of the level of success of the respective policy during a particular episode. These assessments — expressed among other ways in new Common Decisions and Regulations — allow for an identification of the interval and duration of each episode and also identify the changes in the perceived threat from North Korea, the demands made by the EU, the respective measures adopted as well as the logic(s) on which the respective sanctions decisions are based.

Coercion, constraining, signaling:  
The logic(s) of sanctions

As noted by Giumelli, adopting sanctions against a specific target is an “exercise of power in foreign policy.”<sup>11</sup> Consequently, sanctions are often understood solely through their coercive aspect. Yet, this leads to an incomplete picture of the logic(s) that drives the sender to implement sanctions against a target, as sanctions may not necessarily be aimed at coercion alone. Although numerous attempts have

9 The UN sanctions on Iraq, which lasted from August 1990 until May 2003, represent an example of such a sanctions period. See: Mikael Eriksson, *Targeting Peace – Understanding UN and EU Targeted Sanctions* (London and New York, NY, 2011), 46.  
10 Ibid., 47.

11 Francesco Giumelli, *Coercing, Constraining, Signalling: Explaining UN and EU Sanctions after the End of the Cold War* (Colchester, 2011), 32.

been made to formulate a typology on the different logics of sanctions, the current literature differentiates three basic logics of sanctions: (1) coercion, (2) constraining, and (3) signaling.

### **Sanctions are based on the different logics of coercion, constraining or signaling.**

By imposing coercive sanctions, “the sender intends to change the behavior of the target and sanctions attach a cost on certain acts in order to affect the target’s cost/benefits [*sic*] calculation.”<sup>12</sup> Ideally, coercive sanctions aim at increasing the cost of all but one policy option available to targets, thus creating incentives for them to embark on specific policies. Coercive sanctions thus seek a behavioral change on the part of targets, as they aim at increasing the probability of making a target behave in a way that it would not otherwise do. The characteristics of coercive sanctions are high feasibility and high impact.<sup>13</sup>

The essence of coercion is that targets are asked to do something that they can do without compromising their political survival. This also highlights the fact that targets are expected to know what to do to satisfy senders’ demands, which is not always the case if one looks at official documents linked to the imposition of sanctions. Indeed, requests can be very specific or very vague, and there might not even be any explicit demands. For instance, whereas the demand to free political prisoners or accept particular resolutions from a UN agency can be considered political actions that targets can undertake without risking the stability of the system, the request to terrorist groups to give up their political struggle is less likely to be followed by the voluntary compliance of targets. In this latter case, the change of behavior should not be confused with the impossibility for the targets to carry out their intentions, which is the essence of the logic of constraining sanctions.

Constraining sanctions seek to prevent the sanctioned state or entity from pursuing its course of

action and to thwart a target in the pursuit of its policy, through measures that range from weapons embargoes to dual-use technology prohibitions to financial measures. Constraining sanctions thus aim at undermining the capabilities of targets to achieve policy objectives. Although coercive sanctions are linked to specific demands, by adopting constraining sanctions senders usually do not make specific requests for action, but they attempt to curb the capacities of targets to embark on specific policies. Ideally, constraining sanctions impose a cost on one specific action that targets intend to undertake. Similar to coercive sanctions, constraining sanctions also must have a direct impact on the target, but they are usually linked to (what the target perceives as) unfeasible requests. Such sanctions are often adopted when the interests of targets and senders are incompatible, and thus when a zero-sum game-like context determines the resilience of targets and the determination of senders. Constraining sanctions are often used to fight groups or entities that are not willing to conform to the established norms of international society, such as targets included on a terrorist watch-list, but also to assist democratic consolidation by sanctioning individuals and groups that, in post-conflict phases, can derail constitutional institutions, as in the cases of the several lists created with regard to the former Yugoslavia. Constraining sanctions intend to make the life of targeted individuals and entities harder by materially limiting their capabilities to act.

Finally, signaling sanctions are typically designed to convey a particular message to the target. Such sanctions may, for example, be applied to convey determination to the target and to send the signal that further actions and punitive measures are possible. Signaling therefore engenders deterrence, including vis-à-vis others. As their primary objective is to send a message, signaling sanctions must not necessarily have a direct material impact. This is a more nuanced way of exercising power by including two further elements in the picture.

The first is that targets are to be influenced in ways other than imposing material damage on them, so sanctions that do not exact heavy tolls from targets can still make sense according to the respective context. The second is the existence of audiences, both domestic and international, that are of equal importance to the direct targets of sanctions. In order words, targets of signaling sanctions can be the international community, states, populations, non-state -

<sup>12</sup> Ibid., 34.

<sup>13</sup> If sanctions are feasible, then the target knows what to do and the requested behavioral change usually does not endanger the target’s existence. The feasibility of the demand(s) is constituted by two dimensions: preciseness and practicality. The two dimensions for direct material impact are constituted by the cost of sanctions and the dependence on the resource denied to targets. See: Giumelli, *Coercing, Constraining, Signalling* (see note 11), 36–39.

entities, and individuals. This dimension of sanctioning is relevant to show commitment, escalate a dispute, prove political coherence, underline the importance of a norm in international relations, and stigmatize non-compliance with that norm.

### Three strands of EU sanctions practices

Sanctions constitute one of the most frequently used foreign policy tools in international relations. Beyond their traditional use by states, sanctions have also been adopted by international organizations to assist them in fulfilling their respective mandates. This is not the case with the UN, whose Charter endows the Security Council with the power to impose mandatory sanctions alongside other instruments to enable it to accomplish its mission of maintaining international peace and security. The EU, too, has become an increasingly active initiator or “sender” of sanctions over recent decades. EU sanctions practices are commonly differentiated along the lines of three different strands.<sup>14</sup>

Firstly, the EU decides on and implements its own autonomous sanctions in the absence of a UNSC mandate. As the EU has reached consensus on a number of sanctions regimes independent of UNSC resolutions (UNSCRs), Brussels developed a rich autonomous sanctions practice that has become both more frequently used and more sophisticated over the years.

Secondly, the EU implements mandatory sanctions regimes decided on by the UNSC. As members of the UN, individual EUMS assume a duty to comply with and implement UNSCRs.

Thirdly, the EU frequently supplements UNSC regimes with sanctions that move beyond the former, a phenomenon often labeled as “gold-plating.”<sup>15</sup> According to Biersteker et al., in 90 per cent of the analyzed sanctions episodes, UN sanctions were supplemented by other sanctions (e.g., in the form of regional or unilateral measures), while in 74 per cent of the regimes, other sanctions preceded the initial imposition of UN sanctions on the country.<sup>16</sup>

<sup>14</sup> Thomas Biersteker and Clara Portela, *EU Sanctions in Context: Three Types*, Issue Brief, no. 26 (Paris: European Union Institute for Security Studies, 2015), [https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief\\_26\\_EU\\_sanctions.pdf](https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief_26_EU_sanctions.pdf).

<sup>15</sup> Brendan Taylor, *Sanctions as Grand Strategy* (London, 2010).

<sup>16</sup> Biersteker, Eckert, and Tourinho, *Targeted Sanctions* (see note 4), 30.

# The EU Sanctions Regime against North Korea

In the following section, the EU's sanctions regime against North Korea is analyzed. However, as sanctions are usually not imposed in isolation from other foreign policy instruments, the sanctions regime must be placed in the context of the EU's broader strategy vis-à-vis Pyongyang in order to be able to determine the relative importance of sanctions vis-à-vis other measures and policies.

## The political context: The development of the EU's strategy vis-à-vis North Korea from active engagement to active pressure

Officially, the EU's relations with the DPRK is based on an approach labeled "critical engagement." That is, Europe is willing to use both incentives and pressure in its relations with North Korea. Its primary goals are to support a lasting diminution of tensions on the Korean Peninsula and in the region, uphold the international non-proliferation regime, and improve the situation of human rights in the DPRK. Although cooperation and engagement are considered central elements in this strategy, in more recent years the EU has particularly emphasized the "critical" element of its Critical Engagement strategy. In fact, ever since 2013/2014, sanctions constitute the main element of the EU's strategy vis-à-vis North Korea, while its engagement initiatives have been significantly reduced. This led observers to assess that the EU's North Korea strategy underwent several distinct stages. For example, Ko Sangtu distinguishes the phases of active engagement (1995–2002), critical engagement (2002–2013), and active pressure (since 2013/2014).<sup>17</sup>

17 Ko Sangtu, "Keynote Address" (EIAS Briefing Seminar, 20 October 2017), [http://www.eias.org/wp-content/uploads/2016/03/EIAS\\_Event\\_Report\\_Quo\\_Vadis\\_NorthKorea\\_20.10.2017-2.pdf](http://www.eias.org/wp-content/uploads/2016/03/EIAS_Event_Report_Quo_Vadis_NorthKorea_20.10.2017-2.pdf).

## The EU's current sanctions-based policy on North Korea contrasts with Brussels' earlier strategy of active engagement.

The current emphasis on active pressure contrasts with the EU's earlier strategy, which, at times, saw a considerable degree of engagement by the EU. Various forms of assistance to the DPRK have long been at the center of those activities. According to information provided by the European Commission, the EU "has responded to humanitarian needs in North Korea since 1995."<sup>18</sup> Explicitly designated as a contribution to regional stability, between 1995 and 2002 alone, the EU provided food aid and structural food security assistance, humanitarian assistance, and technical assistance to North Korea totaling roughly €400 million — excluding further bilateral assistance initiatives by individual EUMS.<sup>19</sup> Moreover, Brussels successively established or participated in broader diplomatic initiatives with the DPRK that moved beyond mere assistance and aid. For instance, acknowledging the role the Korean Peninsula Energy Development Organization (KEDO)<sup>20</sup> could play to maintain

18 European Commission, *European Civil Protection and Humanitarian Aid Operations – North Korea (DPRK)*, 2019, [https://ec.europa.eu/echo/where/asia-and-pacific/north-korea\\_en](https://ec.europa.eu/echo/where/asia-and-pacific/north-korea_en).

19 Axel Berkofsky, *EU's Policy towards the DPRK – Engagement or Standstill?* Briefing Paper (Brussels: European Institute for Asian Studies, 2003), 23, <http://nautilus.org/wp-content/uploads/2011/12/eudprkstandstill.pdf>.

20 KEDO was established in 1995 by the US, Japan, and South Korea with the aim to implement the Geneva Framework Agreement between the US and the Democratic People's Republic of Korea, which, in the short term, would freeze North Korea's nuclear program at the 1994 level. In the long term, with the help of KEDO, the existing North Korean nuclear facilities are to be completely dismantled and replaced by modern, proliferation-resistant, light-water



peace and stability on the Korean Peninsula, the EU became a member of the organization's Executive Board in September 1997.<sup>21</sup> In 1998, the EU and North Korea established a political dialogue at the Senior Officials' level, held a total of 14 times until its suspension in 2015. In the early 2000s, as both the EU and most of its member states had established diplomatic relations with Pyongyang, Europe continuously expanded and strengthened its economic and humanitarian support for North Korea, for example by opening the European market to North Korea and providing technical support for the structural development of the North Korean economy.<sup>22</sup> This development was paralleled by another major event in North Korea-EU relations, that is, the visit of the so-called EU Troika to Pyongyang in May 2001. During the visit of Swedish Prime Minister Göran Persson, EU Commissioner Chris Patten, and High Representative for Common Foreign and Security Policy Javier Solana, the delegation managed to receive a commitment from then North Korean leader Kim Jong Il to honor the inter-Korean Joint Declaration signed at the June 2000 summit and to maintain a moratorium on missile testing until at least 2003. The May 2001 visit was significant, for the US was, at that time, just in the process of conducting a review of its policy toward North Korea through the so-called Perry Process. In fact, some observers argued that the EU's May 2001 visit was to be understood as a sign of a possible beginning of a more independent EU foreign policy

vis-à-vis the Korean Peninsula.<sup>23</sup> However, such hopes for a more independent EU policy and/or a more immediate engagement of Brussels in the security relations of the Korean Peninsula were quickly diminished following the advent of what became known as the "second nuclear crisis" on the Korean Peninsula in 2002.<sup>24</sup>

With the emergence of the second nuclear crisis on the Korean Peninsula, which started when North Korean officials allegedly admitted to the country's clandestine highly-enriched uranium program, the trajectory of EU-North Korea relations changed abruptly, resulting in a shift of the EU's North Korea strategy from "active engagement" (1995–2002) to an approach of "conditional engagement" (2002–2013).<sup>25</sup> For example, the EU withdrew its support for programs designed to bolster North Korea's economy, terminated its support for the KEDO project, and canceled its plan to provide technical support to lay the foundations for economic development. In addition, the EU suspended a plan to support further opening its market to North Korean products and both issued a human rights resolution against the DPRK at the UN in 2003 and passed resolutions against North Korea at the European Parliament. Despite such punitive measures, however, between 2002/2003 and 2013, the EU still attempted to balance increasing political pressure with continued political engagement. For example, Brussels sustained the political dialogue with Pyongyang, sent an ad hoc delegation to Pyongyang in 2004 to assess the changes in the

reactors (LWRs). KEDO's main tasks were to provide the financing for the two LWRs as well as to supplement North Korea's energy supply by providing alternative energy until the two reactors are completed. For further information on KEDO, see: Sebastian Harnisch and Hanns W. Maull, *Kernwaffen in Nordkorea. Regionale Stabilität und Krisenmanagement durch das Genfer Rahmenabkommen* (Bonn, 2013).

21 Eun-Jeung Lee and Eric J. Ballbach, "Haeksim kaeibin'ga tansun tongsaengin'ga? Pürwiserüi taebukhan chöngch'aek maengnagesö chomyöngghanün EUüi taebukhan mit tongasia anbo chöngch'aek," [Key Intervention or Simple Companionship? Brussel's North Korea Policy in the Context of the EU's Security Policy in East Asia], in *Hanbandonün t'ongil togiri toel su issülkka?* [Can the Korean Peninsula Become a Unified Germany?], ed. Im Hyök-baek and Lee Eun-Jeung, (Seoul: Peace and Democracy Institute, 2010), 267–400.

22 The EU's proactive initiatives in the early 2000s must also be placed in context of then South Korean president Kim Dae-jung's own policy of engagement — the so-called Sunshine Policy — who called upon EU members to support his new approach to North Korea.

23 See, e.g.: Rüdiger Frank, "EU-North Korean Relations: No Efforts without Reasons", *International Journal of Korean Unification Studies* 11, no. 2 (2002): 87–119.

24 Observers of the nuclear conflict on the Korean peninsula often distinguish the first nuclear crisis (1993/1994), which started when Pyongyang initially announced its intention to withdraw from the NPT, from the second nuclear crisis (2002/2003). Furthermore, a third (and since then ongoing) crisis emerged with North Korea's first nuclear test on 9 October 2006. For a history of the nuclear conflict, see: Eric J. Ballbach, "Identität/Macht/Politik: Die Nuklearkrise und Nordkoreas Außenpolitik", in *Länderbericht Korea*, ed. Eun-Jeung Lee and Hannes B. Mosler (Bonn, 2015), 508–23.

25 Eric J. Ballbach, *The End of Critical Engagement – On the Failures of the EU's North Korea Strategy*, Analyses of the Royal Elcano Institute, ARI 101/2019 (Madrid: Elcano Royal Institute, 6 November 2019), <https://www.realinstitutoelcano.org/en/analyses/the-end-of-critical-engagement-on-the-failures-of-the-eus-north-korea-strategy/>.

country since the last European visit in 2000,<sup>26</sup> and exchanged delegations between the European Parliament and the DPRK. Moreover, despite North Korea's nuclear and ballistic missile provocations, Brussels continued to provide food and humanitarian aid to Pyongyang. During North Korea's food crisis of 2011, in particular, the EU provided €10 million in emergency assistance and continued to provide limited contributions to humanitarian aid funding.<sup>27</sup> The continuation of this communication channel in at least a limited way suggests that the restoration of the EU's North Korean aid program is not beyond the realm of possibility. Finally, various European non-governmental organizations (NGOs) continued their activities in North Korea. Politically, following the outbreak of the second nuclear crisis on the Korean Peninsula, the EU's role was mainly limited to supplying verbal assurances and support for its regional partners and the Six-Party Talks, which was the multi-lateral format established in 2003 by the two Korean states, Japan, Russia, China, and the US for the task of ending North Korea's nuclear weapons programs and normalizing their respective bilateral relations.

### **The basic rationale for the EU's sanctions regime is North Korea's nuclear- and ballistic missile-related activities.**

In the aftermath of the escalation of nuclear and missile testing activities by North Korea following the inauguration of Kim Jong Un in 2011 — and especially the significant aggravation of tensions between North Korea and the US — the EU adopted a strategy of active pressure against North Korea. Front and center of this strategy was the EU's comprehensive support of the UN sanctions regime, with Brussels imposing a number of autonomous restrictive measures in addition to UNSCRs. The basic rationale for the EU's sanctions regime against North Korea is the DPRK's nuclear- and ballistic missile-related activities, which are said to “represent a serious threat to inter-

national peace and security” and to “undermine the global non-proliferation and disarmament regime” strongly supported by the EU. With the successive broadening of the sanctions regime, trade relations between the EU and North Korea also plummeted. Moreover, in 2015 the EU suspended the political dialogue with North Korea, leaving by and large some informal dialogue channels as well as a number of (mostly informal) engagement initiatives by individual EUMS. With the outbreak of the global Covid pandemic, North Korea went into a strict national lockdown as early as January 2020, which cut off many of the remaining informal dialogue channels with North Korea and also led to the temporary departure of all diplomatic staff of EUMS residing in Pyongyang.

## **The development of the EU's sanctions regime against North Korea: An overview of the sanctions episodes**

The UN and the EU implemented restrictive measures against North Korea following the country's first nuclear test in 2006. The EU's sanctions regime against North Korea encompasses both the transposition of mandatory UNSCRs as well as the imposition of additional autonomous sanctions.

As is illustrated in Figure 2 (p. 14f.), the EU's sanctions regime developed in numerous phases, or, to use the terms from the sanctions literature, in several episodes. In specific, a total of 10 sanctions episodes are distinguished.

### **Episode 1: November 2006 – July 2009**

Prior to the commencement of the EU's first restrictive measures against North Korea in late 2006, the UNSC adopted Resolution 1695<sup>28</sup> in July 2006, expressing concern at North Korea's test launch of ballistic missiles that could endanger civilian aviation and shipping. Following North Korea's first nuclear test, on 9 October 2006, the UNSC unanimously adopted Resolution 1718<sup>29</sup> on 14 October under Chap-

<sup>26</sup> European Parliament, Delegation for Relations with the Korean Peninsula, “Ad Hoc Delegation Visit to North Korea 21 – 24 February 2004”, Press release (Brussels, n.d.), [http://www.europarl.europa.eu/meetdocs/2004\\_2009/documents/fddkor20050426\\_003/dkor20050426\\_003en.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/fddkor20050426_003/dkor20050426_003en.pdf).

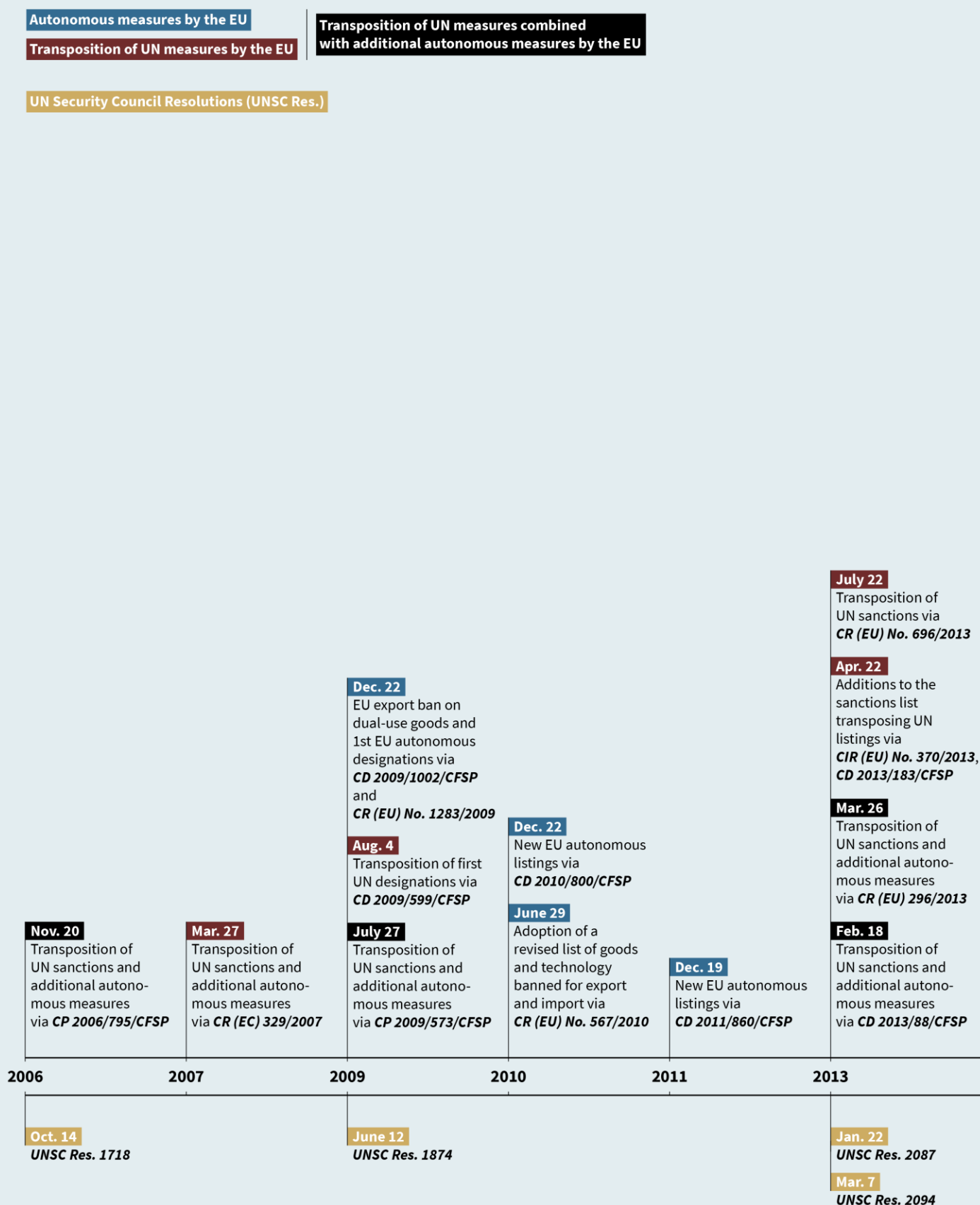
<sup>27</sup> European Commission, “The European Commission Will Give Emergency Food Aid to North Korea”, Press release (Brussels, 4 July 2011), [http://europa.eu/rapid/press-release\\_IP-11-826\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-11-826_en.htm?locale=en).

<sup>28</sup> United Nations Security Council, *Security Council Resolution 1695* (New York, NY, 15 July 2006), <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Disarm%20SRES1695.pdf>.

<sup>29</sup> United Nations Security Council, *Security Council Resolution 1718* (New York, NY, 14 October 2006), [https://www.undocs.org/S/RES/1718%20\(2006\)](https://www.undocs.org/S/RES/1718%20(2006)).



Figure 2 – Timeline of the main EU and UN sanctions on North Korea, 2006–2018



	<p><b>Oct. 8</b> Addition to the sanctions list transposing UN decision and delisting from the EU autonomous list via <b>CD 2014/700/CFSP</b></p> <p><b>Apr. 14</b> Review of the EU autonomous listings and updates of the UN sanctions list via <b>CD 2014/212/CFSP</b></p>	<p><b>July 2</b> New EU autonomous listings via <b>CD 2015/1066/CFSP</b></p> <p><b>Mar. 31</b> Transposition of UN sanctions (2270) and additional autonomous listings via <b>CR (EU) 2016/682</b>, <b>CD 2016/475/CFSP</b> and <b>CD 2016/476/CFSP</b></p> <p><b>Mar. 4</b> Addition to the sanctions list transposing UN listings via <b>CD 2016/319/CFSP</b></p>	<p><b>Oct. 18</b> Addition to the sanctions list transposing UN listings (Res. 2375) via <b>CID 2017/1909/CFSP</b></p> <p><b>Oct. 16</b> New autonomous sanctions via <b>CR (EU) 2017/1858</b>, <b>CIR (EU) 2017/1859</b> and <b>CD 2017/1860/CFSP</b></p> <p><b>Oct. 10</b> Transposition of UN sanctions (Res. 2375) via <b>CR (EU) 2017/1836</b> and <b>CD 2017/1838/CFSP</b></p> <p><b>Sept. 15</b> Addition to the sanctions list transposing UN listings (Res. 2371) and additional autonomous listings via <b>CID (CFSP) 2017/1573</b></p> <p><b>Sept. 14</b> Transposition of UN sanctions (Res. 2371) via <b>CD 2017/1562/CFSP</b> and <b>CR (EU) 2017/1548</b></p> <p><b>Aug. 30</b> Replacement of CR (EC) 329/2007 via <b>CR (EU) 2017/1509</b> and amendment of CD 2016/849/CFSP via <b>CD 2017/1512/CFSP</b></p> <p><b>June 12</b> New autonomous listings via <b>CD 2017/994/CFSP</b> and <b>CIR (EU) 2017/993</b></p> <p><b>June 8</b> Addition to the sanctions list transposing UN listings (Res. 2356) via <b>CD 2017/975/CFSP</b> and <b>CR (EU) 2017/970</b></p> <p><b>Apr. 6</b> New autonomous sanctions via <b>CR (EU) 2017/658</b>, <b>CD 2017/666/CFSP</b> and <b>CIR (EU) 2017/661</b></p> <p><b>Feb. 27</b> Transposition of UN sanctions via <b>CR (EU) 2017/330</b> and <b>CD 2017/345/CFSP</b></p>	<p><b>Nov. 6</b> Addition to the sanctions list transposing UN listings via <b>CID (CFSP) 2018/1657</b> and <b>CID (EU) 2018/1654</b></p> <p><b>Oct. 25</b> Addition to sanctions list transposing UN listings via <b>CID (CFSP) 2018/1613</b> and <b>CIR (EU) 2018/1606</b></p> <p><b>Sept. 24</b> Addition to the sanctions list transposing UN listings via <b>CIR (EU) 2018/1284</b> and <b>CID (CFSP) 2018/1289</b></p> <p><b>Sept. 13</b> Amendment to UN sanctions list via <b>CIR (EU) 2018/1231</b> and <b>CID (CFSP) 2018/1238</b></p> <p><b>July 30</b> New EU listings and amendment of CD 2016/849/CFSP via <b>CD 2018/1087/CFSP</b> and <b>CIR (EU) 2018/1074</b></p> <p><b>May 14</b> Adjustment of EU listings via <b>CD 2018/715/CFSP</b> and <b>CIR (EU) 2018/714</b></p> <p><b>Apr. 19</b> New EU autonomous listings via <b>CD 2018/611/CFSP</b> and <b>CIR (EU) 2018/602</b></p> <p><b>Apr. 6</b> Addition to the sanctions list transposing UN listings via <b>CIR (EU) 2018/548</b> and <b>CID (CFSP) 2018/551</b></p> <p><b>Feb. 26</b> Transposition of UN listings (Res. 2397) via <b>CR (EU) 2018/285</b>, <b>CID (EU) 2018/286</b> and <b>CD 2018/293/CFSP</b></p> <p><b>Jan. 22</b> New EU autonomous listings via <b>CD 2018/89/CFSP</b> and <b>CID (EU) 2018/87</b></p> <p><b>Jan. 8</b> Addition to the sanctions list transposing UN listings (Res. 2397) and additional autonomous listings via <b>CID (CFSP) 2018/16</b> and <b>CIR (CFSP) 2018/12</b></p>
2014	2015	2016	2017	2018
		<p><b>Mar. 2</b> <b>UNSC Res. 2270</b></p> <p><b>Nov. 30</b> <b>UNSC Res. 2321</b></p>	<p><b>June 2</b> <b>UNSC Res. 2356</b></p> <p><b>Aug. 5</b> <b>UNSC Res. 2371</b></p> <p><b>Sept. 11</b> <b>UNSC Res. 2375</b></p> <p><b>Dec. 22</b> <b>UNSC Res. 2397</b></p>	

Table 1

**Episodes of the EU's sanctions regime against North Korea**

Sanctions episode	Time frame
1	11/2006 – 07/2009
2	07/2009 – 02/2013
3	02/2013 – 03/2016
4	03/2016 – 05/2016
5	05/2016 – 12/2016
6	12/2016 – 04/2017
7	04/2017 – 08/2017
8	08/2017 – 09/2017
9	09/2017 – 01/2018
10	01/2018 –

Source: Author.

ter VII of the UN Charter. The resolution expounds the initial threat definition, expressing “gravest concern” about North Korea’s nuclear weapons test as well as the challenge this constitutes to the NPT and international efforts aimed at strengthening the global non-proliferation regime. As Pyongyang’s activities were said to pose a danger to peace and stability in the region and beyond, the resolution states that the DPRK “cannot have the status of a nuclear-weapon state” in accordance with the NPT. UNSCR 1718 thus formulates the initial demands from North Korea, that is, to refrain from further nuclear or missile tests, suspend all ballistic missile and all further activities related to weapons of mass destruction (WMD), abandon its nuclear program in a “complete, verifiable, and irreversible” manner, retract its announcement of withdrawal from the NPT and International Atomic Energy Agency (IAEA) safeguards agreement, and provide the IAEA with transparency measures extending beyond the safeguards agreement to include access to individuals, documentation, equipment and facilities, re-establish its pre-existing commitments to a moratorium on missile launching, and return to the Six-Party Talks and the NPT.

Against this background, UNSCR 1718 initiated a ban on specific military systems and machinery as well as specific weapon systems such as combat aircrafts, battle tanks, or missile (systems); a range of imports and exports that could contribute to the

DPRK’s nuclear-related, ballistic missile-related, or other WMD-related programs; and an export and import ban on luxury goods. Although individual sanctions measures (asset freezes and travel bans) were also authorized, no individual or entity designations were made during sanctions episode 1.

On 17 October 2006, the Council of the EU strongly condemned the nuclear test of the DPRK and assured that it would fully implement the provisions of all relevant UNSCRs. With the adoption of Common Position 2006/795/CFSP<sup>30</sup> (Common Foreign and Security Policy) on 20 November 2006, the EU consequently introduced its first restrictive measures against North Korea. While much of the Common Position is concerned with the transposition of UNSCR 1718, the EU also added autonomous measures, specifically going beyond the restrictions of the UNSCR on the sales of arms and military technology to the DPRK. While UNSCR 1718 was restricted to a ban on specific military systems and machinery as well as specific weapon systems such as combat aircrafts, battle tanks, or missile (systems), the EU decided to ban all “arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment and spare parts for the aforementioned [...]” Council Regulation (EC) 329/2007 further clarified that its sanctions forbid EUMS

“to provide, directly or indirectly, technical assistance related to goods and technology listed in the EU Common List of Military Equipment [...] and to the provision, manufacture, maintenance and use of goods listed in the EU Common List of Military Equipment [...] [and] to provide, directly or indirectly, financing or financial assistance related to goods and technology listed in the EU Common List of Military Equipment [...]”

**30** Council of the European Union, *Council Common Position 2006/795/CFSP* (Brussels, 20 November 2006), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32006E0795&from=IT>; Council of the European Union, *Council Regulation (EC) No 329/2007* (Brussels, 27 March 2007), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R0329&from=EN>.

**From the outset, there was unified support in the EU for sanctions as an appropriate tool to counter North Korea's endeavors.**

This decision reflects the fact that, from the outset, there was unified opposition within the EU against the DPRK's nuclear activities and support for sanctions as an appropriate tool to counter North Korea's endeavors. In particular, France and the UK, who had already backed UNSCR 1718, pushed for tough(er) sanctions by the EU. However, despite their support of the Common Position via an affirmative vote, some EUMS also expressed reservations about the purpose and objectives of sanctions, arguing that the North Korean nuclear issue requires "intense and creative diplomacy."<sup>31</sup> In fact, during sanctions episode 1, international diplomacy on the North Korea issue was still ongoing. Shortly after its first nuclear test, North Korea returned to negotiations in the Six-Party Talks, destroyed a cooling tower and shut down a major power plant in the Yongbyon nuclear facility, turned over 10,000 pages of documents related to its nuclear program, and agreed to a denuclearization process based on the principle of action-for-action. The EU, for its part, also upheld its political dialogue with North Korea and continued to provide humanitarian assistance, in line with its conditional engagement approach prevalent at that time.

## Episode 2: July 2009 – February 2013

In 2008, North Korea resumed its ballistic missile and nuclear activities, leading to the breakdown of the Six-Party process. Following North Korea's second nuclear test, on 25 May 2009, and the subsequent adoption of UNSCR 1874,<sup>32</sup> the Council both transposed the latest UN sanctions decisions and approved further autonomous measures.<sup>33</sup> UNSCR 1874, whose

stated purpose was to constrain military development by the DPRK by restricting trade, financial transactions, and weapons acquisition, extended the restrictions on arms and proliferation-related goods, banned the provision of any financial services that could contribute to the DPRK's WMD programs, gave authorization for states to inspect North Korean vessels suspected of carrying items banned by the sanctions, and seize and dispose of such items if found. Episode 2 furthermore operationalized individual and entity sanctions by specifying designees. Moreover, the Panel of Experts (PoE) was established by the UNSC to investigate non-compliance with the sanctions, propose further targets, and report on the progress on implementation. According to media reports, China and Russia, while concerned about the DPRK's nuclear armory, did not want to risk a destabilization of the North Korean regime, thus preventing stronger measures in the UNSC.<sup>34</sup>

Following the transposition of the first UN designations of five persons and eight entities subject to asset freezing and travel bans on 4 August 2009,<sup>35</sup> in December the EU autonomously adopted an export ban on all dual-use goods and technology listed in Regulation (EC) 428/2009, which set up a Community regime for the control of exports, transfer, brokering, and transit of dual-use items. Moreover, the Council also autonomously designated an additional thirteen persons and four entities to its own sanctions list.<sup>36</sup> Either because of their promotion or support of the DPRK's nuclear-related, ballistic missile-related, and

Council of the European Union, *Council Regulation (EU) No 1283/2009* (Brussels, 22 December 2009), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R1283&from=EN>.

<sup>34</sup> For example, a full ban on trading with the DPRK was avoided due to Chinese and Russian objections, warning that the collapse of the North Korean economy would have dramatic consequences for the region. See: Ewen MacAskill, "UN Approves 'Unprecedented' Sanctions against North Korea over Nuclear Test", *The Guardian* (online), 12 June 2009, <http://www.guardian.co.uk/world/2009/jun/12/un-north-korea-nuclear-sanctions>.

<sup>35</sup> Council of the European Union, *Council Decision 2009/599/CFSP* (Brussels, 4 August 2009), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009D0599&from=EN>.

<sup>36</sup> Council of the European Union, *Council Decision 2009/1002/CFSP* (Brussels, 22 December 2009), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2009:346:FULL&from=EN>.

<sup>31</sup> Interview of the author with a representative from the European Council, Brussels, November 2018; Interview of the author with a representative from the European Council, January 2019; Interview of the author with a representative from the European External Action Service (EEAS), January 2019.

<sup>32</sup> United Nations Security Council, *Security Council Resolution 1874* (New York, NY, 12 June 2009), [https://www.undocs.org/S/RES/1874%20\(2009\)](https://www.undocs.org/S/RES/1874%20(2009)).

<sup>33</sup> Council of the European Union, *Common Position 2009/573/CFSP* (Brussels, 27 July 2009), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009E0573&from=EN>;

other WMD-related programs or because they provided financial services or transferred financial or other assets or resources that could contribute to those programs, the EU, in 2010<sup>37</sup> and 2011,<sup>38</sup> autonomously added further individuals and entities and adopted a Regulation introducing a revised EU list of items, materials, equipment, goods, and technology that could contribute to North Korea's WMD programs and that were subject to an export and import ban.<sup>39</sup>

Following a meeting between the US and North Korea in February 2012 in Beijing, the two countries announced, in separate statements, an agreement by North Korea to suspend operations at its Yongbyon facility, including uranium enrichment activities, invite IAEA inspectors to monitor the suspension, and implement moratoriums on nuclear and long-range missile tests. The US detailed that it would provide North Korea 240,000 metric tons of food aid under strict monitoring. However, in March 2012 North Korea announced it would launch a satellite in mid-April to celebrate the centennial birth date of the country's founder, Kim Il Sung. Although the test was not successful, the US stated that the launch violated North Korea's pledge not to launch any long-range missiles, and the so-called Leap Day Agreement quickly fell apart. In May 2012, North Korea issued its revised constitution, which describes the country as "a politically and ideologically powerful state that is invincible, a nuclear state [*haekpoyuguk*], and a militarily powerful state that is indomitable [...]."

### Episode 3: February 2013 – March 2016

Episode 3 was marked by a dense sequence of sanctions measures adopted by the EU and the UN. The episode commenced with UNSCR 2087,<sup>40</sup> adopted

unanimously on 22 January 2013 following the DPRK's December 2012 satellite launch using a long-range Unha-3. UNSCR 2087 tightened existing sanctions with additional listings of nine entities and four individuals on whom travel restrictions and asset freezes were imposed.

The subsequent Council Decision and Regulation<sup>41</sup> transposed the sanctions measures of UNSCR 2087, most notably the expansion of restrictions on exports, imports, and purchase of certain goods and technologies. In accordance with the Council's Conclusions on the DPRK of December 2012, the EU also autonomously adopted a ban on the export of certain goods relevant to the DPRK's WMD-related programs, especially certain types of aluminum and a ban on trade in gold, precious metals, and diamonds. Brussels also prohibited issuing or purchasing DPRK public bonds; opening new branches, subsidiaries, or representative offices of DPRK banks in the EU; barred the founding of new joint ventures; and prohibited EU financial institutions to open representatives' offices or subsidiaries in the DPRK.

Two reasons explain the EU's decision to implement autonomous sanctions at this particular moment. Firstly, after UNSCR 2087 was adopted and before it was actually transposed, North Korea, on 12 February 2013, conducted its third nuclear test. The Council decision and the subsequent Regulation provided an opportunity to implement additional sanctions to UNSCR 2087, which was originally adopted as a reaction to North Korea's ballistic missile launch on 12 December 2012. The second reason is that the December missile launch was interpreted by EUMS as a significant acceleration of the proliferation threat by North Korea. Already ahead of the announced launch of a "working satellite," the EU warned North Korea in its Council Conclusions that it would consider this "a provocative act [that would] merit a clear international response."<sup>42</sup> A press release from 18 February 2013 describes the February autonomous sanctions as "the EU's first step in defence of the

<sup>37</sup> Council of the European Union, *Council Decision 2010/800/CFSP* (Brussels, 22 December 2010), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:341:0032:0044:EN:PDF>.

<sup>38</sup> Council of the European Union, *Council Decision 2011/860/CFSP* (Brussels, 19 December 2011), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF?uri=OJ:L:2011:338:FULL&from=EN>.

<sup>39</sup> Council of the European Union, *Council Regulation (EU) No 567/2010* (Brussels, 29 June 2010), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:163:0015:0029:EN:PDF>.

<sup>40</sup> United Nations Security Council, *Security Council Resolution 2087* (New York, NY, 22 January 2013), [https://www.undocs.org/S/RES/2087%20\(2013\)](https://www.undocs.org/S/RES/2087%20(2013)).

<sup>41</sup> Council of the European Union, *Council Decision 2013/88/CFSP* (Brussels, 18 February 2013), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF?uri=CELEX:52013JC0003&from=EN>; Council of the European Union, *Council Regulation (EU) No 296/2013* (Brussels, 26 March 2013), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:090:0004:0009:EN:PDF>.

<sup>42</sup> Council of the European Union, *Council Conclusions on the Democratic People's Republic of Korea* (Brussels, 10 December 2012), [https://ec.europa.eu/commission/presscorner/detail/en/PRES\\_12\\_516](https://ec.europa.eu/commission/presscorner/detail/en/PRES_12_516).



international non-proliferation regime.” According to an official from the French Ministry of Foreign Affairs (MoFA), Paris, London, and Berlin in particular pushed for a strong EU response to North Korea’s provocations.<sup>43</sup> The EU’s decision to move its autonomous sanctions beyond the mere additional listing of items, entities, and persons to tangible trade and financial-restrictive measures then provided a qualitative change in the EU’s sanctions regime against North Korea that was based on a changed threat perception in the aftermath of the December 2012 missile launch and the February 2013 nuclear test. With the 2013 sanctions, the EU’s sanctions regime against North Korea entered into episode 3.

Shortly after the EU imposed autonomous sanctions, the UNSC adopted Resolution 2094.<sup>44</sup> UNSCR 2094, jointly drafted by the US and China, expanded the list of proliferation-related goods and added a number of new conditional sanctions. For instance, all UN member states were now required to “freeze or block” any financial transactions or monetary transfers if such activities were deemed to help North Korea’s nuclear and ballistic missile programs. The new financial measures were aimed at cracking down on bulk cash transfers while also restricting the financial network of North Korean banks involved in the country’s illicit activities. Interdiction and inspection of all suspicious ships and cargos also became mandatory — a notable development since China and Russia were opposed to making such measures mandatory in the past.<sup>45</sup>

In parallel to the transposition of UNSCR 2094,<sup>46</sup> the EU again imposed a number of autonomous restrictive measures, including further restrictions for EU financial institutions on establishing and maintaining correspondent banking relationships

with DPRK banks and enhanced vigilance over DPRK diplomatic personnel.<sup>47</sup>

## Episode 4: March 2016 – May 2016

In parallel to the EU’s shift from a conditional engagement approach to one of active pressure, from 2016 onwards the EU’s sanctions regime against North Korea underwent a major qualitative change, developing into the EU’s most comprehensive sanctions regime currently in operation. Following the test of a submarine-based ballistic missile in December 2015, a further nuclear test on 6 January 2016, as well as the launch of a long-range ballistic missile carrying what Pyongyang said was an Earth observation satellite on 7 February 2016, the UNSC — attesting flagrant disregard for previous resolutions — imposed UNSCR 2270.<sup>48</sup>

### From 2016 onwards EU sanctions against North Korea seek to undermine the functional operation of the North Korean state.

The resolution significantly broadened existing sanctions, thus beginning the shift toward a more comprehensive logic of sanctions seeking to undermine the functional operation of the North Korean state. It not only expanded the arms embargo and the number of individual and institutional sanctions designees, but also imposed export bans of commodities such as coal, iron, gold, and titanium as well as sectoral sanctions on fuel, which sought to deprive North Korea of revenue to finance its nuclear and missile-related activities. The introduction of transportation-related prohibitions (such as the imposition of a mandatory inspection requirement of all cargo) and restrictions on the financial sector (including, but not limited to, an asset freeze on the North Korean

<sup>43</sup> Interview with an official from the French Ministry of Foreign Affairs, 22 January 2020.

<sup>44</sup> United Nations Security Council, *Security Council Resolution 2094* (New York, NY, 7 March 2013), [https://www.undocs.org/S/RES/2094%20\(2013\)](https://www.undocs.org/S/RES/2094%20(2013)).

<sup>45</sup> Victor Cha, *UN Security Council Passes New Resolution 2094 on North Korea* (Center for Strategic and International Studies, 2013), <https://www.csis.org/analysis/un-security-council-passes-new-resolution-2094-north-korea>.

<sup>46</sup> Council of the European Union, *Council Decision 2013/183/CFSP* (Brussels, 22 April 2013), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:111:0052:0074:EN:PDF>; Council of the European Union, *Council Regulation (EU) No 696/2013* (Brussels, 22 July 2013), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:198:0022:0027:EN:PDF>.

<sup>47</sup> Council of the European Union, *Council Decision 2014/212/CFSP* (Brussels, 14 April 2014), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0212&from=EN>; Council of the European Union, *Council Decision 2014/700/CFSP* (Brussels, 8 October 2014), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0700&from=EN>; Council of the European Union, *Council Decision 2015/1066/CFSP* (Brussels, 2 July 2015), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1066&from=EN>.

<sup>48</sup> United Nations Security Council, *Security Council Resolution 2270* (New York, NY, 2 March 2016), [https://www.undocs.org/S/RES/2270\(2016\)](https://www.undocs.org/S/RES/2270(2016)).

government as well as prohibiting DPRK banks from opening branches abroad, and vice versa) aimed to limit evasion. Moreover, diplomatic sanctions involved the obligation of all member states to release all North Korean diplomats of their service if they were suspected to be involved and expel North Korean private citizens involved in illegal activities.

The EU's transposition of UNSC Resolution 2270 into EU law<sup>49</sup> not only contained the mandatory listings of 16 additional persons and 12 entities and all further provisions contained in the resolution, but it also added a further 18 persons and 1 entity autonomously to its sanctions list on 19 May 2016,<sup>50</sup> thus bringing the total number of persons subject to EU autonomous restrictive measures to 32 and the number of entities to 13.

### Episode 5: May 2016 – December 2016

On 27 May 2016,<sup>51</sup> the EU decided on new autonomous restrictions on trade, financial services, investment, and transport. Designed to “complement and reinforce the sanctions regime” imposed by UNSC 2270, the additional measures include a prohibition of the import of petroleum products and luxury goods from the DPRK; a prohibition of the supply, sale, or transfer to the DPRK of additional items, materials, or equipment relating to dual-use goods and technology; and a ban on any public financial support for trade with the DPRK. In the financial sector, the sanctions prohibit any transfer of funds to and

from the DPRK, unless authorized in advance, and also impose further investment restrictions. In the transport sector, the sanctions prohibit any vessel owned, operated, or crewed by the DPRK from entering EU ports.

### Episode 6: December 2016 – April 2017

North Korea's fifth nuclear test led to the adoption of UNSCR 2321<sup>52</sup> in late November 2016, which introduced caps on the amount/value of coal, iron, and iron ore exports from the DPRK and export and import bans of statues, copper, nickel, silver, and zinc. UNSCR 2321 further introduced mandatory diplomatic, financial sector, and transportation-related prohibitions to decrease sanctions evasion. These include, among others, restrictions on the use of North Korean embassies and consulates; restrictions on the country's diplomatic access to bank accounts and mandatory closures of existing offices and bank accounts in North Korea; prohibition on supporting trade with the country, and limits on the procurement, insuring, and registering of vessels.

On paper, UNSCR 2321 essentially calls upon member states to place North Korea under economic quarantine unless it reverses course on nuclear development. Most notably, the resolution imposes a numerical and volume cap of \$400 million or 7.5 million tons/year of coal exports to China from 2017. This represents a \$650 million reduction in coal exports compared to 2016, or a more than 20 per cent reduction in the value of North Korean merchandise goods exports of approximately \$2.7 billion. An additional ban on North Korean exports of copper, nickel, silver, and zinc should cost the North Koreans an additional \$100 million.<sup>53</sup>

Transposing UNSCR 2321, the EU added 11 further persons and 10 entities to the sanctions list on 8 December 2016.<sup>54</sup> On 27 February 2017, the Council finalized the transposition of UNSCR 2321.<sup>55</sup>

**49** Council of the European Union, *Council Decision (CFSP) 2016/319* (Brussels, 4 March 2016), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0319&from=EN>; Council of the European Union, *Council Decision (CFSP) 2016/475* (Brussels, 31 March 2016), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0475&from=EN>; Council of the European Union, *Council Decision (CFSP) 2016/476* (Brussels, 31 March 2016), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0476&from=EN>; Council of the European Union, *Council Regulation (EU) 2016/682* (Brussels, 29 April 2016), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0682&from=EN>.

**50** Council of the European Union, *Council Decision (CFSP) 2016/785* (Brussels, 19 May 2016), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0785&from=EN>.

**51** Council of the European Union, *Council Decision (CFSP) 2016/849* (Brussels, 27 May 2016), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0849&from=EN>; Council of the European Union, *Council Regulation (EU) 2016/841* (Brussels, 27 May 2016), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0841&from=BG>.

**52** United Nations Security Council, *Security Council Resolution 2321* (New York, NY, 2016), [https://www.undocs.org/S/RES/2321\(2016\)](https://www.undocs.org/S/RES/2321(2016)).

**53** Marcus Noland, *Analysis of UNSCR 2321 Sanctions on North Korea*, Policy Brief (Washington, D.C.: Peterson Institute for International Economics, 30 November 2016), <https://www.piie.com/blogs/north-korea-witness-transformation/analysis-uns-cr-2321-sanctions-north-korea>.

**54** Council of the European Union, *Council Decision (CFSP) 2016/2217* (Brussels, 8 December 2016), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D2217&from=EN>.

## Episode 7: April 2017 – August 2017

On 6 April 2017, the Council adopted additional autonomous restrictive measures, the stated objective of which was to “further increase pressure” on the DPRK.<sup>56</sup> The EU decided to expand the prohibition on investments in the DPRK to new sectors, namely the conventional arms-related industry, metallurgy and metalworking, and aerospace, and it also agreed to prohibit the provision of computer services and services linked to mining. In the accompanying press release, the Council held that it took these additional restrictive measures after concluding that the actions of the DPRK constituted a grave threat to international peace and security in the region and beyond.<sup>57</sup> The EU again called on the DPRK to re-engage in a credible and meaningful dialogue with the international community, to cease its provocations, and to abandon all nuclear weapons and existing nuclear and ballistic missile programs in a complete, verifiable, and irreversible manner. The Council also decided to add four persons to the list of persons targeted by the EU's restrictive measures.

UNSCR 2356,<sup>58</sup> adopted on 2 June 2017, added 14 persons and 4 entities to the sanctions list and was

transposed by the EU via Council Implementing Decision (CFSP) 2017/975<sup>59</sup> on 8 June 2017.

## Episode 8: August 2017 – September 2017

The UNSC, following the test of another intercontinental ballistic missile (ICBM) by North Korea on 4 July 2017, adopted Resolution 2371.<sup>60</sup> The related measures targeted the DPRK's main exports, imposing a total ban on all exports of coal iron, iron ore, fish and seafood, lead and lead ore, and expanded individual sanctions with new designations. Additional sanctions targeted the DPRK's arms smuggling, expanded financial sanctions (e.g., by forbidding joint ventures with North Korean companies), imposed further restrictions on North Korea's Foreign Trade Bank and its ability to generate revenue, limited access to the international financial system, and introduced a mandatory port entry ban on designated vessels. In addition, North Korean nationals were banned from working in EUMS territories due to suspicions of generating revenue that is used to support the country's nuclear and ballistic missile programs.

Already on 10 August, the Council transposed the additional listings imposed by the latest UNSCR via Commission Implementing Regulation (EU) 2017/1457,<sup>61</sup> adding nine persons and four entities to the sanctions list. The sectoral sanctions of UNSCR 2371 were transposed via Council Regulation (EU) 2017/1548 and Council Decision (CFSP) 2017/1562 on 14 September 2017.<sup>62</sup>

lex.europa.eu/legal-

content/EN/TXT/PDF/?uri=CELEX:32016D2217&from=EN.

55 Council of the European Union, *Council Decision (CFSP) 2017/345* (Brussels, 27 February 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D0345&from=EN>; Council of the European Union, *Council Regulation (EU) 2017/330* (Brussels, 27 February 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0330&from=EN>.

56 Council of the European Union, *Council Decision (CFSP) 2017/666* (Brussels, 6 April 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D0666&from=EN>; Council of the European Union, *Council Regulation (EU) 2017/658* (Brussels, 6 April 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0658&from=EN>; Council of the European Union, *Council Decision (CFSP) 2017/667* (Brussels, 6 April 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D0667&from=EN>.

57 Council of the European Union, “North Korea: EU Expands Sanctions against the Democratic People's Republic of Korea (DPRK)”, Press release (Brussels, 6 April 2017), <https://www.consilium.europa.eu/en/press/press-releases/2017/04/06/eu-sanctions-dprk/>.

58 United Nations Security Council, *Security Council Resolution 2356* (New York, NY, 2 June 2017), [https://www.undocs.org/S/RES/2356\(2017\)](https://www.undocs.org/S/RES/2356(2017)).

59 Council of the European Union, *Council Implementing Decision (CFSP) 2017/975* (Brussels, 8 June 2017), <https://op.europa.eu/en/publication-detail/-/publication/f25872f0-4cd4-11e7-a5ca-01aa75ed71a1/language-en/format-PDF/source-search>.

60 United Nations Security Council, *Security Council Resolution 2371* (New York, NY, 5 August 2017), [https://www.undocs.org/S/RES/2371\(2017\)](https://www.undocs.org/S/RES/2371(2017)).

61 Council of the European Union, *Commission Implementing Regulation (EU) 2017/1457* (Brussels, 10 August 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1457&from=EN>.

62 Council of the European Union, *Council Regulation (EU) 2017/1548* (Brussels, 14 September 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1548>; Council of the European Union, *Council Decision (CFSP) 2017/1562* (Brussels, 14 September 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1597845607952&uri=CELEX:32017D1562>.



## Episode 9: September 2017 – January 2018

Following the launch of a ballistic missile on 29 August 2017, North Korea conducted its largest nuclear test to date on 3 September 2017. Estimates of the device's explosive power, or yield, ranged from 100 to 370 kilotons. In response, the UNSC adopted Resolution 2375,<sup>63</sup> which was transposed in September and October 2017 via Council Regulation (EU) 2017/1836, Council Implementing Regulation (EU) 2017/1568, Council Implementing Decision (CFSP) 2017/1573, and Council Decision (CFSP) 2017/1838.<sup>64</sup> Along with further additions to the sanctions list, these measures encompassed, among others, a ban on the sale of natural gas liquids to the DPRK, an annual cap of 2 million barrels per year of all refined petroleum products and crude oil (gasoline, diesel, heavy fuel oil, etc.), a ban of all North Korean textile exports (of which the international community expects financial losses to the tune of roughly \$800 million), and also the prohibition of ship-to-ship transfers, a prohibition to provide work authorizations to DPRK nationals, and an end to all joint ventures with North Korea.

The transposition of the UNSCR 2375 sanctions was followed by further autonomous measures,<sup>65</sup> which included:

- a total ban on EU investment in the DPRK, in all sectors. The ban was previously limited to investment in the nuclear and conventional arms-related industry, and in the sectors of mining, refining, and chemical industries, metallurgy and metal-working, and aerospace;
- a total ban on the sale of refined petroleum products and crude oil to the DPRK. These exports were subject to certain limitations under the UNSCR of 11 September 2017;
- lowering the amount of personal remittances transferred to the DPRK from €15,000 to €5,000 due to suspicions of them being used to support the country's illegal nuclear and ballistic missile programs.

The Council further added three persons and six entities to the lists of those subject to asset freezes and travel restrictions.

## Sanctions Episode 10: Since January 2018

As a reaction to another ICBM test in late November 2017, the Council increased the restrictive measures against the DPRK by transposing UNSCR 2397.<sup>66</sup> The resolution introduced additional commodity import and export restrictions on North Korea. Most notably, the export ban to the DPRK of all refined petroleum products was additionally strengthened by further reducing the amount of barrels that may be exported; banning imports from the DPRK of food and agricultural products, machinery, electrical equipment, earth and stone, and wood; and banning exports to the DPRK of all industrial machinery, transportation

**63** United Nations Security Council, *Security Council Resolution 2375* (New York, NY, 11 September 2017), <https://www.un.org/securitycouncil/s/res/2375-%282017%29>.

**64** Council of the European Union, *Council Implementing Regulation (EU) 2017/1568* (Brussels, 15 September 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1597845607952&uri=CELEX:32017R1568>; Council of the European Union, *Council Implementing Decision (CFSP) 2017/1573* (Brussels, 15 September 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1597845607952&uri=CELEX:32017D1573>; Council of the European Union, *Council Regulation (EU) 2017/1836* (Brussels, 10 October 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1836&qid=1597845607952&from=EN>; Council of the European Union, *Council Decision (CFSP) 2017/1838* (Brussels, 10 October 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D1838&from=EN>.

**65** Council of the European Union, *Council Regulation (EU) 2017/1858* (Brussels, 16 October 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1597845607952&uri=CELEX:32017R1858>; Council of the European Union, *Council Implementing Regulation (EU) 2017/1859* (Brussels, 16 October 2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1859&from=EN>; Council of the European Union, *Council Decision (CFSP) 2017/1860* (Brussels, 16 October 2017),

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.LI.2017.265.01.0008.01.ENG&toc=OJ:L:2017:265:TOC>.

**66** United Nations Security Council, *Security Council Resolution 2397* (New York, NY, 22 December 2017), [https://undocs.org/S/RES/2397\(2017\)](https://undocs.org/S/RES/2397(2017)); Council of the European Union, *Council Implementing Decision (CFSP) 2018/16* (Brussels, 8 January 2018), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1598264068532&uri=CELEX:32018D0016>; Council of the European Union, *Council Implementing Regulation (EU) 2018/12* (Brussels, 8 January 2018), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1598264068532&uri=CELEX:32018R0012>; Council of the European Union, *Council Decision (CFSP) 2018/293* (Brussels, 26 February 2018), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1598264068532&uri=CELEX:32018D0293>; Council of the European Union, *Council Regulation (EU) 2018/285* (Brussels, 26 February 2018), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1598264068532&%20uri=CELEX:32018R0285>.

vehicles, including all iron, steel and other metals. Moreover, UNSCR 2397 contains the requirement to repatriate all DPRK workers abroad within 24 months as well as impose further maritime restrictive measures against North Korean vessels.

Late 2017 and especially throughout 2018, a series of diplomatic initiatives were aimed at re-engaging North Korea. In early 2018, North and South Korea resumed bilateral dialogue — the first inter-Korean contacts since 2015. Facilitated by South Korea, Pyongyang also agreed to resume talks with the US and unilaterally suspend nuclear and ballistic missile testing. In March 2018, Donald Trump agreed to meet with Kim Jong Un. This set off a flurry of regional diplomacy, culminating in two summit meetings between Trump and Kim in Singapore and Hanoi. North Korea dismantled its nuclear test site and signed a declaration to work toward complete denuclearization in the Korean Peninsula. After the talks collapsed in 2019, however, North Korea resumed missile tests, and the development of its nuclear and ballistic missile programs has continued throughout the episode.

As early as January 2020, North Korea went into a national lockdown following the outbreak of the global Covid-19 pandemic; its self-imposed quarantine reduced the country's external trade more than international sanctions ever did or could. In this state of "dual isolation,"<sup>67</sup> North Korea has refused to re-engage with the US and the international community at large and reiterated this stance following the inauguration of the Biden administration in the US. The Biden administration carried out a policy review regarding North Korea, and although the results were not made public, the administration described its North Korea policy as a "careful, calibrated approach," the ultimate goal of which is denuclearization. Secretary of State Antony Blinken added on 14 December 2021 that the United States "seeks serious and sustained diplomacy with the DPRK." Special Envoy Sung Kim stated that the Biden Administration is willing to meet with North Korean representatives, "anytime, anywhere, without preconditions."

**67** Antoine Bondaz and Eric J. Ballbach, "Coping with Natural Disasters: How the EU Can Support More Effective DPRK Disaster Management Mechanisms" (Washington, D.C.: 38 North, 4 November 2021), <https://www.38north.org/2021/11/coping-with-natural-disasters-how-the-eu-can-support-more-effective-dprk-disaster-management-mechanisms/>.

Apart from making further additions to its sanctions list on 19 April 2018, no new restrictive measures have since been adopted by the EU, albeit existing sanctions have been consistently renewed. On 22 March 2021, however, the EU added another layer to its sanctions regime against North Korea, imposing its first-ever human rights sanctions on individuals and entities within the DPRK. These sanctions were adopted under the aegis of its Global Human Rights Sanctions Regime, which was adopted in December 2020 and modeled after the Global Magnitsky Act introduced by the US in 2016.<sup>68</sup>

## The different logics of EU sanctions against North Korea

Building on the overview of the development of the EU's sanctions regime against North Korea — and the subsequent account of how the threat perceptions, demands, and respective punitive measures developed in each of the sanctions episodes — this section aims at elaborating the underlying logic that justified the imposition of new sanctions as well as the strengthening of existing sanctions and on which primary logic the individual sanctions episodes were based. As discussed above, the "logic of sanctions" refers to how sanctions are expected to influence targets. Although a primary logic may well be detected, it is crucial to note that different logics can be at work at the same time. In other words, signaling sanctions, constraining sanctions, and coercive sanctions must not always be mutually exclusive.<sup>69</sup>

## Coercive aspects of EU sanctions against North Korea

While coercion has played a certain role in the EU's sanctions logic ever since the imposition of the first sanctions in 2006, beginning in 2009 EU sanctions

**68** Council of the European Union, "EU Imposes Further Sanctions over Serious Violations of Human Rights around the World", Press release (Brussels, 22 March 2021), <https://www.consilium.europa.eu/en/press/press-releases/2021/03/22/eu-imposes-further-sanctions-over-serious-violations-of-human-rights-around-the-world/>.

**69** Thomas Biersteker and Zuzana Hudáková, "Are Sanctions on North Korea Working?", *Global Asia* 16, no. 3, [https://www.globalasia.org/v16no3/cover/are-sanctions-on-north-korea-working\\_thomas-biersteker-zuzana-hud%C3%A1kov%C3%A1](https://www.globalasia.org/v16no3/cover/are-sanctions-on-north-korea-working_thomas-biersteker-zuzana-hud%C3%A1kov%C3%A1).

against North Korea can be classified as primarily coercive, if one applies the framework from Giumelli.<sup>70</sup> This is because, since 2009 and especially since 2013, EU sanctions against North Korea have had a high impact on the target while at the same time making feasible demands. From the view of the senders (i.e., the EU and the UN), the regime of Kim Jong Un would not be undermined by renouncing the nuclear program, and sanctions — especially the financial and economic sanctions — without doubt have a high impact. Even as the sanctions have become ever more tough and biting, compliance with the demands of the EU and the UN have remained compatible with both the respective ruling elite. In fact, numerous EU officials have made it clear that they do not seek regime change in North Korea, but instead a change of the regime's behavior. Yet, this view of the EU as a sender of sanctions is not necessarily compatible with the view of North Korea as a target. That is to say that, although the EU (and the UNSC members) might in fact have decoupled compliance with its demands from the question of regime change in North Korea, to the elite in Pyongyang, its nuclear weapons and ballistic missile programs are repeatedly described as a survival guarantee, making the demands of the EU and the UN much more unfeasible if seen from the perspective of the target. This is not to argue that denuclearization and regime survival are seen as wholly incompatible by Pyongyang. Both Kim Jong Il and Kim Jong Un have (at least officially) agreed to denuclearization if its security is guaranteed. However, there is a vast difference in perspectives with regard to how this objective can be achieved. Although there have been individual diplomatic efforts since the first imposition of sanctions in 2006, overall the successive strengthening of sanctions has not been paralleled by the diplomatic initiatives and efforts needed to work out a roadmap. Even more complicating is the fact that North Korea is a particular type of target, that is, what Giumelli describes as an "ideological actor." Although ideological actors "reason in terms of costs/benefits, [...] they have built their legitimacy in opposition to the sender and deem it more important than the cost that they are shouldering for sanctions."<sup>71</sup>

<sup>70</sup> Giumelli, *Coercing, Constraining, Signalling* (see note 11).

<sup>71</sup> Giumelli, *Coercing, Constraining, Signalling* (see note 11), 36. On North Korea's identity construction in opposition to the US, see: Eric J. Ballbach, "North Korea's Emerging Nuclear State Identity: Discursive Construction and Perfor-

## Signaling aspects of EU sanctions against North Korea

When the UN and the EU imposed sanctions in 2006 and 2007, respectively, they did so to discourage Pyongyang from further pursuing its nuclear program. However, by design the initial sanctions were comparatively weak and part of a larger strategy that entailed the political elite staying in power. In fact, when sanctions were initially imposed, the Six-Party Talks were still in place and actually made tangible progress in 2007 and 2008.<sup>72</sup> Against this background, during episode 1 in particular, sanctions had a strong signaling function. Both the UN's and the EU's initial sanctions were aimed at expressing determination, warning of possible further and more punitive action, and thus engendering deterrence vis-à-vis North Korea. Yet, even though the initial sanctions also contained a ban on luxury goods — and in the case of EU autonomous sanctions, an arms embargo — the travel bans, asset freezes, and commodity boycotts proposed in UNSCR 1718 have not been implemented. Neither the UN nor the EU listed individuals or entities in their respective sanctions lists until 2009. Therefore, the actual material impact of sanctions during sanctions episode 1 was minimal.

### While the predominant logic of sanctions after 2009 changed to a coercive one, signaling remained an important aspect.

While the predominant logic of sanctions after 2009 changed to a coercive one, signaling remained an important aspect of the EU's sanctions regime against North Korea. As discussed above, a sender may have various audiences aside from the actual target when adopting signaling sanctions. In the case of its autonomous sanctions against North Korea, the EU — especially via its UNSCR member states France and (until 2020) the UK — repeatedly signaled its determination to go beyond the sanctions decisions of the UNSC. Particularly as North Korea significantly

mative Enactment", *The Korean Journal of International Studies* 14, no. 3 (2016): 391 — 414.

<sup>72</sup> Eric J. Ballbach, "Between Autonomy and Influence? Multilateralism and North Korean Foreign Policy in the Six-Party Talks", in *Korea 2013: Politics, Economy and Society*, ed. Rüdiger Frank, Jim Hoare, Patrick Köllner and Susan Pares (Leiden and Boston, 2013), 215 — 39.

increased its ballistic missile tests and the perceived threats to the global non-proliferation system (as a core interest of the EU) increased sharply, the EU adopted comparably harsh autonomous measures that were designed to go beyond the decisions of the UNSC in order to signal its determination to protect the international non-proliferation system. On the other hand, especially during sanctions episodes 1 and 2, individual autonomous sanctions decisions of the EU have repeatedly been influenced by third-party pressure (e.g., the US, the previous conservative governments in South Korea, or the indirect pressure by the PoE). Autonomous sanctions decisions by the EU have thus been a crucial mechanism to signaling to these third parties.

### Constraining aspects of sanctions

Constraining sanctions aim at undermining the capabilities of targets to achieve policy objectives and deter a target from engaging in a specific activity. According to Giumelli, when imposing constraining sanctions, senders do not make specific requests for action but attempt to curb the capacities of targets to embark on specific policies.<sup>73</sup> He further points out that targets' compliance could determine political defeat and sometimes the suspension of rights (such as jailing) of individuals targeted by sanctions. This occurs when the interests of targets and senders are incompatible and a zero-sum game context determines the resilience of targets and the determination of senders.

**Since 2016, EU sanctions primarily aim at constraining North Korea from further developing its nuclear and ballistic missile program.**

While the demands made by the EU and the UN cannot be classified as unfeasible, one might argue that the importance of the logic of constraint became ever more important as it became ever less likely that North Korea would agree to the central demands of the EU and the UN, that is, the complete, verifiable, and irreversible destruction of its WMD programs. With the decreasing likeliness that EU and UN sanctions would coerce North Korea into changing its behavior, the primary purpose of EU and UN sanctions was to constrain North Korea from further

developing its nuclear and ballistic missile programs. As a means to deter North Korea from engaging in this specific activity, EU sanctions against North Korea have progressively deepened and broadened in scope. For instance, with the transposition of UNSCR 2270 and the imposition of additional autonomous sanctions in May 2016, which significantly broadened existing sanctions, sanctions episode 4 marked the beginning of a shift toward a more comprehensive logic seeking to undermine the functional operation of the state. Whether the sanctions against North Korea can be effective has thus become an issue of implementation rather than design. If fully implemented, the EU's sanctions regime is sufficiently stringent and comprehensive, not only to constrain North Korea's nuclear development, but also to present a viable threat to the stability of the North Korean regime itself.

### The politics of the EU's sanctions regime against North Korea

The episodic analysis of the EU's sanctions regime against North Korea in the context of the EU's Critical Engagement strategy not only reveals some important insights on the development and changing logics of Brussels' sanctions against Pyongyang, but also exposes a set of interrelated factors that are crucial for understanding the politics underlying the EU's sanctions against North Korea. These explanatory factors are summarized in Figure 3.

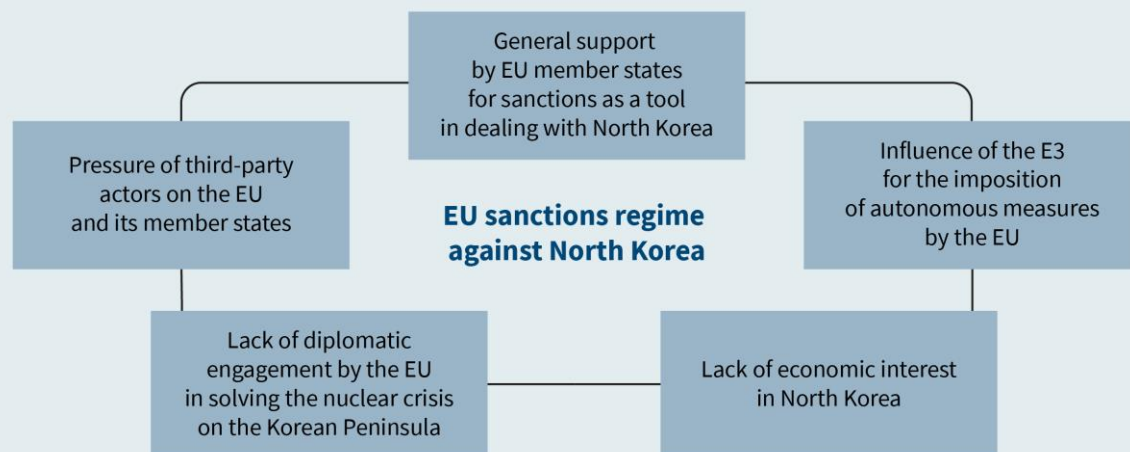
### Broad support for sanctions in dealing with North Korea

On the most basic level, it has to be acknowledged that, ever since North Korea's first nuclear test in 2006, there is a general agreement among all EUMS that — due to the overwhelming threats and challenges posed by North Korea's nuclear and ballistic missile programs — sanctions are an appropriate tool in dealing with Pyongyang.<sup>74</sup> Hence, understanding

<sup>74</sup> The fact that sanctions are considered an imperative element of the EU's dealings with North Korea does not mean that all member states share the same position with regard to the question about what exactly the sanctions should achieve (coerce, signal, constrain), how far-reaching they should be, and if they should be paralleled by tangible diplomatic initiatives.

<sup>73</sup> Giumelli, *Coercing, Constraining, Signalling* (see note 11), 34.

Figure 3

**Central explanatory factors**

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Source: Author

the wide-ranging support among EUMS not only for the respective resolutions of the UNSC but also for the repeated imposition of autonomous sanctions against North Korea requires an understanding of the EU's key objectives in relation to Pyongyang's security conundrum. These objectives, as well as the EU's policy preferences and its definition of the security situation, were once again expressed in a Conclusion on the situation in Korea adopted by the Foreign Affairs Council at its meeting on 17 July 2017.<sup>75</sup> Among other judgments, the Conclusion expounds that North Korea's behavior violates its international obligations and represents a serious threat to international peace and security, undermining the global non-proliferation and disarmament regime, which the EU has steadfastly supported for decades. Acknowledging that "[t]he EU sanctions' regime towards the DPRK is currently among the most restrictive in operation," the Conclusion explicitly states that the Council will "consider further appropriate responses in close consultation with key partners [...], notably through additional autonomous restrictive measures." Although the role of confidence-building measures and dialogue is mentioned, the ultimate objective

remains a "complete, verifiable and irreversible denuclearization of the Korean Peninsula and the full implementation of all relevant UN Security Council resolutions." The EU continues to maintain that a complete denuclearization of North Korea is required, and that sanctions are a critical tool to achieve this objective. As such, Brussels has repeatedly stated that sanctions will remain in place until North Korea denuclearizes – or at least makes significant steps toward this objective. Ultimately, the Conclusion reaffirms that the

"EU policy of Critical Engagement with the DPRK, which combines pressure with sanctions and other measures [...], is not an end in itself but a means to promote the DPRK's full compliance with UNSC Resolutions in terms of abandoning its nuclear, WMD and ballistic missile programmes in a complete, verifiable and irreversible manner and progress on all other issues of concern."

Widely supported within the EU, therefore, is the goal of changing North Korea's behavior to create a more stable Korean Peninsula and Northeast Asia, either through signaling, constraining, or coercion. In order to ensure this objective, the document stresses "the importance of unity of the international community" and "[c]loser engagement with all EU's key partners in the region and worldwide [...], including through

<sup>75</sup> Council of the European Union, "Council Conclusions on the Democratic People's Republic of Korea", Press release (Brussels, 17 July 2017), <https://www.consilium.europa.eu/en/press/press-releases/2017/07/17/conclusions-korea/>.



enhanced outreach activities and support for the full implementation of UN sanctions by all countries.” To that end, the EU also put pressure on countries across the world to implement the sanctions regime on North Korea, and several EUMS are actively involved in the monitoring and potential seizure of North Korea’s illegal shipments — a stance supported particularly by France and Germany. In August 2021, the German frigate “Bayern” departed for Asia with the mission to, among other things, participate in an international observer mission to enforce UN sanctions against North Korea.

### Political will and influence of the E3 in the imposition of autonomous measures by the EU

In order to understand the EU’s principal focus on sanctions in dealing with North Korea — as well as the strategic decision to move its sanctions regime beyond that of the UNSC — the particularities of the EU’s sanctions-related decision-making process and the influence of the member states — or, more precisely, certain member states — in crafting autonomous sanctions have to be taken into account. This requires an acknowledgement of the processual differences between the transposition of UNSCRs on the one hand, and the imposition of autonomous EU sanctions on the other hand. The transposition of UNSCRs may primarily be conceived of as a “legal act,” a process described by one EU Council representative as a “well-orchestrated sequence of events”<sup>76</sup> through which the respective UNSCRs are transposed into EU law. The imposition of autonomous EU sanctions, on the other hand, is a separate process that is almost always initiated at the member-state level or, more precisely, by a coalition of (certain) member states. Conventionally, a proposal for autonomous measures by the EU is prepared in coordination between the relevant institutions within the Foreign Ministries of the E3 states. Sometimes this format was supplemented by a broader coalition of states, and only rarely are autonomous measures proposed by other individual EUMS. The autonomous measures of the EU against North Korea are thus first and foremost driven by certain EUMS or, more precisely, by the national sanctions teams of specific countries that continuously identify potential further targets, and

thus drive the sanctions process. These proposals are then discussed and further refined in Brussels. In turn, this suggests that any potential reversal of the EU’s autonomous sanctions will most likely not start in Brussels, but in Berlin, London, and Paris.

### Third-party pressure

Ever since the imposition of its sanctions regime against North Korea, the EU and its member states have repeatedly been subjected to outside pressure for a more robust policy on North Korea in general and the implementation of sanctions in particular. Most visible is the role of the UNSC’s Sanctions Committee and the PoE. The UN Security Council Sanctions Committee on North Korea is a subsidiary body established pursuant to UNSCR 1718 in 2006. The Committee’s core objectives are to gather more information, specify the sanctions, monitor them, grant exemptions, and issue recommendations for new listings in case of violations. As the Committee’s responsibilities have broadened, a PoE was established in 2009 by UNSCR 1874 to assist the Committee in carrying out its mandate; gather, examine, and analyze information from states regarding the implementation of the measures (including incidents of non-compliance); make recommendations to improve implementation of the measures imposed; and issue reports. Both through its regularly published reports as well as through regular unofficial meetings, the PoE exerted direct and indirect pressure on the EU and its member states through its monitoring and documentation activities. EUMS were repeatedly part of the PoE’s investigations, and the respective instances were openly addressed in the Panel’s reports. A particularly prominent case in Germany, illustrating the pressure by third-party actors on EUMS, was the leasing of embassy property by the DPRK.<sup>77</sup> In 2016, these activities were explicitly prohibited by UNSCR 2321 (2016), which states that “[a]ll Member States shall prohibit the DPRK from using real property that it owns or leases in their territory for any purpose other than diplomatic or consular activities.” With the adoption of Council Decision (CFSP) 2017/345 on 27 February 2017, which incorporated paragraph 18 of UNSCR 2321, the German government was increasingly

<sup>76</sup> Interview of the author with a representative from the EEAS, Brussels, January 2019.

<sup>77</sup> “Hostel at North Korea’s Berlin Embassy Must Close, German Court Rules”, *Reuters* (online), 28 January 2020, <https://www.reuters.com/article/us-germany-northkorea-hostel-idUSKBN1ZR244>.

pressured to halt North Korea's ongoing activities. Even before the adoption of those resolutions and decisions, the case was repeatedly brought up informally by representatives of the South Korean Park Geun-hye government, which demanded from the German government a tougher stance on North Korea in general, and in this specific case in particular.<sup>78</sup> The pressure further increased with a formal investigation by the PoE, which states in its March 2018 report:

"The Panel investigated the leasing of embassy property of the Democratic People's Republic of Korea for uses other than diplomatic or consular activities in Bulgaria, Germany, Poland, Romania and Pakistan as violations of paragraph 18 of resolution 2321 (2016). The Panel notes that continued use of property of the Democratic People's Republic of Korea for purposes prohibited by the resolution constitutes a violation, whether or not the relevant embassies of the Democratic People's Republic of Korea are compensated for use of the leased space."<sup>79</sup>

According to the report, the German MoFA sent a note to the DPRK on 16 March, 2017, urging it to abide by paragraphs 17 and 18 of resolution 2321 (2016), the validity and legitimacy of which was denied in the North Korean response. On 7 April 2017, the German government informed the tenant companies of their obligations under UNSCR 2321 and the respective EU implementing regulations. In May 2017, the Foreign Trade and Payments Ordinance was amended to make the leasing of property from the DPRK an administrative offense in the country.<sup>80</sup>

<sup>78</sup> Interview of the author with a representative from the EEAS, Brussels, March 2018.

<sup>79</sup> *Final Report of the Panel of Experts Submitted Pursuant to Resolution 2345 (2017)* (New York, NY: United Nations Security Council, 5 March 2018), 75, <https://www.undocs.org/S/2018/171>.

<sup>80</sup> Simultaneously, the German government upped its diplomatic pressure, continuing to stress the embassy's obligation to cease using its property for non-diplomatic purposes and urged it on numerous occasions at all levels to abide by the applicable resolution. As a result, on 10 August 2017, the embassy of the DPRK terminated the leases with the two companies, requesting them to vacate the premises by 30 September 2017. However, both companies rejected the termination of their leases and threatened legal action. On 6 November 2017, the Central Customs Authority formally

In addition, these developments must be seen in the context of the US "maximum pressure" campaign against North Korea, with which Washington significantly increased its pressure against the EU and its member states, calling for a tougher European stance vis-à-vis Pyongyang.

## The absence of economic interest in North Korea

Another important factor explaining the politics underlying the EU's sanctions regime against North Korea is the lack of economic interest by EUMS. In many instances, when the EU adopts sanctions against a target country, political support among EUMS varies, with opposition to implementation usually being greatest when commercial ties with targets are highest. Cases such as the oil and gas embargo on Iran highlight the disparities that often emerge when some member states are more adversely affected than others. Given the heavier reliance on Iranian oil imports by Greece, Italy, and Spain, the EU's oil ban was implemented six months after it was agreed upon, so as to allow these three countries to secure new sources of provision. In the case of North Korea, no serious economic interests by EUMS exist, as is illustrated in Table 2, which shows that the strengthening of economic relations between the EU and North Korea was part of Brussels' strategy during the active engagement phase. With the change of the EU strategy toward a conditional engagement approach, and especially since the phase of active pressure, the importance of economic cooperation with North Korea was dramatically reduced, which is directly reflected by the trade statistics.

Economic relations between the EU and North Korea have shown a significant downturn in recent years, with the trade volume decreasing from about €280 million in 2006 to about €9 million in 2018 and only about €3 million in 2020. In this context, the EU's imports from North Korea have also decreased dramatically, from €154 million in 2006 to €3 million in 2018 and €1 million in 2020. During the same period, the EU's exports to North Korea fell sharply, from €127 million in 2006 to €6 million in 2018 and

opened legal proceedings against the companies engaging in illicit activities under the above-mentioned legislation.

Table 2

**The EU's trade relations with North Korea**

Period	Imports	Exports	Balance	Total trade
2006	154	127	-27	280
2007	63	59	-4	121
2008	111	96	-16	207
2009	51	73	22	124
2010	99	68	-31	167
2011	117	42	-75	159
2012	23	48	24	71
2013	117	29	-88	146
2014	17	18	1	34
2015	11	19	8	30
2016	7	21	15	28
2017	5	12	7	17
2018	3	6	4	9

Source: Eurostat, Comext: Statistical Regime 4.

Table 3

**North Korea's main trading partners 2018 (total trade)**

Ranking	Trading partner	Trade value (\$ mil.)	%
1	China	2,172	66.5
2	Ukraine	499	15.3
3	Trinidad and Tobago	137	4.2
4	Dominican Republic	78	2.4
5	Azerbaijan	42	1.3
6	Guinea	31	0.9
7	India	26	0.8
8	Russia	24	0.7
9	Kazakhstan	23	0.7
10	Liberia	16	0.5
~	~	~	~
15	EU 28	9	0.3

Source: International Monetary Fund, Direction of Trade Statistics,  
<https://data.imf.org/?sk=9d6028d4-f14a-464c-a2f2-59b2cd424b85>.



€2 million in 2020. Accordingly, the EU's status as North Korea's major trading partner fell from number 3 in 2001 to number 15 in 2018 (Table 3).<sup>81</sup> For the EU, North Korea ranks at 197 with regard to the Union's most important trade partners in 2020.<sup>82</sup>

### **The lack of diplomatic engagement by the EU in solving the nuclear crisis on the Korean Peninsula**

In addition to the lack of economic interest, not playing a political and diplomatic role in the attempts to solve the nuclear issue on the Korean Peninsula made disagreements among EUMS even less likely. As was discussed above, the EU initially pursued a policy of active engagement, and thus left a greater diplomatic footprint, expressed most vividly by Brussels' entrance to the KEDO executive board as well as the establishment of diplomatic relations by most EUMS with North Korea in the early 2000s. With the emergence of the second nuclear crisis, and especially following North Korea's first nuclear test in 2006, the EU significantly reduced its diplomatic engagement vis-à-vis North Korea. In the period of active pressure from 2016 onwards, the EU by and large followed the US' strategy of maximum pressure, halting the political dialogue with Pyongyang and focusing ever more on a sanctions-based approach. This approach prevented the EU from playing a more active and constructive role on the Korean Peninsula, and Brussels' diplomatic clout in its relations with North Korea gradually decreased. This is despite the fact that both South and North Korean officials have repeatedly expressed hope that the EU could assist the peace process on the Korean Peninsula more actively.<sup>83</sup> Although some EUMS are known to use their unofficial channels of communication with both parties to facilitate negotiations, the EU appears unwilling (or unable) to use its full potential as an actor with significant stakes in the region. This lack of diplomatic engagement also influenced the drafting of sanctions against North Korea. In the case of North Korea, neither the EU nor its most powerful member states have been — or are

engaged in — any meaningful diplomatic initiative to solve the nuclear crisis on the Korean Peninsula since the breakdown of the KEDO process. As such, the continuous work of the national institutions involved in drafting additional sanctions was not challenged by the respective country teams that often work toward securing greater diplomatic room for maneuvering. States such as Sweden, which favor a more active diplomatic role by the EU in the conflict, were simply not powerful enough to challenge the policies of the E3.<sup>84</sup>

<sup>81</sup> Frank, "EU-North Korean Relations" (see note 23), 93.

<sup>82</sup> Eurostat, Comext, Statistical regime 4, [https://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_122530.pdf](https://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122530.pdf).

<sup>83</sup> European Parliament, Delegation for Relations with the Korean Peninsula, "Minutes of Meeting with Mr. Pak Hyon-Bo, Ambassador of the Democratic People's Republic of Korea" (Brussels, 18 January 2005), <https://www.europarl.europa.eu/delegations/en/archives/6/dkor/home>.

<sup>84</sup> That is not to say that those states that argue for a more active role of the EU to solve the nuclear crisis on the Korean peninsula do not support sanctions as a significant means to deal with Pyongyang. Rather, as interviews with Foreign Ministry officials have shown, it is more accurate to say that these states are in favor of paralleling sanctions and diplomacy.

# Recommendations: The Need for a Sanctions+ Strategy

Given the multitude of violations both in terms of human rights and international political norms — and especially as the issue of non-proliferation is at the heart of the EU's CFSP — sanctions are a viable and legitimate option in the EU's dealing(s) with North Korea, and they will remain an important element of Brussels' strategy on North Korea for the foreseeable future. This is not least suggested by the adoption of the EU's first human rights sanctions on North Korea in 2021 and the annual confirmation and renewal of its existing autonomous sanctions in 2019, 2020, and 2021. It is thus highly unlikely that the EU will lift its autonomous sanctions or press for sanctions relief in the UNSC as long as Pyongyang does not take tangible steps toward denuclearization. North Korea, on the other hand, refuses to undertake such steps as long as international sanctions are not at least partially eased or lifted. In fact, North Korea continued the development of its nuclear and ballistic missile programs even during the current phase of harsh international sanctions and a comprehensive and self-imposed national lockdown.

## **The EU is in a unique position to play a role in the (facilitation of a) diplomatic process with the DPRK.**

Breaking this stalemate requires diplomacy, and the EU is in a unique position to play a role in the (facilitation of a) diplomatic process with the DPRK — also with regard to a potential reengagement of the country in a post-Covid era. In fact, current and former European heads of state such as Angela Merkel and numerous EU officials repeatedly emphasized that there is no military option to solve the nuclear crisis, and that a denuclearized Korean Peninsula can only be achieved through diplomatic and political

means.<sup>85</sup> What's more, the EU has a pronounced diplomatic network in the region, and individual member states (such as Sweden) have longstanding relations with — and thus unique access to — decision-makers in North Korea. Moreover, at the end of 2019, six EUMS had embassies in Pyongyang, while North Korea had nine embassies in the EU, and twelve NGOs from EUMS were operating in North Korea. However, to play to its strengths and allow it to make feasible contributions to the diplomatic process, the EU and its member states must move beyond mere rhetorical assurances, demonstrate political will, and invest political capital. Because security developments on the Korean Peninsula directly affect European interests — all while the EU is giving ever greater attention to the Indo-Pacific region — the EU should finally give the nuclear conflict the high priority it deserves. As former Vice President and High Representative for Foreign Affairs and Security Federica Mogherini has acknowledged: “[W]hat happens in the Korean Peninsula [...] matters to all of us.”

However, the mere fact remains, that, ever since the breakdown of the KEDO process, the EU has by and large shied away from assuming a more proactive role on the North Korea issue. Instead, in line with its active pressure strategy and the subsequent strengthening of the sanctions regime, the EU substantially decreased its political engagement with the DPRK, leading to a significant reduction of dialogue channels with the DPRK. In fact, the EU currently has no institutionalized platform to discuss with the DPRK the multitude of issues — aside from the denuclearization challenge — that touch upon Europe's interests, such as non-proliferation and human rights. Hence, the more the Union's North Korea strategy

<sup>85</sup> “Merkel Sees No Military Solution to U.S. Dispute with North Korea”, *Reuters* (online), 11 August 2017, <https://www.reuters.com/article/us-northkorea-missiles-merkel-idUSKBN1AR1BN>.

moved toward an active pressure approach, the more passive, reactive, and dependent on political framework conditions it became. As the EU basically conditioned its engagement with North Korea on tangible progress on the denuclearization issue, its role in wider security affairs on the Korean Peninsula was further diminished, leaving by and large only some informal dialogue channels and individual engagement initiatives by specific EUMS.

### Reengaging North Korea: Bringing engagement and dialogue back in

There is broad agreement among European experts that while sanctions are a legitimate element of the EU's dealings with North Korea and will remain an important element of the EU's North Korea strategy for the time being, sanctions alone are not a viable strategy and will not be sufficient to ensure that the EU achieves its objectives. Against this background, numerous experts have called for a reconfiguration of the EU's North Korea strategy and a broader North Korea policy review.<sup>86</sup> Although a new strategic approach can only be developed over time, there are tangible initiatives that can be pursued by the EU and/or its member states in the short term. Suggestions by European experts range from the establishment of liaison offices in Pyongyang and Brussels to the appointment of a special envoy for the Korean Peninsula, among others. A particularly viable first step, however, would be to resume the political dialogue with North Korea that ceased in 2015.

#### Resuming the political dialogue with North Korea would be viable first step in complementing the EU's sanctions-based policy.

First held in December 1998 — and thus, amid Brussels' active engagement period — the senior-level political meetings aimed at improving bilateral relations. The political dialogue had been held a total of

14 times since 1998, becoming one of (if not) the most important resource for Brussels in dealing with the DPRK. The parties discussed multiple issues at the respective meetings, including North Korea's WMD programs, the human rights situation in North Korea, inter-Korean relations, ways to reduce tensions on the Korean Peninsula, and the EU's humanitarian assistance to North Korea. The political dialogue between the EU and Pyongyang was upheld during the second North Korean nuclear crisis (from 2003 onwards), and even persisted after North Korea's first (2006), second (2009), and third (2013) nuclear tests. Following the 2015 meeting, the EU unilaterally canceled the dialogue, in line with its active pressure strategy — a crucial element of which was to scale down official dialogue with North Korea while strengthening the sanctions regime.<sup>87</sup> However, this contradicts a central point of the EU's own Global Strategy, which states that: "A stronger Union requires investing in all dimensions of foreign policy [...] from trade and sanctions to diplomacy and development." It adds that "long-term work on pre-emptive peace, resilience and human rights must be tied to crisis response through [...] sanctions and diplomacy."<sup>88</sup> "Restrictive measures, coupled with diplomacy, are key tools to bring about peaceful change."<sup>89</sup>

To that end, the EU should resume the political dialogue with North Korea as soon as possible. In fact, in 2018 North Korea proposed such a resumption — an offer that, while supported by some member states, was rejected by the majority within the EU.<sup>90</sup> Yet, the EU has much to gain from such a resumption. On the most basic level, the political dialogue with the DPRK provides a rare opportunity for Brussels to directly address those issues that are deemed particularly important to Europe, such as a peaceful and diplomatic settlement of the nuclear conflict, non-proliferation issues, and human rights. As all diplomats from EUMS left North Korea in 2020, there is currently no platform to discuss those issues with the DPRK in an official and institutionalized manner.

<sup>86</sup> See, e.g.: Antoine Bondaz, *From Critical Engagement to Credible Commitments: A Renewed EU Strategy for the North Korean Proliferation Crisis*, EU Non-Proliferation and Disarmament Consortium, Non-Proliferation and Disarmament Papers, no. 67 (February 2020): 12; Eric J. Ballbach, "The Role of the EU in the Korean Peninsula Peace Process", *Asia Trends* 6 (2021): 54–67; Ballbach, *The End of Critical Engagement* (see note 25).

<sup>87</sup> Ballbach, *The End of Critical Engagement* (see note 25).

<sup>88</sup> Council of the European Union, *A Global Strategy for the European Union's Foreign and Security Policy* (Brussels, 28 June 2016), 39, 45 (emphasis added), [https://eeas.europa.eu/topics/eu-global-strategy/17304/global-strategy-european-unions-foreign-and-security-policy\\_en](https://eeas.europa.eu/topics/eu-global-strategy/17304/global-strategy-european-unions-foreign-and-security-policy_en).

<sup>89</sup> Council of the European Union, *A Global Strategy for the European Union's Foreign and Security Policy* (see note 88), 28.

<sup>90</sup> Interview of the author with an official from the EEAS, January 2019.

Even though North Korea's ongoing lockdown prevents in-person meetings for the time being, using the video-conferencing capabilities recently installed in Pyongyang would allow for initial and preparatory contacts. Once in-person meetings are possible again, the EU — to get closer to the actual decision-makers in North Korea — should even consider the possibility of upgrading the dialogue from the senior officials to a higher diplomatic level. This might contribute to a better understanding of North Korean motives and objectives, while at the same time “[exposing] North Korean officials to European thinking and perhaps challenge their preconceptions about Western aims.”<sup>91</sup> This would have positive effects, regardless of whether negotiations between North Korea and the US, as well as between the two Koreas, are successful or not.<sup>92</sup> A robust dialogue is no reward for North Korea's “bad behavior” but an essential precondition for rebuilding European influence and defending European interest; it is crucial to “reinforce EU strategic autonomy in terms of assessment and analysis, and avoid the miscalculations and misperceptions that may have exacerbated past and current crises.”<sup>93</sup> Moreover, institutionalizing dialogue with the DPRK would ensure another important precondition for a more sustainable North Korea policy of the EU, that is, increasing continuity. While it is important for any successful policy to be flexible enough to react to changing circumstances, it is crucial to ensure a degree of continuity. The weak internal dynamic of the EU's North Korea policy and the subsequent high degree of dependence on external influences hampers both coherency and continuity, which ultimately weakens the strategy overall.

## Foster expert talks and Track 1.5 dialogues

Europe's own conflict-riven past provides it with comprehensive expertise in such areas as risk mitigation and trust-building. Its involvement in the Iran nuclear agreement negotiations are proof of the direct contributions Europe can make in the field of non-proliferation. Hence, in parallel to the re-establishment of political dialogue, the EU and/or individual member states should encourage and host expert meetings — eventually with officials attending — for those issue areas to which Europe can make immediate and expedient contributions. Especially following the breakdown of the Six-Party Talks, when official dialogue with North Korea was lacking, think tanks and academic institutions in several European countries, such as Sweden, Norway, Finland, and Spain, among others, acted as important venues for discreet discussions between North Korean officials and Western experts as well as (former) EU officials. There is ample evidence that North Korea ascribes importance to such meetings, which provide an opportunity to provide back-channel messaging, launch “trial balloons,” and at the same time forge working relationships and establish trust between the participants.<sup>94</sup> On the most basic level, therefore, such meetings below the official government level can contribute to gaining additional information on North Korea, its positions, as well as the underlying institutional and political dynamics. In the best case, such dialogues may pave the way for achieving concrete results on the Track 1 level. At the same time, however, the various European Track 1.5 initiatives, in which North Korea is embedded, vary significantly with regard to their respective degrees of institutionalization, organization, topics, issues addressed, objectives, and individual composition. In early 2019, Sweden hosted a Track 1.5 meeting, bringing together high-level decision-makers from the US, North Korea, and South Korea with a small group of European experts. Complementing those important, yet often one-off, initiatives, institutionalized Track 1.5 talks between officials, policy experts, and military analysts in the relevant countries on specific issues hosted by the EU or its member states could fill an important gap in the complex processes of denuclearization and

91 Ian Bond, “Out of Range, out of Mind: Is There a Role for Europe in the Korean Crisis?” *Boulevard Extérieur*, 13 April 2013, <https://www.boulevard-exterieur.com/Out-of-range-out-of-mind-Is-there-a-role-for-Europe-in-the-Korean-crisis.html>.

92 Mario Esteban, *The EU's Role in Stabilising the Korean Peninsula*, Working Paper (Elcano Royal Institute, 2019), [http://www.realinstitutoelcano.org/wps/portal/rielcano\\_en/contenido?WCM\\_GLOBAL\\_CONTEXT=/elcano/elcano\\_in/zonas\\_in/wp1-2018-esteban-eu-role-stabilising-korean-peninsula](http://www.realinstitutoelcano.org/wps/portal/rielcano_en/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/wp1-2018-esteban-eu-role-stabilising-korean-peninsula).

93 Antoine Bondaz, *From Critical Engagement to Credible Commitments: A Renewed EU Strategy for the North Korean Proliferation Crisis*, EU Non-Proliferation and Disarmament Consortium, Non-Proliferation and Disarmament Papers, no. 67 (February 2020): 12.

94 Eric J. Ballbach, “Socialization on a Second Track? European Track 1.5 Initiatives with North Korea”, *International Journal of Korean Unification Studies* 29, no. 1 (2020): 77–105.

peace-building on the Korean Peninsula. Thus far, unofficial dialogue with North Korea, unlike in the case of Iran, has not included expert discussions on the technical aspects of denuclearization. Given that any denuclearization process consists of both a political and a technical dimension, however, successful denuclearization requires the harmonization of both levels. With its own expertise in the fields of non-proliferation, Europe would be a credible host for such forums, which would complement the official dialogue on denuclearization between the core states in the region. North Korea has repeatedly signaled its willingness to expand its Track 1.5 dialogues with core European partners and institutions, both formally and informally. On the European side, this would, of course, require political will and adequate diplomatic weight and support by the EU to be placed behind any such initiative.

## Abbreviations

CD	Council Decision
CFSP	Common Foreign and Security Policy
CID	Council Implementing Decision
CIR	Council Implementing Regulation
CP	Common Position
CR	Council Regulation
DPRK	Democratic People's Republic of Korea
EEAS	European External Action Service
EU	European Union
EUMS	European Union Member States
IAEA	International Atomic Energy Agency
ICBM	Intercontinental Ballistic Missile
KEDO	Korean Peninsula Energy Development Organization
MoFA	Ministry of Foreign Affairs
NGO	Non-governmental Organization
NPT	Non-Proliferation Treaty
PoE	Panel of Experts
UK	United Kingdom
UN	United Nations
US	United States
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
WMD	Weapons of Mass Destruction



